

DESK PACKET

(MATERIALS SUBMITTED AFTER MEETING PACKET PUBLICATION)

G. OTHER

- 2. Planning Commission Training
Best Practices For Quasi-Judicial Findings**



Best Practices for Quasi- Judicial Decisions

Findings of Fact: Part 1

A quick reminder!

- ◆ “Quasi-judicial decisions” are those decisions where general law or policy are applied or affect an individual’s property interests. Such decisions include but are not limited to preliminary and final plat approvals, conditional use permits, and exception and variance applications.

“LAW OR POLICY” MOST OFTEN MEANS STANDARDS IN CODE

Examples:

Anadromous Waters Habitat

Protection CUPs: 21.18.081(D)(1)-(5)

1. The use or structure will not cause significant erosion, sedimentation, damage to the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems;
2. Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough code, and other applicable planning documents adopted by the borough;
3. The development of the use or structure shall not physically damage the adjoining property;
4. The proposed use or structure is water-dependent.
5. Applicant or owner's compliance with other borough permits and ordinance requirements.

Building Setback Encroachment Permits: 20.10.110(E)(1)-(3)

1. The building setback encroachment may not interfere with road maintenance.
2. The building setback encroachment may not interfere with sight lines or distances.
3. The building setback encroachment may not create a safety hazard.

Material Site CLUPs: 21.29.040(A)(1)-(6)*

1. Protects against the lowering of water sources serving other properties;
2. Protects against physical damage to other properties;
3. Minimizes off-site movement of dust;
4. Minimizes noise disturbance to other properties;
5. Minimizes visual impacts; and
6. Provides for alternate post-mining land uses.

*Amended by Ordinance No. 2022-36, which takes effect October 1, 2024.

STEPS

1. Rely on the Evidence
2. Develop the Record
3. Be Specific and Detailed

Tips for being a good “judge”...

Rely on the Evidence

- ❖ Planning Commissioners are appointed “for their expertise and knowledge of the community, borough land use, and planning issues, as well as their familiarity with regulations and land use code, and must represent the entire borough.” KPB 2.40.015(D)
- ❖ Do not introduce your own evidence.
- ❖ Do not make assumptions about the evidence.
 - ❖ If you don’t understand exhibits or testimony, **ask questions.**
- ❖ Decisions **may not** be based on an individual Commissioner’s specific knowledge of a matter obtained outside of the hearing process.
 - ❖ Note – this can also be the source of a conflict of interest

Develop the Record

- ❖ The Planning Commission may only decide a matter based on the evidence presented.
 - More evidence is better.
 - Ask questions! Do not wait until you are deliberating to realize that you do not have all the information you need to make good findings.
 - If a party appeals, the Office of Administrative Hearings or superior court will likely rely entirely on the PC's record.
 - Appellate courts don't like to substitute judgment on facts, so...
 - **It must be clear from the record why the Planning Commission reached its decision.**

Develop the Record (cont'd)

Establishing a Fact

- ◇ Statement: *The deck will not interfere with sight lines or distances.*
 - ◇ Is this enough to meet the burden?

NO – it is just a conclusory statement. To be enough to satisfy the law, there must be something to back up the statement. A photo showing an unobstructed view from the roadway, or an engineer's report documenting the deck's impact on sight lines or distances, are "facts" as opposed to a conclusory statement.

Develop the Record (cont'd)

Caveat

- ◇ Not all facts need proof, though. It's okay to use common sense on some facts.

For example, an applicant states: “when I go swimming in the ocean I get wet.”

So, you can use your own personal **general** experiences and common sense when evaluating this statement. However, if you've never seen an ocean or ever heard of an ocean, you cannot research it.



Be Specific and Detailed

“Findings of Fact are the polestar for judicial review. Without them, the court wanders aimlessly through the record.” (Perez v. U.S. Steel, 416 N.E. 2d. 864 (Indiana 1981))

- ❖ The PC’s findings of fact need to be **specific and detailed**.
 - **What evidence did you rely on to reach your decision?**
 - List or describe the specific evidence, or lack thereof, that you relied on to make your decision.
 - Findings should be customized to each specific matter
 - Findings should explain or address each standard or other applicable criteria.
“Apply the law to the facts”

Be Specific and Detailed (cont.)

Examples:

1. *As seen on Page J-3 of the record (“Figure 1 – sight triangle on site as-built from the surveyor) the deck has no effect on sight distance for cars traveling on Maple Street.*
2. *The encroachment is along a straight portion of the ROW as seen on Page J-3 (Figure 2 – “Overhead view of Maple Street and Applicant’s Parcel”) and has no sight line issues. This is also seen on Page J-12 of the record (as-built sketch at the top of the page and the photograph at the bottom of the page showing the Applicant’s deck on Lot 1 in relation to Maple Street).*

QUESTIONS?