Preparing Proper Findings

Cayuga County Planning Board Training Series

Cayuga-Onondaga County BOCES
Auburn, New York

November 19, 2014

Nick Colas, AICP
Principal Analyst
Cayuga County Dept. of Planning
and Economic Development

Preparing Proper Findings

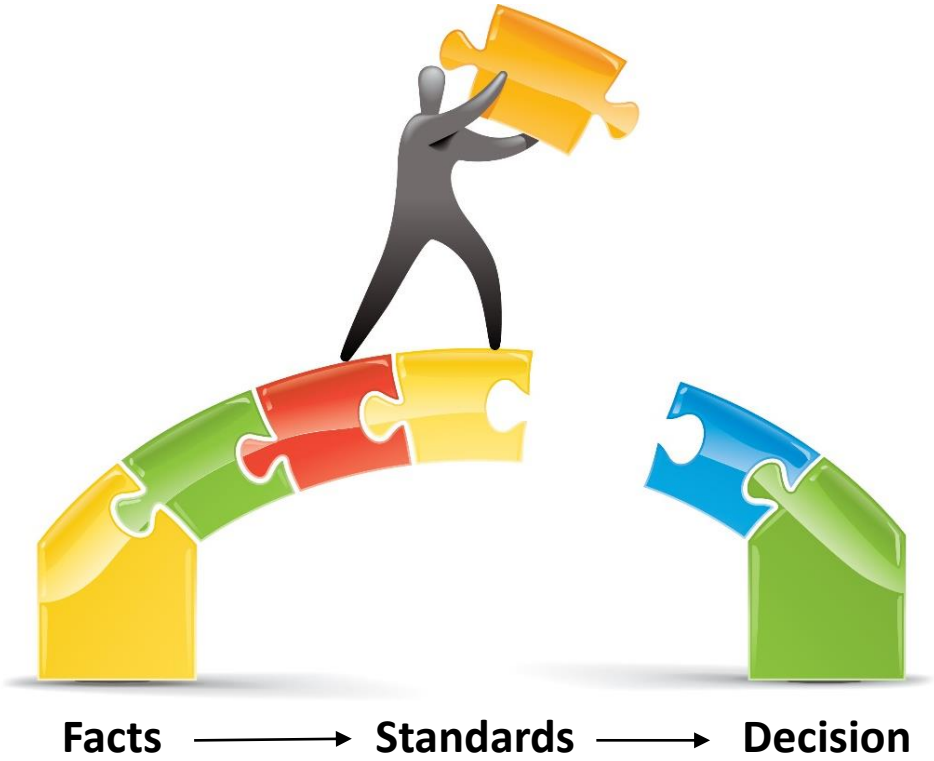
- Introduction
- Judicial review
- The decision making process
- Clarifying and documenting findings

Statutory Guidance

No NYS law relating to planning or zoning includes a definition of “findings” or “decision” or language describing what is specifically required to make proper findings or complete a decision.

What are findings?

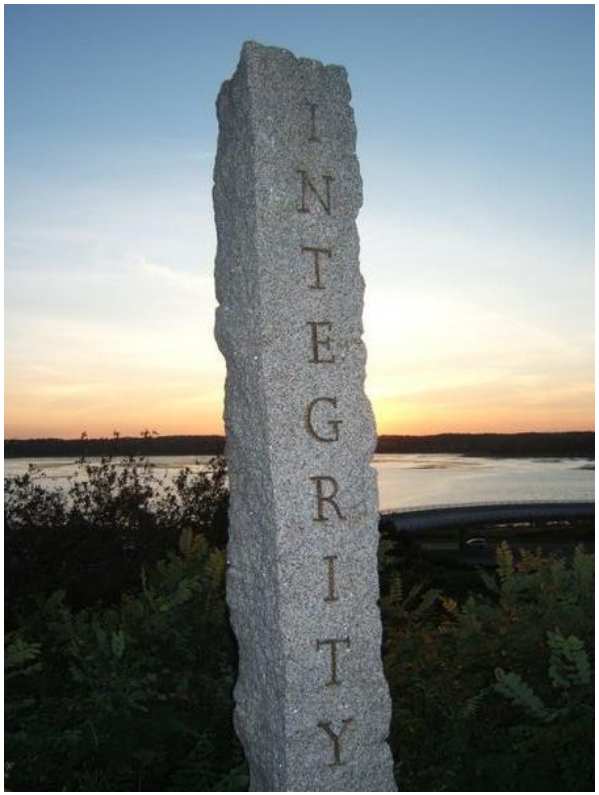
Statements of the facts, standards, and conclusions used in making a decision



Findings include “subdeterminations” which bridge the gap between raw data and ultimate decisions.

Purposes

1. Provide a framework for making principled decisions, enhancing the integrity of the administrative process;



Topanga Association for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506.

Purposes

2. Help make analysis orderly and reduce the likelihood that the agency will randomly leap from evidence to conclusions;

Purposes

3. Enable the parties to determine whether and on what basis they should seek judicial review and remedy;

4. Apprise a reviewing court of the basis for the agency's action; and,

Purposes

5. Serve a public relations function by helping to persuade the parties that administrative decision making is careful, reasoned, and equitable.

Judicial review of local land use decisions is limited

A board determination will not be set aside unless there is a showing of illegality, arbitrariness or **abuse of discretion**

