

**OFFICE OF THE INSPECTOR GENERAL**  
*City of Chicago*



***REPORT OF THE INSPECTOR GENERAL'S OFFICE:***

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**October 2011**

866-IG-TIPLINE (866-448-4754)  
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Joseph M. Ferguson  
Inspector General

## OFFICE OF INSPECTOR GENERAL *City of Chicago*

180 N. Michigan Avenue, Suite 2000  
Chicago, Illinois 60601  
Telephone: (773) 478-7799  
Fax: (773) 478-3949

October 19, 2011

To the Mayor, Members of the City Council, the City Clerk, the City Treasurer, and the residents of the City of Chicago:

The Inspector General's Office performed an audit of processes related to the Downtown Affordable Housing Density Bonus. The purpose of the program is to increase the availability of affordable housing in Chicago through the provision of density bonuses that give developers additional square footage for development projects. In return, the developer provides a specified number of on-site affordable housing units or contributes to a special fund that supports the construction or rehabilitation of, or rental subsidies for, affordable housing.

The purpose of the audit was to review, test, and evaluate the processes to determine whether the Department of Housing and Economic Development and its predecessors had effective controls as well as adequate policies and procedures related to the density bonus.

We determined that internal controls *were not* adequate to ensure a proper review of development projects prior to the issuance of building permits and the adequate training of individuals with core responsibilities respecting the collection of payments. However, we did find the internal controls ensuring the collection of density bonus payments were adequate.

The deficiencies in internal controls resulted in the following negative consequences:

- Planned Development projects were not appropriately reviewed for compliance with ordinance.
- A training issue resulted in a gap in controls related to collection of payments.

There were no controls to ensure consistency in the overlapping review processes of the Department of Housing and Economic Development and the Department of Buildings and that the review process fully complied with the Zoning Ordinance.

Based on our findings, we have made recommendations to the Department of Housing and Economic Development to ensure greater accountability and coordination of processes with the Department of Buildings, including, among other things, detailed process mapping and assessment of consolidation of review and approval processes, consideration of clarifying amendments to the Zoning Ordinance and improvements in specified controls. We have also expressed in our closing conference with the Commissioners of the Departments of Buildings

and Housing and Economic Development that we believe that the formulation of action responsive to the audit findings offers a prime opportunity for Buildings and Zoning to consolidate and streamline into a single process responsibilities that Buildings had previously assumed without authority to do so. We will report on action taken on those recommendations in a future public report.

We thank the Department of Housing and Economic Development and Department of Buildings for their cooperation during the audit. Their assistance contributed significantly to its completion and throughout the process they manifested professionalism and receptiveness to the identification of process and control innovations that will better serve the public.

Respectfully,

A handwritten signature in blue ink, appearing to be "J. Ferguson", written over a circular blue stamp or seal.

Joseph M. Ferguson  
Inspector General  
City of Chicago

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## **AUDITOR'S REPORT**

We have completed an audit of processes related to the Downtown Affordable Housing Density Bonus ("DAHDB"). These processes included project approval, site plan reviews, density bonus calculation and authorization, the collection of affordable housing funds, and updates to the permit processing system, Hansen. The purpose of the program is to increase the availability of affordable housing in Chicago through the provision of density bonuses that give developers additional square footage for development projects. In return, the developer provides a specified number of on-site affordable housing units or contributes to a special fund that supports the construction or rehabilitation of, or rental subsidies for, affordable housing. DAHDB came into operation in November 2004. Our audit focused on a sample of development projects initiated between June 2005 and July 2008. Our purpose was to review, test, and evaluate the processes to determine whether the Department of Housing and Economic Development and its predecessors had effective controls as well as adequate policies and procedures related to DAHDB.

The authority to perform such an audit is established in the City of Chicago Municipal Code § 2-56-030 which states that the Inspector General's Office has the power and duty to review the programs of City government in order to identify any inefficiencies, waste and potential for misconduct, and to promote economy, efficiency, effectiveness and integrity in the administration of City programs and operations.

We conducted this audit in accordance with generally accepted Government Auditing Standards issued by the Comptroller General of the United States, except standard 3.55 which requires an external quality control review. 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 findings and conclusions based on our audit objectives.

Based upon the results of our audit, we determined that internal controls were not adequate to ensure a) proper review of development projects prior to the issuance of building permits and b) adequate training of individuals with core responsibilities respecting the collection of payments. However, we did find the internal controls ensuring the collection of density bonus payments related to affordable housing were adequate.

We thank the management and staff of the Department of Housing and Economic Development and the Department of Buildings for their cooperation during the audit. Their assistance contributed significantly to its successful completion.

Darwyn Jones  
Senior Auditor

## **EXECUTIVE SUMMARY**

The Inspector General's Office ("IGO") performed an audit of processes related to the Downtown Affordable Housing Density Bonus ("DAHDB"). These processes included project approval, site plan reviews, density bonus calculation and authorization, the collection of affordable housing funds, and updates to the permit processing system, Hansen. The purpose of the program is to increase the availability of affordable housing in Chicago through the provision of density bonuses that give developers additional square footage for development projects. In return, the developer provides a specified number of on-site affordable housing units or contributes to a special fund that supports the construction or rehabilitation of, or rental subsidies for, affordable housing. DAHDB came into operation in November 2004. Our audit focused on a sample of development projects initiated between June 2005 and July 2008. Our purpose was to review, test, and evaluate the processes to determine whether the Department of Housing and Economic Development (DHED) and its predecessors had effective controls as well as adequate policies and procedures related to DAHDB.

Audit steps included:

- using reports from Hansen, the permit processing system, to identify a population of projects to be reviewed as part of the audit;
- interviewing office management and employees of both DHED and the Department of Buildings ("DOB");
- gaining an understanding of processes related to project approval, site plan reviews, density bonus calculation and authorization, collection of density bonus funds and updating of the permit processing system;
- reviewing documentation related to development projects to ensure proper approval occurred;
- conducting research to determine the development progress of a sample of projects.

Based upon the results of our audit, we determined that internal controls were not adequate to ensure a) proper review of development projects prior to the issuance of building permits and b) adequate training of individuals with core responsibilities respecting the collection of payments. However, we did find the internal controls ensuring the collection of density bonus payments related to affordable housing were adequate.

