

Getting Even

by C. Gregory Dale

The planning and zoning process ultimately consists of a series of personal interactions and interrelationships. Trust, credibility, and reputation are all important elements of the process. What happens when a planning commission faces an applicant with a tarnished reputation and a history of “burning” the commission in the past? What are the ethical implications of the emotional desire to “get even”?

Consider the following scenario. A developer previously appeared before your planning commission requesting approval for a proposed multi-family development. This case was very controversial with substantial neighborhood opposition and involved many promises by the developer with regard to landscaping, stormwater runoff, building materials, and traffic circulation. When the project was built many of the “commitments” were not kept and the planning commission felt betrayed.

The developer is now back before the planning commission on a new project. You see a rising sentiment on your commission to “get even” with the developer. How do you handle this situation? Can you deny the application, even if it meets the planning and zoning standards of the community?

There are many issues at play in this situation. Let me try to separate them and deal with each.

First, there is no place for “getting even” in the planning commission process. While I understand the natural human emotional response to someone who has broken the bond of trust, planning commissions must remain impartial boards charged with the responsibility of administering the community’s planning and zoning laws. Personal feelings about a particular individual should not enter into the decision making process.

On the other hand, one of the responsibilities of the planning commission is to

assess the evidence presented. What is often a difficult concept for many commissioners to accept is the fact that you do not have to believe everything that you are told.

THE MOST IMPORTANT LESSON... IS THAT YOU SHOULD DO EVERYTHING POSSIBLE TO REDUCE THE “NEED” TO GET EVEN.

If you have doubts about what you are hearing, you can and should ask for better documented information. For example, if an applicant verbally assures the commission that stormwater management will be taken care of, you may request that the applicant submit an engineering study prepared by a qualified engineer to be made a part of the public record.

It is true that if an applicant meets the requirements of the regulations, you must approve the application. However, in reviewing projects, some evaluation of evidence is usually required. Very few codes are entirely quantitative in nature. Indeed, if a set of regulations were entirely quantitative in nature, there would be no need to have a planning commission.

As you go through this process of assessing the evidence, you must make certain that your judgments are related back to compliance with specific standards. Remember that your ability to control the outcome of the development is limited to the authority granted to you in the local planning and zoning laws. For example, you cannot request an applicant to use a certain type of architectural style if your zoning regulations do not include standards or criteria related to architectural design.

If you have a situation where developments are meeting your standards but you still are not happy with the results, then

your standards probably need to be reviewed and revised. You do not want to have a situation where you are, in effect, considering two sets of standards: one as contained in your planning and zoning regulations, and the other as part of an unwritten idea of what is good for the community.

Perhaps the most important lesson when it comes to “getting even” is that you should do everything possible to reduce the “need” to get even. When you approve a project you should clearly spell out what is being required — including any promises made by the applicant. You should not, for example, have to rely upon a vague promise of good landscaping. The specifics of the landscaping plan need to be pinned down when you approve the project. Likewise, if you have stormwater concerns, they should be specifically addressed in the project’s stormwater management plan — and be made part of your approval.

Related to this, it is essential to have procedures in place to ensure that prior to issuance of an occupancy permit all of the improvements included in the approved plans are made (or an adequate bond is posted).

With a good set of standards, a solid review process, and enforceable conditions, you can greatly reduce the likelihood that your commission will find itself in a situation where it feels the need to get even. ♦

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