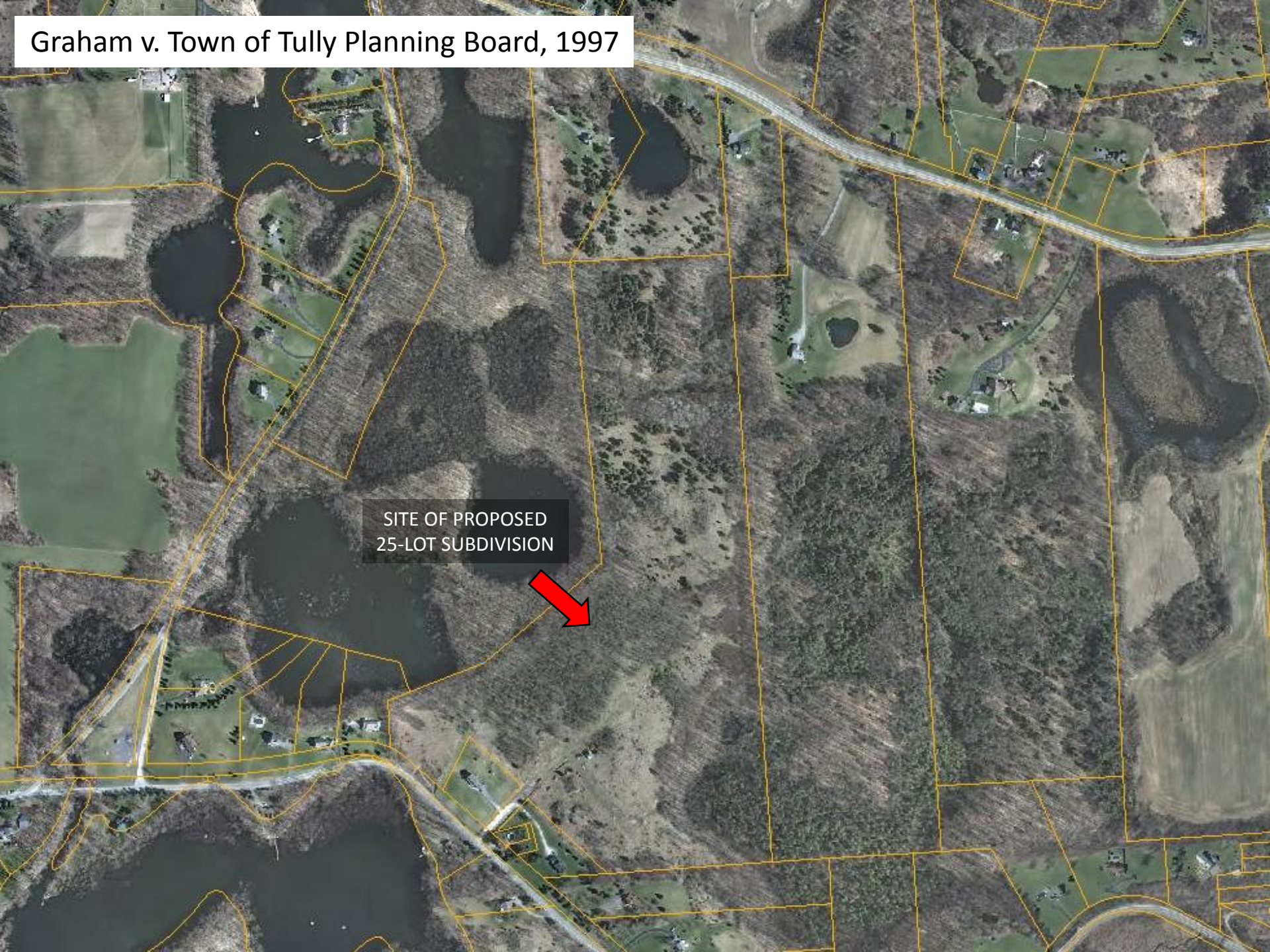
Abuse of discretion

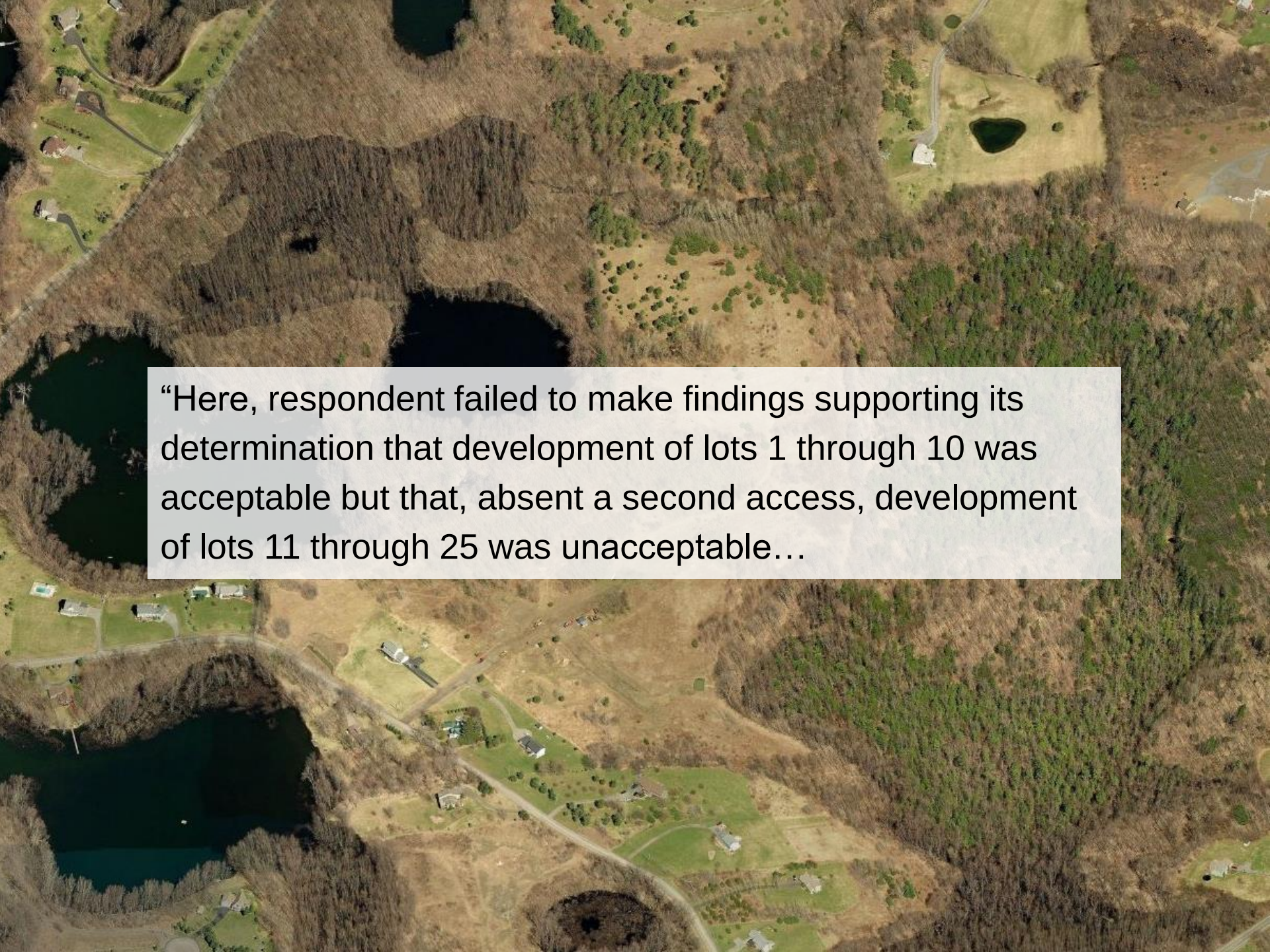
- A failure to take into proper consideration the facts and law relating to a particular matter
- Deciding a question in a way that is clearly against reason and logic

The judge always wore a crown when he made rulings that could only be overturned by the "abuse of discretion" standard to let everyone know... "This is it, baby."