The deficiencies in internal controls resulted in the following negative consequences:

- Planned Development projects were not appropriately reviewed for compliance with ordinance.
  - Two, or 5% of projects sampled, had building permits issued without the required zoning review.

- We could not confirm proper zoning review for 12, or 31% of projects sampled.
- A training issue resulted in a gap in controls related to collection of payments.
- There were no controls to ensure consistency in the overlapping review processes of DHED and DOB and that the review process fully complied with the Zoning Ordinance.

Additional details regarding these findings can be found in the “Audit Findings and Recommendations” section of this report beginning on page 11.

## **BACKGROUND**

In 1957, Chicago was one of the first cities to create incentives – in the form of zoning density bonuses – for developers who built public amenities like plazas and wider sidewalks serving their buildings. In exchange for these public amenities, the City allowed the developer to build a bigger building. This practice still exists and is governed by regulations codified in the current Chicago Zoning Ordinance, (Municipal Code of Chicago, §17-1-0100 et seq. (hereafter “Chicago Zoning Ordinance” or “Zoning Ordinance”)), which was adopted for the purpose<sup>1</sup> of:

- promoting the public health, safety and general welfare;
- preserving the overall quality of life for residents and visitors;
- protecting the character of established residential neighborhoods;
- maintaining economically vibrant as well as attractive business and commercial areas;
- retaining and expanding the city’s industrial base; implementing the policies and goals contained with officially adopted plans, including the Central Area Plan;
- promoting pedestrian, bicycle and transit use;
- maintaining orderly and compatible land use and development patterns;
- ensuring adequate light, air, privacy, and access to property;
- encouraging environmentally responsible development practices;
- promoting rehabilitation and reuse of older buildings;
- maintaining a range of housing choices and options;
- establishing clear and efficient development review and approval procedures; and
- accommodating growth and development that complies with the preceding stated purposes.

The Zoning Ordinance applies to “all development, public or private, within the corporate limits of the City of Chicago, unless otherwise expressly exempted or provided in this Zoning Ordinance.”<sup>2</sup>

### **Floor to Area Ratio Density Bonuses**

In order to regulate the size of buildings, Chicago places limits on the Floor to Area Ratio (“FAR”). FAR is simply how large a building is relative to the lot size and can be expressed in a simple mathematical formula:

$$\text{Area of Building/Area of Lot} = \text{FAR}$$

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<sup>1</sup> §17-1-0500 Chicago Zoning Ordinance

<sup>2</sup> §17-1-0400 Chicago Zoning Ordinance

Consider this example – Assume the Chicago Zoning Ordinance allows a high-rise apartment building to have a FAR of up to 7.0. (For the ease of explanation, assume the developer is erecting a simple building, where all the floors are the same size.) In this example, the developer can build a seven-story building that covers the entire lot ( $7/1.0 = 7.0$  FAR), or a 28-story building that covers one-fourth of its lot ( $28/0.25 = 7.0$  FAR). Both result in a FAR of 7.0 and thus meet the FAR limits per the Chicago Zoning Ordinance.

There are 20 different density bonuses in the 2007 Chicago Zoning Ordinance that relate to FAR.<sup>3</sup> One such density bonus is the DAHDB, which is intended to promote private-sector participation in helping meet the City's affordable housing needs. It was created in 2004 to enable developers in certain downtown zoning districts to build additional square footage in exchange for providing on-site affordable housing or contributing to the City's Affordable Housing Opportunity Fund. Actual on-site units provided by a developer are placed in the Chicago Community Land Trust ("CCLT"), which ensures the unit's long-term affordability.<sup>4</sup> Alternatively, developer contributions to the Opportunity Fund are disbursed<sup>5</sup> as follows:

- 60% for the construction or rehabilitation of affordable housing;
- 40% contributed to the Chicago Low-Income Housing Trust Fund (a not-for-profit organization), of which half shall be restricted solely for the purpose of deposit into the Trust Fund, and the remaining half shall be used for the Trust Fund's Affordable Rent for Chicago program, or similar successor program.

## Project Types

Buildings in Chicago obviously vary in size (skyscrapers, multi-family dwellings, single-family homes), purpose (residential, business, commercial), and location (downtown, neighborhoods, special use districts). The Chicago Zoning Ordinance provides zoning standards for the construction or development of these various types of projects. If a development project falls within those existing standards, then the project is referred to as an *As-of-Right* project and is governed by the provisions within the Ordinance. However, if a project meets certain thresholds (as defined by §17-8-0500 of the Ordinance) then the project is referred to as a *Planned Development*. These Mandatory Planned Development thresholds include many things such as height, land area, unit-count, and building use.<sup>6</sup> A third type of project, referred to as *With-Relief*, is *not* defined within the Ordinance. A With-Relief project exceeds the standards of the Ordinance but does not meet the Planned Development thresholds.

Pursuant to the Zoning Ordinance, As-of-Right and With-Relief projects are subject to site plan review and approval by the City's Zoning personnel within DHED. Planned Development

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<sup>3</sup> See Appendix 1 for the Floor Area Ratio Bonus Menu per the 2007 Chicago Zoning Ordinance.

