



**A Report to the
Audit Committee**

Mayor
David Briley

**Executive Director of Metro
Planning Department**
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Audit of Development Conditions

June 12, 2019

Metropolitan
Nashville
Office of
Internal Audit

EXECUTIVE SUMMARY

June 12, 2019



Why We Did This Audit

The audit was initiated due to a complaint concerning the enforcement of conditions approved in development plans.

What We Recommend

- Clearly define responsibilities and reporting structures through written policies and procedures.
- Establish a central process owner to see projects through from start to finish.
- Establish guidelines around financial responsibility for conditional requirements with services overlapping Metropolitan Nashville Government departments.

Audit of Development Conditions

BACKGROUND

In October 2005, the Metropolitan Council adopted specific plan districts, generally known as SP zoning, to give developers greater flexibility and to ensure constituents greater certainty. These zoning districts are not subject to traditional zoning development standards. Due to the unique nature of these zonings, the developer must meet certain conditions within the plan. These conditions are determined by various Metropolitan Nashville Government departments and are approved by the Metropolitan Council.

OBJECTIVES AND SCOPE

The objectives of this audit are to determine if:

- Controls are in place to ensure that approved development plan conditions are being enforced.
- The cost associated with implementing development conditions is properly allocated to either the developer or the Metropolitan Nashville Government.

The scope of this audit includes all specific plans approved between January 2014 and October 2018.

WHAT WE FOUND

Specific plans are closely monitored and reviewed prior to the Planning Commission and Metropolitan Council approval. However, after the final approvals, responsibility for condition enforcement is unclear. Communication between all departments involved during the construction and implementation process is lacking. Additionally, limitations in the use of technology hinder the process of ensuring departments may easily access the status of projects and conditions to review. There is no assigned party to oversee the entire process and hold internal and external parties accountable.

Specific plans often include conditions that are within the range of typical work performed by Metropolitan Nashville Government departments. However, details of who will perform the work and who will cover the cost of conditions included in specific plans are not clear.

GOVERNANCE

Metropolitan Nashville Code of Laws Title 17.40.105-106 establishes the purpose and intent of specific plans and their development. All zoning changes must be approved by the Metropolitan Planning Commission and the Metropolitan Council. The Metropolitan Planning Commission governs the Planning Department, which researches and makes recommendations on requested zoning changes.

BACKGROUND INFORMATION

Metropolitan Nashville Code of Laws Title 17 outlines land development and planning requirements. This set of rules governs how land can be used and developed, including: building placement, required parking, permitted signage, landscaping requirements, etc. The Planning Department, through extensive research, planning, and community input, has established zoning for all land within Metropolitan Nashville.

With increased development in Metropolitan Nashville, developers sought more flexibility in the zoning of parcels. Developers felt the zoning flexibility would enable them to meet neighborhood needs and market demands. In contrast, neighbors of developments wanted more certainty and assurance around developments moving in nearby. In response to these requests, the Metropolitan Council, along with the Metropolitan Planning Commission and Planning Department, established specific plan districts.

Landowners go through an application process for specific plans which takes the site plan through all affected departments for comment. During this application process, departments or the Metropolitan Council will add conditions for approval. Once approved by all departments, the specific plan is approved by the Metropolitan Planning Commission and Metropolitan Council. The specific plan then goes through the established permitting and inspection process until completion.

Between January 2014 and December 2018, the Planning Department received 485 total Specific Plans submittals.

Exhibit A: Specific Plans Submitted and Approved by Council by Calendar Year

| | 2014 | 2015 | 2016 | 2017 | 2018 |
|-----------|------|------|------|------|------|
| Submitted | 88 | 108 | 95 | 95 | 99 |
| Approved | 66 | 91 | 77 | 74 | 56 |

Source: CityWorks PLL

INFORMATION SYSTEMS

The CityWorks Permits Land and Licensing (PLL) application manages permits, violations cases, inspections, and licenses. The system tracks the process from application through departmental plan reviews, fee collection, inspections, and regulatory meetings and hearings.

The ePermits application is a self-service portal for use by citizens and building contractors. Citizens can apply for permits and research permit information through the ePermits system. Building contractors can request inspections, apply for permits, and upload electronic plans.

