DEVELOPING FINDINGS OF FACT

1. FINDINGS OF FACT DESCRIBED

   a. Board decisions must be based on the facts of the situation. Some facts are concrete and are not reasonably debatable. However, many facts are not concrete, and so people can, and often do, disagree as to what the facts truly are.

   b. In order to logically move from the facts to a decision based on those facts and applicable law, boards need to make decisions on what it accepts as the facts of the situation. Examples of the types of factors that are debatable are whether something is: necessary; in the publics' interest; protective of the health, safety, and welfare of the community; too disruptive; an undue hardship; reasonable; degree of benefit conferred; application or interpretation of an ordinance in a given situation; and the market value of property.

   c. The documentation of the issue presented to the board, a description of the proceedings, what the board finds to be the facts (both concrete and non-concrete), a description of applicable law and how it applies to the situation at hand, is what is normally contained in a findings of fact.

2. WHY FINDINGS OF FACT ARE IMPORTANT

   a. **Background**: While the development of formal findings of fact are not required by law, the courts have held that local governments must, at a minimum, “have the reasons for its decision recorded or reduced to writing and in more than just a conclusory fashion.” Honn, 313 N.W.2d at 416.

   b. **Legislative or Quasi-Judicial Decisions**: Many of the decisions boards make are considered either legislative or quasi-judicial in nature. In both cases the legislature has delegated to the town the authority to exercise powers and make decisions affecting the lives and livelihoods of residents. As such, it is important to be able to demonstrate the board had worked through a deliberative process to reach its decision. This is what courts do when they decide a case and that is what is expected when other governmental bodies exercise their decision making authority. “Governmental bodies must take seriously their responsibility to develop and preserve a record that allows for meaningful review by appellate courts.” Livingood, 594 N.W.2d 889, 895 (Minn. 1999).
As will be discussed in the standard of review section, the type of decision being made can effect how the courts review the sufficiency of the basis for the decision. Courts have applied a greater degree of scrutiny when review quasi-judicial decisions. Boards need to be aware of this and develop a record that shows a thoughtful and complete process of applying the law to the facts of the situation.

i. **Legislative decisions**: Generally, legislative decisions are those that involve value judgments to determine what will promote the public health, safety, morals and general welfare. Legislative acts affect the rights of the public generally, unlike quasi-judicial acts which affect the rights of a few individuals analogous to the way they are affected by court proceedings. Interstate Power Co., Inc. v. Nobles County Bd. of Comm’rs, 617 N.W.2d 566, 574 (Minn. 2000)(citations omitted). Examples of legislative decisions include: zoning; rezoning; policy development; ordinance and resolution development and amendments.

ii. **Quasi-judicial decisions**: Rather than making judgments as to what will promote the public good, quasi-judicial decisions are adjudicative in nature and involve applying specific standards established by law or ordinance to a particular set of facts. Hallmarks of quasi-judicial decisions are those that involve receiving and weighing evidence, and making factual findings. The “three indicia of quasi-judicial actions can be summarized as follows: (1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim.” Minnesota Ctr. For Envtl. Advocacy v. Metropolitan Council, 587 N.W.2d 838, 842 (Minn. 1999). Because these decisions involve the application of law, rather than the development of law, local governments are held strictly to the established standards. Examples of quasi-judicial decisions include: variances; special use permits; and preliminary plat approvals.

c. **Arbitrary or Capricious**: Claiming a decision is arbitrary or capricious essentially is saying the decision was not made according to reason or judgment, did not comply with any fixed rules or standards, or was made in bad faith (i.e., lacked a reasonable basis). If the board cannot point to recorded findings supporting its decision, it is far more likely to be challenged on the basis that the decision was arbitrary or capricious. Decisions have been found to be arbitrary or capricious when they were based on whim, devoid of articulated reasons, lacking an articulated rational connection between the facts found and the choice made, or the decision represents the board’s will instead of its judgment. However, a decision is not necessarily
arbitrary or capricious just because there are other possible reasonable decisions that could have been made in the particular circumstances.

i. **Prima Facie Arbitrary**: Failure to record any legally sufficient basis for a determination at the time the decision was made can result in the decision being considered prima facie arbitrary. *Zylka v. City of Crystal*, 167 N.W.2d 45, 50 (Minn. 1969). The governing body is then left having to try and rebut the presumption.

d. **Standard of Review**: A standard of review is the legal criteria a court uses when deciding a particular case. Different standards of review are applied to different issues depending on the applicable law.

i. **Reasonable Basis**: When a court reviews a local government's decision, it attempts to determine whether the decision had a reasonable basis (rational basis). *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 417 (Minn. 1981); *White Bear Docking and Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 175 (Minn. 1982). This is another way of saying the decision was not arbitrary or capricious. In order to respect the separation of powers between the legislative and judicial branches of government, the reasonable basis test has a relatively low threshold. A decision can overcome an arbitrary challenge if at least one of the reasons given for the decision is found to be reasonable. “The mere fact that a court might have reached a different conclusion, had it been a member of the council, does not invalidate the judgment of the city officials if they acted in good faith and within the broad discretion accorded them by statute and ordinance.” *St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 398 (Minn. App. 1989).