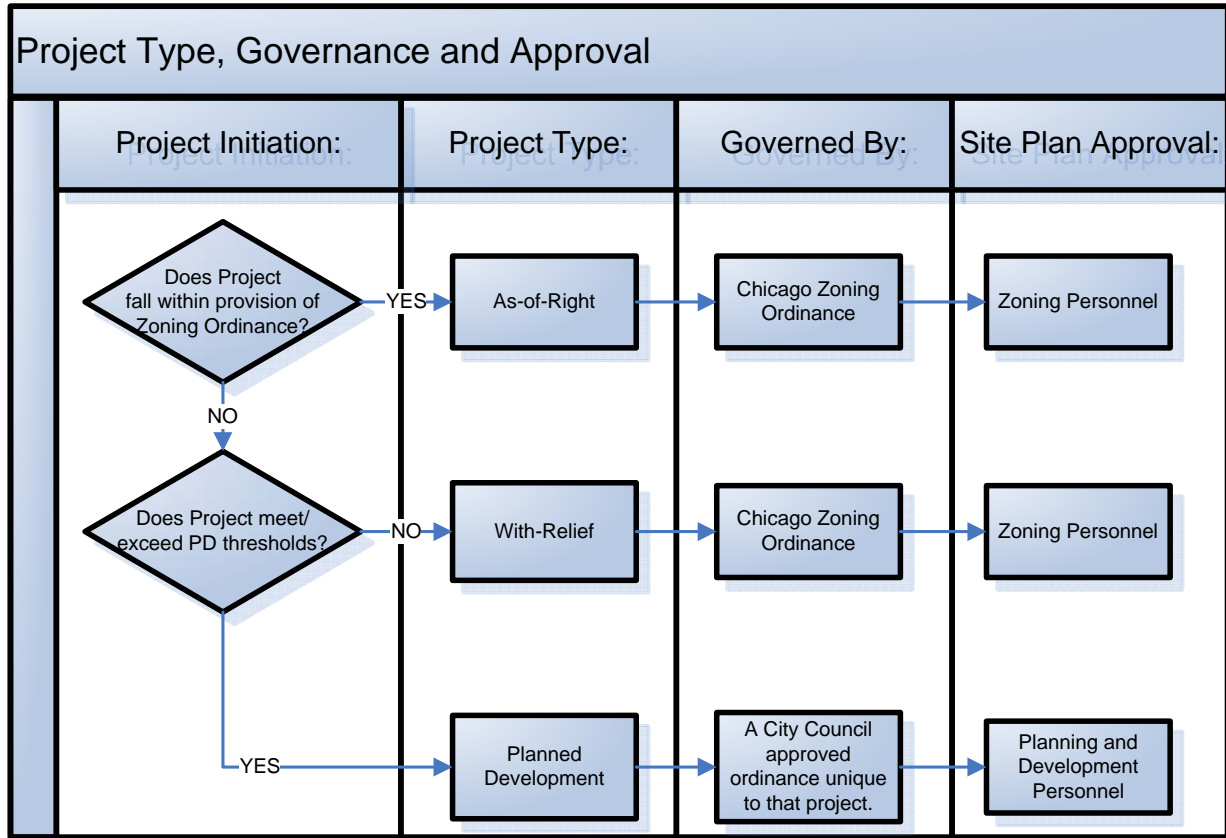
<sup>4</sup> When CCLT homeowners decide to move, they can sell their homes for an amount determined by the CCLT's resale formula, which is included in either a ground lease or deed restriction. The main reason for establishing a community land trust on a citywide basis is to standardize the ways in which CCLT housing will be assessed, subsidized, mortgaged, marketed, and managed throughout Chicago.

<sup>5</sup> Chicago Municipal Code §2-45-110(e)

<sup>6</sup> For a brief description of the various Planned Development thresholds, see Appendix 2.

Projects are governed by City Council-approved project-specific ordinances and subject to site plan review and approval by the City’s Planning & Development personnel within DHED.

To summarize the information relayed in the previous two paragraphs, we provide the following illustration:



As-of-Right and With-Relief projects share the same basic workflow from project initiation to actual construction. The workflow for Planned Development projects differs. For Planned Developments there is a Part I Review which entails review and approval by the Plan Commission, the City Council Committee on Zoning and the City Council and results in the project-specific ordinance. A Part II Review is then conducted during the actual construction to ensure the site plans adhere to the project-specific ordinance.

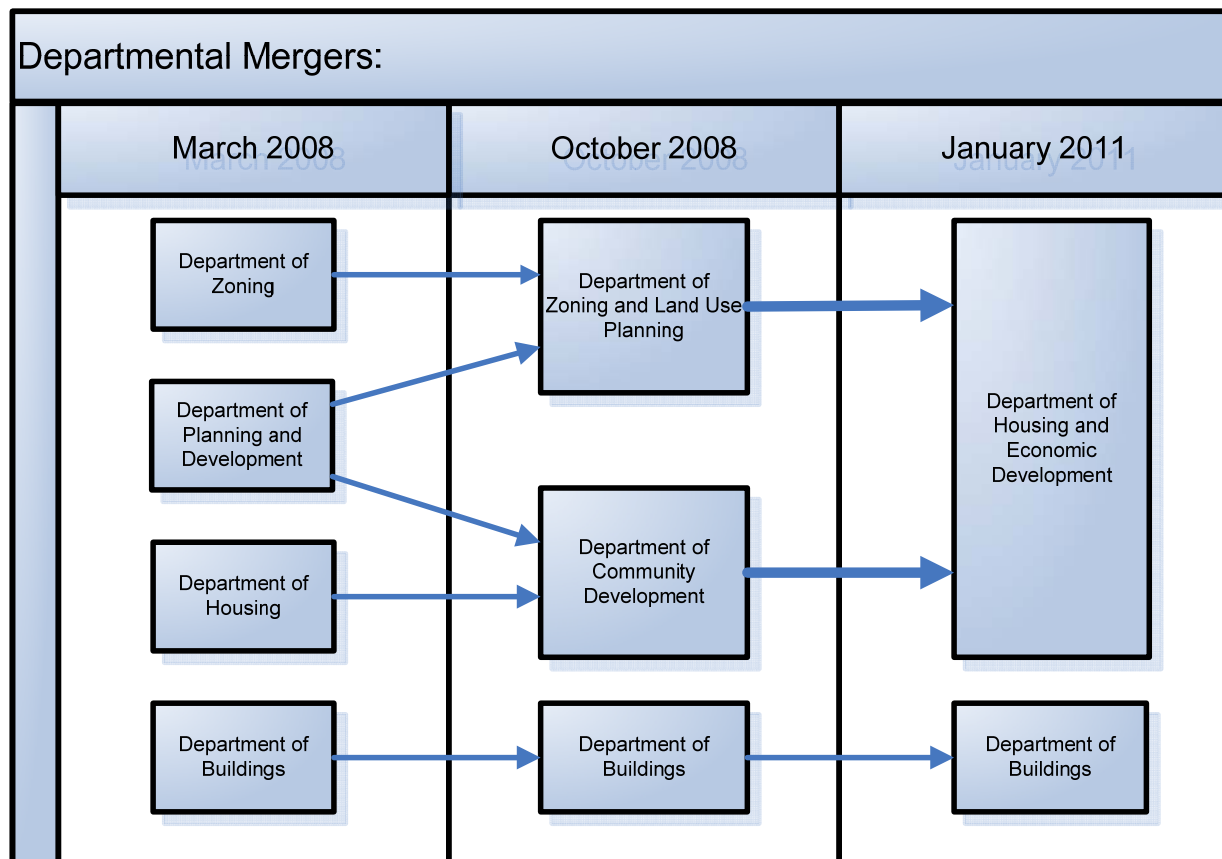
### Department Mergers and Reorganizations

This report refers to four separate department groups for various portions of the DAHDB-related processes. These groups and their responsibilities are as follows:

- Housing – responsible for ensuring the collection of DAHDB-related contributions to the Opportunity Fund;
- Planning and Development (“P&D”) – responsible for reviewing Planned Developments to ensure they comply with ordinance;

- Zoning – responsible for reviewing As-of-Right and With-Relief projects to ensure they comply with ordinance;
- Buildings – also responsible for reviewing As-of-Right projects to ensure they comply with ordinance.

