

To: mayor and City Council

From: Dwight Worden

RE: One man's perspective on the Form Based Code

Please accept the following as my comments on the current status of the Form Based Code process. Before giving my specific comments I make note of the following:

1. I support revitalization of downtown Del Mar, including increasing the size of downtown. Please do not read my criticisms and disagreements set out below as opposition to the goal of downtown revitalization. Rather, my disagreements are on some of the many aspects of how best to pursue revitalization, and to some extent disagreement as to be the size and scope of what is proposed.
2. I recognize adoption of a Form Based Code for Del Mar as one, but not the only, way to stimulate downtown revitalization.
3. I recognize the right of the majority of the Form Based Code Committee to present the majority perspective to council along with the recommendations adopted by the majority of the committee. I also hope that the council will consider my "minority" positions. While I believe we on the committee share the common goal of trying to stimulate downtown revitalization, there are many important aspects of how to do that on which we disagree.
4. The viewpoints and opinions expressed in this memo are mine, speaking for myself only. Although I am a member of the Form Based Code committee I do not speak for the committee.

Here are some of the key areas where my views differ from those of the majority of the committee.

**THE DESIGN REVIEW BOARD AND THE DESIGN REVIEW ORDINANCE SHOULD APPLY TO DOWNTOWN.**

I believe that the existing Design Review Ordinance should remain applicable in the downtown. I believe the DRB should continue to conduct view review, administrative design review, and normal design review for projects in the downtown. I believe the DRB should be the body to interpret and apply the Design Standards and Guidelines being developed for the FBC, with normal appeal rights to the City Council. I do not support the recommendations of the committee majority to reduce the role of the DRB and to eliminate requirements of the current Design Review Ordinance.

The DRB has a long history of success in Del Mar. The facts do not support the perspective of some that the need to undergo DRB review is a major "impediment" to downtown redevelopment. Recently, the following statistics obtained from city staff were presented in the Sandpiper: Since 2006, 89 DRB applications have been reviewed, 7 appeals were filed, 2 De Novo hearings were held and only 1 reversal of the DRB by the Council occurred. This shows 92% of DRB applications were approved without appeal and only .01 percent were reversed by the Council. Granted, most of this activity occurred in residential areas and not in the commercial downtown, but I believe it is likely also true that downtown commercial projects are often less controversial than residential projects.

There are, indeed, many very real impediments to downtown revitalization. The need for DRB review, based on the data, is not, however, one of them. I am attaching for the council's information a copy of a memo I wrote to the Form Based Code committee on impediments to downtown revitalization addressing what the real impediments are.

## **PUBLIC IMPROVEMENTS AND AMENITIES**

I believe the Form Based Code committee has not spent enough time identifying the public improvements and amenities that need to be an integral part of downtown revitalization. The bulk of the committee's time has been spent studying how square footages in private projects might be increased, how heights might be increased, how the review process might be streamlined for the private applicants, and how building envelopes might be designed for the private lots. All of this is important. But, it is equally important, in my view, to identify the public improvements and amenities that will be required to go along with these private changes.

The dramatic increases in the size of downtown proposed by the committee majority will have traffic, parking, crowding, and other impacts to Del Mar if not properly mitigated. Mitigation comes in the form of necessary public improvements. The recommendations of the majority of the committee are to roughly double the square footage of downtown Del Mar while cutting the parking requirements roughly in half and increasing allowed heights. There are reasons for these recommendations, as I'm sure the majority will present, worthy of your careful consideration that have to do primarily with meeting the needs of private owners seeking to redevelop.

It is equally important, however, to make sure that what is proposed is beneficial to the community at large and does not have avoidable adverse impacts. "Benefits" of revitalization will come to the community at large in the form of a more attractive, pedestrian friendly, downtown with public view corridors, gathering spaces, public art, improved streetscape and sidewalks, local serving businesses, and other public amenities. To date, however, the committee has not spent as much time identifying the specifics of what these public amenities will be, where they will be located, and how they will be paid for as it has on relaxing the constraints on private development.

As an example to illustrate my concern, if density is doubled and parking is reduced, absent mitigation, there will be serious spillover parking impacts to adjoining residential areas. This is a negative impact to the community. The impact can, however, be mitigated by the provision of adequate new parking in the downtown. While the committee has generally discussed this topic [structures, valet parking, shared parking, etc], it has not identified where or how such parking might be provided or how it might be paid for.

It is my view that the two key aspects of downtown revitalization must occur in unison: (1) changes to the private development standards and (2) planning and implementing of public improvements and amenities. I am not talking here about "extraordinary public benefits"; rather, I am talking about identifying the specific public improvements and amenities that must be provided as part of the FBC program to mitigate the impacts of that program.

## **A FINANCING PLAN**

The amounts of money involved in implementing the Form Based Code will be dramatic. At an estimated cost of about \$400 per square foot as a rough approximation of the cost of private redevelopment, if the Form Based Code as recommended by the committee is implemented the total private investment in downtown will be in the hundreds of millions of dollars. Likewise, given that each new square foot of development area has significant rental and sales value, the new value transferred to the private sector by roughly doubling the square footage of downtown also reaches into the hundreds of millions of dollars. And, for the city to provide even the most basic public improvements and amenities that would make these dramatic changes in downtown compatible with the community the public cost could be in the millions of dollars.

For example, a 100 space parking structure underground would cost about three million plus, and 100 spaces is not enough. Streetscape and sidewalk improvements are also expensive. New public spaces and "activity areas" will impose cost burdens on the city for improvement and ongoing maintenance. Public art will have its cost. If downtown revitalization succeeds we can expect much more traffic and many more people downtown with the attendant increasing demand for public services including everything from police, lifeguard, fire and traffic control to sewer and water. These can have profound financial impacts to the city.

