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# STRATEGIES FOR WINNING LAND DEVELOPMENT BATTLES

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Following is an introduction to the strategy options which have been most successful in allowing citizens to prevent a development project from harming a neighborhood or the environment. Additional advice on how to pursue these options is available from CEDS at 1-800-773-4571, [Help@ceds.org](mailto:Help@ceds.org), and [www.ceds.org](http://www.ceds.org).

**OPTION A: Win changes to project plans which eliminate adverse effects.** This is *the* most successful option for winning development battles. In fact it appears that a third of the time savvy citizen groups succeed in resolving their concerns about proposed development projects by convincing the applicant or decision-making bodies to add conditions (changes) to project plans. Of course these conditions are designed to resolve the project impacts of greatest concern to these savvy citizens. Other citizens could use this same “savvy” strategy to resolve their concerns by winning substantial changes to project plans. Following is an outline of how to pursue this strategy option.

## Negotiate with the Applicant

The changes which are easiest to win are those which reliably resolve your concerns, while allowing the applicant to get most of what they want. CEDS can help you identify changes meeting both requirements, usually free of charge. We can also help you determine when other options should be considered. If you have identified changes which resolve your concerns, but have only slight to moderate effects on the project, then:

1. Ask the applicant to implement changes;
2. If the applicant recommends an alternative approach for resolving your concerns then get an independent opinion on effectiveness (*CEDS can usually provide this opinion free of charge*);
3. If the applicant agrees to the changes, then press them to incorporate the changes into their formal submittal to regulatory agencies (*which increases the likelihood the applicant will be compelled to fully implement the changes*);
4. Press the applicant to sign an agreement, approved by your attorney, binding them and future property owners to the changes (*CEDS can suggest a good attorney*); and

5. Seek to convince the appropriate regulatory agency to support the changes as a condition of project approval.

## When the Applicant Refuses to Negotiate

In this situation make it clear you intend to oppose the project and you are prepared to appeal an unfavorable decision. This threat sometimes brings the applicant back to the negotiating table. If you are forced to pursue this approach then make certain all the necessary facts, supported by expert testimony (when essential), and legal arguments are in the record to ensure a decision to deny or condition project approval is upheld if the applicant appeals. Hopefully, the applicant will agree to your reasonable plan changes. If not then you will have little choice but to pursue the next option.

**OPTION B: Convince regulatory agencies to deny project approval.** About 1% of all development projects are denied approval by a planning commission or other decision-making body, which means the odds are definitely against winning a denial of the project of concern to you. However, if a project is so severely flawed that modifications will not resolve your concerns, then you may have little choice but to pursue this option. To convince a decision-making body to deny project approval you must:

1. Prove that the project fails to comply with an applicable portion of local, state or federal law or policy;
2. Prove that the noncompliance cannot be resolved with a plan amendment, waiver, modification, variance, etc.;
3. Research the circumstances under which similarly flawed projects have been denied approval by the decision-making body;
4. Convince the appropriate agency to recommend denial of project approval;
5. Present all the necessary facts, supported by expert testimony, to the decision-making body (along with legal arguments) to increase the likelihood a decision to deny project approval is upheld when the applicant appeals; and
6. Seek to make the issue as politically hot as possible.

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## COMMUNITY & ENVIRONMENTAL DEFENSE SERVICES (CEDS)

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For further detail on this option see *Chapter 35: Researching Strategy Options* ([www.ceds.org/pdffdocs/Chapter35.pdf](http://www.ceds.org/pdffdocs/Chapter35.pdf)) in the CEDS book *How To Win Land Development Issues* [www.ceds.org/publications.html](http://www.ceds.org/publications.html).

**OPTION C: Change local law to prevent the project (and all similar projects) from causing specific impacts.** On a number of occasions we have helped citizens win changes to local law that prevented specific development impacts, such as requiring better environmental protection measures. But those pursuing this strategy option face a number of formidable obstacles, particularly when the goal is to apply the new law to a proposed development project. Of primary concern will be exemptions and "grandfathering" provisions. Local decision-makers will be strongly inclined to exempt proposed projects, which of course would include that of concern to you. For further detail on this option and how to prevent undue grandfathering see *Chapter 41: Changing the Law* ([www.ceds.org/pdffdocs/Chapter41.pdf](http://www.ceds.org/pdffdocs/Chapter41.pdf)).