At the outset of the audit in March 2008, these groups were housed in four different departments – the Department of Housing, Department of Zoning and Department of Planning and Development, as well as the Department of Buildings. However, because of recent departmental mergers and reorganizations, they now reside in only two departments, Buildings and the new DHED, the latter of which encompasses the Housing, P&D, and Zoning groups. These departmental mergers and reorganizations notwithstanding, the groups have retained their responsibilities related to the DAHDB process. Therefore, for purposes of this audit, we will refer to the various components—Housing, P&D, Zoning, and Buildings.



## **SCOPE, METHODOLOGY AND PURPOSE**

### **Scope and Methodology**

Our audit scope included development projects initiated between June 2005 and July 2008. Projects were selected for review without consideration of whether they had expressly participated in a density bonus program or not.

Audit steps included:

- interviewing management and employees from various departments that play a role in the Downtown Affordable Housing Density Bonus process;
- identifying the population of approved projects and selecting development projects within the Downtown Affordable Housing Density Bonus' geographic boundaries;
- reviewing project approval documentation to ensure the projects received the appropriate FAR review.

Chapter 17-13 of the Chicago Zoning Ordinance addresses review and approval procedures. Information within that chapter, as well as initial discussions with DHED personnel, indicated that the Zoning group reviewed and approved As-of-Right projects while the Planning and Development group reviewed and approved planned developments. While With-Relief projects are not addressed overtly in the Zoning Ordinance, DHED personnel informed the IGO that the Zoning group also reviewed and approved those projects. During the audit, however, we learned that a group within the Department of Buildings also reviewed site plans with the purpose of approving the developer's adherence to the Zoning Ordinance. For this reason, we broadened the scope of the audit to include those processes within the Department of Buildings.

In order to define a sample of projects to review during the audit, we asked the various departments for a listing of projects submitted for review. Such a listing is not maintained, however. Therefore, the audit team relied on the permit processing system, Hansen, to identify projects that went through the review and approval processes.

### **Objectives**

The objectives of this audit were to:

- determine whether developments built larger than the Zoning Ordinance allowed were developed through participation in the density bonus programs;
- evaluate the policies and procedures regarding those processes;
- assess the adequacy and effectiveness of internal controls relating to the processes;
- test and evaluate program activities to ensure effective and efficient operations and compliance with procedures and policies; and

- identify inefficiencies, waste, loss, and potential for misconduct.

Audit Team

Darwyn Jones, Senior Auditor

Nicole Orr, Auditor

Wendy Funk, Chief Auditor

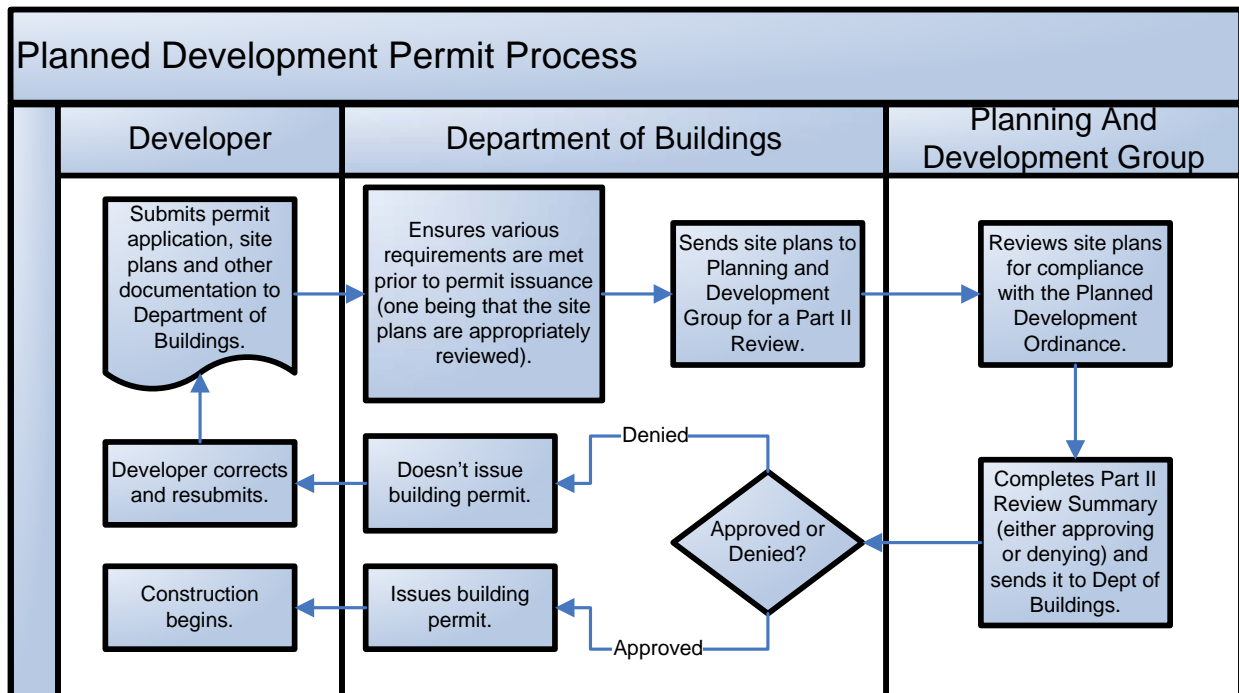
## AUDIT FINDINGS AND RECOMMENDATIONS

### **Finding 08-01: Planned Development Projects Were Not Appropriately Reviewed for Ordinance Compliance**

The 2010 Chicago Zoning Ordinance states:

*§17-13-0610 Effect of Planned Development Approval. After the adoption of a planned development ordinance, every application for a permit or license within the planned development boundaries must be reviewed by the Zoning Administrator<sup>7</sup> for a determination that the proposed use, building or structure complies with all provisions of the planned development ordinance. Zoning and occupancy certificates may be issued by the Zoning Administrator for uses, buildings or structures within the planned development only upon his written approval. Any permit, license or certificate issued in conflict with the planned development ordinance is null and void.*

Therefore, when a building permit application is submitted for a planned development project, the site plans should be reviewed to ensure compliance with the planned development ordinance. This review process is called the “Part II Review.” (The “Part I Review” refers to the review by the Plan Commission, the Committee on Zoning and the City Council as part of the creation of the Planned Development Ordinance.) The illustration below depicts the Part II Review as it relates to the Planned Development Permit Process.



