



Planning Commission Training

Washoe County Planning Commission Training

Mt. Rose Conference Room

12:00 – 2:30

October 29, 2018

M:\Planning & Development\PC Training

PC Training, October 29, 2018



Agenda

■ Training topics

- Legal issues (Nate)
- Master Plan (Bob)
- Findings & Findings Exercise (Trevor and Nate)
- Applications, Conditions & Meetings (Trevor and Mojra)
- Questions and Answers
 - Pose during presentation, but answers here
 - Write down to ask during this period
 - Capture in parking lot (includes future training topics)
 - Run out of time? Schedule another training session



Legal Issues

Disclosures

- **Ethics laws (Chapter NRS 281A)**
- **Examples**



Two Tiers

- **Two tiers: (1) disclosure and (2) recusal**



Disclosure

- **Disclosure**
- **4 categories**
 - Pecuniary interest
 - Commitment in private capacity to others
 - Acceptance of gift or loan
 - Representation of another for compensation within the last year related to the matter before the PC



Disclosure Examples

- **Disclosure Examples: Pecuniary Interest**
 - Money
 - Own property nearby a project
 - Positive or negative effects



Disclosure Examples

- **Disclosure: Commitment in a Private Capacity**
 - Generally applies to members of household
 - Business relationships
 - Or substantially similar situations



Disclosure Examples

- **Disclosure: Receipt of Gift or Loan**
 - Re-fi
 - Other loans
 - Gifts (tickets to a show, ballgame, dinner reservations, drinks, etc.)



Disclosure Examples

- **Disclosure: Prior Representation**
 - New provision (2017)
 - Not well-developed in case law yet
 - Would apply to lobbying-type scenarios or if you were a member of the project team (planner, engineer, realtor, etc.) advocating an item



Disclosures (ctd)

■ Disclosures

- How much?
- Adequate information to inform the public of the nature of the conflict or potential conflict
- Generic disclosures not adequate



Recusal

- **Recusal**
 - Limited Scenarios
 - Conflict must be clear and unavoidable
 - Statutory preference is for public body members to participate in decisions



Communications

Communications

- **NRS Chapter 241**
- **Serial Communications**
- **Examples**



Board of Regents Case

- **Board of Regents Case**
 - Group of regents, a public body, were feuding with one of the members
 - They sent a draft press release around amongst themselves outside of a meeting and each indicated whether they would be in favor of making the release public
 - Ultimately decided not to make it public



Board of Regents Case (ctd)

■ Board of Regents Case

- Target of the press release learned of it
- Complaint filed with AG's Office
- Case went through Supreme Court, which concluded that their cumulative conversations constituted serial communications resulting in a constructive quorum
- Deliberation occurred (make public or not), and decision as reached (aka vote)
- OML violation



Serial Communications

- **Serial Communications**
 - Email
 - Texts
 - Phone calls
 - Faxes
 - Verbal conversations

