



PUEBLO COUNTY
Planning Commissioners' Handbook



“To promote the health, safety, welfare, and quality living environment of Pueblo County residents and visitors by encouraging compatible and sustainable land use development within unincorporated Pueblo County. This is accomplished through long-range planning, developing and implementing land development policies, as well as administering and enforcing land use regulations.”

Pueblo County Department of Planning and Development Mission Statement

Pueblo County Department of Planning and Development

Julie Ann Woods, AICP/ASLA, Director

February 2012

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REFERENCES

The following references have been used in compiling this Handbook, in addition to our own experiences, and a multitude of state, local government and professional/educational websites:

- Colorado Division of Water Resources, website: <http://water.state.co.us>
- Colorado Land Planning and Development Law, Seventh Edition, 1998. Colorado Chapter, American Planning Association.
- Rocky Mountain Land Use Institute, Land Use From A to Z (Videos)
- Solnit, Albert, The Job of the Planning Commissioner, Third Edition, Revised. Planners Press, American Planning Association.
- The Institute for Local Government, 1400 K Street, Suite 205 Sacramento, CA 95814.
- "The Zoning Board," by The Land Use Education Center, College of Natural Resources and Cooperative Extension, University of Wisconsin at Stevens Point
- Municipal and Services Center of Washington, 2601 Fourth Avenue, Suite 800 Seattle, WA 98121-1280
- Alaska Planning Commission Handbook
- Gunnison County Planning Commission Handbook. The majority of this handbook has been duplicated from this document.
- Colorado Counties Inc. 2009 County 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 brief general reference source. Planning Commissioners should always seek advice and counsel from the Pueblo County Attorney regarding legal issues related to their work on the Planning Commission.



WELCOME!

...TO THE PUEBLO
COUNTY PLANNING
COMMISSION

As you're undoubtedly aware, the County's Planning Commission is on the forefront of some of the major ongoing issues in Pueblo County.

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 Board of County Commissioners in the Pueblo County Land Use Regulations (LUR) and other County regulations.

The general public, permit applicants, state and federal agencies, other County departments and the Pueblo County Board of Commissioners are all customers of the Department of Planning and Development and the Planning Commission: **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 Department of Planning and Development 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 Pueblo County Planning Commission (PCPC), 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 County'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 better understand and use those documents (more on this later).

We intend that this Handbook will be a dynamic tool that 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 will annually review the Handbook to ensure its relevance to land use matters in Pueblo County. The loose-leaf format is designed so that new information can be added as it becomes available and routine practices updated. If you'd like a digital copy, we can provide it on CD and/or email a copy to you.

The Board 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.



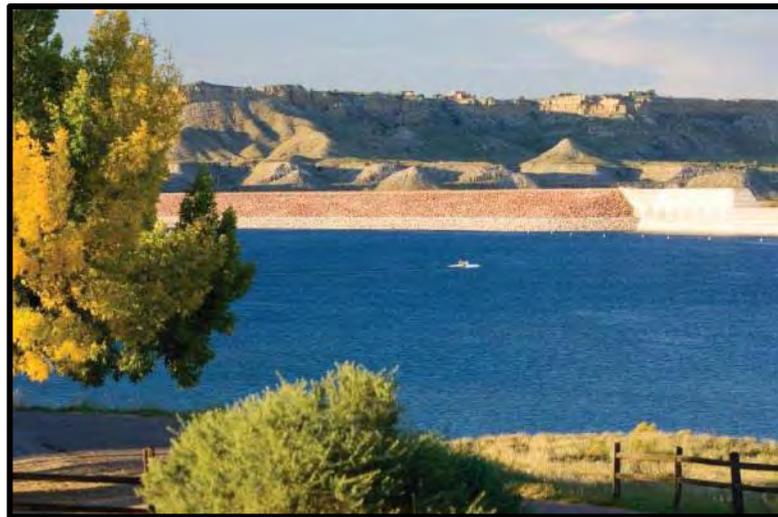
Anthony Nunez, Chair

Pueblo Board of County Commissioners



Julie Ann Woods, AICP/ASLA, Director

Pueblo County Department of Planning and Development



**Pueblo
Reservoir**

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 in an attempt 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 Pueblo County Planning Commission is the Board of County Commissioners' (the three elected people who set policy for the

County) advisor on land use planning, though the Board 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 Board; "the buck stops" with the Board, or sometimes in a court of law.

Because the Commission focuses on planning issues, it is a valuable liaison between the public and the Board. When there is a 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 members' knowledge of their community.

In Colorado, every county is authorized by statute to appoint a three- to nine-member planning commission. In counties of fewer than 15,000 persons, a board of commissioners may, at its discretion, serve as the planning commission. Some jurisdictions, such as Summit County, think that planning commissions are so useful that they have several to address applications in diverse parts of their county.

The Pueblo Board of County Commissioners has generally felt that having a single planning commission whose members have varying perspectives but an overall knowledge and understanding of the county as a whole can best maintain a sense of “community,” and best respond to a wide variety of applications and constituents.

The Pueblo County Planning Commission is currently composed of nine appointed Commissioners. Please refer to the table on the following page for the current contact list and terms of Planning Commissioners.



Walking Stick Golf Course

PUEBLO COUNTY PLANNING COMMISSIONERS TERMS AND CONTACT INFORMATION			
COMMISSIONER INFO	INITIAL APPT. DATE	TERM EXPIRATION	# CONSECUTIVE TERMS SERVED
Betty Alt 2460 North I-25 Pueblo, CO 81008 543-4697 (Home) 549-2716 (Work) bltalt@aol.com	7/12/05	12/31/2013	Completing term of Sandy Clark. Reappt. by BCC on 12/18/07. Currently serving second full term.
Thelma Archuletta 313 North Benito Drive Pueblo West, CO 81007 547-4151 (Home) 214-7368 (Cell) clerb3@aol.com	1/1/08	12/31/2013	Currently serving 2nd full term.
Donald L. Bruestle 260 Lamar Avenue, Apt. 808 Pueblo, CO 81004 647-0303 (Home) kokomo57@msn.com	1/1/09	12/31/2014	Currently serving 2nd full term.
Richard Clark 1371 Camino Pablo Drive Pueblo West, CO 81007 240-9928 (Cell) 404-2789 (Work) rickclark60@yahoo.com	1/1/11	12/31/2013	Current serving 1 st full term.
Ron Greenwell 1287 25 th Lane Pueblo, CO 81006 595-1310 (Home) 569-0825 (Cell) rongreenwell@gmail.com	1/1/12	12/31/2014	Currently serving 1 st full term.
Epimenio Griego 873 29 1/4 Lane Pueblo, CO 81006 778-8061 (Home) eppie_g@hotmail.com	10/14/08	12/31/2012	Completing term of Charles Latino. Currently serving 1 st full term.
Robert Leverington 10 Knightsbridge Place Pueblo, CO 81001 545-5077 (Home) 543-5300 (Work) rob@leveringtonassociates.net	2/27/07	12/31/2012	Currently serving 2nd full term.
Ronald Leyba 4804 Quita Court Pueblo, CO 81001 545-3190 (Home) 406-5186 (Work) ron.leyba@yahoo.com	1/1/10	12/31/2012	Currently serving 1 st full term.
Arnold VanZandt 11 Queensbridge Drive Pueblo, CO 81001-1416 543-1413 (Home) capvz@juno.com	1/1/09	12/31/2014	Currently serving 2nd full term.

HOW DOES THE PLANNING COMMISSION WORK IN PUEBLO COUNTY?