<sup>7</sup> Previous versions of the ordinance refer to the Commissioner of Planning and Development. As discussed in the background section of this report, the same group performs the work, but now reports to the Zoning Administrator.

## Building Permits Issued without Required Zoning Review

During our audit we confirmed that two, or 5%, of the 39 planned development projects sampled were issued building permits without the required Part II Review to ensure ordinance compliance. While both of these projects had a *partial* Part II review completed (for caisson and foundation only), a full Part II review had never been conducted. Thus, the FARs associated with the projects were not validated. P&D personnel indicated they rely on DOB to request a Part II Review, and that no requests for full reviews were made. In essence, as noted in the illustration on the previous page, DOB acts as gatekeeper, funneling projects to the Part II Review process as needed. A *Checklist of Items Required for Permit* has been developed to ensure all required procedures are completed before the issuance of a building permit. That document specifically addresses the need for a Part II Review. However, that document did not ensure the full Part II Review had been conducted in these two instances.

The DOB Projects Administrator of one of the projects explained that she had become confused and issued the building permit in error. She explained that her confusion centered on an invoice and payment of the partial Part II Review fee. At the time of the partial review (for caisson and foundation only), P&D personnel invoiced the developer for the Part II Review fee. However, because only a partial review had been completed only 50% of the total fee was due. Instead of paying only the half that was due, the developer paid the full amount. The Projects Administrator indicated that she mistakenly understood the full payment to mean that the full Part II review had been completed. This occurred although no full Part II documentation had been generated and reflects that the Projects Administrator never checked the file to confirm that a full Part II Review had been performed.

The reason building permits for the second project were issued without approval could not be determined as the Projects Administrator involved is no longer employed by the City.

## Projects without Confirmation of a Full Zoning Review

Additionally, a full Part II Review could not be confirmed for 12, or 31%, of the planned development projects. To aid explanation, it is helpful to understand that while some Planned Development Ordinances define the project in total, others separate the project into various *subareas*. As an example, consider the following:

	<u>Project 1</u>	<u>Project 2</u>		
		Subarea A	Subarea B	Total
Building Area (sq. ft.)	150,000	140,000	10,000	150,000
Lot Area (sq. ft.)	15,000	10,000	5,000	15,000
FAR (Building Area/Lot Area)	<b>10.0</b>	14.0	2.0	<b>10.0</b>

Each of the example projects above have lot areas of 15,000 square feet and are approved for a FAR of 10.0. However, project 1 is defined in total while project 2 is separated into two areas, A and B. To confirm compliance with the ordinance, Project 1 would require only one Part II Review process, but Project 2 would require a Part II Review process for *each subarea*.

Of the 39 planned development projects we reviewed, 17, or 44%, were separated into a total of 76 various subareas. There was no documentation of a Part II Review for 26, or 35%, of those 76 subareas. P&D personnel stated that most of the projects in the sample should have had full Part II Reviews completed and that a 35% exception rate indicated there must be a “gap in the process.”

DOB personnel indicated that every building permit application related to a planned development would be sent to P&D for approval. During the audit, we found instances in which the project was referred to an individual in P&D who did not have the authority to review FAR compliance. DOB personnel indicated that they simply send projects to P&D for review, but are not involved in the specifics of that review. If the project comes back to them from P&D as approved, they simply proceed.

While this exception rate points to a deficiency in the process, it is important to note that in order to determine if these subareas *should* have had a Part II review, we needed to confirm building permits were issued for those particular subareas. This confirmation was not possible, however, as the Hansen system tracks permit status by address, not by subareas. For instance, if the developer had not yet applied for a permit (i.e. they were not ready to build a particular section), a Part II Review for that subarea would not have been initiated or required under current procedures. Also, if a particular subarea was approved with a FAR of 0.00, then it would never have construction upon it, never have a permit application submitted, and thus never initiate a Part II Review. (Of the 76 subareas reviewed, only four were associated with a 0.00 FAR.)

Based on the foregoing, we do not find the current procedures – which are the same as those in place during the 2005 to 2008 audit period under review – adequate to ensure every application for permit or license within the planned development boundaries is reviewed by the Zoning Administrator for a determination that the proposed use, building or structure complies with all provisions of the planned development ordinance.

### **Recommendation(s):**

We recommend that P&D complete the Part II Reviews for the two buildings issued permits without a zoning review as well as the 26 subareas mentioned above.

Additionally, we recommend that the Zoning Administrator, working with both P&D and DOB, review and revise the procedures related to Zoning Ordinance §17-13-0610. This review should include, but not be limited to, consideration of the following:

- The group with responsibility, per ordinance, to review each project to ensure compliance with the Planned Development Ordinance relies on another group (DOB) to inform it when such a review is necessary. Therefore, it is imperative DOB personnel receive training to understand when a Part II Review is necessary, who is authorized to complete Part II Reviews and the difference between Part II Reviews and other reviews completed by the same group (special use reviews, etc.). In addition, DOB personnel should not correlate payment of a review fee with review approval, but should be trained to identify the proper documentation that provides evidence of review approval.

- Because P&D relies on DOB to inform it when a Part II Review is necessary, it is easy for P&D to attribute the lack of review to the fact that DOB did not request the review. Likewise, DOB can send a project to P&D and have it returned as approved, without realizing that the entire project may not have been reviewed.
- There are no controls to ensure 100% of subareas for a particular project are reviewed.
- While Part II Reviews can be conducted in a piecemeal fashion (subarea by subarea), the permits are issued to the project address without regard to subareas. There is no method to identify that a particular permit included or excluded particular subareas.

