

Why Do Public Agencies Collide ?

UGH!! Why doesn't that other *%#^&@* agency realize I also am a public agency???

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Ask most seasoned public agency right of way professionals what their most difficult negotiation has been and often you will hear it was a case involving another public agency (OPA). Why is it that public agencies have such a difficult time dealing with one another? What are the forces that create tensions between public agencies? What can you do to minimize conflicts with other public agencies?

The key to understanding why local public agencies (LPAs) collide is to understand the forces affecting public agencies. The principal forces are bureaucracy, politics, funding/budgets, schedules, priorities and staffing. In this article, we will look at why each of these factors creates obstacles, along with some suggestions how right of way professionals can minimize the negative impact of each.

BUREAUCRACY

People often think of bureaucracy in a negative connotation. It is helpful to remember that bureaucracies are created to bring order and predictability to large enterprises. Elliott Jacques¹ suggests that it is the faulty way bureaucracy is practiced that is at fault. Bureaucracy is organization structure and internal communication processes. At best, bureaucracy clarifies the manager's scope and provides room to maneuver. But the shape that bureaucracy takes can be unique to each agency and different between organizations. The organization structure and common processes are typically unique to each agency. The differences in the bureaucracy between public agencies often create tensions that interfere with successful negotiations. What surprises many is that bureaucracy is quite often a product of organizational size and purpose rather than an arbitrary set of do's and don'ts.

While working for the Forest Service, a large national agency with national and international responsibilities, I had occasion to deal with Weyerhaeuser Company, a large international company. We often had issues relating to our intermingled ownership, and they would tease us about the bureaucracy of the Forest Service.

One day I sat down with my counterpart at Weyerhaeuser, and we diagrammed the organizational structure of the company and

Checklist for Avoiding Conflict with Agencies

- Create a diagram of organizational structures and the approval authority of each agency.
- Each public agency should develop a clear and written description of the communication and approval processes of their respective organizations.
- Build political capital whenever you have the opportunity.
- Being a public agency does not mean you cannot be creative in finding solutions to problems.
- Determine whether their response to your request will be driven by their staffing constraints, limited budget or conflicting priorities.
- Always try to meet with the other agency and agree on a mutual schedule before committing to any timeline independently.
- A Memorandum of Understanding (MOU) may allow you to be very creative and remove troubling schedule conflicts.

compared it with the Forest Service. We were both surprised to discover that the organizational structure was so similar! Next we noted the approval authority of each level of the organization. Here there were slight but important differences. Knowing the difference helped immensely in resolving conflicts. Create a diagram of organizational structures and make visible the approval authority of each agency. It is an effective tool for minimizing conflict between agencies. This tool will facilitate effective communication.

Some bureaucracies are mammoth while others are very small. Ripe ground for conflict exists with this structural imbalance. Often the larger bureaucracy is more rigid in its processes because it has a longer authorization trail. For them, standard forms and processes speed approval through multiple organizational levels. However there is an inherent danger in larger organizations for the staff to expect outside entities to use their forms and processes.

A Classic Example

A small water agency held an exclusive easement for a regional water pipeline. A large state agency that needed to cross the easement sent acquisition forms that the water agency wanted modified. The water agency held that the documents as proposed failed to provide an adequate description of how the project would affect their facilities. The state agency stated that the forms submitted were always used, and that protections would be described after further design. The water agency still refused - stating that the project needed clarification so they could identify what protections were required. The water agency also informed the state agency that the acquisition document would need to reserve rights consistent with the agency's prior rights. The water agency simply wanted to protect its prior rights. It could assert a greater public need for the water pipeline than the state agency could assert for its project. The state agency was reluctant to deviate from its standard practices.

The conflict was resolved when the parties sat down and, using a timeline, diagramed the issues and authorization levels that were required to reach a resolution. An underlying reason for the conflict was that the state agency's local staff did not want to go to the state office for approvals required when there is a deviation from their normal processes.

When public agencies are working with one another it is important to develop a clear and written description of the communication and approval processes of their respective organizations. The sooner in the process and the higher in the organizational levels that this can be accomplished, the more likely the success of the effort. This process parallels the modern construction strategy of "partnering" that is popular today.

Politics

One of the goals of the politician, in addition to representing his or her constituents, is to get (re-)elected. The goal of the public agency staff is usually to build a project. These goals can come into sharp conflict with each other. Politics can quickly turn a simple property issue between public agencies into a nightmare. The goodwill you develop with OPAs may be the only thing that saves your project in troubled political times. The important focus for the real estate staff is to quickly identify the political issues and constraints that are going to affect the project, and involve up line staff with political capital to help bring about a resolution.

Build political capital whenever you have the opportunity

The one common characteristic of public agency work is that it frequently requires dealing with other public agencies. A powerful truth that should motivate public agency right of way agents is the old adage, "What goes around comes around." If you are helpful and cooperative with an OPA, then you stand a much better chance of having the same courtesy returned when you are in a bind. This is true both inside and outside your organization. Keep in mind this cooperation extends between

individuals. According to Mohrman and Mohrman,² "individual organization members will also have to build rich personal networks of contracts" in order to be effective in working across organizational boundaries.