Terms

Each member of the Planning Commission is required to be a resident of the county. A regular member is appointed for a three-year term. Appointments are made by the Board in December each year; a Planning Commissioner whose term is ending generally stays on until a replacement member is appointed. A Chair and Vice-Chair are elected at the first meeting after new members are appointed, usually in January.

Compensation

Planning Commissioners are compensated at a rate determined by the Board. Currently the rate is \$40 per meeting attended, and \$50 for any special meeting attended per year. Beginning in the second quarter of 2012, Planning Commissioner checks will be issued quarterly, following regular meetings in June, September and December. Federal law requires that

compensation over \$600/year be reported; the County Finance Office provides Planning Commissioners with required 1099 tax forms.

Meeting Days and Times

The Planning Commission generally meets once monthly in evening meetings, on the **fourth Tuesday of the month at 5 PM at the Pueblo County Conference Room located at 1001 N. Santa Fe Ave.**, just east of the Pueblo County Courthouse. 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. Occasionally, the Commission will conduct meetings in other areas such as Rye or Beulah when development or other issues are of interest to citizens in those areas.

In order to refresh Commissioners and Staff, an annual “training session” will be scheduled in February, following the appointment and seating of new Commissioners. The meeting will generally be conducted in a “retreat” or training format, scheduled for a few hours or up to a half day to discuss procedures, land use policies, processes, and other matters of interest to the organization.

Homework: Information Packets and Email

“Homework” arrives in the form of meeting packets about a week before a scheduled meeting. In the packet that arrives in the mail are copies of 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.

Seasoned members of the Commission can attest to the fact that the amount of review and reading to prepare for each meeting can be voluminous, complex and requires a significant amount of time for review. **Please let Staff know if there is anything we can do to help make your review quicker and easier.**

Electronic Documents and Use of Laptops and Email

Most Planning Commissioners now use home PCs, laptops or iPads to receive and send documents and communicate with the Planning and Development Department by email. You are welcome to bring your laptop to the meeting if that is a tool that you would find helpful. If you don't have access to a computer and email, please let the Planning Staff know; we'll provide you with information by hard copy and phone.

The goal for the Planning and Development Department is to eventually send all documents electronically (by sending an e-mail with a link to the specific meeting packet) as a sustainability measure to be achieved over the course of the next two years. **Beginning in 2012, the staff will not only mail the meeting packet, but will also e-mail copies of those same documents to the Commissioners to help transition to all electronic documents in 2014.**

Important Email and Web Resources

From time to time the Planning Commissioners may want to contact the Planning and Development Department or access public records to assist in their meeting packet review. On the following page we have provided a “cheat sheet” to help you find your way around Pueblo County's website.



South Union Avenue in Downtown Pueblo

Important Pueblo County E-Mail Addresses/Websites

Department of Planning and Development E-Mail: planning@co.pueblo.co.us

Zoning, Building Setbacks, Land Use, Map Amendment, and Subdivision questions can be directed to Pueblo County Department of Planning and Development, 719-583-6100.

Pueblo County Home Page: <http://county.pueblo.org/>

Under the “Government” tab you will find:

➤ **Online Services which include:**

- *Pueblo County Assessor’s Property Search (Assessor and Treasure Information)
- *Planning Case Search (Planning & Development Land Use Cases)
- *Pueblo County Meeting Information for Pueblo County Planning Commission (PCPC) and Board of County Commissioners (BOCC)
- *Apply for...Permits (Building/Land Use) and Employment Opportunities.

➤ **Ordinances and Codes for Pueblo County Codes:** <http://www.codes.co.pueblo.co.us/>

- Title 16 – Subdivision
- Title 17 – Land Use (including Division II Areas and Activities of State and Local Interest and Division III Hazardous Waste Incineration or Processor Site Certificate of Designation)

Under Departments – Planning & Development – Online Services you will find:

- **Zoning Search:** GIS Map with Zoning Overlay and Planning Case Documents History <http://www.co.pueblo.co.us/cgi-bin/webformbroker.wsc/savesession.p?dept=419101>
- **Public Meeting Documents:** The most current agendas and minutes of the Pueblo County Planning Commission and weekly agendas of the Pueblo Board of County Commissioners.
- **Search Planning Cases:** Find Cases by Type and Year for those cases that have been electronically scanned into the Database. We are not at 100%, so call if you have a question.
- **Apply for a Permit:** If you have questions regarding building codes, design criteria, housing information, contractor searches, final inspections, etc., please contact the Pueblo Regional Building Department at www.prbd.com or 719-543-0002.

Primary Tasks of a Planning Commission

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 Board on subdivision matters, road and plat vacations; PUDs; Zoning Map Amendments (rezoning), and changes to existing regulations (Text Amendments). Unlike most other counties in Colorado, the Pueblo County Land Use Regulations have delegated decision-making authority to the Commission for all Special Use Permits and rescissions; Similar Use Determinations; Public Use Reviews; and School Site Reviews. Additionally, the Commission has the authority under Colorado statute to

create a master plan, or comprehensive plan for the County.

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. Postings occur in the Rotunda area of the County Courthouse.



Pueblo RiverWalk Farmers Market

THE PUEBLO COUNTY

DEPARTMENT OF

PLANNING AND

DEVELOPMENT

The Pueblo County department that administers current land use and long range planning for the unincorporated areas of Pueblo County is the Department of Planning and Development.

The Mission of the Pueblo County Department of Planning and Development is:

“To promote the health, safety, welfare, and quality living environment of Pueblo County residents and visitors by encouraging compatible and sustainable land use development within unincorporated Pueblo County. This is accomplished through long-range planning, developing and implementing land development policies, as well as administering and enforcing land use regulations.”

Who We Are

Members of the Department of Planning and Development staff include Julie Ann Woods, Director; Joan Armstrong, Senior Planner; Louella Salazar, Office Manager; Jeff Woeber, Planner II; Gail Wallingford-Ingo, Planner II; Dominga Jimenez-Garcia, Planner II, Kathy Burnsed, Planner I; Jason

Chambers, Land Use Inspector; Sandy Blanco, Office Support Services IV; and Sandra Smith, Office Support Services IV. An Organizational Chart of the Department is provided on Page 21.



Front Row: Sandy Blanco, Kathy Burnsed

Middle Row: Louella Salazar, Julie Ann Woods

Back Row: Jeff Woeber, Gail Wallingford-Ingo, Sandra Smith, Dominga Jimenez-Garcia

Missing: Jason Chambers, Joan Armstrong

What We Do

The department coordinates issues relating to physical development activities in Pueblo County. Our function can generally be grouped into the three categories of Land Use Administration (current planning); Land Use and Environmental Planning (long-range planning); and management of the Pueblo Area Council of Governments (PACOG).

Land Use Administration (Current Planning)

The Department administers, on behalf of the Board of County Commissioners, Pueblo County's land use regulatory system. These regulations include:

- Pueblo County Subdivision Regulations (Title 16)
- Pueblo County Zoning Regulations (Title 17);
- Pueblo County Regulations for Flood Hazard Areas (Title 17);
- Pueblo County Regulations for Areas and Activities of State and Local Interest (commonly known as House Bill 1041 Regulations) (Title 17, Division II); and
- The Pueblo County Hazardous Waste Incinerator or Processor Site Certificate of Designation Regulations (Title 17, Division III).

Together, these documents are referred to as Pueblo County's **Land Use Regulations (or LUR)**. All of these regulations have now been codified under the Pueblo County Code and are available on the Pueblo County website (www.county.pueblo.org).

