



**Planning Commission
Wednesday, February 19, 2025
4:00 PM
130 Kearns Road
Council Chambers
Agenda**

- 1. ROLL CALL**
- 2. APPROVAL OF MEETING MINUTES**
 - 2.a. APPROVAL OF JANUARY 22, 2025 MEETING MINUTES**
[1.22.25 Meeting Minutes.docx](#)
- 3. ITEMS FOR DISCUSSION**
 - 3.a. PLANNING COMMISSIONERS TRAINING**
[PC training memo 02.01.2023.docx](#)
[Role and Responsibility_APA presentation.ppt](#)
[PC handbook_2.19.2025draft .docx](#)
 - 3.b. COMMUNITY DEVELOPMENT DIRECTOR UPDATES**
- 4. ADJOURNMENT**

TOWN OF SNOWMASS VILLAGE

PLANNING COMMISSION
MEETING MINUTES

January 22, 2025

Members Present:

Brian Marshack
Jim Gustafson
Stan Clauson
Matt Dube
Jami McMannes

Staff Present:

Dave Shinneman
Brian McNellis
Ashleigh Huff

Members Absent:

David Seglin
Doug Faurer

Others Present: Bill Boineau, Deidre Boineau, Darren Duroux, Heather Henry, Gideon Kauffman, Bill Kyriagis, Brad Schacht, Gyles Thornely, Elise Wolf, Rob Wilberger

Call to order: The meeting was called to order at 4:02pm and roll was called. Commissioners Faurer and Seglin were absent.

Item 1: Approval of Meeting Minutes:

The edited minutes from the December 18, 2024, meeting were presented for approval. Commissioner Marshack motioned to approve, seconded by Commissioner Gustafson. Commissioner McMannes recused herself from voting on the approval as she was not in attendance. Approved 4-0

The minutes from the January 8, 2025 meeting were also presented for approval. Commissioner Clauson motioned to approve, seconded by Commissioner Marshack. Once again, Commissioner McMannes recused herself from voting on the approval. Approved 4-0.

Item 2: Divide "SHOP" Workforce Housing Sketch Plan

Brian McNellis, Senior Planner, opened the discussion. Brian indicated staff did not have a formal presentation for the meeting, nor did the applicant represented by Heather Henry, Vice President of Housing and Childcare at Aspen One. Mr. McNellis reminded the Planning Commissioners the meeting was public, as such the public in attendance should be invited to make comments. Mr. McNellis

45 indicated the staff wanted to prioritize the discussion of the prepared draft
46 resolution and conditions of approval.

47 Dave Shinneman, Community Development Director, mentioned after reviewing
48 the site plan, he found the current parking plan did not meet the requirement of
49 one space per unit. He recommended at least one space per unit, along with two
50 handicap spaces. Mr. McNellis pointed out to Mr. Shinneman and the
51 Commissioners the resolution addressed the parking requirements.
52 Commissioner Gustafson asked for clarification on the total number of parking
53 spaces, with the applicant confirming there would be 30 spaces in total,
54 including two ADA spaces. Planning Commission members were encouraged to
55 ask questions and offer feedback, with public comments to follow. A letter from
56 the Divide HOA and comments from Commissioner David Seglin, who was
57 unable to attend, were acknowledged. The plan will proceed to the next stage for
58 further review.

59
60 Chair Dube opened the discussion to Commissioner Comments. Commissioner
61 Clauson raised a question about Commissioner Seglin's comment regarding
62 ceiling heights, asking for clarification on whether reducing the ceiling height
63 from 9 feet to 8 feet could lower the building's overall height. Staff confirmed that
64 the current PUD allows a height of 43 feet from the existing grade and 37 feet
65 from finished grade. The applicant's proposal would reduce the building height
66 slightly, to 37.9 feet from existing grade and 35 feet from finished grade,
67 remaining in compliance with the PUD. Commissioner Marshack inquired about
68 the mix units, occupancy policies, and pet regulations. Ms. Henry clarified that
69 the units would primarily house full-time employees, with two-bedroom units
70 potentially housing couples or individuals, and emphasized that pets would
71 generally be allowed in the new development. Commissioner McMannes raised a
72 question about the easements referenced in the application, specifically who
73 would be involved in updating them as the project progresses. Ms. Henry
74 explained that the easements related to the project would be detailed in the
75 preliminary plat. During the meeting, a few questions were raised on behalf of
76 Commissioner Seglin. The first question addressed whether mechanical
77 equipment would be placed on the roof and if it could be consolidated to minimize
78 visual impact. Ms. Henry confirmed that this would be possible and emphasized
79 that the final design would be detailed in the preliminary phase, including
80 consideration for fire safety and visual screening. The second question concerned
81 site lighting and its potential impact on dark skies. Ms. Henry agreed to meet
82 night sky criteria as a performance standard and emphasized that lighting would
83 be minimized, focusing primarily on safety lighting. She also noted that she had
84 already engaged a lighting consultant familiar with local regulations.
85 Commissioner Gustafson suggested extending the review to include interior
86 lighting, as it can contribute to light pollution. Ms. Henry agreed to consider this
87 as part of the lighting review. Commissioner Marshack expressed concerns about
88 the compatibility of the proposed 30 housing units with the surrounding
89 neighborhood and acknowledged the need for affordable housing but questioned
90 whether this site was appropriate, citing the existing vehicle maintenance shop's

91 industrial nature and the potential impact on the quiet residential area.
92 Commissioner McMannes thanked Aspen Skiing Company for their initiative to
93 develop housing in support of the resort. Commissioner Gustafson highlighted
94 that the company would need to get creative with their housing solutions, as
95 they do not have access to the Town of Snowmass Village housing sites. He noted
96 that this site seems appropriate for Skiing Company employees and expressed a
97 general inclination to move the project forward through the sketch plan.
98 Commissioner Clauson made a motion, which was held for public comments.
99

100 Gideon Kauffman, representing a Snowmass homeowner, expressed concerns
101 about protecting the dark-sky initiative and requested a revision to condition
102 #14 to better address visual impacts. He suggested altering the language to
103 include "interior and exterior lighting impacts and proposed mitigation,"
104 believing this change would offer a clearer understanding of the lighting impacts
105 the project might have.
106

107 Brad Schacht, speaking on behalf of the Divide Homeowners Association, noted
108 that while many comments suggest that no decisions are being made tonight, he
109 emphasized that this project is inconsistent with both the comprehensive plan
110 and the Housing Master Plan—documents set by the Planning Commission. He
111 argued that these conceptual issues should be addressed during the sketch plan
112 phase.
113

114 Commissioner Dube brought back the motion originally made by Commissioner
115 Clauson to approve Resolution #1 of 2025, seconded by Commissioner
116 Gustafson, allowing the project to proceed to the preliminary plan phase. The
117 Commissioner's discussion clarified that the resolution is not a final approval
118 but a step toward refining the project based on public and Commission feedback.
119 While no formal changes were made to the conditions, some Commissioners
120 sought further review, leading to the withdrawal of the motion and second. The
121 Commission agreed to revisit the conditions.
122

123 Commissioner Dube reopened the discussion on the conditions. Commissioners,
124 staff, and the applicant reviewed and modified several conditions. Mr.
125 Shinneman summarized the proposed changes, including revising the 1:1
126 parking space condition and modifying Condition #5 to state that the applicant
127 will explore reducing housing density to increase parking. Additional conditions
128 were added, requiring the applicant to explore separating commercial and
129 residential building components, adjusting ceiling and building heights,
130 ensuring interior and exterior lighting compliance with the lighting code and
131 dark sky requirements, continuing collaboration with the HOA and other
132 concerned entities, and exploring the removal or screening of rooftop mechanical
133 equipment.
134

Commissioner Clauson motioned to approve Resolution 1 of 2025 with all stated and amended conditions. Commissioner Dube seconded the motion. It passed unanimously, with 5 in favor and 0 opposed.

Item 3: Community Development Director Updates

- Training with the Town Attorney, Town Council, and staff will be held on February 19th
- Deerbrook and Elk Camp expansion are projects that could come before the Planning Commission soon
- Snowmass Center Resolution was approved by the Town Council
- Snowmass Transit Center is an ongoing discussion

Motion to adjourn by Commissioner Marshack, seconded by Commissioner Dube. All in favor. None opposed.

The meeting was adjourned at 5:36 p.m.

MEMORANDUM

TO: Planning Commission

FROM: David Shinneman, Community Development Director

SUBJECT: Planning Commissioners Training

DATE: February 19, 2025

I. PURPOSE:

The purpose of this item is to provide the Planning Commission with an introduction into their roles and responsibilities. In addition to the summary provided in this memorandum we will be presenting the attached power point, Handbook, and answering questions of the Commissioners.

II. BACKGROUND:

The Commission is both a recommending body and a decision-making body, depending on the specific type of land use action being sought. For instance, the Commission makes recommendations to the Council on PUDs, Zoning Map Amendments (rezoning), and changes to existing regulations (Code Amendments). The Town of Snowmass Village Land Use Development Code (LUDC) also delegates decision-making authority to the Commission for some Special Use Permits, Variances, Annual Temporary Use Permits, and some Administrative Modifications. Additionally, the Commission is expected to play a key role in the creation and review of the comprehensive plan for the Town.

The Town of Snowmass Village Planning Commission is the Town Council's advisor on land use planning. The Town Council may choose to follow the recommendations of the Commission or not and may reverse or modify Commission actions or send development proposals back to the Commission for further review.

The Commission is comprised of seven (7) regular members. Regular members shall each be appointed by the Town Council to serve overlapping terms of three (3) years each. Appointments to fill vacancies due to the expiration of a term shall be made at the first regular Council meeting in January of each year. Other vacancies shall be filled as provided in the Charter. All members serve at the pleasure of the Town Council and may be removed by a majority vote of the entire Town Council. All terms of members expire on a staggered basis at the first regular meeting of the Town Council in January of each year. A quorum of four (4) members shall be required at any meeting for the Planning Commission to take any official action.

In performing their duties, the Planning Commission shall have the authority:

1. To hire consultants and perform studies, upon the prior approval of the Town Council, to carry out its responsibilities.
2. To consult with and utilize the services of the Planning Director, Town Attorney, and other Town staff, as needed, to carry out its responsibilities.

3. To act, in certain instances, as the Board of Adjustment.

Public Meetings - All Planning Commission meetings are “public meetings” and can be attended by any members of the public. The public can request to be heard regarding any issue at a public meeting, but the Planning Commission is not required to provide time within their public meeting to “hear” from the public, unlike public hearings. The Commission should decide whether they wish to hear from the public at a meeting by communicating with the Chairperson as to their preference on a request to speak at the meeting from the public.

Public Hearings - Public hearings are the official designated times in which an applicant may present his/her proposal to the public, and the public may present its opinions and ask its questions about a proposed project. It is the opportunity for the Planning Commission to hear a full range of testimony about the application to help inform its determination of the proposed project’s compliance with Town regulations.

Hearings will typically be opened by the Planning Commission Chairperson, then turned over to the Community Development Director or Planner assigned to the case. Staff will provide the Commission and public with information on the location of the project and neighboring land use and zoning and provide a summary of the requested proposal including the Staff recommendation. Next, the applicant will have an opportunity to add anything further to the Staff presentation or offer additional information regarding their proposal. After questions from the Planning Commission, the public is invited to comment and ask questions regarding the project, directed to the Commission. The Commission Chairperson may then ask staff or the applicant to respond to issues raised by the Commissioners and the public as appropriate.

III. STAFF RECOMMENDATION:

Listen to the staff presentation and allow time for questions and answers as needed. If desired by the Commissioners staff can provide additional training in the future.

Role and Responsibility of the Local Government Planning Commission

Presented By:

David Shinneman
Community Development
Director

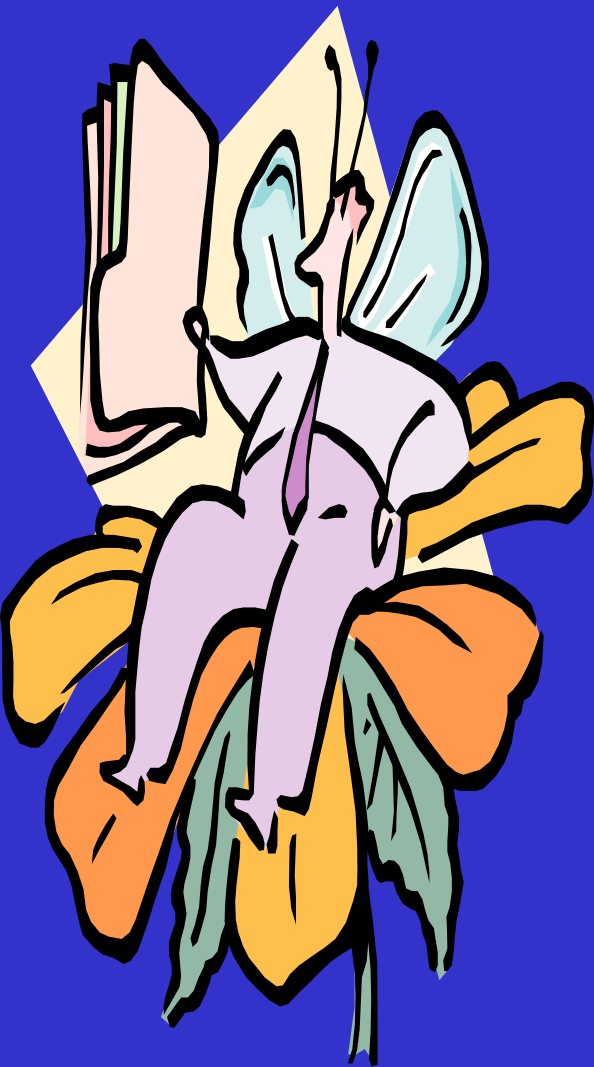
ROLE OF THE COMMISSION



- Comprehensive Planning
 - The Commission has the responsibility to develop and periodically revise the comprehensive plan
- Development Review
 - The Commission reviews land development applications and provides a recommendations to the Town Council

STANDARD LAND USE REGULATORY TOOLS

- Comprehensive or Master Plan
 - Local officials are delegated authority to plan by statute, local charter and ordinance. Planning commission develops and recommends, and Council adopts the plan
 - A master plan is not regulatory: Theobald v. Summit County (1982) unless adopted as a regulation BOCC v. Conder , 927 P.2d 1339 (Colo. 1997)

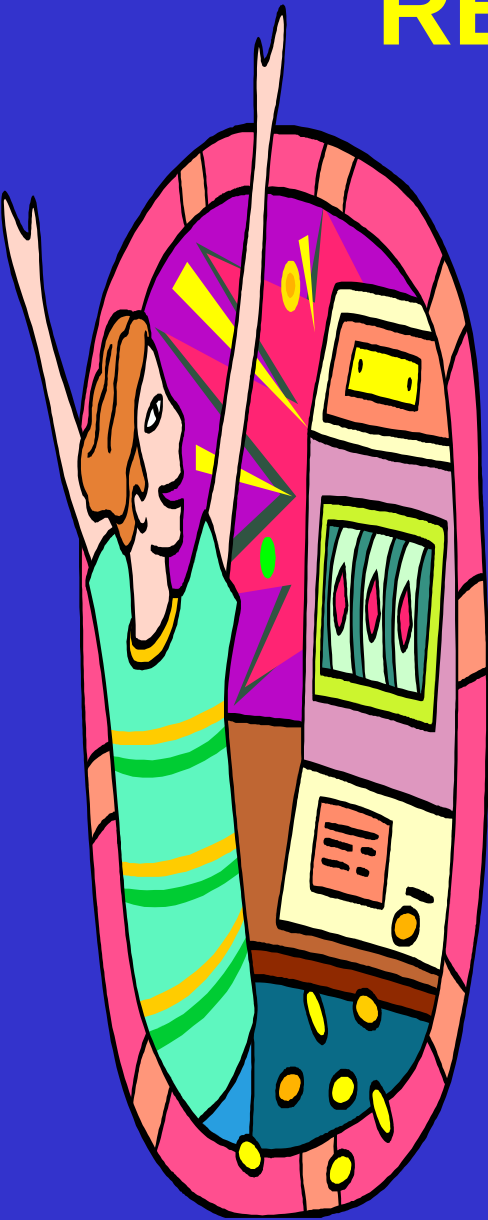




STANDARD LAND USE REGULATORY TOOLS Cont.