OBJECTIVES AND CONCLUSIONS

1. *Are controls in place to ensure all specific plan zoning development projects approved by the Metropolitan Council are being tracked, monitored, and reviewed to ensure the approved conditions required for each project are being implemented and enforced?*

Unable to determine. Conditions are assigned to projects through Metropolitan Council ordinances but are not always listed or available in CityWorks or the ePermits system for employees overseeing and inspecting the construction of these developments. Inspectors only sign-off in CityWorks at a high level giving no indication specific conditions were met. Unclear lines of responsibility for condition's review leads to confusion on who is ensuring conditions are met. No central process owner exists to hold employees and developers accountable for the enforcement of all conditions. (See Observations A, B, C.)

2. *Is the cost of implementing specific conditions required by the Metropolitan Nashville Council appropriately allocated to either the developer or the Metropolitan Nashville Government?*

Unable to determine. Specific plan ordinances do not consistently designate the financially responsible party for work that falls within the normal scope of Metropolitan Nashville Government departments. Many approved conditions are to implement new sidewalks, street lights, changes to intersection design and similar infrastructure requirements. Without an assigned responsible party, Internal Audit could not determine if the appropriate party paid for the specific conditions that overlapped with Metropolitan Nashville Government work. (See Observation D.)

AUDIT OBSERVATIONS

Internal control helps entities achieve important objectives and sustain and improve performance. The Committee of Sponsoring Organizations of the Treadway Commission (*COSO*), *Internal Control – Integrated Framework*, enables organizations to effectively and efficiently develop systems of internal control that adapt to changing business and operating environment, mitigate risks to acceptable levels, and support sound decision making and governance of the organization. The audit observations listed are offered to assist management in fulfilling their internal control responsibilities. See Appendix B for a description of the observation *Assessed Risk Rating*.

Observation A – Lack of Communication Between Departments

The conditions approved by the Metropolitan Council required for specific plan development projects are written by the Planning Department, the Metropolitan Council, Public Works, the Fire Marshall's Office, and Water and Sewer. The Department of Codes and Building Safety is not involved in the process of writing the conditions, and the approved conditions are not readily available to inspectors through CityWorks and the ePermitting system.

Despite their lack of involvement, the Department of Codes and Building Safety is thought to be the one physically inspecting and reviewing the conditions relating to building design. The lack of involvement and lack of communication in the process can lead to inspectors being unaware of specific conditions. Those inspectors that are aware of conditions may not be able to decipher the context of the conditions, as they may be written in broad, vague language. Rather than proactively keeping up with the developers' compliance of these conditions, conditions tend to be retroactively corrected only after complaints from neighbors.

Criteria:

COSO 15: The organization communicates with external parties regarding matters affecting the functioning of internal control.

Assessed Risk Rating:

Medium

Recommendations for management of the Planning Department to:

1. Utilize the CityWorks and ePermits system to ensure the conditions and their explanations are available to inspectors on site during physical inspections.
2. Include all parties responsible for enforcing conditions in the process of writing the conditions.

Observation B – No Clearly Defined Responsibilities

Conditions written by or relating to Public Works, Water and Sewer, and the Fire Marshall are later reviewed and approved by their respective departments during the permitting phase. However, conditions related to the design of the building, materials used on the building, and similar cosmetic requirements are not assigned to be reviewed, signed-off on, or enforced by any particular department.

In previous years, prior to the development boom in the Metropolitan Nashville area, the Planning Department had the staff available to physically inspect specific plan projects during the construction phase to ensure conditions were being met. This was especially useful, as the Planning Department was involved in the process of writing the conditions and understood the context. When the volume of specific plans increased, the Planning Department no longer had available staff to complete this task. Currently, building inspectors from the Department of Codes and Building Safety are physically inspecting the building design against established building codes, and they sign off on the various phases of construction based on the standards of the Building Code. However, inspectors are not required to sign off on the compliance with specific conditions.

Criteria:

COSO 3: Management establishes, with board oversight, structures, reporting lines, and appropriate authorities and responsibilities in the pursuit of objectives.

Assessed Risk Rating:

High

Recommendations for management of the Planning Department to:

Implement written policies and procedures that define enforcement responsibilities and reporting structures.

