

Response to the August 27, 2013 Planning Division analysis of the NNI proposal
and Response to concerns raised by several Civic organizations

Submitted by Carol Brown, September 10, 2013

First, I want to once again take the time to thank the Chairman and District Commissioners, Community Development and all Stakeholders who have taken the time to participate in the NNI for Cobb meetings.

While I based the NNI proposal on the model chosen by Athens-Clarke County, it needs to be understood that there are almost as many versions of neighborhood planning, empowerment, notification and registration programs as there are local governments willing to adopt them. In this case, one size does not fit all and I believe that each local government, in consultation with its residents, has the power to craft an ordinance and a program to its own liking. I have compiled a list with links to local governments in Georgia, the South and Southeast and across the U.S. so that stakeholders can see the different types of neighborhood programs that are in place.

http://cantonroadneighbors.org/NNI_page_2.htm

Cobb County could pick and choose what it feels would work best to recognize, inform and engage many more of its neighborhoods and residents than are currently active. It could choose to adopt an information model that relied heavily on a web portal, listservs and GIS technology. This would be much more like the Athens-Clarke County model rather than the highly structured, traditional neighborhood planning approach used in Atlanta's Neighborhood Planning Units. It is also very affordable for the amount of information and access it provides the citizens. .

I began with the above statement in order to respond to the approach taken by Community Development in their August 27th Work Session presentation to the BoC (Attachment 1). Opening remarks state that the NNI was developed by ACC “as a baby step towards creating a more comprehensive neighborhood planning system as seen in cities such as Atlanta and Seattle among many others” (8/23/13 Memo).

Actually, ACC brought forward an Agenda Item at the request of a citizen, that studied the feasibility of 3 different options: 1. the NPU, 2. The NNI as either a supplement to, or first step towards the NPU and 3. the NNI as a stand-alone option. While the ACC government approved funding to study Option 1, the NPU, they eventually opted for the NNI as a stand-alone program.

This is an important distinction because the 8/27 presentation seems to put more emphasis on the neighborhood planning aspect of NNI than actually exists under the ACC NNI. It also leads to a higher cost of the proposal due to the added requirements for personnel. Thus, these two items in Step 1 might be deferred as they are not really a function of the NNI.

Step #1 1. Draft comprehensive plan policies for neighborhood planning and
2. Planning Commission and BOC approval of neighborhood planning policies through Comp Plan amendment.

While Athens-Clarke County includes its NNI registered neighborhoods as well as other neighborhoods as stakeholders in development of its Comprehensive Plan, it does not appear that neighborhood planning, per se, is part of their NNI, the way that it takes place in Atlanta's NPU.

Other items in the 8/27 analysis that appear to push up the cost of the program due to personnel requirements are the following:

Step# 2 3. Education of the Community about the difference between One-Stop, Site Plan Review, Comprehensive Planning, etc.

Step # 3 1. One-on-one work with neighborhood representative during neighborhood certification process

Step # 4 3. a-d GIS database creation, maintenance and upkeep for (a-d)
4. Ongoing coordination with Water,, DOT, Public Safety, etc

- ∞ Much could be achieved in terms of education by posting helpful, down-loadable files like the proposed Zoning 101, Planning 101, etc. Athens-Clarke County recommended hiring a Consultant following adoption of the NNI to facilitate education by hosting workshops. As the program becomes more familiar to the public through e-newsletters, spots on TV23, Town Hall presentations, the need for one-on-one assistance should greatly diminish. Registration forms for neighborhoods are available online in Athens-Clarke County and many other local governments.(Attachment 2)
- ∞ Cobb County would not need to notify neighborhoods about Site Plan Review, Certificate of Appropriateness, One-Stop, etc. Easy-to-find links to this information would suffice if the neighborhood was interested. This would reduce the need for education on issues that are more advanced, at the onset of the program.

The scaled back version of NNI that I could envision would

- ∞ Create a web portal for Cobb Neighborhoods/Communities with links to files that educate on process, links to Code Enforcement, PENS, Parks and Rec, Planning, Zoning and DOT
- ∞ Create a page for each Commission District where Plans and Corridor studies relevant to that district may be accessed, Zoning, Variance, LUP, SLUP and OBI can be downloaded by District
- ∞ List of registered neighborhoods and civic groups and contact information as well as an interactive map that shows the location of the neighborhoods (Google Map)
- ∞ Place a link to the neighborhood registration form application on the front page of the Cobb Neighborhoods page

HOA can register, platted subdivisions without HOA can register and Cobb can determine the requirements- ACC asked for a petition with 20% of residents signing and no requirement for by-laws or elections. Civic groups can register- preferably as an overlay. Individuals in and adjacent to a special interest corridor could register within the overlay area. A group of neighborhoods along a corridor could register. Cobb can make that decision. (Attachment 3)

Those who register should be able to receive notification of rezoning, variance, LUP, SLUP and OBI as well as any notice of any Public Information Meetings on planning or transportation initiatives that will impact their area. I do not believe it is necessary to send Site Plan Review, One Stop, License Review Board hearings, etc. An easy to find link to that information for those interested should be made available and grouped with similar links.

