



AGENDA

Downtown Advisory Commission
Thursday, January 19, 2012
Municipal Center – MEETING ROOM B&C
400 S. Eagle Street
3:30 – 5:00 PM

- I. **Call to Order / Roll Call**
- II. **Approval of Meeting Summary from November 10, 2011 Meeting (Pages 1-5)**
- III. **Discussion Topics**

North Downtown Special Planning Area (Pages 6 – 8)

*Among DAC's top implementation priorities in the Downtown2030 Plan is the need to **CONSIDER** zoning code updates, and perhaps establish an overlay code to create special additional code requirements for this area. During today's meeting, we will review the existing zoning in place, current mix of land uses and 2030 vision for the North Downtown area. Moreover, staff will provide an overview of existing City review and approval authorities for this area before DAC is asked to answer the question: Are additional codes and regulations needed? If additional updates are determined to be necessary, a subcommittee will be established to convene in February and March to consider specific code changes.*

- IV. **Correspondence /Updates**

Open Meetings Act Required Training (Page 9)

The Illinois Attorney General's Office is administering a new required training for all elected and appointed officials. All voting DAC members are required to complete this training in 2012. Staff is asking that you please complete on-line training by April 19, 2012 and provide copy of certificate of completion to Amy Emery.

- V. **Adjournment**

Next Meeting: April 19, 2012

AGENDA ITEMS: Finalize North Downtown Special Planning Area Recommendations

Create Upper Story Setbacks and Rooftop Uses Subcommittee

UNAPPROVED

**NAPERVILLE DOWNTOWN ADVISORY
 COMMISSION MEETING SUMMARY
 November 10, 2011 - 3:30 P.M. – Municipal Center Rooms B&C**

Call to Order	<u>Time:</u>	3:36 pm																									
A. Roll Call Commissioners:	<u>Present:</u> Steven Rubin, Chairman Judy Brodhead, City Councilman, Arrived at 4:15pm Joe McElroy, City Councilman Mary Ellen Barry Steve Grosskopf Richard Hitchcock Christine Jeffries, Arrived 3:50pm Mary Ann Junkroski Bob Marshall John Schmitt Dwight Yackley Student Member: Nesh Patel was present		<table border="1"> <thead> <tr> <th data-bbox="1219 344 1341 380"><u>Yes</u></th> <th data-bbox="1341 344 1458 380"><u>No</u></th> </tr> </thead> <tbody> <tr><td data-bbox="1219 380 1341 420"><input checked="" type="checkbox"/></td><td data-bbox="1341 380 1458 420"><input type="checkbox"/></td></tr> <tr><td data-bbox="1219 420 1341 459"><input checked="" type="checkbox"/></td><td data-bbox="1341 420 1458 459"><input type="checkbox"/></td></tr> <tr><td data-bbox="1219 459 1341 499"><input checked="" type="checkbox"/></td><td data-bbox="1341 459 1458 499"><input type="checkbox"/></td></tr> <tr><td data-bbox="1219 499 1341 539"><input checked="" type="checkbox"/></td><td data-bbox="1341 499 1458 539"><input type="checkbox"/></td></tr> <tr><td data-bbox="1219 539 1341 579"><input type="checkbox"/></td><td data-bbox="1341 539 1458 579"><input checked="" type="checkbox"/></td></tr> <tr><td data-bbox="1219 579 1341 619"><input checked="" type="checkbox"/></td><td data-bbox="1341 579 1458 619"><input type="checkbox"/></td></tr> <tr><td data-bbox="1219 619 1341 659"><input checked="" type="checkbox"/></td><td data-bbox="1341 619 1458 659"><input type="checkbox"/></td></tr> <tr><td data-bbox="1219 659 1341 699"><input checked="" type="checkbox"/></td><td data-bbox="1341 659 1458 699"><input type="checkbox"/></td></tr> <tr><td data-bbox="1219 699 1341 739"><input checked="" type="checkbox"/></td><td data-bbox="1341 699 1458 739"><input type="checkbox"/></td></tr> <tr><td data-bbox="1219 739 1341 779"><input checked="" type="checkbox"/></td><td data-bbox="1341 739 1458 779"><input type="checkbox"/></td></tr> <tr><td data-bbox="1219 779 1341 821"><input checked="" type="checkbox"/></td><td data-bbox="1341 779 1458 821"><input type="checkbox"/></td></tr> </tbody> </table>	<u>Yes</u>	<u>No</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Staff Present:	TED – Allison Laff, Amy Emery, Marcie Schatz																										
Public:	Patty Gustin – Resident and Planning and Zoning Commission Member Katie Wood – Downtown Naperville Alliance Peggy Frank – Naper Settlement Jack Barry – Liquor Commission Member																										
B. Approval of Meeting Minutes	<u>September 21, 2011 Minutes</u> Motion By: Marshall Second By: Hitchcock Approved: 8:0																										
C. Discussion Topics																											
Liquor Subcommittee and Recommendations	<p>Emery reminded DAC members of the important on-going role they have to relay DAC conversations and recommendations to the groups and individuals each member represents. In an effort to share information from DAC with downtown stakeholders, Katie Wood indicated she would add a link from Downtown Naperville Alliance eCommunications to the DAC web page.</p> <p>Marcie Schatz provided a review of the Downtown Liquor Subcommittee process and the six recommendations presented to City Council on November 1, 2011 related to Class B operations. She thanked DAC members Yackley and Hitchcock for their participation on the subcommittee.</p> <p>Hitchcock shared that he was happy with the recommendation to establish caps for late night operations, particularly after defining a late night (after 11pm) permit. In his opinion, caps are one of many tools available to address mix issues. He was also glad to see the broader downtown land use mix</p>																										