**Response(s):**

“In response to finding 08-01, the Planning Division of the Department of Housing and Economic Development will request building plans from the Department of Buildings for the two buildings and 26 sub areas cited in the Inspector General’s report and conduct a Part II review.

In addition, the Zoning Administrator along with the Planning Division of the Department of Housing and Economic Development and the Department of Buildings is reviewing procedures related to plan review for building permits. The Departments have created an internal document for process mapping or routing of plans for review. The next step will be to review that process and make critical changes to it to ensure a thorough, yet expeditious review. This step may also include additional staff training.”

**Finding 08-02: A Training Issue Resulted in a Gap in Controls Related to Collection of DAHDB Payments and a Consequent Undercollection of Payments for One Development Project**

There are controls designed to ensure payments related to DAHDB are collected prior to the issuance of building permits. When a bonus is approved for a particular project, Housing personnel within DHED are notified. It is their responsibility to place a hold within the Hansen permit processing system. This hold prevents the issuance of any building permit until the developer makes the required payment and the hold is removed. In our review of projects that expressly exercised the Affordable Housing Density Bonus, we found one project that paid \$201,880 less than required by the Planned Development Ordinance. The project was allowed a 3.5 increase in FAR in exchange for a contribution to the Affordable Housing Opportunity Fund of \$1,413,160. However, the City collected only \$1,211,280, resulting in a shortage of \$201,880 relative to the amount that the developer was legally required to pay. While the reduction in payment accurately corresponded to a reduction in FAR (the developer had only included 3.0 of bonus), the Zoning Ordinance specifically requires *full* payment before building permits are issued and the project-specific ordinance was never amended in the City Council to legally authorize collection of the lesser amount.<sup>8</sup>

In this particular case, the hold was removed although the payment was less than the legally required amount. The DHED employee who released the hold indicated that at the time she received the reduced payment, she consulted with P&D and obtained both the Part II approval documentation and a revised FAR Bonus worksheet. Her concern was to ensure that the reduction in payment accurately corresponded to the reduction in FAR, which mathematically, it did. (A 3.5 FAR bonus corresponded to a payment of \$1,413,160 and a 3.0 FAR bonus corresponded to a \$1,211,280 payment.) However, she was not aware that, according to Chicago Zoning Ordinance §17-4-1003-E<sup>9</sup>, that changes to FAR allowance (and thus, of payment) were not allowed without an amendment to the planned development ordinance and final approval by the City Council.

Not only did this result in a shortage of \$201,880 in the payment required by law, but it also resulted in a situation in which a) the project was approved for an increased FAR, b) the full payment had not been received and c) there was no “hold” in the Hansen system. Therefore, if the developer had applied for additional permits, he could have built space above the revised (reduced) FAR level up to the original approved FAR level without paying the full amount required.

We conclude that the internal controls ensuring the collection of density bonus payments related to affordable housing are adequate. We believe the exception noted above is related to a specific situation and occurred simply because of the lack of awareness of Zoning Ordinance requirements (i.e. the fact that a reduction of payment is not acceptable without an amendment to the Planned Development Ordinance and City Council approval).

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<sup>8</sup> See Appendix 3 to read Zoning Ordinance §17-4-1004-E6 in its entirety.

<sup>9</sup> See Appendix 3 to read Zoning Ordinance §17-4-1003-E in its entirety.

**Recommendation(s):**

We would normally recommend the department improve training, ensuring all employees involved in the process were aware of correct procedures. However, as a result of this audit, the one individual with whom this control lies is now aware of the Zoning Ordinance requirement. In addition, she has reinstituted the “hold” within Hansen for this particular project. Therefore, if this developer should ever apply for a new permit, the remaining funds will be collected before that permit is issued.

We do recommend, however, training any individuals who act as backup for this individual when she is away from the office. Also, to ensure any future employees are aware, we recommend that the department update its current documentation in the *Administrative Regulations and Procedures*. While procedures related to the Affordable Housing Density Bonus are currently documented therein, Zoning Ordinance §17-4-1003-E is not specifically addressed.

**Response(s):**

“In response to finding 08-02, the Department of Housing and Economic Development staff will maintain the referenced Hold in the Hansen system to ensure that full payment is received, if additional building permits are applied for on this site.

In addition, the Department of Housing and Economic Development staff will update the “Affordable Housing Zoning Bonus Administrative Regulations and Procedures” document, which is maintained internally and posted on the department’s website, to clarify that, once a zoning bonus has been approved by Council, full payment must be made prior to permitting, regardless of whether the full allowable floor areas is (sic) being utilized by the applicant.”

**Finding 08-03: No Controls to Ensure Review Processes were Consistent between DHED and DOB and Comply with Ordinance****Consistency Between DHED and DOB**

There are three different groups that review projects for compliance with the Zoning Ordinance. Two of these groups are now housed in the same department (DHED) and actually review different types of projects. (If the project is a Planned Development, P&D reviews it. If the project is As-of-Right or With-Relief, Zoning reviews it.) The third group, the Developer Services Program within DOB, also reviews As-of-Right projects. As such, their review processes should mirror the review processes of Zoning. However, there are currently no controls to ensure these processes are consistent. Discussion with the Zoning Administrator, who has responsibility for this review per ordinance, indicated she cannot speak to the processes within DOB as she is not involved.

**Compliance with Ordinance**

During the audit, we tried to determine how these two processes came into existence. According to the Chicago Zoning Ordinance, the Zoning Administrator is responsible for administering and enforcing the provisions of this Zoning Ordinance. In accordance with such authority, one of the duties<sup>10</sup> of the Zoning Administrator includes:

*Examining all plans submitted to the department of construction and permits for conformity with the Zoning Ordinance, and granting all zoning approvals in connection with the issuance of permits for the construction of buildings or structures, including, without limitation, landscaping approvals and determination of the amount of any space impact fees payable under Chapter 16-18 of the Municipal Code.*(Emphasis added)

On the other hand, the Zoning Ordinance does not appear in any way to require or otherwise direct DOB review. Therefore, the DOB process of reviewing site plans to ensure compliance with the Zoning Ordinance appears to usurp the authority of the Zoning Administrator. While the Zoning Administrator was aware of the existence of the DOB processes and knew that the review and approval of Zoning Ordinance compliance took place within that process, she initially indicated she did not understand how they had the authority to conduct such reviews. However, later, in a joint meeting with personnel from P&D, Zoning and DOB, we were informed that the decision to give DOB the authority to complete Zoning Ordinance review was a result of a 2003 City Council ordinance<sup>11</sup> to address developers' complaints that the building permit process took too long. The Deputy Commissioner of DOB, however, had initially indicated there was no ordinance related to the creation of the Developer Services Program, rather it was "created as a result of an interpretation of the Chicago Building Code, §13-32-031 Sundry Programs." That particular section states:

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<sup>10</sup> §17-14-0202-O. Previous versions of the Chicago Zoning Ordinance indicated the Commissioner of Planning and Development had the same responsibilities as they related to Planned Development projects. However, with departmental mergers, the P&D group is no longer a separate City department and now reports to the Zoning Administrator.

