NOTICE OF REGULAR MEETING
KERSEY PLANNING AND ZONING COMMISSION
KERSEY MUNICIPAL BUILDING
446 1st Street, Kersey, CO
TUESDAY, MARCH 1, 2022
6:00 P.M.

AGENDA

1) **CALL TO ORDER**

2) **ROLL CALL**

3) **NEW BUSINESS**

   a. Approval of February 1, 2022 Regular Meeting Minutes
   b. Planning 101 Discussion

4) **ADJOURN**

Town of Kersey
P&Z Communication

Meeting Date: 3/01/2022	**Page 1 of 1**	**Item: New Business**
Agenda No: 3. a.	**Presented by:**	

BACKGROUND:

Approval of February 1, 2022 Regular Meeting Minutes

RECOMMENDED MOTION: I move to approve the February 1, 2022 Regular Meeting Minutes.

MINUTES
PLANNING AND ZONING COMMISSION
KERSEY MUNICIPAL BUILDING
REGULAR MEETING/HYBRID MEETING
FEBRUARY 2, 2022

The Kersey Planning and Zoning Commission regular meeting was called to order by Planning Commission Chairman Mary Roth at approximately 6:01 p.m. on February 2, 2022, via hybrid meeting. Commissioners present in person were Coralie Slusher, Raeann Bauer, KJ Dunston, and Betty Hatfield. Present via Webex was Commissioner Bob Kellerhuis and Town Board Liaison, Mayor Gary Lagrimanta. The Planning Commission has a vacancy.

Staff present were Christian Morgan, Town Manager, and Julie Piper, Town Clerk. Present via Webex were Barb Brunk, Town Planner and Rick Zier, town attorney.

Audience present via Webex were Ed Voltolina of Dorsey Development.

NEW BUSINESS:

1. Approval of September 7, 2021 Regular Meeting Minutes

   Motion made by Commissioner Slusher and seconded by Commissioner Breuer to approve the minutes of the September 7, 2021 regular meeting minutes. Motion carried with a 6-0 vote.

2. Public Hearing – Kersey Dollar General Site Plan Review and Exceptions

Commissioner Roth opens the public hearing at approximately 6:04 p.m.

Barb Brunk – Town Planner, states this is a public hearing to review the Site Plan and exceptions for the Kersey Dollar General. The public hearing was published, posted, and referred out. Only four referrals were received back with no conflicts. She presents the site plan map, which shows the proposed Dollar General located between the Family Dollar Store and Cobblestone Inn with an address of 209 Hill Street. Dorsey Development has requested four exceptions with this project: 1. Reduce the number of parking spaces from 54 to 35, 2. Reduce separation from curb cuts from 250' to adjacent for the driveway access location, 3. Reducing the Highway 34 setback from 50' to 31', and 4. Reduce the south side setback for the Parking Lot from 30' to 5' along Hill Street. Barb Brunk reviews the maps and slides and the design of the building. Staff and Dorsey Development worked together regarding different options for access and this one near the Family Dollar access is the only option. Staff also reviewed and approved the two different setback variances and states with the landscaping and parking situation, these setbacks will work. The engineer reviewed the retention and detention and reviewed the Drainage Report as well. Barb Brunk does state this meets the requirements in the Community Design standards as mentioned in the staff report. She also states the applicant will need to provide a water demand analysis to determine the amount of water needed to serve the proposed use. The applicant will enter into a Site Plan Agreement with the Town as well.

Ed Voltolina with Dorsey Development states they have built several Dollar General Stores in Colorado and thanks the Kersey staff for their help in navigating the process. He reviews the variance requests. He states parking studies throughout Colorado sites shows that not more than 35 parking spots are needed and this site is tight to fit anymore; staff and Dorsey worked and tried to come up with different access but to get the trucks in and out, need to use this access; the Highway 34 setback needed changed to fit the store and landscaping and this store will line up with the Family Dollar store along the Highway 34 side; and the setback on the south side is to accommodate the drainage and landscaping and sidewalk.

Commissioner Dunston asks how trucks will get in to drop loads.
Ed states they pull in and back into the loading dock.
Commissioner Kellerhuis asks about boundary between Dollar General and Family Dollar.
Ed states it is a five-foot wide landscaped and curbed area with drip irrigation.
Commissioner Kellerhuis also states he is very happy that Dollar General wants to come to Kersey but asks how both stores can survive right next to each other.
Ed states that they are competitive nationwide and several locations are either next door or across the street and do survive. This store will have fresh produce. Further discussion regarding locations, produce, and competition with the stores.
Commissioner Dunston asks how many employees will be hired.
Ed states generally 10-13 employees with 3 per shift and two shifts per day.
Commissioner Slusher asks about hours open.
Ed states they are open 8:00 am to 10:00 pm.
Commissioner Kellerhuis asks about an access from Family Dollar to this store other than the sidewalk along Hill Street. Further discussion regarding different options, traffic flow, pedestrian versus traffic, etc. Discussion will be had with Family Dollar regarding a pedestrian access in the middle of the landscaped area between the stores.
Mayor Gary Lagrimanta states a storm water study was recently done there are potentially recommendations for this area.
Barb Brunk states that our engineer, Gene MacDonald, spoke with their engineers and they will install a 42" concrete drainage pipe to replace the current 2" corrugated metal pipe along their site and under the Cobblestone Inn access.
Commissioner Kellerhuis asks if the drainage pipe will be changed down at Kramer's as well.
Christian Morgan states not now, that would be a different project but that something needs done eventually.

No public comment.

Commissioner Roth closes the public hearing at approximately 6:51 p.m.

Commissioner Kellerhuis makes the motion to send this application to the Board of Trustees with the variances requested as approved and a strong suggestion of a sidewalk access between this store and the Family Dollar. Motion seconded by Commissioner Dunston and carries with a 6-0 vote.
Commissioner Kellerhuis asks when construction will begin. Ed Voltolina states early to mid-April and completed in August. Ed states he will be flying in to attend the Board of Trustees meeting next week.

ADJOURNMENT

By unanimous vote, the meeting was adjourned at approximately 6:58 p.m.

Respectfully Submitted,

Julie Piper, Town Clerk

Town of Kersey
P&Z Communication

Meeting Date: 3/01/2022	**Page 1 of 1**	**Item: New Business**
Agenda No: 3. b.	**Presented by: Christian & Barb Brunk**	

BACKGROUND:

Planning 101 (information needed for performing duties as a Planning Commissioner)

RECOMMENDED MOTION:

KERSEY PLANNING COMMISSION
March 1, 2022

Subject: **Planning Commission 101**

Presenter: Town Planner, Barb Brunk

Background: Staff has prepared a basic primer and explanation of the role of the Planning Commission in the Town of Kersey and the framework for Planning Commission review of land use applications. The information below is excerpted from the Town of Kersey Municipal Code and the attached information is a summary of the Town of Kersey land use review process and associated adopted documents. We have also attached information provided by the Colorado Division of Local Governments regarding the legal framework for Land Use Authority and insight into the decision making process for Planning Commissioners. The goal is to provide information for newly appointed members and a refresher for the rest of the Commission and have a discussion with the Commission.

SPECIFIC PURPOSE OF THE PLANNING COMMISSION AS SET FORTH IN THE TOWN OF KERSEY MUNICIPAL CODE

Sec. 2-162. Purpose.

The Planning Commission is created for the following purposes:

(1) To prepare and maintain, subject to periodic revision as necessary, a master plan as described by state statutes.
(2) To implement the provisions of chapters 16 and 17, and to perform all functions and powers referred to in said chapters where reference is made.
(3) To study and recommend to the Board of Trustees amendments to the zoning map of the town.
(4) To study and recommend appropriate zoning classifications for all annexations to the town.
(5) To exchange information with the various governmental agencies charged with planning and zoning responsibilities and with the board of adjustment of the town.
(6) To have all other duties and powers incidental to the above and any and all powers and duties set out by state statute, except that nothing herein shall permit the Planning Commission to make amendments to changes in the zoning of the town, such powers expressly being reserved by the board of trustees.