As was indicated in the 2006 Athens-Clarke County Agenda Item, for the NNI Stand-alone model, only one additional staff person was required. (Attachment 4) The Athens-Clarke County Planner reports

that function is less than 20hrs/week. IT handles the rest. The City of Denver confirmed this, saying that their registration and notification program takes from 10-20% of a Communication staffer's time, and less than 10% of a GIS Tech's time.

- ∞ A new layer for neighborhoods and civic groups could be created in the current GIS map or with a Google interactive map that listed the name of the neighborhood;
- ∞ The current ability of Cobb residents to register for e-newsletters and PENS as individuals could be modified to accept registration of neighborhood and civic groups with boundaries stated, Cobb does not currently have a Directory of Neighborhoods and this would be one advantage of implementing NNI.
- ∞ A Cobb Neighborhoods web portal with a page for each Commission District
- ∞ Notification of hearings emailed earlier than the required 30-days-prior-to-a-hearing, sign posting. There is currently no requirement for a 1,000' buffer letter to be sent with Variances, OBI or LUP. Variance and LUP do require signature or notification of contiguous occupants or land owners.

There were a number of concerns raised (by civic groups and in the 8/27 presentation) about whether NNI would violate the Georgia Zoning Procedures Law and require an amendment.

The relevant Georgia Statutes: Chapter 66 Zoning Procedures 36-66-2 Legislative purpose; local government zoning powers; 36-66-3 Definitions, 36-66-4 Hearings on proposed zoning decisions; notice of hearing. 36-66-4 requires “at least 15 but not more than 45 days prior to the date of the hearing, the local government shall publish . . . within a newspaper of general circulation within the territorial boundaries of the local government, notice of the hearing. The notice shall state the time, place and purpose of the hearing”. Also required if the rezoning is not initiated by the local government, is the location, the current zoning and proposed zoning. Also, a sign containing the required information shall be posted, not less than 15 days-prior to the hearing, in a conspicuous location on the property.

The powers of the Cobb Board of Commissioners are enumerated in [Cobb County, Georgia, Code of Ordinances >> PART II - STATE ENABLING LEGISLATION >> CHAPTER 2. - ADMINISTRATION >> ARTICLE II. BOARD OF COMMISSIONERS](#)
Sec. 2-34. Powers generally; specific powers.

Cobb County's additional requirements for notice of hearing can be found on the various applications for Zoning, Variance, Temporary Land Use Permit, Special Land Use Permit and Other Business Item.. All require that a sign be posted 30 days prior to the hearing. There is a requirement that the applicant mail a letter of intent to those property owners within 1,000' of subject property regarding Zoning and SLUP. There is no 1,000' buffer letter requirement for Variance, LUP or OBI. Variance and LUP do require signature or notification of contiguous occupants or land owners.

The concern that failure to send timely notification by email with the NNI program could cause a delay that might result in a “procedural taking” is unfounded. Georgia ZPL and Cobb County require the posting of a sign and published notice, and Athens-Clarke County and other local governments continue to post the signs and publish notice as required by state law, along with the early notification that NNI offers. ACC also requires that a buffer letter be sent to property owners near subject property.

When a local government decides to recognize neighborhoods, in the case of Atlanta NPU, it makes

clear that the NPU makes recommendations and acts in an advisory capacity. The zoning powers of a local government are not delegated to neighborhood organizations. Merely offering a neighborhood registry to area residents does not violate the Zoning Procedure Law.

An additional concern that was raised is that a resident or neighborhood must be certified or registered with the county in order to be able to speak at a hearing of the BoC, and that this is a violation of 1st Amendment rights. No such requirement exists. Any individual may continue to address the local government, as long as their conduct follows the established Rules of Procedure.

A question was raised about changing roles for the planning commission. One change that could be adopted would be to require that a zoning applicant meet with the neighborhood before the planning commission hearing, but NNI only suggests this and does not require it. Other local governments do require it and then make the Public Meeting report part of the application that the Planning Commission reviews.

An opinion was expressed that adoption of the NNI would lead to more zoning decisions being litigated. The statistics are probably available to answer this question if one were willing to undertake the research necessary to get a definitive answer.

