

When Information Is In Question

C. Gregory Dale

During your service as a planning commissioner you will often confront the question of what to do when you believe (or know) that information being presented to the commission is untrue. Let us begin by considering a hypothetical situation.

An applicant appears before your commission requesting site plan approval. Your ordinance contains standards that site plans must meet. One of those standards relates to documenting and mitigating, if necessary, the impact of any stormwater runoff on downstream properties.

The developer, as part of his presentation, submits a civil engineer's report that demonstrates that the development will satisfy the city's requirements, in part because the city's existing stormwater facilities have adequate capacity. On the other hand, a nearby homeowner opposed to the development argues that the existing stormwater facilities are inadequate, and states that his basement has frequently been flooded.

How do you handle this situation?

In a sense, your role is like that of a judge. You and your fellow commissioners hear testimony, some of which may be contradictory. It is your job to determine what information is relevant, and what appears to be believable. Obviously, you do not have to believe everything you hear. For example, if someone argues that, in their opinion, a development will result in stormwater runoff problems, but offers no evidence in support of their opinion, you will likely give little weight to that opinion in making your decision.

In the hypothetical situation described, you may well want to get more detailed information from all parties. Can the neighbor document or back up his assertions? What is the city engineer's position on the adequacy of the stormwater facilities? What response does the applicant's engineer have?

Even if you feel that the neighbor (or, perhaps, the applicant) is not being truthful, don't make an accusation. Instead, simply indicate that the information being presented is important to your consideration and you want to verify its accuracy.

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Let me now add a twist to the hypothetical. What happens if you have personal knowledge (as opposed to a feeling or belief) that certain information being presented is inaccurate or untrue. The best approach would be for you to publicly disclose what you know. Relevant information should be set before the commission for consideration. But if you are uncertain as to whether inaccurate information is being presented, the wisest course would be ask your staff look into the matter before the commission takes final action.

Also be careful to avoid getting trapped in a conflict of interest situation. For example, if the complaining neighbor were a relative or a business partner, you should not even be taking part in the commission's hearing or deliberations. Indeed, it is best if you are not even present in the room when the hearing takes place. [See "Conflicts of Interest," in PCJ #1]. When you are excused from deliberations due to a

conflict of interest you are no longer a part of that process and should do nothing to influence the process one way or the other. If a falsehood is stated, it is up to the individuals remaining in that process to either challenge or accept that statement.

What happens if you are privy to information that is made available to you through an "ex-parte" contact (i.e., private communications from a party to the proceeding)?

While it is best to avoid discussing a matter outside of the formal review and/or hearing process (see "Ex-Parte Contacts," in PCJ #2), if you have learned of relevant information as a result of such contacts you should publicly state what you have learned so that all commissioners and all interested parties have access to that information and the right to challenge it if they so desire (in fact, one of the best ways of avoiding ex-parte contacts is by telling the person who wants to speak to you in private about a pending matter that you may have to publicly disclose the information you hear).

As I have mentioned many times before, it is essential that planning commissioners act in a way that ensures public confidence in the planning process. ♦

C. Gregory Dale, AICP, is a planner with the planning and engineering firm of Pflum, Klausmeier & Gehrum, and works in their Cincinnati, Ohio office. Greg is also a past president of the Ohio Chapter of the American Planning Association, and frequent speaker at planning and zoning workshops. His column appears regularly in the Journal.