PLANNING COMMISSION REVIEW OF LAND USE APLICATIONS

Each land use application process has specific review criteria. Two samples of specific criteria in the Municipal Code and Land Use Code are included below. The Duties of the Planning Commission described **in Section 16-436 of the Kersey Municipal Code** below are specific to ***special review permits.*** The Review Criteria for as outlined in **Article 4, Section 4.12.C of the Kersey Land Use Code** is for ***site plan review*** . Staff reports for each application presented to the Commission contain an analysis of the review criteria specific to the application under review. However, all applications presented to Planning Commission are subject to the following basic review criteria:

(1) That the proposal is consistent with the comprehensive plan.
(2) That the proposal is consistent with the intent of the zoning district in which the use is proposed to be located.
(3) That the use will be compatible with the existing surrounding land uses.
(4) That there is adequate provision for the protection of the health, safety, and welfare of the inhabitants of the neighborhood and the Town.

Sec. 16-432. Duties of the Planning Commission.

(a) The Planning Commission shall hold a public hearing to consider the application for the ***special review permit.*** The Planning Commission shall provide recommendations to the Board of Trustees concerning the disposition of the requested permit. The Planning Commission shall recommend approval of the special review permit unless it finds that the applicant has not met one or more of the standards or conditions set forth in this article. The applicant has the burden of proof to show that the standards and conditions of this article have been met. The applicant shall demonstrate:

(1) That the proposal is consistent with the comprehensive plan.
(2) That the proposal is consistent with the intent of the zoning district in which the use is proposed to be located.
(3) That the uses which would be permitted will be compatible with the existing surrounding land uses.
(4) That the uses which would be permitted will be compatible with future development of the surrounding area as permitted by the existing zoning and with the future development as projected by the comprehensive plan.
(5) That there is adequate provision for the protection of the health, safety, and welfare of the inhabitants of the neighborhood and the town.

(b) The secretary of the Planning Commission shall forward the official recommendation of the Planning Commission to the board of trustees. The official recommendation shall include the information contained in the official record and the case file. The information shall be forwarded to the board of trustees within ten days of its having been made.

(c) If the Planning Commission recommendation is conditioned upon the applicant submitting specific items prior to publication of the notice for hearing by the board of trustees, then the ten-day period shall commence upon submission of the items by the applicant.

ARTICLE 4, Section 4.12.C - ***Site Plan Review Criteria***.

The site plan must meet the following review criteria:

1. All of the information required on a site plan is shown.
2. The lot size and lot dimensions are consistent with what is shown on the approved final plat.
3. No buildings or structures infringe on any easements.
4. The proposed site grading is consistent with the requirements of the Town's adopted storm drainage criteria or master drainage plans.
5. The density and dimensions shown conform with the Kersey Zoning Code Density and Dimensional Standards (Section 3.6) or the approved PUD requirements.
6. The applicable Community Design Principles and Development Standards have been adequately addressed and the proposed improvements conform with Article 2.

Planning Commission is the reviewing body for all land use applications in the Town of Kersey. The Commission is charged with reviewing the applications and making recommendations to the Board of Trustees. The Planning Commission is charged by State Statute with approval of the Comprehensive Plan. In Kersey, the Commission approves the Comprehensive and the Town Board adopts the

Town of Kersey, Planning 101

March 1, 2022

- What is planning
- Why do local governments plan
- Local government Land Use Control
- Kersey's Regulatory Framework
- Kersey's Land Use Review process
- Role of the Planning Commission and Town Board
- Defensible Decisions

WHAT IS PLANNING

- Planning is a basic function and power of local government in Colorado.
- Master plans and land use regulations such as zoning, building codes, design standards and sign codes are, for the most part, locally designated.
- Planning Commissions and local Elected Officials prepare plans in order to preserve the **public health, safety and welfare**.
- Effective planning ensures the orderly development of land within the planning jurisdiction.

LOCAL GOVERNMENTS PLAN FOR A VARIETY OF REASONS:

- **To protect the public and preserve quality of life.**
- **To develop community vision and achieve goals**.
- **To protect private property rights**. *While regulations like zoning may place limits on an individual landowner's ability to utilize his or her land, they are, at their core, intended to protect the property rights of all landowners in a planning jurisdiction. Striking the balance between individual liberties and the public good is critical to every planning effort.*
- **To encourage/continue economic development**.

LOCAL GOVERNMENT LAND USE CONTROL

Kersey is a Statutory Town. Statutory governments only have powers given to them through State Statute. If there is no grant of power for a certain activity within the statute, the government cannot engage in that Activity.

The Local Government Land Use Control Enabling Act grants counties and municipalities broad authority to plan for and regulate the use of land. Each local government is authorized to plan for and regulate the use of land within its respective jurisdiction by:

- Regulating development and activities in hazardous areas;
- Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species;

- Preserving areas of historical and archaeological importance;
- Regulating the establishment of road and public lands administered by the federal government (including authority to regulate public right-of-way, but not on roads authorized for mining claim purposes or under specific permit or lease granted by the federal government);
- Regulating the location of activities and developments which may result in significant changes in population density;
- Providing for phased development of services and facilities;
- Regulating land use on the basis of the impact thereof on the community or surrounding areas;
- Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.

KERSEY'S REGULATORY FRAMEWORK

- **Comprehensive Plan** – Kersey's vision for the future, adopted in 2016.
- **Town of Kersey Municipal Code** – local governing law for the community. May be amended from time to time through the review process as approved and adopted by the Town Board.
- **Land Use Code** – additional detail about the process and standard for developing property within the community.
- **Building Code** – adopted by reference in the Municipal Code – regulates how structures are built.
- **Policies** – Standards established and updated by the Board to give direction regarding specific activities. (i.e.: Special Districts)

COMPREHENSIVE PLAN:

The comprehensive plan, is a framework and guide for accomplishing the community's vision. It states goals, policies and action items to guide courses of action for future growth and development of land, public facilities and services and environmental protection.

USING THE COMPREHENSIVE PLAN

1. A basis for regulatory actions;
2. A basis for community programs and decision making;
3. A source for planning studies;
4. A standard for review at the County and State level;
5. A source of information; and
6. A long-term guide.

KERSEY MUNICIPAL CODE

The Municipal Code is the governing framework of laws for the Town. The portions of the Code that are most relevant to Planning are the Annexation Regulations, Subdivision Regulations, Zoning Code and Floodplain regulations. They set forth the specific rules and review process for land use decisions.

USING THE MUNICIPAL CODE – use the Code to:

1. Determine if a specific activity is allowed in Kersey;
2. Determine locations for different activities;
3. Define the process to obtain permission to develop property within the Town; and
4. Set forth specific standards for each type of request.

LAND USE CODE

The Land Use Code gives additional detail specific to land development. Community Design Standards are the framework for how development looks and furthers the community vision established in the Comprehensive Plan.

USING THE LAND USE CODE – used together with the Municipal Code:

1. To set specific community Design principles and development standards (i.e.: architecture, streets, landscape, parks and open space requirements, signs);
2. Give additional detail about specific development review standards (i.e.: Annexation, subdivision, site plans, signs); and
3. Enforcement of Development permits.

BUILDING CODE

Building Regulations are adopted in the Town of Kersey Municipal Code. Current standards in the Town of Kersey are governed by the 2018 Editions of: International Building Code; International Residential Code; International Mechanical Code; International Fuel Gas Code; International Property Maintenance Code; International Fire Code; and the 2012 Edition of the International Energy Code. Specific provisions of each of the codes are modified as outlined in Chapter 18 of the Kersey Municipal Code. The building Codes regulate how structures are built. The Town contracts with SafeBuilt to review plans prior to Town issuance of Building Permits and perform inspections as things are constructed prior to Town issuance of a Certificate of Occupancy.

POLICIES

Used by Staff to guide actions regarding specific activities and the Board to guide decisions (i.e.: Special Districts)

REVIEW PROCESS IN KERSEY

1. Applicant meets with staff to review the request and process;
2. Applicant submits the required information;
3. Staff reviews the materials for compliance with the Comprehensive Plan, Town Policies, Municipal Code, Land Use Code, and development standards and prepares a report about the application;
4. Planning Commission reviews the materials at a public hearing and makes a recommendation to the Town Board; and
5. Town Board reviews the request at a public hearing and takes action to approve or deny the request.