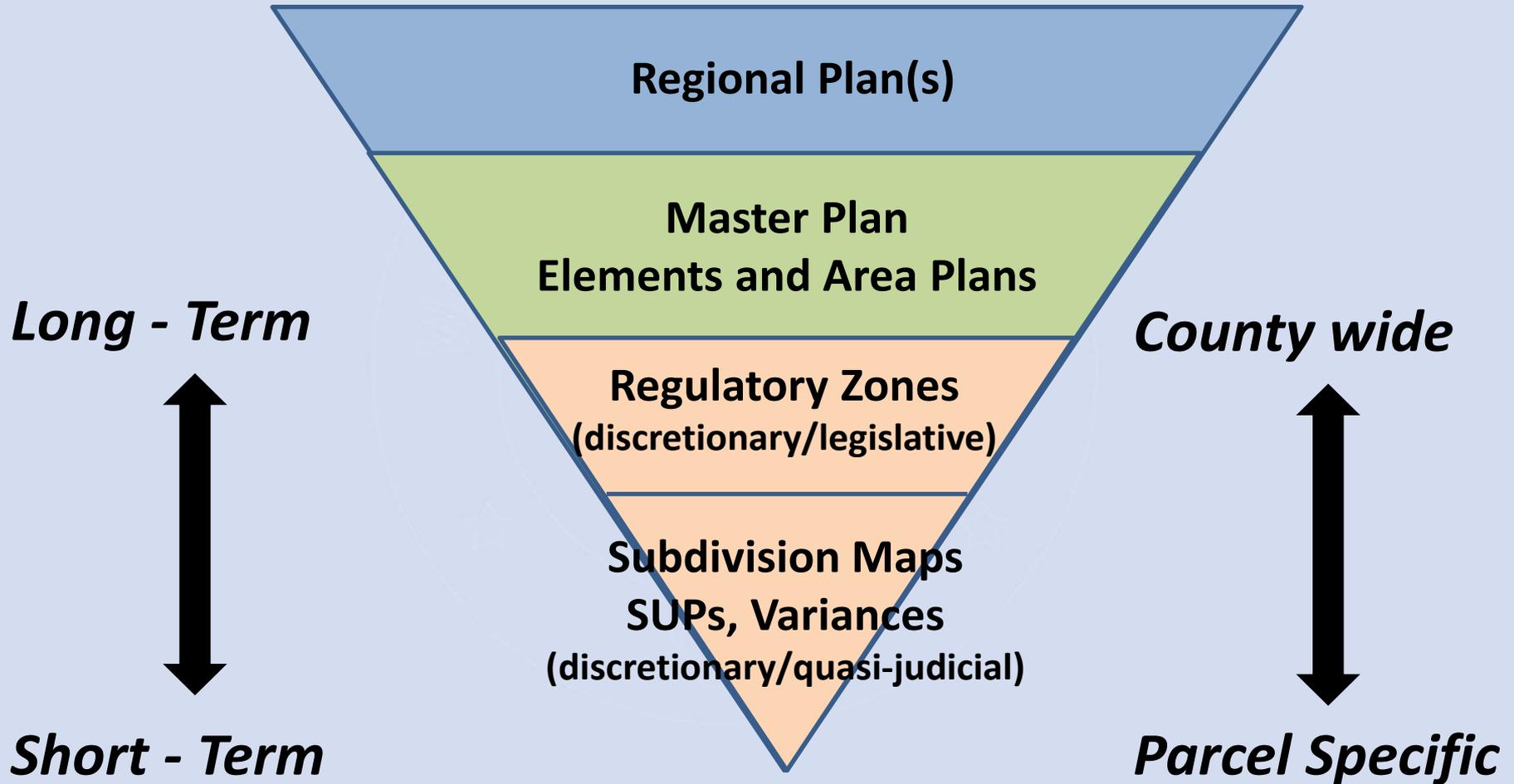


Serial Communications (ctd)

- **Serial Communications**
 - Quorum
 - Deliberation
 - Vote
 - Avoid “Reply All”



Planning Hierarchy





Master Plan

■ Master Plan

- Serves as the blueprint for future development
- Outlines where and how our communities will grow
- Provides basis for future provisions of services and infrastructure
- Includes vision, goals and policies
- Provide the basis for rational decision making by elected and appointed officials



Master Plan (continued)

■ Master Plan Objectives

- Coordinate public and private investment
- Minimize conflict between land uses
- Influence and manage the development of our communities
- Increase the benefits and cost effectiveness of public investment
- Predict public infrastructure and service needs in advance of demand
- Ensure that community facilities are located to best serve each community



Vision and Character Statements

■ Vision

- Relates to seeing and looking, about looking ahead
- Outlines goals and where “we” are headed
- Crafting a vision statement:
 - Project into the future (more than 20 years)
 - Use the present tense
 - Use clear, concise and jargon-free language
 - Infuse with passion and emotion

■ Character Statements

- Vision statements for each area plan



Goals

■ Goals

- Refine the Vision into broad statements that describe:
 - What matters? (what is of importance)
 - What is desired? (what is our end state)
- Targets to achieve through a series of actions (policies) within a set time frame (e.g., 20 years)
- Segregated into discreet topics (e.g., Conservation, Land Use, Transportation, Public Facilities, etc.)



