

Chapter 39: Lobbying Final Decision-Makers

A final decision-maker is anyone who has the authority to resolve your concerns. The applicant is certainly a final decision-maker. In many instances regulatory staff have the authority to require adoption of your preferred solution, but they can be over-ruled by agency heads. So a department director or secretary may be the actual final decision-maker. The local legislative body are frequently final decision-makers. They can deny or condition rezonings, adopt new laws to resolve impacts inadequately addressed by existing law, or approve funds to buy a site. Sometimes state legislators or members of Congress also have the power to resolve your concerns. A mayor or county executive may be a final decision-maker since the department heads report to them. The governor of your state or even the President can be final decision-makers for regional or national issues. In other words, for any given issue there may be several decision-makers who have the power to implement your preferred solution.

WHICH DECISION-MAKER TO APPROACH FIRST

To win you must figure out which decision-maker(s) can be most easily influenced to act. How do you do this? Usually the best place to begin is by talking with the decision-maker who was elected to represent you.

In many localities council or commission members are elected by district. The elected official representing your district will usually be more receptive to your concerns than other members, especially if they did not rely heavily on developer-real estate money during their last election campaign. If council members are not elected by district then try the official with the best reputation for helping citizens resolve development-related concerns. Veteran citizen activists will know who this official is.

THE MEETING

Perhaps you are at the point where there has been an initial meeting with the applicant and regulatory staff. But the applicant has not agreed to act and staff feel they lack the authority to force the applicant to adopt your preferred solution. So the purpose of meeting with the council-commission representative is to request their help in finding a way to get your solution implemented or to come up with other equally effective solutions. Following are some examples of what you might request.

- If the applicant is reluctant to negotiate then ask if the decision-maker would be willing to encourage the applicant to reconsider;
- If staff feel they lack the authority to mandate a solution then ask the decision-maker if they agree or, if they're uncertain, if they would request an opinion from the legal staff;
- If a department head feels they have the authority to mandate a solution but lack the funds to ensure long term maintenance, then ask the decision-maker if they would support a budget amendment making the necessary funds available;

- If a department head has simply been unresponsive then ask the decision-maker if they could talk with the official;
- Ask the decision-maker if they believe it may be possible to acquire the funds to preserve the site in total or partially; or
- If it looks like current law prohibits full implementation of your solution, then ask the decision-maker to help you change the law.

In some local jurisdictions council members, commissioners or board of supervisor members are prohibited from discussing proposed development projects: an *ex-parte* communication. This restriction results from the role they play in the process as a board of appeals or as the final approving authority. If you run into this problem then consider discussing a solution in general. For instance, if you are concerned about increasing the number of houses along a dead-end street then ask your representative to consider a law limiting the number of houses built on all dead-end roads, not just the one affected by the proposed development project. Such a generic conversation should be permissible as long as it does not focus in on one particular project or your dead-end road.

Most elected officials are motivated by good intentions. They want to serve the public good. Of course public good has many aspects, including keeping housing costs down and minimizing property rights infringement as well as safeguarding the environment, schools, historic resources and other values. But all elected officials are also motivated by political considerations. The greater your public support, the more likely it is the decision-maker will act as you wish. This is why the section on *Expanding Public Support* appeared first in this Part of the book. The impact of your supporters will be even greater if they include people the decision-maker views as influential. Examples of these influential people would include:

- leaders of community associations and other citizen groups, especially those with a large membership in the decision-maker's district;
- religious leaders, especially someone from the decision-maker's place of worship;
- business owners or corporate executives especially from companies employing a large number of people who live in the decision-maker's district;
- contributors to the elected official's campaign fund (in many places campaign finance records are open to the public and may even be available online²²⁴);
- leaders of organizations which endorsed the decision-maker during their last campaign (assuming they are an elected official);
- other elected officials, particularly those in leadership positions in the decision-maker's party;
- individuals with good, positive name recognition; or
- anyone who the decision-maker would prefer not to offend by rejecting your request for help.