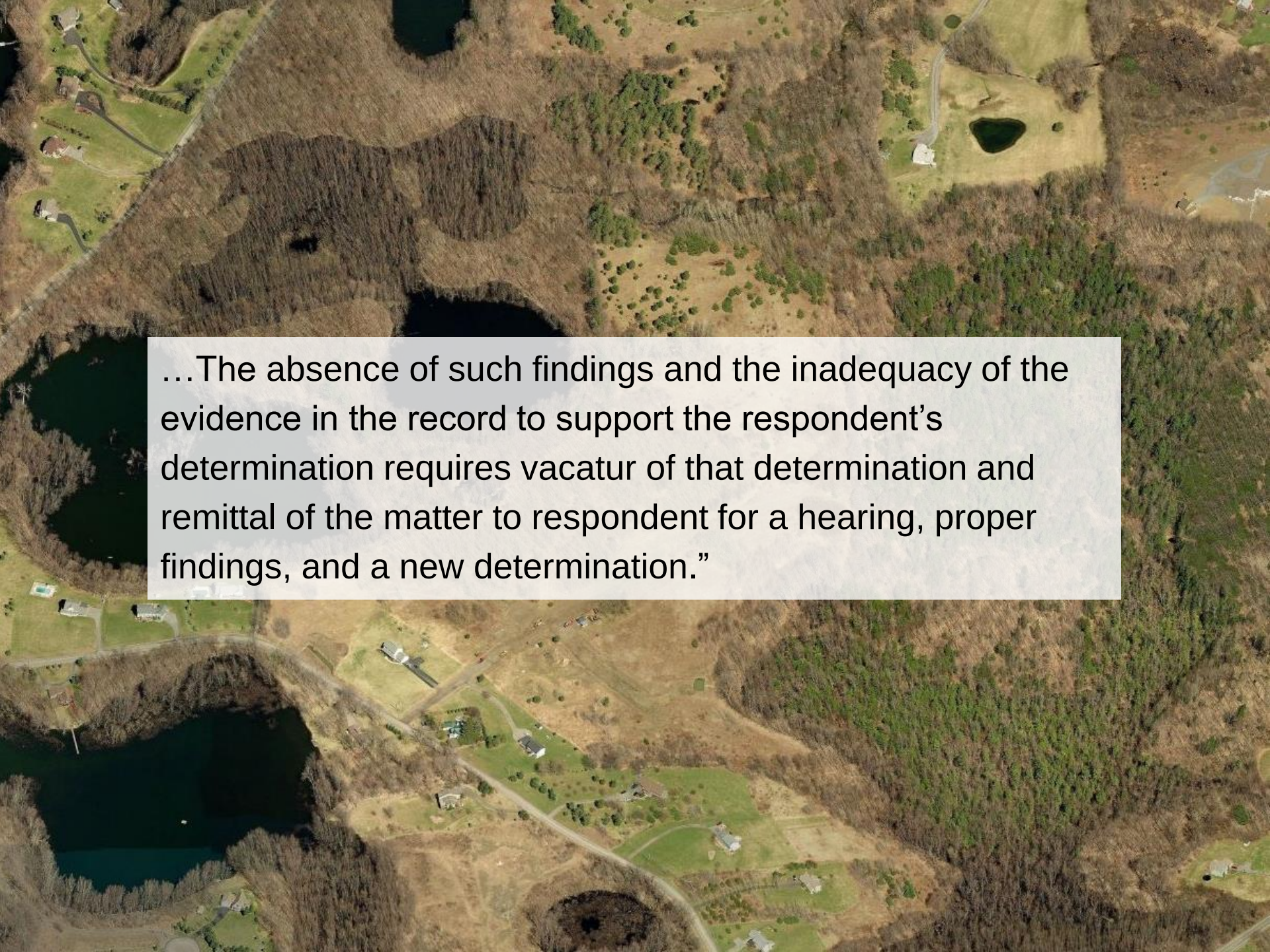
If a decision is rational and is supported by substantial evidence, a reviewing court will not usually substitute its judgment for that of a local board even if an opposite conclusion might logically be drawn.

