

The Players: Who Cares and Who Controls

CHAPTER 2

Before we discuss how planning issues are reviewed and resolved, it may be helpful to understand who the players are. Basically, there are four types of people who show up for the meetings and engage in the conversation that results in a land use decision:

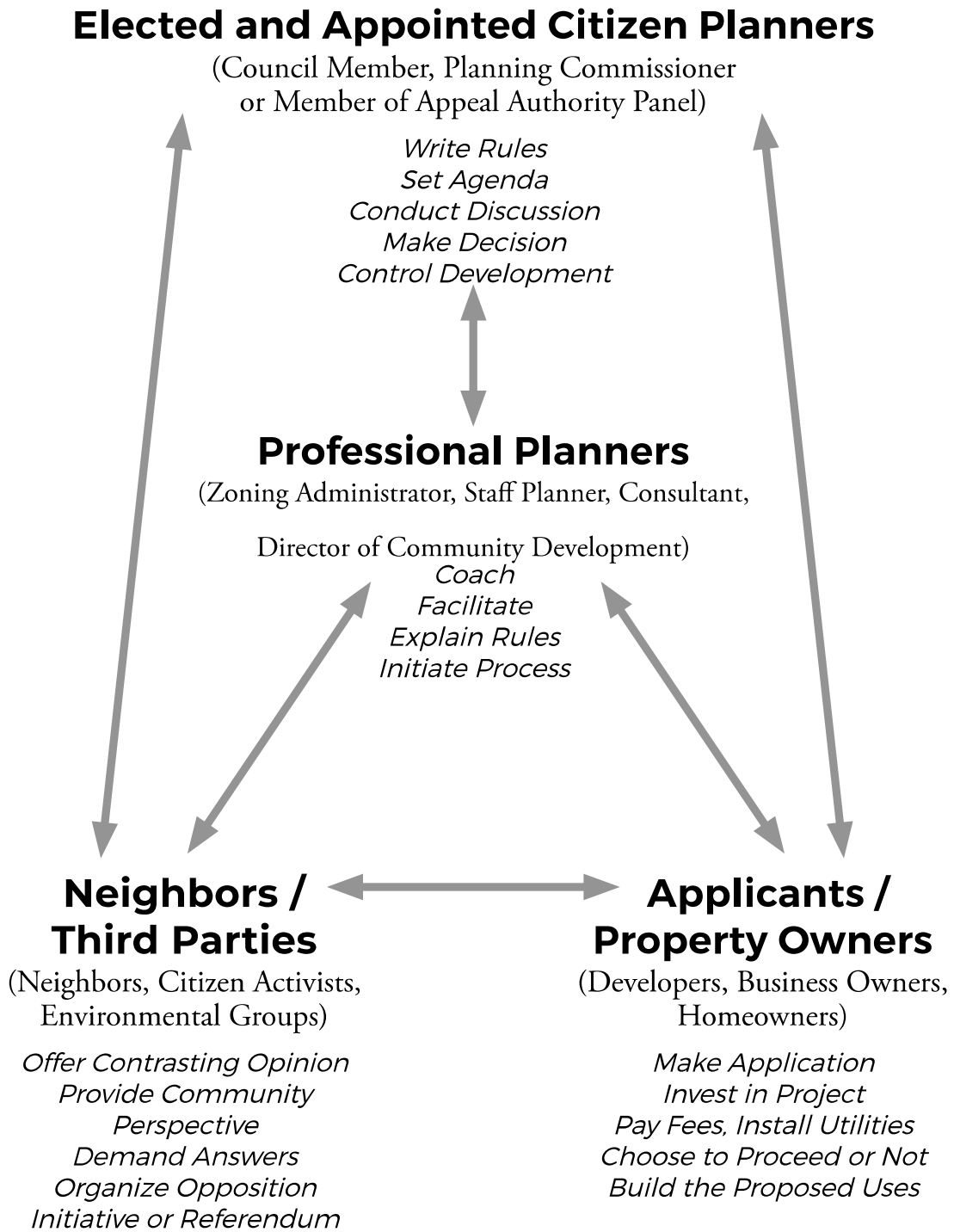
1. Citizen Planners
2. Professional Planners
3. Applicants/Property Owners
4. Neighbors/Third Parties

We will discuss each participant in turn.