Policies

■ Policies

- Provide actions to accomplish each goal, but not regulatory
- Should be measurable, assign responsibility, contain actions (not should but shall)
- Directly drives Development Code
 - Development Code must conform to Master Plan (NRS 278.0284 – Master Plan rules)
 - Policies are actionable statements which should be included within the Development Code



Master Plan – Elements (Volume 1)

- **Executive Summary and Introduction**
- **Conservation***
- **Housing***
- **Land Use* and Transportation***
- **Population**
- **Public Services and Facilities***
- **Regional Open Space and Natural Resource Management Plan***

*Enabled by NRS



Master Plan – Elements (ctd)

Other potential elements (NRS enabled)

- **Historic Preservation**
- **Recreation (usually combined with Open Space element)**
- **Safety**
- **Urban Agricultural**



Master Plan – Area Plans (Volume 2)

- Cold Springs
- Forest
- High Desert
- North Valleys
- South Valleys
- Southeast TM
- Southwest TM
- Spanish Springs
- Sun Valley
- Tahoe
- Truckee Canyon
- Verdi
- Warm Springs



Master Plan – Specific Plans (Volume 3)

- **Reno-Stead Corridor Joint Plan**
- **Warm Springs**
- **Not a specific plan, but a:**
 - Planned Unit Development
 - Black Rock Station Development Standards Handbook (Article 442)

Article 442, *Specific Plan Standards and Procedures*, added to Development Code in July 2015



Roles of Planners (Staff)

- **Support the Planning Commission**
- **Ensure Administrative Procedures are Followed**
- **Analyze the Projects**
- **Prepare Clear and Detailed Analysis**
- **Justify the Recommendations**



Roles of Planning Commission

- **Understand your Roles – Know the RPPs**
- **Prepare Beforehand**
- **Stick to the Agenda**
- **Be Objective and Dispassionate**
- **Follow Parliamentary Procedure**
- **Promote Civility**



Findings

- **Findings of Fact are the citation of specific facts about an application that the approval body finds to be true and which lead to the conclusion that application conforms or fails to conform to one or more applicable approval criteria**



Findings

- An example of a findings requirement from the Washoe County Development Code:

Section 110.804.05 Requirements for Application

“...the applicant shall provide evidence showing how the findings required in this article can be met.”





Principles of Findings

- **Decisions must be based on Facts**
- **Facts must address the standards**
- **Information is NOT the same things as “Facts”**
- **Opinions without a factual basis are without merit**
- **Public sentiment is not a basis for decision**
 - Exception: substantial and specific public input can amount to substantial evidence; probably limited to matters capable of lay observation, as opposed to expert opinion matters (hydrology, engineering, etc.)



Findings

**Your job is to hear fact-based testimony
and determine:**

- **Are standards being met?**
- **What are the facts?**
- **What is the burden of proof for the applicant to meet?**
- **What do I have to be convinced of in order to act on this, either to approve or deny?**



Findings – Defensible Decisions

■ Defensible Decisions

- In planning, the standard is substantial evidence
- NV Supreme Court: facts in the record that a reasonable mind would conclude are adequate to support a conclusion
- Doesn't matter if court “disagrees,” as long as there is substantial evidence
- Absence of substantial evidence = arbitrary and capricious



Findings Exercise

- **An interactive exercise in which a motion to approve or deny a mock planning item will be reviewed to determine and/or consider strengths and weaknesses of the findings related to the motion.**



Findings Exercise (ctd)

- **City annexes 7,000 acres of mostly undeveloped, rural land located almost 20 miles outside the city core. Developer applies for MPA and RZA to change the designations from generally rural to a mix of industrial, commercial, and residential. Would result in capacity to build up to 6,000 new homes in the area. Water services and infrastructure at time of application inadequate to serve buildout potential. City code requires finding that adequate water services and infrastructure exist or are planned to exist to support changes to zoning.**