Graham v. Town of Tully Planning Board, 1997





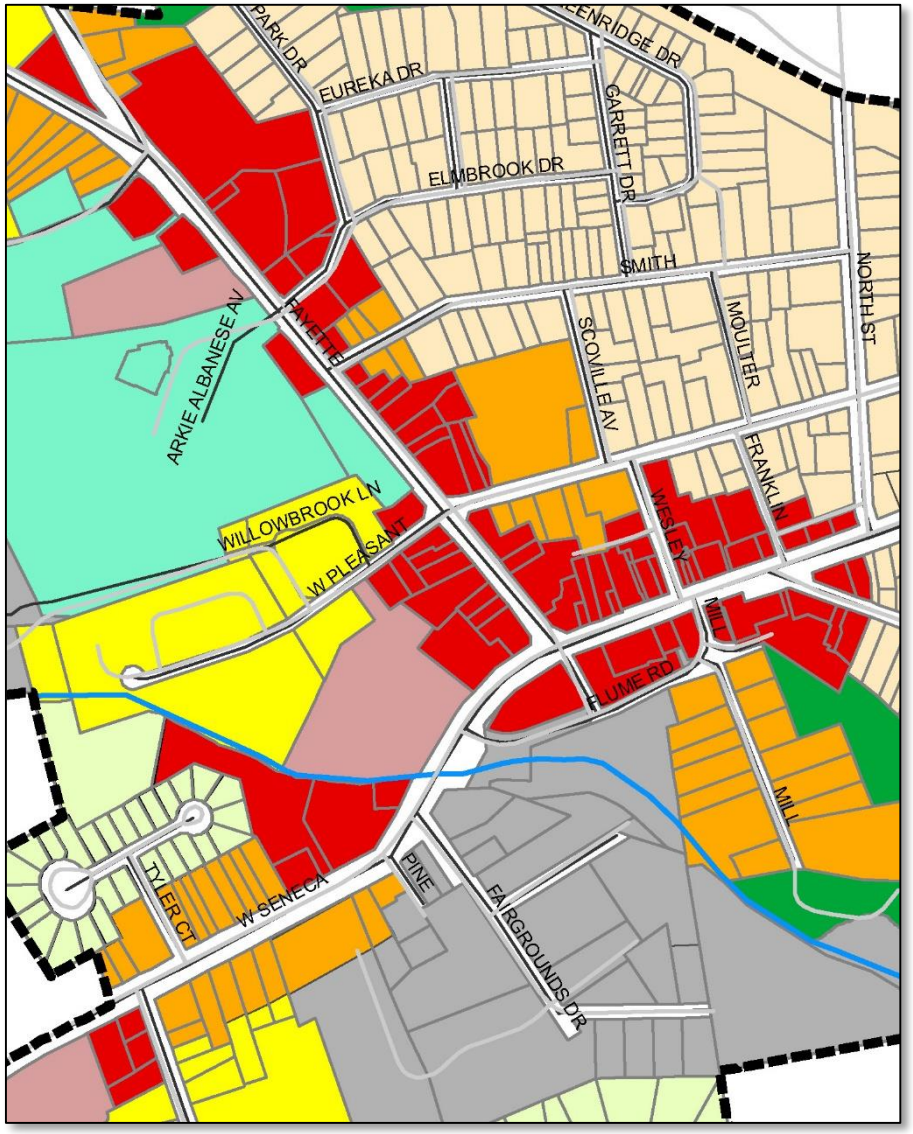
“Here, respondent failed to make findings supporting its determination that development of lots 1 through 10 was acceptable but that, absent a second access, development of lots 11 through 25 was unacceptable…



…The absence of such findings and the inadequacy of the evidence in the record to support the respondent’s determination requires vacatur of that determination and remittal of the matter to respondent for a hearing, proper findings, and a new determination.”

Hobbs v. Albanese, 1979

"The evidence in the record, however, is not sufficient to establish that petitioners' proposed use would have a greater impact on the traffic in the area than would other permitted uses not subject to special permits…and the matter is remitted to the village board for further proof regarding the traffic hazard, or for issuance of the permit."



The Decision Making Process

- Begin creating a record
- Identify the legal standards
- Identify the relevant facts
- Analyze the facts in relation to the legal standards
- Make a final determination

Schedule "A": **APPLICATION FOR SUBDIVISION APPROVAL**

FOR OFFICE USE ONLY
File No. _____
Receipt No. _____

OWNER RELATED INFORMATION

☐ Preliminary Plan ☐ Tentative Plan ☐ Final Plan

Name of Applicant (s):
Mailing Address: _____ Phone:
Postal Code: _____

SPECIAL INSTRUCTIONS:

Registered Owner (s) (if not applicant):
Documents to be Returned to: _____

LAND TO BE SUBDIVIDED

Location: Municipality:
Parcel Identifier: _____ Civic: _____
Abutting Property Owner(s): _____
Approval Requested for Lot(s) #
Type of Development Proposed: ☐ Single unit dwelling ☐ Other (Specify) _____
Assessment Requested from Department of Environment: ☐ Yes ☐ No
Is there a remainder lot? ☐ Yes ☐ No

CERTIFICATION - ON-SITE SYSTEM NOT REQUIRED (unserviced areas)

I certify that _____ (is, are) being created for a purpose (_____)
(lot(s) being approved and/or remainder lot) (specify purpose)
that will not require the installation of an on-site sewage disposal system.

SIGNATURE _____

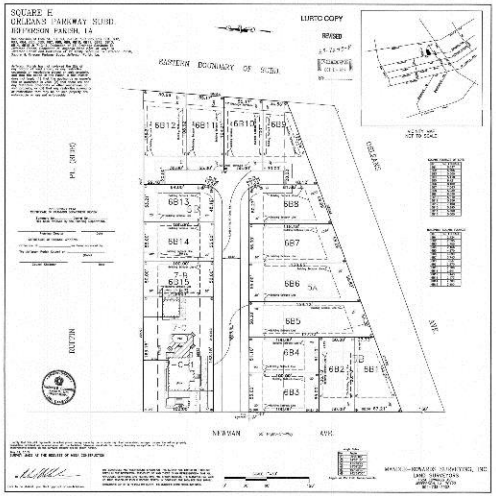
Water Services	Existing	Proposed
Municipal	☐	☐
Drilled	☐	☐
Dug Well	☐	☐
Other (specify)		

Sewer Services	Existing	Proposed
Municipal	☐	☐
On-site	☐	☐
Other (specify)		

Access	Existing	Proposed
Public Road	☐	☐
Municipal Road	☐	☐
Private Road	☐	☐
Private Right-of-Way	☐	☐
Name of Road _____		

I certify that I am the owner or acting with the owner's written consent.

Signature of Applicant(s) _____ Date _____

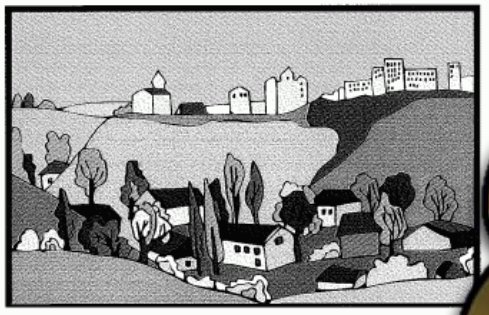


Genesee Farms, Inc. v. Scopano, 1980

“On the sparse record before us it is impossible for this court to determine "whether there is substantial evidence to support the determination…”(*Matter of Fuhst v Foley*, 45 N.Y.2d 441, 445.) The reasons given for the denial are conclusory and unexplained…”

