

What Planners Wish Their Planning Commissioners Knew

by Jim Segedy, Ph. D., FAICP, and Lisa Hollingsworth-Segedy, AICP

Lisa recently visited with Paulding County, Georgia's Planner, Chris Robinson, whose career has included work at two regional planning commissions, two counties, one city, and one state agency. She asked him "over the years and in all the places where you have worked as a planner, what did you wish your planning commissioners knew?"

Chris' answers started us down a road studded with memories of our own experiences over the years as we worked to empower planning commissioners at their job. It never hurts to remind ourselves who we are, and what we're doing on the planning commission in the first place.

So with our thanks to Chris for his perspective, and apologies to David Letterman, here's our Top Ten List of things planners wish their planning commissioners knew. One caveat: each state has slightly different planning and zoning laws, and local commissions' procedures will vary. Still, the basic ideas we set out should be relevant for most of you.

10. *The responsibilities and duties of being a planning commissioner.* Planning commission involvement is not an appointment to accept for status or just to add to your resume. It involves training, study, and preparation for every meeting. You will need a clear understanding of the commission's role in administrative and legislative actions, as well as legal issues such as due process, "takings," preemption, and more.

Planning commissioners are responsible for working together to ensure that the community grows and develops according to the vision established in the plan. As you consider an appointment (or accepting a re-appointment) carefully consider the significant commitment required, from the amount of time involved in preparing to make informed

decisions to the (potentially lengthy) meetings each month.

9. *Proper adoption of the zoning ordinance, map, and amendments is very important.* Planning commissioners should be familiar with their state's code language that spells out the procedures for how a zoning ordinance and/or map can be amended. Requirements for advertising and public hearings are the most common items addressed, but some states specify additional standards.

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8. *The relationship between the comprehensive plan and the zoning ordinance.* Your comprehensive plan (or master plan, or something similar) is the critical guidance document for your community. It likely contains an examination of current conditions, identifying goals and objectives for the future, and a general framework for how to achieve those goals – and why. The plan establishes the framework for decision-making and the public purpose for local government regulations pertaining to land use.

7. *The definition of "hardship" when granting a variance.* Typically, a variance from the zoning code's standards is allowed only when there is a "hardship on the property." In other words, the property cannot be developed under the current rules because of specific conditions on the site or its unusual configuration. "Hardship," as the word is defined in zoning codes, does not relate to the

financial well-being of the property owner, or whether the site could generate greater profit (that is, more than a "reasonable return") if a variance were granted. As one of the leading treatises on zoning law states, "the courts have consistently held that a variance may not be granted solely on the ground that such relief will enable the applicant to make a greater profit."¹

The technical zoning definition of hardship is too often ignored by planning and zoning boards (the body authorized to grant variances differs from state to state). One consequence of this, and of too readily granting variances, is that the community's zoning ordinance and comprehensive plan will be undermined. Bottom line: it is important to know the criteria in your ordinance for granting variances, and then make decisions in accordance with those criteria.

6. *Politics is for politicians – not planning commissioners.* In most places, planning commission appointments are made by elected officials. Sometimes these officials have "expectations" about their appointees and the decisions they are called on to make. This has the potential of damaging the commission's integrity as an independent body. As Greg Dale (who has frequently written on ethical issues for the PCJ) has noted: "As a planning commissioner you have an ethical obligation to remain in a position of objectivity and fairness. Any time you take a position at the urging of an elected official, you run the risk of tainting your credibility as an objective decision-maker."²

One of the fundamental purposes behind the creation of planning commissions early in the 20th century was to

¹ Anderson's *American Law of Zoning*, 4th Edition, Sec. 20.23, p. 495.

² "Who Do You Work For," in PCJ #16 (reprinted in *Taking a Closer Look: Ethics & the Planning Commission*; for details: www.plannersweb.com/ethics.html).

provide for an independent, non-partisan, body to provide advice to the governing body on planning, zoning, and other land use matters. As planning historian Laurence Gerckens has noted, “it is worth recalling that citizen planning commissioners were put into that position ... to provide insights into the problems and potential of the community, and to provide leadership in the solution of problems before they arise.”³

5. “Health, safety, and welfare.” These three words are the foundation upon which a community’s comprehensive plan and land use ordinances are built. Planning commission decisions should be based on impacts on the health, safety, and welfare of the community, not just on the welfare of any one individual or group.

