

# The Role of the Lawyer

by Carolyn W. Baldwin, Esq.

Lawyers appear in the planning commission's orbit in four distinct roles. A lawyer may be: (1) representing an applicant; (2) representing an opponent; (3) a member of the board; or (4) counsel to the board. Each role has its place and the lawyer's contribution should be assessed according to the role assumed in any given situation.

## 1. The Lawyer As Representative of the Applicant

When the applicant brings a lawyer, listen carefully to the presentation, but don't assume that the lawyer is necessarily right on every point, either of law or of fact. Lawyers in this situation are advocates and as such will be selective in the points they make to the commission. Lawyers who have done their job will be familiar with the commission's ordinance and regulations, especially the sections that pertain to their clients' applications. But a lawyer's interpretation of a given section may differ from yours. Be consistent in your application of the rules.

Ask questions, but don't argue with the lawyer. Make notes of any points where you disagree, and the basis for your disagreement. Above all, don't let yourself be bullied by threats of litigation, unconstitutional takings and other bluster which may come your way. Make your decision based upon the law as set forth in your ordinances and regulations. Be sure that the bases for your decision are clearly stated in the motion or motions on which the commission votes. Courts do not lightly overturn planning commission decisions if they are in accordance with duly adopted regulations and are firmly based on factual findings.

## 2. The Lawyer As Representative of Opponents to a Project

Most of the same caveats apply. The opponents' lawyer can balance the

applicant's representative and raise questions about both factual assertions and interpretations of the applicable ordinances and law. It can be very helpful to hear both sides of an issue articulated by knowledgeable practitioners.

If there are lawyers on both sides, the chances are good that your decision will

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be appealed whichever way it goes. Therefore it is doubly important to make your decision carefully, and to back it up with factual findings reflected in the record.

## 3. The Lawyer As Member of the Planning Commission

A member, who is also a lawyer, can be very helpful to the planning commission, especially if presenting lawyers are trying to overwhelm the commission with legal jargon. The lawyer member must not, of course, be an advocate for either an applicant or an opponent, but can help the commission to frame its decision in terms that are supported by the facts and that fit within the framework of the ordinance.

The lawyer member can also help the board streamline its procedures, so that hearings and deliberations are not mixed (a frequent error made by lay boards), and decisions are made clearly and expeditiously.

## 4. The Lawyer As Counsel to the Commission

“A stitch in time . . .” The commission should have access to the municipality's legal counsel when legal questions arise. Administrators complain that consultation with counsel is too costly. But defending a bad decision is much more costly. If your decisions are properly made, and they hold up in court consistently, you will find yourselves in court far less frequently than if you have a reputation for sloppy decision making which can be overturned.

When a legal question arises and the commission is not clear on the answer, postpone the entire matter until you have had time to consult with counsel.

Efficient use of counsel is important. Frame your question by summarizing the factual situation in which it arises and then ask the legal question. If a lawyer appearing before you has presented you with a legal opinion with which you are inclined to disagree, present the opinion to your own counsel for comment.

Your counsel's opinion is not necessarily a matter of public record. Especially if the issue seems likely to go to court, it may be advisable to keep the response confidential. On the other hand, a well-crafted legal opinion, made available to the public, may forestall a court challenge.

Buttress your position with clear rationale, based upon the facts of the case and the ordinances, and a court is likely to uphold your decision. ♦

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