Land Use and Environmental Planning (Long-Range Planning)

The "planning" related functions of the Department include activities on behalf of

both the County and Council of Governments. We are responsible for:

- Coordination of efforts to develop the "master plan" for the Pueblo Region. The Department's principal focus is in the area of the General Land Use Plan Element of the Master Plan or Comprehensive Plan. The City, County and PACOG adopted the Pueblo Regional Development Plan in early 2002. This document is expected to be updated beginning in 2013.
- Coordination of the County and Pueblo Area Council of Governments (PACOG) water quality planning and management responsibilities (the 208 Plan);
- Participation in the *Communities of Pueblo Strategic Planning Efforts*;
- Administration of Intergovernmental Agreements affecting land use;
- Parks, Trails, and Open Space planning;
- "Special" planning efforts/studies, e.g., Recreation and Tourism Element and the South I-25 Corridor Special Area Land Use Plan;
- Fountain Creek Vision Task Force, including the Water Quality, Water Quantity and Land Use/Environmental Working groups; and
- Monitoring of the Pueblo Chemical Agent-Destruction Pilot Plant (PCAPP) project.

Pueblo County's building code is administered through the Pueblo Regional Building Department located at 830 N. Main, Suite 100 in Pueblo.

The Department of Planning and Development conducts plan reviews and site inspections, coordinates long range planning efforts with the City of Pueblo, facilitates dispute resolution between land uses, enforces zoning violations, provides information and works closely with federal and state agencies on a wide variety of issues. We maintain a computer database and permit tracking system that was initiated about 10 years ago to provide access to archived and current permit and parcel information (available on-line at <http://county.pueblo.org/government/coun ty/department/planning-and-development/online-services>) to provide greater access by other County departments and the public and to improve analysis of existing information.

The department's Work Program, developed by the Department and agreed to by the Pueblo Board of County Commissioners, identifies those key tasks and the staff responsible for their completion. Among the projects Staff will work on in 2012 is the background research

for the Update of the *Pueblo Regional Development Plan* and revisions to the Land Use Regulations.

Our Department works under the direction of the Pueblo County Board of Commissioners and provides staff support for the Board of Commissioners, Planning Commission, Zoning Board of Appeals (Board of Commissioners seated as the Board of Appeals), and the Pueblo Area Council of Governments (PACOG). The Planners also serve on a number of technical and citizen advisory committees, addressing topics such as environmental policy, the Fountain Creek Watershed, and transportation plans.

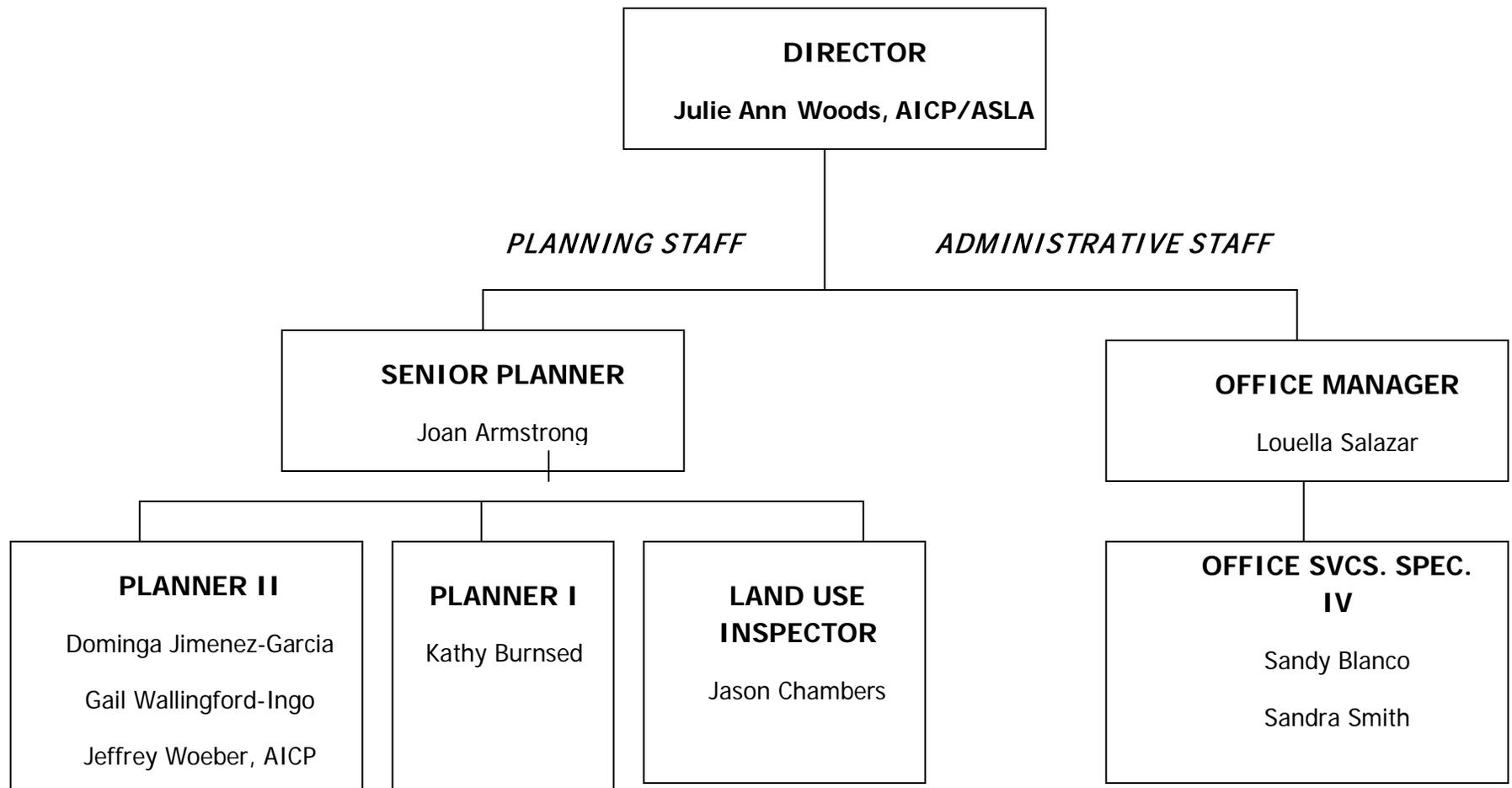


Pueblo's Chile and Frijoles Festival

PUEBLO COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT

ORGANIZATIONAL CHART

As of 10/7/2011



HOW LAND USE, BUILDING AND ISDS PERMITS ARE PROCESSED

Land Use Permits

Currently, there are over forty (40) different Land Use Action types in Pueblo County that may be reviewed administratively by Planning Staff or reviewed by the Planning Commission, Board of Commissioners, Zoning Board of Appeals, and/or PACOG. (See Land Use Action summary table on Pages 24-25). Most of the Land Use Actions require a public notice and a public hearing or meeting. Permit applications are reviewed under the Pueblo County Land Use Regulations and are typically processed by a Planner assigned to the case by the Senior Planner. Larger land use cases may be handled or coordinated by the Planning and Development Director or Senior Planner and may require the expertise of specialists hired by the County and funded by the applicant.

Staff review of land use applications includes working with applicants and the public; researching background information and public records; preparing legal notices and letters to adjacent neighbors;

coordinating neighborhood meetings when appropriate; preparation of staff reports, including analysis of adjacent land use and conformance with the Pueblo Regional Development Plan; and preparing decision and recommendation documents for the Commission and Board.

Pre-application Conferences

“Pre-application conferences” are conducted by the Planning Staff with applicants (required for larger projects; optional for smaller projects) to allow an informal briefing of the applicant to learn more about submittal requirements and the review process. The Staff may ask other County department staff members, and/or representatives from other agencies (e.g., Division of Wildlife; City of Pueblo, etc.) to participate in the conference.

