

WHY CAN'T THE PUBLIC AND PRIVATE SECTORS JUST GET ALONG?

GETTING TO KUM BA YAH IN THE DEVELOPMENT PROCESS

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Where are we coming from?

Goals in the development process vary between the public and private sectors...

Private sector goals

- Profits and The Project
- Certainty/information—biggest issue in any type of investing, including real estate investing
- Time value of money—delays create lost value, sometimes means losing partners
- Factors playing roles in the developer's ability to do a project: lining up financing, transactional contingencies based upon governmental approvals, contractor arrangements, lost profits, etc.



Public sector goals



- Multiple “bottom lines”: tax revenues; public safety, health and welfare; comprehensive or other plan goals; political bottom lines
- Legal obligation to treat everyone equally, have a clear process
- Time pressures are different, must adhere to minimum regulatory timeframes
- Planners have a variety of obligations as well, political pressures may exist
- Community/elected official attitudes toward growth and development
- Ethics—legal and professional (i.e. local ordinances or AICP Code)

BEST PRACTICES

GOOD COMMUNICATION /
ATTITUDE-FORMING
STRATEGIES TO MAKE
EVERYONE GET ALONG



BEST PRACTICES

GOOD COMMUNICATION /
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PRE-APPLICATION PROCESS

Have a Pre-Application Meeting

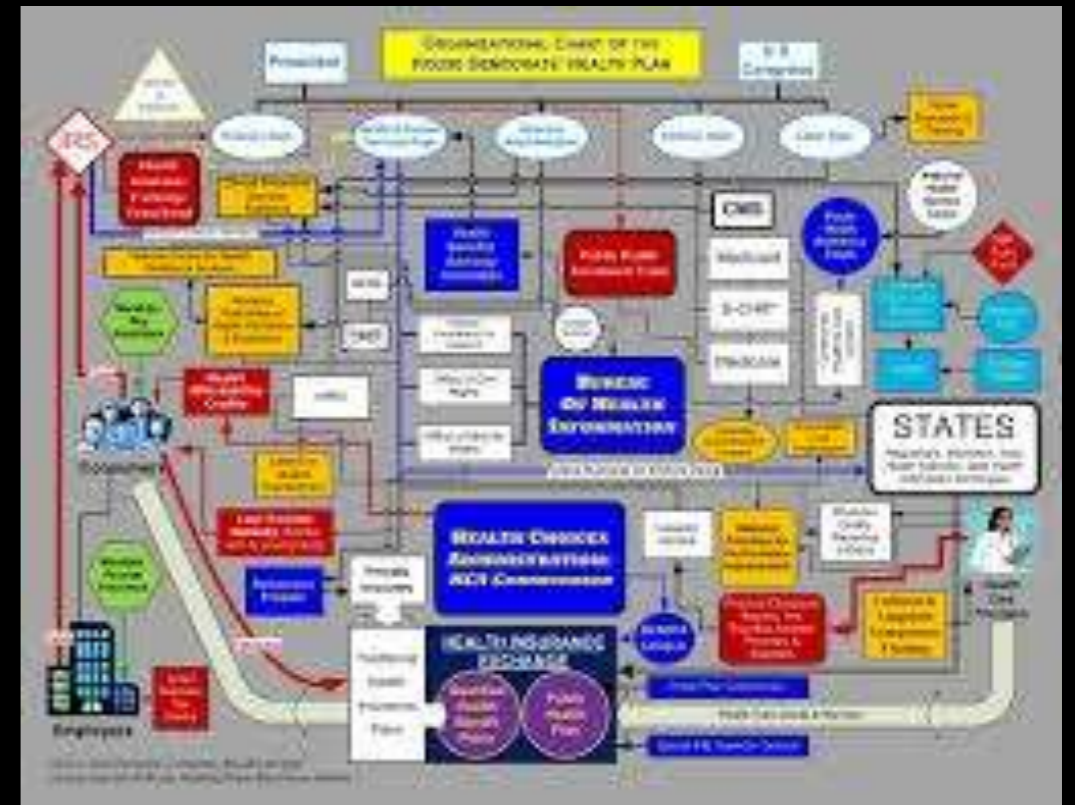
- Allow developers the opportunity to have a pre-application meeting
- Developers need to provide sufficient detail to get meaningful feedback
- Local governments need to give meaningful feedback based on what they get



