

OVERVIEW

Planning commissions play a crucial role by acting as advisors to municipal elected officials on community planning issues. In most cases, planning commissions will provide recommendations to the municipal governing body, which has the authority to enact legislation or grant final approval to proposed developments. Whenever a planning commission takes action on an item, it should provide written findings of fact related to that action. Findings of fact create a link between an adopted plan, policy, or ordinance and the planning commission's formal recommendation or decision.

WHAT ARE FINDINGS OF FACT?

Findings of fact are the specific reasons given by a municipality to either approve or deny an application or request. Findings of fact should be, as the name implies, based on fact and substantial evidence rather than opinion.

Findings should be provided for administrative decisions (subdivision and land development plans) and for most legislative decisions (zoning map amendments, zoning text amendments).

For example, if an applicant submits a plan to subdivide a parcel of land but fails to comply with the municipality's subdivision ordinance or



zoning ordinance, the planning commission could recommend denial of the application based on the findings that the request did not

comply with municipal regulations. In many cases, these types of findings will be outlined by staff within a staff report or in the agenda.

Findings of fact serve three primary purposes:

- They articulate the planning commission's position to the governing body and provide the factual basis that was used to make their recommendation or decision.
- They provide the applicant with an understanding of the facts that were used to approve or deny the request. These findings can help enable the applicant to determine whether, and on what basis they could request further judicial review.
- They support the municipality's decision on the issue should a challenge be presented in the courts.

WHY ARE FINDINGS OF FACT SO IMPORTANT?

The American Bar Association's 2008 Model Statute on Local Land Use Process provides court guidelines that recommend reversal or remand of a land-use decision if the local government:

- a. Exceeded its jurisdiction;
- b. Failed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;
- c. Made a land use decision based on findings of fact, or an application of laws to facts, that is not supported by substantial evidence in the whole record;
- d. Improperly applied the land development regulations or other applicable laws; or
- e. Made an unconstitutional decision;
- f. Made a land use decision that is not consistent with the local comprehensive plan as it existed at the time of the development application; or
- g. Made a decision that is arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law.

While findings of fact play a crucial role in providing the governing body and the applicant with the reasons for a planning commission decision or recommendation, findings of fact help to provide evidence that should ultimately make municipal decisions legally defensible. The absence of findings of fact or the absence of substantial evidence to support findings can result in the courts reversing or remanding a municipal land use decision.

Written findings of fact supported by substantial evidence should be provided whether or not a planning commission envisions the approval or denial of an application or request being challenged in court.

HOW ARE LEGALLY DEFENSIBLE FINDINGS CREATED?

Findings of fact can be created through orderly analysis of an application, where evidence is linked directly to the planning commission's conclusions. To create legally defensible findings, a planning commission can follow this procedure:

1. Identify the applicable law(s). Planning commissions should identify what laws apply to the request in order to understand any criteria or standards that apply.
2. Identify facts from opinions. Facts related to the request should be identified and should be supported by substantial evidence. Planning commissions should avoid utilizing opinions in rendering decisions as most opinions cannot be supported by substantial evidence.
3. Form a decision that links the applicable law with the supporting facts, or absence of the same.

For example, zoning text and map amendments are required by the Municipalities Planning Code to be generally consistent with a municipality's adopted comprehensive plan. If an amendment is proposed and found to be generally consistent with the comprehensive plan, such a finding could be made as part of the record. Findings of fact should be presented at the time a motion is made by a planning commissioner. For example, if recommending denial of an application, the planning commissioner would qualify that motion by presenting findings of fact that led to the conclusion that the request should not be approved.

EVIDENCE TO SUPPORT FINDINGS OF FACT

Municipalities should expressly state their findings and provide relevant facts to support them. Evidence should be included in the record of the meeting. Evidence can consist of staff reports, written and verbal testimony, and other documentation. If substantial evidence does not exist to render a decision or recommendation, the planning commission could consider continuing the item to a future meeting so that further analysis can be conducted.

When a recommendation or action is motioned by a planning commission member, findings of fact should be stated in support of the motion. These findings of fact should be included within the meeting minutes as an official record of the planning commission's reasoning for its decision. Findings may be provided by Staff in a report or in the agenda, or the planning commission may identify findings based on their own research. If staff did not provide the planning commission with findings or if the planning commission decides to take action contrary to staff's recommendation, adequate findings must still be provided.

The following is an example of a planning commission motion and findings of fact related to a rezoning request.

The planning commission recommends that the governing body deny the proposed rezoning based on the following findings of fact:

1. The proposed rezoning is inconsistent with the comprehensive plan's future land use map.
2. The proposed rezoning is inconsistent with the comprehensive plan's goals and policies related to the location of high density residential housing.
3. The proposed rezoning would permit uses that are inconsistent with surrounding land uses and would create negative impacts on adjacent property owners. This includes commercial uses that are inconsistent with the single-family residential character of the area.
4. The proposed rezoning is inconsistent with adopted plans for the general area and could constitute spot zoning, leaving the municipality vulnerable to a validity challenge.

For more information, contact:

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