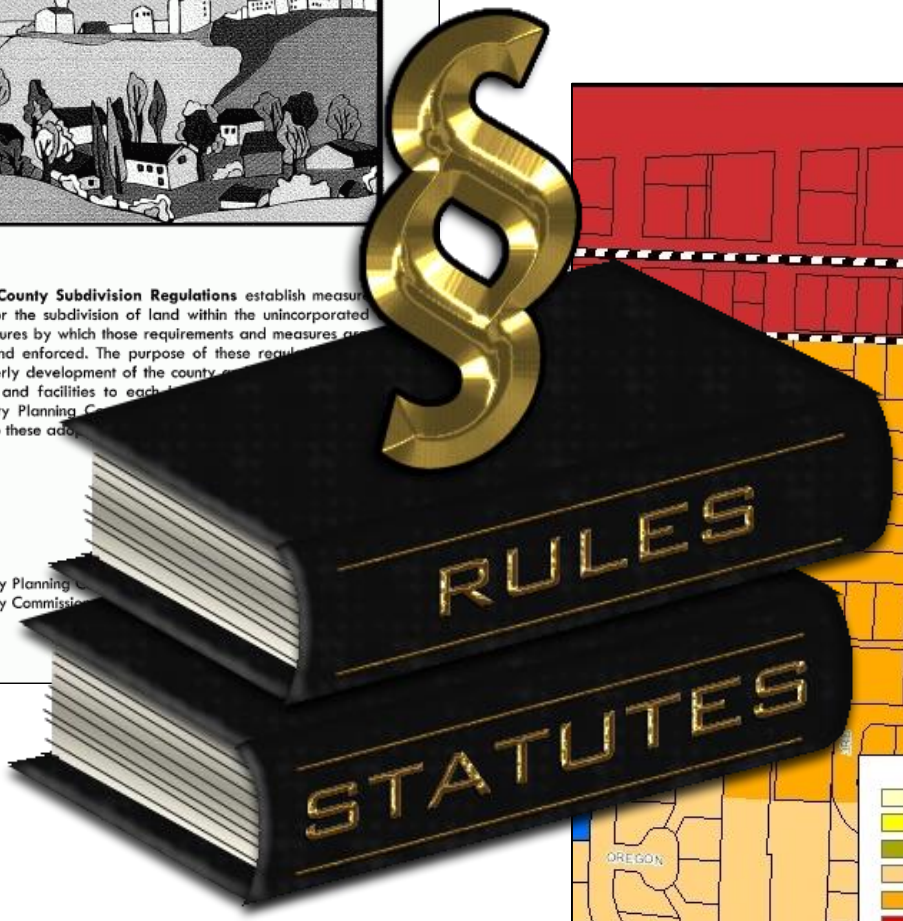
Subdivision Regulations

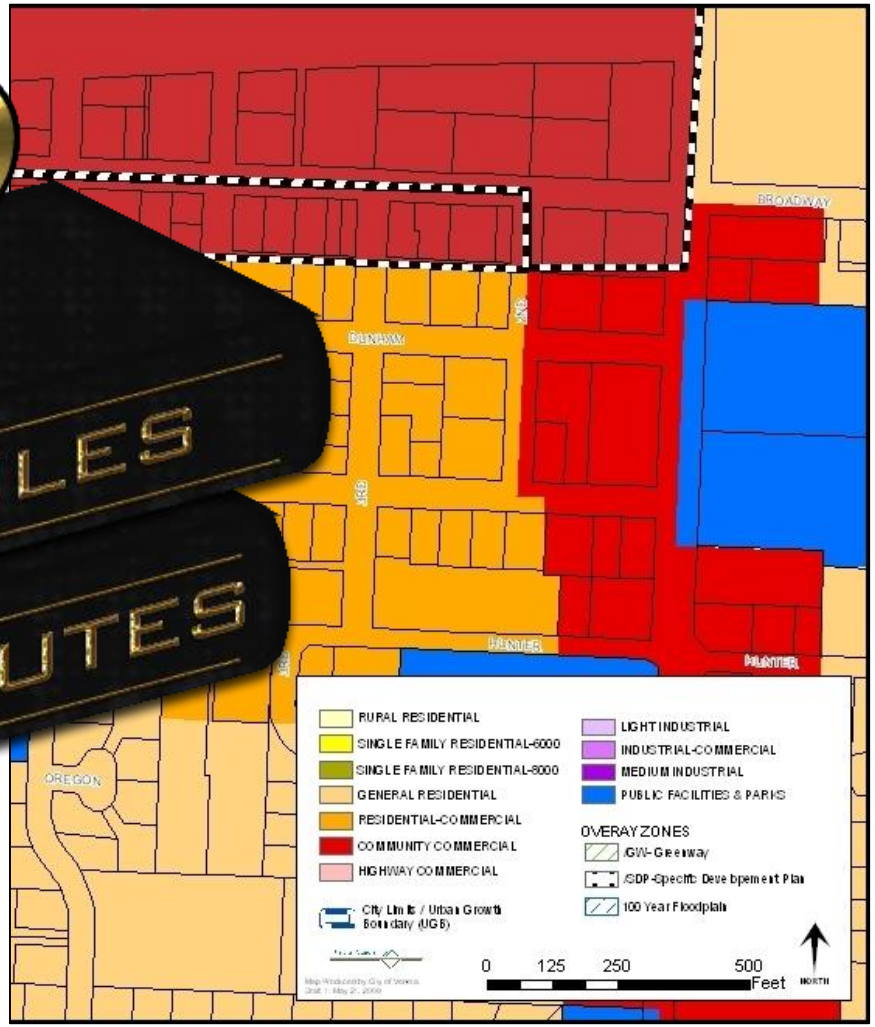
Creating a healthy and wholesome environment through the wise stewardship of land.