PRE-APPLICATION PROCESS

Have a Pre-Application Meeting

- Some of the best pre-application processes are very formal, with written feedback and face-to-face meetings
- Know how things work in your jurisdiction (staffing and politics regarding projects) but don't overuse improper channels



PRE-APPLICATION PROCESS

Formalize the Pre-Application Meeting

- One problem with the pre-application meeting is that public planners treat it informally and don't prepare = they often wing it
- What that means is that public planners offer comments or insights haphazardly and the meeting can become a brainstorming event on the public planner's end
- Tendency is for public planner to be more negative for fear they missed something or that the developer will take away only what they want to hear and ignore the critical pieces

PRE-APPLICATION PROCESS: BEST PRACTICES

Best practices for public planners

- Get information up front from the developer and prepare for the meeting
- Stick to what the code says and avoid expressing personal opinions or trying to interpret what the Town Council/Planning Commission members might say
- Maybe offer some pitfalls that others have experienced instead of presenting as a barrier that is absolute
- Prepare written feedback

PRE-APPLICATION PROCESS: BEST PRACTICES

Best practices for developers:


- Bring a primary entitlement consultant to the meeting
- Prepare for the meeting by understanding the code and process (there should be no surprises if done properly)
- Don't react too negatively to information presented (wait and talk it over with your consultants) - listen

PRE-APPLICATION PROCESS

Bring the Right People (or Leave the Lawyer at Home)

- Early in the process, bringing an attorney to meeting without them needing to be there can strain a meeting
- Public planner may feel somewhat intimidated and not want to speak as freely as they might otherwise
- The developer might perceive that the municipality may have some real concerns about the project if the municipal attorney is present





