

The Legal Framework for Land Use Decisions[©]

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Planning Commissioners Workshop

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Overview

- **The Legal Framework**
 - Federal, State & Local laws
 - Police Powers
 - Limitations on Police Powers
- **The Planning Commissioners' Role**
 - Legislative
 - Quasi-Judicial

The Legal Framework

■ **Federal Laws**

- National Environmental Protection Act
- Endangered Species Act
- Clean Water Act
- Clean Air Act
- Religious Land Use and Institutionalized Persons Act (RLUIPA)
- Federal Court Decisions

The Legal Framework

- **State Laws**
 - Planning and Zoning Law
 - Subdivision Map Act
 - California Environmental Quality Act
 - Permit Streamlining Act
 - Mitigation Fee Act
 - California Coastal Act
 - Ralph M. Brown Act
 - Political Reform Act
 - State Court Decisions

The Legal Framework

- **Local Laws**
 - General Plan
 - Special Plan
 - Zoning Ordinance
 - Other Ordinances & Regulations
 - Design Guidelines
 - Environmental Guidelines
 - Application Submittal Requirements

The Legal Framework

- **The General Plan**
 - Known as the “local constitution.”
- **Consistency**
 - The GP must be internally consistent.
 - Projects must be consistent with the GP.
- **The Commission must balance:**
 - The community’s collective vision expressed in the General Plan,
 - With the benefits and burdens of the specific project.

The Legal Framework

- **General Plan Consistency**
 - A project is consistent with the GP if, considering all of its aspects, it will further the objectives and policies of the GP and not obstruct their attainment.
 - A project is inconsistent if it conflicts with a GP policy that is fundamental, mandatory, and clear.

The Legal Framework

■ Hypothetical:

- A hillside housing project would require significant grading and retaining walls to support an access road that can accommodate emergency vehicles.
- Can this project be found consistent with the Hillsborough General Plan given the following policies?
 - Policy A: Minimize grading and retain natural contours of the land.
 - Policy B: Provide adequate emergency access.

The Legal Framework

■ **Zone Code**

- Separates a city into districts to regulate the intensity of development, uses of land, and development standards.
- **“By right”** - Allows certain uses without any discretionary review.
- **“Conditional”** – Allows certain uses if specific conditions are met.

The Legal Framework

■ Variances

- A limited waiver of zoning standards to accommodate unique physical characteristics (size, shape, topography, location or surroundings) of a property. (GC 65906)
- Must be conditioned to assure that the deviation from the code does not constitute a grant of special privileges.
- Cannot be issued to authorize a use or activity which is not otherwise authorized in the zone.

The Legal Framework

■ Hypothetical

- Hypo 1 – A height variance to accommodate a wind turbine on top of an office building which would advance energy efficiency policies in the GP.
- Hypo 2 – An off-street parking variance requirements for an apartment building located near public parking garages where many of the tenants would not own cars.

The Legal Framework

■ Police Power

- The basis for all land use regulation.
- Authorizes local governments to take action to “protect the health, safety, and general welfare” of its residents.
 - U.S. Constitution, 10th Amend.
 - Cal. Const. Art. XI, §7.

The Legal Framework

- **Limitations on the Police Power**
 - **Preemption** – local land use regulations may not conflict with state or federal law.
 - **Takings Clause** – requires compensation if regulations overly limit private property rights.
 - **Due process** – no deprivation of life, liberty or property.
 - Substantive – vested rights.
 - Procedural – notice and hearings.

The Legal Framework

- **Limitations on the Police Power**
 - **Equal Protection** – requires similarly situated persons to be treated in equal manners.
 - **First Amendment** – allows freedom of speech and expression.

The Planning Commissioners' Role

- **Commission's Primary Functions**
 - Legislative
 - Quasi-Judicial / Adjudicative
- Different ground rules will apply depending on which function is being fulfilled.

The Planning Commissioners' Role

- **Legislative Function**
 - Involves policy making activity.
 - The Commission's legislative actions include: making recommendations about adoption of a General Plan or Zoning ordinances to the City Council.

The Planning Commissioners' Role

■ **Legislative Function**

- Commission need not provide any special due process.
 - Following Brown Act procedures for notice and a hearing are all that is necessary, unless a public hearing is required.
- No requirement to provide evidence or findings to support policy decisions.

The Planning Commissioners' Role

- **Legislative Act – Standard of Review**
 - Legislative acts are presumed valid without supporting findings.
 - A legislative action will be upheld unless the Commission / Council acted arbitrarily, capriciously or without evidentiary basis. (CCP § 1085).

The Planning Commissioners' Role

- **Quasi-Judicial Role**
 - Involves applying general policy to a specific property, individual, interest or situation.
 - Examples – Granting / denying a conditional use permit, variance, or allowing a non-conforming use for a particular property.
 - Elements of a quasi-judicial decision: notice, evidence, and the findings.

The Planning Commissioners' Role

- **Quasi-Judicial Role – Notice**
 - The affected property owners generally must receive notice of the hearing at least 10 days in advance.

The Planning Commissioners' Role

- **Quasi-Judicial Role – Evidence**
 - The applicant must have an opportunity to present evidence to the Commission.
 - A Commissioner's decision must be guided by the evidence presented at the hearing.
 - Refrain from and disclose any *ex parte* contacts.
 - If a Commissioner has a personal bias that persists regardless of the evidence presented, he or she cannot participate in the decision.

The Planning Commissioners' Role

- **Quasi-Judicial Role – Findings**
 - The Commission must adopt certain findings to make a final decision:
 - Findings are written statements of fact explaining how and why the Commission made a particular decision.
 - All land uses must be consistent with the General Plan and applicable zoning laws.
 - Specific findings may be required to approve certain uses.

The Planning Commissioners' Role

- **Quasi-Judicial Act – Standard of Review**
 - A fair trail may have been denied if:
 - There is inadequate notice,
 - The hearing was unfair, or
 - The decision-makers are not impartial.

The Planning Commissioners' Role

- **Quasi-Judicial Act – Standard of Review**
 - An “abuse of discretion,” is established if:
 - The agency has not proceeded in the manner required by law,
 - The order or decision is not supported by the findings, or
 - The findings are not supported by the evidence. (CCP § 1094.5)

Summary

- A complex web of Federal, state and local laws govern the Commission's action.
- The police powers allow land use regulations, so long as it does not conflict with other laws.
- The legal standards governing a commissioner's actions differ depending on whether the role is legislative or quasi-judicial.

Questions?

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