Review by County Departments and Other Agencies

Land use applications are accepted by the Planning and Development Department once a month on the third Wednesday of each month, before 2:00 PM. Once an application is determined to be complete, it is sent to the applicable reviewing agencies and County departments.

Preparation of a Staff Report

A staff report is drafted describing the project, analyzing its compliance with standards of the Land Use Regulations and conformance with the *Pueblo Regional Development Plan*, including pertinent comments by agencies and departments. All Staff Reports will include a recommendation, based on the merits of the application and the Planning Staff's best professional judgment. Although the 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.



PUEBLO COUNTY LAND USE ACTIONS & PROCESSES								
TYPE OF LAND USE ACTION	POSTING PRIOR TO MEETING	PUBLICATION IN NEWSPAPER PRIOR TO MEETING	NOTICE TO SURROUNDING LANDOWNERS PRIOR TO MEETING	HEARD BY PCPC	HEARD BY BCC	HEARD BY PACOG	HEARD BY ZBA	ADMINISTRATIVE AUTHORIZATION
Sketch Plan	(10 days)	(15 days)	(15 days)	X	X			
Sketch Plan Associated with RLUP	(10 days)	(15 days)	(15 days)		X			
Preliminary Plan	(10 days)	(15 days)	(15 days)	X	X			
Final Plat	(10 days)	(15 days)	(15 days)	X	X			
Rescission of Preliminary, Final	(10 days)	(15 days)	(15 days)	X	X			
Cluster Development (Resolution)	(10 days)	(15 days)	(15 days)		X			
Rescission of Cluster Devel. (Reso.)	(10 days)	(15 days)	(15 days)		X			
SDV Plat-Like Drawing					X			
Subdivision Exemption					X			
Resubdivision (minor revisions)					X			
Resubdivision (major revisions)	(10 days)	(15 days)	(15 days)	X	X			
Plat Amendment	(10 days)	(15 days)	(15 days)		X			
Rescission of Subdivision Exemption					X			
Road Vacation	[15 days]	[15 days]	[15 days]	X	X			
Alley Vacation	[15 days]	[15 days]	[15 days]	X	X			
Public Way Vacation	[15 days]	[15 days]	[15 days]	X	X			
Easement Vacation	[15 days]	[15 days]	[15 days]	X	X			
Plat Vacation	[15 days]	[15 days]	[15 days]	X	X			
Acceptance of Street & Other Public Land Dedication					X			
Multi-Family Development	[15 days]	[15 days]	[15 days]		X			
Rescission of Multi-Family Devel.	[15 days]	[15 days]	[15 days]		X			
Lot Line Rearrangement 5 or Less Lots								X
LLR > 5 Lots (Resubdivision)	(10 days)	(15 days)	(15 days)	X	X			
Lot Line Vacation 5 or Less Lots								X
LLV > 5 Lots (w/out row, esmt. vacation)					X			

PUEBLO COUNTY LAND USE ACTIONS & PROCESSES (CONTINUED)								
TYPE OF LAND USE ACTION	POSTING PRIOR TO MEETING	PUBLICATION IN NEWSPAPER PRIOR TO MEETING	NOTICE TO SURROUNDING LANDOWNERS PRIOR TO MEETING	HEARD BY PCPC	HEARD BY BCC	HEARD BY PACOG	HEARD BY ZBA	ADMINISTRATIVE AUTHORIZATION
LLV with row, esmt. Vacation = Plat Vacation	[15 days]	[15 days]	[15 days]					
Planned Unit Development	[15 days]	[15 days]	[Min. 15 days before BCC]	X	X			
Rescission of PUD	[15 days]	[15 days]	[Min. 15 days before BCC]	X	X			
Rural Land Use Plan Review	(10 days)	(15 days)	(15 days)		X			
Rescission of RLUP	(10 days)	(15 days)	(15 days)		X			
Map Amendment	[10 days]	(15) [10] days	(15) [10] days	X	X			
Special Use Permit	[10 days]	(15) [10] days	(15) [10] days	X				
Special Use Permit Appeal					X			
Rescission of Special Use Permit	[10 days]	(15) [10] days	(15) [10] days	X				
Similar Use Determination	[10 days]	(15) [10] days	(15) [10] days	X				
Public Use Review	[10 days]	(15) [10] days	(15) [10] days	X				
Zoning Variance	[10 days]	(15) [10] days	(15) [10] days				X	
Rescission of Zoning Variance	[10 days]	(15) [10] days	(15) [10] days				X	
Road Name Change	[10 days]	(15) [10] days	(15) [10] days		X			
Text Amendment		(15) [14] days	(15) days - interested parties	X	X			
Certificate of Designation	[30 days]	[30 days]	[30 days]		X			
1041 Permit		[min.30 days,max.60 days]	[min.30 days,max.60 days]		X			
Wastewater Treatment Facility	-	-	-		X	X		
Special District Service Plan (SDSP)	-	(15 days)	(15 days - notice to property owners in area)	X	X			
Zoning Appeals					X			
School Site Review				X				

() denotes procedure

[] denotes regulation

Site Visits

On occasion, on-site visits may be conducted to familiarize the Commissioners and the public with the site plan and characteristics unique to the proposed site in relation to the neighborhood of the proposed project. These are published meetings that are not recorded but are open to the public. A time for Planning Commission members to state their observations about the site will be scheduled for the next regular recorded meeting.

Public Hearings, Procedures and Consent Agendas

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 in order to help inform its determination of the proposed project's compliance with County regulations. Hearings will typically be led by the Planner assigned to the case who will orient the Commission and public on the location of the project and neighboring land use and zoning, as well as provide a summary of the requested proposal and the

Staff recommendation. Next, the applicant will have an opportunity to further present information regarding their proposal. After questions from the Planning Commission, the public is invited to comment and ask questions regarding the project to the Commission. The Commission may then ask staff or the applicant to respond to issues raised by the public as appropriate. Please refer to the Rules of Procedure for the Pueblo County Planning Commission included as **Appendix 1**.

Public hearings may be placed on the Planning Commission's Regular Agenda as a "Consent" item by the Planning Staff only if a) there is a recommendation of approval; b) the applicant agrees to the conditions of approval; and c) there is not expected to be any members of the public speaking for or against the proposal. As with all "Consent" items, if either a member of the public or a Commissioner wishes to discuss the proposal, then the item will be removed from the "Consent Agenda" and placed at the end of the regular meeting agenda.

Recommendations and Decisions

Planning Commission members assess a proposed project's compliance with the Land Use Regulations and conformance with the Pueblo Regional Development

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 five (5) land use actions: Special Use Permits; Rescission of a Special Use Permit; Similar Use Determinations; Public Use Review; and School Site Reviews. All other non-administrative land use actions require additional review by the Pueblo Board of County Commissioners.

Before any action is considered final, a resolution is signed by the Chair of the Planning Commission (pending an amendment to the PC Bylaws), or the Pueblo Board of County Commissioners, depending on which body has final authority. Draft recommendations and a corresponding resolution are prepared by the Planning Staff. For Public Hearings, the record includes the Staff Report, which indicates compliance with the applicable regulations; “findings of fact”; and a statement of recommendation for decision. The “land use action” is finalized in the form of a resolution approved by the Pueblo Board of County Commissioners.

Appeals of Decisions

Under the Land Use Regulations, the applicant, Planning Staff or an aggrieved party have “standing” and are allowed to petition for an appeal of the Planning Commission’s final action to the Board of Commissioners, or subsequently, District Court. On all other land use actions, the Planning Commission recommends approval, conditional approval, or denial. The Commission also recommends actions to the Board on new regulations, and on amendments proposed for existing regulations. The Board of Commissioners takes final action on those recommendations.