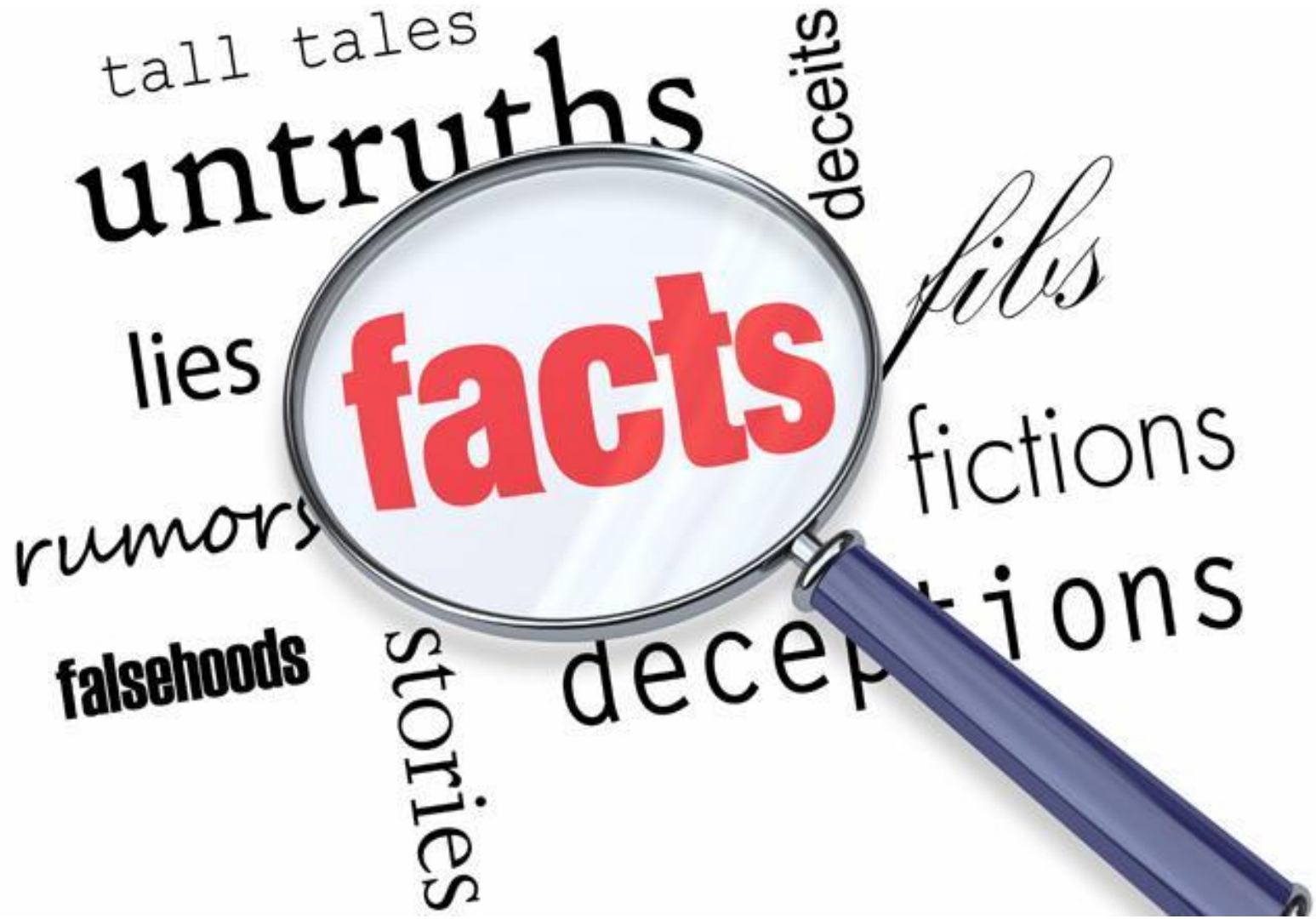


The **Shawnee County Subdivision Regulations** establish measur
requirements for the subdivision of land within the unincorporated
and the procedures by which those requirements and measures a
administered and enforced. The purpose of these regul
ensure the orderly development of the county
public services and facilities to each
Shawnee County Planning C
sions conform to these ado

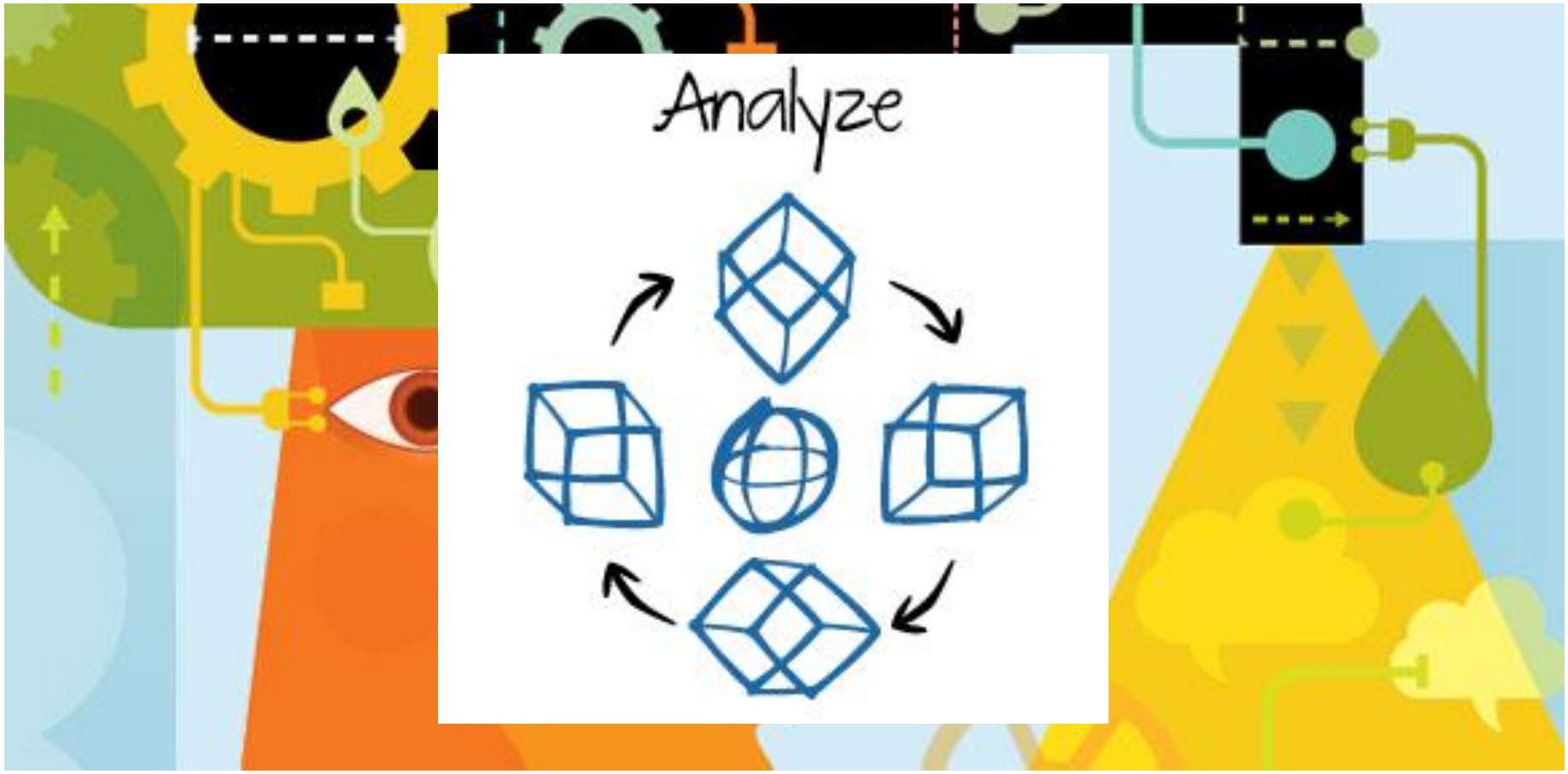
ADOPTED:
Shawnee County Planning C
Shawnee County Commissio






tall tales
untruths
deceits
facts
fibs
lies
fictions
rumors
deceptions
falsehoods
stories

