



INFORMATION LIBRARY

DEVELOPING FINDINGS-OF-FACT

Table of Contents

I.	INTRODUCTION	2
II.	WHEN FINDINGS-OF-FACT ARE USED	2
III.	DEVELOPING A FINDINGS-OF-FACT	3
A.	Minutes	3
B.	Resolutions	3
C.	Policies	3
D.	Formal Findings-of-Fact	3
E.	Ten Recommendations	4
IV.	THE IMPORTANCE OF FINDINGS-OF-FACT	4
A.	Background	4
B.	Legislative or Quasi-Judicial Decisions	5
1.	Legislative Decisions	5
2.	Quasi-judicial decisions	5
C.	Arbitrary or Capricious	5
D.	Standard of Review	6
1.	Reasonable Basis	6
2.	Substantial Evidence	7
3.	Fairness	7
E.	Scope of Review	7
1.	Swanson Standard	7
2.	Appellate Review	9
3.	Rational for decisions:	9
	APPENDIX A	10

I. INTRODUCTION

Conclusions and decisions are only as good as the facts and reasons that support the conclusion made. As such, board decisions must be based on the facts of the situation. Some facts are concrete and are not reasonably debatable. However, some facts are subject to debate. In order to logically move from the facts to a decision based on those facts and applicable law, boards must decide what they believe to be true and communicate their findings. The findings-of-fact are the board's 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.

Examples of debatable facts are whether something is:

- necessary;
- in the public's 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 situation; and the market value of property.

II. WHEN FINDINGS-OF-FACT ARE USED

Boards make a wide 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. Generally, findings-of-fact are developed for decisions involving:

- 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
- any time understanding the background and basis for a decision may be helpful.

III. DEVELOPING A FINDINGS-OF-FACT

There are several issues to consider when developing your findings-of-fact. Two of the most important are where to make your findings and what the findings are to include.

- A. Minutes:** Recording the reasoning leading to a decision in the minutes of a meeting should be developed as a standard practice for all 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 reasons.
- 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 and context.
- C. Policies:** There is no singular form of town board policies may take. Some policies are written like 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 reasons of the policy in the policy itself. Usually, this is done through leading paragraph(s) to a policy.
- D. Formal Findings-of-Fact:** This is the most formal means of setting out findings-of-fact and should be used for higher level decisions and must be used for some specific town actions, like planning and zoning ordinances.¹ Depending on the matter being acted upon, findings can be a page or less or quite extensive and detailed. Some findings take a more conversational tone, while others provide a numbered list of findings. 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.

¹ Minn. Stat. § 462.357, subd. 2

E. Ten Recommendations: Although 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. Attorneys also vary in their styles and use different approaches, best fitting the situation. It is crucial for boards to identify when findings should be developed and then work on implementing a procedure to develop findings to best work with the type of decision being made. However, here are some recommendations that, if applicable, townships should follow:

1. If a town has zoning ordinances, have its attorney assist in developing fact-finding procedures and forms.
2. Enter statements of fairness regarding the proceedings into the record.
3. Allow all sides of an issue equal opportunity to present their views and evidence.
4. Enter the sources of information as the basis for a decision into the record (e.g., court cases, comprehensive plan, material submitted to the board, etc.). Also describe what it is that leads the board to deny or approve the request.
5. If hearings are audio or video taped, keep the tape as part of the record.
6. Develop the findings at the meeting if possible. If impossible to develop, audio or video tape the proceedings and direct the findings to be completed within a few days based on the record of the proceedings and other information presented.
7. Do not forget about the limitation imposed under the 60-day rule² to reach a decision on certain matters.
8. Be aware that what is said about the proceedings, these statements may reflect on the completeness or fairness of the proceedings.³
9. 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.
10. 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.

IV. THE IMPORTANCE OF FINDINGS-OF-FACT

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.”⁴

² Minn. Stat. § 15.99,

³ *Earthburners, Inc. v. County of Carlton*, 513 N.W.2d 460 (Minn. 1994).

