



MEMORANDUM

DATE: JUNE 6, 2016
TO: MENDOCINO HISTORICAL REVIEW BOARD
FROM: PLANNING AND BUILDING SERVICES
RE: EXAMPLES OF FINDINGS AND MOTIONS TO APPROVE, CONTINUE OR DENY A PROPOSAL

1. The scope of Review Board findings are established by Section 20.760.065 of the Mendocino Town Zoning Code:
 - (A) The exterior appearance and design of the proposed work is in harmony with the exterior appearance and design of existing structures within the District ... and [if applicable] with that of the existing subject structure; and
 - (B) The appearance of the proposed work will not detract from the appearance of other property within the District; and
 - (C) Where the proposed work consists of alteration or demolition of an existing structure, that such work will not unnecessarily damage or destroy a structure of historical, architectural or cultural significance.
2. The following are examples of motions to approve, continue, or deny a proposal while establishing findings for the record:

Findings for a MHRB motion to approve

- Describe aspects of the project that exemplifies A - C.
- Example: Restate A, B, and C above and conclude with something similar to "I move to approve MHRB-2015-## based on the findings in the staff report and because the proposed board and batten exterior compliments architectural features seen elsewhere in the neighborhood."

Findings for a MHRB motion to continue

- Identify the reason for continuing an item.
- State whether the item is continued to a date certain or not.
- Example: "Board Members have deliberated on the size and form of the proposed structure, I move to continue MHRB-2015-## and encourage the applicant to consider today's debate."

Findings for a MHRB motion to deny

- Describe how the project does not satisfy the standards (Section 20.760.050) or the design guidelines.
- Describe the opposite of the required findings and provide project specific examples.
- Include matters most important to the Board membership.

- Example: “The exterior appearance and design of the proposed work is *not* in harmony with the exterior appearance and design of existing structures within the District; the appearance of the proposed work will detract from the appearance of other property within the District; and where the proposed work consists of alteration or demolition of an existing structure, such work will unnecessarily damage or destroy a structure of historical, architectural or cultural significance.” Conclude with a statement similar to this example: “The proposed commercial building would have 50 windows that are more than 75% of the building’s façade. Standards discourage excessive use of glass. The proposal clashes with other buildings facing the same commercial street. I move to deny MHRB-2015-##.”
3. A foundation in the basis for an appeal, MTZC Section 20.760.072 Appeals, may assist in crafting a motion and providing facts to support the Review Board Member’s decision:
- (A) Appeals from a decision of the Review Board shall be based upon the information available in the public record on the date of the Review Board’s decision, and no new information shall be submitted except a statement supporting the grounds for appeal.
- (B) The grounds for appeal shall be limited to one (1) or more of the following allegations:
- i. That the exterior appearance and design of the approved work is not in harmony with the exterior appearance and design of existing structures within the District and with that of the existing subject structure, if any;
 - ii. That the appearance of the approved work will detract from the appearance of other property within the District;
 - iii. Where the approved work consists of alteration or demolition of an existing structure, that such work will unnecessarily damage or destroy a structure of historical, architectural or cultural significance;
 - iv. That the action of the Review Board is inconsistent with a specific section or sections of this Division;
 - v. That the project was denied.
4. Additional resource: “Evidence in the Record to Support Findings” from *Curtin’s California Land Use and Planning Law*, 25th edition (Pages 258-261). Attached.
- Court made clear that the transcript of a council debate was not adequate. There must be evidence in the record to support the findings. Evidence may consist of staff reports, written and oral testimony, the EIR, exhibits, and the like.
 - Findings must relate to the issue at hand.
 - Boilerplate or conclusory findings that do not recite the specific facts upon which the findings are based are not acceptable.
 - Cities must expressly state their findings and must set forth the relevant facts supporting them.
 - There is no presumption that a city’s rulings rest upon the necessary findings and that such findings are supported by substantial evidence. Rather, cities must expressly state their findings and must set forth the relevant facts supporting them.

For excellent discussions on findings, see Governor’s Office of Planning and Research, [Bridging the Gap: Using Findings in Local Land Use Decisions](#) (1989), available at www.ceres.ca.gov/planning/Bridging-Gap, and [Special Issues Under Takings Law: Findings, Fees and Dedications](#) (Institute for Local Self Government) (1999).

- To provide a framework for making principled decisions, thereby enhancing the integrity of the administrative process
- To facilitate orderly analysis and reduce the likelihood the city will leap randomly from evidence to conclusions
- To serve a public relations function by helping to persuade parties that administrative decisionmaking is careful, reasoned, and equitable
- To enable the parties to determine whether and on what basis they should seek judicial review and remedies
- To apprise the reviewing court of the basis for the city's decisions

Topanga Ass'n for a Scenic Community v. County of Los Angeles, 11 Cal.3d at 514

One court emphasized how important it is not only to prepare adequate findings, but to ensure that they are made easily available for a court to review. In *Protect Our Water v. County of Merced*, the court could not determine from the record what the county's findings were and whether they complied with CEQA. "The board of supervisors did appear to adopt [findings], but it is impossible to determine from this record what those findings are." The consequences were drastic: "Because we cannot discern the required findings under CEQA, we reverse the [county's approval]." *Protect Our Water v. County of Merced*, 110 Cal. App. 4th 362, 373 (2003). See chapter 21 (Land Use Litigation) for a discussion of preparation of an adequate record.

