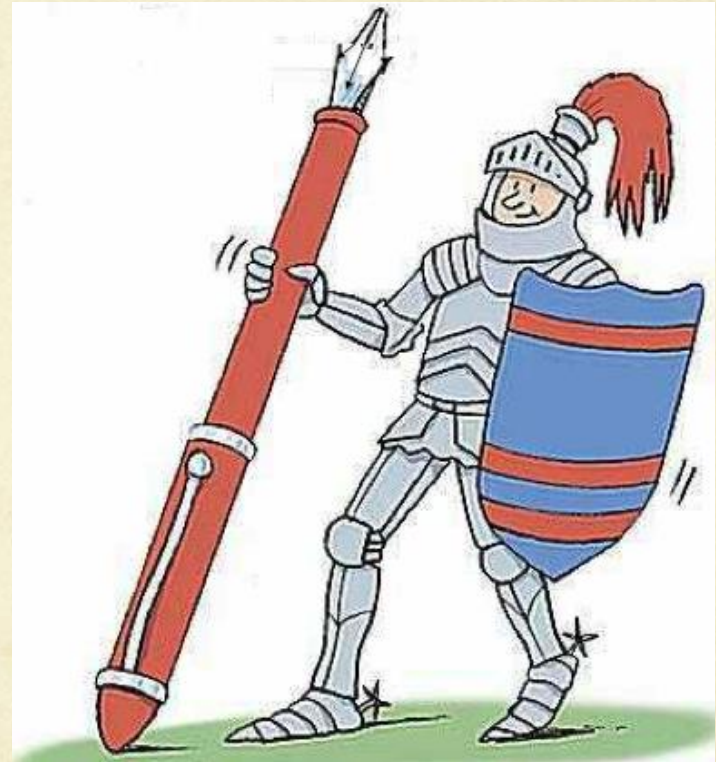


Basic Planning 101

Workshop

Session #2 – April 6, 2013

**Defensible
Findings
and
Project
Conditions**



Findings:

**Are the
basis for
your
decision**



Basic Structure of a Finding:

We can

- or -

We
cannot

make the
finding
that [-----
---]

because:

“Because” includes:

Facts and rationale that are the basis for making – or not making – a finding



Facts and Rationale also:

Can provide the basis for conditions applied to the project,

- and -

Distinguish action in one case from another.

Sources of Facts and Rationale

The Staff Report:

- **General Plan policies**
- **Zoning District purpose statement**
- **Analysis of project proposal, land use patterns, police calls, scientific studies, etc. that relate to the required finding**
- **Past practice, precedent**
- **Draft Findings and conditions**

Sources of Facts and Rationale

The CEQA Document:

Public Testimony:

- **Residents often know the community the best. But encourage and note factual input, not emotional pleas**

Your Site Visit and Knowledge:

- **Need to put into the record**

Making a Decision

Don't have to go with staff recommendation

- **Report done before the public hearing – staff didn't have the benefit of that input**
- **Don't have to believe everything you hear or read. Ask questions, ask for documentation**
- **You may balance and weigh standards and facts differently than staff**

Example:

**Residential
subdivision
on steep
hillside**



Required Finding:

One of the findings for denying a subdivision:

- **CGC Sec. 66474 (c) – That the site is not physically suitable for the type of development.**

Issues Raised in Public Hearing:

**Poor
access
for
emergen
cy
response**



Issues Raised in Public Hearing:

Requires extensive grading and high retaining walls



Issues Raised in Public Hearing:

**Houses
would
appear too
massive**



Questions to ask yourself:

Are the concerns sufficient for a basis for denial of individual lots or of total subdivision?

Are the proposed lots substantially steeper than others in the community?

Are there other more appropriate building locations on the property?

Is there another reasonable use for the site?