ROLE OF THE PLANNING COMMISSION AND TOWN BOARD

PLANNING COMMISSION:

Planning Commission is the recommending body on most land use decisions. They review land use applications for compliance with the Comprehensive Plan, Municipal Code and Land Use Code. They make recommendations to the Town Board regarding their action on the application. Planning Commission can recommend Approval, Approval with Conditions or Denial.

TOWN BOARD:

The Town Board sets Policy regarding Land Use and acts as the the decision making body for land use applications.

ELEMENTS OF DEFENSIBLE DECISIONS: QUESTIONS TO CONSIDER

1) **DOES THE REGULATION ADVANCE A LEGITIMATE PUBLIC INTEREST?**

Review regulations to ensure they have the intent and effect of accomplishing results that are legitimate public policy objectives.

2) **IS THE REGULATION A REASONABLE WAY TO ACCOMPLISH THAT PUBLIC INTEREST?**

There may be many ways to accomplish a certain objective, but one must balance public interest and private interest. The particular regulatory approach should be reasonable in light of this balancing.

3) **CAN THE RELATIONSHIP BETWEEN THE REGULATION AND PUBLIC INTEREST BE DOCUMENTED?**

A regulatory body should be able to show how the particular zoning regulation advances the public interest. Typically, this is best accomplished by ensuring that zoning decisions are made in accordance with a land use plan.

4) **DOES THE REGULATION ALLOW A REASONABLE ECONOMIC USE OF PROPERTY**?

The public interest being served by the regulation must be balanced with the private interests such that there is some reasonable use of the property under the zoning regulation.

5**) IS THE REGULATION FAIRLY APPLIED?**

Generally speaking, similarly situated property should be regulated equally. If not, care should be taken to document legitimate reasons as to why this is not the case.

FINDINGS OF FACT - WHAT ARE THEY?

Findings of fact are a citation of specific facts about the application that the approval body finds to be true and which led to its conclusion that the application conforms or fails to conform to one or more applicable approval criteria. They are:

- Legal footprints
- Findings of fact and conclusions of law
- Factual foundations for your conclusions as to whether your standards are met

PRINCIPLES OF FINDINGS

- Your decisions must be based on facts
- The facts must address the standards
- The burden of proof is on the applicant
- Information is not the same things as "facts"
- Weighing of the evidence is your responsibility
- You do not have to believe everything you hear
- Opinions without a factual basis are without merit
- Public sentiment is not a basis for decisions
- You can rely on personal knowledge, but make it a part of the record

LEGISLATIVE V. QUASI-JUDICIAL ACTIONS.

Legislation action is usually reflective of some public policy relating to matters of a permanent or general character, is not normally restricted to identifiable persons or groups, and is usually prospective in nature.

Quasi-judicial action, generally involves a determination of the rights, duties, or obligations of specific individuals on the basis of the application of presently existing legal standards or policy considerations to past or present facts developed at a hearing conducted for the purpose of resolving the particular interests in question.

EX PARTE CONTACTS AND QUASI-JUDICIAL DECISIONS

An ex parte contact is any written or verbal communication initiated outside of a regularly noticed public hearing between an official with decision-making authority and one or more of the parties. An ex parte contact may include discussing an upcoming hearing or decision with the staff.

Why are ex parte contacts before making a quasi-judicial decision improper?

1. All parties are entitled to have the matter heard by an impartial person or body.
2. Every quasi-judicial decision must be supported by findings of fact, and the findings of fact must be based solely upon the evidence as it appears in the record of the proceeding.
3. In some instances, the parties have the right of cross-examination of the opposing side. They cannot cross-examine an ex-parte contact.
4. In the event one party challenges the final decision, you can be sure any ex parte communications will be included as one of the grounds for reversing the decision.

What do I do if someone attempts to contact me before a hearing?

1. **Stop the Person**. Advise the person that you cannot listen to or review anything about the issue prior to the hearing.
2. **Disclose the Contact**. At the next public meeting or prior to the hearing on the public record, advise the remaining members of the board and the parties of the contact.
3. **Consider Whether the Ex Parte Contact Requires Abstention**. An ex parte contact, by itself, is usually not enough to reverse the final decision or require you to abstain from voting on the issue. Determine whether it creates a conflict such that you cannot participate in the decision-making process, or "fairness" of due process in the decision making proceedings.
4. **Consider Adopting Formal Procedures**. Constituents are often unable to understand why they cannot speak about particular issues to those who have been elected or appointed to represent those constituents. It may help to have a formal procedure in place that you can reference when someone tries to contact you about an upcoming decision.

CONFLICTS OF INTEREST

Premise: It is not a conflict of interest to have an opinion! It is only a conflict of interest when you act on that opinion for personal pecuniary gain, rather than in the general public interest.

Statutory Provisions - Most of these deal with having a direct financial interest in a contract being awarded or other decisions being made. Municipalities have more limitations than other local governments.

a. Any member of the governing body of any city or town who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon, and shall refrain from attempting to influence the decision of the other members of the governing body in voting on the matter.

b. A local government official or local government employee shall not:
   i. engage in a substantial financial transaction for his private business proposes with a person whom he inspects or supervises in the course of his official duties; or
   ii. perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

What to do if you have a conflict

a. Disclose
b. Abstain from voting (except if necessary for quorum)
c. Do not participate in the process (you cannot lobby your fellow board members or speak as a regular citizen)

STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS

WHAT IS PLANNING AND WHY SHOULD A COMMUNITY PLAN?

Planning is a basic function and power of local government in Colorado. Unlike some other states, Colorado does not have a statewide land use plan. Master plans and land use regulations such as zoning, building codes, design standards and sign codes are, for the most part, locally designated. Planning commissions and local elected officials prepare plans in order to preserve the public health, safety and welfare. Effective planning ensures the orderly development of land within the planning jurisdiction.

Local governments plan for a variety of reasons:

- **To protect the public and preserve quality of life**
  Planning can provide a wide number of benefits to a community. Effective planning can reduce problems such as school overcrowding and road congestion and prevent development in high-risk areas like flood plains and steep slopes. It can also ensure that open space and viable agricultural lands are protected from development – an issue that is paramount to communities struggling to preserve their quality of life in the face of rapid growth.

- **To develop community vision and achieve goals**
  The creation and adoption of a master plan provides the blueprint a community needs to realize its shared vision for the future. An effective planning process will engage the public and build on the strengths of the community. The master plan is more than just a list of goals and values, however. It is also a roadmap that allows the community to achieve these goals through specific land use policies and actions.

- **To protect private property rights**
  Too often, planning is seen as infringing on, rather than enhancing, private property rights. While regulations like zoning may place limits on an individual landowner's ability to utilize his or her land, they are, at their core, intended to *protect* the property rights of *all* landowners in a planning jurisdiction. Striking the balance between individual liberties and the public good is critical to every planning effort.

- **To encourage/continue economic development**
  Orderly planning provides the kind of certainty and predictability that developers, lending institutions and business owners seek. Planning can help outline the future capital improvements and infrastructure a community will require to grow, and identify the means to finance these infrastructure needs. Good planning can also ensure that sufficient land is available for employee housing and new business development.

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NOTE:

The following information is intended to provide a general overview of legislative enabling authority for local government land use planning in Colorado. Any local government considering using any of the land use powers cited here should carefully review the relevant statutes and case law. This is not a complete review of all Colorado land use law, and is not to be construed as legal advice. All statutory citations refer to the Colorado Revised Statutes (CRS), as amended, through 2012.

For further information on any of these topics, we recommend consulting Colorado Land Planning and Development Law, edited by Don Elliott. The resource was used as a reference in creating this document in addition to state statutes.

- **To facilitate decision-making on land use**
  Decision making by local governments is made in accordance with master (or comprehensive) plans, zoning and/or other land use regulations. Good land use planning is proactive in nature and helps prevent accusations that land use decisions have been made in an arbitrary or capricious manner. In the absence of planning, land use decisions can often be made haphazardly or by default. Without planning, the impacts of land use decisions are still felt and their costs are borne by the entire community. Good planning leads to sound decision-making.

