

## History Repeated

### A Report on Proposed Development In Cedar-Riverside Exploring Impact of "Five 15 on the Park"

This study exposes major shortcomings in the assessment of project as planned.

There are several alarming issues related to the proposed development "Five 15 on the Park". This project, requesting over ten million dollars in public money, should be cause for concern and scrutinized further before any demolition or construction is permitted. The three major issues include:

1. Due Diligence in pursuit of reasonable alternatives, and absence of Planning Directors Designation Study in discussion of relocation/reuse of 1500 S. 6<sup>th</sup> St (Gluek tied house AKA Rainbow Gallery.)
2. Disregard for conclusions of an important precedent setting court ruling, CIV NO. 4-73-592 recognizing ***"the unique vulnerability of Cedar-Riverside to the drastic consequences of possible planning error"*** Suggesting ***"the area is not suitable for high-rise, high-density development."***
3. Discrepancies with the guidance of the city approved and adopted Small Area Plan (SAP).

At the end of this document you will find included excerpts from the ruling and links to more supporting information. This report is the result of analysis of hundreds of pages of documentation.

#### **Issue 1.** Due Diligence in "pursuit of reasonable alternatives."

According to the City Attorney, the important consideration here is "did the developer explore all reasonable alternatives?" in attempting to relocate/reuse 1500 S. 6<sup>th</sup> St.

In other, similar situations it is common to hold an open house, advertise on the Internet, the MLS, local newspapers, and put up posters. **No advertising was present.**

Fine and Associates assert that they worked with the West Bank Business Association (WBBA) to find a buyer. WBBA board member Cadillac Kolstad refutes this. "I was left with the opposite impression. The board was presented with information that Fine & Assoc. would 'save the building' by moving it, and that they had so many interested legitimate parties that it would be hard to decide who would be awarded the contract."

These facts show that reasonable alternatives have not been explored fully, or diligently, but only in a cursory manner. Without advertising, it is impossible to determine the extent of interest and feasibility of alternatives. Given adequate information, the WBBA, could have assisted finding a buyer/reuse for 1500 6th St. making it a priority for their staff and using established contacts. Other considerations include, city owned "lot A" is more than large enough to absorb this structure. The Environmental Assessment Worksheet states that the building "will be relocated" (EAW p.2, p.6). That statement appears to be false and misleading. Moving the building may however be inappropriate, as certainly demolition is. As has been recently determined by the courts, the city has no authority to hear appeals on HPC decisions when a designation study has been called for by the Heritage Preservation Commission. (Minneapolis code of ordinances 599.190) This whole project is in contradiction to the spirit of court documents, and the Cedar Riverside Small Area Plan (SAP).

#### **Issues 2. & 3.** The Small Area Plan (SAP) and CIV NO. 4-73-592. These are best discussed in conjunction.

The present character of the neighborhood and the history of comprehensive, community involved planning including the current SAP, are a direct result of the 70 page precedent setting ruling, CIV NO. 4-73-592. This judgment issued by The Hon. Miles Lord, filed under "The National Environmental Protection Act" (NEPA) should be understood. The conclusions show that public development must have many considerations other than "economic viability", and must consider the welfare of people already in the community. (Herein referred to as the "New Town" case.)

Considering the extensive litigation history, and that this is on the same land as the "New Town" case, with over 18% higher density, and 23 % higher than the maximum densities discussed in the SAP. It is hard to

justify the presence of city support for "Five 15" and the absence of an Environmental Impact Statement (EIS). Cedar Riverside is currently the most densely populated neighborhood in the state of Minnesota.

The problems noted about the shortcomings of the of the "New Town" development by the courts, are very similar to the present shortcomings of the review process with "Five 15". The project is not consistent with several findings and stipulations in the city adopted "Small Area Plan", which states: **"planners will use this SAP as a guide"** and **"development must adhere to the future land use plan"**.

For example, in the SAP, 1500 6th St. is specified for "mixed use", preserved as a distinct parcel on map 6.1 and recorded as being in "average plus" condition in map 4.6. Therefore demolition and incorporation of this parcel into a residential zone has no basis in policy.

The hardship already incurred by the neighborhood must be accounted for. Two important cultural venues, Bedlam Theater and Grease Pit Bike Service, were forced from the area by this project. A shortage of commercial space, and the arbitrary interpretation of the SAP by organizations advocating development caused this. Businesses could not open, and there is no place for a much needed youth center. Seward Redesign published a study recently showing that West Bank and adjacent parts of Seward have a shortage of commercial / storefront type property. This helps illustrate already quantifiable negative impact, and disregard for established planning principles. (SAP p. 36. *"Independent cultural venues comprise an important component of Cedar Riverside's fabric. This element must be recognized as essential to the community's identity and vitality. As such, future plans **must include measures to enhance and support [and certainly not constrain] the ability of these venues to flourish"**)* (SAP p 84 #7 *"Support increased indoor **community activity space, particularly for youth in the neighborhood."**)*)

Cultural venues have been lost and a community disrupted and damaged. An entire block of commercial property, and 14 housing units have been destroyed and rendered unavailable. These properties were listed as "average" by the city in the SAP, map 4.6. The disruption and mess caused by actual construction of this development will create another set of hardships.