conversation move from the Liquor Subcommittee to a different group.

Barry surmised that it seems the City is proposing to transfer from the Liquor Commissioner to the City Council the decision of whether a business can obtain a liquor license. In response, Marcie Schatz explained that the proposed cap is only recommended for late night operations, not for all other Class B establishments that close by 11pm (e.g. traditional restaurants). All applications for a late night permits will go to the Liquor Commission to provide recommendation. If the cap limit for a particular license type is reached, only then City Council approval would then be required.

McElroy suggested that if a cap really just means is higher level of scrutiny maybe a different term than “cap” is needed. He observed that the vast majority of communities in the region have all established caps for licenses. He feels it is a reflection of the Naperville community that we don’t currently have caps.

Marcie Schatz noted that the Liquor Concept Meeting and the role it has to filter applications prior to any review by the Liquor Commission will continue to be an important tool in the license process.

Schmitt expressed concern with regard to the establishment of caps for all Class B Licensed establishments. He repeated staff’s point that there is no intention to have an ‘arduous process’, but commented that intent and result can sometimes change. He went on to say that the Naperville Area Chamber of Commerce has concerns about how regulations will impact the market, free enterprise, and property owner rights. With respect to late night permits, the discussion makes sense given service demands upon the City for these operations. However, the idea of establishing caps for all Class B establishments, to maintain the “proper” retail mix is a concern.

Marcie Schatz clarified that the recommendation at this time is only to Cap Class B late night permits. There is no recommendation on cap of all Class B Licenses.

Hitchcock observed that there seems to be two things in play. Most recommendations of the subcommittee related to liquor and liquor in the downtown. The idea of a broader discussion for a cap on all Class B License is a conversation that has really just started. A cap could be a tool to control the mix, but there may be many other tools instead, including use of incentives for retail.

With respect to the recommendation pertaining to the establishment of a group to discuss caps for Class B licenses and the retail mix, (e.g., establishment of Caps on Class B Licenses (non-late night) in the Downtown to NDP, DAC and DNA as a Broader Discussion on Retail Mix), Schmitt indicated he has a problem with how it currently is written. He feels that because caps are not the only answer to address mix concerns the statement should be revised. He

would also recommend representatives from the Chamber be a part of any discussion group. He went on to express the Chamber's position that property owners should have protections and maintain their rights. Naperville has a lot of rules, regulations and laws already. The Chamber wants to make sure the City is enforcing what is already in place before adding more layers.

Marcie Schatz responded that in addition to the recommendations presented by the Liquor Subcommittee, the Downtown Liquor Subcommittee recommendations for consolidated city enforcement and a revised FireWatch program are moving forward. These changes relate directly to the Chamber's concerns about enforcement of existing laws.

Councilman McElroy asked how the level of regulation in Naperville compares to other downtowns? Is it more onerous than other communities?

Schmitt clarified his concern to say if Naperville establishes a cap, every request will have to go to the City Council and have to be scrutinized, which will cause some delay in approval.

Marcie Schatz clarified that as recommended, only late night operations would be subject to a cap and that all other communities have caps in place today.

Councilman Brodhead relayed her experience with full menu availability ending before current scheduled times. She expressed some concern about further hour reductions and asked how these requirements are to be enforced.