> *"Successful communities don't just happen; they must be continually shaped and guided. A community must actively manage its growth and respond to changing circumstances if it is to meet the needs of its residents and retain the quality of life that initially attracted those residents to the community."*
>
> *(Growth Plan, City of Grand Junction)*

STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS

THREE-MILE PLAN

BACKGROUND

In 1987, the Colorado legislature made substantial changes to the state's annexation law. One of the more significant changes limited municipal annexations to no more than three-miles beyond a current boundary line in any given year, except under special circumstances. The legislature also required that a municipality adopt an annexation master plan for the three-mile area (or three-mile plan, as they are commonly known) prior to the completion of any annexation.

BEFORE YOU ANNEX

Prior to the final adoption of an annexation ordinance within the three-mile area, the municipality must have in place a three-mile plan. This plan must be updated at least once a year.

WHAT IS A THREE-MILE PLAN?

The three-mile plan is a long range planning opportunity for municipalities to consider where they want to annex, how they will provide service in the newly annexed areas, and how they will sustain adequate levels of service throughout the rest of the municipality. It ensures that the municipality will annex land only when it is consistent with pre-existing plans for the surrounding area.

The failure to plan specifically for the physical growth of a municipality can result in haphazard annexations that prove expensive to the municipality annexing the land, the county in which the land is located and the neighboring communities.

The statute requires a three-mile plan to generally describe the proposed location, character and extent of future public utilities and infrastructure (e.g., streets, bridges, parks, playgrounds, aviation fields, waterways, open spaces and other public grounds) as well as proposed land uses for the area. The master or comprehensive plan takes into account all land that is functionally related to the growth of the municipality, not just land within three miles of the municipal boundary. If the master or comprehensive plan covers these elements required for a three-mile plan, it will suffice as the three-mile plan, and many municipalities have adopted it as such. As noted above, the three-mile plan must be reviewed and updated annually.

In contrast to an annexation impact report, which is site specific to individual annexations, the three-mile plan takes a broader approach to the annexation and development of land. No plat of a subdivision of land within such an area may be filed or recorded until approved by the municipal planning commission. A proposed annexation should be consistent with the municipality's master plan and three-mile plan, in addition to other policies.

On a separate, more political point, when citizens hear the term "three-mile plan," some may jump to the conclusion that the municipality is intending to force everyone within three miles to annex. It is important to educate the citizens of the municipality but also the citizens in the county on this point. Generally speaking, municipalities cannot force landowners to annex, nor can landowners force municipalities to annex them.

WHAT IF WE DON'T HAVE AN UPDATED THREE-MILE PLAN?

The failure to have a plan prior to the completion of an annexation could open a municipality up to litigation. Colorado law limits those who have a right to challenge annexations to property owners within the annexed area, the county(ies) in which the land is located and neighboring municipalities within one mile. In areas with growth pressures, it is increasingly likely that these three groups will use the lack of a plan as grounds for invalidating the annexation.

State law does not specifically state that an annexation must be in compliance or conformity with a municipality's three-mile plan, though it is likely that a court would require a legislative finding that such compliance or conformity exists. If the annexation is accompanied by a proposed planned unit development, the PUD must be in general conformity with the municipality's master plan, irrespective of the three-mile plan (CRS §24-67-104(1)(f)). Neighbors of the project have the right to challenge the PUD, even though they might, in turn, challenge the annexation.

STATUTES FOR REFERENCE

Three-Mile Plan: 31-12-105(e)
Municipal Annexation Act of 1965: 31-12-101, et seq.
Annexation Impact Report: 31-12-108.5

STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS

MASTER PLAN PRIMER

MASTER PLAN – GENERAL DESCRIPTION

The master plan, sometimes referred to as a comprehensive plan, is a framework and guide for accomplishing community aspirations and intentions. It states goals and objectives and recommends courses of action for future growth and development of land, public facilities and services and environmental protection.

PLAN ELEMENTS THAT MAY BE INCLUDED

- Statement of Objectives, Policies and Programs
- Relationship of Plan to the Trends/Plans of the Region
- Land Use
- Transportation
- Utility and Facility Plan
- Urban Influence Area
- Housing
- Cultural/Historical/Social Setting
- Educational Facilities
- Energy
- Environment
- Recreation and Tourism*

*the only plan element required by statutes (see C.R.S. 30-28-106 and 31-23-206)

BASIS/BACKGROUND FOR PLAN INFORMATION

The plan is based on inventories, studies, surveys, analysis of current trends and must consider social and economic consequences of the plan and existing and projected population.

GOALS AND OBJECTIVES OF THE PLAN

The principal purpose for a master plan is to be a guide for the achievement of community goals. A plan will also:

1. State and promote broad community values in the plan goals, objectives, policies and programs.
2. Establish a planning process for orderly growth and development, and economic health.
3. Balance competing interests and demands.
4. Provide for coordination and coherence in the pattern of development.
5. Provide for a balance between the natural and built environment.
6. Reflect regional conditions and consider regional impacts.
7. Address both current and long-term needs.

USING THE PLAN

The adopted plan has the potential for many uses and will define the way it is to be used in its implementation section. Among the uses of the plan are the following:

1. **A basis for regulatory actions**: The plan serves as a foundation and guide for the provisions of the zoning regulations, subdivision regulations, the land use map, flood hazard regulations, annexation decisions and other decisions made under these regulations.
2. **A basis for community programs and decision making**: The plan is a guide and resource for the recommendations contained in a capital budget and program, for a community development program, and for direction and content of other local initiatives, such as water protection, recreation or open space land acquisition and housing.
3. **A source for planning studies**: Few plans can address every issue in sufficient detail. Therefore, many plans will recommend further studies to develop courses of action on a specific need.
4. **A standard for review at the County and State level**: Other regulatory processes identify the municipal plan as a standard for review of applications. Master plans are important to the development of regional plans or inter-municipal programs, i.e., a regional trail network or area transit program.
5. **A source of information**: The plan is a valuable source of information for local boards, commissions, organizations, citizens and business.
6. **A long-term guide**: The plan is a long-term guide by which to measure and evaluate public and private proposals that affect the physical, social and economic environment of the community.

RESPONSIBILITY FOR PREPARATION AND ADOPTION OF THE PLAN

The planning commission is responsible for preparing the plan, distributing the plan, holding public hearings on the plan, and adopting the plan.

PUBLIC INVOLVEMENT

Citizen participation helps to guide the planning commission in making decisions and in promoting community understanding of planning needs and issues. At least one public hearing must be held by the planning commission and by the legislative body before the plan is adopted. To generate support, understanding, and active participation in planning, however, more community involvement is usually needed. Citizens who are not well informed can present obstacles to the implementation of the plan by not supporting or participating in local programs.

Local Government Land Use Authority in Colorado

COLORADO
Department of Local Affairs
Division of Local Government

CDO
Community Development Office

Introduction

Colorado has a strong tradition of local government control with respect to land use planning. Unlike some other states, Colorado does not have a statewide land use plan. Land use planning regulations like zoning, sign codes, and building codes are, for the most part, locally designated.

The state delegates land use regulatory authority to local governments through enabling legislation. The exercise of this authority, whether in the enactment of land use controls or in decisions enforcing such regulations, must always bear a rational relationship to the health, safety, and welfare of the community. This police power must be exercised in a manner consistent with federal and state constitutional rights.

Home Rule and Statutory Powers

Local government land use authority depends on the government's classification. There are 271 incorporated municipalities in Colorado. Ninety-eight (98) of these are home rule municipalities, 12 are statutory cities, 160 are statutory towns, and 1 is a territorial charter city. There are 64 counties in Colorado, 60 of which are statutory counties. Two counties, Pitkin and Weld, are home rule counties. Two others, Denver and Broomfield, are constitutional home rule counties.

Local governments are free to draw upon any and all authority delegated by the General Assembly, and home rule cities or counties derive additional authority from their charters. Home rule municipality authority is found in Article XX of the Colorado Constitution and home rule county authority is found in Article XIV.

