THE IMPORTANCE OF FINDINGS

NEVADA CHAPTER, AMERICAN PLANNING ASSOCIATION
STATE CONFERENCE
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Exercise

- Variance application for addition to existing garage that is at zero setback (Code requires 20'). Existing garage constructed on 20% slope prior to code being enacted.

- State statute that permits zoning codes to be enacted requires that variances be granted for hardship.

- Only 1 comment received from Road Division asking that a "hold harmless" agreement absolving jurisdiction from any damages if snow removal operations damage existing garage and/or new addition.

- No noticed property owners appear at hearing on variance application.
Exercise

- What additional information do you need, if any, to render a decision?
- What is your decision and why?
SESSION TAKE-AWAYS

- Distinction between findings of law and findings of fact
- Importance relative to legal challenges
- How to create defensible findings!
WHY IS IT IMPORTANT TO MAKE FINDINGS?

- Creates a link between an adopted plan/policy/ordinance and a planning action such as a zone change, subdivision map approval, etc.
- Creates a legally defensible decision.
FINDING OF LAW

- **DEFINITION:** “A FINDING AS TO THE APPLICABILITY OF A RULE OF LAW TO PARTICULAR FACTS” (WWW.THEFREEDICTIONARY.COM)

- **EXAMPLE:** PROPERTY OWNER SUBMITS VARIANCE APPLICATION TO CHANGE THE BOUNDARY OF AN OPEN SPACE EASEMENT IN A SUBDIVISION. APPLICATION IS REFUSED BECAUSE PROPER PROCEDURE WOULD BE TO AMEND THE SUBDIVISION MAP TO ALTER THE OPEN SPACE EASEMENT.
FINDING OF FACT

Definition: “The conclusions of a judge, jury, or administrative tribunal regarding the underlying facts of the case under consideration.” (www.yourdictionar.com)

Example: Applicant’s representative claimed that water would run uphill because there was sufficient pressure from stream flow. Planning Commission did not recognize this as a fact concerning the availability of a sustainable water supply.
IMPORTANCE OF FINDINGS RELATIVE TO JUDICIAL REVIEW

- AMERICAN BAR ASSOCIATION PROVIDES FOLLOWING GUIDELINES FOR REVERSING A LAND USE DECISION:
  - THE ACTION EXCEEDED JURISDICTION OF DECISION MAKING BODY
    - **EXAMPLE:** Variance for open space easement improper procedure
  - MADE A DECISION NOT SUPPORTED BY WHOLE RECORD WITH REGARDS TO FINDINGS OF LAW OR FINDINGS OF FACT
IMPORTANCE OF FINDINGS RELATIVE TO JUDICIAL REVIEW

- AMERICAN BAR ASSOCIATION GUIDELINES:
- IMPROPERLY APPLIED THE LAND DEVELOPMENT REGULATIONS OR OTHER APPLICABLE LAWS
  - **EXAMPLE:** Failed to make a supportable finding of hardship for a variance
- MADE A LAND-USE DECISION THAT IS NOT CONSISTENT WITH THE LOCAL COMPREHENSIVE PLAN
  - **EXAMPLE:** Grants a zone change that is not consistent with master plan land use designation
IMPORTANCE OF FINDINGS RELATIVE TO JUDICIAL REVIEW

- AMERICAN BAR ASSOCIATION GUIDELINES:
  - MADE A DECISION THAT IS ARBITRARY, CAPRICOUS, AN ABUSE OF DISCRETION, OR OTHERWISE NOT IN ACCORDANCE WITH LAW

  - **EXAMPLE:** Denied a special use permit application because of overwhelming neighborhood opposition to application even though the requested permit met all requirements of the ordinance
CREATING DEFENSIBLE FINDINGS

- IDENTIFY THE APPLICABLE LAW(S)
  - EXAMPLE: Applicant suggested that a conditional zone change could be granted; NRS does not authorize this

- IDENTIFY FACTS FROM OPINIONS
  - EXAMPLE: Water does not naturally run uphill

- WRITE A DECISION THAT LINKS THE APPLICABLE LAW WITH SUPPORTABLE FACTS (OR ABSENCE OF SAME)
  - EXAMPLE: Granting of variance requires identification of hardship; convenience for applicant is not a hardship
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Exercise

- WHAT ADDITIONAL INFORMATION DO YOU NEED, IF ANY, TO RENDER A DECISION?

- NOW WHAT IS YOUR DECISION AND WHY?
THANK YOU!