Marcie Schatz responded by noting that the requirements of the code are enforced as resources are available. On a weekend, kitchen hours are not the city's highest enforcement priority. However, random checks through the FireWatch program should help to ensure compliance.

Marshall asked if a late night establishment violates the liquor code, what is the process for enforcement? Marcie Schatz noted that the consolidated enforcement efforts recommended by the Downtown Liquor Subcommittee that are now being implemented will provide a unified response from police, code enforcement, fire and legal with respect to violations.

DAC voted to support all of the recommendations made by the Liquor Subcommittee to City Council as noted below:

- 1) *Establish a new Late Night Permit with the caveat that it is a revenue neutral permit.*

Support: Chairman Rubin, Councilman Brodhead, Councilman McElroy, Barry, Hitchcock, Jeffries, Junkroski, Marshall, Schmitt, Yackley

Opposed: None

Approved: 10-0

- 2) *Modifying Class B License kitchen hours requirements to 9:00 p.m. Sunday-Thursday and 10:00 p.m. on Friday and Saturday, and eliminate reduced menu requirement.*

Support: Councilman McElroy, Barry, Hitchcock, Jeffries, Junkroski, Marshall, Schmitt, Yackley

Opposed: : Chairman Rubin, Councilman Brodhead

Approved: 8-2

- 3) *Eliminate required kitchen hours on Thanksgiving and Christmas.*

Support: Councilman Brodhead, Councilman McElroy, Barry, Hitchcock, Junkroski, Marshall, Schmitt, Yackley

Opposed: Chairman Rubin

Abstain: Jeffries (noted that the NDP Board has not yet discussed)

Approved: 9-1

- 4) *Establish a Citywide Cap on Late Night Permit.*

Support: Chairman Rubin, Councilman Brodhead, Councilman McElroy, Barry, Hitchcock, Jeffries, Junkroski, Marshall, Yackley

Opposed: Schmitt

Approved: 9-1

- 5) *Establish a Downtown Cap for Late Night Permits.*

Support: Chairman Rubin, Councilman Brodhead, Councilman McElroy, Barry, Hitchcock, Jeffries, Junkroski, Marshall, Yackley

Opposed: Schmitt

Approved: 9-1

- 6) *Recommend No Further Issuance of Class C License.*

Support: Chairman Rubin, Councilman Brodhead, Barry, Hitchcock, Jeffries, Junkroski, Marshall, Schmitt, Yackley

Opposed: Councilman McElroy

Approved: 9-1

- 7) *Direct the discussion on retail mix to a group including representatives from NDP, DAC, DNA and the Chamber.*

DAC changed the original language recommended by the Liquor Subcommittee with respect to this item in order to include the Chamber and emphasize the retail mix discussion instead of establishment of caps.

Support: Chairman Rubin, Councilman Brodhead, Councilman McElroy, Barry, Hitchcock, Jeffries, Junkroski, Marshall, Schmitt, Yackley

Opposed: None

Approved: 10-0

Emery provided an overview of DAC accomplishments in 2011, including:

**CITY OF NAPERVILLE
MEMORANDUM**

DATE: January 19, 2012
TO: Downtown Advisory Commission
FROM: Amy Emery, AICP, Community Planner – TED Business Group
SUBJECT: North Downtown Special Planning Area

BACKGROUND:

Naperville Downtown2030 provides detailed recommendations regarding the North Downtown Special Planning Area, an area bounded by Douglas Avenue on the north, Benton Avenue on the south, Washington Street on the east, and Webster Street (generally) on the west (see pages 33-36 of the *Downtown2030 Plan*). The plan notes that because this area is susceptible to market pressure and has potential to impact the downtown culture and experience if redeveloped, it merits special attention and proactive planning. Accordingly, the plan provides recommendations regarding appropriate land uses, parking, height, open space, and processing requirements specific to this area.

DISCUSSION:

Included amongst the DAC priority action items is an implementation item related to the North Downtown Special Planning Area, specifically:

“Evaluate a zoning overlay (or similar approach) to define special zoning and development considerations for the North Downtown Special Planning Area.”

This implementation item was included at the request of Councilman Boyajian during the drafting of *Naperville Downtown2030* in an effort to ensure compliance with recommendations for the North Downtown Special Planning Area. While there are several recommendations that are regulated by the City today (i.e., parking, building design), there are two areas of potential vulnerability: zoning and height. Listed below is an analysis of these two topics, as well as options that may be used to address the vulnerabilities noted.

