

The Commissioner As Applicant

by C. Gregory Dale

What do you do when a fellow planning commissioner is appearing before your commission as an applicant?

This is not an unusual scenario. It is sound practice for a commission to have members representing a wide spectrum of the community. Thus, a number of planning and zoning commissions include members who work in the construction or development industry. However, this may mean that a commissioner who is a developer will have a project before the commission for review. How do you handle this situation?

First, the potential problem should be anticipated as part of the new member selection process. The likelihood of a conflict of this sort arising should be raised with applicants to the commission by whoever makes the appointment. If it is believed that a conflict may regularly occur, then that person should probably not be appointed to the commission.

Planning commissions should also have guidelines in place outlining what to do when a commissioner is an applicant, or represents an applicant. Such guidelines should provide that commissioners, if at all possible, avoid personally appearing before their own commission as applicants. Commissioners should make every effort to designate a spokesperson (i.e., employee, consultant, etc.) to actually present the issue to the planning commission. Personal appearances by commissioner/applicants may indeed unfairly serve to sway the views of some members of the commission. Even if commission members can remain neutral, such appearances may still lead the public to believe that the process is unfairly biased.

Guidelines should also provide that the commissioner/applicant not partici-

pate in the commission discussion or vote as a commission member. The cleanest approach would be for the commissioner to not be present in the room during the discussion and vote.

A similar problem occurs when commissioners appear before their own com-

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missions as agents for an applicant. It is common for planning commissions to include architects, planners, attorneys or engineers who make their living from working on behalf of builders or developers. Very often these professionals, as part of their job, are involved in presenting the project to various public bodies, including planning and zoning boards.

Not surprisingly, it may be difficult for a commission to remain unbiased in its evaluation of a project when a fellow commissioner is advocating a particular position. At the very least it can create a perception of bias. It can also put other commissioners in an awkward position: they may well be uncomfortable with the situation but not want to raise it as an issue for fear of harming their working relationship with a fellow commissioner.

Again, the best way to deal with this is

to have guidelines in place before the situation occurs. If at all possible, a planning commissioner should not appear before the commission as an agent for an applicant (or, for that matter, in a capacity representing an opponent of a project). Most architects or engineers are part of a firm or group and can generally arrange for a substitute to make the actual presentation to the commission.

When a commissioner represents an applicant, the planning staff may also be placed in an awkward position. Typically, an applicant's architects or engineers meet with staff on an informal basis prior to the submission of a formal application. If the applicant is represented by a member of the commission, staff is placed in a very difficult position — as one can well imagine.

Even if staff does not feel pressured in any way, the public perception may be that improper influence was exerted. Ironically, problems can also result if the staff comes down hard on the project, as the involved commissioner may then be upset with the very staff he or she will have to work with on a regular basis as a member of the commission.

The reality is that planning commissions are composed of members who live and work in the community. All members are influenced in one way or another by their own set of values and their role in the community. The best approach is to place the integrity of the commission above all — and to have guidelines in place for dealing with conflict of interest situations. ♦

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