Planning commissioners should also be familiar with the concepts of “due process” and “takings” so they are not “buffaloed” by applicants who will argue that an adverse decision will violate one or both of them.⁴ Your by-laws and/or zoning ordinance should contain a checklist or form that will keep you on track and document due process and findings for approval or denial.

4. *Conflicts of interest – and how to avoid them.* As a planning commissioner, you are called upon to check your personal interests at the door of each meeting. It is critical that you keep the community’s best interests in focus, not how the proposal may impact your own business, property, or income. You and your fellow commissioners should be familiar with your commission’s rules on conflicts of interest (which we hope your

commission has!) and scrupulously adhere to them.

It is also important to put aside personal feelings about either the applicant or members of the public who may be testifying. Jim recalls that during his term as a planning commissioner, he heard fellow commissioners say, “they seem like nice people,” or “my kid plays soccer with the their kid.” These should have nothing to do with your review of a project. If you can’t focus on making objective decisions based on your ordinance’s criteria, you probably shouldn’t be serving on a planning commission.

3. *The role of planning staff.* If your community employs planning staff, it is part of their job not just to ensure that development applications are complete,

but to conduct a basic evaluation of the permit request against the standards contained in your ordinance. In some communities, staff may also prepare recommended findings based on their technical review of the application. But staff should never direct you how to vote, and you

should always independently evaluate the recommendations you receive, the material presented by the applicant, and any testimony or public comments you hear.

Staff are a resource to make your deliberations easier by assembling the information you need before you meet. Most staff welcome questions from commissioners in advance of the meeting. This can help keep the meeting on track and keep you as a planning commissioner well informed.

2. *Site visits to subject properties are important.* Looking at photos and maps just isn’t the same as seeing the site and observing the conditions that may be impacted by a proposed development. Driving by the site for a quick look usually isn’t as revealing as getting out of your car and walking around the site. Issues involving scale or density, for example, can seem abstract without a

real feel for the specific area potentially affected by the project.

Some planning commissioners are reluctant to go on site visits because they are concerned about running afoul of Sunshine Laws, or even trespassing. Site visits are fact-finding missions, so as long as you restrict conversations to details of the permit request and don’t stray into the area of discussing possible decisions, you should be fine. Of course, be guided by advice your commission receives from its legal counsel on site visits.

1. *Why avoiding ex-parte communications is critical.* Decisions must be made on the basis of fact – and in the light of day. Information gathered should come through appropriate channels: the permit application; maps and photos that support it; what you observe on a site visit; clarifications provided by your staff; and public hearing comment. If your decision is based, even in part, on information you privately received from the applicant or from someone opposing a project, you are – in our opinion – leaving yourself open for a court challenge.

However, in the review process for this article, we heard from one planner who informed us that ex-parte communications are allowed in her jurisdiction, though members are encouraged to report the content of such communications at the commission meeting and to remain objective.

Your best bet is to follow the communication and decision-making standards spelled out in your planning commission by-laws and/or your zoning ordinance procedures. If your commission or board doesn’t have provisions addressing how to handle ex-parte contacts, set aside some time to develop them. ♦

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³ “Community Leadership & the Cincinnati Planning Commission,” *PCJ* #18 (Spring 1995).

⁴ *Editor’s Note:* for a good overview of procedural due process and “takings,” we’d recommend respectively “Procedural Due Process in Practice,” by Dwight Merriam, FAICP, Esq., and Robert Sitkowski, AIA, Esq.” (*PCJ* #31); and “Taking on Takings Claims,” by Dwight Merriam (*PCJ* #60). Both articles are included in our publication, *Taking a Closer Look: Planning Law* (2008). For details: www.plannersweb.com/law.html.