⁴ *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 417 (Minn. 1981)

B. Legislative or Quasi-Judicial Decisions: Many decisions a board makes are considered either legislative or quasi-judicial in nature. In both cases the legislature gives towns 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.⁵

 1. **Legislative Decisions:** These are decisions involve value judgments determinations about public health, safety, morals, and general welfare. Legislative acts affect the rights of the public generally, where quasi-judicial acts which affect the rights of a few individuals analogous to the way they are affected by court proceedings.⁶ Examples of these decisions include;

- Planning and zoning,
- Policy development,
- ordinances,
- resolution development, and
- amendments

2. **Quasi-judicial decisions:** These are decisions are adjudicative in nature and involve applying specific standards established by law or ordinance to a set of facts. These decisions involve receiving and weighing evidence and making factual findings.⁷ Because these decisions involve the application of law, rather than the development of law, local governments are held strictly to established standards of review. Examples of quasi-judicial decisions include;

- variances,
- special use permits, and
- plat approvals.

C. Arbitrary or Capricious: Claiming a decision as arbitrary or capricious is essentially saying the decision was not made according to reason or lacked a reasonable basis. If the

⁵ *In re Livingood*, 594 N.W.2d 889, 895 (Minn. 1999), demonstrates that legislative decisions must be reasoned, stating that “Governmental bodies must take seriously their responsibility to develop and preserve a record that allows for meaningful review by appellate courts.” Furthermore, the type of decision being made can affect how the courts review the sufficiency of the basis for the decision. Courts have applied a greater degree of scrutiny to the review of quasi-judicial decisions than to legislative decisions.

⁶ *Interstate Power Co., Inc. v. Nobles County Bd. of Comm’rs*, 617 N.W.2d 566, 574 (Minn. 2000) (citations omitted).

⁷ *Minnesota Ctr. For Env’tl. Advocacy v. Metropolitan Council*, 587 N.W.2d 838, 842 (Minn. 1999) lays out “three indicia quasi-judicial actions...” These indicia are (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.”

board cannot point to recorded findings supporting its decision, it can be open to challenges that the decision was arbitrary or capricious. Decisions are found to be arbitrary or capricious when they are 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 desires instead of its judgment. However, a decision is not necessarily arbitrary or capricious simply because there are other possible reasonable decisions that could have been made in the circumstances.

When the town board fails to record any legally sufficient basis for a the decision, result can be that the decision is considered prima facie arbitrary by the court.⁸ Meaning that the court will assume that the decision arbitrary and the town board must prove that the decision was not arbitrary and capricious, where general procedure has the person suing prove that the decision was arbitrary and capricious.

D. Standard of Review: A standard of review is the legal framework a court uses when deciding a case. Different standards of review are applied to different cases depending on the applicable law and issues. Regarding township decisions, the three most common standards of review are Reasonable Basis, Substantial Evidence, and Fairness.

1. **Reasonable Basis:** When a court reviews a local government's decision, it attempts to determine whether the decision had a reasonable basis.⁹ This is another way of saying the decision was not arbitrary or capricious. In order to respect the separation of powers, the reasonable basis test is easier to overcome than most standards of review. A decision can overcome an arbitrary challenge if at least one of the reasons given for the decision is found to be reasonable.¹⁰

Whether a decision satisfies reasonable basis test is based on the legal sufficiency of and factual basis for the reasons given for the decision. 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. And the factual basis is satisfied when the record in support of the decision and demonstrates a factual basis for the rational on which it was based.¹¹

⁸ *Zylka v. City of Crystal*, 167 N.W.2d 45, 50 (Minn. 1969).

⁹ *Honn*, 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).

¹⁰ *St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 398 (Minn. App. 1989) further outlines the courts rational in testing the reasonable basis test. The court states, "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."

¹¹ *Id.* (citing *Swanson*, 421 N.W.2d at 313).

2. **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 quasi-judicial decisions, some courts require these decisions to be supported by substantial evidence.¹² The substantial evidence test requires five pieces, which are: “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.”¹³ 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.”¹⁴
3. **Fairness:** The fairness standard of review is generally not used. However, 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.¹⁵ Even though the standards of review did not apply, the court decided it could still consider what had occurred because not doing so would result in “manifest injustice.”