Findings Exercise (ctd)

- **City approves both requests. Re zoning, city finds that no adequate water services and infrastructure currently exist. However, city also finds that each specific development proposal in the future would be required to demonstrate adequate water services and infrastructure. City also finds that public water utility in the area has the ability to expand its service lines if necessary to support particular future developments.**
- **While details of water and sewer service will be determined when a proposal is made, “there is infrastructure in place that could be expanded, such as an existing sewer plant, and a water purveyor ... Alternatively, new utilities could be built by the developer.”**



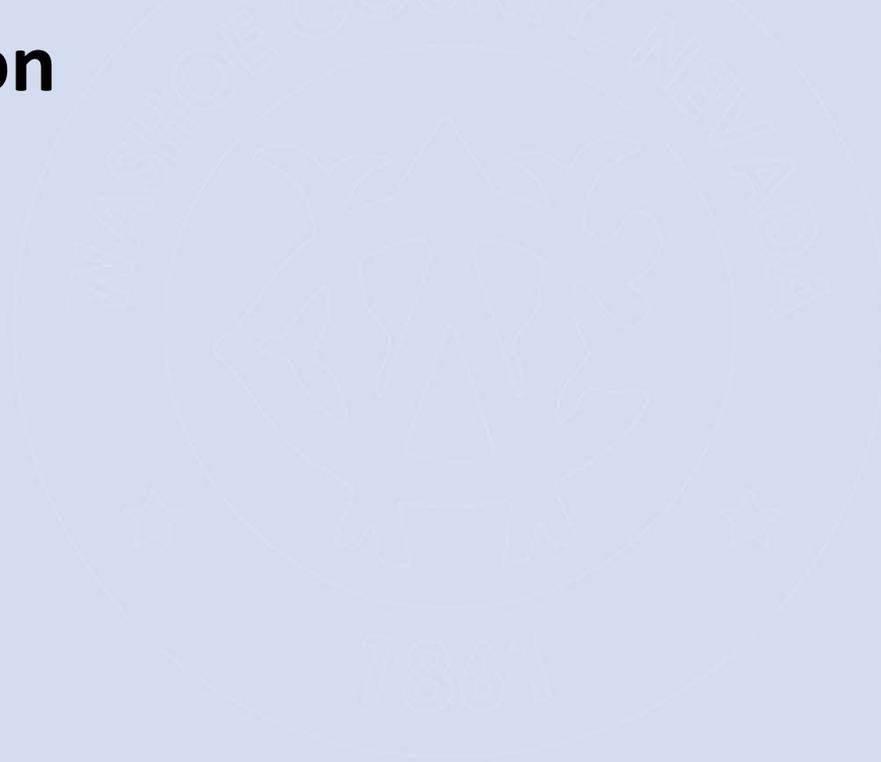
Findings Exercise (ctd)

- **Residents in the area petition for judicial review challenging both approvals. As to zoning, they argue that city failed to make adequate findings of availability or planned availability of water services and infrastructure. City argues it is not possible to plan the level of detail argued for by the petitioners prior to an actual development proposal being made, as opposed to merely changing the zoning designation.**



Findings Exercise (ctd)

- **What do you think? Is this adequate?**
- **Discussion**





Findings Exercise (ctd)

- **City of Reno v. Citizens for Cold Springs, 126 Nev. 263 (2010)**
- **NV Supreme Court reversed the zoning approval**
- **Inadequate findings made on the issue of water services and infrastructure**
- **Rejected city's arguments about detail level**



Findings Exercise (ctd)

- **Complete detail not required**
- **But:**
 - More than deferral of the issue to the future
 - More than broad or evasive conclusions about how officials can build new facilities if needed
 - Findings should be “[m]eaningful and should not set forth broad conclusions, make boilerplate resolutions, or defer issues to a later date”
 - In this context, must articulate at least a “general plan” for how services will be provided; “local government must set forth an estimate of the water services and infrastructure required to serve the proposed development facilitated by the zoning amendment and must state how the governing entity plans to meet this demand.”



