



Peter Wilkida

Findings of Fact

Remember grade school tests? You connected items in column (a) to those items in column (b) with which they were most closely related. That's what findings of fact do—link (a) each conclusion a commission must make to reach a decision to (b) those facts presented the commission that support the conclusion.

Unless the commission expressly states these links, its decision is left unexplained. The parties involved and the public are likely to perceive the decision as irrational, arbitrary, and unfair. If the decision is challenged, a court will look first for findings of fact in the record. If it sees none, or if the findings do not support the decision, the court will almost surely invalidate the decision or order the commission to make adequate findings of fact. The lack or inadequacy of findings of fact is one of the most common reasons courts overrule commission decisions.

When Are Findings of Fact Required?

Generally, findings of fact are required in any discretionary land use decision that applies a law, regulation, criterion, or standard to a specific set of existing facts, as determined from evidence presented at a hearing. These are commonly known as adjudicative, quasi-judicial, or administrative decisions. They include decisions on applications for conditional or special use permits and variances, and may include decisions on requests for subdivision and site plan approvals. In some states, they may include rezoning decisions.

What Are Findings of Fact?

Findings of fact are difficult to define (and few statutes or courts do so). They are not mere recitations of the required conclusions set out in the development regulation. But they

are more than restatements of factual evidence presented, for they must reflect the commission's determination, and often its choice, of:

- What the actual facts are—i.e., What evidence is or is not credible? Which of conflicting evidence is the more credible?
- Which facts relate to and support the conclusions the commission makes. The commission may approve an application, deny an application, or impose conditions on approval; and
- How those determined facts reasonably lead to the required conclusions. Although findings of fact need not fully explain or describe how the stated facts support a conclusion, they must at least state enough to show a logical connection between the facts and the conclusion. For example, where approval of a special use permit requires a determination that the proposed development will not endanger the public health or safety, one finding of fact might refer to a traffic study's conclusion that the development will generate a volume of traffic less than the traffic capacity of the adjacent street, and thus can be safely accommodated by the surrounding road system.

How Are Findings of Fact Made?

One process is for the commission to make a final decision and ad hoc findings of fact right after receiving and discussing evidence. This can be time consuming, however, and often results in incomplete and ambiguous findings of fact.

Alternatively, the commission might hear and discuss the evidence, and make a provisional decision to approve or deny the application, but only summarize the factual findings and evidence relied on to reach the required conclusions. It then directs the staff to draft a resolution detailing conclusions and findings of fact consistent with the commission's discussion and summary. It is then submitted for approval at the commission's next meeting. This method provides the best opportunity for well-drafted findings of fact, but the delay can be a problem if the law requires the final decision within a set time period. At times, commissioners may also inadequately summarize the evidence and factual findings supporting their decision, and then unfairly rely on staff to "make it right."

Using a third method, the staff prepares a report that includes a resolution of approval or denial with well-drafted findings of fact. The commission then adopts, modifies, or at least uses the report as a template for coming up with alternative findings of fact. This allows a quick

decision and eases the commission of the burden of drafting findings on the spot. But this may not work well if the hearing presents unanticipated, new evidence, or if the commission substantially disagrees with the action and findings recommended by the staff.

No matter which method is used, commissioners should familiarize themselves with the required conclusions applicable to a particular decision. They should consider what aspects of development each conclusion implicates, and how. They should also pay close attention to all the evidence presented them, whether as part of the application, impact studies, staff report, or hearing testimony. This makes it easier for commissioners to evaluate "material" and "substantive" evidence and distinguish it from irrelevant and insignificant evidence, or mere opinion.

Do Findings of Fact Have to Be Written?

In most states, decisions requiring finding of fact must be in writing, either separately, in a resolution, or as part of the minutes of a meeting. Even if not required to be written, findings of fact should be written, to minimize any confusion about what the commission decided and why. □