<sup>11</sup> We could not find the specific ordinance. This does not mean it doesn't exist, however, as we found references to ordinances amending the zoning code with the message, "Ordinance introduced but missing."

*The building commissioner shall have authority to institute the preliminary review program, the customized review program, the superstructure permit program, the developer services program, and other programs which may include programs authorizing qualified licensed design professionals to self-certify plans presented to the building commissioner pursuant to the requirements of Chapter 13-40 for compliance with the requirements of this code, and, to issue permits and to assess fees thereunder accordingly.*

Chapter 13-40, referenced in the above section, makes no mention of compliance with the Zoning Ordinance, but focuses only on the Building Code. Therefore, during the course of the audit, there was no specific ordinance found granting DOB the authority to review for compliance with the Zoning Ordinance.

Besides the concern of consistency between the processes, the fact that two processes exists with the same purpose (at least for As-of-Right projects) can cause confusion for developers. For instance, if a developer conducts their own research through the City of Chicago website, they will find both DOB and DHED indicate Zoning Ordinance Review is part of their processes. The developer could begin with either of them and then be redirected depending on the specifics of that particular project.

### **Recommendation(s):**

To ensure adequate controls and efficient operations, we recommend DHED and DOB work together to review the overall processes related to compliance with both the Zoning and Planned Development Ordinances. At a minimum, the following should be considered during the review:

- Current processes to review compliance with the ordinances exist within two different departments and are performed by three different groups. While there may be significant discussions regarding individual projects, there is little communication between the three groups regarding the process as a whole. The review should include an assessment of whether these functions should continue to reside with the various groups and, concomitantly, whether the process should be streamlined within a single department component group.
- Whether it is decided that these functions continue to reside where they currently exist or not, training should be conducted for all employees involved in the process. This training should, at a minimum, convey each function involved and the purpose of each function, and who has authority to perform each function. It is important that this training approach the process as a whole and avoid treating each group as a silo of responsibility. Without understanding the various roles in relation to the whole, the process is susceptible to control gaps. Furthermore, consistent policies and procedures should be documented and shared with all groups.
- Amend the Chicago Zoning Ordinance to explicitly and accurately portray the responsibilities and authority of each department. Currently, the Zoning Ordinance does not accurately reflect the City's processes.

**Response(s):**

“In response to finding 08-03, the Department of Housing and Economic Development is evaluating the process for plan review along with the Department of Buildings. While the Department of Housing and Economic Development and the Office of Zoning Administrator acknowledge the responsibility for zoning review is with the Office of the Zoning Administrator, over the years, some of the review was shared by the Department of Buildings to remain operational.

As the process mapping of the two departments continues, we will work with the Law Department and City Council to address possible ordinance amendments to codify any applicable changes that may be made.”

## APPENDIX 1 FLOOR AREA BONUSES

The floor area bonus provisions of §17-4-1000 of the Chicago Zoning Ordinance are intended to provide an economic incentive for developers to provide affordable housing and public amenities that improve the quality of life of city residents, employees and visitors and are a benefit to the public. These bonuses include the following:

<b>Public Benefit/Amenity</b>	<b>Section of Ordinance<sup>12</sup></b>	<b>Approval Authority<sup>13</sup></b>
Affordable Housing	§17-4-1004	ZA
Public Plazas and Pocket Parks	§17-4-1005	ZA
Chicago Riverwalk Improvements	§17-4-1006	ZA
Winter Gardens	§17-4-1007	ZA
Indoor Through-Block Connections	§17-4-1008	ZA
Outdoor Through-Block Connections	§17-4-1009	ZA
Sidewalk Widening	§17-4-1010	ZA
Arcades	§17-4-1011	ZA
Water Features in Public Open Spaces	§17-4-1012	ZA
Upper-Level Setbacks	§17-4-1013	ZA
Lower-Level Planting Terraces	§17-4-1014	ZA
Green Roofs	§17-4-1015	ZA
Underground Parking and Loading	§17-4-1016	ZA
Parking Concealed by Occupiable Space	§17-4-1017	ZA
Off-Site Park/Open Space Contributions	§17-4-1018	PD
Streetscape Improvements	§17-4-1019	PD
Transit Station Improvements	§17-4-1020	PD
Pedway Improvements	§17-4-1021	PD
Adopt-A-Landmark	§17-4-1022	PD
Chicago Public Schools Capital Improvements Fund	§17-4-1023	ZA

<sup>12</sup> Includes eligibility criteria and bonus formulas

<sup>13</sup> ZA = Zoning Administrator; PD = Planned Development approval process

## APPENDIX 2 MANDATORY PLANNED DEVELOPMENT THRESHOLDS

Per §17-8-0500 of the 2007 Chicago Zoning Ordinance, Planned Development review and approval is required for all of the following:

<u>Section of Ordinance</u>	<u>Description</u> <sup>14</sup>
§17-8-0501	Air Rights
§17-8-0502	Airports and Heliports
§17-8-0503	Non-Accessory Parking in the “D” (Downtown) Zoning Districts
§17-8-0504	Hospitals, Colleges, Universities and Campus-Style Institutional Uses
§17-8-0505	Religious Assembly, Community Centers and Similar Assembly Uses
§17-8-0506	Schools, Safety Services and Other Government Buildings
§17-8-0507	Power Plants, Water Plants and Wastewater Plants
§17-8-0508	Entertainment and Spectator Sports
§17-8-0509	Development Along Waterways
§17-8-0510	Large Commercial Developments
§17-8-0511	Large Industrial Developments
§17-8-0512	Tall Buildings
§17-8-0513	Large Residential Developments
§17-8-0514	Bonus Floor Area in Excess of 150% of the Base FAR
§17-8-0515	Expansions of Existing Development

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<sup>14</sup> This appendix is meant to provide a recap of subject criteria used to define Planned Developments. For a detailed explanation of the specific thresholds please refer to the current Chicago Zoning Ordinance.

