



MEMORANDUM

March 23, 2007

TO: Dr. Royce Hanson, Chairman
Montgomery County Planning Board

FROM: Thomas J. Dagley
Inspector General

SUBJECT: Recommendations – Draft Manual of Development Review Procedures

I am taking this opportunity to inform you of the work of the Office of Inspector General (OIG) regarding the Manual of Development Review Procedures for Montgomery County, Maryland (draft date March 1, 2007). The OIG has reviewed this document to assess internal controls specifically related to management accountability and enforcement actions. This memorandum provides recommendations based on the OIG's unique experiences and perspective in handling land use complaints that first surfaced in April 2005. Since the first report of height and setback violations emerged regarding Clarksburg Town Center, numerous additional allegations of internal control deficiencies in land use matters have been reported to and continue to be addressed by my Office, Montgomery County Planning Department staff, and others.

While I believe a performance audit¹ is the best approach to provide you with a comprehensive assessment of internal controls, we agreed when we met in January that an audit prior to the issuance and implementation of a Manual and revised Rules of Procedure might be premature, if not counterproductive. In this regard, the OIG anticipates conducting a performance audit on development review activities in either fiscal year 2008 or 2009.

¹ As reported in a January 12, 2006 OIG memorandum to the Chairman and others, a performance audit is an objective systematic examination of evidence that assesses the performance and management of a program or activity against specific criteria. When reporting on the results of their work, auditors must disclose all material or significant facts known to them which, if not disclosed, could mislead knowledgeable users, misinterpret the results, or conceal improper or unlawful practices. Later in 2006, the OIG found that no performance audits have been conducted in MNCPPC's development review area for at least the past five years.

The OIG has three general areas of concern with regard to internal controls and the draft Manual: accountability, enforcement, and certification. Below are our recommendations for your consideration to strengthen internal controls for development review activities. After you have had an opportunity to review these recommendations, I welcome the opportunity to meet with you to explain our analysis. I am sending a copy of this memorandum to the Council President and members as information and to communicate my availability to clarify the basis for these recommendations before the Manual is approved and issued.

Recommendations

- 1) Develop and implement procedures to substantiate the integrity and reliability of information on applications. The procedures should assign accountability for this verification to a specific staff member, such as the lead reviewer, and clearly itemize what action the assigned individual will take to verify key information. The procedures should document the steps to be taken to report the results in the staff report. These procedures will help detect any inaccurate, misleading, or false information at the beginning of the development review process.

Although incorporating these procedures may seem unduly burdensome on staff, the principle of prevention applies. Strengthening internal controls will reduce the waste of resources that is a predictable consequence of working with faulty information throughout the life of a project. As staff in the Planning Department, Council, and OIG know, questionable information linked to a specific project can cause the entire project to be reworked, often at significant expense and delay. Equally important is the improved transparency in operations and stakeholder confidence that occurs when controls of this type are implemented.

- 2) Develop and implement policies and procedures for staff to report allegedly inaccurate, misleading, or false information to the appropriate official. This will allow staff to consistently and objectively report these concerns and allow management to track allegations and results in a meaningful way. Suitable administrative penalties for the submission of inaccurate, misleading, or false information on applications should be published in the Manual, up to and including referring potential criminal matters to an independent investigative or law enforcement agency.
- 3) Establish procedures to verify the professional certifications of applicants and their representatives with the appropriate regulatory board. If potential violations are discovered, the respective board should be promptly notified in writing. This notification, the regulative board's response, and the Planning Board's handling of any violations should become a permanent record and considered in all future work by the staff and Board. These verifications with the State are not time consuming and will increase public confidence in development review and Board processes. As

you may know, there is at least one potential violator under investigation at this time as a result of information reported by a County resident.

- 4) The Certificate of Compliance and Statement of Justification requirements included in the draft Manual are effective tools for increasing accountability for applicants and their representatives. To further increase accountability, require applicants to certify conformance to all federal, state, and local laws and regulations. The Certificate of Compliance should be used to oblige applicants to reveal existing easements or other restrictions which govern the use of the subject property and to certify the accuracy of data contained in the application. In the draft Manual, although applicants are required to certify conformance with Board decisions, applicants are not accountable for conforming to all laws. In order to promote consistency and clarity, consider drafting standard language for use in these documents.

- 5) All forms submitted to MNCPPC should have standard legal language for the applicant and/or representative to attest to the accuracy of the information provided. This will allow staff to take appropriate action if intentionally misleading or false information is submitted and a designated official determines referral to a law enforcement agency is appropriate.

We would like to acknowledge the overall cooperation extended to OIG staff. If you have any questions regarding these recommendations, please contact me.

OIG #0030

Cc: Marilyn Praisner, Council President
Council Members