Observation C – Lack of Accountability

The specific plan process does not have a central process owner. No one oversees the entire specific plan process from start to finish ensuring the status of the project is being updated and communicated to each party involved. The CityWorks system has the capability of updating the project status, but it is not utilized. All projects, regardless of status, are listed as “Open.” Reports cannot be pulled to establish

which projects are in different phases of the development process, and completed projects cannot be singled out for verification of compliance with conditions.

Criteria

COSO 5: The organization holds individuals accountable for their internal control responsibilities in the pursuit of objectives.

Assessed Risk Rating:

Medium

Recommendations for the management of the Planning Department and Department of Codes and Building Safety to:

Establish a central process owner to oversee projects from start to finish, hold the various departments accountable, and update the progress of the project in CityWorks, as needed.

Observation D – No Clearly Defined Financial Responsibility for Infrastructure

Several of the approved conditions include the implementation of new sidewalks, street lights, changes to intersection design, and similar infrastructure requirements. Specific plan ordinances do not consistently designate the financially responsible party for work that falls within the normal scope of Metropolitan Nashville Government departments.

Lack of clearly defined responsibilities in conditional infrastructure inhibits transparency in determining how much the Metropolitan Nashville Government is spending on specific plan projects.

Criteria

COSO 12: The organization deploys control activities through policies that establish what is expected and procedures that put policies into action.

Assessed Risk Rating:

High

Recommendation for the management of the Public Works Department to:

Create a written policy that outlines the acceptable infrastructure spending amounts by Metropolitan Nashville Government departments to implement conditions within specific plans. Document required steps to take if expected spending exceeds the acceptable range.

GOVERNMENT AUDITING STANDARDS COMPLIANCE

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our observations and conclusions based on our audit objectives.

METHODOLOGY

To accomplish our audit objectives, we performed the following steps:

- Interviewed key personnel within the Planning Department, Public Works Department, Department of Codes and Building Safety, Fire Marshal’s Office, and Metropolitan Water Services.
- Reviewed and analyzed documentation for compliance with the Metropolitan Nashville Code of Laws, and other applicable laws, regulations, and policies.
- Evaluated internal controls currently in place.
- Reviewed sample selections to determine the effectiveness of internal controls.
- Considered risk of fraud, waste, and abuse.

AUDIT TEAM

Laura Henry, CFE, In- Charge Auditor

Lauren Riley, CPA, CIA, ACDA, Quality Assurance

Gina Pruitt, CPA|CITP, CISA, CHFP, CQA, CEMB, CGMA, CRISC, CCSFP, CHCO, Interim Metropolitan Auditor

APPENDIX A – MANAGEMENT RESPONSE AND CORRECTIVE ACTION PLAN



**METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY**

Planning Department
Metro Office Building
800 Second Avenue South
Nashville, Tennessee 37201

May 16, 2019

Ms. Gina Pruitt
Metropolitan Auditor
Office of Internal Audit
P.O. Box 196300
Nashville, TN 37219-6300

Dear Ms. Pruitt:

The appropriate personnel of the Metropolitan Planning Department have reviewed your department's audit of Development Conditions and have accepted all of your recommendations. We have provided a response to your findings and have established a timeline for corrective action.

We look forward to working with you in the future regarding this matter.

Sincerely,

A handwritten signature in blue ink that reads "Lucy A. Kempf".

Lucy A. Kempf
Executive Director
Metropolitan Planning Commission

APPENDIX A – MANAGEMENT RESPONSE AND CORRECTIVE ACTION PLAN

We believe that operational management is in a unique position to best understand their operations and may be able to identify more innovative and effective approaches, and we encourage them to do so when providing their response to our recommendations.