Building and Individual Sewage Disposal System (ISDS) Permits

Zoning authorization for all Building Permits is reviewed for compliance with the Land Use Regulations by the Department of Planning and Development. A compliance checklist, or Zoning Authorization Form, is prepared for each application. Building permits are issued by the Regional Building Department while ISDS permits are issued by the City-County Health Department, respectively. Land Use decisions made by the Planning Commission are taken into account in the compliance review—no permits will be “signed off” unless they

comply with zoning or the final action taken by either the Planning Commission or Board of Commissioners.

Most building permits are also routed to the Pueblo County Department of Engineering and Public Works (and any other applicable County departments

and/or local or state agencies, such as the City of Pueblo, fire department, etc.) for review when appropriate. Building Permits are not issued until zoning compliance has been verified by the Planning Staff and any required access permits and ISDS permits have been issued.



GENERAL LAND USE

REGULATION IN COLORADO AND PUEBLO COUNTY

The authority to plan for and regulate the use of land in the unincorporated area of Pueblo County is one of the most important and controversial aspects of a Planning Commissioner's job. In a very basic sense, Colorado is a local control state when it comes to land use planning and decision-making. This places Planning Commissioners at "ground zero" in the growth management debate. As the state continues 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 County Planning Commissioner, you will work side by side with the Board of Commissioners, your Planning and Development Department Staff and the citizens of Pueblo County to guide future

development in the unincorporated areas of the County.

County or Regional Comprehensive Plans

A comprehensive plan (sometimes referred to as a "master plan," or "comp plan," for short) is a planning document intended to guide the growth and long-term development of a community. **Each Planning Commissioner should have a copy of the Pueblo Regional Development Plan to use as reference on each land use case coming before them.**

The Comprehensive Plan is an **advisory document only**; it is not the equivalent of zoning and is not binding upon the Planning Commission or Board in their decision making. However, a Board is authorized to make its Comprehensive Plan, or any part of the plan binding through zoning, regulations or other land use codes. (C.R.S. §30-28-106) A comprehensive plan is a regulatory document only when a Board of Commissioners formally adopts it as a regulation. In Pueblo County, the Board does not adopt it as a regulation, but endorses and acknowledges the Comprehensive Plan and amendments.

The criteria that may be incorporated into a comprehensive plan have been expanded in

the last few years to include the availability of affordable housing, wildlife areas, waterways and waterfronts, mass transit routes, cultural, historical and archeological buildings and formations, geological hazards, floodways, and wildfire hazards. Counties required to adopt master plans include those with populations of: 1) 100,000 or more; or 2) 10,000 and a 10% growth rate between 1994 and 1999 or any 5-year period ending in 2000 or any subsequent year. Counties required to adopt master plans must include a recreational and tourism element in their plans. (C.R.S. §30-28-106)

Zoning regulations provide the detailed means of giving effect to the principles in a comprehensive plan. (Theobald v. Board of County Commissioners, Summit County, 644 P. 2d 942, (1982)) The Planning Commission must send copies of its Comprehensive Plan to the Board of Commissioners and all planning commissions of municipalities within the county.

In the case of Pueblo County, its Regional Development Plan was developed jointly with the City of Pueblo and is available for review on line at: <http://county.pueblo.org/sites/default/files>

[/documents/government/county/departments/planning/Pueblo%20Regional%20Development%20Plan.pdf](#). In 2002, the joint plan was adopted by both the City and County Planning Commissions, and the Pueblo Area Council of Governments (PACOG). Subsequently, each jurisdiction has made amendments to the plan, but the amendments have no influence on the other jurisdiction as they were not jointly adopted. It is expected that the County and the City will again jointly work together to update the ten year old plan to reflect a “new vision” for Pueblo in 2013.

South I-25 Special Area Land Use Plan

The Pueblo Regional Development Plan identifies several “Special Use Areas” that were so designated with the idea that they would require additional planning study and analysis. One such area is located just south of the City of Pueblo limits and west of I-25. The County contracted with Thomas and Thomas to help with the development of the South I-25 Special Area Land Use Plan. The purpose of the plan was to strategically direct and influence the pattern of future growth in the approximately 18,500 acre area, taking into consideration view sheds and natural areas. The plan was adopted by the County Planning Commission on September 28,

2004, but was not adopted by the City Planning Commission.

Recreation and Tourism Element of the Comprehensive Plan

In response to the 2001 CRS mandate that Master Plans must contain a recreational and tourism element, PACOG commissioned a recreation and tourism study for all land within Pueblo County. The plan element identified and mapped existing resources, examined trends, and made recommendations for future actions. This element was adopted by the City and the Pueblo County Planning Commission, as well as the PACOG.

Sustainability Principles

On September 27, 2011, a set of “Sustainability Principles” were adopted by the Pueblo County Planning Commission for inclusion as an amendment to the *Pueblo Regional Development Plan*. Though broad in scope, land use projects should be reviewed against these principles as a part of the plan. As of the date of this Handbook, the Sustainability Principles have not been adopted by the City of Pueblo. **A copy of the Sustainability Principles are provided as Appendix 8 to use as reference during land use reviews.**

Requirement that County Projects Comply with County Regulations

Case law in Colorado requires that County projects must adhere to their own zoning regulations with respect to County property unless those regulations have specifically exempted County activities. (Clark v. Town of Estes Park, 686 P.2d 777 (1984); City of Englewood v. Rich, 686 P.2d 780 (1984).)

Pueblo County’s Land Use Regulations do not specifically state that the requirement to obtain necessary Land Use Approvals applies to federal, state, county and municipal governments and special districts, their agencies and their subdivisions, unless the unit of government is expressly exempted from the requirement. Nonetheless, land use review is implied by the requirements that wastewater facilities, school sites, etc. require land use review.

Notification to the County of Municipal Development or Annexation

The council of any municipality within which a development of five or more acres is proposed, is required by statute to notify the County Board of Commissioners before approving any related zoning change or issuance of any subdivision or building permit. (C.R.S. §31-23-225) A municipality

wishing to annex into its boundaries an existing development plan to which a county is a party and the municipality is not, is required to notify the county of the proposed annexation.

The County is required to participate in an annexation transition committee whenever a proposed annexation has more than 100 residents and includes more than 50 acres. (C.R.S. §31-12-106) A county that is a party in a development plan may file an objection to the petitioning municipality's proposed annexation. Counties filing such objections may also seek mediation of any disputes; costs of such mediations are the responsibility of the objecting county. (C.R.S. §24-32-3209)

Zoning Regulations

The County's original approving zoning resolution and zone district maps were adopted on August 8, 1963. Original zoning covered the "core" area of the County, an area extending approximately 3 to 4 miles north, south, and west of the City of Pueblo and approximately 15 miles east of the City including the Avondale area. Approximately three years later on January 6, 1967, the County expanded "zoning" to include all of Pueblo County (see Pueblo County Zoning Map included on page 33). **Title 17, Land Use** is the chapter of the

Pueblo County code that pertains to zoning and is available on-line at:

[http://county.pueblo.org/government/courty/department/planning-and-](http://county.pueblo.org/government/courty/department/planning-and-development/codes)