²²⁴ For contributions to candidates for federal office go to: <http://www.fecinfo.com/> For state and local candidates go to: <http://www.afscme.org/wrkplace/campfin.htm>

Prior to meeting with the decision-maker, get your allies together in hopes of reaching consensus on the following points. You don't want to debate any of these points among yourselves while meeting with the decision-maker.

1. Who will attend the meeting from your side? Two to six is best and should include at least one person likely to be viewed as influential by the decision-maker. Make certain though this person solidly supports your position and avoid folks with a reputation for flip-flopping on issues.
2. Who will act as spokesperson?
3. Who will be responsible for taking detailed notes of what is said during the meeting? Generally, it is not okay to tape a meeting.
4. What issues will be raised, who will present each issue, and what justification will be offered for why you believe the issue to be real?
5. What solutions will offered and who will present the solution (usually the same person who presents the issue)?
6. If the decision-maker offers alternative solutions then make certain everyone agrees not to agree during the meeting. Instead listen with an open mind and ask for time to consult with others. This will allow you to think through the alternative and determine if it really is as good as it sounded at first.
7. Prepare your allies for not achieving victory at the first meeting; it will probably be just a first step.
8. Don't take a maybe as a no. Instead, view it as an opening to continue discussions in hopes of turning it into a yes.
9. Make certain everyone understands that you have alternatives and while winning the decision-maker's support is certainly desirable it is not your only option. If the decision-maker refuses to support you at this first meeting then your alternatives include:
 - a. Mobilizing more of your supporters to lobby the decision-maker;
 - b. Turning your attention to other decision-makers; and/or
 - c. Initiating legal action.

By making your allies aware of your options it will reduce their tendency to agree to proposals that may be less than satisfactory.

10. Everyone in your group must agree to keep their temper and not threaten.
11. Everyone also agrees to end the meeting if the decision-maker is the first one to use threats or other intimidation tactics.

Begin the meeting with the decision-maker by thanking them for taking the time to see you. Compliment them on past actions you know of where they supported responsible growth management. Describe your concerns, the basis for your concerns, your proposed solution and why you believe the solution to be the best choice. If you have already met with the applicant, staff, department heads, or others then point this out and describe the outcome. After answering any questions the decision-maker may have, then ask what they would do if in your position.

Do they see another more workable solution?

Or what approach would they take to win implementation of your preferred solution?

Most importantly, what are they willing to do to help resolve your concerns?

End the meeting by reviewing your points of agreement and next steps (who is to do what by when). Lastly, thank the decision-maker again for taking the time to meet with you.

POST-MEETING ANALYSIS

After the meeting, adjourn to another location to chat with your allies about next steps. Review what each of you heard during the meeting with respect to points of agreement and disagreement as well as action items - who will do what by when. When you reach consensus then consider following up on the meeting with a letter to the decision-maker which begins with another thank you then lists points of agreement and next steps. Close with a sentence asking if the letter accurately reflects the decision-maker's recollection of the meeting.

If the decision-maker agreed to support your efforts and committed to taking specific steps to fulfill the promise, then you are in good shape. Be certain to follow-up with the decision-maker to see if there is anything you can do to help and to verify that they are making good on their commitments. But also monitor permit-approval processes so you do not lose any opportunities to appeal a decision to approve the project before your concerns are resolved.

If the decision-maker seemed undecided about supporting your effort, then focus your post-meeting discussion on how you might win them over.

1. Was it your collective sense that the decision-maker felt they did not have sufficient information?

If yes, then the next step is obvious: get the information as quickly as possible and meet again with the decision-maker.

2. Did you get the sense that the decision-maker felt that the political repercussions of supporting your position were too great?

If yes, then search among your supporters for others who can influence the decision-maker and consider the three tactics described below.

3. Did the decision-maker agree that your solution made sense, but they felt other final decision-makers would oppose it?

If this was the case then you probably discussed ways of winning the support of these other decision-makers, such as meeting with them (making certain to include folks among your supporters whom the other decision-makers would view as influential).

4. Was the decision-maker just dead set against your solution and didn't seem interested in helping you find other fixes?

If this was your sense then move on to another final decision-maker. Its always best to focus your energy on your allies not your adversaries. There are usually several final decision-makers and one of them will likely be more open to your campaign. If they all refuse to act then you should focus continued political pressure on the decision-maker most likely to turn around while simultaneously initiating legal action.