Each Colorado town, city, or county may choose to become a home rule government. Home rule municipalities have the power to create their own charter, ordinances, and laws including zoning and subdivision. There are three primary limitations. First, a home rule municipality or county only has power to supersede state law where a matter is of local concern. Second, home rule jurisdictions must follow their own procedures and standards. Third, until a home rule jurisdiction adopts a charter or ordinance provision differing from state statute, they are bound by those statutes.

Statutory governments, on the other hand, only have powers given to them through state statute. If there is no grant of power for a certain activity within the statute, the government cannot engage in that activity.

Land Use Enactment by the Colorado General Assembly

The Colorado legislature has passed many bills with implications for land use planning and regulation. It has placed the majority of land use responsibility and control at the local (county and municipal) level of government. The following compilation is primarily limited to those statutes that address land use planning and control directly, although other statutes enable local governments and state agencies to take a variety of actions that indirectly affect land use. All of the statutes listed below, unless otherwise noted, are enabling legislation. This means that these are tools at a local government's disposal but are not mandated or enforced unless otherwise noted.

Local Government Land Use Control

The Local Government Land Use Control Enabling Act grants counties and municipalities broad authority to plan for and regulate the use of land. Each local government is authorized to plan for and regulate the use of land within its respective jurisdiction by:

- Regulating development and activities in hazardous areas;
- Protecting lands from activities which would cause immediate or foreseeable material danger to significant wildlife habitat and would endanger a wildlife species;
- Preserving areas of historical and archaeological importance;
- Regulating the establishment of road and public lands administered by the federal government (including authority to regulate public right-of-way, but not on roads authorized for mining claim purposes or under specific permit or lease granted by the federal government);
- Regulating the location of activities and developments which may result in significant changes in population density;
- Providing for phased development of services and facilities;
- Regulating land use on the basis of the impact thereof on the community or surrounding areas;
- Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.

(§ 29-20-101, et seq.)

Planning Commissions

Counties (§ 30-28-103) and municipalities (§ 31-23-202) are authorized to appoint a planning commission. However, where the county population is less than 15,000 people, the board of county commissioners may constitute the planning commission or appoint a separate body. (Note: Legislation enacted in 1974 requires all counties to adopt subdivision regulations, and those regulations must be reviewed or adopted by a planning commission, so as a practical matter all counties must have a planning commission.)

Master Plans

Counties and municipalities are authorized to prepare a master plan (often referred to as a comprehensive plan). It is the responsibility of a county (§ 30-28-106) or municipal (§ 31-23-206) planning commission (rather than the governing body) to prepare and adopt a master plan for the physical development of their communities. Adopted master plans must include a recreation and tourism element. Counties are required to have a plan allowing extraction of minerals from the ground, and that plan may be a part of a master plan. In 2002, the more populous and faster growing counties and municipalities were required to formally adopt their master plans within two years (§ 30-23-206(4)).

Zoning

Municipalities (§ 31-23-301) and counties (§ 30-28-111) have the power to regulate land use through zoning for the purpose of promoting the health, safety, morals, or general welfare. Various federal laws limit local zoning authority with respect to telecommunications devices, group homes, signs, religious institutions, and site accessibility to handicapped individuals.

Subdivision

The adoption of subdivision regulations is authorized for cities and required for counties through detailed enabling legislation (§ 30-28-133 for counties and § 31-23-214 for municipalities). "Subdivision" or "subdivided land" is defined (§ 30-28-101(10) for counties, § 31-23-201(2) for municipalities) as any parcel of land that is to be divided into two or more parcels or is to be used for condominiums, apartments, or any other multiple dwelling units, unless specifically excluded in the same section. Specifically excluded from the definition of subdivision within counties is any division of land where all of the resulting parcels are larger than 35 acres, although other land use regulations may still address development on those parcels.

Planned Unit Development

Counties and municipalities are authorized to allow planned unit developments (PUDs), areas of land to be developed under a unified plan of development that does not correspond to the existing land use regulations. Local governments authorize PUDs through the adoption of a resolution or ordinance setting forth the general standards for PUDs. After this, they may adopt resolutions or ordinances approving specific PUDs that meet those standards. PUDs are required to be consistent with adopted master plans. (§ 24-67-101 et seq.)

Annexation

The Municipal Annexation Act of 1965 gives municipalities the authority to annex new territory and sets eligibility, procedures, and limitations for annexation. The statute has been amended several times and constitutional amendments that affect certain key aspects of municipal annexation have been adopted. In the statutes, many criteria for annexations exist as well as certain limitations. (§ 31-12-101 et seq.)

Three Mile Plans

No annexations may occur that would extend the municipal boundary more than three miles in any direction in a given year. Prior to any annexation within the three mile boundary, municipalities must have a plan for that area, commonly called a "three mile plan." Three mile plans must propose land uses for the area and generally describe the location, character, extent of certain features, and utilities and infrastructure to be provided by the municipality. Three mile plans are required to be updated annually. Commonly, annexation policies and elements of a three mile plan are incorporated as a chapter of the municipal master plan. (§ 31-12-105)

Vested Property Rights

A vested property right means the right to undertake and complete the development and use of property under the terms and conditions of a site specific development plan that has been approved by the local government. The vested property rights statute allows municipalities and counties to establish a vesting process and determine when vesting occurs in the development review process within a jurisdiction.

If a local government does not adopt an ordinance or resolution to determine when vesting occurs or specify what constitutes a site specific development plan, then rights vest upon approval of any substantially similar plan, plat, drawing, or sketch. A vested property right precludes any zoning or land use action by a local government that would negatively affect or delay the use of property as established in the approved site specific development plan, with a few limited exceptions.

Rights remain vested for three years. Local governments are also authorized to enter into development agreements with landowners providing vested rights for over three years. (§ 24-68-101, et seq.)

Impact Fees

Municipalities and counties are authorized to impose impact fees or similar development fees to fund costs for capital facilities necessary to serve new development. Impact fees are generally collected either at the time of subdivision or site plan approval or at the time of building permit issuance. They must be directly related to impacts of the proposed development and must be spent for the purpose for which they were collected within a reasonable period of time. The statutes define procedures that must be followed when impact fee programs are adopted and enforced. (§ 29-20-104.5)

Building Code

Counties (§ 30-28-201) and municipalities (§ 31-15-601) may adopt ordinances and a building code for the public health, safety, morals, and general welfare and the safety, protection and sanitation of such dwellings, buildings, and structures. If a county or municipality does not have a building code, factory-built structures and buildings constructed on site intended for multiple occupancy (motels, hotels, multi-family structures) are subject to building standards set forth by the state Division of Housing. (§ 24-32-3301, et seq.) Additionally, if a county has enacted a building code, it is also required to adopt and enforce a building energy code that meets or exceeds the standards in the 2003 International Energy Conservation Code. (§ 30-28-201(3))

Local governments are not permitted to adopt or apply building codes to manufactured housing that differ from the requirements of the federal Manufactured Housing Act (42 USC § 5401-5426). In addition, county and municipal building codes do not apply to school construction. Schools are instead subject to building and fire codes adopted by the director of the Division of Fire Prevention and Control in the Department of Public Safety. (§ 22-32-124) Local government building departments may become prequalified to undertake review and inspections of schools. (8 CCR 1507-30-4)

Adequate Water Supply

A local government cannot approve an application for a development permit unless it determines that the applicant has satisfactorily demonstrated that the proposed water supply for the development will be adequate. (§ 29-20-301 et seq.)

Areas and Activities of State Interest

Local governments are authorized to identify, designate, and regulate through guidelines and permitting procedures areas and activities of state interest within their jurisdiction. These are commonly known as "1041 powers" after the House Bill that created them. The statute establishes a system to identify types of projects with impacts beyond their immediate scope and establishes criteria for local governments to use in planning for and regulating such projects. The 1041 powers are intended to allow local governments to retain and increase their control over projects with statewide impacts. (§ 24-65.1-101, et seq.)