Citizen Planners.

These individuals are either appointed or elected. Appointed citizen planners are usually chosen for the planning commission, board of adjustment, or other land use body by the local mayor and/or the local government's legislative body. Elected citizen planners are typically members of the local legislative body who are chosen directly by those residents who vote. These are everyday people who are usually not compensated for their time in reviewing land use questions.

Their goals. Citizen planners are supposed to take the broader, long-range view and consider land use issues in light of the community as a whole. Accordingly, they sacrifice a lot of their time for the good of the community. They would not invest so much time if they did not feel that they are accomplishing something that justifies the effort (and hassle). They are usually permanent residents who own their homes. They are rarely renters. By and large, they are middle-class, middle-aged, and middle-of-the-road philosophically. If they did not like local planning as a concept, they would not be on the board or commission. Sometimes they are individuals who are well thought of in the community but were not involved in planning before their



appointment. Sometimes they are appointed or elected because they have been vocal advocates for a planning philosophy that the legislative body, mayor, and/or voters want to advance.

Citizen planners are usually comfortable with the use of regulatory power. They spend a lot of time together and like consensus decisions better than repeatedly disagreeing among themselves. Some are more independent than others. Some are comfortable expressing their opinions in public, but others will rarely say a word. As would be expected, some members of a legislative body may exercise informal leadership that influences how the decisions are made. Some are thorough and do a lot of homework on issues and others are more passive and remain to be convinced. They are subject to biases and problems with perception.

Their role. Since they represent the government, citizen planners control the process and the agenda. They set the meeting times and the rules for the discussion. Most land use decisions are made by a board or commission composed of citizen planners. The world turns on the opinions and conclusions of a simple majority—four of seven or three of five. The essential goal of someone who wishes to influence policy is to get the support of the majority of citizen planners sitting on a given board or commission.

Professional Planners.

Some local governments may or may not have a professional planner on staff, while others may have dozens. If the local government has the funds to hire a professional planner, that planner typically completes all the administrative work needed for a land use system to function properly. Sometimes smaller local governments may hire a consultant to handle specific applications or to help design a general plan or draft revisions to the zoning ordinance. If there is no staff planner, local governments usually attempt to minimize the cost of consultants and thus limit the role of those who charge an hourly fee. Under such circumstances, the citizen planners or the town clerk may try to manage land use regulations as a sideline on their own.

If a professional planner is involved, the process is likely to be more efficient, understandable, and deliberate. There is a smaller chance of delay from confusion and mistakes in applications, but the process can still be slower than applicants wish. Citizen planners will often just look for the desired result and attempt to get there without

a lot of complication. However, that approach can be fatal if a faulty process is used because that more often than not creates an exposure to legal liability and damages for the local government. Professional planners, if allowed to function properly by the citizen planners who hire them, will help keep the process organized, legal, and defensible. Of course the attorney who advises each community also plays an essential role.

Their goals. In contrast to many citizen planners who are often serving a four-year term and have a lot more going on in their lives besides planning, professional planners choose to be planners full-time and typically have a more long-term view. Professionals usually choose this career because they want to see long-range improvement of the community. They are concerned about how their work will be viewed by the citizenry and by others in their profession. They usually hope to keep their jobs, however, and many express frustrations that compromise is too common, and the vision of the general plan is not implemented consistently. Professionals want to get home at night and do not enjoy late night meetings any more than anyone else does—perhaps less.

Their role. Professional planners can be very helpful to others in the process by acting as referees and coaches. While the land use gauntlet can be very complicated, the planners understand better than anyone—sometimes even the lawyers—exactly what the local ordinances and standards say. They should be willing to fully inform all those involved in the process about what the issues are and how decisions are made. They should meet with applicants prior to public hearings to maximize the chances that an application will be complete and ready for hearing when it appears on an agenda. They should be equally willing to visit with neighbors and other concerned citizens and provide all the public information available about an issue so the public debate can proceed fairly.