- Zoning
 - Traditional zoning by district: uses by right, accessory uses, uses by special or conditional review, and prohibited uses
 - Standard test for eligibility of a property for rezoning: (1) error in the original zoning ordinance; (2) to bring the property into conformance with the comprehensive (master) plan, or (3) "changed conditions"

STANDARD LAND USE REGULATORY TOOLS Cont.



- Conditional or Special Uses: Allowing a use not otherwise permitted, but acceptable on a site-specific basis under special terms and conditions
- Subdivision Controls and Site Planning
 - Site design: allows the government a role in designing the project
 - Water; sewer; streets; lot size; setbacks
 - Dedication requirements; security for public improvements

STANDARD LAND USE REGULATORY TOOLS Cont.

- Subdivision plat must be approved if in compliance with zoning and subdivision regulations
- Planned Unit Development
 - Flexible; allows a combination of residential and commercial uses
 - Can tailor standards and add conditions
 - Eliminates need for variances



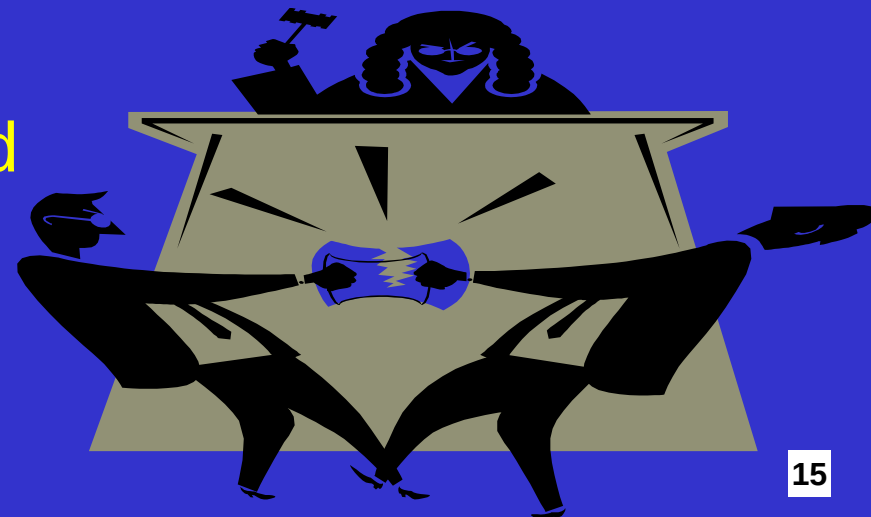
QUASI-JUDICIAL ACTIONS



- Defined:
 - Amendments to the zoning map (rezoning), and most conditional/special use permits, PUD's and site plans are "quasi-judicial" while the original zoning map itself is legislative.
 - *Legislative 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. Cherry Hills Dev. Co. v. Cherry Hills Village (Colo. 1988)*

QUASI-JUDICIAL ACTIONS Cont.

- The consequences of the fact that an action is quasi-judicial are several:
 - Notice and hearing required
 - Right to present witnesses and evidence
 - Right to cross-examination?
 - Right to legal argument
 - No *ex-parte* contacts allowed
 - Rules of evidence: informal





- Defined: contacts between the applicant or opponents and the members of the public body outside of publicly scheduled hearings and meetings on the application
 - Why should these contacts be avoided? “Due process” requires that the applicant hear, in public, what is said to the public body about the application. The consequence of engaging in them can be as severe as invalidating the final action
 - How can *ex-parte* contacts be avoided? Once approached or called by the applicant or opponent and the matter is identified by them, immediately advise them that it is improper for you to talk about the case outside of the hearing room. Urge them to bring their points of view and testimony to the hearing

EX-PARTE CONTACTS Cont.



- The prohibition extends to written materials as well: Make sure any materials you receive from applicants, opponents, or interested parties outside of the hearing room are copied and shared with everyone at the beginning of the hearing
- What to do if an *ex-parte* contact has occurred: Disclose the contact at the beginning of the hearing; describe its content as completely as possible. In an extreme case, you may be required to step down and not further participate
- Site visits: Appropriate if you avoid any contact with either side at the site. Even "informational" contact at the site is still an ex-parte contact
- Contact with staff: Permitted, so long as staff is not used as a "human telephone" with which to communicate with the applicant or opponents

CONDUCTING THE PUBLIC HEARING

- Taking Testimony
 - *Importance of a strong chair or presiding officer*
 - Sticks to the agenda, and to the topic for action
 - Focuses discussion
 - Reminds board members of the time



CONDUCTING THE PUBLIC HEARING Cont.

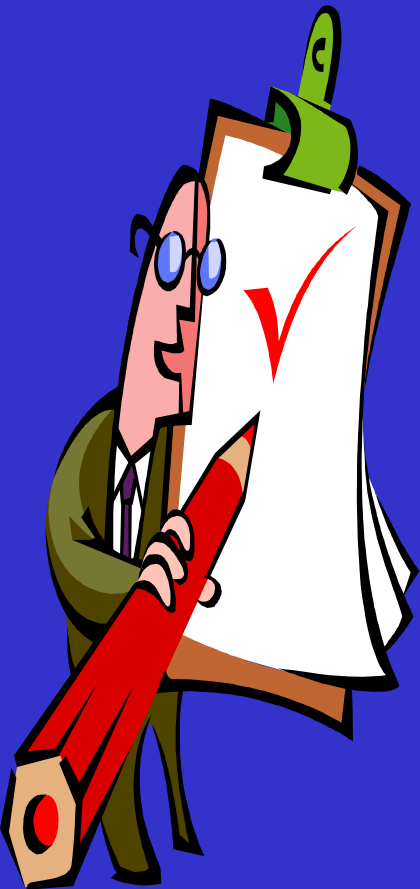
- Expedites discussion and action (example: "I'll entertain a motion on that.")
- Knows the art of suggesting when the time is right to act
- As a participant in meeting rather than as the chair, you have the opportunity to exercise some of the same leadership roles



CONDUCTING THE PUBLIC HEARING Cont.

– Rules for Taking and Limiting Testimony

- Goal: That board members and public attendees leave the hearing feeling that it was fair and that their views were heard and appreciated



- Explain the rules for the hearing at the outset
- Suggest speakers don't repeat prior testimony if they can state they agree with an earlier speaker
- Make sure that all attendees at the public hearing know they have the right to speak
- Thank all the speakers for appearing
- It is appropriate for the Board to consider the weight and credibility of testimony, and whether it is quoting someone who is not present
- Consider all the testimony and evidence. (Don't let the number of people for or against the application determine your decision.)

CONDUCTING THE PUBLIC HEARING Cont.



- Making Motions

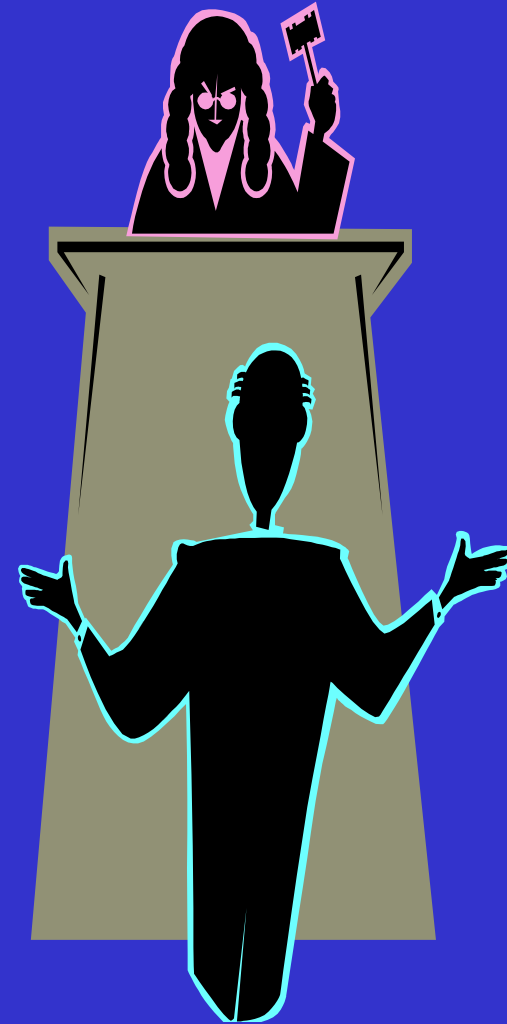
- Importance of Findings and Reasons for Approval

- Compare the evidence against the standards in the code or regulations. Summarize the evidence and relate the evidence relied upon to satisfy the criteria
- Draw conclusions from the evidence
- Rely upon and state your conclusions in the motion
- "[A] record of proceedings before the Board must contain details of the evidence presented and proper grounds and reasons to support its decision." Murray v. Board of Adjustment of Larimer County
- Written conditions have a greater chance of being upheld on appeal

CONDUCTING THE PUBLIC HEARING Cont.

– Amendments to motions

- Must be germane to the main motion
- Are a good way to add one or a series of conditions. Example: Move to approve the application; then “move to condition the approval as follows: _____.” Vote on amendments first, then on main motion, as amended



CONDUCTING THE PUBLIC HEARING Cont.

– Stick to the request before you:

- Apply the same standards of relevance you would want to see in public testimony
- If it is a site plan application, don't question the use. If it is a rezoning case, don't engage in site planning
- The applicant is in charge of its application; if the request is for rezoning to C-1, that is what you vote on. (Exception: variances where it is permissible to grant less than the requested relief.)



CONDUCTING THE PUBLIC HEARING Cont.

– Failed motions

- Failed motion means no recommendation; if approval motion fails, someone on the prevailing side should immediately move to recommend denial

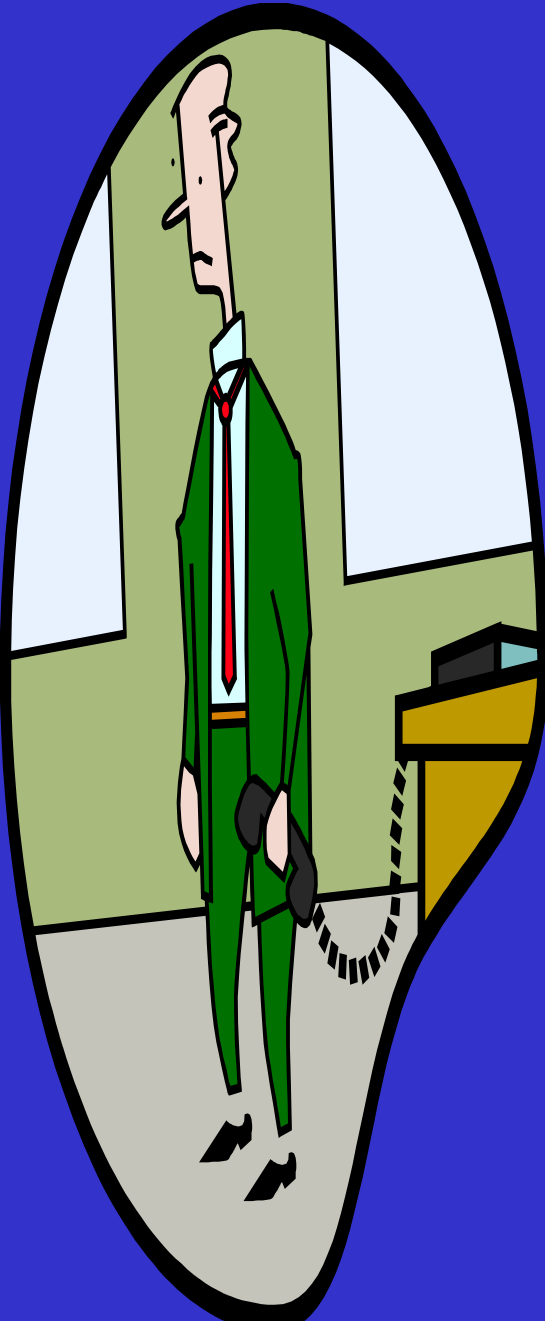


SURVIVING JUDICIAL REVIEW

- Substantially improved chances if there is a preponderance of the evidence in the record on each of the required elements, and if that evidence is summarized in written findings
- Generally, the courts will not substitute their judgment for yours unless you have clearly abused your discretion



SURVIVING JUDICIAL REVIEW Cont.



- Common reasons you can lose:
 - *Ex-parte* contacts
 - Notice or hearing defects
 - Conditions or decision not based on the code of regulations

ETHICS AND CONFLICTS OF INTEREST

- What to Remember:
 - What is a prohibited conflict of interest?
 - What is the "appearance of impropriety?"
 - What must you do about a conflict? [Disclose; step down; don't vote]





ETHICS AND CONFLICTS OF INTEREST Cont.

