

Reining In Area Planning Commissions

Decision against planned Brentwood restaurant -- later overturned -- shows dangers of local control.

By BENJAMIN M. REZNIK

IN 2000, the voters of the city of Los Angeles adopted extensive charter reform. One of the primary objectives of this initiative, sponsored in large part by then-Mayor Richard Riordan, was to bring governmental decision-making closer to the local community level. In doing so, the new charter focused extensively on the issues of planning and zoning.

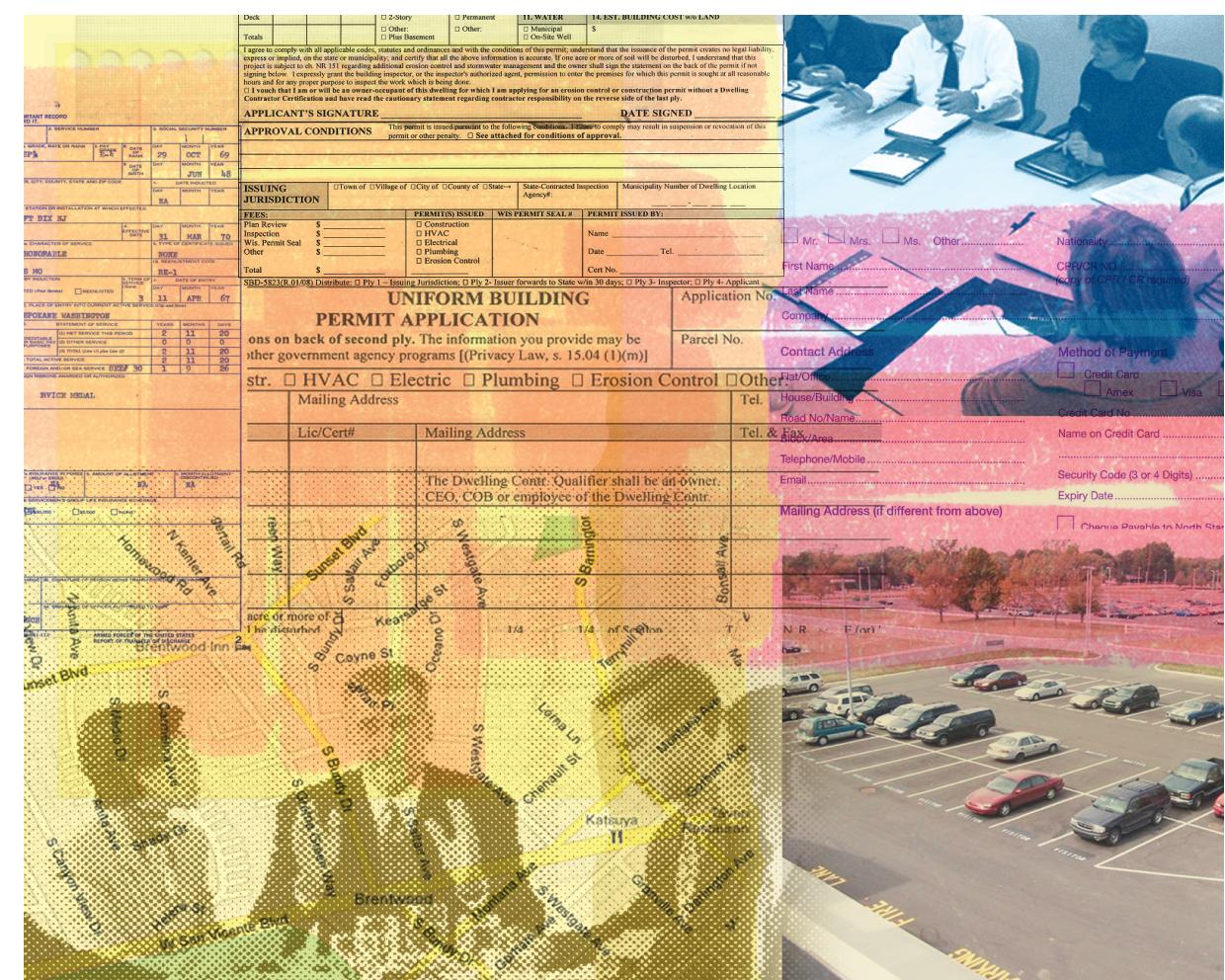
Rather than leaving all planning decisions in the hands of a citywide Planning Commission, the charter established seven area planning commissions, known as APCs, each consisting of five volunteer members appointed by the mayor and covering distinct geographical parts of the city. These commissions are charged with reviewing projects that are judged to have limited local impact, while the nine-member citywide commission continues to review major projects.

These APC commissioners need not and, in fact, do not possess any special training, knowledge or experience in land-use matters, and certainly are not familiar with the body of land-use and zoning laws applicable to many of their decisions. Pursuant to the city charter and zoning code, the APCs are empowered to decide many important cases. In many instances, their decisions are final – meaning there is no further right of appeal to the City Council. The only remedy left is litigation, and that, all too often, is expensive for modest projects. The impact of a negative APC decision can be devastating upon an applicant, as it can result in significant financial losses, sometimes in the millions of dollars.