Following are three possible tactics for providing a decision-maker with the public support needed to take a tough stand.

LETTERS, PHONE CALLS, POSTCARDS & EMAILS

In my home state citizen activists have a saying about bills before the Maryland General Assembly; if a Senator or Delegate gets more than six letters or calls on a piece of legislation than this indicates widespread public interest in the measure.

Isn't this great?!

We just sit down at the start of the legislative session, pick out the bills we do and don't like and get seven or more people to write a letter about each one. Then we can go watch football or ski for the rest of the winter while all our pet bills sail through and the peeves crash and burn.

Of course this is not the way it works.

Yes, if a decision-maker gets a half-dozen or more well written, well reasoned letters then this does indicate that enough people are interested so that the 0.1% - 1% who act on their interests have started writing. But if all the letters sound alike then the decision-maker concludes that this is not a spontaneous public response reflecting widespread interest but a lobbying effort orchestrated by an advocacy group. This reduces the impact of the letters, but not completely. If the six letters were

signed by the top six contributors to the decision-maker's last election campaign then it probably does not matter whether they sound alike or not. The decision-maker will listen very closely to what their six best supporters have to say.

The key then to making an impact through the letter writing tactic is to search for people to write letters who can influence the decision-maker, such as:

- campaign contributors;
- officials from the decision-maker's party;
- organizations that endorsed the decision-maker during their last campaign;
- leaders of groups with a large membership in the decision-maker's district;
- business owners or corporate executives with a large number of employees in the district;
- registered voters who:
 - " live in the decision-maker's district (especially in the precincts the decision-maker won during the last election),
 - " belong to the same party, and
 - " are frequent primary voters (voted in two or more of the last primary elections²²⁵).

Make certain the letter demonstrate that the signer clearly understands the issue, has considered the pros and cons, and presents well-reasoned arguments for supporting your position. You could provide your influential supporters with a sample letter and factsheet or even write the letter for them. Have them mail the letter to you, not directly to the decision-maker. This way you know the letter was actually written and you can present all the letters to the decision-maker en masse.

These same principles apply to e-mails and phone calls. Ask people to copy you with e-mails as well as the reply they receive. Ask folks to let you know how the decision-maker responded to phone calls.

Postcards are much like a petition. If someone only signs a postcard and does not take the time to write a thoughtful letter, then their interest in the issue is probably rather superficial. However, if 10% of the voters in the decision-maker's district sign a postcard, then the impact increases dramatically.

Avoid the temptation to flood a decision-maker's office with calls, letters and e-mails. Instead, start with a few contacts from your most influential supporters. If this low-key effort does not seem to have an effect, then increase the volume if you believe the decision-maker may turn around.

²²⁵ Frequent primary voters are key to winning tight election races. A decision-maker tends to be more influenced by how frequent primary voters think compared to voters in general; especially people who seldom vote.

PUBLIC OPINION SURVEY

Citizens have used public opinion surveys to demonstrate widespread voter-taxpayer support for a given solution. Generally surveys work best for issues where the decision-maker is considering a discretionary action, such as:

- how much funds to allocate to a project such as land preservation, improved transit, reducing class size, or environmental restoration projects;
- whether to downzone rural lands while adopting a program to compensate family farm owners for the equity loss;
- construction of a new highway; or
- whether rezoning should be granted for a large, controversial project.

These actions are mostly all discretionary because government is not required by law to approve-disapprove if specific criteria are met. In other words, government has substantial discretion with respect to questions such as how tax revenues are budgeted, whether to amend a comprehensive plan to set the stage for rezoning large areas, or whether to grant a request to rezone a specific property. A public opinion survey would not help much with nondiscretionary decisions, such as whether to grant approval for a preliminary plan of subdivision or a wetland permit application.

The classic scenario for initiating a survey is where decision-makers believe a majority of taxpayers oppose a solution advocated by citizens. In fact, the decision-makers use this claim as a principle reason for not supporting the solution. The citizens advocating the solution are confident majority support is there and carry out a survey to document their belief. The results of the survey show that the citizen advocates are right and that decision-makers should support the solution if they believe in will of the people. The survey results can also generate a fair amount of newspaper, radio and TV coverage.