- What is a prohibited conflict of interest?
Some examples:
 - Are you in a business which sells materials or supplies to the applicant?
 - Do you have a financial interest in the land or the applicant?
 - Do you provide services or materials to someone who has a contract with the applicant?
 - Are you the applicant for a land use approval?

- [Note: all have in common some financial transaction between the public official and the government, or between the public official and the private party who is applying for Government approval.]

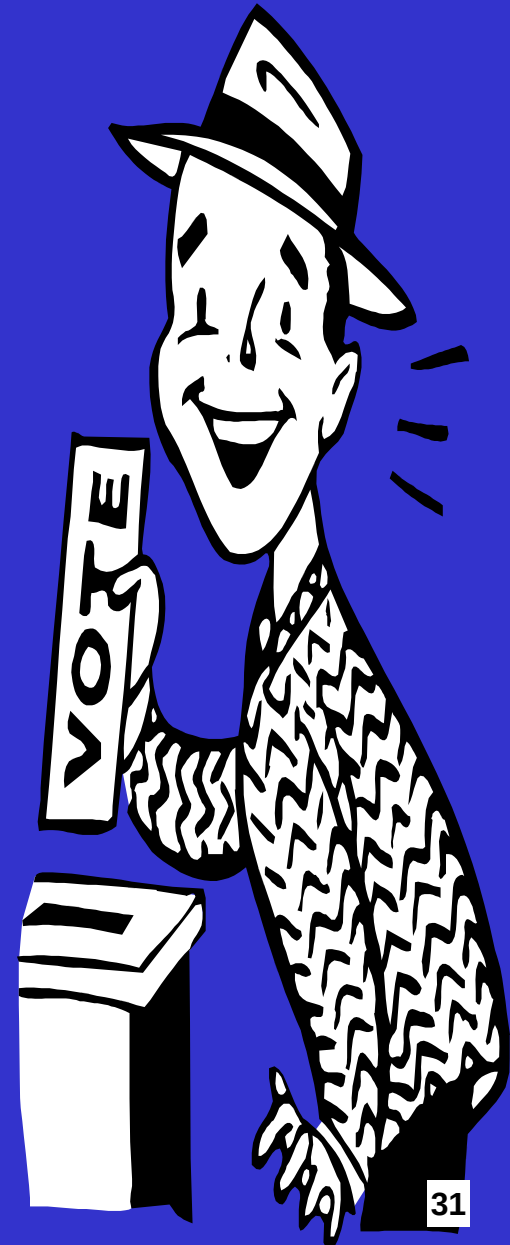
ETHICS AND CONFLICTS OF INTEREST Cont.

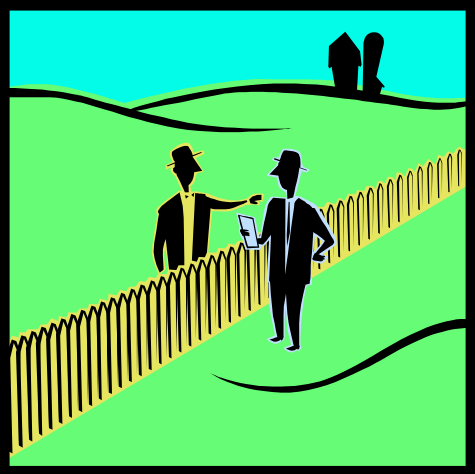
- Appearance of Impropriety
 - Difference between prohibited conflict of interest (generally financial), and “appearance of impropriety” (not prohibited, but does not look proper to the general public).



ETHICS AND CONFLICTS OF INTEREST Cont.

- Safe Harbors: What isn't a "personal or private interest"?
 - Voting on tax proposals
 - Voting on general laws (examples: leash law, zoning ordinance, building code), which affect all citizens including you
 - Parking variance for church of which you are a member. [Example: Town of Minturn case]





ETHICS AND CONFLICTS OF INTEREST Cont.

- Member is related by blood or marriage to applicant, but has no financial connection or potential of experiencing financial gain or loss
- Member is next door neighbor of applicant
- Board member and applicant are friends, go to the same church, are members of the same club, play golf together, like each other or hate each other

- Note: These fact patterns all lack potential of personal financial gain or loss

ETHICS AND CONFLICTS OF INTEREST Cont.

- What to do?
 - Disclose
 - Step down
 - Don't vote





**Can I answer any
questions?**



TOWN OF SNOWMASS VILLAGE Planning Commission Handbook



What We Do

The Community Development Department, includes the building, planning, and code compliance divisions and aims to build our sense of community, enhance economic vitality, and protect our natural assets by responsibly planning the built environment through implementing the town's [Land Use Development Code](#), [Building Code](#), and [Comprehensive Plan \(PDF\)](#). Community Development is a regulatory department and facilitates long-term planning projects.

Town of Snowmass Village Community Development Department

David Shinneman, Director

February 2025

APPENDIX 1: RULES OF PROCEDURE FOR THE TOWN OF SNOWMASS VILLAGE
PLANNING COMMISSION

APPENDIX 2: REDUCING RISKS OF PERSONAL LIABILITY IN THE TOWN OF SNOWMASS
VILLAGE

APPENDIX 3: EX-PARTE COMMUNICATIONS IN QUASI-JUDICIAL PROCEEDINGS

“Ethics and the Planning Commission: Ex-Parte Contacts,” by C. Gregory Dale, FAICP 73

APPENDIX 4: COLORADO’S “OPEN MEETINGS LAW,” A GUIDE FOR KEEPING
THE PUBLIC IN THE LOOP

APPENDIX 5: SITE VISITS

“Site Visits: Necessary But Tricky” by C. Gregory Dale, FAICP

77

APPENDIX 6: TOOLS FOR COMMUNICATION WITH THE PUBLIC AND AMONG COMMISSION
MEMBERS

“When They Speak, Do You Listen?” by Elaine Cogan

“Leading the Commission: The Effective Chair” by Elaine Cogan

REFERENCES

- Gunnison Town Planning Commission Handbook. The majority of this handbook has been duplicated from this document.
- Colorado Counties Inc. 2009 Town Commissioner Handbook: Several sections specifically related to Colorado planning law and the role of Planning Commissioners have been copied almost verbatim with CCI permission.

Selected articles are reprinted in this Handbook as downloads for your personal use from the Planning Commissioners' Journal, a publication that provides volunteer Planning Commissioners with basic and updated tools to succeed in their work on the Commission. Their website is: http://pcj.typepad.com/planning_commissioners_jo/

LEGAL DISCLAIMER

It is not the purpose and intent of this Handbook to state binding legal interpretations. The Handbook is designed only to serve as a general reference source. Planning Commissioners should always seek advice and counsel from the Town of Snowmass Village Town Attorney regarding legal issues related to their work on the Planning Commission.



WELCOME! ...TO THE TOWN OF SNOWMASS VILLAGE PLANNING COMMISSION

The Town's Planning Commission is a part of many of ongoing land development issues in the Town of Snowmass Village.

The Planning Commission's roles are to plan and regulate land use to ensure orderly development and care for the environment consistent with protection of constitutional rights. It is guided in those roles by federal and state laws and standards adopted by the Town Council in

the Town of Snowmass Village Land Use & Development Code (LUDC) and other Town regulations.

The general public, permit applicants, state and federal agencies, other Town departments, the Planning Commission and the Snowmass Village Town Council are all customers of the Community Development Department: All need to be heard fairly and addressed respectfully. It is not an easy task and is one not readily appreciated on a regular basis by those who are not sitting in your position.

This Handbook is intended to provide basic information to help Planning Commissioners understand how and why land use regulations and planning commissions exist; to introduce you to the Community Development Department Staff and to inform you of what the department is responsible for; to explain land use permitting and planning processes; to address the practices of the Town of Snowmass Village Planning Commission (PC), and to define some of the "jargon" that you will hear as you meet with developers, consultants, planners and the public.

This Handbook is not a summary of the Town's land use regulations, and it does not replace the Planning Commission's *"Rules of Procedure"* (included as Appendix 1), though it may help you to better understand and use those documents (more on this later).

It is intended that this Handbook will evolve and change with time as planning issues, legislation and your own experiences continue to shape regulations and planning practice. Planning Staff and the Planning Commission should annually review the Handbook to ensure its

relevance to land use matters in the Town of Snowmass Village.

The Town Council and Staff appreciate the time and effort that you have offered to commit to this demanding and complex responsibility.

We look forward to working with you, and hope your experience on this Commission is interesting, professionally satisfying, and enjoyable.

WHY HAVE A PLANNING COMMISSION?

The idea of appointing a group of lay citizens to make decisions and recommendations about land use planning originated at the turn of the 20th century. Government reformers, seeking to take local government out of the hands of "party machines" reorganized administrative procedures to reduce political influence on decisions. One solution was to create a planning commission of appointed citizens that would be responsible for setting the community's development direction and assure that development proposals were designed to complement that direction.

A planning commission, because it is an appointed body, has a certain degree of freedom that elected officials may not have, and is generally seen as a body that is free of the political responsibility normally associated with elected officials.

The Town of Snowmass Village Planning Commission is the Town Council's (the five elected people who set policy for the

Town) advisor on land use planning, though the Council may choose to follow the recommendations of the Commission or not and may reverse or modify Commission actions or send development proposals back to the Commission for further review. Planning Commission decisions may be appealed to the Town Council; "the buck stops" with the Council, or sometimes in a court of law.

Because the Commission focuses on planning issues, it is a valuable liaison between the public and the Council. When there is controversy, the Commission is in the thick of things, doing its best to sort through the facts and make good decisions, based both on the standards of the regulations, but also on the members' knowledge of their community.

In Snowmass Village, the Planning Commission is authorized under Article VIII of the Town's 1980 Home Rule Charter.

The Town Council has generally felt that having a planning commission whose members have varying perspectives but an overall knowledge and understanding of the Town as a whole, can best serve the community and can best respond to a wide variety of applications and constituents.

The Town of Snowmass Village Planning Commission is currently composed of seven (7) appointed Commissioners (at least five are required by the Charter). Please refer to the table on the following

page for the current contact list and terms of Planning Commissioners.



JAS Aspen Music Festival

TOWN OF SNOWMASS VILLAGE PLANNING COMMISSION ROSTER

7 Regular Members - Serve 3 year overlapping terms. Meet 1st & 3rd Wednesdays of each month.

Matt Dube
P. O. Box 6317
Snowmass Village, CO 81615
Email: dube.innover@gmail.com
Term Ends: 12/2025

Brian Marshack
P.O. Box 8530
Snowmass Village, CO 81615
Email: bmarshack@gmail.com
Term Ends: 12/2027

Doug Faurer
P.O. Box 5401
Snowmass Village, CO 81615
Email: dfaurer@alpineproperty.com
Term Ends: 12/2025

Jim Gustafson
Mailing: 411 E. Main St., Suite 205
Aspen, CO 81611
Email: gus@zgrouparchitects.com
Term Ends: 12/2025

Stan Clauson
P.O. Box 6968
Snowmass Village, CO 81615
Email: stan@scaplanning.com
Term Ends: 12/2027

David Seglin
P.O. Box 5990
Snowmass Village, CO 81615
Email: daseglin@gamil.com
Term Ends: 12/2025

Jami McMannes
Email: jami.mcmannes@gmail.com
Term Ends: 12/2027

THE PLANNING COMMISSION IN SNOWMASS VILLAGE.

Terms

Each member of the Planning Commission is required to be a resident of the Town. A regular member is appointed for a three-year term. Appointments are usually made by the Council in December each year; a Planning Commissioner whose term is ending generally is terminated unless re-appointed. A Chair and Vice-Chair are elected at the first meeting after new members are appointed, usually at the first meeting in February.

Compensation

Planning Commissioners are volunteers who are not compensated for their time. The Town typically provides some snacks and drinks at each of the Commission meetings.

Meeting Days and Times

The Planning Commission generally meets twice monthly in evening meetings, on the first and third Wednesdays of the

month at 4 PM at the Town of Snowmass Village Town Hall Council Chambers located at 130 Kearns Road, just west of the Snowmass Center. Additional meetings, such as site visits or special meetings that require larger blocks of time than a regular meeting agenda can provide, are sometimes scheduled.

To refresh Commissioners and Staff, an annual “training session” will be scheduled in the spring, following the appointment and seating of new Commissioners. The meeting will discuss procedures, land use policies, processes, and other matters of interest.

Information Packets and Email

Meeting packets arrive the Friday before a scheduled meeting. You will receive an e-mail indicating the packet is available and includes a link to the packet including staff reports, application materials and maps, the agenda, minutes of previous meetings, draft recommendation or decision documents, and general information unrelated to upcoming agenda items. Consistent with the Town’s goal of being “green”, the Community Development Department will send all documents

electronically (by sending an e-mail with a link to the specific meeting packet) as a sustainability measure.

Electronic Documents and Use of Laptops and Email

Most Planning Commissioners now use home PCs, laptops to receive and send documents and communicate with the Community Development Department. You are welcome to bring your laptop to the meeting. Wi-Fi is available in the Town Hall Council Chambers for your use. It is critical to remember that there should be no correspondence between Planning Commission members related to any ongoing land use cases. Commissioners may, however, communicate directly with Planning Staff.

Important Email and Web Resources

From time to time the Planning Commissioners may want to contact the Community Development Department or access public records to assist in their meeting packet review.

Important Town of Snowmass Village E-Mail Addresses/Websites

Community Development Department E-Mail Addresses:

David Shinneman, Director	<u>dshinneman@tosv.com</u>
Jim Wahlstrom, AICP, Sr. Planner	<u>jwahlstrom@tosv.com</u>
Brian McNellis, AICP/MLA, Sr. Planner	<u>bmcnellis@tosv.com</u>
Ashleigh, Permit Technician & PC Secretary	<u>ahuff@tosv.com</u>
Mike Metheny, Chief Building Official	<u>mmetheny@tosv.com</u>
Lauren Litchet, Plans Examiner / Building Official	<u>llitchet@tosv.com</u>
Sara Nester, Code Compliance Manager	<u>snester@tosv.com</u>

Land Use, Zoning, Subdivision, Code Compliance, and Building questions can be directed to the Town of Snowmass Village Community Development Department at 970-923-5524.