### **APPENDIX 3**

#### **TIMING OF CASH PAYMENTS AND FINANCIAL GUARANTEES**

Chicago Zoning Ordinance, §17-4-1004-E6: Property owners that are subject to the affordable housing standards of this section must pay the required cash contribution or provide a performance bond or other security ensuring construction of the affordable housing units before the issuance of building permits for the construction of the subject buildings. Such bond or security must be:

- (a) in an amount equal to the cash contribution required under Sec. 17-4-1004-C2 or Sec. 17-4-1004-D2, whichever is applicable; and
- (b) released after the commissioner of housing has certified that the onsite affordable housing units have been created.

#### **ADMINISTRATION OF FLOOR AREA BONUSES**

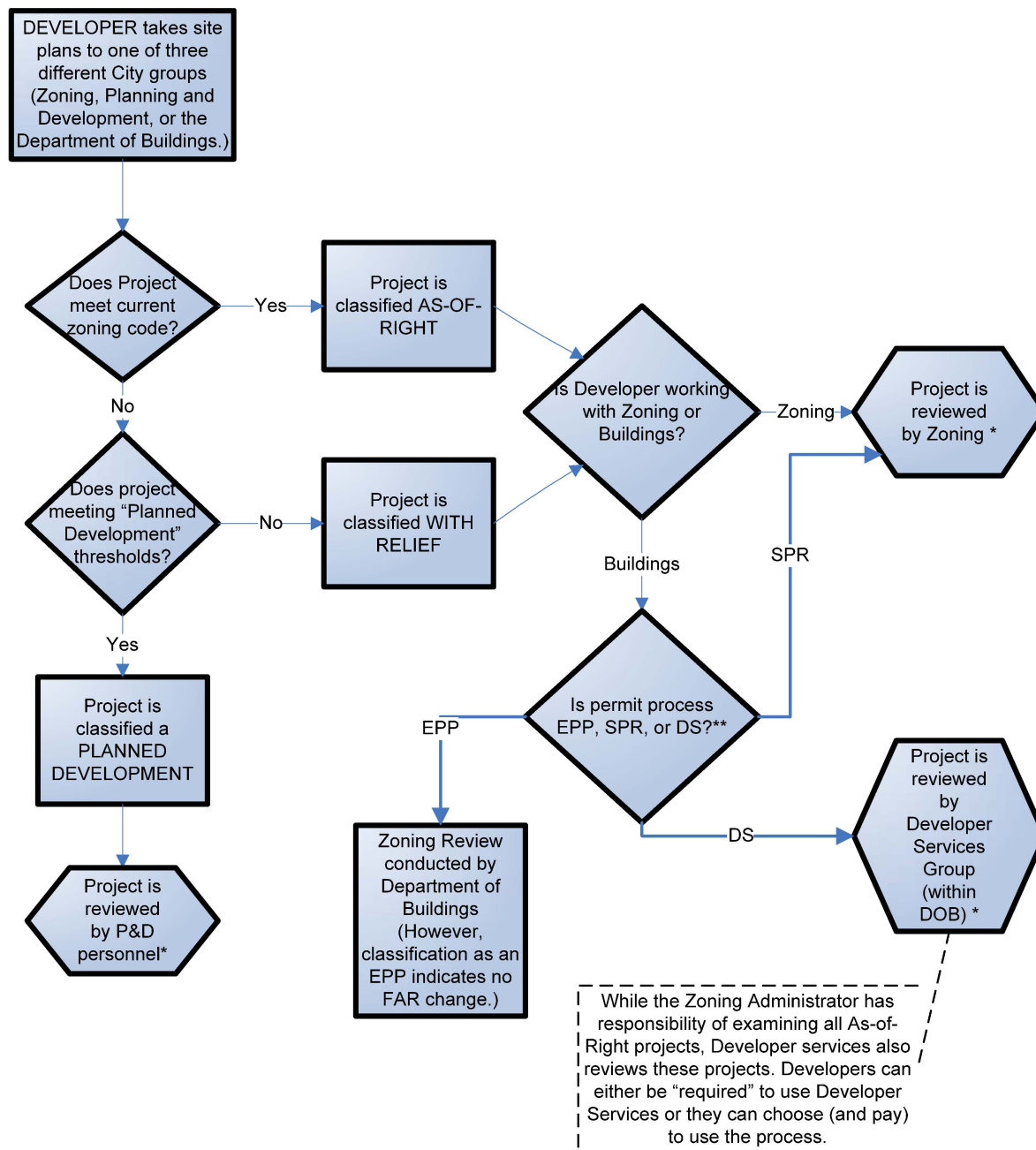
Chicago Zoning Ordinance, §17-4-1003-E: No public amenity for which a floor area bonus has been granted may be reduced in size without a corresponding reduction in building floor area or substitution of an equivalent amenity.

1. Elimination or substitution of an amenity for which a floor area bonus was granted requires Planned Development review and approval in accordance with Sec. 17-13-0600.<sup>15</sup>
2. In the case of an existing Planned Development, any elimination or reduction in size of an amenity for which a floor area bonus was granted requires an amendment to the Planned Development ordinance and final approval by the City Council.
3. Floor area exceeding the maximum base floor area ratio of Sec. 17-4-0405-A, added to a building by virtue of floor area ratio bonuses of this section, may not, in turn, serve as a basis for creating additional bonuses.

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<sup>15</sup> Sec. 17-13-0600 of the Chicago Zoning Ordinance details the procedures for review and approval of Planned Developments, which includes hearings with the Plan Commission, hearings with the Committee on Zoning, and City Council approval.

## APPENDIX 4 PROJECT CLASSIFICATION AND REVIEW



\* During the review process it may be found that the project is misclassified. If misclassified (as A-o-R, PD or Relief project) the developer is then sent to the proper review department. (In addition, the Department of Buildings can send developers to Zoning if they feel the development is complicated.

\*\* Note: While the various projects require approval from the different groups, in most cases the developer is working with the Department of Buildings and it is up to that department to notify the other groups of the required reviews.