



Project: Advancing Equity in Rezoning  
Subject: Small Working Group Topic #1 – Review Criteria  
Meeting Dates: April 11, 2024, 3:00pm - 4:30pm  
April 12, 2024, 11:00am - 12:30pm  
Meeting Location: Webb 4.1.3 / Virtual Meeting

## Meeting Notes

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### Meeting Objectives:

- Recap of January meetings
- Continue discussion on Public Health, Safety, and General Welfare criterion
- Discuss proposed updates to Justifying Circumstances criterion

### Welcome, Introductions and Agenda Review

- Meeting participants introduced themselves by sharing their name and organization.

### CPD Presentation Part 1

- Brandon Shaver presented the meeting agenda, project background, and a refresher on previous discussion on proposed changes to review criteria.
  - General agreement on removing Uniformity of District Regulations and Code Intent Statement criteria and moving the provision to provide land for a community need from plan consistency to another section.
  - Less clear consensus on what to do about Public Health, Safety, And General Welfare criterion as it is dated language that has historically been used for exclusionary purposes. A goal of this project is to get away from problematic language and legacy as well as remove ambiguity in review criteria.
  - Planning Board and City Council don't want to be a "rubber stamp" for CPD recommendations, but have identified need to rework Public Health, Safety, And General Welfare language while retaining the ability to make decisions with some discretion.
  - Project team is proposing to focus on using adopted plan recommendations to address issues within Public Health, Safety, And General Welfare
- Brandon Shaver presented examples of previous rezoning cases, highlighting how adopted plan guidance can be used to evaluate rezonings in place of the public health, safety and general welfare criterion.
- Rob Haigh presented an overview of the existing rezoning criteria, staff evaluation and proposed changes.

### Comments/Questions/Discussion:

- The examples presented seem focused on addressing specific projects or uses, instead of "is this zone district the right zone district for this address, regardless of what uses are allowed?"
  - Rezoning (map amendments) change the rules for development and land use and do not approve a specific project.
  - Agree with move away from arbitrary Public Health, Safety, and General Welfare language, which can mean whatever you want it to mean. With our base zone districts, especially mixed use, analysis for examples should have been "yes." The City Council conclusion on 34<sup>th</sup> and Irving seems incorrect based on the proposed zoning not being particularly high intensity, but with the flaw of allowing drive-thrus. CPD should move drive-thrus to some kind of overlay district in order to be more specific and intentional about where they are allowed. There's a problem to be solved

here but it may not be a criteria problem, instead a base zoning district problem, especially where auto-oriented uses are allowed.

- Using adopted plans as main criteria can be difficult when there's conflicting or very nuanced guidance, especially where there are multiple plans to evaluate for consistency.
- Could have said it's not consistent with adopted plans, one of the things staff could improve upon is presenting to Planning Board and City Council the reasons why the adopted plans do and don't support the proposed rezoning. Staff reports typically provide plan recommendations that support a rezoning, but often don't include guidance that may not support the rezoning request.
  - CPD response: This proposed approach likely wouldn't change staff's recommendation for these cases, it is meant to point out examples where adopted plans could be used to analyze appropriateness of a given request without the public health, safety and general welfare criterion.
- Staff highlighting plan guidance both for and against a particular proposal in a staff report would put staff in a more neutral position.
- In the past, this is what use waivers were used for, tailoring zoning application to local conditions and desires.
  - CPD response: Waivers are used in some instances, provided they are a bridge to a future text amendment.
- Gas station examples highlight concern that rezoning decisions are being, or will be made, based on specific projects. The City makes it harder by not getting involved in creating things like Good Neighbor Agreements or not allowing waivers and conditions—there are situations where some degree of customization of zoning would be appropriate. More tailoring of uses could help this situation, like with the suggestion for providing for drive-thru uses with an overlay.
- Conflicting plans— what is conflicting and how does this happen? Doesn't seem to make sense how a new plan would contradict the existing plan(s)
  - New plans can zoom out or narrow in on a specific area, station area, neighborhood, larger areas, and staff's analysis is more heavily weighted on more recent plans. The current practice is to remove the older plans that no longer provide good guidance when new plans are adopted.
  - Sometimes what looks like conflict is not conflict, as small area plans provide more granular and specific guidance from larger area plans. However, sometimes areas covered by plans overlap and that can be confusing/conflicting.
  - Feeling that these conflicts are "inevitable" shows us we should try to build a system that prevents this kind of conflict or lack of clarity.
  - On the other hand, plans are visionary and not regulatory, and interpretations can differ.
  - A citywide plan and a small area plan expressing things differently should be expected, the issue is with failure to be tidy and not removing old plans as new ones are adopted.
- Agree with and appreciate the approach to move away from Public Health, Safety, And General Welfare, but the concern with Blueprint Denver is that if you're an applicant and trying to understand what your rights would be, the guidance seems to be ambiguous in terms of what zone district is recommended where. Not sure it gets to predictability from the applicant standpoint and opens a box of tools to people who don't want development.
  - CPD question: Could staff do a better job regarding providing key elements of plan guidance to decision makers?
- Gas station example seems kind of forced and specific, hard to see how we could cover all the bases with this kind of analysis. Agree with removing Public Health, Safety, And General Welfare language, and in a lot of cases a side agreement might take care of this concern, however City Council can't consider this or must pretend it's not there. Do any of our adopted plans still have language similar to the Public Health, Safety, And General Welfare criterion—would we run up against finding this language again somewhere else?
- Want to think about proposal a bit more— it would be helpful to give people a way to sift through plan guidance, as Blueprint Denver is a big document. If we want to make the process more equitable and