Town of Snowmass Village Community Development Department Home Page:
<https://co-snowmassvillage2.civicplus.com/120/Community-Development>

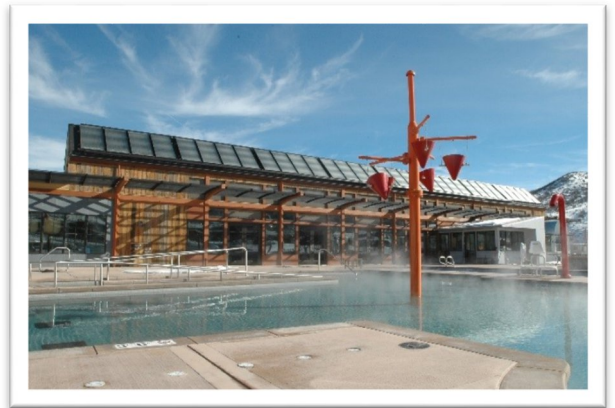
Planning Commission

The Commission is a recommending body and a decision-making body, depending on the specific type of land use action. For instance, the Commission makes recommendations to the Council on PUDs, Zoning Map Amendments (rezoning), and changes to existing regulations (Text Amendments). The Town of Snowmass Village Land Use Development Code (LUDC) also delegates decision-making authority to the Commission for some Special Use Permits, Variances, Annual Temporary Use Permits and some Administrative Modifications. The Commission is expected to play a key role in the Update of the Comprehensive Plan. A link to the recently adopted 2018 Comprehensive Plan is here:

<https://www.tosv.com/132/Comprehensive-Plan>

Colorado's Open Meetings Law: Letting the Public Know

Under Colorado's "Open Meetings Law," (also informally called the "Sunshine Law") all meetings, including work sessions and visits to a proposed development site that involve three or more Planning Commission members, must be open and public, and notice must be given to the public by posting in designated posting areas at least 24 hours before a meeting.



Snowmass Recreation Center Pool

THE COMMUNITY

DEVELOPMENT

DEPARTMENT

Who We Are

An Organizational Chart of the Department is provided on the following page.

What We Do

The Town of Snowmass Village Community Development Department administers building permits, reviews building plans for zoning compliance, handles land use cases and manages long range planning projects.

The department coordinates issues relating to development activities in the Town of Snowmass Village and can be grouped into the categories of current planning; long-range planning; zoning review, building permits. and code compliance.

Current Planning

The Department administers, on behalf of the Town Council, the Town of Snowmass Village's land use regulatory system. These regulations include:

Town of Snowmass Village Land Use and Development Code (LUDC) (Chapter 16A of the Municipal Code); and

- Town of Snowmass Village Building Regulations (Chapter 18 of the Municipal Code).

All of these regulations have been codified under the Town of Snowmass Village Municipal Code and are available on the Town of Snowmass Village website: (https://library.municode.com/co/snowmass_village/codes/municipal_code).

The Community Development Department conducts plan reviews, site inspections, coordinates long range planning efforts within the community and with other agencies, facilitates dispute resolution between land uses, assists in the enforcement of zoning violations, provides information and works closely with federal and state agencies on a wide variety of issues.

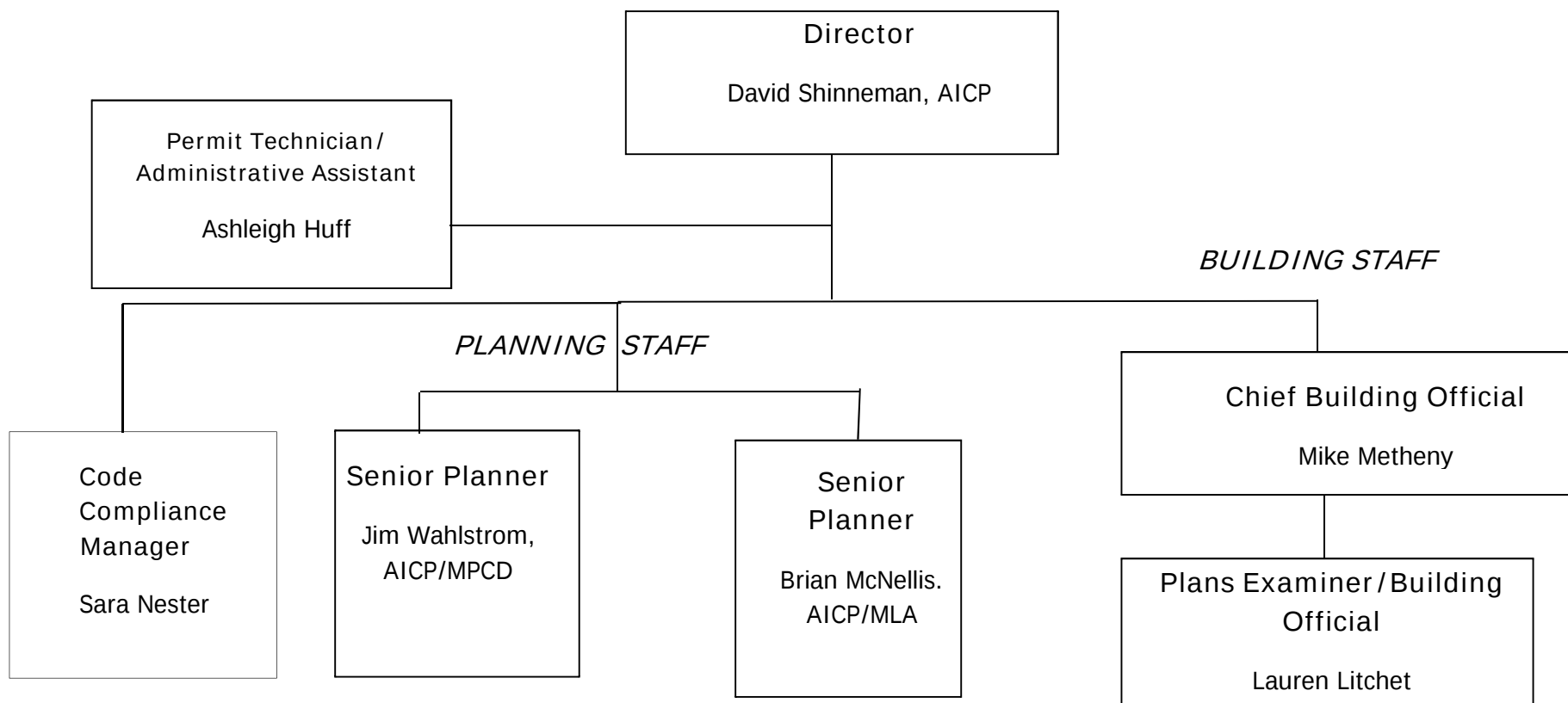
Long-Range Planning

The "planning" related functions of the Department include activities on behalf of the Town. We are responsible for coordination of efforts to develop the "master plan" or Comprehensive Plan for the Village. This document was last completed in 2018 and is available to review at:

<https://www.tosv.com/DocumentCenter/View/131/TOSV-Comprehensive-Plan?bidId=>

TOWN OF SNOWMASS VILLAGE COMMUNITY DEVELOPMENT DEPARTMENT ORGANIZATIONAL CHART

As of 8/1/2020



HOW LAND USE AND BUILDING PERMITS ARE PROCESSED

Land Use Permits

Currently, there are over a dozen different Land Use Action types in the Town of Snowmass Village that may be reviewed administratively by Planning Staff, reviewed by the Planning Commission, and/or Town Council. (See *Table 5-1 Summary of Development Review Procedures*.) Many of the Land Use Actions require public notice and a public hearing or meeting. (See *Table 5-2 Timing of Required Public Notices*, from the Land Use Regulations). Permit applications are reviewed under the Town of Snowmass Village Land Use Regulations and are typically processed by a Planner assigned to the case by the Community Development Director.

Staff review of land use applications includes working with applicants and the public; researching background information and public records; preparing legal notices for the newspaper and for adjacent neighbors; preparation of notice of decisions (NODs) and staff reports, including analysis of adjacent land use and

conformance with the *Town of Snowmass Village Comprehensive Plan*; and preparing decision and recommendation documents for the Commission and Council.

Pre-application Conferences

“Pre-application conferences” are conducted by the Planning Staff with applicants to allow an informal briefing of the application and for the applicant to learn more about submittal requirements and the review process.

Review by Town Departments and Other Agencies

Land use applications are accepted on-line by the Community Development Department at any time during normal business hours. Once an application is determined to be complete by the planner handling the case, it is sent to the applicable Town departments and reviewing agencies for review and comment.

Preparation of a Staff Report or Notice of Decision

A staff report, or as applicable, a Notice of Decision, is drafted describing the project, analyzing its compliance with standards of the Land Use Regulations and conformance with the Town of Snowmass Village Comprehensive Plan. All Staff Reports will include a recommendation, based on the merits of the application and the Planning Staff's best professional judgment. Decision-makers will receive a packet of the cases to be heard in advance of the meeting. A summary of the Staff Report with Staff's recommendation is presented at the meeting/hearing for the benefit of the members of the public who may be attending the meeting and hearing about the case for the first time.



TABLE 5-1 SUMMARY OF DEVELOPMENT REVIEW PROCEDURES					
Application Type	Pre-Application Conference ?	Role of Recommending (R), Decision-Making (DM) and Appeal (A) Bodies			Public Notice Required? ¹
		Staff	Planning Comm.	Town Council	
Interpretation (Sec. 16A-1-70)	Optional	DM		A	No
Amendment to Text of Development Code (Sec. 16A-5-210) or to the Official Zone District Map (Sec. 16A-5-220)	Optional	R	R	DM	Yes (for Town Council second reading of ordinance)
PUD Sketch Plan (Sec. 16A-5-320)	Mandatory	R	R	DM	Yes (for joint meeting and for Town Council resolution)
PUD Preliminary Plan (Sec. 16A-5-340)	Mandatory	R	R	DM	Yes (for Planning Commission and Town Council)
PUD Final Plan (Sec. 16A-5-360)	Optional	R		DM	No
PUD Amendment (Sec. 16A-5-390)	Mandatory for Minor or Major	DM R	R	DM	Yes (for Minor and Major)
Special Review (Sec. 16A-5-230)	Mandatory	R ²		DM ²	Yes (for staff or Town Council) ²
Variance (Sec. 16A-5-240)	Optional	R	DM	A	Yes (for Planning Commission)

Administrative Modification (Sec. 16A-5-250)	Optional	DM ²		A	Yes ³
Zoning Plan Review (Sec. 16A-5-270)	Optional	DM ²		DM/A	No
Subdivision Exemption (Article V, Division 5)	Optional	R		DM	No
Subdivision (Article V, Division 4)	Mandatory	R	R	DM	Yes (for Planning Commission)
Subdivision Amendment (Sec. 16A-5-450)	Mandatory for Minor and Major	DM R		DM	Yes for Minor and Major
Annual Temporary Use (Sec. 16A-5-260)	Mandatory	R	R	DM	Yes (for Town Council)
Administrative Temporary Use (Sec. 16A-5-260)	Optional	DM		A	No

Footnotes:

1. Public notice shall be given as specified in Section 16A-5-60, Notice of Public Hearings.
2. Staff is the primary decision-making body for administrative modification, zoning plan and special review applications. However, the staff may refer any administrative modification to the Planning Commission or special review application to the Planning Commission and Town Council if issues arise whereby the Planning Director deems referral to be appropriate. In such cases, action shall be by the Planning Commission at a public hearing for administrative modifications, at a regular meeting by the designated decision-making body, being either the Planning Commission or Town Council, for zoning plan reviews or by the Town Council at a public hearing for special review.
3. Required notice shall be given as noted in Table 5-2.

TABLE 5-2 TABLE OF REQUIRED PUBLIC NOTICES			
<i>Application Type</i>	<i>Days Prior to Hearing That Public Notice Must Be Given</i>		
	<i>Published</i>	<i>Mailed</i>	<i>Posted</i>
Amendment to Comprehensive Plan	30	No	No
Interpretation	No	No	No
Amendment to Text of Development Code	15	No	No
Amendment to Official Zone District Map	15	15	15
PUD Sketch Plan (Planning Commission)	10 ¹	No	No
PUD Sketch Plan (Town Council)	10	10	10
PUD Preliminary Plan	30	30	15
PUD Final Plan	No	No	No
PUD Amendment	15	30 (Major) 15 (Minor)	15
Special Review	15	15	15
Variance	30	30	15
Administrative Modification	No	15 ²	No
Subdivision Exemption	No	No	No
Subdivision	30	30	15
Subdivision Amendment	15	15	15
Annual Temporary Use	15	No	15
Administrative Temporary Use	No	No	No
Comprehensive Sign Plan	15	15	No

¹ No public hearing occurs before the Planning Commission; the required public notice is for the joint meeting, pursuant to Section 16A-5-320(c)(4), Joint Meeting.

² Mailed notice shall be by United States mail postage prepaid.

Site Visits

On occasion, site visits may be conducted to familiarize the Commissioners with the project. These meetings/hearings are not recorded but are open to the public. A time for Planning Commission members to state their observations about the site will be conducted back in Town Hall either the same day or at the next meeting. Often, the site visit is scheduled an hour before the start time of the regularly scheduled Planning Commission meeting.

Public Meetings, Public Hearings, Procedures and Consent Agendas

All Planning Commission meetings are considered to be “public meetings” and can be attended by the public. The public can request to be heard regarding any issue at a public meeting, but the Planning Commission is not required to provide time within their public meeting to “hear” from the public, unlike public hearings. The Commission should decide whether they wish to hear from the public at a meeting by communicating with the Chair as to their preference on a request to speak at the meeting from the public.

Public hearings are the official designated times in which an applicant may present his/her proposal to the public, and the

public may present its opinions and ask its questions about a proposed project.

Hearings will be opened by the Planning Commission Chair, then turned over to the Planner assigned to the case. The Planner will orient the Commission and public on the location of the project and neighboring land use and zoning, and provide a summary of the requested proposal and Staff recommendation. Next, the applicant will have an opportunity to present their proposal. After questions from the Planning Commission, the public is invited to comment and ask questions regarding the project directed to the Commission. The Commission Chair may then ask staff or the applicant to respond to issues raised by the public as appropriate.

Recommendations and Decisions

Planning Commission members assess a proposed project’s compliance with the Land Use Regulations and consistency with the Town of Snowmass Village Comprehensive Plan, and may approve, approve with conditions, or deny the proposed project. The Commissioners may additionally base their decision or recommendation upon their field observations and other evidence in the record.