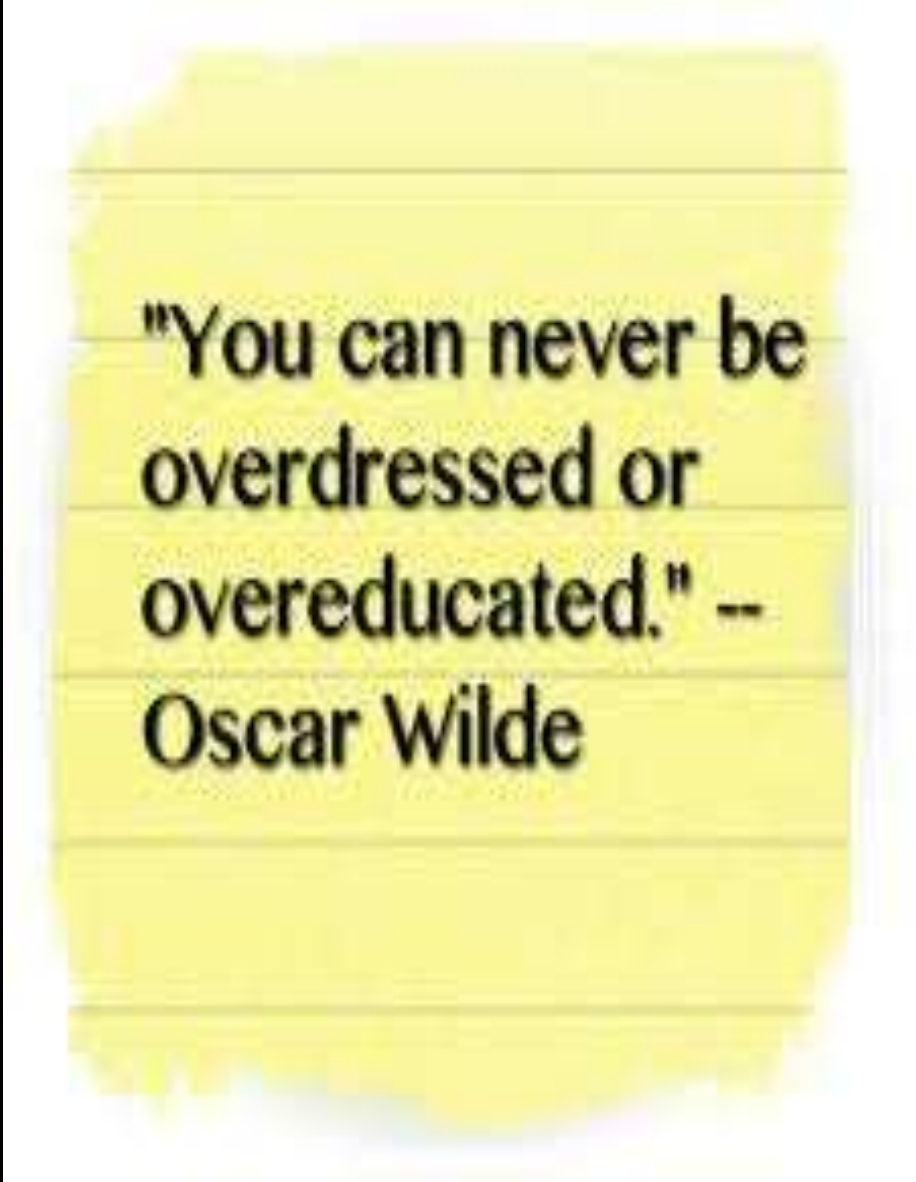
**TALES
FROM
DEVELOPMENT
HELL**

**THE GREATEST MOVIES NEVER MADE?
DAVID HUGHES**

**APPLICATION PROCESS
BEST PRACTICES**

APPLICATION PROCESS

- Educate
- Educate
- Educate



"You can never be overdressed or overeducated." -- Oscar Wilde

APPLICATION PROCESS

Don't Fight About the Process



APPLICATION PROCESS

Developer Best Practices:

- Alternatives
- Review Schedule
- Don't Press for Decision



APPLICATION PROCESS

- Planner Best Practice
 - Be Proactive
 - Timeline



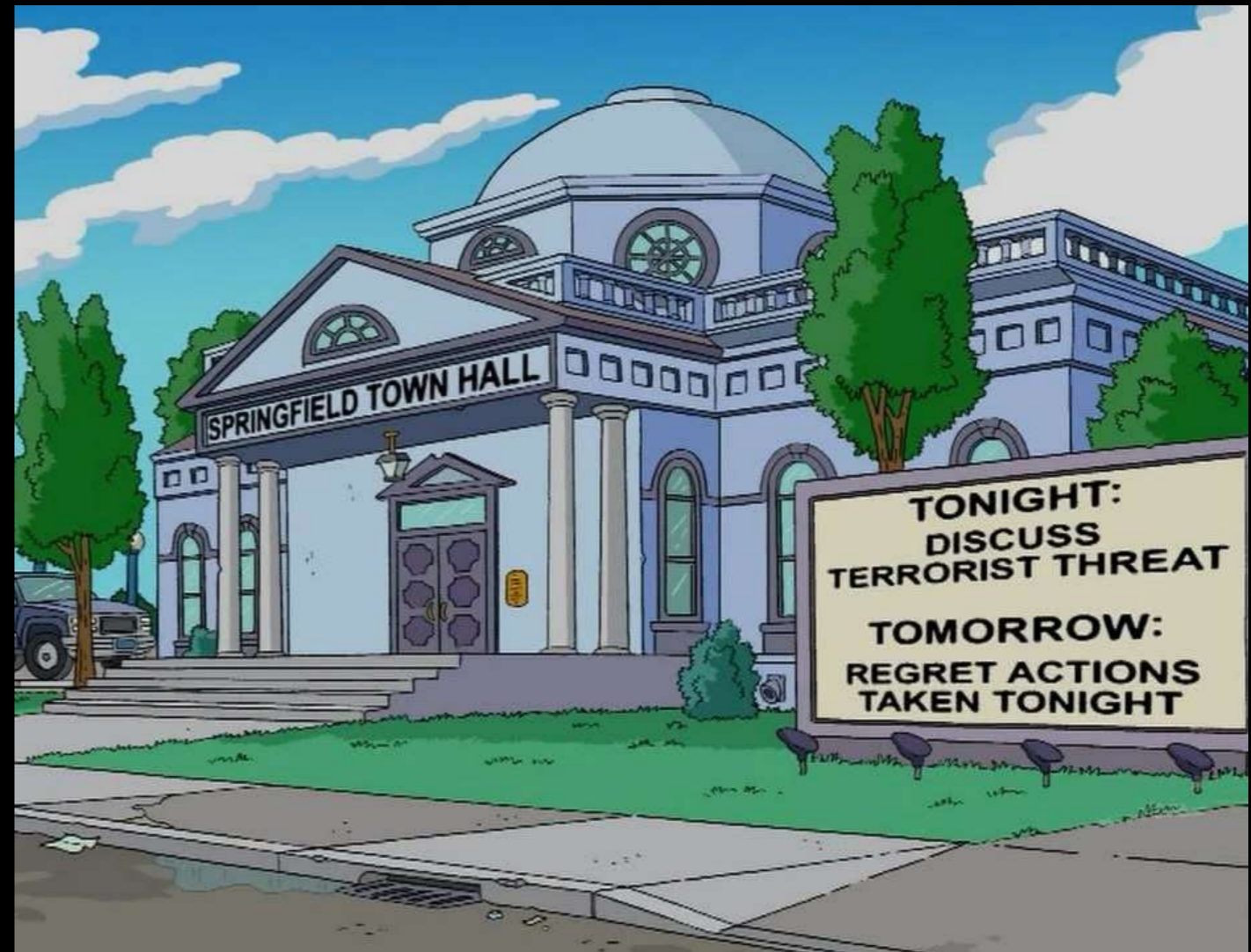
APPLICATION PROCESS

- Early Reactions
- Tone Setters



BEST PRACTICES

PUBLIC HEARINGS



PUBLIC HEARINGS

Promptness of Review/Staff Reports

- As a developer/private planner there is nothing you hate more than finding out that you are getting a staff recommendation of denial on the Friday before the Tuesday hearing
- Sometimes the work around is to get the staff report and then table the hearing



PUBLIC HEARINGS

Promptness of Review/Staff Reports

- By tabling, you now have the opportunity to review the issues and propose changes to address those concerns
- An aggressive approach, but effective. But gauge the board's attitude toward this strategy...



ARE YOU KIDDING ME?

Your demanding me to bottle.

PUBLIC HEARINGS: BEST PRACTICES

Public planner best practice:

- Provide the applicant with a comprehensive review letter; or
- Draft staff report that makes clear the issues and the likely recommendation weeks not days before a hearing



PUBLIC HEARINGS: BEST PRACTICES

Developer best practice:

- Don't get pissed when you get the letter
- Use the letter as a road map to a potential resolution
- Address the issues and DO NOT underestimate the power of staff recommendation of denial



PUBLIC HEARINGS: THE PRESENTATION

- Public hearing demeanor, presentation styles need to be tailored to the application and the particular decision-making board
- Private sector applicants need to know who is on the board and how the board reacts to presentation styles
- Talking to planning staff members beforehand is critical to understanding board dynamics
- Dress appropriately for the circumstance



PUBLIC HEARINGS

Take the Right Approach

- The public planner may not always know the best approach for a hearing
- While it is important to have a public planner's perspective on the attitude of the Reviewing Board they don't always understand the power of a presentation on human behavior
 - Example: I have recently had the planning director tell me that the best thing I could do was just be there but with no presentation. I knew better but went along and nearly got a denial...

PUBLIC HEARINGS: BEST PRACTICES

Public planner best practice

- Don't always assume you have it completely figured out
- It's not your job to make sure the applicant does a good job
- Give the applicant the opportunity to sell their position

PUBLIC HEARINGS: BEST PRACTICES

Developer best practice:

- Use your best judgment and listen to your consultants
- Certainly don't talk your way out of an approval but know when doing a little extra might be better than not
- “Practice run” presentations are always a great idea



PUBLIC HEARINGS

Use the Right Arguments

- Balance emotional versus legal versus political arguments in a presentation:
 - Some of the best presentations are more about emotion than legal arguments
- There has to be an appropriate balance and you need to gauge to whom you are presenting