This project, Five 15, is opposed by many parties. Since the public financing is not all approved, demolition may result in a vacant lot where a well maintained building now stands. This type of demolition is contrary to the conclusions of the SAP (p4, #1, #4, and p.37, *"retail opportunities focus primarily on the improvement and re-tenanting of small, street front spaces, rather than on projects involving large-scale new development or demolition and redevelopment."*)

## **Conclusion**

These issues are only a summary of the shortcomings in the planning process. "Five 15 on the Park" is a radical departure from over 30 years of public policy directives, conventions and agreements. The proposed development contradicts many aspects of the city adopted SAP, and well established judicial opinions.

Permitting, funding or approvals on this project should be withheld until all controversial issues are resolved including preparation of an Environmental Impact Statement, and a proper Designation Study.

Enclosed you will find some key text from the court ruling and summary. The present situation is incredibly similar. Here the developer needs public money to lower their costs. There is significant damage and disruption to the community, and very little if any benefit. It seems history is repeating itself on the West Bank.

Prepared By Cadillac Kolstad WBBA Board Member, et al.

Below find additional links to reference materials and case studies.

Text from a case study by The Environmental Research and Development Foundation. Tucson, Arizona

"The court decision ruled against the developer, .... and was precedent setting in that it established the developer must be accountable for the human consequences of his development. A permanent injunction against the high-rise was lodged until the developer could assess the unquantifiable costs." Link to complete case text about the Injunction [http://www.leagle.com/decision/1976716422FSupp294\\_1653](http://www.leagle.com/decision/1976716422FSupp294_1653) Please look it over more extensively.

The Injunction:

"MILES W. LORD, District Judge.

The Court, having received the Findings of Fact, and Conclusions of Law of the Special Master and having considered the Special Master's Memorandum, makes the following:

#### ORDER FOR JUDGMENT

1. Defendants, and each of them, are hereby permanently enjoined from taking any action in furtherance of the Cedar-Riverside project as proposed, both Stage II and any other part of the project, until defendants can show that they have satisfactorily complied with the requirements for a detailed environmental impact statement pursuant to the National Environmental Policy Act and the Minnesota Environmental Policy Act.
2. Defendants are permanently enjoined from any further activity on the Cedar-Riverside project as proposed, both Stage II and any other component of the project, until, upon the completion of an adequate Environmental Impact Statement, it is shown to the Court's satisfaction that the decision to proceed with the Cedar-Riverside project is not in violation of the Minnesota Environmental Rights Act, is not arbitrary and capricious and is not in violation of the substantive standards of MEPA and NEPA.

This is what the court said about allowable future projects in Cedar Riverside during the injunction: "A project which is necessary to satisfy the needs of the existing Cedar-Riverside population or which is normally scheduled as a part of an ongoing city-wide obligation or program without special reference to the Cedar-Riverside Urban Renewal Plan."

From the Special Masters Memorandum

*So, too, here. The discussion of alternatives is insufficiently informative to provide a reasoned basis for choice. As the court there said "perhaps most substantively, the requirement of a detailed statement helps insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug." 482 F.2d at 1285 (Emphasis supplied). Here the serious criticism of the underlying uneconomic assumptions of the project were swept under the rug.*

*Here, as in the cited analogous case, the consequent economic costs are factors not to be ignored but which cannot be allowed "to strip the section of its fundamental importance." Particularly is this so, due to the unique vulnerability of Cedar-Riverside to the drastic consequences of possible planning error*

*Perhaps this limited availability of open space in Cedar-Riverside proves the area is not suitable for high-rise, high-density development. Perhaps this amounts to a preclusive limitation!*

*"Here the selective presentation of evidence was accomplished by the far simpler expedient of omitting any discussion of known fallacies in the underlying economic assumptions justifying the proposed high-density high-rise development at Cedar-Riverside. The study purported to view the possibilities for a residential development on very high-cost land which seemingly dictated high densities. It was within the knowledge of HUD that a public subsidy was necessary to "lower" the cost of the land. The high-densities and high-rise construction were dictated only by profit-making and, probably, by tax-shelter considerations."*

August 30, 1975 Date s/Edward J. Parker Special Master

The Injunction was eventually lifted by an appeal, due to a referenced agreement worked out with the city however that court stated: [310](#) (1911). Although we cannot foresee the future, we agree that given massive federal financing, a unilateral change of position by the City Council could revive the controversy. However, even in that event, the dispute would not evade expeditious review. The parties would be free to refile this lawsuit. In view of the existence of a voluminous trial and appellate record, an expeditious end to the litigation would be possible, as indicated in the conclusions of the trial court hereinbefore set forth.

The present situation appears consonant with the conditions described in the above paragraph.