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10 Tips for Land Use Decisionmaking

By Gideon Kracov and Steve Zikman

Land use planning in California requires a careful balancing of quality of life, economic development and environmental sustainability. As a result, increasingly complex administrative policies and a host of applicable land use laws and regulations can intimidate even the most determined participants. Whether you're dealing with a fence dispute between neighbors or a controversial multi-stakeholder approval for a large commercial project, here are some useful tips to help manage the process:

Do your research. It is critical to get accurate facts about the proposal at issue, including the needs and interests of the various parties or stakeholders. Information can be obtained from the local jurisdiction through California Public Records Act requests. Speak with the appropriate planning or public works staff who can explain aspects of the project, including code compliance requirements and opportunities for mitigation. Of course, the Internet often can also provide a wealth of information about the project, as well as the key decisionmakers and participants.

Know applicable codes and plans. Land use decisions are governed by numerous state and local laws and regulations. These may include the California Planning and Zoning Law, California Environmental Quality Act or the zoning provisions of the local municipal code. Further, each jurisdiction has its own general and specific plans that govern development. There are also an increasing number of laws and regulations related to green building and climate change. Copies of these laws and plans should be analyzed to glean a basic understand of the governing legal structure for land use and zoning approvals. Much of this can be located online but local law libraries also can provide access to treatises and land use practice aids.

Engage local officials. Land use decisions generally come down to counting the votes of the local officials (usually councilpersons, supervisors or planning commissioners) charged with deciding whether to approve the project. In particular, in jurisdictions where one elected official represents a particular district, that official's opinion will often carry the day for land use projects within that district. Stakeholders should cultivate a relationship with that official (and staff) to obtain assistance and guidance about the project.

Get organized. A stray objector or gadfly usually will not meaningfully influence land use decisionmaking. In many cases, land use projects will require public hearings. It is valuable to organize a coalition of stakeholders to lobby and testify at these hearings. The coalition can include community members, neighborhood councils, businesses, labor representatives and environmental organizations. The broader the base, the better chance to influence public opinion, media and elected officials about the proposal. Social networking sites can be invaluable allies in building support around these issues.

Identify your interests and goals. Once you have an understanding of the project and the governing laws and decisionmakers, your interests (or needs) and goals must be identified. Figure out what you *really* need out of the proposal. Try to avoid hard positions as that often leads to further polarization among the various 'sides' and escalation of any conflict. Carefully consider project revisions and any mitigation proposals. Of course, the proponent must decide at what point the project no longer 'pencils out.' However, identifying needs and goals helps guide efforts and messaging as the project progresses. It also allows measurement of the end result in relation to these interests and goals.

Meet face to face. While telephones and other electronic media are invaluable technologies for

communication, face-to-face meetings still offer tremendous opportunities for deeper understanding of the respective needs and interests of the parties. Face-to-face meetings help us to see each other as whole persons rather than a demonized version of 'the other side.' An in-person meeting can encourage more respectful and productive listening and civil discourse. This helps to establish rapport and dispel preconceptions about the individuals involved. It allows discussion of key concerns and motivations with decisionmakers present.

Consider using a mediator. Mediation or other form of assisted negotiation can play a significant role in de-escalating the level of conflict by encouraging better communication, building trust, dispelling cynicism and misperceptions, and resolving the underlying issues. As a third party neutral with no direct stake in the conflict and some sense of perspective, a mediator often is able to help the parties reframe the issue from one of 'positions' toward 'interests' and 'needs.' The mediator provides a safe environment for the parties to discover commonality. The goal is not only a middle position (compromise) but rather a search for genuinely shared values and concerns.

Beware of timelines and limitations. In most instances, land use decisionmaking involves timelines and limitations periods that govern procedures, hearings and administrative appeals. These temporal rules emerge from laws including the Ralph Brown Act, California Planning and Zoning Law, California Environmental Quality Act, Permit Streamlining Act, as well as local codes and regulations. If the governing timelines or limitations expire it can significantly prejudice the efforts of project proponents and stakeholders.

Put it in writing. The expression that 'talk is cheap' applies to land use disputes. Thoughtful and comprehensive written comments on the project are a key part of exhausting administrative remedies. Moreover, when commitments are made by project stakeholders, it is essential that they be documented in the record of the proceeding on the project. This is most appropriately done through clear and concise written instruments.

Know when to hire a professional. Land use projects often involve a host of complicated technical and legal issues. At some point in time, even the most conscientious developers and laypersons understand the need to retain the experience and expertise of a lawyer, mediator or other land use professional. This is particularly true for controversial projects where litigation and judicial review is anticipated.

Each land use matter involves particular facts and stakeholders. These tips are meant to offer general guidance on the road to understanding and managing the often complex process of land use decisionmaking.

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