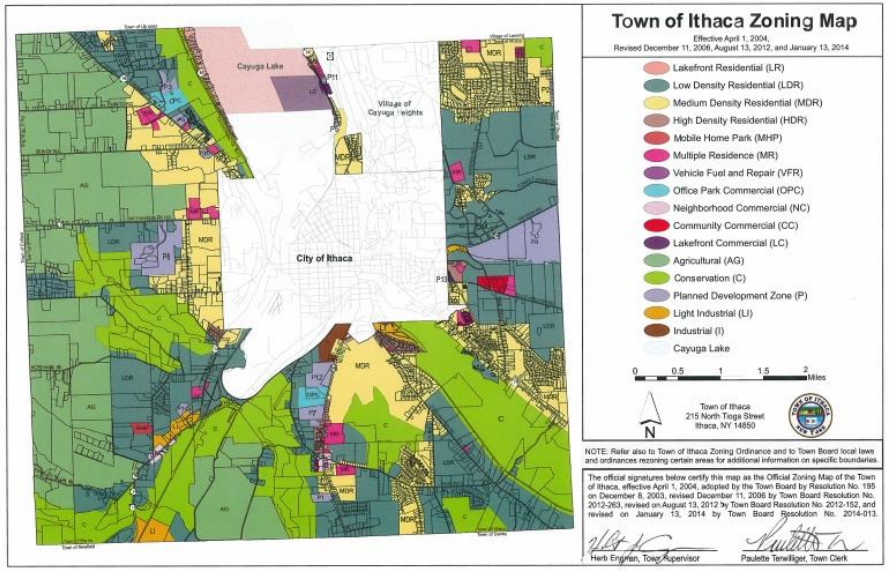
who
what
where
how
when
why
?


Analyze

Remember to ask for proof

John S. Bowers et al. v. Henry Aron et al., 1988

"…the Zoning Board's findings consist of a recitation of the standards…with little or no attempt to correlate the evidence in the record to those standards. There is…no explanation as to what evidence in the record was relied upon by the Zoning Board in reaching this conclusion."



ANECDOTAL
EVIDENCE
S. Harris

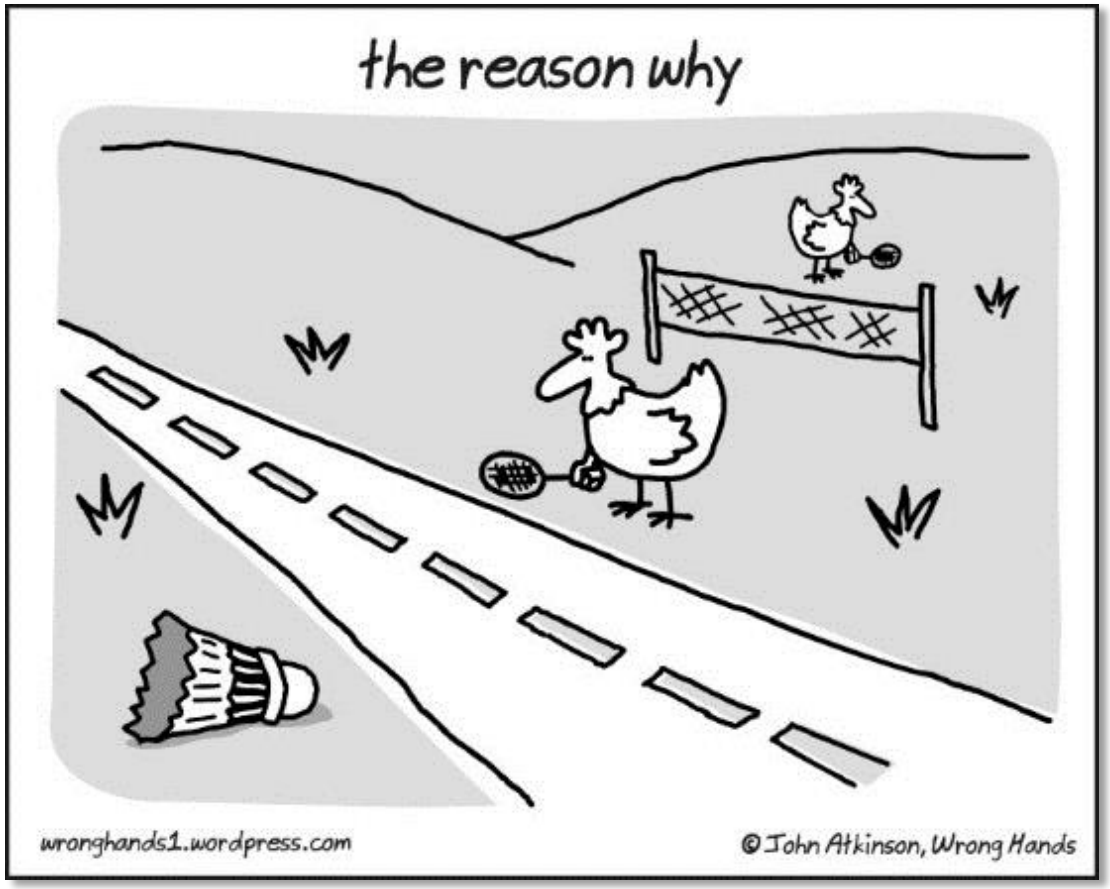
Generalized complaints or speculative fears of predicted consequences provide no basis for decision making.

