

Politics in Land Use Decisions

By Paul Merwin

Land use decisions are undeniably political. They are important decisions that city officials make in front of concerned citizens. There is nothing inherently wrong with this political reality. Cities make political decisions all the time.

However, politics can cause some problems. First, it can make decision-making difficult. Conflicting viewpoints and angry citizens make consensus hard. Second, politics can make decisions vulnerable to legal challenges. In fact, League of Minnesota Cities Insurance Trust (LMCIT) members spend about \$2.5 million per year on land use claims. A good process can help reduce both problems.

Politics vs. the law. One way to think about this is to consider that political disputes are often about results—about what different people want to happen such as seeing the city council approve or deny a land use application. The law, on the other hand, is mostly concerned with the process of reaching that result—about whether citizens got adequate notice and an opportunity to be heard, about whether there was evidence for decisions.

That does not mean the law is opposed to good results. To the contrary, the legal requirements help ensure good results by ensuring that all parties have a chance to participate in the process and that decisions are made openly with evidence that all parties can evaluate and comment on.

Much of the controversy in land use decisions arises because participants are focused entirely on the results, and are not aware of how the legal process works. Educating citizens and regulated parties about how city land use authority works can minimize conflict.

Two types of city authority. Cities exercise two main kinds of land use authority: legislative and quasi-judicial. When cities make law in the form of ordinances, they

use legislative authority. When applying those laws, cities act quasi-judicially.

Legislative Authority. Legislative decisions address the big picture and involve planning and zoning for the entire city, deciding the appropriate uses for all locations and conditions. Cities consider what is best for the community, answering questions like whether a given area should be single-family residential, multi-family residential, commercial, or industrial.

Cities have broad discretion when making legislative decisions, meaning courts are unlikely to second-guess city legislative decisions. The reason for this is that legislative decisions are inherently political. Legislative decisions implement rules that apply across the whole city, and city councils are accountable to the entire community for these decisions. If a city council makes unpopular land use decisions when acting legislatively, it will likely cause political reactions.

Quasi-judicial authority. When an applicant seeks permission for a specific land use on a specific piece of property, the city acts quasi-judicially. Much like a judge, the city's job is to evaluate the facts presented to the city, and then apply the law to those facts.

This is not the time to decide whether a particular use is best for the community, is popular, or is the best use of the property. The only question at this time is whether the application meets the standards provided by the law. Cities have less discretion when acting quasi-judicially. Courts will review quasi-judicial decisions more strictly.

Misunderstanding city authority is a common cause of political controversy. People get involved because they want a result. Maybe they want a project denied because they think it is bad for the community. However, by the time the application arrives, the only decision for the city is whether that appli-

cation meets the requirements of the ordinance.

Defining the requirements of the ordinance. Legal requirements are both procedural and substantive. Procedural requirements tell you what happens when. What information is required for an application? When is a decision required?

Substantive requirements tell you what must be decided and what evidence is required. What criteria does the ordinance require? What evidence is necessary to meet those criteria?

For example, most variances require applicants to meet three criteria to show undue hardship. If a resident applies for a variance to build a deck, the question is not whether the deck is a good idea, but whether the three criteria have been met. Identify those criteria. Keep any debate focused on those three criteria.

Managing the process. Successful cities use a number of tools to manage the process. Public notices should describe the specific kind of approval and the ordinances at issue. At land use meetings, display the applicable legal requirements where attendees can see them. Educate citizens about the difference between legislative and quasi-judicial authority, and state which one applies for every decision.

For more information. LMCIT offers a unique loss control program to address the legal risks associated with land use decisions. The LMCIT land use attorneys provide consultation, training, and information to members. For more information, contact **Paul Merwin** at pmerwin@lmc.org or (651) 281-1278, or **Jed Burkett** at jburkett@lmc.org or (651) 281-1247, or visit the League web site at www.lmc.org/page/1/land-use-lc.jsp. 

Paul Merwin is senior land use attorney with the League of Minnesota Cities. Phone: (651) 281-1278. E-mail: pmerwin@lmc.org.