

THE ATTORNEY - PLANNER RELATIONSHIP 'KEY' TO GOOD LOCAL ZONING

by

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INTRODUCTION

Planners carry-out day-to-day zoning administration. The municipal attorney normally is involved in the zoning process through review of proposed ordinance language and with enforcement proceeding.

A positive working relationship between the planner and attorney is vital to successful zoning administration. This article examines the role of the planner and the municipal attorney in day-to-day administration of the planning and zoning process.

YOUR LAWYER - DON'T LEAVE HOME WITHOUT HIM

Municipal planning and zoning have become more complex and legalistic. Gone are the days when the planning commission, zoning board of appeals and elected officials could “kick back” and informally decide what to do about a zoning request. Today the process of making the zoning decision requires strict adherence to procedures. Public notification and decision making is based on compliance with predetermined standards (typically contained in the local zoning ordinance).

In almost all cases the planner must be concerned with future litigation. The planner, planning commission, and Board must make decisions that will be upheld in court. Your lawyer is your expert, and an individual that you should rely on to ensure that your decisions will be fair, and will be viewed as fair by the courts.

MAKE FAIR AND LOGICAL DECISIONS BASED ON THE PLAN & ORDINANCE

Decision making by a planning commission and board should be fair and

unbiased. If a project is turned down, the reasons for the denial should be clear. The decision should be documented. The public debate should be clearly summarized in the minutes of the Board meeting.

The motion to approve or deny should include the reasons for denial. In practice this seldom happens. After an acrimonious debate a board member will often move to deny without summarizing the reasons for denial. This enables the attorney for the developer to speculate as to why the development was denied in a subsequent legal challenge. The public will often vent against a project and offer testimony that is untrue or derogatory at the meeting. The local government must make it clear that they are not making their judgement on unfair or inaccurate testimony. It is important that the municipality explain clearly and factually in writing why the request was denied.

Some planners actually write out both motions to recommend approval or denial, with the reasons clearly stated. The reasons for denial or approval are taken directly from the ordinance, or State enabling legislation, or from the Comprehensive Plan.

FINDINGS OF FACT

A formal findings of fact prepared by the planner and attorney and adopted by the Plan Commission and referred to the legislative Board is the best protection against a law suit. The planner and attorney have time to prepare a logical summary of the legitimate reasons for approval or denial of the applicants request. The legislative Board typically adopts the findings a month or two after the denial, with emotion out of the decision making.

In practice most towns do not write and adopt a formal findings of fact. Alternately, they develop such a finding for major projects where litigation seems likely.

BE FAIR, OPEN AND HONEST

The developer before the Plan Commission is usually a successful businessman who is often betting his life savings on his project. You must treat him fairly. If the developer is proposing an unpopular project, citizens will speak out strongly against the proposal. At the public hearing the Chairman should keep order, and rule out of order testimony that is not pertinent to the case.

The planner has the most contact with the developer. The planner is often advising the developer, but must make sure that the developer understands that the planner is only an advisor to the Plan Commission. The Commission and Board can and will take action that is not consistent with the planners recommendation. The Plan Commission and legislative Board makes decisions. The planner owes both the developer and the Plan Commission his honest and open assessment of the project.

When it becomes clear that a Plan Commission will recommend denial of a project the planner should work closely with the attorney to ensure that no procedural errors are made. The attorney and planner must work to ensure that there is no case against the community.

THE COURTS AS A SUPER ZONING BOARD

Most judges do not wish to become a super zoning board. They do not typically overturn a local denial that is based on law and sound judgement.

The Courts and the local government should ensure that they have a logical and current Comprehensive Plan and Zoning Ordinance. The plan and code should be consistent. The goals and objectives of the plan and the purposes and intent of the zoning ordinance should be consistent. A simple restatement of purposes and intent in the zoning code that is taken directly from the State enabling legislation ensures that at least the purposes of the code are consistent with State enabling legislation.

MAKING SURE THAT YOUR DECISION MATCHES CASE LAW

In Illinois standards were established in the courts in two major cases. These standards will be considered by the courts in evaluating challenges to municipal zoning decisions. The planner and attorney should obviously consider these standards when making zoning decisions, and preferably state so in writing in the findings of fact.

LASALLE NATIONAL BANK v. COUNTY OF COOK (1957)
SINCLAIR PIPE LINE COMPANY v. RICHTON PARK (1960)

1. The existing uses and zoning of nearby property.
2. The extent to which property values are diminished by the particular zoning restrictions.
3. The extent to which the destruction of plaintiff's property values promote the health, safety, morals, or general welfare of the public.
4. Relative gain to the public compared to hardship imposed upon the individual property owner.
5. The suitability of the subject property for the zoned purposes.
6. The length of time the property has been vacant as zoned, considered in the context of land development in the vicinity.
7. Community need for the proposed land use.
8. The care with which the community had undertaken to plan its land use development.

A simple written statement with a paragraph explaining how your decision is consistent with these 8 standards is valuable. They form a good framework for your report to the board and your findings of fact.

THE TRACK RECORD OF YOUR COMMUNITY

Does your community make logical decisions on land use, or are your decisions unreasonable, arbitrary, and capricious? Have your zoning decisions often been overturned by the courts, or are you usually upheld? You must try to make sure that the decisions of your Plan Commission and

legislative Board is consistent. Communities often have developers who cause no problems, and other developers that cause major problems. You still must make sure that you treat both developers fairly.

YOUR LAWYER IS YOUR PARTNER

It is important that your lawyer is your partner in working with your community. His training is different than yours, and he sees things in a different way. You need to work closely with him or her to ensure that you and your community make consistent, logical, and fair decisions based on law.

About the authors

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