Frangella Mushroom Farms, Inc. v. ZBA of the Town of Coeymans, 1982

"The lack of evidence to support these findings is not salvaged by the fact that respondent's findings purport to be based in part on the personal knowledge of its members, since in this respect the board's decision contains only a bare conclusory statement without supporting facts to provide a basis for judicial review"

Making the final determination

- Explain the reasons
- Avoid making conclusory statements



Take advantage of parliamentary procedures to develop findings

Make and amend motions to:

- Establish the facts
- Cite the evidence/proof

"What luck!"

ZBA findings and decision templates available at:

http://www.dos.ny.gov/lg/onlinetraining/test_resources/area_variance_findings_decision.pdf

http://www.dos.ny.gov/lg/onlinetraining/test_resources/Use_variance_findings_Decision_Document.pdf

USE VARIANCE FINDINGS & DECISION

(Dept. of State Example)

OFFICE USE ONLY
Application No. UV- _____
Date of Application: _____
(Postmarked or Hand Delivered)
Date of Public Hearing: _____
Date Notice Published: _____
Date of County Referral: _____
Date of Final Action: _____
Date of Filing of Decision with the Municipal Clerk: _____

Applicant: _____

Appeal Concerns Property at the following address:

_____

County Tax Map Section: _____ Block_____Lot_____
Zoning District Classification:_____

Use for which Variance is Requested:_____

_____

_____

Applicable Section of Zoning Code:_____
Permitted Uses of Property: _____

_____

TEST: No use variance will be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. The following tests must be met for each and every use allowed by zoning on the property, including uses allowed by special use permit.

1.The Applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial.: Yes___No___

Proof:_____

_____

_____

_____

_____

ILLUSTRATIONS OF FINANCIAL EVIDENCE
- Bill of sale for the property, present value of property, expenses for maintenance
- Leases, rental agreements
- Tax bills
- Conversion costs (for a permitted use)
- Realtor's statement of inability to rent/sell

2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the zoning district or neighborhood.): Yes___No___

Proofs:_____

_____

_____

_____

ILLUSTRATIONS OF UNIQUENESS
- Topographic or physical features preventing development for a permitted use
- Why would it be possible to construct the applicant's proposal and not any of the permitted uses?
- Board member observations of the property and surrounding area.

ZONING BOARD OF APPEALS
AREA VARIANCE FINDINGS & DECISION

OFFICE USE ONLY
Application No. AV- _____
Date of Application: _____
(Postmarked or Hand Delivered)
Date of Public Hearing: _____
Date Notice Published: _____
Date of County Referral: _____
Date of Final Action: _____
Date of Filing of Decision with the Municipal Clerk: _____

Applicant: _____

Appeal Concerns Property at the following address:

_____

County Tax Map Section: _____ Block_____Lot_____
Zoning District Classification:_____

Requirement for which Variance is Requested:_____

_____

_____

Applicable Section(s) of Zoning Code:_____

TEST: No area variance will be granted without a consideration by the board of the following factors:

1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties: Yes___No___

Reasons: _____

_____

_____

2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance: Yes___No___

Reasons:_____

_____

_____

3. Whether the requested variance is substantial: Yes___No__

Reasons:_____

_____

4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood: Yes___No___

Reasons:_____

_____

_____

5. Whether the alleged difficulty was self-created: Yes__No_

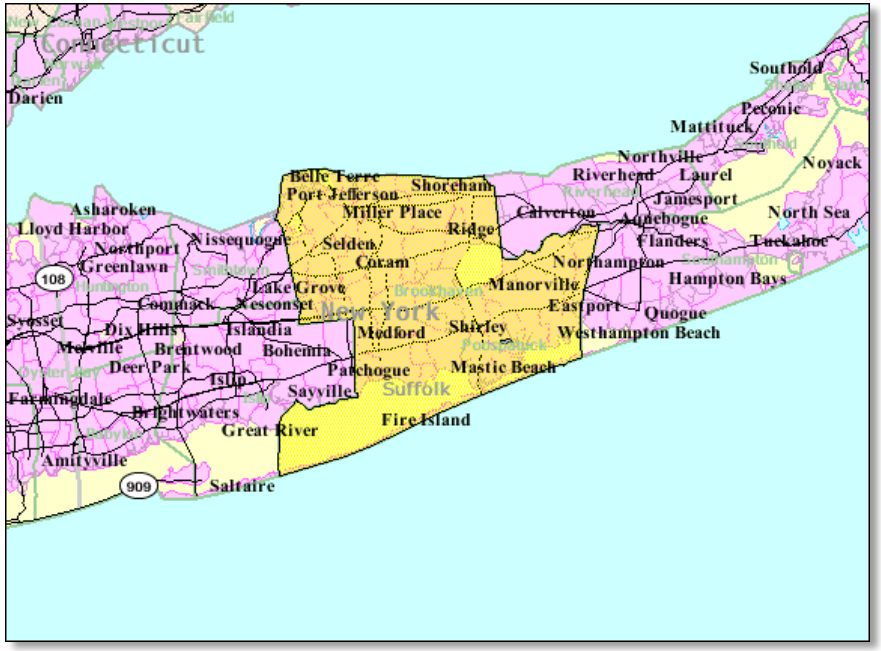
Reasons:_____

_____

_____

Conley v. Town of Brookhaven ZBA, 1976

"After a review of the record, we find that there are facts from which the board could conclude that a variance should be granted…Although a contrary conclusion might also be drawn,…We may not substitute our judgment for that of the local zoning board, where there is substantial evidence in the record to support the board's determination."



Cowan v. Kern et al., 1977

"…it is for locally selected and locally responsible officials to determine where the public interest in zoning lies…It matters not whether, in close cases, a court would have, or should have, decided the matter differently. The judicial responsibility is to review zoning decisions but not, absent proof of arbitrary and unreasonable action, to make them."

In Conclusion

The process of making land use decisions has its rough edges: economic impacts, election campaigns, tender egos, and neighborhood conflicts. Making findings as an integral part of the decision making process will not guarantee that all of the rough edges will be smoothed out. However, if decision making officials take findings seriously,…

…they can reduce the public's doubts about the wisdom of their decisions and reduce public skepticism about their motivations. Using findings builds an excellent defense for local officials' decisions, and ultimately more justly serves the public purposes of regulating land use.

Bridging the Gap: Using Findings in Local Land Use Decisions. 2nd Ed. Governor's Office of Planning and Research. Sacramento, California. 1989

"Let's hold off making a decision until we have even more information we don't really need."