The Planning Commission is the final authority on one (1) land use action: Variances. Staff are the decision-making body on Administrative Modifications and Zoning Plans. However, the Staff may refer these applications to the Planning Commission under the Land Use Regulations. All other non-administrative land use actions require additional review and/or action by the Town Council or can be appealed to the Town Council (refer to Table 5-1 for more detail).

Before any non-administrative land use action is considered final, a resolution is signed by the Chair of the Planning Commission, or a resolution or ordinance (depending on which land use action is being acted on) is signed by the Mayor on behalf of the Town Council. For Public Hearings, the record includes the Staff Report, which indicates compliance with the applicable regulations, consistency with the Town of Snowmass Village Comprehensive Plan, and a Staff recommendation. The “land use action” is finalized in the form of a resolution (or ordinance) by either the Planning Commission or Town Council.

Appeals of Decisions

Under the Land Use Regulations, the applicant, a person who testified or a

person who provided written comments have “standing” and are allowed to petition for an appeal of the Planning Commission’s final action to the Town Council, or subsequently, District Court. On all other land use actions, the Planning Commission serves as a recommending body to the Council.

Building Permits

Zoning compliance for all Building Permits is determined by the Planning Division in the Community Development Department. Building Permit plans are reviewed as part of the Building Permit application process; if plans aren’t compliant with zoning (land use regulations), then they will not proceed to plans review by the Building Division. Building permits are issued by the Building Division. Land Use decisions made by the Planning Commission are considered in the compliance review—no permits will be “signed off” unless they comply with zoning or the final action (with or without conditions) taken by either the Staff, Planning Commission or Town Council, as appropriate.

Most building permits are also routed to the Town of Snowmass Town Engineer through the Public Works Dept. for a right-of-way permit; the Snowmass Water & Sanitation District who will collect tap

fees; and the Roaring Fork Fire Rescue (RFFR) to ensure fire hazards are mitigated. When a building permit application is submitted, a letter from the applicable homeowner's association

approving architectural and site design must also be provided. Building Permits are not issued until zoning compliance has been verified by the Planning Staff.



LAND USE REGULATIONS IN COLORADO AND THE TOWN OF SNOWMASS VILLAGE

The authority to plan for and regulate the use of land in the incorporated area of the Town of Snowmass Village is an important aspects of a Planning Commissioner's job. In a basic sense, Colorado is a local control state when it comes to land use planning and decision-making. As we continue to experience rapid growth, issues like traffic congestion, sprawl, loss of open space and agricultural land, availability of affordable housing, and private property rights will continue to dominate public conversations about land use.

As a Town Planning Commissioner, you will work with the Town Council, your Community Development Department Staff and the citizens of the Town of Snowmass Village to guide future development in the Town.

Town of Snowmass Village
Comprehensive Plan

The comprehensive plan is intended to guide the growth and long-term development of the Town.

The Comprehensive Plan is an advisory document; it is not the equivalent of zoning and is not binding upon the Planning Commission or Town Council in their decision making. However, a Town Council is authorized to make its Comprehensive Plan, or any part of the plan binding through zoning, regulations or other land use codes. A comprehensive plan is a regulatory document only when a Council formally adopts it as a regulation.

Comprehensively Planned Areas (CPAs)

In the Town of Snowmass Village, the Council adopted elements of the Comprehensive Plan into the Land Use Regulations through the Comprehensively Planned Area (CPA) regulations. Further, the Town Council is the party charged with interpreting the Comprehensive Plan and is responsible for the adoption of the Comprehensive Plan through the passage of an ordinance.

The Comprehensive Plan promotes our community's vision, goals, objectives, and policies; establishes a process for orderly growth and development.

Zoning Regulations History

The Town's first "Zoning Code and Regulations" went into effect under Ordinance 4, Series of 1978. This was a ten-page document and did not include a Zoning District Map or even specific zones. Today's Land Use and Development Code became effective on September 2, 1998, and has been updated and codified several times since.

Chapter 16A, *Land Use and Development Code* is the chapter of the is available on-line at:

[https://library.municode.com/co/snowmass_village/codes/municipal_code?nodeId=CH16ALAU\\$DECO](https://library.municode.com/co/snowmass_village/codes/municipal_code?nodeId=CH16ALAU$DECO)

Zoning Map

Access to the Town's Zoning map is through the GIS portal, at: <http://gis.tosv.com/GIS/Public/?config=configZoning.json>

Subdivision Regulations

The Town of Snowmass Village adopted the current subdivision regulations in 1998 which were incorporated into the Town of Snowmass Village Land Use Regulations. Chapter 16A, Article V Review Procedures, Division 4 contains

the Subdivision Regulations for the Town of Snowmass Village.

For reference, the definition of Subdivision is as follows:

Subdivision means the division of any tract or parcel of land, with or without improvements thereon, into two (2) or more lots, tracts, parcels, sites, separate interests (including leasehold interests, condominium units or interest as defined in the Colorado Common Interest Ownership Act, and interval estates as defined herein), interests in common or other divisions for the purpose, whether immediate or future, of sale or development. Subdivision shall also mean condominiumization as defined herein and specifically includes the division or conversion of any existing units, including dwelling units, office or other building into condominiums, or time share estates. It also includes subdivision relating to the process of subdividing land or property previously subdivided. Unless this method of disposition is adopted for the purpose of evading this definition, the term subdivision as defined in this Section shall not apply to the following divisions of or interests in land or condominium units:

- a. The division of land by order of any court in this State or by operation of law.
- b. The division of land by a lien, mortgage, deed of trust or any other security instrument.
- c. The division of land which creates cemetery lots.
- d. The division of land which creates an interest or interests in oil, gas or minerals which are now or hereinafter severed from the surface ownership of real property.
- e. The creation of undivided joint ownership interests (including leasehold interests) in a particular dwelling unit or condominium unit; provided, however, that no agreement exists, either recorded or unrecorded, between co-owners providing for or allowing the exclusive use or occupancy of the property by one (1) or more co-owners during any annually recurring period of time, if said agreement is in any way binding or effective on any assignee or future owner of an undivided joint interest fractional fee, interval estate, right-to-use or other similar interest in such property.

- f. The division of land by reason of dissolution of a joint venture or partnership.

In Snowmass Village, the subdivision of property requires review by Staff and other referral agencies and the Planning Commission with final approval by Town Council.

The Building Official cannot issue permits of any kind for construction on any land for which an approved final plat is required.

Guarantees for Improvements

A subdivider must provide assurance and collateral with the Council for construction of required public improvements. As the developer completes such improvements, s/he may be given a release by the Council for all or parts of the related collateral. Should the Council find construction not in accordance with specifications, it must furnish a list of deficiencies and may withhold collateral sufficiently to assure compliance. The Council, on finding substantial non-compliance with specifications by the developer, may employ as much of the collateral as may be necessary to complete public improvements to specification. (C.R.S. §30-28-137).

Plat Amendments

Sec. 16A-5-450, Amendment of final plat, sets forth the process to amend a final plat. There are three procedures of amendment: administrative, minor and major. A major amendment requires a public hearing before Town Council.

Plat Vacations

The Town of Snowmass Village may vacate certain recorded plats or portions of them, such as public rights-of-way, dedicated easements, etc. This process requires the adoption of an ordinance by Town Council.

Plat Exemptions

The Town Council is authorized to exempt certain activities from the terms of the subdivision regulations, including lot line adjustments, lot combinations, conveying title and condominiumizations/time shares. This process requires the adoption of a resolution by the Town Council.

Intergovernmental Agreements

Colorado statutes authorize and encourage local governments to cooperate or contract with other units of government to plan or regulate development of land (i.e., mutually binding and enforceable

comprehensive development plans, regional Planning Commissions or for revenue sharing). Intergovernmental agreements involving one or more municipalities or other local governmental entities (districts) are authorized by the Act. (C.R.S. §29-20-101, et seq.)

Intergovernmental Agreements (IGAs) Between the Town of Snowmass Village and Special Districts

The Town of Snowmass Village enters into intergovernmental agreements from time to time with Special Districts. For instance, when the Roaring Fork Fire Rescue District wanted to redevelop Fire Station 45, that District entered into an agreement with the Town to specify how design review would be handled and how building permit fees would (or would not) be charged. This helps to clarify what the two entities' desires are.

TAKINGS, VESTED RIGHTS AND OTHER TOWN LAND USE ELEMENTS

The “Takings” Issue

One of the perennial issues commissioners face when addressing land use decisions is the “takings” issue. The issue derives from a clause in the Fifth Amendment to the U.S. Constitution, which states, “...nor shall private property be taken for public use without just compensation.” At the crux of the matter is the following question: At what point does a land use regulation or decision go too far and “take” private property, thus entitling an owner to compensation? There have been numerous court cases regarding the matter, with the U.S. Supreme Court rendering the 1994-benchmark decision in the case of *Dolan v. City of Tigard*. (512 U.S. 374). The Dolan decision states local governments may only exact conditions on a permit that are roughly proportional to the impact of the project being proposed. A 1987 case, *Nollan v. California Coastal Commission* (483 U.S. 825) stated there must be an “essential nexus” between the

conditions being placed on a permit and a legitimate government interest. The legislature codified the holdings, setting up standards for exactions and conditions placed on land use permits. (C.R.S. §29-20-201, et seq)

Vested Rights

A “vested right” is a right of a landowner to proceed with a particular development with assurance that local laws and regulations will not change in a manner preventing the development from occurring, or imposing new requirements on the development. The State of Colorado first passed a vested rights bill in 1987, providing that when a development right is “vested” by the Council, there can be no regulatory changes of a specific nature to the development right, without compensation, for a period of three years. This law was revised in 1999, establishing that a development right is considered vested upon the approval of a “*site specific development plan*”, unless a Town has passed an ordinance or resolution identifying an alternative vesting point. The 1999 law also modified the definition of what constitutes a site-specific development plan. (C.R.S. §24-68-101, et seq.)

Notwithstanding the limitations included within that legislation, the Town has the authority to adopt and enforce a new or amended regulation when necessary for “the immediate preservation of public health and safety.” In Snowmass Village, a

project automatically receives a three year vesting unless the Town Council agrees to allow more time, which is then incorporated into the ordinance approving the development.



PLANNED UNIT DEVELOPMENTS AND SPECIALLY PLANNED AREAS (SPA)

Planned Unit Developments (PUDs)

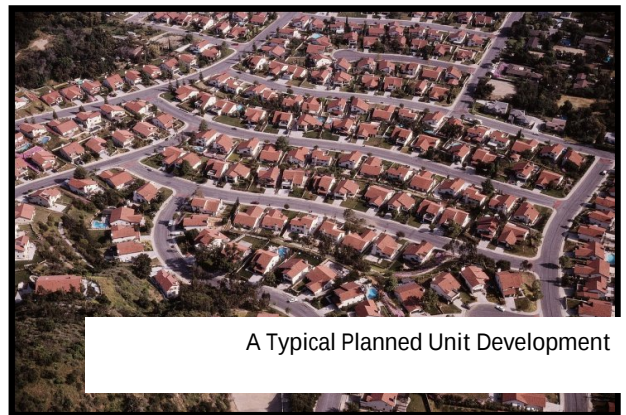
The Town Council may authorize “Planned Unit Developments (PUDs)” by ordinance, designating the objectives of such developments. Terms of the PUD are typically negotiated between the land owner, the neighbors and the jurisdiction where the property is located. By customizing the zoning, the project is designed to mitigate any negative impacts to neighboring parcels.

In Snowmass Village, a PUD is used as an “overlay zone” that rests on top of a designated underlying zone such as SF-15, MF, etc. The PUD process is very lengthy and can take over a year. The typical PUD will move through three steps: Sketch Plan; Preliminary Plan; and Final Plan. Approval at each step means the Applicant

has the authority to move on to the next step. Final PUD approval is granted by ordinance by Town Council and typically includes many conditions to be met before building permits can be issued.

Specially Planned Areas (SPAs)

When the Town incorporated, it recognized that the existing development, approved in Pitkin County, would not necessarily “fit” the proposed zone districts. Therefore, the Town Council designated existing developments as Specially Planned Areas (SPAs). SPAs are allowed to continue their use, but any redevelopment triggers a rezoning to a PUD where parameters for development can be set.



A Typical Planned Unit Development

TOWN COUNCIL AND OTHER BOARDS AND DEPARTMENTS RESPONSIBLE FOR SOME BUILDING AND LAND USE-RELATED ISSUES

Snowmass Village Town Council

The Council makes decisions on recommendations from the Planning Commission on most land use projects, including subdivisions and amendments to the Land Use Regulations. They also are the final authority on all related codes and appeals of Planning Commission decisions.

Environmental Advisory Board

Members of the Environmental Advisory Board (EAB) are appointed by the Town Council. The EAB was established by a Town Ordinance with the mission to advise Town council on environmental matters, and updating and accomplishing the goals of the town's Environmental Sustainability Plan. They do not normally review land use cases but may be asked for

advice from Town Council on certain land use matters.

Public Works Department

This department is responsible for the maintenance and improvement of the Town's transportation infrastructure, storm drainage system, solid waste and recycling, town-owned public buildings, facilities and vehicles. Services include road repairs, weed mowing and management; and snow plowing. The Town of Snowmass Village Public Works Department is comprised of three Divisions: Road and Bridge, Solid Waste & Recycling, and Facilities Maintenance. When reviewing land use applications, the Department will consider impacts to the existing roadway and storm sewer system, solid waste and municipal services. The Department is also responsible for keeping the Geographic Information System (GIS) current.

Parks, Recreation and Trails Department

The Parks, Recreation and Trails Department is responsible for maintaining 2 parks and 35 miles of trails located throughout Town of Snowmass Village. Maintenance of the parks includes a wide range of ground maintenance and care such as lawn care, ball field preparation,

weed control, trash pickup and removal. The Department is also responsible for minor building/facility repair and maintenance and some facility scheduling. Personnel from the Department are also trained to review land use cases and evaluate if trail connections or park dedication should be part of the land use approval. The basis for their recommendations is the Parks, Open space, Trails and Recreation (POSTR) Plan.

Transportation Department

The Transportation Department is responsible for operating the Village Shuttle system with a fleet of shuttles. There are both fixed-route shuttles and dial-a-ride services provided. The Department is also responsible for many other transportation-related services and development-related reviews. The Department reviews and comments on land use cases as appropriate.

