

Homer Planning Commission Training

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Findings of Fact and Conclusions

- ▶ What are findings?
- ▶ Findings provide the reasons associated with a Commission decision, including:
 - ▶ Identifying the evidence reviewed
 - ▶ Analyzing and explaining the reasons for a decision (including any specific factors the Commission is required to consider)
 - ▶ Providing conclusions explaining how the Commission decided each issue

Why are findings important?

- ▶ The Alaska Supreme Court described several principles supporting the importance of findings:
- ▶ Findings bridge the analytical gap between the raw evidence and the ultimate decision or order.
- ▶ Findings focus on the relationship between evidence and findings, and between findings and the ultimate action taken by the Commission, allowing a hearing officer or court to determine whether the decision is supported by substantial evidence.

3

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Why are findings important?

- ▶ Sufficient findings allow the parties to determine whether and on what basis they should seek review of the decision. If there is an appeal, it allows the court to evaluate the basis of the Commission's decision.
- ▶ Findings force the Commission to draw relevant sub-conclusions that support its ultimate decision.
- ▶ Analyzing findings facilitates orderly analysis by the Commission and minimizes the likelihood that the Commission will randomly leap from evidence to conclusion.

4

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Why are findings important?

- ▶ Findings avoid speculation.
- ▶ Findings conserve judicial resources.
- ▶ Findings enable a court to meaningfully examine an administrative body's mode of analysis.

5

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Why are findings important?

- ▶ When factual findings and conclusions are sufficient, the Commission's decision is unlikely to be reversed by a court. Court review of an administrative body's factual findings is "highly deferential" and courts merely "review the entire record to ensure that the evidence detracting from an administrative agency's decision is not dramatically disproportionate to the evidence supporting it."
- ▶ *Public Safety Employees Ass'n, AFSCME Local 803, AFL-CIO v. City of Fairbanks*, 420 P.3d 1243 (Alaska 2018).

6

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What findings are required?

- ▶ The primary requirements are:
- ▶ 1. The decision must be supported by substantial evidence in the record. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
- ▶ 2. The record must sufficiently reflect the basis for the Commission's decision to allow meaningful judicial review.

7

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What findings are required?

- ▶ The Alaska Supreme Court has explained that each time it had previously found administrative findings to be insufficient, it was because it was impossible for the Court to determine how the administrative body resolved some crucial dispute or other issue.
- ▶ *Alvarez v. Ketchikan Gateway Borough*, 28 P.3d 935 (Alaska 2001).

8

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How to ensure factual findings are sufficient

- ▶ For CUP and Variance applications in Homer, HCC 21.71.050(c) requires the Commission to “issue written findings and reasons supporting its decision.”
- ▶ If there are factors the Commission is required to consider, it should explicitly note those factors and provide its analysis of each factor. Example: CUP criteria in HCC 21.71.030.
- ▶ Each criteria should be analyzed with citations to relevant evidence in the record and a clear finding.
- ▶ Do not leave the parties or a reviewing court guessing at necessary findings or the reasons for them.
- ▶ Even when findings are terse or brief, they are sufficient as long as they address the critical issues and explain the reasons for the Commission’s decision.

9

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Ex Parte Contacts

- ▶ The prohibition of ex-parte contacts applies when a government body is acting in a judicial or quasi-judicial capacity.
- ▶ According to the Alaska Supreme Court, a body acts in a quasi-judicial capacity when it applies general policy to particular persons in their private capacities instead of deciding a general policy or the rights of individuals in the abstract.

10

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Ex Parte Contacts

► Examples of quasi-judicial vs. legislative actions

- Conditional Use Permit hearing – quasi-judicial
- Considering a variance request – quasi-judicial
- Small-scale rezoning – legislative
- Administrative appeals – quasi-judicial
- Comprehensive Plan - legislative

11

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What is an Ex Parte Contact?

- “A contact between the decision-maker and a party, regarding the merits of a matter under adjudication made without notice and opportunity for all parties to participate.”
 - The State of Alaska Hearing Officer’s Manual
- “To communicate, directly or indirectly, with the appellant, other parties or persons affected by the appeal, or members of the public concerning an appeal or issues specifically presented in the notice of appeal, either before the appeal hearing or during any period of time the matter is under consideration or subject to reconsideration, without notice and opportunity for all parties to participate in the communication.”
 - HCC 21.93.710

12

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Reasons for Prohibiting Ex Parte Contacts

- ▶ Ensuring that no person has a special influence over, or opportunity to persuade, a decision-maker
- ▶ Ensuring that all parties to a proceeding have an opportunity to rebut any facts considered by the decision-maker
- ▶ Ensuring all facts considered by the decision-maker are on the record
- ▶ Ensuring the interests of fairness and the appearance of impartiality

13

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Best Practices to Avoid Ex Parte Contacts

- ▶ Do not directly or indirectly speak about the merits of the case with any person without giving all parties an opportunity to be present (in-person or remote) and respond.
- ▶ Do not review or consider written information or evidence without ensuring that it is copied to the other parties and made part of the record. Any communication with parties outside of a hearing should be in writing and sent to all parties.
- ▶ Avoid the appearance of ex-parte contacts by avoiding being in the same room as only one party.
- ▶ Avoid ex-parte communications even after deciding the issue due to the possibility of a remand if the decision is appealed in court.

