



backlit snow dusters by Christian Collins

Best Practices for Making Sound and Defensible Land Use Decisions

Are you an expert in land use law? If the answer is no, don't worry, because you're not alone. Elected and appointed officials are regularly asked to make decisions that have legal implications that could be challenged. The decisions of local governments are always open to litigation, and sometimes lawsuits are unavoidable. However, with an understanding of basic legal principles and how they can be used to support decision-making best practices, you can be confident that you are making defensible land use decisions that will limit the community's risk of a legal challenge.

Legal Foundations

Legal and constitutional principles are the foundation of sound and defensible land use regulations and administrative decisions. The following 4 legal principles have a major impact on governmental decision-making:

- **Procedural Due Process** – The use of fair procedures helps prevent arbitrary and unreasonable decisions. This principle also requires that persons affected by decisions have sufficient notice and the opportunity to be heard. Common procedural due process errors include, failing to comply with legal notification

requirements, not providing information for public inspection, and not using clear standards to guide discretionary decisions.

- **Substantive Due Process** – Land use regulations and regulatory decisions must advance a legitimate governmental interest. A simple first test is to ask, “Do we have the authority to enact this regulation and/or make this decision?” If a government action is not related to public health, safety, or general welfare, it can be deemed arbitrary and capricious, and subsequently invalidated in court.

- **Equal Protection** – This principle ensures the right of all persons under like circumstances to enjoy equal protection under the law. Simply put, similar uses should be treated similarly, unless there is a rational justification for their unequal treatment.
- **Just Compensation** – Governmental actions cannot result in the taking of private property without just compensation. Be careful that your regulation or decision will not effectively take away all economic value of a property.

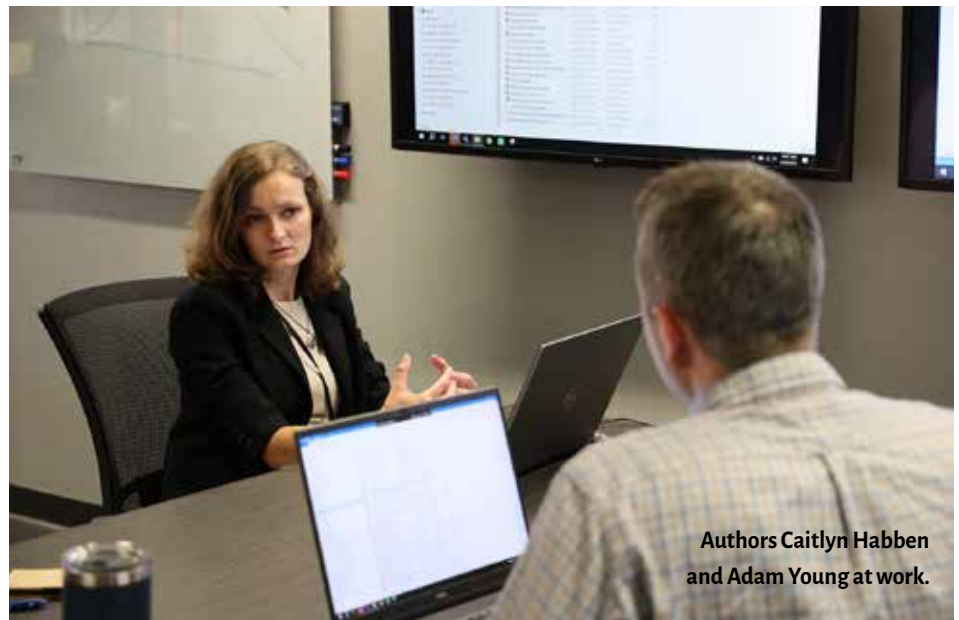
Decision-Making Best Practices

Although many planning and zoning related decisions are simple, others can be extremely complicated and difficult, especially when they involve a controversial topic, a large-scale development project with potential negative impacts, or a project that has drawn significant public attention. Four best practices that can help you reach a proper and legally defensible decision: 1) look to your master plan; 2) make thorough findings; 3) follow your standards; and, 4) assemble and rely on your team.

Look to Your Master Plan

Section 201 of the Michigan Zoning Enabling Act, PA 110 of 2006, requires any locally adopted zoning ordinance to be based on a plan designed to promote public health, safety, and general welfare of the community. This plan – commonly called a master plan – is a comprehensive, long-range policy guide that provides a framework for growth, development, and the community's future vision. From a legal standpoint, the plan provides the legal basis for the community's zoning regulations and is a guide for decisions related to land use.

Local decisions must be consistent with the policies in the master plan. This includes more than just a review of the future land use map when reviewing a rezoning request. Your master plan very likely contains additional information to



Authors Caitlyn Habben and Adam Young at work.

review when making decisions, such as goals and objectives statements, design guidelines, concept plans, and documented public sentiments gained during the master planning process. *For more on the master plan, read "Navigating the Future: Understanding Community Master Plans" in this issue of the magazine.*

A word of caution: As local conditions and circumstances change over time; you will need to keep the master plan up to date so it continues to reflect community values and addresses contemporary issues. A review is required every 5 years and a new or updated master plan is recommended every 10 to 20 years.

Make Thorough Findings

Findings of fact should be as specific as possible and relate directly to the provisions of the zoning ordinance, master plan, or other related ordinances or documents used to support the action taken. These findings of fact should be documented as part of a carefully phrased motion made by the decision-making body. At a minimum, a motion should include:

- Nature of the request
- Action taken
- Review standards that were applied
- Findings of fact behind the action taken
- Any conditions attached

Follow Your Standards

Whether you are a member of the zoning board of appeals, legislative body, or the planning commission, your job is to verify that zoning ordinance requirements and standards are met. To do this, you must identify and follow the review and approval standards outlined in your zoning ordinance. (If your zoning ordinance does not have standards for the various types of development requests, amend your zoning ordinance!) These standards, and the facts used to apply them, are the clearest guide for reaching a decision.

It can be tempting to base your decision on emotions or justifications that fall outside the scope of your review, especially for high-profile projects generating considerable public interest. This is where communities open themselves up to the risk of litigation, as the applicant can call into question the subjectivity or fairness of the decision made. Zoning and planning decisions are not made on the basis of public support or lack of support; they must be based on whether the proposal meets the requirements of the applicable plans, regulations, and standards of review specified in the zoning ordinance.

Following your standards also applies to conditions that may be attached to the approval of a development request. Any

conditions attached must be justified as being necessary to comply with the review standards.

Assemble and Rely on Your Team

Having a great team in place to equip and support local elected and appointed officials and decision-makers is a significant benefit to limiting your legal risk. This team may include a combination of staff and/or consultants. Seek and lean on your team's expertise and advice to make sound and defensible land use decisions.

MAP has many workshops that examine planning and zoning processes; for example, Master Planning Process, Risk Management, Stand by Your Plan, and Getting the Development You Want. These workshops are available for communi-

ties to host on their own (check out On Site Workshops at MAP's website). In March 2024, MAP will host 10 workshops around the state with a mix of in person and virtual events (check out the ad in this issue of the magazine and MAP's Regional Workshops webpage for details).

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