The areas and activities are as follows:

Areas:

- Mineral resource areas
- Natural hazard areas
- Areas containing or having a significant impact upon historical, natural, or archaeological resources of statewide importance
- Areas around certain key facilities, such as airports, major facilities of a public utility, interchanges involving arterial highways, and mass transit facilities

Activities:

- Site selection and construction of new or expanded water and sewage treatment systems
- Site selection and development of certain solid waste disposal sites
- Site selection of airports
- Site selection of rapid or mass transit facilities, terminals, stations, and fixed guideways
- Site selection of arterial highways and interchanges and collector highways
- Site selection and construction of major facilities of a public utility
- Site selection and development of new communities
- Efficient utilization of municipal and industrial water projects
- Conduct of nuclear detonations
- The use of geothermal resources for the commercial production of electricity

EXTRATERRITORIAL POWERS

In some cases, Colorado statutes give one jurisdiction certain powers over land use activities in a different jurisdiction:

- § 31-23-212 and 213 enable a municipality to govern land within its municipal boundaries as well as a major street plan for up to three miles outside its municipal boundary, or halfway to the next city if the land is within five miles of both cities.
- § 31-15-401 and 601 allow a municipality to prohibit or regulate nuisances such as "bawdy and disorderly houses and houses of ill fame or assignation" (adult establishments) within three miles of city limits, as well as the storage of explosives within one mile.
- § 25-7-138(4) allows municipalities to consent to the location of a new land waste application site or new waste impoundment within one mile of its boundaries.
- § 31-15-707(1)(b) allows a municipality to construct or authorize the construction of waterworks outside its boundaries and to protect the waterworks and water supply from pollution (up to five miles above the point from which the water is taken).
- § 31-25-216, 217, 301, and 302 allow a municipality to establish, manage, and protect its park lands, recreation facilities and conservation easements (including the water in those parks) located beyond city limits.
- § 31-23-225 requires a municipality to notify the county and state geologist of a proposed major activity (a subdivision or commercial or industrial activity covering five or more acres of land), prior to approving any zoning change, subdivision, or building permit application associated with that activity.
- § 30-28-136 requires counties to submit a copy of any preliminary plan for a subdivision to many agencies including: counties and municipalities within two miles of the proposal, special and other districts, the Colorado State Forest Service, the State Engineer, the Colorado Geological Survey, and other referral agencies. The statute also requires the county to allow a 21 day review period before taking action.

INTERGOVERNMENTAL COOPERATION

- § 29-20-105 § 29-20-105 through 107 authorizes and encourages local governments to cooperate or contract with other units of government for purposes of planning or regulating the development of land. Through an intergovernmental agreement (IGA), local governments may, after notice and hearing, jointly adopt mutually binding and enforceable comprehensive development plans for areas within their jurisdictions. Local governments may also, pursuant to an IGA, provide for revenue sharing. Parties to an intergovernmental agreement are required to provide notice and a copy of the agreement, as well as a map demonstrating the territory covered by the agreement, to each neighboring jurisdiction. (§ 24-32-3209)
- § 29-1-203 allows local governments to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units. The contract may establish a separate legal entity to do so.

- Local governments intending to adopt or amend a comprehensive plan are required to give notice of the proposed plan or amendments to all neighboring jurisdictions for review. The neighboring jurisdictions may file objections to the proposed plan or amendments and may compel the planning jurisdiction to participate in mediation, prior to litigation, in order to settle the dispute over the comprehensive plan or amendments. (§ 24-32-3209) (For more information about alternative dispute resolution see http://dola.colorado.gov/cdo and click on our resource library – land use dispute resolution.)

- § 30-28-105 enables municipalities and counties to form multi-county and joint city/county planning commissions, known as regional planning commissions. These are empowered to perform planning functions similar to those performed by county planning commissions, including making and adopting a regional plan for the physical development of the region. Counties and municipalities are expressly authorized to participate in more than one regional planning commission. Regional zoning boards of adjustment are enabled by § 30-28-117(5).

- § 32-7-101 authorizes at least two counties (upon approval of the electors) to form a regional service authority (RSA) to perform a wide variety of local government services, including joint planning. One available joint planning power is to prepare and adopt a comprehensive development guide for the RSA area to be used to assist local government planning efforts. The purpose of a RSA is to encourage using a single government entity to provide a single service or function when that service transcends local government boundaries.

- Special districts are quasi-municipal corporations and political subdivisions of the state. Special districts cannot exercise land use or zoning powers, and most of a special district's activities are subject to the land use controls of the municipality or county in which they were created. In some circumstances, special districts can overrule zoning permit denials by the board of county commissioners when they pertain to their own facilities (based on case law interpretation of § 30-28-110(1)(c)). However, special districts are subject to local building codes when constructing facilities.

SOURCES:

Code of Colorado Regulations (CCR)

Colorado Land Planning and Development Law: Ninth Edition. Edited by Donald Elliott. Denver: Bradford Publishing Company, 2012.

Colorado Revised Statutes, as amended, through 2012.

http://dola.colorado.gov/cdo - Resource library includes land use planning information.

U.S. Code (USC)

COLORADO
Department of Local Affairs
Division of Local Government

CDO Community Development Office

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STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS

PARLIAMENTARY PROCEDURE

ORDER OF BUSINESS

- Call to order
- Approval of minutes
- Reports
- Old business
- New business
- Adjourn

TIPS FOR THE CHAIR

- Repeat all motions.
- Call for both "yes" and "no" votes.
- Don't discuss motions.
- Be fair.

WHEN YOU WANT THE GROUP TO MAKE A DECISION:
You say, "I move that we_____." *(Called a main motion. Only one on floor at a time.)*
The Chair—

- Repeats motion and calls for 2nd.
- Repeats motion and calls for discussion.
- Calls upon people who want to discuss.
- When discussion ends, repeats motion and calls for a vote.
- Announces result of vote.

WHEN YOU WANT TO MAKE A SMALL CHANGE IN A MOTION:
You say, "I move to amend the motion by _____." *(e.g. "adding/substituting/striking the words…")*
The Chair—

- Follows the same procedure as above for main motion.
- Amendments are decided before the main motion.
- Once the amendment is decided, return to consideration of main motion.

WHEN YOU VOTED ON THE WINNING SIDE ON A MOTION BUT NOW YOU HAVE CHANGED YOUR MIND:
You say, "I move to reconsider the motion to _____." *(Usually at same meeting.)*
The Chair—

- Needs a second.
- Debatable only if motion to be reconsidered is debatable. May not be amended.
- If passed, return to discuss and vote on the motion to be reconsidered.

MINOR OR INCIDENTAL MOTIONS:

YOU THINK THE CHAIR MADE A MISTAKE IN FOLLOWING THE RULES OF PROCEDURE:
You say, "Point of order, Mr./Ms. Chairperson." *(One of few times you may interrupt another speaker, even the Chair.)*
The Chair—

- Says: "State your point."
- Listens to member, decides if correct, corrects mistake, and goes on with meeting.

GROUP IS BOGGED DOWN ABOUT A MATTER WHICH IS NOT URGENT, OR YOU THINK MORE INFORMATION IS NEEDED BEFORE THE MATTER CAN BE DECIDED:
You say, "I move that we refer the matter to a committee."
The Chair—

- Says: "It has been moved that we refer the matter to a committee."
- Handles like a main motion.
- If motion passes, refer matter to an existing committee or appoint a new one.

GROUP IS NOT READY TO MAKE A DECISION, AND WANT TO WAIT UNTIL A LATER MEETING TO DECIDE:
You say, "I move that we postpone this matter until the next meeting (or other meeting)."
The Chair—

- Handles like a main motion.
- May be amended.
- Only needs a majority vote.
- If passed, put on agenda for a future meeting.

DEBATE DRAGS ON, YOU ARE SURE THAT EVERYONE HAS MADE UP HIS/HER MIND, AND YOU WANT TO END THE DEBATE:
You say, "I move the previous question." (This is only a vote to vote. If it passes, vote on the main motion. If it fails, continue debate on main motion.)
The Chair—

- Says: "The previous question has been moved."
- Requires a second.
- No debate.
- Two-thirds vote to pass.