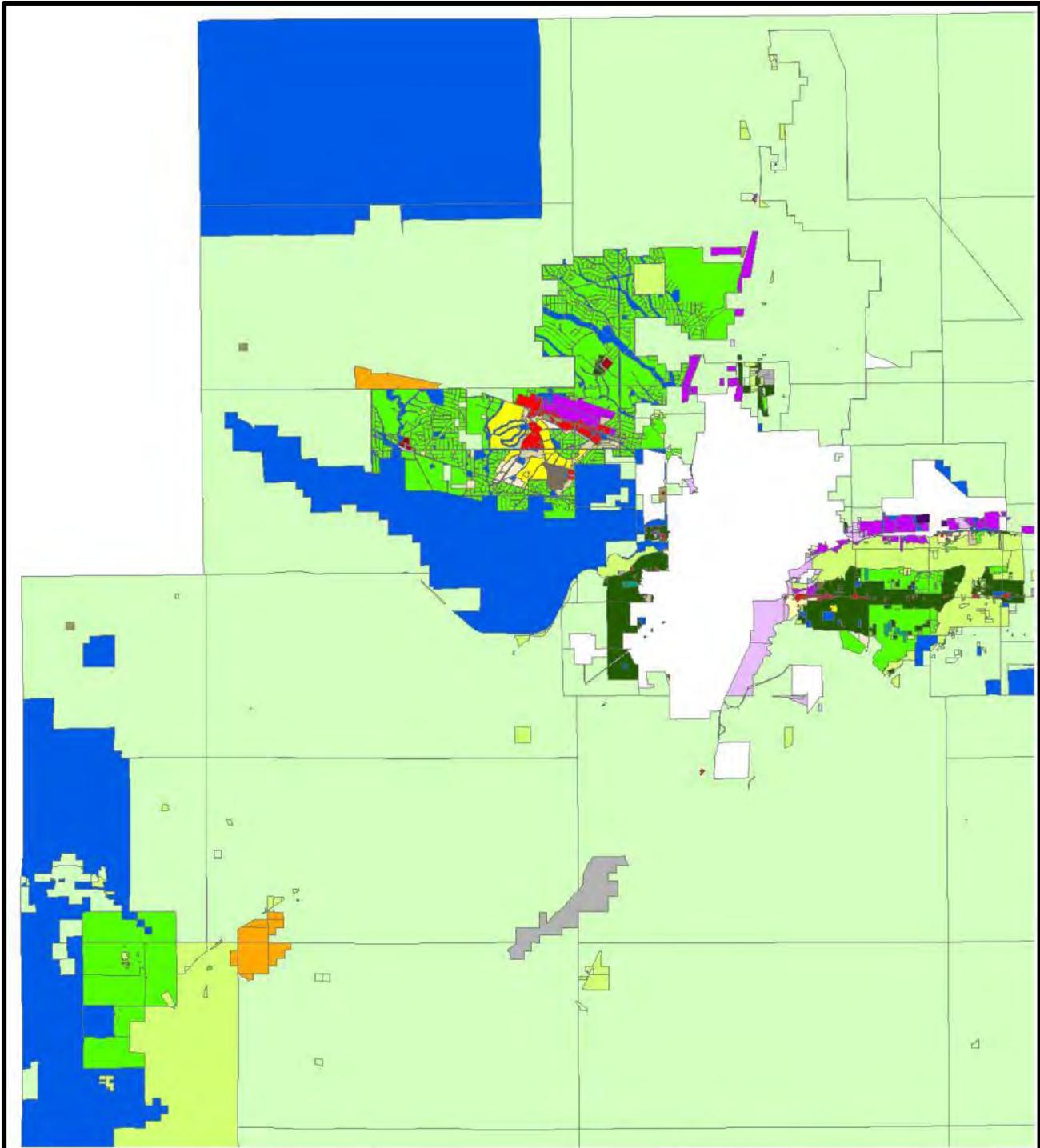
[development/codes.](http://county.pueblo.org/government/courty/department/planning-and-development/codes) **All Planning Commissioners should have computer access to Title 17, Land Use and the Zoning Map to use as reference during land use reviews. Staff will schedule a training session on accessing this information on-line at a subsequent Planning Commission meeting.**

Subdivision Regulations

Colorado Statute requires that every Board of County Commissioners must adopt and enforce subdivision regulations for unincorporated areas within their counties and must hold a public hearing before adopting or revising any subdivision regulations. (C.R.S. §30-28-133(1)). Pueblo County adopted subdivision regulations in 1972 that were incorporated into the Pueblo County Land Use Regulations. **Title 16, Subdivision** is the chapter of the Pueblo County Code that pertains to the division of land and is available on-line at:

<http://www.codes.co.pueblo.co.us/DATA/TITLE16/index.html> **All Planning**

Commissioners should have access to a copy of Title 16, Subdivision for reference for all plat, vacation and subdivision reviews.



Pueblo County
Zoning Map

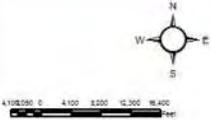


EXHIBIT
No. A

State statute requires that the subdivision regulations require subdividers to submit information outlined in C.R.S. §30-28-133(3), including:

- Property survey and ownership of the surface and mineral estates, if applicable;
- Relevant site characteristics and analyses applicable to the proposed subdivision;
- A plat and other documentation showing the layout or plan of development;
- Adequate evidence that an adequate water supply is available for the proposed subdivision;
- Oil and gas/mineral estate notification (C.R.S. §24-65.5-101); and
- Evidence the developer has made access and sites available for electric and natural gas utility service.

Subdivision regulations adopted by a county must also include, as a minimum, provisions for:

- Suitable areas for schools and parks (reserved for acquisition by the County and dedicated to the County); payment-in-lieu-of dedication not exceeding the full market value of the sites; or a

combination of such dedications and payments not exceeding the full market value;

- Standards and procedures applicable to storm drainage plans and designs to insure proper drainage ways;
- Standards and procedures to insure sanitary sewer plans and site design standards for on-lot sewage disposal systems when necessary; and
- Water systems standards and technical procedures. (C.R.S. §30-28-133(4) 3-6).

Street and highway plans, plats and re-plats of land subdivided for building lots (and their streets, alleys and other public ways) must be reviewed by the Planning Commission and approved by the Board before they may be recorded. (C.R.S. §30-28-110(3)(a)).

Subdivision Plan Referral

State statute requires that when the Board receives a complete preliminary plan for a subdivision from a developer it refer it to certain agencies. Pueblo County requires review by several agencies in addition to those required by the State. Staff performs that task even before it prepares its report and the Plan is presented to the Planning Commission, in order to have as much

information as possible before Planning Commission and Board review begins:

- The applicable school district for recommendations on school sites and “structure adequacy”; statute requires the district be notified only when 20 or more residences are involved; Pueblo County sends to the applicable district any application for any project that includes residences or lots;
- Any community or municipality likely to be affected by the proposal; statute requires this be done only for municipalities within three miles of the proposed subdivision;
- Utility, local improvement and service districts, and ditch companies, when applicable;
- The Colorado State Forest Service;
- The United States Forest Service, Bureau of Land Management, or National Park Service, when applicable;
- The appropriate local Natural Resources Conservation Office/Soil Conservation Service Board for review of soil suitability and flooding potential;
- The Colorado Department of Public Health and Environment for review of sewage treatment works and water quality. The Board may not approve a

subdivision unless the appropriate health agency has approved proposed sewage disposal facilities;

- The Colorado Division of Minerals and Geology;
- The Colorado Division of Water Resources (the “State Engineer”) for an opinion on the effect of the subdivision on water rights;
- The Colorado Division of Wildlife;
- The Colorado Department of Transportation;
- The Pueblo County Emergency Services Office; and
- Other agencies, entities, and groups that the Planning and Development Department, Planning Commission, or Board may deem advisable.

