

May 18, 2014 Email

Kevin Widdison, Editor

The Grants Pass Daily Courier

Reference: My Comments (i.e., Readers' Comments) at "Post A Comment" to Editor's May 16, 2014 Opinion, *The Rule Of Law In Land-Use Controversies* at <http://www.thedailycourier.com/articles/2014/05/16/opinion/news01.txt>

Dear Kevin:

In my view your opinion, *The Rule Of Law In Land-Use Controversies*, was accurate. For example, I believe your following summary statements reasonably describe the responsibilities of the Josephine County (JO CO) Planning Commission (PC).

- The planning commission must rule on whether the proposed aggregate . . . meets the land-use regulations in that area. And nothing more.
- They need to follow the law and let the chips fall where they may.
- However, all of the players in this highly emotional case must remember that this is not a popularity contest. This is not an election. This is not a political decision. All of the passionate pleas in the world will not stop this project if it conforms to the pertinent land-use regulations.

It is my experience that one of the most basic needs for the local land use applicant, planning commissioner (JO CO PC member), local government decision-maker (i.e., JO CO Commissioner), planner, developer, land owner, land use advocate, and the neighbor is to understand the land use rules. One of the most important land use regulations a local government in Oregon must follow is that it is required to include findings in a quasi-judicial decision to approve or deny a land use application.

FINDINGS. As required in ORS 215.416(8), written statements of fact, conclusions, and determinations based upon the evidence at hand, presented relative to the criteria and standards for such review and accepted by the review or hearing body in support of a final action (Article 11, Definitions, *Josephine County Rural Land Development Code*, page 1-16 at web page http://www.co.josephine.or.us/Files/complete_code_2005.pdf).

I believe findings in quasi-judicial land use proceedings before the PC and the BCC have their own requirements to be in compliance with the law.

1. Identify the relevant approval standards (i.e., standards and criteria).
2. Identify the facts which were believed and relied upon by the decision maker(s) and/or the planning commission.
3. Explain how those facts lead to the conclusion that the standards are, or are not, satisfied.
4. Respond to specific issues relevant to compliance with applicable approval standards and criteria that were raised by citizens in the proceedings.
5. Identify the specific approval standards and state that they are met by the land use application, or that compliance is feasible and impose enforceable conditions that will ensure compliance (i.e., if land use application approved).

However, in Oregon the PC does not make findings for land use applications that propose changes to a comprehensive plan and zoning. It, in effect, makes recommended findings to the BCC who are responsible to develop and approve these types of findings-decision.

Sadly, in Josephine County the public experiences are that the majority of the PC members make political decisions that are hardly unique; they are the norm. My reasons for this position follow. Members do take votes, for which they might state the reasons they voted, to approve or deny a land use application. However, the majority of the PC members's recommended decisions are not understandable as they pertain to their quasi-judicial responsibilities which, as you state, is to “. . . rule on whether the proposed aggregate . . . meets the land-use regulations in that area. And nothing more.” For example, historically it has been impossible to write findings based on the generalized deliberations recorded in the minutes of the PC for its vote and recommendations to approve or deny a land use application to change the comprehensive plan and zoning.

The same is generally true of the BCC. It is a political body and has an especially difficult time understanding its quasi-judicial land use proceedings responsibilities versus the needs of its electoral base; it mostly makes political decisions and signs the findings. It is also impossible to write findings based on the sketchy deliberations recorded in the minutes of the BCC to approve or deny a land use application. If this is true, how are finding actually written? Approximately 90 percent of the time, when the decision is to approve the land use application, findings are written by the land use applicant which the BCC signs as its own.

When I first found out about this findings development process, I was astounded to incredulous. The unequal, and I thought unfair, situation stiffened my will to question government's land-use findings and its stated compliance with the standards and criteria. It also strengthened a desire to help neighbors when I could in understanding land use proceedings. After so many years in the land-use trenches, I almost find it normal for the applicant to write the findings/decision. I mean, what could be more logical than a business writing the government's findings for its private request?

I reference our educational “findings” brochures at our web site. Again, thanks for an informative piece not well understood on the role of the PC.

Sincerely,

Mike Walker, Member
Hugo Land Use Committee
Hugo Neighborhood Association & Historical Society
<http://www.hugoneighborhood.org/>

Citizen Involvement
<http://www.hugoneighborhood.org/citizen.htm>

Citizen Involvement Issues, Including Educational Brochures For “Findings”
http://www.hugoneighborhood.org/Citizen_Involvement_Series.htm