There are a number of good references on conducting citizen surveys, such as *Public Opinion Polling: A Handbook for Public Interest and Citizen Advocacy Groups*.²²⁶ While volunteers can carry out the actual survey, it is vitally important that a qualified professional design the survey and the sampling methodology. I have seen more than one citizen group invest a lot of time and money in a survey only to have the results prove worthless due to poor design.

PETITION

The petition does have a place in advocating for Smart Growth, but this tactic also has some severe limitations. Of course a petition is crucial for getting a referendum issue on the ballot. But a petition tends not to be terribly effective in swaying decision-makers. The reason is that most decision-makers know it is easy to get people to sign a petition. So you start off with a device which does not necessarily show a high level of public support for a solution. Additionally, within two

²²⁶ Public Opinion Polling, by Celinda C. Lake for the Montana Alliance for Progressive Policy, published by Island Press, 165 pp., 1987.

weeks most petition signers will not recall what it was they signed. More importantly, it is unlikely someone will go to the trouble of tracking how a decision-maker acted on an issue simply because they signed a petition. In other words, come the next election it is unlikely petition signers will know how candidates acted on the issue and then use this as a basis for casting votes. But there are ways of making petitions more effective. For instance, you can make follow-up mailings to petition signers to increase their depth of knowledge and commitment to the issue. You can then do a final mailing so petition signers receive it a few days before an election. This final mailing will show which candidates did and did not support the solution advocated on the petition. If decision-makers know you plan to take these steps, then the petition will have greater impact. However it is hard to get this message across without sounding like you are making a threat, which is generally a mistake.

At first blush it may seem a simple matter to draft a petition. Sadly, this is not the case. If a petition is being used to get an issue on the ballot then it must meet a verify specific legal form both in terms of how the heading is worded and the space provided for signatures, printed name, address, etc. Also, you may need to verify that signers are currently registered to vote. More than one citizen group has collected thousands of signatures only to have them all thrown out because of some procedural snafu. Obviously you should consult with an attorney experienced in petition format before launching a drive.

CHARRETTE

Over the last decade a collaborative process known as a charrette has been used increasingly to resolve land-use disputes. Typically, the charrette process lasts three-days to a couple of weeks. During the charrette stakeholders (citizens, developers, government officials, affected business and land owners, etc.) meet with a “design team” brought in from the outside. The design team consists of experts from various disciplines (planners, environmental engineers, etc.) who provide objective input on technical and process issues. The intent of the process is to provide all stakeholders with the resources needed to understand issues and evaluate alternatives. The stakeholders are then encouraged to thoroughly evaluate each alternative in hopes of arriving at a mutually satisfactory solution.

Because of the time and expense involved, charrettes tend to be used only for planning at a town, county or watershed level, although they have been applied to large individual projects, such as one which would substantially alter the character or size of a community, town or area.

Calling for a charrette can be a great way for citizens to gain the time and resources needed to thoroughly evaluate a proposed project or a comprehensive plan change. However, it should not be used solely for delay.

Again, if a project or plan change has major quality of life repercussions then a charrette offers a way ensuring that it only proceeds after thorough evaluation in a process where you are an equal participant. But a charrette is not a guarantee that the process will be fair, much less that your viewpoint will prevail.

The fairness of the charrette depends upon the objectivity and biases of the design team, as well as those sponsoring the charrette, which are usually local elected officials. There are a number of professionals and enterprises serving as charrette design teams. You should insist upon a role in selecting the design team. As teams or team members are proposed ask for a list of all the charrettes each has served. Contact the citizens involved with several of these charrettes to learn how well the design team performed. As the charrette proceeds compare the advice given by design team members with that provided by citizen advocacy groups. This may allow you to determine if the advice fairly reflects all viewpoints - pro-citizen as well as pro-development.

To learn more about charrettes visit the following websites: CharretteCenter.Com or the [National Charrette Institute](http://NationalCharretteInstitute).