When Complexities Arise

Another complexity that can occur with LPA's is that they are sometimes interwoven. Following is an example where one agency holds seats on the board of the another public agency:

Two council members from LPA #1 spoke at a board meeting of LPA #2 urging relocation of a facility from a planned site that had been opposed by nearby residents. A proposal by the residents (endorsed by the council members of Agency A) was to move the facility to the nearby property owned by Agency A. The LPA #1 held seats on the board of LPA #2, consisting of 40% of the vote. According to the LPA #2 charter, a 2/3 majority was necessary to adopt a resolution of necessity. The representatives from the LPA #1 serving on the LPA #2 board recommended approval of the location change even though it would cost several million dollars more to construct at the alternate site. How do politics play into the acquisition? What else might you want to

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know about the political situation if you are the agent working for the LPA #2?

The political reality was that the LPA #2 could not pass a resolution of necessity to acquire the less expensive original site as long as the representatives to the board from the LPA #1 opposed the location near the residents. Also, the two council members that supported the move comprised only 25% of the LPA #1 board. How could politics further affect the outcome?

What if the two council members, who were the key proponents of the alternate site, held little sway with the remaining six council members of the LPA #1? What if the alternate site was in an open space area and the board of the LPA #2 had a strong preservation orientation? Up to this point, the LPA #1 had not formally taken a position, even though its representatives and its two council members favored the proposal. You might find yourself in the position of thinking you had a deal - only to learn that the LPA #1 did not support the decision.

With intermingled LPAs it is even more important that respective staff understand the organizational intricacies and political motivators of each entity. The policies of current political administrations, the partisan composition of the legislature and other similar factors at state, county and municipal levels of government will similarly affect the organization environment and therefore the manager's behavior.³

The key point for goal-oriented right of way managers is that they must become detectives in search of learning about political realities of the organizations they partner with. In the Regional Management Academies conducted by "The Centre for Organizational Effectiveness," the tool of mind mapping is often used.

Mind Mapping as an Option

Mind mapping is a way to demonstrate the many influences on the internal manager of the organization. Using inquiry skills to learn about why your counterparts see the world as they do, who has power and what are larger pressures impacting small projects are all ways to help clarify the political realities. These methods help the intelligent right of way professional to sort through the morass and find a path that can address the seemingly “non-rational” issues. Political concerns are entirely rational, but they are often hidden from view unless one looks carefully. A tip from the authors of “The Price of Government”⁴ is apropos: “Get the political stars aligned if you want to make fundamental change.”

Funding and Budgets

When dealing with another public agency it is imperative to know if they are budget driven or schedule driven. One or the other will almost always dominate. Recently a LPA was dealing with a nearly bankrupt LPA. Knowing the financial problems involved enabled the staff to seek creative ways to move projects along a critical project schedule.

There would be difficulty finding funds for analysis needed to process the acquisition request. The respective agencies, understanding the funding constraint, proposed to have the project-generating LPA fund the studies up front and allow the bankrupt LPA to reimburse the cost from the proceeds of escrow at the back end. Being a public agency does not mean you cannot be creative in finding solutions to problems. Too often LPA staff hides behind their bureaucracy without doing the work necessary to identify workable solutions.

It is all too easy to get focused on your LPA's need for response to requests without understanding that the other agency does not have the funds to respond. On the flip side, your LPA may need to recognize that another agency may be schedule driven to the point they are willing to help with paying for services (if you are short of funds) in order keep their project on schedule. To help minimize conflict with OPAs, it is important to know whether their response to your request will be driven by their staffing constraints, limited budget or conflicting priorities.

Another funding issue is federal funding. Your LPA may not have experience with federally-funded projects. Federally-funded projects have rigorous requirements for documentation, appraisal and appraisal review. A healthy discussion with an LPA who approaches with a federally funded project is imperative for you to understand the difference in timeline and cost.

Schedule and Priorities

Along with budget, schedule and priorities are the most significant forces affecting a public agency. Conflicts often arise when Agency A is under time or schedule constraints and Agency B is constrained by budget and/or staff resources. The challenge for Agency A is to get a mutual understanding of the acquisition timeline from Agency B early in the project life. Unfortunately, what happens all too often is that staff from Agency A commit to a timeline within their agency without consulting Agency B. Conflict mounts when the timeline begins to “slip” and Agency B is perceived to be holding things up. In reality, Agency B may be ahead of their anticipated schedule. In order to minimize conflicts between public agencies, always try to meet with the other agency and agree on a mutual schedule before committing to a timeline independently.

Just because you have a priority project on a critical schedule does not mean the other agency has the same level of priority for your project. So what do you do when you have met with the other agency and the schedule they give you busts the project timeline? You have several choices:

1. Find some political capital to apply pressure for elevating the attention to your project. This may require your up line supervisor(s) to intervene.
2. Pool several issues if you have other work with the OPA so that your project can draft with other issues that the OPA may consider more important.
3. If you have a lot of work with the OPA where you each acquire from each other, then consider a Memorandum of Understanding (MOU) whereby you simplify and standardize procedures for acquisition. You may want to agree to value and execute deeds as the need arises but only exchange compensation every year or two. A MOU may allow you to be very creative and remove troubling schedule conflicts.
4. Change your schedule or realign your project. Sometimes it is not worth the effort to fight the schedule barriers that an OPA may create.

Staffing

Staffing is usually a concern in conjunction with one of the other factors covered. A staffing issue can arise when there are vacancies in the OPA and/or critical expertise is unavailable. An example might be that Agency A needs property from Agency B, and Agency B has a vacancy in a review appraiser's position. Whatever the staffing issue might be, you may need to offer to pay to have the agency contract for the required services. This not only helps you to maintain you schedule, but it may gain you some political capital that could prove useful in the future. ■

References

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