It is for these reasons that I have consistently advocated that a serious financing plan must be an integral part of any Form Based Code effort. This plan should identify the public improvements and amenities, where they will be located, and how they will be paid for. Such a financing plan should address which items will be paid for by the private sector incident to redevelopment and which will be paid for by the public.

On the private side there are a number of strategies that should be addressed: increasing development application fees, assessment districts, reimbursement agreements, increasing business license fees, new property or business taxes, in lieu parking fees, etc. And, a realistic analysis should be completed of what the increased sales tax and business license fees to the city might be from successful redevelopment. I'm not advocating all of these, other than that they be seriously studied. Some are controversial. Some can legitimately be seen as new "impediments" to downtown redevelopment. But, to the extent that necessary public improvements and amenities are not paid for by the private sector they must be paid for by the public sector so identifying and allocating these costs between the private and public sectors is important.

On the public side there are also a number of strategies that can and should be studied: parking meters downtown, parking management districts, pay parking lots and structures, increasing TOT, assessment districts, general and special obligation bonds, certificates of participation, projections of new sales and property taxes coming from redevelopment, etc. None of this public financing, however, is easy. Almost all of the strategies require public voter approval. Recent Del Mar history shows the voters rejecting the last two city sponsored ballot measures for financing measures.

The point to all this is that we must come to grips with the financing issues, as difficult as they may be. We should not contemplate doubling the size of downtown coupled with reductions in parking unless we are confident that financing mechanisms will be in place to ensure that needed public improvements and amenities are provided as the private redevelopment occurs. Redevelopment will not occur overnight, rather it will be years if not decades before downtown revitalization nears completion. A strong public financing plan is the only way to assure that this change in our downtown will be compatible with the community.

### **THE COUNCIL SHOULD COMMIT NOW TO HOLDING A PUBLIC VOTE ON THE FBC.**

I recommend that the council state now whether or not a public vote will be held on the FBC program. If there is to be a public vote (which is what I recommend) that should be clearly stated. If there is not to be a public vote that should also be clearly stated. So, I have two overall points on this issue: the council should clarify NOW whether or not there will be a vote and (2) I recommend the council commit that there will be a public vote.

There are many reasons why a public vote on the FBC is a good idea, including:

1. Del Mar has a tradition of public voting on major projects.

2. For downtown revitalization to succeed there must be community "buy in" and the best way to get that is through the community discussion and debate that comes with the process leading to a community vote. If a majority of the community votes "yes" the City Council can, with some confidence, commit to the major city expenditures for an EIR (estimated to cost \$150,000) and the other substantial costs that will be incurred in proceeding with the FBC.

3. Del Mar history shows that good projects in the downtown will receive voter support. The Del Mar Plaza, the L'Auberge, and most recently the Garden Del Mar, all received voter approval. In fact the Garden Del Mar received the highest voter approval of any measure in Del Mar history. We should not be afraid of a public vote if we have confidence that the revitalization being proposed is good for the community.

3. Measure B likely requires a vote, or series of votes, in any event. It would be a better vote, and better for the community, for the council to place a measure on the ballot before a Measure B vote is triggered that would allow the community to vote once on the downtown redevelopment program as a whole. A companion to this council endorsed measure could be a proposal to repeal or modify Measure B. Otherwise, if a Measure B vote is triggered other requirements are triggered as well: a Specific Plan must be prepared (with its attendant substantial costs), financing and other studies must be conducted, "extraordinary public benefits" must be identified and required, and a moratorium on downtown development results if the voters reject the Specific Plan under measure B.

Measure B is more than 20 years old and has, in my opinion, served its purpose. The concept of a public vote on major downtown projects remains a good one, but I believe it is time to replace measure B with a vote tailored to current circumstances. I attach for the council's reference a memo I wrote to the committee addressing these Measure B issues in more detail.

### **PUBLIC PARTICIPATION AND LOOKING FORWARD**

I believe that the public should be involved in every stage of the FBC development. In spite of effort on the part of the FBC Committee and staff to engage private owners and the public, the reality has been that only a small handful of private property owners and even fewer members of the public at large have actively participated in the FBC Committee proceedings. This means that the recommendations coming to council from the committee have been formulated, by and large, without significant input from affected downtown owners or from members of the community. Given this circumstance, it is my recommendation that the City Council insist upon an aggressive community outreach program at this point. The options and recommendations coming from the committee simply must be reviewed, vetted, and commented upon by the affected private owners and the community at large before we can proceed with any program with any confidence.

The committee majority's strategy has been to work in house to try and put flesh on what the Form Based Code would look like, and only then to undertake an aggressive community outreach. I have disagreed with this strategy, favoring instead that an aggressive community outreach should be conducted to engage the owners and the community while the committee was developing its options and recommendations. I was in the minority on this point. It is not too late, however, to address this concern. If the council makes clear now that all options and viewpoints are still on the table and undertakes a serious community outreach program we may still be able to have the needed dialogue. My concern, however, is that human nature and the committee process being what it is, that with recommendations in hand the community outreach will result in more of a "sales campaign" in justification of the committee recommendations than in the needed open ended dialogue.

## **OTHER ISSUES**

There are many other issues relating to the Form Based Code that I have not addressed in this memo but that are important. These include, but are not limited to, the proposal to reduce the number of Lanes on Camino Del Mar, proposals for including residential units in the downtown, parking requirements, height restrictions, corner treatments, the Design Standards and Guidelines Manual, affordable housing issues, and a number of other matters. I would be happy to discuss my views on any or all of these matters with any of you at any time.

Sincerely,

D. Dwight Worden