MOTIONS WHICH CAN BE MADE AT ANY TIME:

WHEN YOU WANT THE GROUP TO TAKE A SHORT BREAK:
You say, "I move that we recess until _____ (time)."
The Chair—

- Requires a second.
- May be amended but no debate.
- Majority needed to pass.

WHEN YOU WANT THE MEETING TO END:
You say, "I move that we adjourn."
The Chair—

- Requires a second.
- No debate.
- Majority needed to pass.

TIME-SAVER TIPS:

- Post or distribute a handout at hearings that explains the procedures and expectations of public hearings, manages public testimony, etc.
- After presentation of the minutes (minutes do not have to be read), the chair says, "If there are no additions or corrections, the minutes will stand approved as printed."
- When there is no new business: "If there is no further business, the meeting is adjourned."

Taken from William Baird's "Parliamentary Procedure in a Nutshell," 1974.

STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS

TIPS FOR RUNNING A PUBLIC HEARING

1) Chair calls meeting to order, announces agenda, approves minutes of past meeting(s), and outlines the general procedures under which cases will be considered.

2) Chair declares the public hearing open.

3) Staff introduces the case and enters, if applicable, the following exhibits into the record:

    a. Proposed ordinance or resolution by title only
    b. Official application form and attachments, if any
    c. Staff report
    d. General reference map of the area
    e. Applicable Comprehensive Plan documents by reference
    f. Zoning Ordinance by reference
    g. Official Zoning Maps by reference
    h. Proof of Posting
    i. Proof of Publication
    j. Public hearing roster, if used

4) Staff presents its analysis of the case and the comments of referral agencies, and then makes a recommendation for Commission action.

5) Applicant presents the case, including presentation of exhibits, and formally requests action to be taken.

NOTE: The burden rests with the applicant to produce evidence sufficient to prove the request is justified.

6) Chair establishes whether proponents and opponents are represented by a spokesperson. The Chair may establish a time limit on persons (staff and applicants excepted) who wish to address the Commission.

7) Public may comment or ask questions.

    a. Proponents speak first
    b. Opponents speak second

NOTE: At no time should the public speak directly to the applicant or vice versa. All comments should be directed to the Commission.

8) Applicant may reply to staff and public questions, but may not introduce any new evidence or information not previously presented by either group.

9) Commission may ask questions of applicant.

10) Chair will close public portion of the hearing.

11) Discussion by the Commission.

NOTE: Only the staff may be questioned at this stage.

12) Declaration of Findings of Fact.

13) Action by the Commission.

a. Motion by Commission member
b. Roll call/electronic vote, chair votes last

STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS

A CHECKLIST FOR DEFENSIBLE DECISION MAKING

ELEMENTS OF DEFENSIBLE PROCEDURES

1) **NOTICE**
   Notice should be adequate and timely. It should be reasonably calculated to notify interested parties of a proposed action and give them an opportunity to present their objections. The average person must be able to understand the notice. It must allow sufficient time for interested parties to prepare. Also it must meet statutory and/or charter deadlines and posting requirements.

2) **OPPORTUNITY TO BE HEARD**
   All parties interested in a proposed action must have the opportunity to be heard and present evidence to support their position. Hearings must be open to the public.

3) **FULL DISCLOSURE**
   All parties must have full access to information, statements and evidence relied upon by decision-makers to make their decision. Ex parte communications should be avoided. Avoid acting on information received at the last minute.

4) **FINDINGS**
   Findings are the legal "footprints" that should be left in administrative proceedings to explain how the decision-maker progressed from the facts through established policies to the decision. The decision must be explicitly stated, as well as the underlying rationale.

5) **UNBIASED DECISIONS**
   The decision maker should be clear of bias or prejudice. Conflicts of interest or apparent conflicts of interest must be identified. In some but not all cases, abstention is required.

6) **TIMELY DECISIONS**
   Decisions should be made within a reasonable period of time. The decision-maker must avoid having the process used as a delaying tactic.

7) **COMPLETE RECORDS**
   A full and clear record must be kept of the proceedings, including not just the deliberation of the decision-makers, but also all evidence which is offered and relied upon by the decision-makers.

8) **CLEAR RULES**
   Rules for the proceedings should be set out clearly in advance and followed.

ELEMENTS OF DEFENSIBLE DECISIONS: QUESTIONS TO CONSIDER

1) **DOES THE REGULATION ADVANCE A LEGITIMATE PUBLIC INTEREST?**
   Review old regulations to ensure they have the intent and effect of accomplishing results that are legitimate public policy objectives.

2) **IS THE REGULATION A REASONABLE WAY TO ACCOMPLISH THAT PUBLIC INTEREST?**
   There may be many ways to accomplish a certain objective, but one must balance public interest and private interest. The particular regulatory approach should be reasonable in light of this balancing.

3) **CAN THE RELATIONSHIP BETWEEN THE REGULATION AND PUBLIC INTEREST BE DOCUMENTED?**
   A regulatory body should be able to show how the particular zoning regulation advances the public interest. Typically, this is best accomplished by ensuring that zoning decisions are made in accordance with a land use plan. See discussion of findings below.

4) **DOES THE REGULATION ALLOW A REASONABLE ECONOMIC USE OF PROPERTY?**
   Again, the public interest being served by the regulation must be balanced with the private interests such that there is some reasonable use of the property under the zoning regulation.

5) **IS THE REGULATION FAIRLY APPLIED?**
   Generally speaking, similarly situated property should be regulated equally. If not, care should be taken to document legitimate reasons as to why this is not the case.

FINDINGS OF FACT

WHAT ARE THEY?

Findings of fact are a citation of specific facts about the application that the approval body finds to be true and which led to its conclusion that the application conforms or fails to conform to one or more applicable approval criteria. They are:

- Legal footprints
- Findings of fact and conclusions of law
- Factual foundations for your conclusions as to whether your standards are met

PRINCIPLES OF FINDINGS

- Your decisions must be based on facts
- The facts must address the standards
- The burden of proof is on the applicant
- Information is not the same things as "facts"
- Weighing of the evidence is your responsibility
- You do not have to believe everything you hear
- Opinions without a factual basis are without merit
- Public sentiment is not a basis for decisions
- You can rely on personal knowledge, but make it a part of the record

TIPS FOR DETERMINING THE FINDINGS

- Use the application process to put the burden on the applicant
- Use the staff report as a starting point
- Announce the rules in advance
- Encourage factual testimony
- Have the standards in front of you
- Ask questions designed to get evidence related to the standards
- Keep your records neat and complete - documents and exhibits
- Keep the evidence phase separate from the deliberation phase
- Deliberate the facts and standards
- Assess compliance explicitly
- Make careful motions with stated reasons
- Have a "package" of application, records, staff report, motion and minutes:
    - lists the record
    - lists the standards
    - reflects a weighing of the evidence
    - determines compliance
    - clearly states the decision with any conditions

Adapted from Rocky Mountain Land Use Institute 2001 Annual Conference handout by Gregory Dale, AICP, Principal, McBride Dale Clarion. Cincinnati, Ohio.

DUE PROCESS, EX PARTE CONTACTS, CONFLICTS OF INTEREST, AND PERSONAL LIABILITY

DUE PROCESS IN LAND USE HEARING

I. Any applicant appearing before a local body requesting a decision of that local body when acting within the scope of its powers is entitled to receive due process of law.

A. Due process is guaranteed by the United States Constitution.
   1. Amendment 5 provides that no person shall "be deprived of life, liberty, or property, without due process of law;" Article 14, Section 1 provides "Nor shall any state deprive any person of life, liberty or property without due process of law…"
   2. A similar provision exists in the Colorado Constitution at Article II, Section 25. "No person shall be deprived of life, liberty or property without due process of law."

B. In the land use context, because property rights are at issue, the provisions of each of the constitutional sections cited above, together with 42 U.S.C. § 1983, are applicable.

II. Legislative v. Quasi-Judicial Actions.

A. The level of due process which is required to be afforded depends upon whether the action of the governing body is legislative or quasi-judicial in nature.