Colorado State agencies are required by Colorado statute to provide their comments within 21 days unless they request an extension. Failure to respond within that time signifies approval. (C.R.S. §30-28-136)

Guarantees for Improvements

A subdivider must provide assurance and collateral with the Board for construction of all required public improvements. As the developer completes such improvements, s/he may be given a release by the Board

for all or parts of the related collateral. Should the Board find construction not in accordance with specifications, it must furnish a list of deficiencies and may withhold collateral sufficient to assure compliance. The Board, 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 Corrections

Under Title 16, Subdivision, all plat amendments must be reviewed by the Board at a public hearing. Amendments to a plat for minor technical corrections must be submitted to the Board for consideration, but do not require a public hearing. Refer to Title 16, Section 16.20.030.

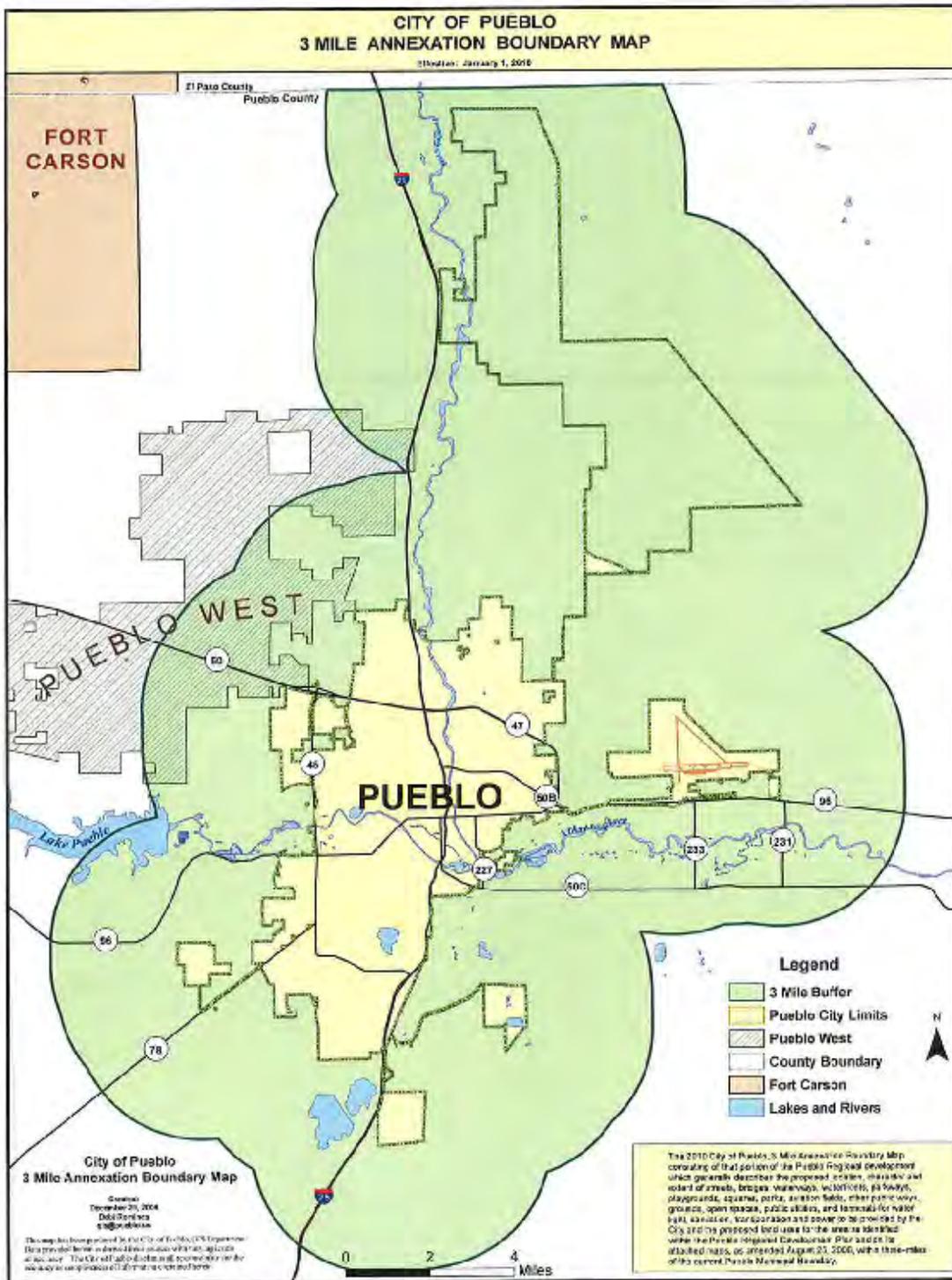
Counties may vacate certain subdivision plats or portions of them to permit the creation of subdivision exemption plats to correct the legal description of properties located within them. (C.R.S. §30-28-301) However, Pueblo County uses the Plat Vacation process to vacate plats or portions

thereof. The County's Subdivision Exemption process is used to "legalize" improved parcels that were illegally subdivided.

Municipal Three-Mile Extraterritoriality

When the Board approves a subdivision within three miles of a corporate municipal boundary, the subdivision must conform to major street plans of that municipality. (C.R.S. § 31-23-212) There are three corporate municipalities in Pueblo County: the City of Pueblo, the Town of Boone and the Town of Rye.

The City of Pueblo has adopted a Three-Mile Area Plan (see Annexation Boundary Map on page 38). Neither Boone nor Rye has adopted such a plan. Although the County is not required to adopt or to consider any element of a Three-Mile Plan, other than a major street plan, Pueblo County does strongly consider the objectives and policies of each municipality's Three-Mile Area Plan, and as a courtesy submits Land Use applications to a municipality when a proposal is located within its Three-Mile Plan Area.



Impact Fees

Before 2001, counties lacked explicit statutory authority to levy impact fees. However, several counties imposed impact fees for road construction/maintenance and fire protection by citing the broad land use authority found in the Local Government Land Use Enabling Act and the Planned Unit Development Act. (C.R.S. §29-20-101, et seq. and C.R.S. §24-67-101, et seq.) Some counties also required dedication or fees-in-lieu for parks, school sites and storm drainage facilities during the subdivision process. (C.R.S. §30-28-133(4).

In 2001, the Colorado General Assembly granted counties the authority to impose impact fees as a condition of issuing development permits. Local governments wishing to impose impact fees must legislatively adopt fees that are generally applicable to a broad class of property owners and will defray projected impacts on capital facilities caused by proposed development. Double-charging developers an impact fee for the same facility for which a jurisdiction has already imposed an exaction must be avoided. Impact fees may be waived for low or moderate income housing. Developers subject to the fee may seek judicial review of such fees while

development proceeds. (C.R.S. § 29-20-104.5.)

Impact Fees Collected by Pueblo County

There are three impact fees currently collected by Pueblo County for residential subdivisions: school, park and fire (please refer to Section 16.42.120 of Title 16, Subdivision

<http://www.codes.co.pueblo.co.us/DATA/TITLE16/Chapter 16 42 DESIGN STANDARD S/16 42 120 Public sites and ope.html>).

Impact fees are collected up front at the time of subdivision application, except for the fire impact fee which is allowed to be deferred for 50% of the fee until time of Zoning Authorization for Building Permit. In addition, certain metropolitan and fire districts may require the installation of fire hydrants for commercial/industrial/multi-family subdivisions as well.

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 are authorized by the Act. (C.R.S. §29-20-101, et seq.)

**Intergovernmental Agreements (IGAs)
Between Pueblo County and Municipalities**

Pueblo County has an intergovernmental agreement with Pueblo West Metropolitan District, which sets out guidelines for the design, construction, maintenance, reconstruction and servicing of public roadways within their district boundaries. A separate agreement with the City regulates the extension of wastewater treatment collection lines, which gives the City the power to refuse to extend services to commercial development outside the City.

