

21 April 2005

Dear Chairman,

Regarding the Administration's gazettal of the Town Planning Board Guidelines for implementation of the Town Planning (Amendment) Ordinance on 15 April 2005, I have some concerns related to the general public interest and would like to draw Legco members' attention, and hence, deciding whether to form a Subcommittee for further discussion.

It should be most appreciated if you permit me to circulate the enclosed papers to all Legco members in the House Committee meeting on 22 April 2005.

Yours sincerely,

(Daisy Wong, Personal Assistant to Abraham Shek Lai-him)

for Abraham Shek Lai-him

Concerns raised by the Hon. Abraham Shek Lai-him over Town Planning Board Guidelines for implementation of the Town Planning (Amendment) Ordinance

There are 3 points which I would like to draw your attention as being in the general public interest:

1. Unnecessary Restriction on Submission of Additional Information

The Guidelines restrict submissions to the Board to an extent which is contrary to the Ordinance and contrary to the Legislative intent.

Guideline 29 : Submissions and Representations

The new “objection” process gives the public only 2 months to make representations. Having made the representation within the deadline the Guideline in paragraph 3.2 then states that

- It is the duty of the representer to provide sufficient information when making submissions to the Board;
- the Ordinance does not provide for the submission of further information to supplement a representation/comment.
- Any representations made after the date will treated as not having been made.

This restriction on the submission of additional information is not contained within the Ordinance. It is an interpretation being adopted to deliberately prevent the public from being able to provide sufficient information for the Board to properly consider the submission.

Under the present system there is 2 months available to provide the letter of objection and then a further period of 1 to 2 months for preparation of additional information which can be submitted after the Preliminary Consideration stage right up to the date of the hearing.

The new 2 month period does not provide sufficient time for people to understand the zoning change, appoint consultants and prepare submissions, especially if they are complex. It would not provide time for the submission of Traffic Impact assessments, Landscape submissions, Environmental submissions, etc. The Board

would not have adequate information and would likely over-rule the submission because of lack of information.

During the consultation process Planning Department said that any additional information could only be submitted at the actual hearing. That would lead to the crazy situation where large volumes of information could be presented at the hearing when the Board would not have time to consider them, no departmental comments and the public would not have time to comment on it.

Guideline 32 : Submission of Further Information

Para 7 takes the same position. The Guidelines should not prevent the submission of additional information for representation, comment or further representation as the Ordinance does not prevent it. 3 weeks is too short to be able to prepare complete information. The original representation may need to be supplemented to respond to the comments made, etc.

Proposal

The intention is to provide the public with access to the Board on a reasonable basis. While the Ordinance may be silent on this point the Board should adopt Guidelines which allow for the submission of additional information up until 4 weeks before the date of the hearing.

2. Deferment of Decision making.

Guideline No. 33 : Deferment of Decisions on Representations, Comments Further Representations and Applications

The Board is required to consider applications within a certain time limit. The Ordinance provides rights of Review and Appeal to a decision made in relation to an application. Should the Board decide to defer making a decision, these rights cannot be accessed.

Where the applicant requests a deferment then his rights are not interfered with.

Paragraph 2.1 : the Planning Department is given the right to request the Board to defer making a decision. This effectively provides the Planning Department an

opportunity to deny the applicant a right to a timely decision and access to the following rights of appeal, etc.

“Planning Department” should be deleted from this paragraph.

Paragraph 3.1 (c) : The Board should not be able to delay making a decision on the basis of a major Government study or decision which may affect an application. Any decision should be made under the provisions of the current Outline Zoning Plan. There is no certainty as to when a Government Study will be completed or decision made. The applicants rights under the current statutory plan and rights of appeal would therefore be severely and adversely affected.

This sub-paragraph should be deleted.

3. Guideline No. 36 : Class A and Class B Amendments

This provision is supposed to facilitate applications as part of the streamlining process. Legco therefore delegated authority to the D of Plan and exempted this process from the need for public notification and consultation and this is clarified in paragraph 4.3.

Paragraph 3 : requires that applications which are considered unacceptable to Government Departments will still be submitted to the Board for consideration.

At present if the application is circulated to the DO they consult local people to obtain “local views” and if there is an objection the application has to be submitted to the Board.

In view of the limitation of the ordinance on public notification and consultation, REDA asked that provision be included in this Guideline to clearly “state that the Govt would not adopt administrative procedures which go beyond the provisions of Sc 16A in this respect, and that the DO should not be subject to any circulation of such applications and such applications will not be notified to any person or organisation, including the District Councils” and

“Any adverse comment by the DO relating to “public views” must not be a reason for the application to be referred t the Town Planning Board.”

These amendments have not been included and informal indications from Planning

Department staff is that they still anticipate the same DO consultation process to proceed under the amended ordinance. This will completely defeat the intention of the one item introduced to streamline the development process.

The Guideline should contain specific reference to local views not being sought by the DO in relation to Type A and Type B applications

21 April 2005