

Findings of Fact for Planning Commissions

LAW

Picture this scene: A typical planning commission is meeting to consider a controversial zone change—it could be anywhere in the country. The meeting is crowded and emotions run high. The planning staff presents their staff report with its exhaustive analysis. The applicant makes a long and detailed presentation complete with appearances by an attorney, architect, engineer, landscape architect, and traffic engineer. A parade of citizens speak, voicing a wide range of statements and opinions, some on point, some not relevant to the case at hand, almost all in opposition. The commission is attentive and diligent, and the information is substantial and complicated. After many hours of testimony, the planning commission deliberates extensively. Finally a motion is made to approve the project; it is voted on and approved. The announcement is simple: “Motion to recommend approval of the project.”

What, if anything, is wrong with this familiar picture? By all accounts, commission members ran a fair meeting and were dedicated to making the best decision for their community. Isn't that their job?

Understanding the answer is a key to understanding the nature of planning commission decisions. Yes, it is the job of planning commissions to make decisions in the best interest of the community. However, they must do so by making the critical connection between facts and standards in order to avoid being arbitrary and unfair. The problem with our scenario is that the planning commission did not explain the basis or rationale for its decision. It did not make a connection between facts and standards.

Planning commissions are hardworking groups that have the best interests of their communities at heart. However, it is not enough to work hard and have your heart in the right place. Planning commissions should do more than decide whether they “like” the project that is before them or whether it is a good thing for the community. *Planning commission decisions should be based on a careful consideration of facts and whether those facts allow the planning commission to conclude whether applicable community policies and standards are met.* Those facts should be site- and neighborhood-based; the policies and standards should be grounded in the community's plans and in their land-use regulations. In short, decisions should be based on a sound basis and rationale.

This article focuses on findings of fact as a tool to communicate how and why planning commissions make a decision. First, there are several important caveats: The laws that govern planning commissions, and how they are required to document their decisions, vary from state to state and community to community. Some states and communities require that planning commissions document the basis of their decisions; others do not. Each commission and their staff should become familiar with the unique requirements of their jurisdiction. However, regardless of what the law requires, planning commissions should clearly communicate the basis of their action as a simple matter of good government. The public has a right to know why decisions are made the way they are.

“Findings of fact” are specific facts about the application that the planning commission finds to be true and which lead to its conclusion that the application conforms or fails to conform to applicable policies and regulations. Findings of fact are the “footprints” that show the connection between the decision of the planning commission, the factual basis for the decision, and the community's policies and regulations.

The following are some principles that can guide planning commissions as they think through the best way to make findings of fact.

PLANNING COMMISSIONS ARE NOT COMMITTEES OF COMPASSION. While planning commissions can and should exhibit compassion for applicants and other citizens, it is ultimately the job of the commission to make fact-based determinations and not be influenced by emotions or personal stories.

DECISIONS MUST BE BASED ON FACTS. Zoning decisions involve physical places. Decisions related to planning and zoning cases should be based on the facts associated with the property and the physical issues in the surrounding areas.

FACTS MUST ADDRESS THE STANDARDS. When reviewing an application, a planning commission must have the applicable policies and standards in front of them. The thought process of the planning commission should focus on fact-based information relevant to community policies and standards.

THE BURDEN OF PROOF IS ON THE APPLICANT. While the planning commission can and should have user-friendly procedures and meetings, ultimately it is up to the applicants to demonstrate that they meet the community standards.

INFORMATION IS NOT THE SAME AS ‘FACTS.’ It is up to the planning commission to sort through what it determines to be relevant facts. Planning commissions typically hear a wide range of information and testimony during the course of an application, and it is the commission's responsibility to sift through it. Not all facts are equal. It is the commission's job to weigh the applicability and credibility of information.

OPINIONS WITHOUT A FACTUAL BASIS ARE WITHOUT MERIT. Experts and citizens alike are entitled to their opinions. However, when people present opinions at meetings, the planning commission has a right and an obligation to request and determine the basis of that opinion.

There are many ways for a planning commission to structure findings of fact. One is to include facts, reasons, and rationale as part of motions for each proposal. Another is to make a provisional decision to approve or deny an application, providing staff with guidance in drafting a resolution detailing the findings for action at a subsequent meeting. Yet another is to structure staff reports as templates for

proposed findings, subject to modifications by the commission. Commissions should work closely with their planning staff and legal counsel to determine the best mechanism for each community depending upon its own legal requirements.

The following are some options that a planning staff or commission can review as they think through what would work best for its community:

- ▶ Use the initial application to require an applicant to explain how their proposal meets the community's standards.
- ▶ Use the planning staff report to present proposed findings of fact based upon the standards.
- ▶ Encourage speakers at meetings to present factual testimony related to standards.
- ▶ Have the actual standards in front of the commission when hearing cases.
- ▶ Encourage the planning commission to ask specific questions designed to elicit evidence related to the standards.
- ▶ At meetings, explicitly deliberate the facts and relationship to the standards after the public comment period is complete.
- ▶ State the basis and reasons when making motions.
- ▶ Use minutes to clearly reflect the conclusions of the commission related to the basis and rationale for the decision.

Findings of fact are an effective tool to make sure that a planning commission stays focused on their mission: making fact-based decisions based upon community policies and standards. It is an effective way for a commission to provide discipline in its decision making. It also provides the public with a better understanding of how and why planning commissions come to their conclusions.

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