

There is more than one way to resolve a claim

By Luis Fragoso

Land Use claims can be very convoluted as they usually involve a hodgepodge of complaints, venting and facts, some of which involve third parties not associated with the City. Making sense of the allegations made by a pro se claimant (someone acting on his or her own behalf) can be a daunting task and sometimes we have to involve defense counsel early on to help us break up the allegations into more “digestible” portions.

Last year, a 160-plus page Claim for Damages was filed against one of our member cities alleging that the claimant was being targeted and retaliated against by the City for trying to build a house on a property where another house was destroyed by a landslide some time ago. The claimant had to get many permit variances, waivers and other unique approvals to build and she finally received a decision from the City’s hearing examiner allowing construction, but with many specific conditions.

This claimant has a history of abusive behavior towards City staff and they indicate that her behavior is unpredictable and ranges from being nice to throwing papers at them. Her Claim for Damages contained a mix of claims directed at the City and others unrelated to the City. She also described constant and ongoing fights with her neighbors which generated several lawsuits but none involving the City. Moreover, she had made similar claims against the City almost ten years ago and then again, a couple of years ago.

After reviewing the allegations and discussing the matter with City staff, defense counsel wrote a letter to the claimant explaining that many of her land use claims appeared to be time barred under LUPA or even a three-year statute of limitations; some others were outside the City’s control (the claims against her neighbors), and others were subject to a public duty doctrine defense.

Surprisingly, we received an interesting and unexpected response from the claimant in which she acknowledged that her Claim for Damages was primarily prompted by various unique problems in the construction of her house, none of which are the City’s fault or due to any City actions or inactions. She even acknowledged that she could have been nicer to staff!

A compromise was reached to have City staff meet with the claimant on a bi-weekly basis (rather than on a daily basis like she demanded) and provide assistance as needed through the conclusion of her project. In addition, defense counsel offered the following suggestions to the City:

1. Whenever possible, try to communicate in writing.
 - a. Explain this is necessary because it provides documentary support for when and what is happening or being said or requested, and to avoid misunderstandings and miscommunications.
2. Designate one staff person to be the point of contact, if possible.
3. Hold meetings as appropriate and necessary.
 - a. Explain that the City has limited staff, limited time, and limited resources.
4. For all meetings, ensure that there is more than one City staff person present (if possible) to have a “back-up” in the event of later claims of misrepresentation or similar communication issues.
5. For all meetings, make a written record of the meeting.
 - a. Keep in mind that such notes are public records subject to the Public Records Act (PRA) and may also be subject to production or disclosure in discovery or litigation.
6. The City Attorney should be advised of any meetings where threats of a claim or lawsuit are made, or where staff believe a claim or litigation may result from what was discussed.
7. The City Attorney should attend any meeting where someone brings, or threatens to bring, an attorney.
8. Staff (or the City Attorney) should respond to written communications or requests in a reasonable time period - generally within seven days. If a response will take more than seven days, staff should send a short (form) letter advising the requestor that staff is working on a response and that one will be coming by _____ [date] (similar to a PRA response letter advising when the City can't make the five-day response period).
9. At all times, be respectful and polite, even if the other person is not. If staff feels physically threatened, the meeting should be cancelled, and the citizen asked to leave. If she/he refuses or the threats escalate, call for additional City assistance or, if necessary, the police.

Please continue sending WCIA your claims. We are committed to working with you and finding the best way to resolve them.