

A Good Motion - Finding the Findings



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A Good Motion - Finding the Findings



Why?

- ⌘ Action taken is clear
- ⌘ Helps with consistency
- ⌘ Easier for review - by courts, legislative bodies, public - especially the public
- ⌘ Legally defensible

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- ⌘ Findings of fact: what are they?
- ⌘ - KRS 100.211(1) say that for zoning map amendments “The findings of fact and recommendation shall include a summary of evidence and testimony presented by the proponents and opponents of the proposed amendment”

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- ⌘ What do the Courts say:
- ⌘ City of Louisville v. McDonald - “..procedural due process requires at least that the local legislative body in rezoning matters act on the basis of the record and on the basis of substantial evidence”

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⌘ What do the Courts say:

⌘ American Beauty Homes Corp v. Louisville - “..three grounds for judicial review, (1) action in excess of granted powers, (2) lack of procedural due process, and (3) lack of substantial evidentiary support, effectually delineate its necessary and permissible scope”

⌘ In theory the courts won't look beyond these 3

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⌘ What do the Courts say:

⌘ Kentucky State Racing Commission v. Fuller-
Factual findings are not deemed arbitrary if they are supported by substantial evidence, which is defined as “evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable men” (Emphasis added)

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⌘ Findings/Evidence - Where do they come from?

- ⌘ 1. The record
- ⌘ 2. Experience?
- ⌘ 3. The Comprehensive Plan/regulations
- ⌘ 4. Staff and professional review and comment
- ⌘ 5. Evidentiary support/substantial/reasonable

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⌘ What Evidence to take:

- ⌘ 1. Expert
- ⌘ 2. Layperson
- ⌘ 3. Pro
- ⌘ 4. Con
- ⌘ 5. Staff review and comment
- ⌘ 6. Hearsay, rules of evidence - KRS 100.345

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⌘ What should you consider?:

- ⌘ 1. Everything from the prior 2 slides
- ⌘ 2. Emotion - pro and con?
- ⌘ 3. A particular constituency?
- ⌘ 4. Political fallout?
- ⌘ 5. Opinion - backed by logic or not?
- ⌘ 6. Others?

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⌘ What do they have to relate to:

⌘ Standards for Approval:

⌘ Rezoning

⌘ KRS 100.213

- ☒ In agreement with the adopted comprehensive plan
- ☒ existing classification inappropriate/new appropriate
- ☒ major changes of a physical, economic or social nature unanticipated by the comp plan which have substantially altered the basic character of such area

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⌘ What do they have to relate to:

⌘ Standards for Approval:

⌘ Subdivision

⌘ Snyder v. Owensboro:

- ☒ In agreement with the adopted regulations
- ☒ must cite deficiencies,
- ☒ if deficiencies are resolved then approval must follow
- ☒ regulations must have definitive standards

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⌘ What can muck up a good motion?:

⌘ Personal feelings:

- ☒ Conflict of interest
- ☒ Evidence not in the record
- ☒ Pre-decision
- ☒ Clouded judgement
- ☒ Couldn't care less - "parroting the statute"

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- ⌘ What is a good motion?
- ⌘ What is a bad motion - any good war stories?
- ⌘ Questions and Comments?