

STILL WATERS RUN DEEP:

PLANNING & LEGAL TENSIONS IN YOUR MEETINGS – AND WHAT TO DO ABOUT THEM

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Workshop Committee encouraged this speaker to address:

- “...the dynamics between planners and legal counsel who often see an issue from very different perspectives...”
- “...acknowledging opposing sides...”
- “...the tension in the relationship...”
- “...pull back the curtain...” (*Uh, oh!*)

That may sound a bit obtuse, but...

- Intriguing topics to “zoning geeks” like me
- Instigated interesting thoughts and discussion – between planner and lawyer
- Hints at some of the “deep” sub-issues which “run” under the “still waters” of your meetings
- Let’s weave some of that into this presentation to give you some different and useful perspectives

Disclaimer – and some “Claims”

- I am an experienced, certified planner and not an attorney. I do not practice law or give legal advice.
- Yet I know a lot about the laws and legal environment in which we practice planning and zoning.
- And so I am often engaged to advise communities, applicants - and their legal counsels - about planning and zoning matters.
- I always encourage seeking the advice of your legal counsel

Why do these questions about roles of planners and legal counsel arise?

- In zoning activities and meetings, you administer, enforce, and interpret local LAWS
- You conduct legal procedures
- You affect the property rights of applicants, owners, neighbors
- These activities are circumscribed by state and federal LAWS and precedents
- Yet most of you and most planners are not lawyers

Further.... during your proceedings

- Questions are often raised – or hinted at - about property rights, fairness, procedures, laws and precedents, and the potential for subsequent lawsuits (*in recent years, the drum beat was “Shemo, Shemo, Shemo...!”*)
- You may or may not have your own legal counsel present
- You and your planner may not be familiar with the legal issues – thus at a bit of a disadvantage?

And even further....

- You are advocates for important community values and goals, often expressed in local plans and codes
- Your procedures invite the community and affected parties into the discussion (adding complications)
- The law may or may not support what you believe you should do
- Your decisions could be questioned in a court
- Some attorney in a nice suit raising legal issues may be an annoyance.....

Is this the source of...

- “...the dynamics between planners and legal counsel”?
- “very different perspectives...” and “opposing sides...”?
- “...tension in the relationship...”?

It may help to recognize that

- Laws draw lines around and protect the activities and rights and powers of both your community and the applicant
- The support of legal counsel is – or should be – available to both “sides” – planners and attorneys often work on the same team
- There may or may not actually be “sides” – perhaps just parties working through a process to determine what is best for both the applicant and the property owner

Legal counsel is essential to


- Keep the planning/zoning process honest and fair
- Help boards to keep decisions within the law
- Give applicants a sound position in your process
- Balance community interests and individual property rights
- Ensure hearing and consideration of all perspectives
- Remind all parties that we are

“A government of laws, and not of men.”

John Adams (1735-1826)

Professional and citizen planners are essential to

- Prepare and adopt plans and codes which reflect local planning objectives and respect legal precedents
- Practice good decision-making in implementing plans and administering codes

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With the foregoing comments
in mind,
let's consider some best practices
for conducting planning and
zoning meetings.

Recommendations

1. Run a good meeting every time.
2. Have a strong chair and a supportive board.
3. Instruct participants about your role and theirs.
4. Get training.
5. Get professional assistance.
6. Review and update procedures annually.

Run a good meeting every time.

- Do your homework before the meeting
- Follow clear, consistent procedures:
 - Pre-meeting
 - Meeting
 - Post-meeting
- Explain the meeting procedures
- Make a good record

Have a strong chair and supportive board.

- Not everyone is cut out for the job of Chair
- Requires confidence, centeredness, awareness of the big picture, respect of and concern for all participants, strong grasp of procedures
- Set a tone of friendly but professional meetings
- Fairly, firmly manage process and participants
- Needs support and assistance of all board members

Instruct participants about your role and theirs.

- Be attentive to informing and educating all parties – board members, applicants, and residents – before, during and after the meeting
- Recognize that most residents rarely if ever attend your meetings and may welcome explanations:
 - procedures and when public comment will be taken
 - importance of factual public testimony and relevant questions
 - importance of testifying under oath

More instructions for participants

- Provide structure for speakers, i.e., time limits, use podium and microphone, who speaks when (*but be cautious with limiting applicant's right to enter information into the record*)
- Require speakers to address standards, discourage irrelevance and repetition, prohibit antagonism
- Best practices for meeting management are especially important with large audiences and contentious issues.
- Ensure fair and courteous treatment of applicants, whether “locals” or “outsiders”

Get training.

- Congratulations!! You are attending the APA Cleveland 27th Annual Planning & Zoning Workshop (*ask for a budget & bring more members next year!!*)
- Attend other local and regional training sessions
- Check out the resources at:
<http://www.ohioplanning.org>
<https://www.planning.org>
- Ask legal counsel and professional planners for in-house training and other resources

Get professional assistance.

- Legal Counsel. Many boards have legal counsel in attendance at all meetings & many do not. Know how and when to reach for that assistance. Build a working relationship.
- Professional Planner. An in-house or consulting planner can help you evaluate and manage applications, provide staff reports, and other services. Especially helpful with complex projects.
- Other Professionals. Civil engineers and others can provide important assistance in your decisions.

Review/update procedures annually.

- Annual Board coordination work session
- Discuss what works well and what needs improvement in forms, staff reports, meeting procedures, policies, codes, etc.
- Make sure all members have copies of the zoning code, subdivision regulations, etc.
- A rare chance for members to raise general questions & ideas & bring new members up to speed
- Invite staff, legal counsel, trustees and others



Thank you
for
your time and attention.

Please hold your questions.