On occasion, staff planners will attempt to act as informal gatekeepers on the planning process and inappropriately control access to citizen planners. Applicants may be told that their requests will not be placed on an agenda or that applications will not be accepted because they are certain to be denied. This type of activity by staff is usually out of place and perhaps illegal unless specific responsibility to control the agendas of citizen planners is defined in the relevant ordinance. It is a fundamental tenet in a democracy that individual citizens and property owners are entitled to

due process when significant aspects of citizenship are subject to regulation. The decision by one staff person to deny an applicant a hearing on his or her application is not due process.

Applicants/Property Owners.

The applicant for land use approval is usually a property owner, someone who has an option to purchase property, or perhaps even a long-term tenant. An applicant may be a homeowner who wants to build a carport or an international conglomerate that desires to develop a big box retail store or office tower. They may be in the business of development and therefore appear before the community decision makers repeatedly. Applicants all tend to have some things in common, however. Their interests can be narrower and short-term. Applicants are commonly interested in less regulation, not more, and they invariably have concerns about cost and delay.

Their goals. Applicants want a positive answer with minimal hassle, and they want it soon. They can be sophisticated or naïve, depending on how close they have been to the process, but they do not often see their particular proposal as representing a great threat to the health, safety, and welfare of the community. Unless they are appearing as a homeowner, they usually have a stake in the outcome that is related to their employment and how they make their living.

Their role. The job of the applicant is to present a complete proposal and explain and promote it to those who will decide whether or not it will be approved. While their ability to communicate may hinder that goal, sometimes they can work out a consensus and get approval without major aggravation. Most applications are not controversial, of course, and hundreds of small-time, routine approvals will be granted between the real block-buster fights that we often hear about in the news or on social media. The most successful applicants start early to understand the local regulations, introduce themselves to the staff and neighbors, and embrace creative suggestions to forge “win-win” results.

There is a growing number of professionals, including planners, who make a living representing applicants in land use matters. Since the courts have proven to be incapable of resolving disputes quickly and economically, more and more lawyers have caught on to the importance of doing the legal work early. They appear before local decision-makers on behalf of property owners and applicants on a regular basis. This

can be a positive thing, depending mainly on the nature of the application and the approach taken by the lawyer and their clients. In the best of worlds, an applicants' attorneys can work with neighbors and citizen planners to reach middle ground and make sure that a consensus is delivered with the final project. If attorneys are involved, the final result of the process is more likely to survive a challenge and less likely to contain hidden defects that cause problems later.

Neighbors/Third Parties.

The term "third parties" as used here represents all the other participants in the land use arena. They include the residents and business operators located near land that may be the subject of a proposal. They also could include organized groups who have a more general agenda such as limiting growth, preserving open space, implementing trail networks, or calming traffic. Sometimes local school officials and law enforcement will comment on proposals and voice support or opposition. One of the more creative aspects of the land use community is to make up acronyms for third-party participants who oppose development, including NIMBYs (Not In My Back Yard), BANANAs (Build Absolutely Nothing At All Near Anybody), CAVES (Citizens Against Virtually Everything) and, for citizen planners, NIMTOs (Not In My Term Of Office.) Not every opponent is unreasonable, of course. Most are concerned about very real, significant issues in local land use.

The roles can be fluid. Today's applicant will be neighbor to tomorrow's applicant, and by the next election or appointment cycle, may even be a citizen planner reviewing a future application.

Their goals. The goals of third parties can vary widely. They could be competitors of a proposed business with a financial stake just as significant and influential as the applicant's. They may be the proverbial "little old ladies in tennis shoes" that have only a community goal in mind, such as to preserve the old schoolhouse or to save the hillsides. They are usually just neighbors. They perhaps purchased their home or farm with the idea that the area seemed attractive as it was then and do not wish to see it change now. Sometimes they want to influence change, but often they just want to stop it.