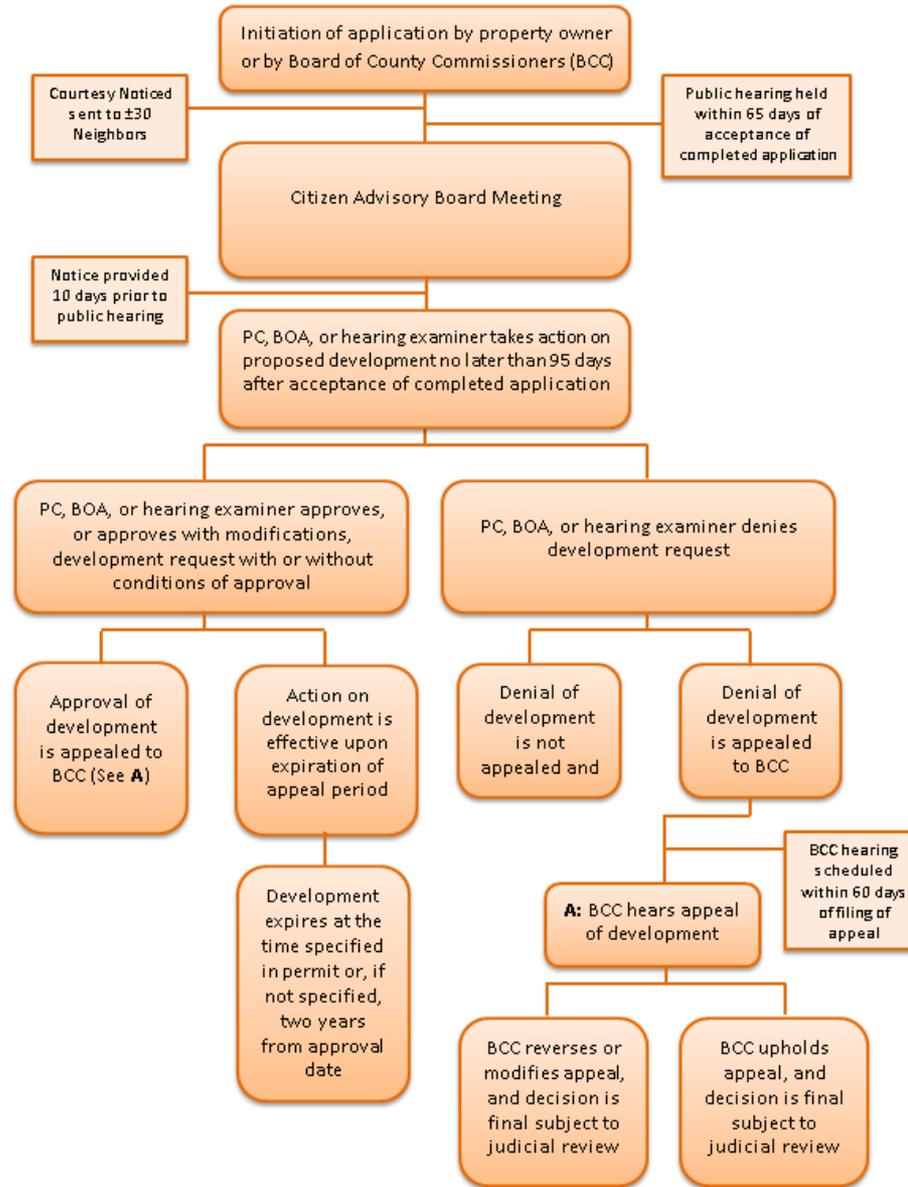
Findings Exercise (ctd)

- This was the analysis applied in that case, but it gives some guidance about the level of detail the courts are looking for when reviewing findings
- Need not be complete, or all-inclusive
- But must be more than just generalized conclusions or deferrals to future dates
- More importantly, must meet the language of the ordinance that defines the finding