CEQA = California Environmental Quality Act

EIR = Environmental impact report



Evidence in the Record to Support Findings

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There must be evidence in the record to support the findings. Evidence may consist of staff reports, written and oral testimony, the EIR, exhibits, and the like. Findings are proper if they incorporate a staff report. See *McMillan v. American Gen. Fin. Corp.*, 60 Cal. App. 3d 175, 184 (1976). One court held that a summary of factual data, the language of a motion, and the reference in a motion to a staff report can constitute findings. However, the court made clear that the transcript of a council debate was not adequate. See *Pacifica Corp. v. City of Camarillo*, 149 Cal. App. 3d 168, 179 (1983). "The Council debate, although reflective of the views of individual councilmen, is not the equivalent of *Topanga's* findings." *Id.*

The city's written findings are not the sole means by which Topanga requirements can be satisfied.

However, the city's "written findings" are not the sole means by which *Topanga* requirements can be satisfied. See *Harris v. City of Costa Mesa*, 25 Cal. App. 4th 963 (1994). The *Harris* court said that in addition to the findings stated in the city council resolution, it could look to the transcript of the hearing for findings contained in statements made by council members. The court further held that it is proper to look for findings in oral remarks made at a public hearing where both parties were present, which were recorded, and of which a written transcript could be made. *Id.* at 971. The court noted that opinions of neighbors may constitute substantial evidence, and that sufficient evidence can be found in presentations by neighbors seeking to deny a project. *Id.* at 973.

Relevant personal observations can be evidence. An adjacent property owner may testify to traffic conditions based upon personal knowledge. See *Citizens Ass'n for Sensible Dev. of Bishop Area v. County of Inyo*, 172 Cal. App. 3d 151, 173 (1985). Also, testimony at a public hearing describing various problems

posed by the proposed development, including increased flooding and traffic, security problems, and health and safety risks, can support a city's findings in denying a development plan. See *Lindborg/Dahl Investors, Inc. v. City of Garden Grove*, 179 Cal. App. 3d 956, 962-63 (1986); *Placer Ranch Partners v. County of Placer*, 91 Cal. App. 4th 1336, 1342 (2001) (holding that the opinion of area residents was an appropriate factor to consider in making zoning decisions, citing *Stubblefield Construction Co. v. City of San Bernardino*, 32 Cal. App. 4th 687, 711 (1995)). See also *Browning-Ferris Indus. v. City Council*, 181 Cal. App. 3d 852, 865 (1986) (allowing a city to rely upon staff's opinion in reaching decisions and recognizing this as constituting substantial evidence).

Findings must relate to the issue at hand. In striking down findings that were not legally sufficient to justify a variance, the court stated:

[D]ata focusing on the qualities of the property and project for which the variance is sought, the desirability of the proposed development, the attractiveness of its design, the benefits to the community, or the economic difficulties of developing the property in conformance with the zoning regulations, lack legal significance and are simply irrelevant to the controlling issue of whether strict application of zoning rules would prevent the would-be developer from utilizing his or her property to the same extent as other property owners in the same zoning district.

Orinda Ass'n v. Board of Supervisors, 182 Cal. App. 3d 1145, 1166 (1986)

Boilerplate or conclusory findings that do not recite the specific facts upon which the findings are based are not acceptable. See *Village Laguna, Inc. v. Board of Supervisors*, 134 Cal. App. 3d 1022, 1033-34 (1982). Similarly, a finding that was made "perfunctorily" and "without discussion or deliberation and thus does not show the Board's analytical route from evidence to finding will be struck down." *Honey Springs Homeowners Ass'n v. Board of Supervisors*, 157 Cal. App. 3d 1122, 1151 (1984).

For example, the City of Poway alleged that San Diego's findings on a land use project were insufficient under the *Village Laguna* standard. See *City of Poway v. City of San Diego*, 155 Cal. App. 3d 1037 (1984). The court disagreed and held that the City of San Diego's written findings, as dictated in the record, provided enough comprehensive information and factual discussion of the issues before the city. *Id.* at 1049. This comports with *Craik v. County of Santa Cruz*, in which the court stated that "findings need not be stated with judicial formality. Findings must simply expose the mode of analysis, not expose every minutia." 81 Cal. App. 4th 880 (2000).

