

Appendix D

An Approach to Making a Discretionary Land Use Decision

A decision-maker must analyze facts, identify the issues, and apply the relevant facts to the applicable standards and make a decision. This appendix provides an approach to reach a decision.

1. Put the application in its proper context

By identifying the nature of the application under review, you can begin to organize your thoughts in ways that will identify the relevant and irrelevant issues. For example, if a planning commission is considering a rezoning, you know that the policies in your locality's comprehensive plan will play a big role, you may suggest some modifications to the application that would allow a policy to be achieved, that you have a lot of discretion in how those policies are applied, and that your decision will be a recommendation to the governing body. On the other hand, if the planning commission is considering a subdivision plat, the sole issue is whether the plat satisfies the minimum requirements of the subdivision ordinance, the comprehensive plan is irrelevant, there are no policy considerations, and the planning commission has no discretion to deny the plat if it satisfies the minimum requirements.

2. Identify the relevant policies, standards, and facts

The staff report should identify the relevant policies and standards that apply to a particular decision. The policies and standards not only guide your decision, but also determine what facts will be relevant or irrelevant. Discarding the irrelevant from the relevant is essential. Be aware, however, that what may be considered to be relevant to a legislative decision on a rezoning or a special use permit application, is significantly broader than what is relevant to a ministerial decision on a subdivision plat or site plan.

3. Rank the policies, if applicable

When considering legislative or discretionary matters to which the policies in the comprehensive plan may apply, you may need to decide which policies should prevail over other policies if there are conflicts between them. Hopefully, the policies in your comprehensive plan are not internally inconsistent. Even if they are not, you may decide to give one policy greater weight in your decision than another.

4. Organize the facts

Facts must be organized in two ways. First, the relevant facts must be separated from the irrelevant facts. Facts are relevant if they tend to support or not support a conclusion. Second, the facts need to be organized within the framework of the policies or standards applicable to the decision. A well-written staff report should present the relevant facts within the framework of the policies or standards to allow the public body to easily identify which facts support or do not support each applicable policy or standard.

5. Consider and discuss the options

The range of options available in making a decision will depend on the nature of the application, the facts that have been presented, and whether the facts support or do not support the applicable policies, criteria, and standards.

6. Select an option

By the time the discussion ends, a conclusion should have been reached as to whether the facts support the applicable policies or standards. Again, the available options will depend on the nature of the application. However, the option selected must be supported by the relevant facts as they are applied to the applicable policies and standards. Otherwise, the decision may be subject to challenge as arbitrary and capricious.