PUBLIC HEARINGS

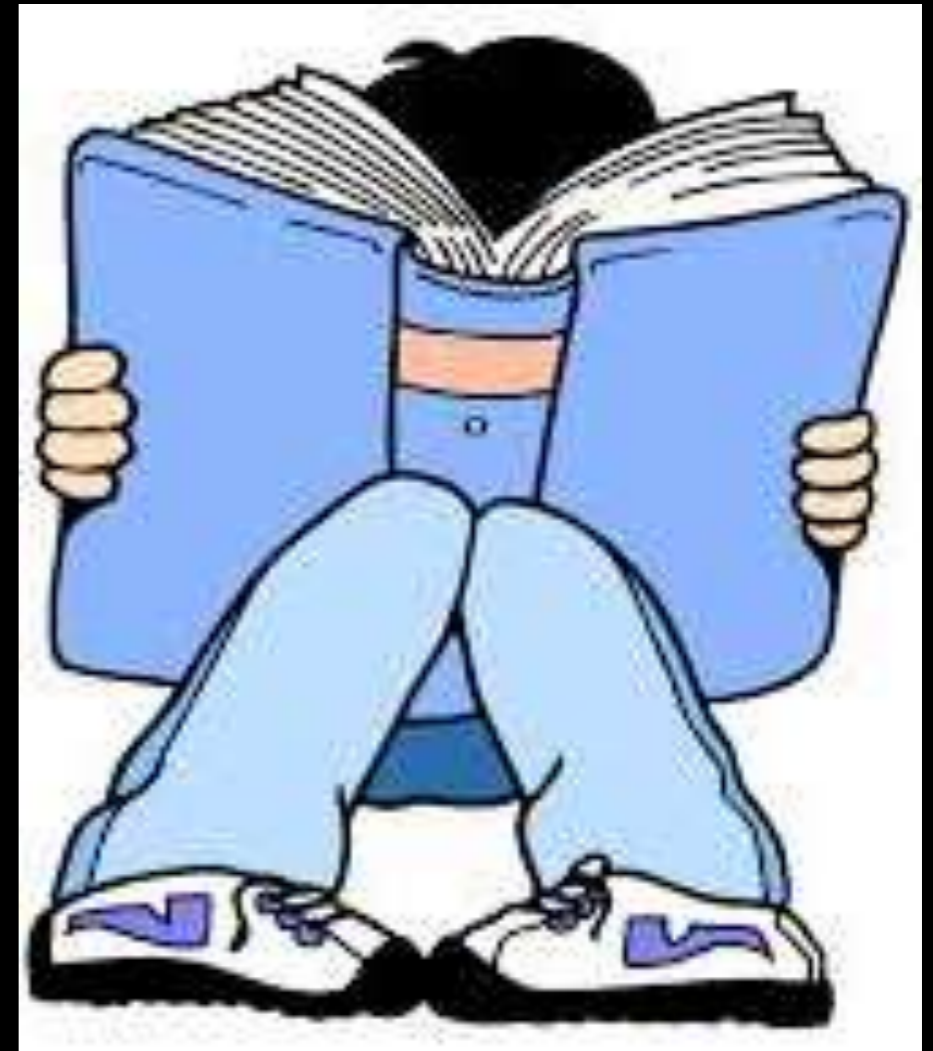
Use the Right Arguments

- 90% of the time the Reviewing Boards are not seasoned land use professionals or lawyers—legal arguments are powerful but many times playing on the emotional side ultimately works
- With that said, knowing the law (RTFC) is very important and a powerful weapon in the process