Housing Department

The Housing Department serves as “landlord” to the employee housing maintained by the Town. They also are responsible for developing employee housing, including “for-sale” units available to purchase by qualified employees. Because the Land Use and Development code requires development

to mitigate for employee generation, many private sector employee units are also available for rent or sale. The Housing Department staff are charged with reviewing land use cases and provide comment regarding any necessary deed restrictions or preferred employee housing type when development is proposed, for consideration by the Planning Commission.

Land Use Review by Town Engineer Through Public Works

As part of their Land Use Review function, the Public Works Director may ask the Town Engineer to review and comment on Land Use applications for compliance with the Town of Snowmass Village construction standards. Together, the Public Works Director and Town Engineer advise the Planning Commission on the impact of a proposed development on Town infrastructure and design and construction issues related to Town roads, utilities and driveway locations. Public Works is responsible for Revocable Right-of-Way Permits and license agreements for structures located in Town right-of-way.

Planning Commission review of Land Use applications often includes requirements for other permits. The Public Works

Department is responsible for administering the following “other” permits:

- : Needed for any type of improvement placed in the road right-of way.

- Town Roadway Access Permits: Necessary when a driveway will access a Town road. If not accessing a Town road, a driveway waiver may be issued by the Public Works Director or their designee.

- Road Right-of-Way Excavation Permits: Needed for any work done on a Town road. Access and excavation permits may be applied for through the Public Works Dept.

Building Department

The Building Department is a division within the Community Development Department that is dedicated to promoting and preserving building safety through professional and courteous service. The purpose of the Department is to educate the public, enforce minimum building code standards, and to enhance the relationship with the public and building community. Building permits may be applied for and inspections scheduled online.

Building Permit and Plan Review System

The Building Department accepts plans for review electronically. Applicants will need

to set up an account to upload plans. Please contact the Building Division at 970-923-5524 to set up an account. Plans may be uploaded as PDFs. The system will provide you with substantial information regarding the progress of your building permit review and will allow for uploads of both original sets and revisions, will allow payment of fees, issuance of permits, scheduling of inspections, and issuance of Certificates of Completion and Certificates of Occupancy (new construction).

Building Department Office Hours are Monday-Friday 7:30 AM to 4:00 PM

Town of Snowmass Village Attorney

The Town Attorney provides legal counsel to the Town Council, the Planning Commission, and various Town of Snowmass Village Departments, including Community Development.

Typically, legal counsel does not attend Planning Commission meetings. However, the Attorney may come to the meetings at the request of the Planning Commission or staff when needed. The Town Attorney and Community Development Staff meet regularly to review land use cases and issues and/or to jointly work on projects.

Town of Snowmass Village Geographic Information Systems Department

The Town's Geographic Information System (GIS) is maintained within the Public Works Department and assists the planning staff in the preparation of Town of Snowmass Village's Comprehensive Plan and provides a variety of other planning-related services that allow citizens, businesses and government departments to view, understand, interpret, and visualize data in many ways.

The Town's GIS and Project Manager is the person responsible for maintaining the online map. The online map allows anyone the ability to visually find detailed information about any location within the Town of Snowmass Village.

Zoning Inspections and Enforcement

The Community Development Department ensures compliance with the Land Use and Development Code when building permits are submitted on-line and through the inspection process. Before a Certificate of Completion or Certificate of Occupancy is issued, zoning compliance is verified by the Planning Division before the Chief

Building Official signs off. The Police Department is sometimes asked to follow up on some zoning/building construction complaints such as non-compliant lighting, construction dumpsters that attract wildlife, and illegal off-premise (typically real estate) signs.

Health Department and Restaurant Inspections

The Town does not have a health department and relies on the State Health Department for health-related matters. Some, but very few, land use cases are forwarded to that department or Pitkin County for review and comment as a referral agency. Such comments are then incorporated into the Staff reports for the Planning Commission's consideration.



THE LAND USE REGULATIONS:

The Town of Snowmass Village had no land use regulations (often referred to as the zoning code) until it incorporated in 1977; development before incorporation followed Pitkin County land use regulations. The Land Use and Development code (LUDC) includes a zoning map which identify various “zone districts” in which the various zoning regulations are applied. For instance, an owner whose property has an SF-15 zoning designation on the Official Zoning Map, should reference the SF-15 Single Family zone district regulations in Chapter 16A, to determine what uses are allowed and what the dimensional requirements (height, setbacks, lot size, etc.) are. Zoning

text amendments and/or rezoning of property may be proposed by the Planning Commission, Council, the public, or the Community Development Department Staff, following public hearing procedures.

The link to the Land Use and Development Code regulations is:

https://library.municode.com/co/snowmass_village/codes/municipal_code?nodeId=CH16LAUSDECOTLE17/index.html



Limelight Hotel Fire Pits

OTHER TOWN OF SNOWMASS VILLAGE REGULATIONS AFFECTING LAND USE

Several regulations have been in place for many years that directly affect the design or operation of a development, and are summarized here.

International Building Code

As of the date of this Handbook, the Building Department uses the 2015 Edition of the International Building code, particularly, Chapters 1 through 35, inclusive, and Appendix Chapters A, B, C, E, G, I, J and K inclusive. In addition, the Town also uses the following codes for construction within the Village:

- 2015 International Plumbing Code (IPC)
- 2015 International Fire Code (IFC)
- 2015 International Existing Building Code (IEBC)
- 2015 International Energy Conservation Code (IECC)
- 2014 National Electrical Code (NEC)
- 2012 International Green Construction Code (IGCC)

- 2015 International Residential Code (IRC)
- 2015 International Mechanical Code (IMC)
- 2015 International Fuel Gas Code (IFGC)

The adopted Building regulations can be found in the Municipal Code at https://library.municode.com/co/snowmass_village/codes/municipal_code?nodeId=CH18BURE

Other Code Provisions Related to Building

In 2008 the Town of Snowmass Village adopted the Home Energy Rating System (HERS) and Renewable Energy Offset Program (REOP). The goal of these programs is to reduce building and site energy consumption within the Village. Below is a link to the adopted ordinance that created the program:

- [Renewable Energy Offset Program \(PDF\)](#) (REOP)

International Fire Code

The Town Council has adopted the *International Fire Code (IFC)*, 2021 edition. In 2019, Roaring Fork Fire Rescue and the Planning Department partnered to develop new provisions, adopted by Ordinance 13, Series 2019, to further suppress the potential for wildfire hazard in Snowmass Village. Together, these documents are referenced as the *Fire Codes of the Town of Snowmass Village*.

AN EFFECTIVE PLANNING COMMISSION

Being Prepared and Interacting with the Staff Before a Meeting

The most functional planning review process for customers happens when the Commission and Staff work as a team.

The staff's responsibility is to provide "up front" factual information for you as possible. Before every meeting, Commissioners should review items on the meeting agenda, reading the related staff reports and any other supporting documentation for each agenda item. It's helpful to re-familiarize yourself with sections of the Land Use Regulations or other regulations affecting a particular project.

If you have questions about an upcoming agenda item, please ask. Contact the Planning Staff: we are happy to have a conversation before the meeting, and it gives us time to prepare additional information if necessary, including contacting the Town Attorney or other Town departments. Meetings run smoother and the public is better served

when the Staff and Commission members are on the same page before the meeting starts.

At a meeting or hearing, Commissioners may ask questions about a project, its relationship to the Land Use and Development Code regulations and other regulations, and its potential impacts on the community.

The Town Attorney is not typically present at regular Commission meetings, if legal questions arise consult with the Community Development Director and If necessary the Commission can continue an item to ask for legal advice. Planning Staff members are not attorneys, and attorneys representing developers or other members of the public are not there to provide legal opinions to guide the Commission. Don't take legal advice from anyone but the Town's own Attorney.

Maintaining an Open Flow of Ideas

The Chairperson and the other Commissioners share responsibility for seeing there is a continuing flow of ideas and discussion among all parties, including applicants, staff, members of the public, and the Commissioners

themselves. Be objective and ask questions.

Avoiding “Ex-Parte” Communication

“Ex-parte communication” is *“an oral or written, off-the-record communication made to or by a member of a review or decision-making body in a ‘quasi-judicial’ proceeding other than the Planning Director or Town Attorney, without notice to all parties involved, that discusses the merits, or could affect the outcome, of a decision or recommendation to be made by that reviewing decision-making body.”*

The Town of Snowmass Village Attorney annually meets with the Commission to review the current legal implications for ex-parte communications, and how to avoid them. (Also see *Appendix 3: Ex-Parte Communications*).

Taking Advantage of Educational Opportunities Outside of the Town’s Training Sessions

The Council may have talked with you during your initial interview about your availability to attend conferences and training sessions outside of the Town that will help you in your role as a Planning Commissioner. Depending upon budgetary constraints, you are encouraged to take advantage of the

annual fall conference of the Colorado Chapter of the American Planning Association, which often offers sessions designed just for Planning Commissioners.

Site Visits

Planning Commissioners are expected to be familiar with the property that is the subject of a Land Use hearing. This entails driving out to the site and seeing, first-hand, the details of the property and the surrounding area.

In some instances, it is appropriate for a site visit to be led by a staff person, usually the Case Planner. The Staff will explain the purpose and rules of the site visit at its beginning to prevent misunderstandings about the purpose and protocol of the meeting. Though these visits are not recorded, they are still regularly scheduled meetings of the Commission and are subject to the Colorado Open Meetings Law requirements for notice.

The purpose of such a site visit is to familiarize the Commissioners with the site and how the proposed project fits into the site. It is not a hearing; statements and questions from neighbors should be presented at the hearing so that these can become part of the record. If the applicant is present and is willing, questions can be

addressed to him or her at the end of the site visit.

Planning Commissioners should discourage side conversations about the proposed project. This is considered ex-parte contact and could result in a Commissioner not being able to act on a project.

Commissioners must refrain from offering suggestions or opinions about the project during the site visit; such discussions should occur at a recorded meeting or hearing scheduled for the project. Specific Commission concerns should be directed to staff so that these concerns can be

researched and addressed prior to action by the Commission.

People who own property adjacent to the site and other neighbors should be encouraged to put their concerns in writing for the Commission in advance of the scheduled meeting or hearing. Observations by Commission members from site visits are scheduled as part of the regular agenda items on the meeting after the date on which the site visit is conducted. (See additional information in *Appendix 5: Site Visits*).



APPENDIX 1: SUGGESTED RULES OF PROCEDURE FOR THE TOWN OF SNOWMASS VILLAGE PLANNING COMMISSION

Article I. General Provisions

Section 1: These rules are to supplement the provisions of the Land Use and Development Code of the Town of Snowmass Village as they relate to procedures of the Town of Snowmass Village Planning Commission, hereinafter referred to as "Commission."

Section 2: Any member of the Commission who has a personal or financial interest in a matter before the Commission shall neither vote thereon nor participate in any meeting or hearing on said matter.

Section 3: Nothing herein shall be construed to give or grant to the Commission the power or authority to alter or change the Land use and Development Code, including the official zoning map, which authority is reserved to the Town Council of Snowmass Village.

Section 4: The Town Attorney or their designee shall be consulted in cases where the powers and duties of the Commission are not clearly defined.

Section 5: The office of the Planning Commission shall be located at the office of the Town of Snowmass Village Community Development Department, 130 Upper Kearns Rd, PO Box 5010, Snowmass Village, Colorado 81615.

Section 6: Unless otherwise specified by these rules, Robert's Rules of Order shall constitute the rules of procedure to conduct any meeting.

Article II. Officers and Duties

Section 1: The officers shall be the Chairperson and a Vice Chairperson.

Section 2: The Commission shall elect annually from its members by a majority vote a Chairperson and Vice Chairperson to serve when the Chairperson is absent. The Chairperson and Vice Chairperson shall be elected at the conclusion of the last regular meeting of the Commission in January and shall hold office for one year, commencing on the 1st day of February or until a successor is designated. The Town of Snowmass Village Community Development Department's Administrative Assistant or other clerk shall be designated as Secretary to the Commission and shall perform the duties outlined in these Rules of Procedure.

Section 3: The Chairperson shall supervise the affairs of the Commission. They shall preside at all meetings of the Commission, shall appoint such committees and subcommittees as may be necessary to carry out the purposes of the Commission. The Chairperson shall be an ex-officio member of all committees and subcommittees so appointed.

Section 4: The Vice Chairperson, in the absence or disability of the Chairperson, shall perform all the duties and exercise all the powers of the Chairperson.

Section 5: The Secretary shall record and maintain permanent minutes of the Commission's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact; shall keep records of its examinations and other official actions; shall summarize accurately the testimony of those appearing before the Commission or keep a verbatim transcript of all hearings; shall record the names of all persons appearing before the Commission; shall, subject to the Commission and Chairperson, conduct the correspondence of the Commission and have public notices of meetings or hearings posted as required by law; shall file said minutes and records in the public portal, which minutes and records shall be a public record; and shall be the custodian of the file of the Commission and keep all records.

Article III. Members

Section 1: Each member of the Commission shall be a resident of Town of Snowmass Village.

Section 2: If any Commission member is absent for three (3) consecutive regular meetings or any five (5) regular or special meetings in any twelve (12) month period, his position shall be declared vacant by the Chairperson who shall make a request to the Town Council to appoint a new member. Any person appointed to fill such vacancy shall serve the unexpired term of the person whose position has been declared vacant.

Article IV. Meetings

Section 1: Regular meetings shall be held in the Town of Snowmass Village Town Council Chambers (or alternatively through an on-line video conferencing program), 130 Upper Kearns Rd, Snowmass Village, at 4:00 p.m. on the first and third Wednesdays of each month, unless such day shall be a recognized holiday. In that event, the regular meeting shall be held at such other time as the Chairperson may designate.

Section 2: Regular meetings may be cancelled by the Chairperson or staff when there are no cases pending. Notification must be given to members, however, not less than forty-eight (48) hours prior to the time set for such meetings.

Section 3: Special meetings may be called by the Chairperson at their discretion, or upon the request of three (3) or more members, provided 72 hours' notice is given each member.

Section 4: All meetings shall be open to the public.

Section 5: A quorum of the Commission shall consist of four (4) members for any regular or special meeting. A concurring vote of a majority of the members of the Commission present and casting votes on a question shall be required for any decision, determination, or official action by the Commission. In the event that a quorum is not present, all applications, hearings, and other matters scheduled for that meeting pursuant to notice shall be continued and made a matter of record until the next regularly scheduled meeting of the Commission. All such matters so continued by action of the members present shall be placed on the agenda for the next regularly scheduled meeting of the Commission and public notice concerning the same shall be noted and posted along with all new items on the next agenda in accordance with the then current practice of noticing of the Commission's agenda. The action of continuance shall be automatic and no vote of the members present shall be necessary to take the action of continuance.