Review of Discretionary Applications

Development Application (Typical)





Review of Discretionary Applications

Timelines

- **Tentative Subdivision maps – 60 Days**
- **Special Use Permits 65/95 Days**
- **Abandonments – 10 Business Days after Noticing**
- **Master Plan Amendments – NA**
- **Regulatory Zone Amendments – NA**
- **Development Code Amendments – 125/180 Days**



Review of Discretionary Applications

Noticing

- **Noticing by Mail**
 - Variance, Abandonment, SUP, RZA
- **Legal Noticing**
 - MPA, DCA, Abandonment



Review of Discretionary Applications

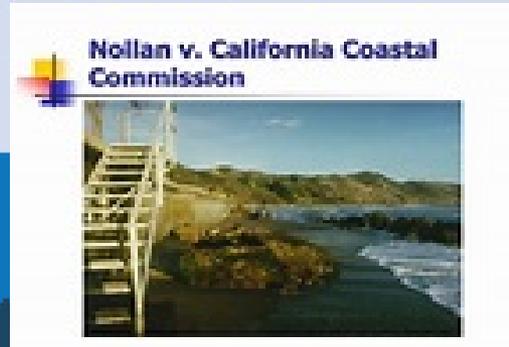
Review Procedures

- Application Intake (15th of the Month)
- 3 Day Review
- Agency Review Submittal
- Courtesy Notice
- CAB/Neighborhood Meetings
- Agency Staff Analysis
- Complete Staff Reports
- Noticing
- Send out Packets to PC
- Planning Commission Hearing
- Appeal



Conditions- *Nexus*

- Conditions and the need for a **Rational Nexus** and **Proportionality** between proposed conditions and the impacts of a particular project
- “Nexus” requirement established in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987)
- What was Case about? Land Dedication for “psychological “ public access to beach.....
- The issue @ Court: whether the imposition by CCC constituted a taking
- US Supreme Court , [Justice Scalia](#): a public-access condition did not meet the *nexus test*





Conditions- *Proportionality*

- “Proportionality” established in *Dolan v. City of Tigard*, 512 U.S. 374 (1994)
- “Proportionality” is Not Math, but:
 - **Jurisdictions must make determinations that the required condition is related both in nature and extent to the impact of the proposed development**
- What was the Case About? Land dedication for public green/path/bike ways
- The issue @ Court: Are conditions related in both nature and extent to the impact or excessive and disproportionate?





Conditions



- Think of it as....Object = reflection
- It is ok to apply municipality's police power/conditions (the reflection) when a harm/impact (the object) exists and must be alleviated
- If NO identifiable harms exist = NO legitimate use of the municipality's land-use powers exists either.
- Always tie conditions to MP Goal or Policy
- What is the *Nexus*? Is *Degree* Proportional ?
- Beware of Takings: asking a land owner to surrender constitutional rights, disproportionate and/or excessive conditions





PC Meetings

Sequencing of Testimony and Deliberations

- Remember to Deliberate after Testimony. This includes:
 - Staff Presentation and Applicant presentation
 - Public Comment
 - During this period: PC can ask Q's for Clarification to staff, applicant and attorney
- After Public Comment is closed then you can start Deliberatingand.... still ask more Q's
- Why?
 - Avoid the appearance that one has made-up their mind & influencing each other's opinion before testimony, facts, public's comments



Appeals

- Most decisions by the Planning Commission are appealable to the Board of County Commissioners.
- Appeals must be in writing and must be delivered to the Planning and Building Division within 10 calendar days from the date that the decision being appealed is signed by the Planning Commission Chair and/or the Secretary to the Planning Commission, filed with the Secretary to the Planning Commission, and mailed to the original applicant in the proceeding being appealed
- Can be filed by an “Aggrieved person” (110.910.02): ...”who has suffered a substantial grievance (not merely dissatisfied with decision)”
- Why? To have clear and defensible record, as if in Court





Questions?