Whether a decision satisfies reasonable basis test is based on the legal sufficiency of and factual basis for the reasons given for the decision. *Id.* (citing *Swanson*, 421 N.W.2d at 313).

1. **Legal Sufficiency**: Legal sufficiency is satisfied if the decision is reasonably related to the promotion of the public health, safety, morals, and general welfare of the community. *Id.*

2. **Factual Basis**: The record in support of the decision must demonstrate a factual basis for the rational on which it was based. *Id.*

ii. **Substantial Evidence**: Courts are not always consistent when stating the applicable standard of review. However, it seems clear that the reasonable basis standard applies to legislative decisions. Despite court statements that the same standard should apply to at least some
of the decisions that are considered quasi-judicial, some courts require quasi-judicial decisions to be supported by substantial evidence. See, e.g., Graham v. Itasca County Planning Com’n, 601 N.W.2d 461 (Minn. App. 1999). The substantial evidence test requires: "1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; more than a scintilla of evidence; 3) more than 'some evidence'; 4) more than 'any evidence'; and 5) evidence considered in its entirety." Taylor v. Beltrami Elec. Co-op., Inc., 319 N.W.2d 52, 56 (Minn. 1982). When applying the substantial evidence test, it has been decided that there "are correlative rules or principles that must be recognized by a reviewing court, such as: 1) unless manifestly unjust, inferences must be accepted even though it may appear that contrary inferences would be better supported; 2) a substantial judicial deference to the fact-finding processes of the administrative agency; and 3) the burden is upon the appellant to establish that the findings of the agency are not supported by the evidence in the record, considered in its entirety." Id.

iii. **Fairness:** In at least one instance, the Minnesota Supreme Court held that a local government’s decision was so inequitable as to be rendered arbitrary and capricious. Interstate Power Co., Inc. v. Nobles County Bd. of Comm’rs, 617 N.W.2d 566, 575 (Minn. 2000). Even though the traditional rules allowing the court to apply equitable standards were found not to apply, the court decided it was not prohibited from considering what had occurred. Because applying the traditional rules would result in “manifest injustice,” the court felt it was warranted to reach a different result.

e. **Scope of Review:** Once the standard of review is determined, courts must decide the scope of what they will look at to determine if the applicable standard has been met. Attempting to limit the scope of the court’s review to the record developed by the board is one of the primary reason for developing findings of fact. Local governments, as part of the legislative branch of government, are subject to having their decisions reviewed by the judicial branch (i.e., the courts). However, as part of respecting the separation of powers, courts will limit their review of legislative decisions as long as it believes the local government had some rational basis for its decision. “The court’s authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked.” White Bear Docking and Storage, Inc. v. City of White Bear Lake, 324 N.W.2d 174, 175 (Minn. 1982). “[I]t is the duty of the judiciary to exercise restraint and accord appropriate deference to civil authorities in the performance of their duties.” Id. at 176.

i. **Swanson Standard:** Courts consider “the nature, fairness and adequacy of the proceeding at the local level and the adequacy of the factual and decisional record of the local proceeding. Where the
municipal proceeding was fair and the record clear and complete, review should be on the record.” Swanson v. City of Bloomington, 421 N.W.2d 307, 312-13 (Minn. 1988).

1. **Fairness**: Amount of consideration given the issue (e.g., number of meetings held); parties were allowed to testify without limit; party was allowed to answer questions and react to testimony of other participants; information relied upon for the decision was made part of the record; there was foundation for the opinions expressed; relevant evidence was received.

2. **Clear & Complete Record**: “Where the municipal body has proposed formal findings contemporaneously with its decision and there is an accurate verbatim transcript of the proceedings, the record is likely to be clear and complete.” Id. at 313.

