



How to Defeat and Reform the Regulatory Bureaucracy and Create Shovel Ready Projects

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Introduction

After attempting to stimulate the U.S. economy with federal stimulus funding for construction of projects that were “shovel ready”, the President frustratingly discovered what more experienced mayors, county executives, governors, developers and business executives have long known. There exist in all levels of government throughout the country pervasive regulatory bureaucracies that can, and often do, whether intentionally or not, sabotage economic development efforts.

A shovel ready project is one that has all required permits and approvals to begin construction. The construction could be for a highway, bridge, school, business park, senior housing, pipeline, office building, building renovation, neighborhood revitalization, shopping center, manufacturing plant or any other job creating and economy stimulating project. The approvals

and permits need to be obtained from multiple regulatory agencies operating under authority of well-intended legislation. However, a regulatory bureaucratic system has developed that was likely not anticipated by legislators and is often counterproductive to both legislative intent and economic growth. A system has evolved that delays or prevents job creating and tax revenue generating investment, adds unnecessary and excessive costs, profits regulatory consultants and stymies effective and timely regulatory decision making.

The U.S. nation-wide regulatory regime has grown over time to include planning, transportation, environmental, energy, conservation and other protecting agencies, in addition to local building inspectors, fire marshals and countless others from whom Americans must obtain approvals.

This regulatory system is in need of reform.

This report follows the timeline of an actual case study of a regulatory approval process to illustrate the failings of the regulatory system and some simple and implementable reforms to better provide for accomplishing regulatory missions without impeding economic expansion.

Case Study

The attached Regulatory Process Time Line outlines the process of an actual recent application to a state transportation department [DOT] by an industrial park developer. The developer, previous to this application, developed an industrial park and was successful in selling parcels to three job creating manufacturing companies. The developer constructed DOT required off-site traffic improvements to allow the three sales. Further sales required additional off-site traffic improvements to be approved by DOT because of projected increased road traffic generated by the new manufacturing facilities. The industrial park had sufficient land remaining for about 6-10 additional parcel sales. The understanding with DOT at the initial agreement was that the developer would continue with construction of off-site traffic improvements in a phased manner to allow incremental parcel sales.

The developer's request for DOT's approval of the scope of an off-site traffic study was delayed and obstructed by the regulator's repeated use of numerous outside consultants who profit by continuous reviews, lack of clear decision making authority and responsibility within the regulatory staff, and unrealistic response time requirements placed on the regulators.

It would take the developer an incredible 34 months to receive approval from DOT. It was only after intervention by state legislators and a meeting with the cabinet level DOT head that the regulatory bureaucracy moved to approve the project.

Complicating the problem for the developer was that the industrial park was financed in part by a loan from another state agency to encourage the creation of manufacturing jobs. The developer was facing default on repayment of the state loan because there were no proceeds from further land sales to service the debt while DOT obstructed the project. In time the lending state agency, aware of DOT's history, understandingly and cooperatively agreed to restructure the state loan debt, and allowed time for the developer to defeat the DOT bureaucrats.

Although this example involves a transportation bureaucracy the lessons learned apply to many governmental regulating bodies. The problems illustrated here are systemic.

Recommendations

1. **Prohibit the hiring of outside consultants by regulatory agencies.** If only one reform could be implemented this is it. Regulatory bureaucracies hire consultants, at tax payer expense, to review permit or approval applications. The consultants have an incentive to discourage early approvals which would reduce their billable hours. In practice, each consultant review results in additional conditions and questions, which applicants need to respond to after incurring additional fee expenses from their consultants. Regulatory staffs appear reluctant to discontinue outside consultants because they allow staffs to avoid decision making responsibility and present possible post governmental service employment opportunities for the regulators.
2. **Give regulatory staffs clear authority and responsibility to make decisions.** Many regulatory bureaucrats have the training and willingness to make timely decisions, but they work in an environment where there is no clear delegation of authority. They are caught in a system designed to disperse responsibility among a number of staffers, each of which can neither approve nor disapprove an application, and some of which actively avoid responsibility in fear of future criticism of their decisions. Regulatory agencies must employ fully qualified staff with the authority, responsibility and expectation to make timely decisions without fear of later criticism. No application should be rejected unless there is a demonstrable violation of legislative statutes or legally promulgated regulations. Regulators must not be allowed to arbitrarily make rules at their own discretion.
3. **Reconsider agency response time requirements.** Attempts have been made in the past to reform regulatory bureaucracies by imposing response times on the agencies' actions. These response times are often 30 or 45 days from the time an application or a reply is received. But in practice short response times can be counterproductive. If there is insufficient time for a full review the regulators simply meet their time deadlines with a