B. The Colorado Supreme Court, in the case of Cherry Hills Resort Development Company v. City of Cherry Hills Village, 757 P.2d 622 (Colo. 1988) has discussed the distinction as follows:

> Legislation action is usually reflective of some public policy relating to matters of a permanent or general character, is not normally restricted to identifiable persons or groups, and is usually prospective in nature. Quasi-judicial action, on the other hand, generally involves a determination of the rights, duties, or obligations of specific individuals on the basis of the application of presently existing legal standards or policy considerations to past or present facts developed at a hearing conducted for the purpose of resolving the particular interests in question. This type of decision-making is denominated "quasi-judicial" precisely because it bears similarities to the adjudicatory function performed by courts. If a statute or ordinance authorizes the exercise of quasi-judicial authority but does not provide for notice and hearing, these basic requirements may property be implied as a matter of fundamental fairness to those persons whose protected interests are likely to be affected by the governmental decision.

C. The leading case on what makes a matter quasi-judicial is Snyder v. City of Lakewood, 542 P.2d 371 (Colo. 1975). In Snyder the Court identified three criteria for identifying a matter as quasi-judicial, which are: (1) a state or local law requiring that the body give adequate notice to the community before acting; (2) a state or local law requiring that the body conduct a public hearing, pursuant to notice, at which time concerned citizens must be given an opportunity to be

heard and present evidence; (3) a state or local law requiring the body to make a determination by applying the facts of a specific case to certain criteria established by law.

III. Elements which must be present in a hearing.

A. The hallmark of a due process hearing is that a "fundamental fairness" attack to the proceedings. Monte Vista Professional Building, Inc. v City of Monte Vista, 531 P.2 400.

B. The first element of fundamental fairness is adequate notice to place all parties in interest on notice that a hearing is to held, and giving fair notice as to what will be the scope and requested outcome of that hearing. Failure to give adequate notice may void any action taken at the hearing.

C. Level of formality. The level of formality to be afforded at the hearing is essentially a question of local preference, so long as adequate opportunity is afforded for all viewpoints which are relevant to the application to be aired.

D. Necessity of findings. In order to comply with due process requirements, and in order to insulate the decision made from successful judicial attack, findings must be made by the legislative body (which findings are always better put in writing), which relate both to the evidence presented and to the criteria which exist and which are applicable to the application being heard. Bauer v. City of Wheat Ridge, 513 P.2d 203.

E. Impartial decision-making panel. Applicants are entitled to an impartial panel. Any evidence of predecision, or decision based on matters other than those appearing in the record, potentially subject the decision-makers to liability to the applicant for violation of the applicant's due process rights.

EX PARTE CONTACTS AND QUASI-JUDICIAL DECISIONS

What is an ex parte contact?

Broadly defined, an ex parte contact is any written or verbal communication initiated outside of a regularly noticed public hearing between an official with decision-making authority and one or more of the parties, but not all of the parties, concerning a particular subject matter which is under, or which is about to become under, consideration by that official, and which seeks either to influence, or present information relating to, that matter which is the subject of the decision. The term is usually used in a courtroom context; the judge cannot discuss a case with either party or their attorney without the other party and the attorney being present. The term is also equally applicable to any quasi-judicial matter pending before a local governmental body. An ex parte contact may include discussing an upcoming hearing or decision with the staff.

Why are ex parte contacts before making a quasi-judicial decision improper?

1. All parties are entitled to have the matter heard by an impartial person or body. At the very least, ex parte contact, whether the contacting person is an applicant or a protestant, call into question the impartiality of the decision maker.

2. Every quasi-judicial decision must be supported by findings of fact, and the findings of fact must be based solely upon the evidence as it appears in the record of the proceeding. The record of the

proceeding consists only of matters presented at the hearing, not anything presented before or after the hearing. Therefore, to have a defensible record, only evidence presented during the hearing, on the record of the hearing, may be relied upon in reaching the body's decision.

3. In some instances, the parties have the right of cross-examination of the opposing side. They cannot cross-examine an ex-parte contact.

4. In the event one party challenges the final decision, you can be sure any ex parte communications will be included as one of the grounds for reversing the decision.

What do I do if someone attempts to contact me before a hearing?

1. Stop the Person. If it is a verbal contact, advise the person that you are sitting as a judge in the matter and you cannot listen to or review anything about the issue prior to the hearing.

2. Disclose the Contact. At the next public meeting or prior to the hearing on the public record, advise the remaining members of the board and the parties of the contact, your response, and whether or not you think you can make an impartial decision based on the evidence presented at the hearing despite the contact.

3. Consider Whether the Ex Parte Contact Requires Abstention. An ex parte contact, by itself, is usually not enough to reverse the final decision or require you to abstain from voting on the issue. Each individual contact must be reviewed to determine whether it affects your impartiality or ability to consider the matter fairly, whether it creates an appearance of impropriety, whether it creates a conflict such that you cannot participate in the decision-making process, or whether it otherwise affects the rights of the parties seeking the decision to "fundamental fairness" or due process in the decision-making proceedings.

4. Consider Adopting Formal Procedures. It is difficult to tell a neighbor or a constituent that you cannot talk to them about an issue that may be very important to them. Very often constituents are unable to understand why they cannot speak about particular issues to those who have been elected or appointed to represent those constituents. It may help to have specific procedures that the governing body or the planning commission has adopted that you can point to as the reason you cannot handle a quasi-judicial issue in the same manner as you do other legislative or administrative issues. This will also help to make sure all board members handle ex parte contacts in the same manner.

CONFLICTS OF INTEREST

Premise: It is not a conflict of interest to have an opinion! It is only a conflict of interest when you act on that opinion for personal pecuniary gain, rather than in the general public interest.

I. Basics

A. Statutory Provisions

1. Sections 31-4-404, 24-18-109, and 24-18-201, et. seq., C.R.S. provided guidelines to defining and disclosing conflicts and abstention from participation when there is a conflict. Most of these deal with having a direct financial interest in a contract being

awarded or other decisions being made. Municipalities have more limitations than other local governments.

a) 31-4-404(2). Any member of the governing body of any city or town who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon, and shall refrain from attempting to influence the decision of the other members of the governing body in voting on the matter.
b) 24-18-109(2). A local government official or local government employee shall not: (a) engage in a substantial financial transaction for his private business proposes with a person whom he inspects or supervises in the course of his official duties; or (b) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

2. Potential criminal ramification for conflicts are in 18-8-301, et. seq., and 18-8-401, et. seq., C.R.S.

3. Many municipalities have local ordinances or rules governing conflicts.

4. What to do if you have a conflict
    a. Disclose
    b. Abstain from voting (except if necessary for quorum)
    c. Do not participate in the process (you cannot lobby your fellow board members or speak as a regular citizen)

AVOIDING PERSONAL LIABILITY IN THE MAKING OF A LAND USE DECISION

I. Following the rules for conducting quasi-judicial hearings clothes the decision maker in the common law judicial immunities.

A. Pearson v. Ray, 386 U.S. 547

B. This immunity can be lost, however, when judges act in some manner other than as judges.

II. Legislative immunity.

A. At common law, legislators, when acting within the provisions of the “speech and debate clause” of the United States Constitution, are absolutely immune from liability for their official actions. Tenney v. Brandhove, 341 U.S. 367.

B. This immunity, too, may be waived when ultra vires action are taken.

III. Colorado Governmental Immunity Act

A. The Colorado Governmental Immunity Act, 24-10-101, et. seq., C.R.S., affords protection to government officials when acting within the scope of their duties except for six identified, but here irrelevant, circumstances.

B. Willful and wanton conduct is not protected by the Governmental Immunity Act.

IV. How to lose your immunity.

A. There are some very, very easy ways to lose immunity and therefore subject yourself to personal liability. Among these are:
   i. Prejudging a matter.
   ii. Having ex parte contacts with applicants or objectors.
   iii. Making a decision which is in violation of clearly established law.
   iv. Acting outside the scope of your authority.
   v. Ignoring or going against publicly given legal advice.
   vi. Ignoring, or acting outside the bounds of established procedures or ordinances.

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