3. **Contemporaneous Findings**: Courts speak of the importance of the findings being contemporaneous to the decision. “In evaluating the reasons, we look at the contemporaneous record made by the entity.” Hurrle v. County of Sherburne, 594 N.W.2d 246, 249 (Minn. App. 1999)(citation omitted). However, courts sometimes differ on what they consider contemporaneous. Findings develop as late as 26 days after a decision have been considered contemporaneous. BBY Investors v. City of Maplewood, 467 N.W.2d 631, 635 (Minn. App. 1991). In other cases, the courts limit their review to the findings adopted during the meeting at which the decision was made. Hurrle, 594 N.W.2d at 249. The purpose behind requiring findings to be contemporaneous “is to prevent the decision-making entity from later providing reasons that ‘completely unconnected with the actual basis for the denial.’” Hurrle, 594 N.W.2d at 250 (quoting Metro 500, Inc. v. City of Brooklyn Park, 211 N.W.2d 358, 362 (Minn. 1973)).

a. **Remand to Develop More Complete Record**: There have been times when a court determines that the record developed by the local government is so incomplete as to render any meaningful judicial review impossible. In these cases, the court has remanded the case back to the local government to develop a more complete record. See, e.g., Earthburners, Inc. v. County of Carlton, 513 N.W.2d 460 (Minn. 1994); White Bear Rod and Gun Club v. City Hugo, 388 N.W.2d 739 (Minn. 1986). However, the courts are very reluctant to remand a case for fear that the local government will engage in post hoc justification of their decision. Recent cases have
expressed even more concern over this option. It is an extraordinary approach because it allows a local government to avoid the general rule that if the local government fails to create an adequate record to, for instance, deny a permit, the court will order the grant of the permit. *Interstate Power Co., Inc. v. Nobles County Bd. of Commrs.*, 617 N.W.2d 566, 577 (Minn. 2000). If a case is remanded, in order to avoid concerns over after the fact justifications being developed to support decision the local government is limited to only considering the issues raised in the earlier proceedings. *Id.* Courts have acknowledged some mitigation of the concern over after the fact justifications if the local government taped the original proceedings. That is one of the reasons why it is important for towns to record its hearings and to make the tape part of the official record of the hearing.

b. **Prima Facie Arbitrary**: Failure to record contemporaneous findings and legally sufficient reasons for the decision constitutes a prima facie showing of arbitrariness. *Holasek v. Village of Median*, 226 N.W.2d 900, 902 (Minn. 1975). The person challenging the decision normally has the burden of showing it is arbitrary. However, the failure of the local government to record any legally sufficient basis for its determination at the time it acted makes a prima facie showing of arbitrariness “inevitable.” *Zylka v. City of Crystal*, 167 N.W.2d 45, 50 (Minn. 1969). This inevitable finding causes the burden of proof to shift to the local government to attempt to dispute the presumption of arbitrariness.

ii. **Appellate Review**: If the decision of the district court is appealed, the appellate court refers back to the legal sufficiency of the local record and does not rely upon the district court’s determination. *Swanson*, 421 N.W.2d at 311; *Trisko v. City of Waite Park*, 566 N.W.2d 349, 352 (Minn. App. 1997).

iii. **Rational for decisions**

1. Neighborhood concerns can be considered, but cannot be the sole basis for a decision. *Northwestern College v. City of Arden Hills*, 281 N.W.2d 865, 869 (Minn. 1979); *Swanson*, 421 N.W.2d at 313.
2. Environmental concerns can be considered, but must be based on fact, not conjecture. Swanson, 421 N.W.2d at 313-14.

3. WHEN TO USE FINDINGS OF FACT

   a. Boards make a broad range of decisions, not all of them need to be supported by findings of fact. There are no hard and fast rules for when written findings should be developed. However, towns can use as a general rule of thumb that findings of fact should be developed when a decision involves: land use issues; determining the lowest responsible bidder; approving or denying a liquor license or other licenses; donations; denying something or approving something controversial; establishing a policy; rejecting a cartway or road petition; adopting ordinance; or generally any time a decision needs to placed into a context to help understand its background and basis.

4. RECOMMENDATIONS

   a. Enter into the record statements as to the fairness of the proceedings.

   b. Be sure all sides to an issue have been given an equal opportunity to present their views and evidence.

   c. Do not merely list sources of information as the basis for a decision (e.g., court cases, comprehensive plan, material submitted to the board, etc.). Describe what it is about the comprehensive plan, ordinance, law, etc. that leads the board to deny or approve the request.

   d. Audio or video tape record hearings and keep the tape as part of the record.

   e. Develop the findings at the meeting if possible. If it is not possible to develop completed findings at the meeting, be sure the entire proceeding has been audio or video taped and direct the findings to be completed, preferable, within a few days based on the record of the proceedings and other information presented.

   f. Do not forget about the limitation imposed under the 60-day rule (Minn. Stat. § 15.99) to reach a decision on certain matters.

   g. Be careful what is said about the proceedings, such statements could reflect on the completeness or fairness of the proceedings. (Earthburner)

   h. Be sure information being relied upon is entered into the record.

   i. If an applicant presents an expert to support his/her position, if you want to rebut that evidence you will likely need to obtain an expert.
Do not underestimate the need to develop findings of fact when approving a request. While the applicant will likely not challenge the decision, there may be others who will.