Zoning

With the exception of the properties that front the west side of Washington Street between Franklin and Benton Avenues (currently zoned B4 or B5), the majority of the properties within the North Downtown Special Planning Area are zoned either Transitional Use (TU) or Single-Family Residential (R2). These zoning classifications are more restrictive than the future land use recommended for the area in *Naperville Downtown2030*.

Observation #1: Private property owners may seek to rezone their properties to reach compliance with the recommended B4 or B5 zoning, as this zoning offers expanded uses

such as retail and office. Accordingly, zoning compliance may be achieved on a voluntary basis.

Observation #2: Under the existing zoning, private property owners could redevelop their properties with a use that is not preferred for the area. For example, a new single-family home could be constructed by right along Benton Avenue or Franklin.

Options:

- a) The City could take action to rezone properties within the North Downtown Special Planning Area in accordance with the recommendations made in the plan. This option would result in a large number of non-conforming uses today.
- b) The City could amend the zoning code to include an overlay zone which mandates compliance with the recommendations made for the North Downtown Special Planning Area, including codifying the plan's recommendation that projects involving multiple-lot consolidation be processed as a Planned Unit Development (PUD) (see *Naperville Downtown2030*, page 34, for more information on PUDs).
- c) The zoning code could also be amended to mandate that all projects within the North Downtown Special Planning Area (regardless of size) be processed as a PUD.

Height

Maximum heights are dictated based upon the zoning of a property. While *Naperville Downtown2030* recommends very specific height restrictions for the study area, these height limits may/may not be consistent with the underlying zoning. Because zoning rights are regulatory (vs. "recommendations" made in a comprehensive plan), the City cannot enforce a maximum height recommended through *Naperville Downtown2030* if that height is more restrictive than the rights offered by the underlying zoning.

Observation #1: With the exception of those properties fronting Washington Street, the zoning of the properties located between Franklin and Benton Avenues allows for a maximum height (35') which is more restrictive than the height recommended for that area through *Naperville Downtown2030* (40-50' or 57', depending on area).

Observation #2: Several other areas within the North Downtown Special Planning Area have existing zoning which allows a maximum height (by right) in excess of the *Downtown2030* plan recommendations, including:

- B4/B5 properties fronting Washington Street (zoning allows 60'/50', respectively; plan recommends 43' maximum).
- Properties located between Douglas and Franklin Avenues (depending on area, zoning allows 40-43'; plan recommends 40-47'). In the worst case scenario, the rights allowed by zoning are 4' greater than what is recommended by the plan.

Options:

- a) For projects requiring a PUD, compliance with the *Naperville Downtown2030* height recommendations can be achieved through the PUD process.

- b) For non-PUD projects, voluntary compliance with the *Naperville Downtown2030* height recommendations can be sought when working with developers.
- c) The zoning code could be amended to include specific height restrictions located in this area (in accordance with *Naperville Downtown2030* recommendations). A similar approach was recently used to create a height overlay for properties located within the *5th Avenue Study Area*.

Next Steps

At their January 19, 2012 meeting, DAC should determine if additional regulatory measures are needed to ensure appropriate redevelopment within the North Downtown Special Planning Area. If DAC determines that additional measures are appropriate, staff recommends that details regarding these additional measures be discussed by a DAC subcommittee (including a representative from the Naperville Planning and Zoning Commission) and presented to DAC (as a whole) for review at a regularly scheduled DAC meeting in April 2012.

RECOMMENDATION:

Determine if additional regulatory measures are needed to ensure appropriate redevelopment within the North Downtown Special Planning Area.

Open Meetings Act

Elected and Appointed Members

OMA Electronic Training

Effective January 1, 2012, elected or appointed members of a public body subject to OMA must complete the electronic training once during their term of election or appointment as follows:

- Any person who is an elected or appointed member of a public body subject to the Act **on** January 1, 2012, must complete the electronic training between January 1, 2012, and January 1, 2013.
- Any person who becomes an elected or appointed member of a public body subject to the Act **after** January 1, 2012, must complete the electronic training no later than the 90th day after taking the oath of office or, if not required to take an oath of office, after otherwise assuming responsibilities as a member of the public body.

Elected or appointed members need not complete the electronic training on an annual basis thereafter unless they are also designated to receive training on compliance with the Open Meetings Act.

The Public Access Counselor's Office's OMA electronic training is available free of charge at:

http://foia.ilattorneygeneral.net/electronic_foia_training.aspx.