BROAD BEST PRACTICES

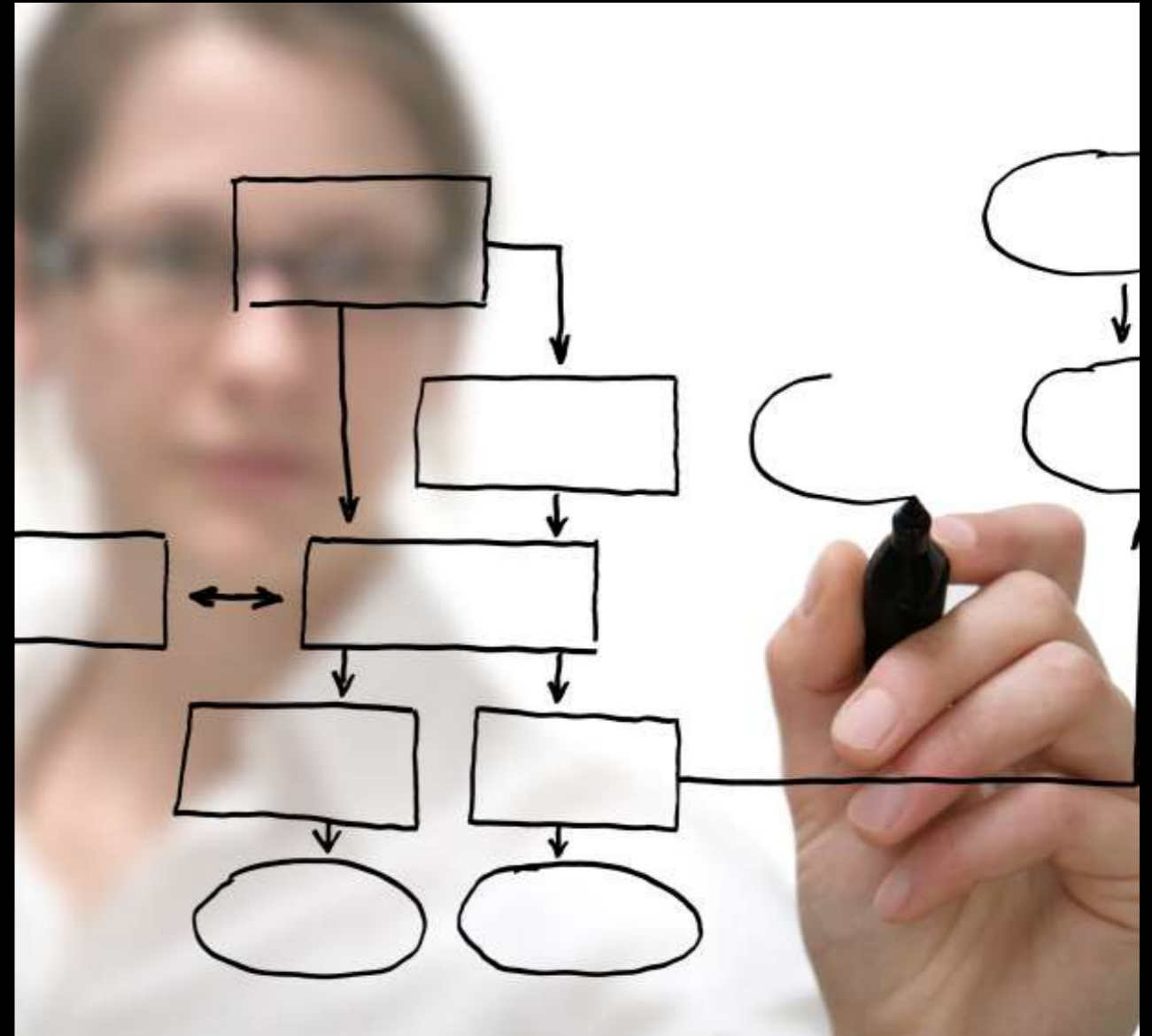
RTFC*

- Everyone needs to read the code; lawyers and consultants need to educate their clients about the code and what it says
- “We've always done it this way” is not the code...
- Taking the time or money to read and understand the code saves time and money later