Do the Findings:

Provide the basis for approval with conditions to:

- **Eliminate or relocate certain lots**
- **Require design guidelines to ensure houses fit onto the site and are not out of scale because of construction on slope**

Another Example:

**Use Permit
for a
Restaurant /
Bar –
because of
alcohol
service and
late hours**



Example Use Permit

Findings:

- (1) The specific proposed use will be consistent with the provisions of the General Plan.**
- (2) The granting of the Use Permit will not be:**
 - a. Detrimental to the public health, safety, peace morals, comfort or general welfare of persons residing or working in the vicinity.**
 - b. Detrimental to property and improvements on adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.**

Facts & Rationale to Consider:

- **Site is an existing building along an existing commercial shopping street**
- **There are no residential, hotel or nursing home uses within 1,000 ft. of the site, so no sensitive receptors to be disturbed.**
- **Proposed use includes food service, not just liquor sales**
- **Applicant proposes to close by 11 PM Sun – Thurs; 12 midnight Fri-Sat**

Include Relevant Project Characteristics as Conditions:

- **Proposed hours of operation**
- **Food service available whenever the restaurant/bar is open**

The Toughest Findings to Make: Variances

Must make ALL findings:

- 1. There are special [physical] circumstances of the property** - size, shape, topography, location or surroundings – that do not generally apply to other property
- 2. Creates a hardship** - deprives the property of substantial property rights existing on other property in the vicinity and under identical zoning classification.

Variance Findings con't:

3. **Does not grant special privileges** inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated [No use variances].
4. **Is not detrimental** to the public health, safety, peace morals, comfort or general welfare of persons residing or working in the vicinity or to property and improvements on adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

**Example:
Variance to
exceed
maximum
lot coverage**



Example: Variance to exceed maximum lot coverage

Lot is 4,000 sf. and house is 900 sf

Proposed house would be 1,350 sf

**Minimum lot size in zoning district
6,000 sf.**

**It's the smallest lot on the block
and on the adjacent blocks**

Defensible Conditions

Four tests:

1. **Is there an essential nexus between a legitimate state interest and the condition?**
(Nollan v. Californian Coastal Commission, 1987 US Supreme Court Decision)

Link between Findings & Conditions:

The findings are important for documenting the **nexus between a public interest and a condition**



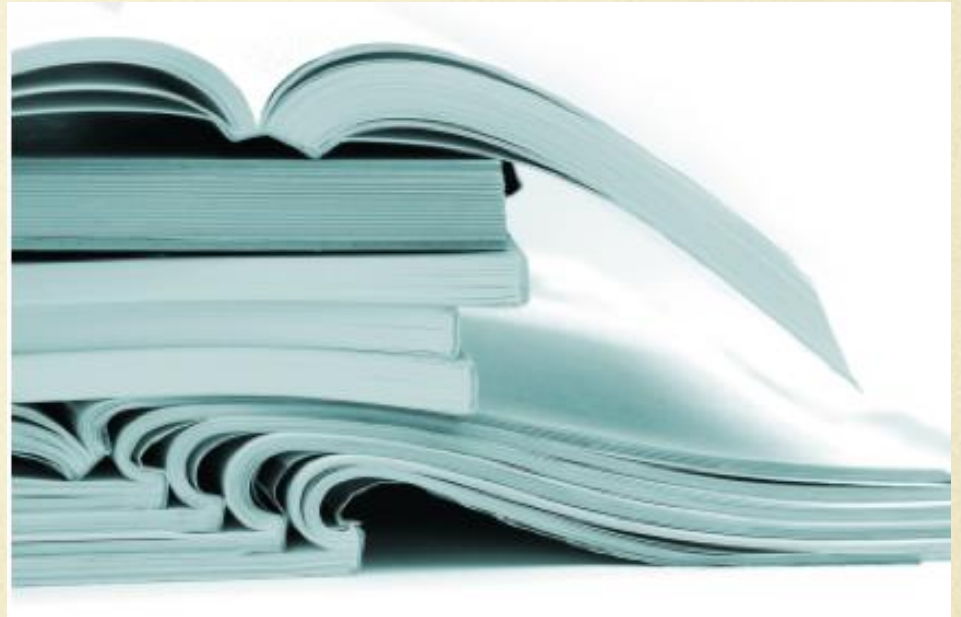
Defensible Conditions

Four tests continued:

- 2. Is there a rough proportionality between the project's impacts and the condition? (*Dolan v. City of Tigard, 1994 US Supreme Court decision*)**

How Much Project Impact:

Analysis is important for documenting the proportionality between a project impact and a condition



Defensible Conditions

Four tests continued:

- 3. Is the condition within the agency's express or implied authority?**
- 4. Is the condition in compliance with applicable Federal and State law?**

Defensible AND Enforceable

Conditions should be drafted to
say **WHO** is responsible to do
WHAT, by **WHEN**, and **HOW** will
compliance be checked?



Clarity



Are the meanings of the terms in the condition the same for everyone?

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