list of question or concerns which the applicants must respond to with the aid of, and additional payment of fees to, their consultants. This triggers another response time requirement on the regulators met with another set of questions or concerns, continuing the cycle. The net effect of short response times can be unintentionally delayed approval times. It might be better to give regulators a reasonable time period to review applications without the pressure of meeting time limit demands that are too short for efficient operations.

4. **Be willing to be confrontational and aggressive when interacting with poorly performing regulators.** American citizens should not be submissive, meekly compliant or patient with regulators that cannot perform their duties in a timely and efficient manner. This could enable underperformance and even bullying. If required, be prepared to defeat regulatory bureaucracy by being aggressive at meetings and demand to know why projects are delayed, contact legislators or other public elected officials for assistance in dealing with ineffective regulators, and as a last resort, shed the light of the news media on problem regulators.

Implementation of these few recommendations could help defeat and reform the nationwide regulatory regime and stimulate more rapid economic recovery with shovel ready projects.

Attachment
Regulatory Process Time Line
Industrial Park Case Study

Month #1

- Developer submits scoping application to DOT

Month #3

- Developer receives comments from DOT
- Developer's consultant request meeting with DOT

Month #4

- Meeting with DOT results in approval of scope of traffic study for phased off-site traffic improvements
 - Data collected for traffic counts

Month #6

- Traffic impact study submitted to DOT
- DOT sends study to outside consultant for comments

Month #8

- DOT reneges on agreement of traffic study scope and methodology
- DOT adds 7 distant road intersections to study scope and changes agreed methodology

Month #9

- Developer amends contract with its consultant to add the additional number of intersections and increase contract fees accordingly

Month # 10-13

- Developer's consultant collects data and completes traffic impact study to meet DOT's broadened requirements

Month #14

- Revised study submitted to DOT

Month #15

- DOT sends study to a different review consultant

Month #16

- Developer receives comments from DOT
- DOT reneges on phased traffic improvement plan and wants developer to first purchase extensive, impractical and unfeasible road intersection right-of-ways as a condition of further review of the plan

Month #17

- Developer request meeting with DOT

Month #18

- Meeting held with DOT staff
- DOT promises to reconsider right-of-way acquisition requirement

Month #19-28

- DOT emails that project would be discussed that day
- DOT emails that staff did not come to conclusion
 - DOT requests minutes of earlier meeting
 - Minutes sent to DOT
 - DOT reminded to review minutes
 - Phone call reveals minutes not reviewed by DOT
 - DOT reviews and approves minutes
 - DOT sends additional comments to developer
- Developer authorizes its consultant to proceed with revisions to the plan and submit to DOT
 - Revised plan submitted to DOT
- Numerous calls and emails to the DOT checking on status of review
 - DOT replies that review not begun
 - DOT promises review in 21 days
 - DOT sends plan to outside consultant
- DOT adds new requirements for approval of project

Month #29

- Developer decides to take a more adversarial and aggressive tactic and contacts state senator and state representative for assistance

- State legislators contact DOT department head to resolve problem

Month #30

- DOT staff schedules meeting with developer

Month #31

- Developer meets with DOT staff and is confrontational during meeting, refusing to incur any additional costs, and demanding either approval or disapproval of plan
- DOT staff agrees to approve plan subject to approval by local and county governments
 - Developer agrees to condition

Month #32

- DOT sends plan to another different outside consultant for comments
 - Consultant suggests changes and new conditions
 - DOT sends outside consultants comments to developer
- Developer sends “come on guys” email to DOT staffers reminding them that review process ended
 - DOT calls to tell developer to ignore consultants comments

Month#33

- Developer secures approval of off-site improvement plan from local and county governments

Month #34

- DOT approves plan substantially the same as the one agreed to in month #4

*Similar studies can be found at the Applied Government Studies Center website
[www.agscenter.org]*