accessible, asking a neighborhood to have to analyze and cite plans to make their argument may increase the burden.

- Agree with moving away from Public Health, Safety, And General Welfare, but less concerned with this approach adding risk of not meeting plans. Plan consistency is already a criterion and can already be used to deny a problematic application. Public Health, Safety, And General Welfare is a poorly defined and abused criteria, highlighting plan guidance would help focus discussions, especially if staff can highlight ways in which a proposal does and does not meet plan guidance. This approach would address the rubber stamp aspect if we don't just provide evidence that supports recommended position from staff. Giving a broader analysis and background gives everyone latitude to talk about how something does or does not meet plan guidance and would positively change character of plan discussion.
- If we just eliminate the Public Health, Safety, and General Welfare criterion altogether, plan guidance from staff becomes even more important, but we want to find some way to review issues like traffic, safety, equity goals, housing, etc. There is a need to keep some lens to examine specific and practical impacts and concerns with proposed rezonings.
- The zoning code requires staff to make recommendation of approval or denial and staff could potentially do a better job of highlighting alternatives in staff reports and not present certain outcomes as a "slam dunk".
- Maybe a guideline that specifically calls out goals like equity, carbon neutrality and others in our plans. Some aspects of plans may change but some are safe and will be in our plans for a long time. Calling out guidelines will help staff and applicants to know what to focus on.
- On the council side—good job of explaining the issues and showing how we can continue. There could be a middle ground of rewording to focus on "General welfare" without bringing up discriminatory points like "this will bring in more low-income people, which will lead to more crime." Council members want to be able to vote against something that would impact air quality, for example. Council members feel these things are important and does care about equity, environment, quality of life, and social determinants of health, i.e., where we're choosing to put people that are most vulnerable, for example places that don't have grocery stores or have poor air quality and want to be able to look at these issues.
- Citywide plans (Comprehensive Plan 2040/Blueprint Denver) contain high level concerns, environment, equity, etc.—anything someone wants to explore is there and this proposal redirects us to look to the plans and cite them. One thing we need to hold on to is that a rezoning is fundamentally saying that this zone district and all that it allows is or is not consistent with plans, and not "what is this person planning to do." We need to avoid assumptions about projects and consider all the range of things that a rezoning could be used for.

## CPD Presentation Part 2 – Equity, Environment, and Justifying Circumstances

- Following the discussion, Rob Haigh presented information on how our plans address equity and environmental health.
  - Blueprint Denver focuses on equity and addressing the climate crisis, especially in the context of large-scale rezonings and text amendments. Blueprint's equity concepts should guide implementation decisions on a smaller scale as well, considering current conditions, historical inequities, potential benefits and how impacts could be mitigated.
  - Can use Blueprint's equity concepts to ground individual pieces of plan guidance and look for whether there are environmental justice issues at play.
  - Environmentally resilient vision element in Comprehensive Plan 2040 states Denver is committed to more sustainable growth in terms of density, transportation and mode choice, natural resource conservation, environmental quality, etc.

### Comments/Questions/Discussion:

- Discussion question: Is there anything else we should consider when using adopted plans to evaluate rezoning requests?

- Is CPD anticipating “smart” growth or sustainability factors in rezoning decisions? (i.e., Low resource use types of development)
  - CPD response: These factors are considered and reflected in plan guidance, most often in terms of land use recommendations.
- Agree with highlighting Blueprint equity concepts and think it’s a good approach, but there are some things in Blueprint Denver that could be argued either way. For example, would an upzoning bring traffic and thus arguably negative environmental impacts? Better transit infrastructure is sorely needed in some areas of the city, but we need density to bring the transit— this creates an argument loop. Infrastructure considerations often get left out of plan guidance discussions on both sides of a proposal.
- Plan guidance can be argued different ways, but it’s good to know about the equity and environmental considerations in our plans. How and why are they being called out as part of this process?
  - CPD response: In previous discussions we heard decision makers wanted to make decisions based on equity and environmental considerations and thought Public Health, Safety, And General Welfare language was needed to do that. The project team is demonstrating how these decisions can be made based on plan guidance.
- New City staff and City Council members get trained (or may get trained) on plan guidance, but members of the public don’t. Could there be something like a handbook written in plain language as a guide to plans and how the criteria get applied? People may have only knowledge of only pieces of or misconceptions about plan guidance.
  - CPD response: That is a great idea and something the project team would be open to considering.