| | Recommendation | Concurrence and Corrective Action Plan | Proposed Completion Date |
|-------------|--|--|--------------------------|
| <i>Risk</i> | <i>Recommendations for the management of the Planning Department to:</i> | | |
| M | A.1 – Utilize the CityWorks and ePermits system to ensure the conditions and their explanations are available to inspectors on site during physical inspections. | Accept – We will ensure that conditions and their explanations are included on plans available to the Codes Department utilizing the Bluebeam plans review system as an integrated platform to communicate Specific Plan conditions. Additionally, we will provide a summary of these conditions to the inspectors utilizing the CityWorks and ePermits systems. The implementation of this recommendation will require additional staffing and other resources. A request for the additional resources will be made as part of our 2021 fiscal year budget submission and if approved will be implemented by 12/31/2020. | 12/31/2020 |
| M | A.2 - Include all parties responsible for enforcing conditions in the process of writing the conditions. | Accept – Parties responsible for enforcing conditions are currently included in the process of writing conditions, however we will utilize the Bluebeam plans review system and CityWorks as an integrated platform to enhance the interaction between the parties, to improve communications, and to ensure that all responsible parties are included in a meaningful and appropriate manner. The implementation of this recommendation will require additional staffing and other resources. A request for the additional resources will be made as part of our 2021 fiscal year budget submission and if approved will be implemented by 12/31/2020. | 12/31/2020 |

APPENDIX A – MANAGEMENT RESPONSE AND CORRECTIVE ACTION PLAN

| | Recommendation | Concurrence and Corrective Action Plan | Proposed Completion Date |
|----------|---|---|--------------------------|
| | <i>Recommendations for the management of the Planning Department and Department of Codes and Building Safety to:</i> | | |
| H | B.1 - Implement written policies and procedures that define enforcement responsibilities and reporting structures. | Accept – Working with the Codes Department and other stakeholders, we will develop written policies and procedures that define enforcement responsibilities and reporting structures for SP conditions by 12/31/19. The implementation of these policies and procedures will require additional staffing and other resources. A request for the additional resources will be made as part of our 2021 fiscal year budget submission and if funded will be implemented by 12/31/2020. | 12/31/2019 |
| M | C.1 - Establish a central process owner to oversee projects from start to finish, hold the various departments accountable, and update the progress of the project in CityWorks, as needed. | Accept – We will work with the responsible departments to establish a central process owner to oversee projects from start to finish, establish a method to hold the various departments accountable, and update the progress of projects in CityWorks system. We lack the ability or the authority to impose requirements on the other departments, but we will work to achieve an agreement that produces this outcome by 12/31/2020. | 12/31/2020 |
| | <i>Recommendation for the management of the Public Works Department to:</i> | | |
| H | D.1 - Create a written policy that outlines the acceptable infrastructure spending amounts by Metropolitan Nashville Government departments to implement conditions within specific plans. Document required steps to take if expected spending exceeds the acceptable range. | Accept – The Public Works Department and Planning Department will work with other stakeholders to create a written policy, as described in the audit recommendation. The policy will address the principle that the developer will have the responsibility for infrastructure specified in the SP conditions. The policy will also address those rare situations where SP developments are approved with conditions but are not moving forward. If In these instances, there is a necessity for Metro to provide infrastructure for the health and safety of the public, the policy will address the process for seeking public funds. | 12/31/2020 |

APPENDIX B – ASSESSED RISK RANKING

Observations identified during the course of the audit are assigned a risk rating, as outlined in the table below. The risk rating is based on the financial, operational, compliance or reputational impact the issue identified has on the Metropolitan Nashville Government. Items deemed “Low Risk” will be considered “Emerging Issues” in the final report and do not require a management response and corrective action plan.

| Rating | Financial | Internal Controls | Compliance | Public |
|---------------------------------|--|---|--|---|
| HIGH | Large financial impact >\$25,000 Remiss in responsibilities of being a custodian of the public trust | Missing, or inadequate key internal controls | Noncompliance with applicable Federal, state, and local laws, or Metro Nashville Government policies | High probability for negative public trust perception |
| MEDIUM | Moderate financial impact \$25,000 to \$10,000 | Partial controls Not adequate to identify noncompliance or misappropriation timely | Inconsistent compliance with Federal, state, and local laws, or Metro Nashville Government policies | Potential for negative public trust perception |
| LOW/ Emerging Issues | Low financial impact <\$10,000 | Internal controls in place but not consistently efficient or effective Implementing / enhancing controls could prevent future problems | Generally complies with Federal, state, and local laws, or Metro Nashville Government policies, but some minor discrepancies exist | Low probability for negative public trust perception |
| Efficiency Opportunity | An efficiency opportunity is where controls are functioning as intended; however, a modification would make the process more efficient | | | |