Their role. Third parties have the right to be heard on most significant land use issues (at the appropriate time, of course). They are guaranteed rights of free speech,

access to public records and meetings, and, as provided in local ordinance, official notice of hearings and proposals. They are sometimes marshaled by applicants to support an application and sometimes whipped into opposition by vocal community leaders. They have a duty to be courteous and honest, and to respect the time and investment of others, but they are often the least sophisticated and most frustrated participants in the process. Their involvement is usually transactional, which is to say based on a specific proposal, and not generally extended over a series of decisions and conversations. Sometimes citizen planners are exasperated—after working to get community input on a long-term vision—to find their work criticized by those who do not understand the big picture or have any idea how much work went into forging the right balance. Third parties should realize that their most productive involvement is early, not late, in the process of land use management.

All in all, while the stage generally is set for a free-for-all, somehow the system works pretty well. The more the public, the media, and community leaders interact on a specific proposal, the more likely the result will be in line with current community values and goals. That is not to say that all decisions lead to good public policy in the long run, but land use planning is not an exact science. Sometimes part of the good accomplished is to involve citizens in the conversation, no matter what the result is. The key for those involved in a controversy is to respect each other enough and understand the ground rules sufficiently that no more damage is done than necessary to the long-term relationships that make a community successful.

Who's in charge?

Before discussing the process, it may be helpful to note the forums in which the process occurs. In larger cities and counties, the citizen planners may have legislatively delegated to some staffers an assignment as a “land use authority”, which would include the ability to make routine decisions such as issuing building permits, reviewing project designs, and monitoring conditional uses.¹

Under the state enabling statutes, however, there are some citizen planner functions that cannot be delegated. Some specific decision-making bodies must play defined roles in the process.

Every local government has a legislative body, whether the “city council”, “town board” or “county commission”. The legislative body plays a pivotal role. They alone

can adopt local plans and ordinances. This is a legislative function and cannot be delegated to anyone else.²

Local government officials such as the mayor, city administrator, or other city or county employees must act to administer the ordinances and create a process for receiving applications, creating agenda, issuing permits, and monitoring land use compliance. Such administrative work is an executive function that is not normally performed by the legislative body except in towns and smaller cities and counties.

According to Utah state statute, in order to regulate local land use, communities must always have a planning commission. It must have the opportunity to review and make recommendations regarding the general plan, the zoning ordinances, and other legislative and administrative matters before the legislative body can consider such an issue. Without a planning commission, there cannot be any land use management.³

Another mandatory body or function is an appeal authority. In the past, this role was usually performed by the board of adjustment. Some local governments may still have a board of adjustment, but others may have assigned the variance and appeals processes to a hearing officer. In fewer cases and for certain issues, a planning commission, city or county council or commission, board of appeals, or some combination of these may hear land use appeals. Although each community now decides how appeals will be heard, some appeal opportunity must be provided. The local ordinance must explain how the legislative body has decided to handle appeals and variances.⁴

Councils, boards and commissions are comprised of citizen planners. Their decisions are the basic components of land use controls. They set the agenda, conduct the meetings and discussions, and adopt the rules for the process of planning and zoning. They have the final say in adopting a system of land use management, and it is only through the ballot box or in court that the voters of the community can challenge or change their decisions. These councils, boards and commissions are “in charge.”

1 Utah Code Ann. §10-9a-302 (municipalities) & §17-27a-302 (counties) (directing the legislative body, with the advice of the planning commission, to designate a separate administrative person or body to act on each type of application).

2 *Bradley v. Payson City Corp.*, 2003 UT 16; 70 P. 3d 47 (Utah 2003).

3 See Utah Code Ann. §10-9a-302, §10-9-402 (municipalities) or §17-27a-302, and §17-27-402 (counties) (expressing that the existence of a planning commission to review and make recommendations on amendments to the general plan, land use ordinances, and zoning map is mandated). See also *Toone v. Weber County*, 2002 UT 103, 57 P. 3d 1079 (Utah 2002) (holding that the role of the planning commission is mandatory.)

4 Utah Code Ann. §10-9a-701 (municipalities) or §17-27a-701 (counties).

