

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CORPORATION COUNSEL

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Office of Government Operations
Legal Counsel Division



June 5, 2001

Sara Green
Advisory Neighborhood Commission 4B
7106 Piney Branch Road, N.W.
Washington, D.C. 20012

Re: ANC participation in development of Small Area Plans

Dear Ms. Green:

This responds to your letter dated February 15, 2001 wherein you request advice regarding the process for developing a Small Area Plan (SAP), and the role of Advisory Neighborhood Commissions (ANCs) and the Council in that process. You advise that the Office of Planning (OP) is preparing an SAP for the area around the Takoma Metro Station, referred to as the Takoma Central Area Plan. You would like to know what the process is for the adoption of an SAP, specifically the role and the timing of ANC and Council participation, and the effect of the provisions of law giving ANCs notice and great weight. In addition, you are concerned that the Takoma Central Area Plan, the first SAP, is going to be held as a draft plan by the OP so that it can be packaged with other land use proposals that might take a long time. You are also concerned that developers and property owners might seek approval for projects from city agencies by relying on the draft Takoma Central Area Plan prior to comment by the ANC and approval by the Council. You advise that the current draft Takoma Central Area Plan contains several zoning and land use changes. The OP advises that the Takoma Central Area Plan is not yet in final draft form. OP hopes to have a final draft version by July so that it may begin the formal review process by the ANC and the Council.

OP advises that the SAP process utilized in creating the Takoma Central Area Plan is governed by section 4 of the District of Columbia Comprehensive Plan Act of 1984 Land Use Element Amendment Act of 1984 (Land Use Law), effective March 16, 1985, D.C. Law 5-187, D.C. Code § 1-247, which reads as follows:

(c)(I) The Mayor may prepare proposed small area action plans for selected geographical areas that require more specific land use analysis to incorporate the broadest range of planning techniques and solutions practical to achieve the District's goals and objectives. The proposed small area action plans may include specific zoning recommendations, capital improvements requirements, financing strategies, special tax, design, or other regulatory recommendations, and implementation techniques necessary for the realization of objectives and policies of the Comprehensive Plan.

(2) The Mayor shall make copies of each proposed small area action plan available to each affected Advisory Neighborhood Commission and make ample copies of each proposed small area plan available to the Council and the public. Each proposed small area action plan shall include small area maps that depict land use policies at the small area level that are not inconsistent with the adopted generalized District-wide land use maps or approved ward plans.

(3) The Mayor shall hold a public hearing on each proposed small area action plan in the appropriate area, not less than 30 days after the publication of the proposed small area action plan and not more than 90 days after the publication of the proposed small area action plan.

(4) Not more than 60 days after the completion of the public hearing required by this subsection, the Mayor shall transmit the revised small area action plan to the Council, with a proposed resolution, for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. The transmission shall include copies of the Mayor's public hearing records, and an executive summary that identifies the differences, and the rationale for the differences, between the revised small area action plan and the proposed small area action plan that had been the subject of a public hearing. If the Council does not approve or disapprove the revised small area action plan, in whole or in part, by resolution within this 45-day review period, the revised small area action plan shall be deemed approved. Once approved, the small area action plan shall provide supplemental guidance to the Zoning Commission and other District agencies in carrying out the policies of the Comprehensive Plan.

It appears that the development of an SAP is a process separate from the comprehensive planning process. The OP is acting on behalf of the Mayor in the SAP process under Mayor's Order 83-25, dated January 3, 1983. It is clear under the Land Use Law that the ANC is entitled to a copy of the proposed SAP at least 30 days prior to the scheduled hearing by OP. After the hearing and revision of the SAP, the SAP is submitted to the Council for a 45-day period of reView.

The notice to the ANC under the Land Use Law is consistent with the notice required to be given to the ANC of proposed zoning changes under section 13(c)(1) of the Advisory Neighborhood Councils Act of 1975 (ANC Notice Law), effective October 10, 1975, D.C. Law 1-21, D.C. Code § 1-261 (c)(1), which reads in relevant part as follows:

(c)(1) ... In addition to those notices required in subsection (a) of this section, each agency ... shall, ... before the formulation of any final policy decision or guideline with respect to ... requested or proposed zoning changes ... provide to each affected Commission notice of the proposed action as required by subsection . (b) of this section.

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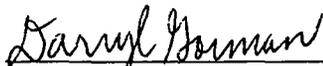
Subsection 13(b) of the ANC Notice Law requires 30 days written notice by first class mail to each affected ANC, the Office of ANCs, the Commissioner representing the single-member district affected by the action, and to each Ward Councilmember. Such 30 days notice specifically excludes Saturdays, Sundays and legal holidays. Thus, if an SAP includes any proposed zoning changes, the provisions of the ANC Notice Law would require that notice be given to the ANC under § 13(b) in addition to the requirement of the Land Use Law that a copy of the SAP be given to the ANC at least 30 days prior to the hearing. Furthermore, if the SAP includes any proposed zoning changes, the ANC may make a recommendation regarding the proposed zoning change, and that recommendation is required to be given great weight by OP in formulating the revised proposed SAP to be submitted to the Council. *See* § 13(d) of the ANC Notice Law.

Given that the OP has expressed its intent to submit the proposed Takoma Central Area Plan to the Council without waiting for any other plans to be completed, your concern about the use of the draft plan by developers and property owners may be somewhat mooted. However, if a developer or property owner cites a draft SAP in support of a request for a zoning change, I advise the ANC to point out to the Zoning Commission that the plan has not been approved by the Council. The Land Use Law states that only an approved SAP provides guidance to the Zoning Commission.

If you have any further questions with regard to this issue, please contact Annette Elseth, Assistant Corporation Counsel, Legal Counsel Division, at 724-5537, or me at 724-5493.

Sincerely,

ROBERT R. RIGSBY
Corporation Counsel



DOG/abe
(AL-01-153)

cc: Councilmember Adrian Fenty
Councilmember David Catania
Barrington Scott, Chair, ANC 4B
Cecily Patterson, ANC 4B
Louis Lieb, ANC 4B
Andrew Altman, Director, Office of Planning
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