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.
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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