Section 6: A quorum of the Commission shall be present at all public hearings and for the transaction of any business.

Article V. Order of Business

Section 1: All meetings of the Commission shall proceed as follows:

- (a) Roll call and declaration of quorum.
- (b) Approval of minutes of previous meeting.
- (c) Communications.
- (d) Statement of hearing procedures by Chairperson.
- (e) Call of cases on agenda and hearing of requests for continuance. Continued hearings shall be considered first before new cases are heard.

CONTINUANCES

Continuances may be granted at the discretion of the Commission in any case for good cause shown and to any interested party who has entered their appearance as follows:

- (1) New cases--first time on agenda: continuances may be granted upon request.
- (2) Continued cases: All cases which have previously appeared on the agenda of the Commission constitute continued cases. A request for a further continuance will be considered upon request by the party or his/her representative at the time the case is called, and upon showing that he/she will be unable to proceed with his/her evidence at the hearing.

FAILURE OF APPLICANT TO APPEAR

- (1) The Chairperson may entertain a motion from the Commission to dismiss the case for want of prosecution. In the absence of a motion by the Commission, the chair shall rule.
 - (2) In cases which are dismissed for want of prosecution, the applicant will be furnished with written notice by the Secretary of the Commission.
 - (3) The applicant shall have seven (7) days from the date of notice of dismissal to apply for reinstatement of the case. In such cases, applicant must file a written request with the Secretary for reinstatement. Reinstatement shall be at the discretion of the Chairperson for good cause shown.
 - (4) In all cases reinstated in the above-described manner, the case will be docketed and notice given the usual manner prescribed for new cases. All costs incurred by reinstatement shall be borne by the applicant.
- (f) New business.
- (g) Reports of committees.
- (h) Adjournment.

Article VI. Notices for Hearings

Section 1: Notice of public hearing shall be mailed, posted and published in a newspaper of general circulation in the Town per the Land Use and Development code requirements. Notice of such hearing shall be posted on or as near as reasonably possible, to the property for which the application is sought and shall be mailed to the owner of such property and to the owners of real property lying within 300 feet of the exterior boundaries of such property by first class mail, with postage prepaid. The word "owner" as used in this section shall be construed to mean persons who are shown to be the record owners of the property upon the records of the Pitkin County Assessor. The purchaser shall be considered the owner for the purposes hereof. Proof of compliance with this section shall be available from the Town Community Development Director, if requested, including the names and addresses of the persons to whom the notice was mailed and the date of mailing, a statement that the required mailing occurred and a sign was posted upon or near such property, and the publisher's affidavit of publication. Such proof shall become a part of the record of action taken by the Commission.

Article VII. Procedures of Hearings

- Section 1: At the hearing, the applicant may appear in his own behalf or may be represented by his counsel or agent.
- Section 2: All members of the public who wish to speak, shall be heard.
- Section 3: The Town Staff shall present the case to frame the issues for consideration by the Commission. Planning Commissioners may ask clarifying questions of staff.
- Section 4: The applicant or his representative may make an initial statement outlining the nature of his request and introduce evidence regarding their case. Following their presentation, the Planning Commissioners may ask clarifying questions of the applicant.
- Section 5: Members of the public are invited to speak either for or against the case.
- Section 6: The applicant and/or its representative may address matters presented by opposition to the application.
- Section 7: The Commission shall not be bound by the strict rules of evidence, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence.

Article VIII. Decisions

- Section 1: Subject to the Land Use and Development Code regulations, final decisions or recommendations shall be made by resolution.
- Section 2: The Commission shall conduct its hearings and vote on all matters in public session at the meeting in which evidence is concluded, unless the Commission considers additional time for deliberation is necessary.
- Section 3: A concurring vote of a majority of the members of the Commission casting votes shall be necessary for any decision or determination or to recommend any application to the Town Council.
- Section 4: The Commission may deliberate or seek legal advice in executive session, however, all hearings and votes cast shall be made at a meeting that is open to the public.
- Section 5: Notice of the decision of the Commission shall be given to the applicant and other interested parties as soon as possible after the decision is reached.
- Section 6: Any action that requires Town Council approval will have the Planning Commission's Resolution included in the packet for Town Council's consideration.

Article IX. Records

Section 1: A file of materials and decisions relating to each case shall be kept by the Community Development Department as part of the records of the Commission.

Section 2: All records of the Commission shall be a public record.

Article X. Amendment of Rules

Section 1: These rules may be amended by an affirmative majority vote of all members of the Commission.

Section 2: The proposed amendment must be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

APPENDIX 2: REDUCING RISKS OF PERSONAL LIABILITY IN THE TOWN OF SNOWMASS VILLAGE

[Reproduced here from a memo from David Bumgarten, legal counsel to the Gunnison Town Planning Commission, but also applicable to the Town of Snowmass Village Planning Commission].

There are three sources of protection from personal liability for a Planning Commissioner - statute (Colorado Governmental Immunity Act), common law, and insurance. But all three sources have limits; so to minimize exposure, the following are suggestions for self-protection:

1. Know the limits of your authority and act within those limits.

The protections provided by the Act, common law, and insurance policies generally extend to an act or omission occurring in the performance of your official duties and within the scope of your office or employment. Consequently, knowing the limits of your authority and acting within those limits is important in reducing the risk of personal liability. Planning Commissioners have duty and authority regarding Town planning functions, on those applications before it pursuant to Land Use Regulations. Obtain legal advice prior to acting where a question exists and a claim is possible.

2. Avoid any conflict of interest. (See: C.R.S. 24-18-101 et seq.)

Avoid any conflict of interest and the appearance of a conflict and do not act from personal motivation; otherwise, your conduct may be outside the scope of your official or public duties. As a practical matter, the likelihood of suit can increase if personal motivations appear to be involved, emotions may rise, making resolution of the suit more difficult, and judges and juries are less likely to be sympathetic to your position. Understand the rules applicable to your actions and decisions, follow the rules, apply the rules even-handedly and don't play favorites; change the rules if they don't work.

3. Avoid willful, wanton and malicious conduct.

"Willful" is defined as "voluntary and intentional;" "wanton" is defined as "reckless, headless, malicious . . . reckless disregard of rights of another." The Act's protections do not extend to such conduct, most common law immunities will not be available, and insurance policies often exclude such conduct from coverage. Punitive damages are more likely if such conduct is found to exist.

4. Establish and follow where required, understandable, practical, and legally sufficient procedures which meet due process requirements.

Due process violations often provide a basis for federal civil rights act claims, particularly with respect to land use, licensing and permitting decisions. Typical claims often allege inadequate or

improper notice, lack of a hearing, inadequate hearing procedures, improper timing of the hearing, biased decision-makers, failure to follow required procedures, consideration of improper evidence and so forth. The risk of liability can be reduced if procedures, to be followed whenever due process requirements must be met, are created and periodically reviewed for legal sufficiency. Then, follow them.

5. Be wary of involvement in personnel decisions.

Increasingly, personnel decisions form the basis for lawsuits against government officials. The law in this area is developing and awards encourage the filing of suits. Every employee termination or substantial disciplinary action should be viewed as a potential liability event. Moreover, personnel decisions are often fraught with emotion and the risk of suit is thereby increased.

6. Keep good records of what you do and why you do it.

Being right is good; being able to prove you're right is even better. The increasing volume of paperwork becomes frustrating at times, but it is vital that accurate records of your official activities be kept, that proper and lawful reasons are expressed for the actions you take, and that those reasons are recorded in some fashion. While staff maintain records of formal meetings of the commission, it is wise to keep your own personal records and calendar of those significant events, if any, which occur outside recorded meetings. Lawsuits can take months or years to bring and years to conclude. Determining what happened in preceding years may be important to successfully resolving the lawsuit. Memories fade, but documents often remain available.

Be aware of tape recorders, and be guided by the assumption that what you say and write in or out of a meeting will become public knowledge and evidence in a lawsuit.

7. As Town officials, focus your efforts on legislative and quasi-judicial decision-making.

Common law immunities do not protect elected officials in every action they take; instead, the immunities protect governmental operations of a legislative, judicial, executive or administrative nature. Legislature and judicial actions are afforded greater protection by the courts than are administrative actions. Thus, while limiting the involvement of officials in administrative matters is sometimes suggested as a good management practice, it also is a good method of reducing the risk of personal liability.

APPENDIX 3: EX-PARTE COMMUNICATIONS IN QUASI-JUDICIAL PROCEEDINGS

[Reproduced here from a memo from David Bumgarten, legal counsel to the Gunnison Town Planning Commission, but also applicable to the Town of Snowmass Village Planning Commission].

This section will focus on issues that may arise regarding communications that individual Planning Commissioners may have with parties to, or members of the public interested in, quasi-judicial proceedings (as opposed to "quasi-legislative" proceedings) before the Planning Commission.

A "quasi-legislative" proceeding is prospective in nature, is of general application, and requires balancing of questions of judgment and discretion; generally it is policy-making. A "quasi-judicial" proceeding decides rights and liabilities based on past or present facts; a quasi-judicial proceeding is one in which the Planning Commission investigates facts, weighs evidence and draws conclusions as a basis for official acts. It is the application of policy, guidelines and regulations to a fact-specific situation, (e.g., a Planning Commission determination on a Land Use Permit application is "quasi-judicial"). It is useful to recognize that a Planning Commissioner in a quasi-judicial proceeding is acting as the equivalent of a judge. An ex-parte communication is one that occurs outside of the normal hearing process, e.g., with an applicant, off the record.

Since Planning Commissioners are public officials who act in both "quasi-legislative" and "quasi-judicial" proceedings, and may be accustomed by philosophy and choice to constant and open interaction with members of the public, and since the members of the public may not know or appreciate the different obligations and constraints a Planning Commissioner has in the different types of proceedings, it is not surprising that both Planning Commissioners and those who lobby them for support may have discomfort recognizing the perils of such ex parte contacts and difficulty avoiding ex parte contacts when the issue at hand involves a quasi-judicial rather than quasi-legislative matter.

Nonetheless, ex-parte contacts in quasi-judicial proceedings do have perils; they may cause damage to the applicant, to the public and to the integrity of the process. Courts give guidance to judges and to one acting as the equivalent of a judge. The United States Supreme Court has stated that "the tribunals of the country shall not only be impartial in the controversies submitted to them but shall give assurance that they are impartial . . ." *Berger v. United States*, 255 U.S. 22, 35-

36 (1921). Basic to our system of justice is the precept that a judge must be free of all taint of bias and partiality. A judge "... must meticulously avoid any appearance of partiality, not merely to secure the confidence of the litigants immediately involved, but to retain public respect and secure willing and ready obedience to their judgments". *People v. Hrapski*, 718 P.2d 1050 (Colo. 1986). A trial judge must "conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary". A.B.A. Standards, The Function of the Trial Judge 1.5. Code of Judicial Conduct, Canon 2, provides that a judge should avoid the appearance of impropriety in all activities. Code of Judicial Conduct Canon 3(A)(4) provides in pertinent part: "A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex-parte or other communications concerning a pending or impending proceeding ...".

This section suggests six rules of thumb regarding ex parte communications in quasi-judicial proceedings. The first rule of thumb is to not initiate them and to avoid them when others initiate them; do this politely but firmly. Encourage participation in the normal hearing process, through an in person appearance on the record, or if an in person appearance is not convenient, by letter to the Planning Commission that can be entered into the hearing record.

The second rule of thumb is to limit conversations outside of the hearing process to policy rather than facts of the particular matter before the Planning Commission. A decision maker's public stance on a policy issue related to an application or the dispute normally will not disqualify the decision maker, endanger the process or deprive the applicant or the public of a fair decision. What might demonstrate bias would be to engage in an ex parte discussion about facts of a particular matter or to make an ex parte statement indicating that the decision maker has made up his mind about the facts of a particular case before the evidence has been officially presented.

The third rule of thumb is to remember and indicate in any conversation outside of the hearing process that the Town is allowed discretion to regulate but not to make arbitrary decisions. It is important that all decisions and disputes must be made within the constraints of both established process and policy guidelines; e.g., "if an application fulfills Town requirements, it will be granted; if it does not, it will be denied." Avoid blanket statements of "always" and "never."

The fourth rule of thumb is that if an ex-parte communication does take place during the pendency of a quasi-judicial proceeding, the commissioner should place on the record of the proceeding the circumstances and substance of the communication. This will give notice to all participants and the public and will afford them the opportunity to respond.

The fifth rule of thumb to follow is to remember that these rules of thumb ought to be given attention even before an application or dispute is officially before the Planning Commission.

The sixth rule of thumb to follow is to carefully define in writing the role of a “project manager” or similar Planning Commission member role with regard to contact with the project applicant. [NOTE: The Planning Commission Guidelines clearly define the role of a Project Coordinator.]

“Ethics and the Planning Commission:
Ex-Parte Contacts,” by C. Gregory Dale,
FAICP

(Copyright, Planning Commissioners Journal)

This column will focus on another common ethical problem facing Planning Commissioners: “ex-parte” contacts.

To begin, let us again look at a hypothetical situation: At a local charity fund-raising event, you are approached by the President of a community council from a neighborhood where a developer is seeking site plan approval for the construction of a shopping center. The individual is an old friend who wants to talk to you about what the community believes will be the impacts of the shopping center on the community. She begins to describe the traffic, stormwater run-off, litter and other problems that they anticipate. How should you react?

First, any contact that you have with a party involved, or potentially involved, in a matter before the Planning Commission outside of the public hearing process is known as an “ex-parte” contact. Ex-parte contacts can present difficult ethical problems for Planning Commissioners. Most people tend to think of ex-parte contacts as referring to contacts that occur

outside of the meeting. While that is generally true, the literal meaning of the term “ex-parte” is “one-sided.”

This, of course, suggests that when you engage in an ex-parte contact, you are engaging in a one-sided discussion, without providing the other side an opportunity to respond and state their case. Critical elements of legal due process involve providing all parties an opportunity for a fair hearing, full disclosure of information that you are considering, and an opportunity to be heard. Engaging in outside or ex-parte contacts can violate those due process requirements, and ought to be avoided. Having said that, let me acknowledge that you were appointed as a Planning Commissioner in large part because of your knowledge and involvement in your community.