#### **Proposed Changes: Justifying Circumstances**

- Following the discussion, Rob Haigh presented potential changes to the justifying circumstances criterion.
- Currently, at least one of the listed justifying circumstances must be met (in addition to all other criteria).
- One big change: Rezoning must be consistent with adopted plans OR meet a justifying circumstance.
  - Why? Emphasizes the focus on plan guidance but also allows for consideration of significant changes or current community needs (when outside of plan guidance).
  - Implementing plans through rezoning shouldn’t require changed or changing conditions.
  - Other cities along the Front Range use this approach.
- Other adjustments: Retain, move, remove examples of justifying circumstances.
  - Retain justifying circumstances for correction error or mistake and addressing changed or changing conditions (i.e., new transit station or large infrastructure improvement)
  - Move “community need not anticipated at the time of plan adoption” into menu of justifying circumstances.
  - Remove justifying circumstances for FC59, overlay districts, and unique physical characteristics.

#### **Comments/Questions/Discussion:**

- Why is “changed or changing conditions” still in there? This used to mean “you don’t get a rezoning unless you meet changed or changing conditions,” may be duplicated by the “community need” justifying circumstance. City Council might want to retain community need circumstance for legislative rezonings.
- “Community need” should be in Council’s purview to ascertain and address.
- City Council has led the majority of legislative rezonings.
- Determination by the City Attorney’s Office whether a rezoning is legislative or quasi-judicial can be challenging to understand.
- Don’t disagree with the presented justifying circumstances, but concerned about “community need not anticipated by plan”—who is the community that does or does not decide there’s a specific need? There is

a need to ensure that community voice is the whole community and not just the people who have the privilege to spend time attending public meetings or hearings.

- The rezoning process doesn't have all the outreach that a plan process has, so there may be a need to state the limitations or conditions on how to use the community need justification.
- Want to discuss proposal to remove Chapter 59 zoning as justifying circumstance. Remaining Former Chapter 59 properties are often highly customized PUDs or sites with lots of waivers for very specific uses. It's no longer best practice in zoning to have these and so we should keep this justifying circumstance.
  - CPD response: Using today's criteria you must meet both adopted plans **and** justifying circumstances criteria. Using the proposed approach, consistency with adopted plans is sufficient. There should be very few cases where rezoning from the old code into the Denver Zoning Code wouldn't meet adopted plan guidance.
- Need to do some further considering, but I do think moving to the "OR" formulation makes sense. There are instances, particularly community need, that make sense.
- The need to justify a rezoning that meets plans doesn't make sense, so this change is appreciated. Implementing plans by itself is sufficient and should be a goal. Sometimes a rezoning might be appropriate even though it isn't supported by plans, like community need, but change or changing conditions may be duplicative of community need not anticipated. Errors have been rare and need to stay rare.
- Wonder if there's any deeper definition of "community need not anticipated in plan" somewhere. From lay perspective, applications often have handwaving about justifying circumstances, so it's better if they don't have to do it. Mostly concerned about "community need" seeming very broad, is there case law or something similar on that?
  - CPD response: Community need should be on case-by-case basis and rare, but it's a good point that it may need additional guard rails.
- What are "adopted plans" specifically? Do DRCOG plans count, for instance? There are other layers of plans and sometimes they conflict. Would be helpful to have list of adopted plans to reference. Also, elected officials don't go through a class that explains the plans, so looking forward to a handbook or something similar that provides background.
  - CPD response: Adopted plans are plans adopted by City Council, often when Council adopts area plans, they are specifically stated to supersede older plans. We have a website that lists all City Council adopted plans. However, it wasn't always standard practice to supersede older plans as new ones are adopted, and we are currently working to remedy that moving forward.

## Closing Statements

- Brandon and Rob thanked the task force members for their time and encouraged them to reach out to the project team with any additional thoughts, notes, or questions.
- Next steps: To break up the complex review criteria topic into digestible pieces, a third set of working sessions are expected in the summer.

## Attendees:

Task Force Members:

CM Amanda Sandoval, CM Flor Alvidrez, Bruce O'Donnell, Joel Noble, Londell Jackson, Lou Raders, Maggie Lea, Melissa Horn, Caitlin Quander, Steve Harley, Kate Hilberg, Brendan Greene

Project Team:

Brandon Shaver, Andrew Webb, Rob Haigh, Joe Green, Fritz Clauson