E. Scope of Review

Once the standard of review is determined, courts must decide the scope of the facts if the to decide if the standard was met. Being able to limit the scope of the court’s review to the developed record is one of the primary reasons for creating a findings-of-fact. As part of respecting the separation of powers, courts will limit their review of legislative decisions if it believes the local government had some rational basis for its decision.¹⁶

1. **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.”¹⁷

¹² *Graham v. Itasca County Planning Com’n*, 601 N.W.2d 461 (Minn. App. 1999).

¹³ *Taylor v. Beltrami Elec. Co-op., Inc.*, 319 N.W.2d 52, 56 (Minn. 1982).

¹⁴ *Id.* In applying these principals, the court will look at several factors, which are: 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.”

¹⁵ *Interstate Power Co., Inc. v. Nobles County Bd. of Comm’rs*, 617 N.W.2d 566, 575 (Minn. 2000).

¹⁶ In *White Bear Docking and Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 175 (Minn. 1982) the court clearly states the courts intent to limit itself by stating, ““The court’s authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked.” And again, later where the court said, “[I]t is the duty of the judiciary to exercise restraint and accord appropriate deference to civil authorities in the performance of their duties.”

¹⁷ *Swanson v. City of Bloomington*, 421 N.W.2d 307, 312-13 (Minn. 1988).

- i. **Fairness:** How much consideration given to the issue (e.g., number of meetings held); if parties were allowed to testify without limit; if the party was allowed to answer questions and react to testimony of other participants; which information relied upon for the decision was made part of the record; if there was foundation for the opinions expressed; what relevant evidence was received.
- ii. **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.”¹⁸
- iii. **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.”¹⁹ However, courts sometimes differ on what they consider contemporaneous. Findings develop as late as 26 days after a decision have been considered contemporaneous.²⁰ In other cases, the courts limit their review to the findings adopted during the meeting at which the decision was made. 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.’”²¹

However, 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.²² However, the courts are very reluctant to remand a case for fear that the local government will engage in after the event justification of their decision. Recent cases have expressed even more concern over this option. This allows a local government to avoid the general rule that a failure to create an adequate record to, for instance, deny a permit, the court will order the grant of the permit.²³ 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.²⁴ Courts have noted

¹⁸ *Id.* at 313.

¹⁹ *Hurre v. County of Sherburne*, 594 N.W.2d 246, 249 (Minn. App. 1999)(citation omitted).

²⁰ *BBY Investors v. City of Maplewood*, 467 N.W.2d 631, 635 (Minn. App. 1991).

²¹ *Hurre*, 594 N.W.2d at 250 (quoting *Metro 500, Inc. v. City of Brooklyn Park*, 211 N.W.2d 358, 362 (Minn. 1973)).

²² *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).

²³ *Interstate Power Co., Inc. v. Nobles County Bd. of Comm’rs*, 617 N.W.2d 566, 577 (Minn. 2000).

²⁴ *Id.*

attempts to mitigate concerns over after the fact justifications by the local government taping the original proceedings.

When a town fails to record contemporaneous findings and legally sufficient reasons for the decision constitutes prima facie showing of arbitrariness.²⁵ Normally, the person challenging the decision 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.”²⁶ This inevitable finding causes the burden of proof to shift to the local government to attempt to dispute the presumption of arbitrariness.

2. **Appellate Review:** If the decision of the district court is appealed, the appellate court refers to the legal sufficiency of the local record and does not rely upon the district court’s determination.²⁷
3. **Rational for decisions:**
 - i. Neighborhood concerns can be considered but cannot be the sole basis for a decision.²⁸
 - ii. Environmental concerns can be considered, but must be based on fact, not conjecture.²⁹

²⁵ *Holasek v. Village of Median*, 226 N.W.2d 900, 902 (Minn. 1975).

²⁶ *Zylka v. City of Crystal*, 167 N.W.2d 45, 50 (Minn.1969).

²⁷ *Swanson*, 421 N.W.2d at 311; *Trisko v. City of Waite Park*, 566 N.W.2d 349, 352 (Minn. App. 1997).

²⁸ *Northwestern College v. City of Arden Hills*, 281 N.W.2d 865, 869 (Minn. 1979); *Swanson*, 421 N.W.2d at 313.

²⁹ *Swanson*, 421 N.W.2d at 313-14.

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 **FINDINGS OF FACT** Unit Development, etc.) for a (indicate **AND DECISION** 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 will 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

APPENDIX A

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