Training program

Yet, despite all this, the city of Los Angeles does not require any training program for its commissioners nor provide legal counsel to guide them on the complex issues of a case. When considering cases involving variances or legal nonconforming uses, the APCs, as appellate bodies of last resort, are placed in a position of having to understand and correctly apply legal concepts and rules. While Planning Department staff members are present at the hearings, most of the time no representative from the City Attorney's Office is in attendance.

The results in many instances are predictable. Decisions are rendered that are not supported by the evidence, which may be contrary to the law, and which – in some circumstance – are “results oriented” rather than legally correct. This is extremely unfair and prejudicial to people who purchased properties in



reliance on what the law permits them to build only to be told by an APC that their application is denied.

I have firsthand knowledge of many such unfortunate experiences. Recently, one of the APCs ignored the advice of the Department of Building & Safety and the Planning Department in a case involving proposed Brentwood restaurant Fig & Olive where the project was permitted to use the existing “grandfathered” number of parking spaces for the site. Statements made by some of the commissioners at this hearing demonstrated that they did not care what the law was nor the risk to the city of a decision that ignored it, because they did not like the result. So this APC ruled that the building permit must be revoked.

Our office filed a lawsuit and the court ruled in our client’s

favor. Now our client will be able to proceed against the city for substantial damages for the delays caused by the illegal revocation of the building permit. The result will be an unnecessary cost for a city already wallowing in red ink!

The city attorney cites budgetary constraints as the reason his office does not provide the APCs with legal support at the hearings. However, one has to wonder whether in the long run the city would be better served providing such counsel to these local area planning commissions.

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Scrutiny Will Keep MTA Finances on Correct Path

By MARK RIDLEY-THOMAS

THE Metropolitan Transportation Authority’s money must be carefully watched. With literally billions of public dollars flowing through Metro’s fingers, the need for careful financial controls, and for fairness in Metro contracting, is greater than ever before.

Sensing intolerable traffic congestion, mounting concerns for global air quality and renewed interest in urban living, a unique coalition of business, labor and public sector voices joined with the electorate to sponsor and fund Measure R.

Measure R will give Metro the ability to move 12 major urban transit and multiple highway improvement projects ahead simultaneously.

This half-cent-per-dollar sales tax is dedicated exclusively to transportation. Under Mayor Antonio Villaraigosa’s “30/10” initiative to build 30 years of rail and highway improvements in 10 years, the critical path is now implementation, and a crucial element on that path will be Metro’s ability to manage its financial affairs.

Metro’s financial team is in constant contact with their peers in Washington, D.C., over the detailed financial mechanisms required for 30/10. These mechanisms include TIFIA (Transportation Infrastructure Finance and Innovation Act) and QTIB (Qualified Transportation Infrastructure Bond) requests. The

TIFIA program of low-interest loans has been used by Metro before, but never on this scale. The QTIB package involves a new program of interest-free, federally guaranteed bonds. Together, the dollar amounts on these requests start with a big “b,” as in “billions.”

These requests have inspired considerable scrutiny on Capitol Hill. Our local congressional delegation, led by Sen. Barbara Boxer, and including Reps. Jane Harman and Judy Chu, and Congresswoman-elect Karen Bass, are actively working the corridors of power. The Obama administration has signaled a preliminary willingness to support this congressional initiative.

One ready-to-build project, the Crenshaw/LAX Light Rail Corridor, will be the prototype first phase of implementation for the larger 30/10 program. As such, it is receiving particular attention and support, witness the first TIFIA loan of \$546 million, announced by Boxer last month to kick-start Crenshaw/LAX.

At the same time, advocacy for traditional federal funding sources, such as the New Starts program for the Purple Line subway to Westwood and the Downtown Regional Connector, are also in play.

Measure R will give Metro the ability to move 12 major urban transit and multiple highway improvement projects ahead simultaneously. This places special attention on the financing practices of the Metropolitan Transportation Authority.

Financial battering

Like almost everything in this economy, Metro suffered significant battering and blows in the aftermath of the financial crisis of 2008. Positions involving hedging, debt swaps and nontraditional credit enhancements turned sour. This left Metro facing increased costs to recover its liquidity positions and maintain

covenants. The cost of these losses to the public is still unknown.

Metro staff members moved quickly after 2008 to arrange alternative credit enhancements for threatened leveraged positions, and now are reviewing the agency’s debt policy to include further safeguards and a more conservative approach. I joined with other Metro directors in September to support a revised debt policy for future financings.

Two months ago, I authored a motion to expand the financial advisory services available to Metro by bringing in three financial advisers, as opposed to the current single adviser. Private sector financial advisers provide both market forecasting and technical capitalization plans for Metro’s Financial Services Group. Metro’s expanding need for project capitalization coincides with continuing volatility in municipal debt markets. Therefore, the need for expanded financial advice, and a carefully crafted financial plan, is more critical than ever before.

At the same time, my office is concerned that Metro’s stable of financial service vendors, including financial advisers, underwriters and bond counsel firms, reflects the diverse skills of our community, with appropriate opportunities available for small and local businesses.

Metro made a positive step in this direction with its recently approved list of underwriting firms that include African-American, women and Latino co-managers for major debt issues.

Therefore, while much public attention will be focused on proposed light-rail and subway alignments, grade crossings and, hopefully soon, groundbreakings and grand openings for transit systems, an ever-vigilant eye should be maintained on the financial practices and economic well-being of the transit agency itself.

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