For many of you, it is simply impossible to avoid all contacts involving matters before you outside of the hearing process. In those cases, each of you must judge your own community's tolerance for such type of activities. While you should refrain as much as possible from engaging in ex-parte contacts, let me caution you that if you are going to discuss matters with interested parties outside of the hearing

process, that you make yourself available to all sides. Also, any substantive information or facts that you receive during the course of those contacts that relate to the matter at hand ought to be made a part of the public record so that it can be available for consideration or challenge by all interested parties. This can be done by way of a public statement by you at the Commission meeting.

Remember that there is nothing more frustrating for the losing party than to have the impression that the other side prevailed through the use of “back door” politics. And nothing is more important to you as a Planning Commissioner than your credibility and integrity.

There is another, perhaps more difficult, aspect of ex-parte contacts which you may face. This involves attempts by elected

officials of your jurisdiction to influence your opinion -- or simply inform you -- of their views on a particular matter before you. This is a difficult problem both because it is hard to prevent, and because it can create a very real bias in your own mind, especially if you are appointed to your position. Clearly, you ought not encourage this sort of ex-parte contact. If possible, your Council or Commission should take steps to discourage such contacts, if they are occurring. Your job is to make decisions or recommendations based solely on the evidence presented to you during the hearing. It is at the hearing that elected officials, like other citizens, can present their views.

C. Gregory Dale, FAICP, is a Principal with the planning and zoning firm of McBride Dale Clarion in Cincinnati, Ohio. Dale manages planning projects and also regularly conducts training for planning officials throughout the country. He regularly writes for the “Planning Commissioner’s Journal.”

APPENDIX 4: COLORADO'S "OPEN MEETINGS LAW," A GUIDE FOR KEEPING THE PUBLIC IN THE LOOP

[Reproduced here from a memo from David Bumgarten and Tom Dill, legal counsel to the Gunnison Town Planning Commission, but also applicable to the Town of Snowmass Village Planning Commission].

These are practices that will foster good governance discipline, will well serve our constituents, and will keep us out of legal jeopardy. We are available to meet to discuss any of these issues at your convenience. Please remember that Colorado law is explicit in the following statements:

1. C.R.S. 24-6-402(2)(b) states that "All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times." (Emphasis added.)
2. C.R.S. 24-6-402(2)(c.)states that "Any meeting at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place.... No less than twenty four hours prior to the holding of the meeting." (Emphasis added.)
3. C.R.S. 24-6-402(2)(d)(III) states: "If elected officials use electronic mail to discuss... public business among themselves, the electronic mail shall be subject to the requirements of this section."
4. C.R.S. 24-6-402(4) states that the members of a local public body, upon the announcement by the local public body to the public of the topic for discussion in the executive session, and upon the affirmative vote of two-thirds of the quorum present, may hold an executive session only at a regular or special meeting; no adoption of any formal action shall occur at any executive session.
5. C.R.S. 24-6-402(4)(f)(I) authorizes a local public body to conduct an executive session on "(p)ersonnel matters except if the employee who is the subject of the session has requested an open meetings."
6. C.R.S. 24-6-402(8) states that no action of a local public body shall be valid unless taken or made at a meeting that meets the law's requirements.

7. C.R.S. 24-6-402(9) authorizes the Town or District courts to enforce this law on behalf of any citizen, and, if the court finds a violation of this law, to award costs and attorney's fees. A fair reading of the law demonstrates that it is the explicit policy of the state that meetings of the Council be given public notice; that public notice can be easily accomplished; and that a personnel matter can be discussed in an executive session except if the employee who is the subject of the session has requested an open meeting.

Because the law can be complied with readily and with ease, and because noncompliance raises an unnecessary issue and places an ultimate decision in jeopardy, I urge you to provide public notice.

APPENDIX 5: SITE VISITS

“Site Visits: Necessary But Tricky” by C. Gregory Dale, FAICP

(Copyright, Planning Commissioners Journal, Summer, 2000)

Consider this scenario. As part of your preparation for an upcoming Planning Commission meeting, you accept an offer from an applicant to tour a site that is subject to a zone change request. After all, how can you make a decision about a zone change without seeing the property, and who is better able to show you the property than the owner? However, as you are touring the site, you notice nearby residents suspiciously watching the tour from driveways and back yards. For reasons that you cannot fully explain, you feel guilty, as if you were doing something improper. Are you doing anything wrong?

In previous articles, I have discussed the concept of "ex-parte" contacts. (See excerpts, below.) Ex-parte contacts are those communications that occur outside the public forum. Before discussing site visits, it is helpful first to review the ex-parte issue, because it has a bearing on how to deal with site visits.

From a due process standpoint, planning commissions must provide equal access to information to all interested parties. If you are going to consider information in making a decision, then that information must be in the public realm, so that anyone has the opportunity to agree or dispute it. As importantly, planning commissions must be careful not to give even the impression that they have information not available to the public.

Ex-parte contacts inevitably result in individual commissioners obtaining information that affects their decision making process. Simply disclosing the nature and content of the contact at a commission meeting does not solve the problem; no matter how complete your disclosure, it is unlikely to convey the full extent of the ex-parte discussion. Nor will disclosure erase the suspicions that many people have when they hear about these contacts. For these reasons, I have always urged commissioners to avoid ex-parte contacts entirely. People should be encouraged to attend commission meetings to present their opinions in public.

This is not to suggest that ex-parte contacts are necessarily illegal. In some states, under some circumstances, they may be. As always, I urge you to first check with your legal counsel to understand the law in your state or community. My concern is more with the appearance of impropriety. The integrity of your commission is paramount, and it does not take much for that integrity to be damaged.

What does this have to do with site visits? The answer is that site visits are, in fact, a form of ex-parte contact, in that they occur outside the public forum. On the other hand, they are a unique type of ex-parte contact, for several reasons. I believe that any reasonable person would agree that in order to make an intelligent decision about a particular property, a commission member must not only view the property, but the surrounding area as well. While many planning staff provide photographs or video of property and surrounding areas as part of their staff reports and presentation, this still cannot duplicate the personal experience of a site visit.

Thus, the issue becomes how to conduct site visits while respecting the sensitivities of ex-parte contacts. My experience is that

communities have successfully handled site visits in several ways.

First, the most straightforward approach is to conduct your own site visit alone. In most cases, a site visit can be done from the public right-of-way (i.e., from a car or the sidewalk). There is no need to take a guided tour of the neighborhood by a resident, or a guided tour of the property by the owner. Let's face it, when someone wants to give you a guided tour, they are doing so to try to convince you to agree with their point of view. Similarly, when someone sees you on the "guided tour," they are going to be suspicious, and that suspicion will reflect poorly on your role as an objective commissioner. Also, take a moment at your meeting to simply disclose for the record that you made a site visit. It only makes you look that much more prepared.

If you walk the area and are approached by the applicant or neighbors, handle it in the same manner that I suggest you handle any other ex-parte contact: politely explain that you are not able to discuss a matter pending before the commission and encourage them to appear before the commission to express their viewpoint.

In those cases where the size or features of the property, or the nature of the use makes it necessary to go onto the site, I suggest you have your staff make arrangements for a site visit. The staff should accompany you without the owner/applicant.

Some communities organize group site visits for their commissions. This can be helpful in that it ensures that everyone is seeing the same thing. However, this would typically be considered a public meeting that is subject to public notice. If your community is interested in this approach, I urge you to work with your legal counsel to structure it in a legally defensible manner. For example, if you travel to a site in a single vehicle, you

should not be discussing the merits of the case with each other. Also, you may need to make provision to allow others (such as the applicant, neighbors, and other interested citizens) to accompany you at the site. There are many "open meetings" aspects to group site visits that must be considered.

While site visits are a critical part of your preparations, like all matters of government they must be handled with caution. Be guided by two principles. First, understand what is legally acceptable in your community. Second, avoid any action that creates even an impression of impropriety.

APPENDIX 6: TOOLS FOR COMMUNICATION WITH THE PUBLIC AND AMONG COMMISSION MEMBERS

“When They Speak, Do You Listen?” by
Elaine Cogan

(Copyright Planning Commissioners Journal,
January/February, 1992)

"I know you hear me, but are you listening?" Nearly shouting with exasperation, a frustrated citizen confronted her community's Planning Commission after a particularly heated public meeting on a controversial zone change.

The chair of the commission took exception to her question. "Of course we're listening. What do you think we've been doing the last four hours?"

They may have thought they were listening, but the decision made by the Planning Commissioners soon after the meeting did nothing to convince a skeptical public. The commissioners voted unanimously to endorse their previous stand on the issue without any acknowledgment of the public comments they had ostensibly been "listening to" the previous four hours.

It is possible that no amount of public discussion would have changed the opinions -- and the votes -- of the Planning Commissioners, and it is entirely within their rights to reaffirm their original

opinion. But once they opened up the discussion to the citizens, they should have showed by their questions and other responses that they considered the public's input seriously before they took another vote. "Why did we bother to come? They didn't even hear what we were saying," is a reasonable public evaluation of the proceedings that occurred. The seeds of an apathetic or militant citizenry are nurtured in such unfertile ground.

Whenever you are holding a meeting where the public is invited to give comments or testimony, it is important to be aware of any nonverbal clues, behavior or habits that may seem to indicate inattentiveness. You send a negative message to the public when you slouch in your chair or lean back so far your eyes appear to be closed. Likewise, if you take profuse notes with your nose close to your notebook. Though you may be able to write and listen at one time, citizens would trust you more if you put your pencil aside and look up at them when they speak.

Another nonverbal behavior pattern that annoys citizens is seeing commissioners chat with each other or staff when the public is speaking. While you may be

discussing the subject at hand, or have another legitimate purpose, you appear to be disinterested in the public comment or just rude. Still another habit to avoid is drumming your fingers or a pencil on the table as if you are impatient to get this all over with.

In addition to nonverbal behavior, be aware of what you say and how you say it. When you answer or respond to a public comment, do you engage in a dialogue or in a monologue? In other words, do you have your set speech or point-of-view no matter what the citizens say, or do your responses show you were listening? One effective approach is to respond to each individual by name.

If you are not personally acquainted, give your memory a boost by jotting down their names as they introduce themselves. Then, take care to couch your response or comments in terms the citizen has raised. "Yes, Mrs. Jones, I can understand your concern that widening the street will take out those two old oak trees. Several of your neighbors have also raised that issue. Let's ask staff to respond. I know they've looked into the matter."

Staff may tell you and Mrs. Jones that after reviewing all the alternatives, they think the old oaks have to go. But, after you make it clear that citizen concern is important, they may also be willing to take another look. Whatever the final decision, you have shown by your comments that you were listening, and are not closed to considering new information.

During the commissioners' discussion after the public comment period is over, look for ways to give further evidence you were listening. "According to what we've heard today, several citizens seem to think that it is better to save the trees than widen the street. I would like to explore this further before we make a decision." Or, even if you think the citizens are off track, you should acknowledge what you heard, and then go on to state why you disagree.

Most citizens are reasonable and understand you cannot always give them what they want. But they do want -- and deserve -- to have their points-of-view listened to and acknowledged. Nod affirmatively when citizens talk. Look them in the eye when you respond. Refer to them by name. Show respect.

“Leading the Commission: The Effective Chair” by Elaine Cogan

(Copyright Planning Commissioners' Journal, Fall 1993)

The planning process suffers if the chair is either weak and unfocused or too strong and intimidating. An alert and united commission can work to overcome such shortcomings, but it is an uphill and never-ending battle if the chair does not realize there is a problem.

First, a word about the use of the designation "chair" rather than chairman, chairwoman, or chairperson. All are in common use, and all are correct. However, the neutral term "chair" is more in keeping with similar terms for other leadership positions such as administrator, president, and chief executive officer.

Most of us know good leadership when we see it, though we may not be able to define its exact qualities. One easy clue is attendance. Lagging attendance is a clear signal that something is wrong with the leadership. If the commission has an effective chair, members will not want to be absent very often because too many productive and important decisions will be made without them.

Another sign of problems is when there is little or no discussion on major issues. If this happens consistently, the leader's style may either have bored or bullied the other commissioners into apathy or

submission. Either way, the process is in trouble. It is far better to have more discussion about important matters than less, no matter how heated the debate.

Still another indicator of poor leadership is the behavior of staff. If the professionals seems to take over the meeting so that the chair is just the ceremonial or titular head, the commission is not fulfilling its proper role as the citizens' voice on planning issues. On the other hand, if staff is always meek and passive, either the chair is keeping the commission from having the benefit of professional assistance, or you have the wrong staff.

What, then, are the principles of effective leadership that you should follow if you are a Planning Commission chair? As chair, you should:

Be conversant with all the issues under discussion; but you need not be an expert in any. In fact, knowing too many technicalities may get in the way of encouraging laypeople to express themselves, which is the role you are expected to play.

Always show fairness and leave personal opinions behind, except when it is time to vote. If you must speak out, turn over the gavel to your vice chair. But if you do that too often, your ability to be an unbiased presiding officer will be questioned. Fairness also means you give everyone a

chance to speak and deal quickly and decisively with those who try to dominate the discussion.

Disdain the trappings of power. The gavel is all you should need to keep order, and it should be used sparingly. Neither request, require nor countenance special consideration from staff or from anyone else.

Maintain the proper balance between formality and informality. Many people still like to be called by their last names, but first names are acceptable if you know them well or it is in your community's style. Never exhibit the negative paternalism inherent in calling women or members of minority groups by their first names when you address others more formally.

Shirtsleeves and denims or business attire? This is dictated more by the mores of your community than by any style manual.

Display energy and enthusiasm, even at a hearing that has dragged on into the early morning hours. Of course, a good leader

will not have allowed the meeting to go on that long, but in any event, you must always strive to be upbeat and positive, fair and courteous.

Use praise unsparingly. A good leader does not need praise; a good leader dispenses it, but always sincerely. There should be much to laud: staff work on a particularly difficult or onerous issue; public testimony that is fair and non-belligerent on a contentious subject; forbearing and intelligent discussion among the commissioners.

Stimulate and synthesize the group process without overwhelming it. You should always, figuratively at least, be looking to the right and the left and keeping your antennae out for verbal and nonverbal signals from the commission, staff, and the public. As chair, you should be able to move the group more often to consensus than to a win/lose posture.

Most of all, a good Planning Commission chair enjoys the role and realizes that tomorrow is another opportunity to exert enlightened and informed leadership.