14

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Best Practices to Avoid Ex Parte Contacts

- ▶ Avoid making informal comments about a quasi-judicial matter off the record, including at other hearings.
- ▶ Avoid visually observing a property at issue on your own or conducting individual research in a quasi-judicial matter.
- ▶ If the Commission intends to conduct a site visit, it should be noticed as a public meeting under the OMA and should involve the entire body.

15

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Conflicts of Interest

- ▶ Financial Interests (defined in HCC 1.18.020)
- ▶ A financial interest is:
 - An interest currently held by that person or an immediate family member, including:
 - ▶ Involvement or ownership in a business
 - ▶ Property ownership, or a professional or private relationship, that is a source of income, or as a result of which the person receives a financial benefit; or
 - ▶ An affiliation with an organization in which the person holds a position of management, or is an officer, director, trustee, employee, or the like.
- ▶ A Financial Interest does not include:
 - Affiliation as an unpaid volunteer with a legally recognized non-profit
 - Financial interests of a type which are generally possessed in common with all other citizens or a large class of citizens.

16

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Conflicts of Interest

- ▶ A “substantial financial interest” means a financial interest that would result in pecuniary gain or loss exceeding \$1,000 in a single transaction or more than \$5,000 in the aggregate in 12 consecutive months.
- ▶ A Commissioner (city official) cannot participate in any official action in which:
 - They have a substantial financial interest in the subject of the action
 - They will have a substantial financial interest in the subject of the action within one year
 - They reside or own land within 300 feet of the subject property
 - They will recognize a substantial financial interest as a result of the action
- ▶ Exceptions:
 - They can acquire a substantial financial interest in the subject of the action 12 months after the action is approved
 - Any gain or loss that is generally in common with other citizens or those outside of the 300 foot boundary.

17

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Conflicts of Interest

- ▶ Procedure for Declaring Conflict of Interest (HCC 1.18.045):
 - The commissioner who has or may have a substantial financial interest must disclose the facts concerning that interest to the Commission before taking any action. Another commissioner can also raise the issue.
 - The commissioner may then excuse themselves from the proceeding without a vote or the remaining commissioners must vote on whether the commissioner must be excused.
 - If a commissioner is excused, they must leave the “official table” and not vote, debate, testify or otherwise take part in the official action.

18

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Conflicts of Interest

► Partiality means:

- The ability of a commissioner to make an impartial decision is actually impaired
- The circumstances are such that a reasonable person would conclude the ability of the member to make an impartial decision is impaired and includes, but is not limited to, instances in which:
 - The member has a personal bias for or against a party to the proceeding including the party's lawyer
 - The member or an immediate family member is a party, material witness, or represents a party in the proceeding.

19

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Conflicts of Interest

► Procedure for declaring and ruling on partiality in quasi-judicial matters (HCC 1.18.048)

- A commissioner who has partiality concerning a quasi-judicial matter shall not advise on the matter, adjudicate the matter or serve as a member of the Commission as it adjudicates the matter.
- A commissioner who has or may have partiality regarding a matter before the Commission shall disclose the facts concerning the possible partiality to the Commission before the proceeding. Other commissioners can also raise the question.
- After the disclosure, the commissioner may excuse themselves for partiality without a vote. Otherwise, the remaining commissioners must vote on whether the commissioner must be excused from hearing the matter due to partiality.

20

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Spot Zoning

- ▶ Spot zoning is “the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners.”
 - *Griswold v. City of Homer*, 925 P.2d 1015 (Alaska 1996).
- ▶ Spot zoning is the antithesis of planned zoning in that it reclassifies a parcel in a manner inconsistent with existing zoning patterns for the benefit of the owner and without any substantial public benefit or purpose.

21

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Spot Zoning

- ▶ The factors considered by a court when determining whether a zoning ordinance constitutes spot zoning are:
 - The consistency of the amendment with the comprehensive plan
 - The benefits and detriments of the amendment to the owners, adjacent landowners, and community.
 - The size of the area rezoned.
 - ▶ *Balough v. Fairbanks North Star Borough*, 995 P.2d 245, 264 (Alaska 2000).

22

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Questions

► Any questions?



23

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