

Chapter 38: Working with Regulatory Staff

Frequently citizens resolve their concerns by working with the staff responsible for reviewing development projects. The purpose of the staff review is to determine if the project complies with various regulations and policies. These staff people may be the individuals responsible for reviewing preliminary subdivision plans, wetland permit applications, stormwater management plans, traffic impact studies, or a host of other submittals an applicant must make to receive all necessary permits and other approvals. If the project reviewer is uncertain of their authority to resolve your concerns then you may also be dealing with their superiors.

The role of regulatory staff is to help applicants understand and comply with requirements designed to protect public health, safety and welfare. Applicants may range from the individual homeowner wishing to build a deck and to the development company seeking approval to construct a shopping mall. Given this role, you will find regulatory staff most cooperative if you seek their assistance in implementing a win-win solution. The quickest way to lose their help is to pressure them to stop a project, unless the project is blatantly bad, which is rarely the case.

While most regulatory staff are dedicated public servants with a genuine desire to help, they are also universally underpaid and overworked. They tend to get frustrated with citizens who have not familiarized themselves with the basics. This is one of the reasons why consultants tend to get easier access to regulatory staff and files. The consultant can ask for precisely what they want and pose questions that are usually easy to answer. The staff person does not need to spend a lot of time educating the consultant in the basics. So take the time to educate yourself on the technical and legal aspects of the issue(s) of concern to you prior to contacting regulatory staff.

Your initial staff contact will likely be to look at project plans and other documents as part of *The Easy Solution* recommended at the beginning of this book. At that initial meeting ask each staff person what regulations, policies and guidance documents are relevant to the issue(s) of concern to you. Frequently these documents are available in local public libraries or online. Make the effort to read these materials following your initial meeting. You will no doubt have many questions after reading the documents. But if it is obvious that you have made an effort to educate yourself then you will likely find staff more cooperative in answering your questions, particularly if they are specific and relevant to the project under review. Also, the better you understand the technical aspects and legal constraints the easier it will be for you and staff to find a solution that works and can be implemented through a permit or other approval.

At first glance rules, regulations and guidance documents may appear to lock reviewing agencies tightly in to what they can and cannot require. Generally though staff do have some flexibility, especially where a project will cause impacts greater than those normally associated with development. For example, if a project threatens the best trout stream in a county or the highest (or worse) performing school then staff may be in a position where they can call for control measures

not normally employed. Obviously, the more public support for enhanced controls, the easier it is for staff to call for their use.

Now that we have this preliminary stuff out of the way, let's pick up where we left off. You have just had your first negotiating session with the applicant. Chances are the session did not result in satisfactory resolution of your concerns. At this point you request a meeting with the staff person responsible for reviewing the project for the issues of concern to you. Your hope is to convince the staff person to adopt your win-win solution or help you find an equally effective alternative.

Generally, meetings with staff are one-on-one. But feel free to bring along another person if you would like help with items such as taking notes on staff suggestions.

Begin the meeting by expressing your desire to find a win-win solution. In fact, you might point out that you have met with the applicant in hopes of reaching a mutually satisfactory agreement. Say you wanted to meet with regulatory staff because you think you have a solution and you would like their opinion.

Next, describe your concerns and why you believe the project will cause each impact. Ask the staff person if they agree that the impact is possible. If they disagree then carefully note their reasons why. If you believe you have some relevant facts which staff is unaware of, then, by all means, present them. If the disagreement is a result of inadequate information then explore options for obtaining the data. Suggest that the issue be tabled until the missing information can be obtained and you can meet again. Alternatively, you could also ask the staff person to assume for the moment that the information will show the concern is real, then present your solution and ask if they feel it is workable. If the staff person still disagrees then you should go onto to your next issue.

If the staff person agrees that an impact is possible or likely then present your solution(s). Ask if they feel the solution will work from a technical perspective. If the response is positive, then ask if the agency has the legal authority to require the applicant to implement solution. If they say no or they are uncertain then ask for detail so you can research this latter.

If staff believes a solution to be unworkable then ask if they have any alternatives to suggest. A good way to phrase this request is something along the lines of:

If you lived where I do and you shared my concern about the project, how would you go about getting it resolved?

Sometimes discussions with staff enter a sort of twilight zone where logic seems to break down. The facts supporting your concerns seem obvious and compelling yet staff insists you are wrong or you have not quite convinced them you are right. Or it appears they clearly have the authority to require implementation of a solution, but staff insist they do not. Of course you should continue the discussion, asking additional questions, in hopes of determining whether you are missing something.

Besides the possibility of thick-headedness on your part, there are at least three other possible explanations for the apparent impasse:

- The agency has established a history of approving similar projects without requiring solutions such as those you suggest. If they were to deny approval for this project then the applicant may be in a good position to get the decision reversed in court.
- The staff person's superiors have directed them to approve the project or staff knows that those who advance in the agency do not take actions such as those you are advocating.
- The staff person has taken a dislike to you. Again, most staff people are dedicated, caring individuals. However, even a saint can lose their patience if you begin accusing them of being in cahoots with the applicant, lazy, of below average IQ, or you make other offensive remarks.

If a staff person feels they lack the authority to mandate a solution then ask if they could get their superior's opinion and/or recommend it to their superior. If they are reluctant then contact the superior directly.

If you come to agreement on a solution, then ask the staff person how implementation can be guaranteed. More likely than not their response will be to make it a condition in a permit or some other approval. It is also likely that they will need to send a letter to the applicant notifying them that they are required to modify their plans and other submittals to show how the solution will be implemented. Request a copy of the letter as well as the permit/approval document. When the revised plans/submittals are received then request an opportunity to review the documents to verify that the solution has been incorporated.

If you do not quite get to the point of full agreement then consider sending a follow-up letter confirming your understanding of whatever points of agreement you have reached, what the next steps will be, who will do them, and by when.