5. HOW TO DEVELOP FINDINGS OF FACT

The form a findings of fact takes will depend on the nature of the decision being made.

a. Minutes: Recording the reasons leading to a decision in the minutes of a meeting should be developed as a standard practice for the lower level types of decisions. It is not necessary to detail reasons for every decision, but there are some decisions that warrant making the extra effort to briefly set out the supporting rational.

b. Resolutions: The typical form of a resolution is ready made to set out the reasons behind a decision. The “Whereas” lines of a resolution should state the legal authority for the action being taken as well as the factual basis. While it is possible to have a resolution that contains only the “Be it resolved” line, most actions taken by resolution should contain “Whereas” lines to provide background.

c. Policies: A board policy need not take a particular form. Some written as a resolution, while others look more like an ordinance. Whatever form the board chooses for its policies, it should seriously consider setting out some of the key rational in the policy itself. Usually this information serves as a lead paragraph(s) to a policy.

d. Formal Findings of Fact: This is the most formal means of setting out findings of fact. Depending on the matter being acted upon, findings can go on for pages or be less than one page in length. Some findings take a more conversational tone, while others provide a numbered list of findings.

i. Content: Findings typically contain the following sections or information:

1. Name of the entity hearing the matter and that the document is the findings of fact and decision (or recommendation).

2. Name of the party or parties involved.

3. Brief background of the proceedings and what is being considered.
4. List of the findings of fact including an identification of any applicable provisions of law or ordinance key to the consideration of the matter.

5. Decision.

6. Signature and date lines.

ii. **Practical Issues**: There is no single method for when or how to develop findings of fact. Each community that has addressed this issue seems to develop its own unique practices for developing findings. Municipal attorneys also vary in their styles and use different approaches in different situations. The key is for boards to identify when findings should be developed and then work to implement a procedure for developing findings depending on the type of decision being made. If a town has zoning ordinances, it is extremely important to have its attorney assist it to develop fact finding procedures and forms.
PROTOTYPICAL FINDINGS OF FACT
By: Terry Adkins
Rochester City Attorney

(CITY, COUNTY, TOWNSHIP) OF _____________________
_______________ COUNTY, MINNESOTA

IN RE:

Application of __________, a Minnesota (General Partnership, Corporation), for a (Comprehensive Plan Amendment, Preliminary Plat, Rezoning, Planned Unit Development, etc.) for a (indicate nature and type of development -- for instance a retail center) on Property Located (indicate general location, south of County Road X, North of County Road X, East of Interstate X, and West X Avenue).

On (month, date, year), the (name of local government) met at its regularly scheduled meeting to consider the application of (insert name) for a (insert specific nature of the application, e.g., comprehensive plan amendment, preliminary plat, rezoning, etc.) for the development of (an apartment complex, retail center) on the property located (restate general location, not legal description) hereinafter referred to as (“Property” or “Site”). Representatives of (name of applicant) were present and the (City Council, County Board, etc.) heard testimony from all interested parties wishing to speak at the meeting and now makes the following findings of Fact and Decision:
FINDINGS OF FACT

1. Who is the Applicant? What are they proposing to develop? How is the site currently used and who owns it?

2. Describe the nature of the Applicant’s control of the land if pertinent, e.g., the Applicant will lease the property for 20 years with additional options for 25 years.

3. The property consists of x acres and is zoned x. If the application involves a rezoning, explain the nature of the zoning that is being applied for (e.g., the proposed development requires a rezoning to B-3 General Retail District).

4. Comprehensive Plan Relationships:
   a. Describe how the Subject Property is guided on the Land Use Plan. If an amendment is required, describe.
   b. Describe relationship with other comprehensive plan elements, transportation, housing, parks and open space, environmental elements, etc.
   c. Cite consistency or inconsistency with plan goals, objectives, and/or policies.
   d. Relationship with other officially adopted studies or plans, such as a redevelopment plan.

5. Identify standards or criteria for approval of the application. Describe how these standards or criteria have or have not been met by the proposal.
   a. Factual findings (the proposed development meets or exceeds all of the setback requirements in the B-3 District).
   b. Information or expert testimony, reports that you relied on in making your decision, traffic studies, noise studies, appraisals, etc.

6. Any other information that you relied upon, or that well serve to explain the rational basis for your decision.
DECISION

__________________’s request for approval of a (comprehensive plan amendment, rezoning, preliminary plat, conditional use permit, variance, etc.) is hereby granted (denied) for the development of (general description of project, e.g., retail center) located (general description) in accordance with and subject to the conditions of the plans, maps, designs, and all other documents referenced in and provisions of the proposed development agreement between (local governmental unit name) and (applicant) attached hereto as Exhibit “A”.

Adopted this ________________ day of ____________________, 2001.

(NAME OF LOCAL GOVERNMENT)

BY: _____________________________

______________________________, Mayor (Board Chairman)

ATTEST:

______________________________

______________________________, Clerk