ECCA stated a number of concerns in their response to the BOC. One was that additional electronic Notification was costly, redundant and not needed because the public was not unaware, they were simply not interested.

My response to this is that when civic group leadership becomes immersed in these issues for many years, the process seems very clear and accessible to them. I would suggest that the process has a veneer of accessibility that is in reality, confusing to the average person. Zoning procedure and an understanding of Land Use and Code are a specialized field that can take several years to master. Even with improved information on the County web site, it will continue to be daunting for those who only deal with it infrequently. Civic groups can play a valuable role in assisting residents on rezoning matters, but generally the half-dozen active groups in Cobb do not have a large active volunteer membership, and each District has a large number of residents and many businesses. A greater number of registered neighborhoods and a few new civic groups to cover areas without representation could only increase opportunities for participation, not stifle it, as the letter claims.

The issue of early notification of the affected neighborhood, and possibly the adjacent neighborhood is seen as restrictive in the ECCA letter. However, the law recognizes the importance of notification and consent of those adjacent to a proposed rezoning or variance. Cobb's Variance application has a page for those contiguous occupants or land owners to subject property to sign their consent. A property owner must meet the "substantial interest-aggrieved citizen test" DeKalb County v Wapensky, 253 Ga 47 (1984) to challenge a zoning decision. A Civic group alone lacks the standing to challenge a zoning decision. DeKalb County Bd of Commissioners v Druid Hills Civic Assoc 269 Ga. 619 (1998),

The section on Response/Input by ECCA reflects the fact that their Board voted against attending the Stakeholder meetings, and has not fully researched the proposal or other similar neighborhood programs. Citizens may continue to address the BoC and Planning Commission whether they register or not. ECCA writes

“The implementation of arbitrarily set and rigidly enforced geographic boundaries presupposes that each zoning issue in the county is pertinent only to that particular parcel or geographic area, and that input from any other area is not

warranted nor welcomed.”

In fact, this proposal and most registration forms ask the neighborhood to state what their boundaries are. They are not imposed by the County. In the case of existing HOA, there will be a platted subdivision. Registration is open to civic groups as an overlay, or to residents of a special-interest corridor. An individual or civic group would still be free to address the County on issues, but greater deference should be accorded the contiguous resident, neighborhood and community affected. Not every zoning decision sets a legal precedent. The current system allows individuals from miles away, to adopt a position on a rezoning case which may be contrary to the position of adjacent residents. This is not constructive or helpful, however the proposed NNI will not curtail this practice.

The ECCA letter concludes by describing the NNI proposal as costly, redundant and counter-productive. To return to my earlier observation, I believe that the staff requirements needed to implement the NNI are overstated, partly due to characterizing the program as Neighborhood Planning, rather than as a communication model that relies heavily on internet technologies. The NNI is not redundant, notification is not routinely emailed to even the active civic groups, who must search the online zoning analysis. Most residents do not make this effort. Unless something is occurring in their area they have no reason to. However, if they are not conversant with zoning procedure and the code, the appearance of a zoning sign one month before a hearing may give their neighborhood little time to prepare and meet with the applicant. Letters of notice are not currently sent out within a specified buffer on Variance applications and Temporary Land Use Permits, although the signed consent of conspicuous occupants or landowners is required. No neighborhood notification is required on Other Business Items.

Cobb does not have a meeting requirement so that practice varies with each Commissioner. I believe that in addition to the neighborhood registration, web portal and email notification, Cobb residents and business owners would be well served by a requirement that the Applicant meet with the affected neighborhood, prior to the planning commission hearing, and that the results of that meeting be made part of the application and record. This is a requirement in a number of nearby local governments.

Rezoning Feb-Oct 2013	Land Use Permits	Special Land Use Permit	Other Business Item	Variance Jan -Oct 2013	Items requiring notification	Planning and related studies, Code Amendments
Z 1 - Z 60	LUP 1- LUP 26	SLUP 1- SLUP 10	52	V1 – V 123		
60	26	10	52	123	271	

Table 1. Tally of items that could be sent in notification process

As we all are learning, registration and notification of neighborhoods with the goal of making participation easier has become the norm in many local governments. What Cobb offers is more than some counties, but less than others in large MSAs. I believe that residents do care about their community but also have many demands on their time. In some cases, age and income are constraints that act as barriers to participation. I believe that Cobb does care and can take cost-effective steps to reach out to more citizens. As the Commissioners move ahead in their deliberations I hope that they will keep in mind that this program is not expensive and has the potential to bring more people into the process over time. In our form of government, that is money well spent.