**OPTION D: Preserve the site.** This option can range from preserving the entirety of a development site to just that portion which is most sensitive with respect to environmental or neighborhood impacts. Common preservation options include acquisition, easements, and the sale of development rights. An unconventional use of the latter option is for adjoining property owners to pool their resources to purchase the development rights for a portion or all of a site. The total cost for this unconventional approach may be comparable to that of waging a protracted legal battle with the benefit of actually achieving something worthwhile in the end - land preservation - rather than just making an attorney richer. For further detail on this option see *Chapter 16: Open Space Preservation* ([www.ceds.org/pdffdocs/Chapter16.pdf](http://www.ceds.org/pdffdocs/Chapter16.pdf)).

**OPTION E: Elect Decision-Makers Committed To Responsible Growth Management.** In the long run, there is no effort which will be more effective in preventing impacts to neighborhoods and the environment than replacing developer-oriented elected officials with those committed to responsible growth management. The money spent by citizens fighting one bad development project could instead get one or more good people elected to the Town Council, the Board of County Commissioners-Supervisors, or other decision-making bodies. This option may also be part of a strategy to win a battle involving a specific development issue, provided that a parallel strategy is pursued which prevents the project from becoming "vested" prior to when the newly elected officials take office. For further detail on this option see *Chapter 42: Electing & Retaining Decision-Makers Committed To Responsible Growth Management* ([www.ceds.org/pdffdocs/Chapter42.pdf](http://www.ceds.org/pdffdocs/Chapter42.pdf)).

## THE PROACTIVE OPTION

**Identify properties where harmful development has not YET been proposed, but could be, and work with the**

**owner and decision-making bodies to resolve the potential impacts.** This is the most successful strategy option for stopping bad development *before it is proposed*. Look at each of the vacant properties near your home or the environmental resource of concern to you. Determine if present zoning permits uses that may threaten either, which it usually does. If yes, then work with the property owner and decision-making bodies on the variety of preventative options presented in the CEDS publication *Proactive Neighborhood Planning* ([www.ceds.org/pdffdocs/PNPEX.pdf](http://www.ceds.org/pdffdocs/PNPEX.pdf)).

## FREE REVIEW OF PROJECTS PLANS

We will be delighted to review project plans for impacts to your neighborhood or the environmental resource you cherish. Just mail us a copy of the plans and we can generally call you with the results of our analysis within a day or two. We strongly urge you to take advantage of this free service prior to any hearings on the project. We believe many citizens could resolve their concerns early in the review process with the information available through a free CEDS plan review and the other assistance we provide. Plans should be mailed to: CEDS, 811 Crystal Palace Ct., Owings Mills, MD 21117. Be certain to include a note giving your contact information and alerting us to any specific issues you'd like us to evaluate. For further information contact CEDS at 1-800-773-4571 or [Help@ceds.org](mailto:Help@ceds.org).

## ATTORNEYS & EXPERT WITNESSES

We urge you not to immediately hire an attorney upon learning of a development proposal. In most cases this is *not* the best first step and could become a rather costly mistake. This is because what citizens need most when confronted with a development proposal is to determine if good reason exists to believe the project will adversely affect their interests and, if yes, what technical solutions are available for resolving these impacts. Most attorneys lack the technical expertise to make either determination. CEDS has the expertise and can generally answer both questions free of charge. We can then assist you in negotiations with the applicant or decision-making bodies. If litigation is necessary then we have a nationwide network of 135 attorneys specializing in helping citizens with land use, zoning, and environmental issues. These attorneys vary widely in their legal expertise, fees, strengths and weaknesses. CEDS can help you select an attorney who: a) has the right expertise, b) has won cases similar to your's, and c) is available to handle your case for a reasonable fee. We also have a large network of potential expert witnesses: traffic engineers, land planners, stormwater engineers, wetland scientists, school experts, and many other professionals. Our folks have several virtues in common: they like working for citizens, they know how to critically evaluate a project from a citizen perspective, and they strive to keep their fees low. For help in figuring out if you need an attorney or expert witness and, if so, who is the best choice, contact us at 1-800-773-4571 or [Help@ceds.org](mailto:Help@ceds.org).