Similar findings were also upheld in *Jacobson v. County of Los Angeles*, 69 Cal. App. 3d 374 (1977). In this case, **the ordinance pertaining to conditional use permits required the zoning board to reach seven specific subconclusions and described these as the "findings" that must be made.** *Id.* at 391 (citing *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506 (1974)). **The court found these specific subconclusions sufficient.**

In summary, there is no presumption that a city's rulings rest upon the necessary findings and that such findings are supported by substantial evidence. **Rather, cities must expressly state their findings and must set forth the relevant facts supporting them.** See *J.L. Thomas, Inc. v. County of Los Angeles*, 232 Cal. App. 3d 916, 926 (1991).

PRACTICE TIP

Conclusory findings are not acceptable under Code Civ. Proc. § 1094.5. The findings should refer to the specific evidence upon which they are based.

There is no presumption that a city's rulings rest upon the necessary findings and that such findings are supported by substantial evidence.

When Are Findings Required?

Legislative Acts

Findings are not required for legislative acts unless a statute or local ordinance so requires.

Findings are not required for legislative acts unless a statute or local ordinance so requires. See *Mountain Defense League v. Board of Supervisors*, 65 Cal. App. 3d 723, 732, fn.5 (1977). Thus, findings are generally not required on zoning ordinances since they are legislative in character. See *Ensign Bickford Realty Corp. v. City Council*, 68 Cal. App. 3d 467, 473 (1977); *Towards Responsibility in Planning v. City Council*, 200 Cal. App. 3d 671, 685 (1988) (summary of fiscal finding is not required in a general plan amendment or a rezoning).

Under certain circumstances, however, local ordinances or state law mandates findings for a legislative act. For example, state law requires findings when a general plan limits the number of newly constructed housing units (Gov't Code § 65302.8), when a local ordinance has an effect on the housing needs of a region (Gov't Code § 65863.6), or when a housing development project that complies with the applicable general plan and zoning is disapproved because it would have an adverse effect on public health or safety (Gov't Code § 65589.5(j)). See also *Mira Dev. Corp. v. City of San Diego*, 205 Cal. App. 3d 1201, 1222 (1988) (Government Code section 65589.5 does not require findings to support denial of a rezoning application, citing *Arnel Dev. Co. v. City of Costa Mesa*, 28 Cal. 3d 511, 522 (1980)). Findings are not required if the housing limitation is adopted by an initiative. See *Building Indus. Ass'n v. City of Camarillo*, 41 Cal. 3d 810, 823–24 (1986). The Mitigation Fee Act requires that certain determinations be made by the legislative body when it establishes or increases development impact fees. Gov't Code § 66001.

CEQA requires that certain findings be made whenever a project is approved and an EIR has been prepared that identifies significant impacts.

Other statutes require that certain determinations be made regardless of whether the decision at issue is adjudicatory or legislative. For example, CEQA requires that certain findings be made whenever a project is approved and an EIR has been prepared that identifies significant impacts. Pub. Res. Code § 21081. The Water Code requires, for certain large projects, that the city “shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses.” Water Code § 10911(c).

Nonlegislative Acts

The nonlegislative or quasi-judicial capacity usually involves applying a fixed rule, standard, or law to a specific parcel of land.

Findings are required when the city acts in its nonlegislative (quasi-judicial, adjudicatory or administrative role) as opposed to its legislative capacity. A city usually acts in its legislative capacity when it establishes a basic principle or policy, such as a general plan adoption or amendment, or a rezoning. See *Ensign Bickford*, 68 Cal. App. 3d at 474. The nonlegislative or quasi-judicial capacity usually involves applying a fixed rule, standard, or law to a specific parcel of land. Examples of such actions include granting or denying variances, use permits, subdivision applications, design review approvals, and the like. See chapter 21 (Land Use Litigation) for further details.

Dedications or Ad Hoc Impact Fees

In the landmark exaction case *Dolan v. City of Tigard*, the United States Supreme Court for the first time held that a city must prove that development conditions,

especially relating to dedications, placed on a discretionary permit have a “rough proportionality” to the development’s impact. 512 U.S. 374, 391 (1994). If conditions are not roughly proportional, then a “taking” may occur. The city can meet its burden of proof by making appropriate findings based on the record and by quantifying its findings in support of the particular dedication. The city may not rely on conclusory statements that the dedication “could” offset the burden. This rule also is applicable when a city imposes a fee on an ad hoc basis not based on a generally applicable legislative enactment. See *Ehrlich v. City of Culver City*, 12 Cal. 4th 854 (1996). For a thorough discussion of *Dolan*, see chapter 12 (Takings) and chapter 13 (Exactions).

For excellent discussions on findings, see Governor’s Office of Planning and Research, *Bridging the Gap: Using Findings in Local Land Use Decisions* (1989), available at www.ceres.ca.gov/planning/Bridging-Gap, and *Special Issues Under Takings Law: Findings, Fees and Dedications* (Institute for Local Self Government (1999)).

A city must prove that development conditions, especially relating to dedications, placed on a discretionary permit have a “rough proportionality” to the development’s impact.

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NOTICE

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