

Effective Interaction of Planning Commissions, Planners, and Attorneys



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Land use issues often top of the agenda in communities where people actively participate at all levels of the regulation and planning process. The closest possible collaboration between professional planners, planning commissioners, appeals board members, and the city attorney is essential for success. This article suggests how the commission and its planning staff can make the best use of the time and talent available to them.

Plan Preparation

In the typical community, planning commences with the preparation of a comprehensive plan, often referred to as a master plan. When comprehensive plans are developed, there are implications as to how they will be implemented. It is helpful for the commission and planners to present the broad policies they are trying to achieve to the attorney in the early stages of development. The attorney can provide the state legal context and identify potential legal obstacles to enacting the policies.

The attorney ensures that the requisite enabling authority exists for any particular regulation. This is particularly true in jurisdictions that do not have home rule authority. Commissions should make this determination in the early stages of consideration before a significant investment of time and precious resources have been spent.

Conceiving, Writing, and Adopting Regulations

The next stage involves the development of specific regulations that implement the plan's policies. There are three parts to this: 1) what is being regulated; 2) application and review process, and 3) enforcement. First, the attorney must determine "Can we do this?" Next, "Does the process meet legal standards?" Finally, "How will we enforce it?" Once the plan and regulations are

adopted, the focus is on ensuring that applications for development are consistent with the standards and on enforcement against violators.

Everyone must understand the intent of the regulation or other planning action. Staff and commissioners should articulate what needs to be accomplished and how the measure should be formulated to meet the objective. This information also should be shared with the appeals board before any specific adjudication is required.

Coordination encourages everyone to engage in the "what if" exercise. It is amazing how much the first draft can be improved through open dialogue about all possible iterations. Both planners and attorneys or their predecessors will have interpreted the draft in their own ways. It is important to preserve consistency in public policy to the extent possible. Achieving this requires that all participants methodically examine existing plans and regulations to spot any inconsistencies and that they carefully review any previous advice or decision.

In large cities, ordinance writers may be planning staff while in smaller communities the commissioners themselves may draft the wording. In other communities, the agency or commission may hire a legal consultant to help draft the ordinance or amendment. In all these circumstances the municipal attorney needs

to review the work and discuss any potential problems. The attorney may even participate in the drafting.

The drafters must also review the pertinent court decisions affecting regulation. For example, problems could arise if the attorney fails to educate all parties concerning the current standards for regulatory takings or religious facilities. Conversely, in order for the attorney to provide useful advice, the planner must be able to explain such concepts as sustainability and floor area ratio.

Managing the Planning Process and Commission Meetings

The most important of many components of coordination is the respect and collegiality with which all participants treat each other. Each has an essential professional role to play, and competition or avoidance among them will only serve to reduce the value of their contributions to the community.

It should not be necessary for the attorney to attend all planning commission meetings. However, attendance is common practice for zoning boards of appeal or zoning boards of adjustment. These meetings are bound by strict procedures and the attorney plays an important role in helping the board members understand how to accept evidence and how to make findings of fact. While a few planning commissions act as

the zoning board of appeals, this is not common.

The attorney attends the town council meetings and advises the elected officials. Therefore, it is vital to have had the attorney's review of plans, new ordinances, and revisions prior to these items coming before the elected officials.

Mistakes to Avoid

It is imperative that cooperation and coordination begin at the onset of the process. By the time the new plan or regulation is nearing completion, it may be too late. The same applies to an application for development or an enforcement action. Coordinating early and often helps avert mistakes. One of the worst outcomes resulting from delays in collaboration is the possibility of the professional planner and attorney offering conflicting positions to the commission or appeals board. This only serves to undermine everyone's confidence both in the process and in the professionalism and competence of their staff.

When the professional staff and commission or board communicate effectively with each other throughout the process, the benefits extend beyond these parties to the community itself. A well-managed process engenders the perception among developers, elected officials, special interest groups, and the community as a whole that the process is working smoothly and is in good hands. □