BROAD BEST PRACTICES

- Clear Process
- Directions
- Forms



BROAD BEST PRACTICES

- Know the Players:
Developers and
Planners



BROAD BEST PRACTICES

- Relationships
- Partnerships



BROAD BEST PRACTICES

- Decision Making



BROAD BEST PRACTICES

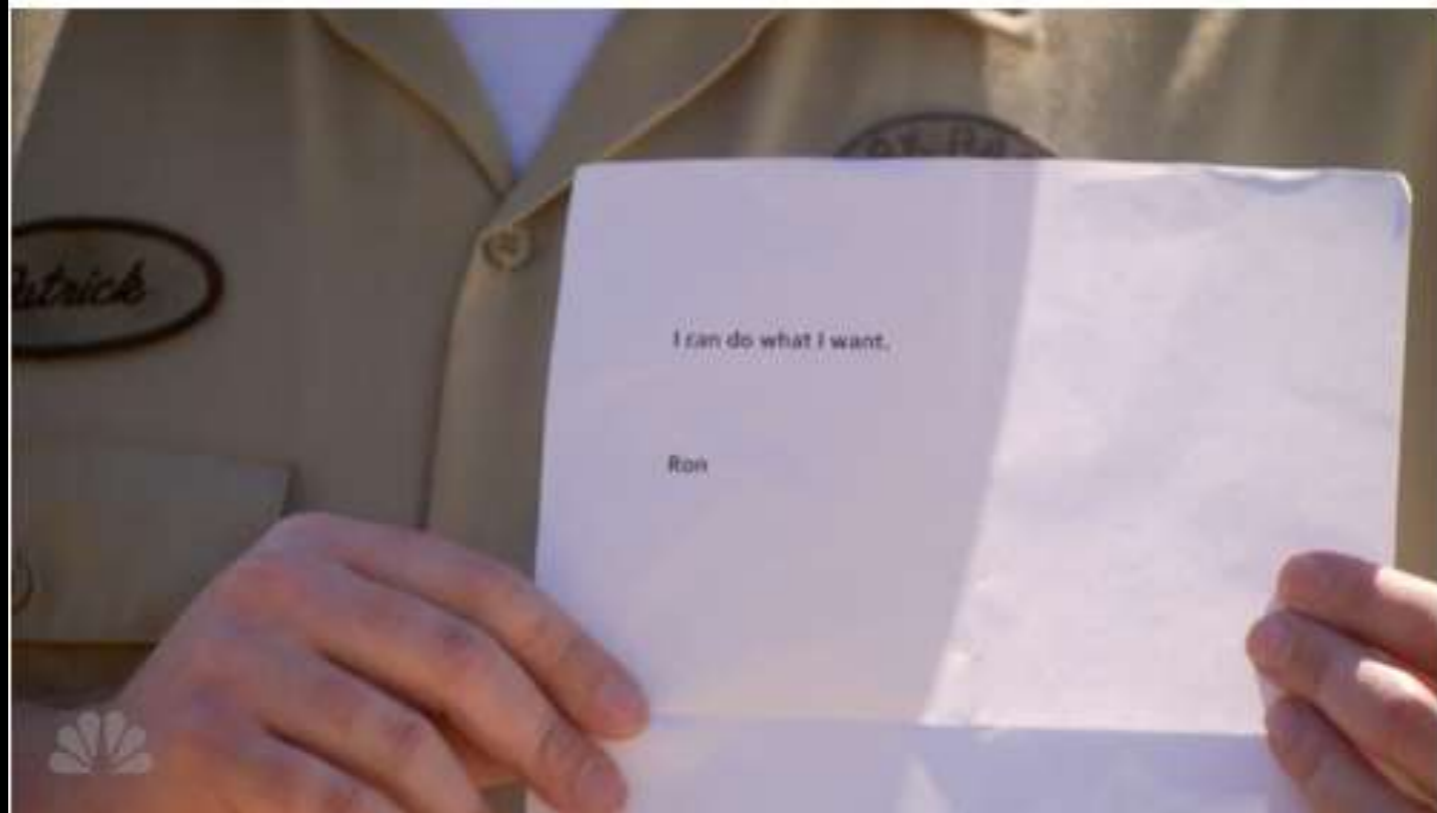
Leave your political bias or personal opinions at home

- Developers tend to be property rights advocates and public planners not
- Once the public planner perceives that the developer hates government or the process, it puts them on the defensive and sets the negative tone as you pointed out
- This goes back to: stick with the code
- Important role for consultants: keep opinions and preconceived notions in check





- Not to worry.
I have a permit.



I can do what I want.

Ron



BROAD BEST PRACTICES

Be creative and open to new ideas

- This strikes at both sides
- Planners: what's written in the code or the comprehensive plan isn't gospel—realize that it's not necessarily great stuff (and certain situations may warrant a change!)
- Developers: stay open to suggestions or goals of the community especially when adopted in master plans and guidelines
- Sometimes really minor issues that cost little can be viewed as extremely important by a community

BROAD BEST PRACTICES

Help the project find a way...

- We've been there a thousand times: Does the zoning allow this use? No. What can we do about that? Find a use that's allowed. I don't know what else to tell you.
- Be creative and open-minded



BROAD BEST PRACTICES

Public planner best practices:

- Consider the impact of the use/proposal and forget about zoning
- Determine if the use may be beneficial, desirable, and compatible
- Look to the comprehensive plan. Look at other zone districts that might be appropriate as a rezoning
- Consider if the code should be amended to allow the use
- Be pro-active and helpful but also be realistic

BROAD BEST PRACTICES

- **Developer best practice:**
 - Study the code and come up with your own alternatives
 - Be knowledgeable and realistic
 - Importantly don't do this on your own....**hire a planner**



Dominic F. Mauriello

Principal

With more than a two decades of experience working in both the public and private sector, Dominic is an expert strategist. He has served as a town planner in Vail, Colorado, and Melbourne, Florida.

Since 2000, his focus has been primarily in the private sector, concentrating efforts on entitlement process management and facilitation of development projects.

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Questions and discussion

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