Though not an IGA, the City of Pueblo uses an Extraterritorial Water Service Application and Agreement (EWA) to provide water service outside of the City limits. When people in the County want City water for their parcel, they can apply to the City through the Extraterritorial Water Service Application and Agreement. The City submits the EWA application to the Pueblo County Department of Planning and Development for review of compliance with zoning and subdivision. Comments are then provided back to the City. An EWA can lead to annexation into the City, at the City's discretion.



Takings, Vested Rights and other County 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 first passed a vested rights bill in 1987, providing that when a development right is “vested” by the Board, 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 county 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 County has the authority to adopt and enforce a new or

amended regulation when necessary for “the immediate preservation of public health and safety.”

Rule 106 Review

If a landowner is dissatisfied with a land-use decision or regulation enacted by the Board, they may ask for a judicial review to determine if the Board acted in an arbitrary or capricious manner or exceeded its jurisdiction. (Colorado Rules of Civil Procedure, Rule 106.)

Agricultural Land Preservation, Open Space and Conservation Easements

As the state continues to experience rapid growth, preserving open space and agricultural land becomes a priority for many counties. Open space provides a number of beneficial uses, including wildlife habitat, community buffers that help preserve a community’s sense of place and identity and recreational space for hiking and biking. Preserving agricultural lands, which often provides benefits similar to open space, accomplishes multiple goals. Many of the counties along Colorado’s Front Range and in rural resort areas have passed either sales tax or mill levy increases to fund preservation and management of open space parcels.

Additional funding and technical assistance is available from organizations like Great Outdoors Colorado, the Endangered Species Trust Fund, the Land and Water Conservation Fund and American Farmland Trust. In addition, there are a number of land trust organizations around the state willing to assist in acquiring open space.

Though Pueblo County does not currently have a formal Open Space program, there are a few entities (Keep Pueblo Beautiful, Pueblo Open Space Trust) currently engaged in conservation and preservation of open and agricultural lands within the County.

While the outright purchase of selected parcels is an effective way to preserve open space, it is often cost prohibitive and sometimes controversial since the land is removed from the County tax rolls. One alternative is to seek the purchase or donation of a conservation easement on property targeted for preservation. A conservation easement is a partial interest in a piece of property that holds the development right of the property. By purchasing or receiving the donation of a development right (conservation easement), a county can ensure the parcel in question will never be developed.

Conservation easements may also be held in reservation; meaning the County could establish and retain the easement. This option may be exercised if and when a county decides to sell off property. At the same time, the landowner retains ownership of the land and can continue to use it for ranching (C.R.S. §3830.5-101, et seq.)

Transfer of Development Rights

Another method of preserving open space in the unincorporated area is the establishment of a transferable development rights (TDR) program. In these programs, development rights are “transferred” from the areas the county wants to retain as open space and/or farmland, and directed to areas either within the incorporated area or in direct proximity to developed areas where they can be annexed easily. Developers commonly purchase the development rights from rural landowners in “sending” areas and are then able to develop at a higher density in the “receiving” areas where development is desired. At this time, Pueblo County does not have a TDR program in place.

Right-To-Farm Ordinances/Policies

One of the side effects of rapid growth in the unincorporated areas of the state is increasing friction between agricultural operations and residents moving into outlying developments. New rural residents are often unaccustomed to some aspects of agricultural production (odors, dust, noise, etc.) and react by complaining to the County. The additional residents in areas next to ranching operations, including problems with dogs chasing livestock, have a detrimental effect on a rancher’s willingness and/or ability to stay in business. In response to this issue, counties may pass “right-to-farm” ordinances or policies protecting agricultural producers from nuisance liability. County “right-to-farm” ordinances may be more protective than state statute. (C.R.S. §35-3.5-101, et seq.)



The Pueblo County Board of Commissioners adopted Resolution 02-232 that created a Right-to-Farm and Ranch Policy. In addition, the Turkey Creek Soil Conservation District published a “Rural Living Handbook” that is intended to inform developers and new residents about what

they can expect by developing and living in an agricultural area. A copy of this document is available at <http://www.sheriff.co.pueblo.co.us/docs/RuralLiving10.pdf>.



ENABLING LAND USE STATUTES AND 1041 POWERS

1041 Powers

In 1974, the legislature passed H.B. 74-1041, granting county government the authority to affect issues outside the normal scope of local land use authority. These so-called “1041 powers” allow the Board to designate certain areas and activities as being of “state interest” and apply additional regulations to the uses of these lands. The areas subject to such designation and regulation fall into the following broad categories:

- Mineral resources areas;
- Natural hazard areas;
- Areas relating to historical, natural or archaeological resources; and
- Areas around “key facilities” (i.e., airports, mass transit terminals, highway interchanges, public utilities, etc.).

Local governments also may designate certain activities of state interest in order to

realize increased regulatory authority over the following types of projects:

- Water and sewage treatment systems;
- Airports;
- Solid and hazardous waste disposal sites;
- Mass transit systems;
- Highways; and
- Public utility facilities.

Upon designation, the Board may establish rules and regulations related to development in these areas, provided that those rules and regulations meet certain statutory minimum criteria. (C.R.S. §24-65.1-100, et seq.)

Local Government Land Use Control Enabling Act of 1974

Counties are granted broad regulatory authority under this act. The Board may pass rules and regulations, for example, in the following areas:

- Regulating development and activities in hazardous areas;
- Protecting wildlife areas from development;
- Preserving historically and archaeologically important areas;
- Regulating roads on federal lands;

- Regulating significant population density increases; and
- Providing for orderly land use.

Planned Unit Development Act Of 1972

State statute allows the Board to authorize “Planned Unit Developments (PUDs)” by resolution designating the objectives of such developments. As a practical matter, most entities that allow PUDs consider

them a zoning designation. Essentially, it is custom-designed zoning specific to just a single parcel of property. 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.



A Typical Planned Unit Development

OTHER COUNTY BOARDS, COMMISSIONS OR DEPARTMENTS RESPONSIBLE FOR LAND USE-RELATED ISSUES IN UNINCORPORATED PUEBLO COUNTY

Pueblo Board of County Commissioners

The Board 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.

Zoning Board of Appeals

Zoning Boards are common to most entities and are designed to be the “safety valve,” to determine when a specific requirement within a regulation should not be applicable to an individual property. The Zoning Board is statutorily required in Colorado, and members are typically appointed by the Board of Commissioners, or the Board of

Commissioners can serve as the Zoning Board of Appeals (ZBA), which is the case in Pueblo County. The Zoning Board of Appeals in Pueblo County is specifically authorized to consider variances from the Land Use Regulations as well as hear appeals of decisions made by the County Zoning Administrator (Planning Director).

Pueblo County Department of Engineering and Public Works

This department is responsible for the maintenance and improvement of the County’s transportation infrastructure, parks, buildings, grounds, and facilities pursuant to federal, state and local laws and in keeping with the community’s priorities and needs. Services include road grading, patching, reconstruction, drainage ditch cleaning, weed mowing and management; snow plowing, parks maintenance and improvement, and building maintenance and improvement. The Pueblo County Department of Engineering and Public Works is comprised of three Divisions: Parks, Road and Bridge, and Engineering.

Parks Division

The Parks Division is responsible for maintaining 15 parks and District 70 school sites located throughout Pueblo County. Maintenance of the parks and school sites

includes a wide range of ground maintenance and care such as lawn care, ball field preparation, weed control, trash pickup and removal, minor building/facility repair and maintenance and some facility scheduling.

Road and Bridge Division

The Road and Bridge Division is responsible for the maintenance of 1,202 miles of roads including 455 miles of paved roads and 747 miles of gravel roads. About 340 miles of roads are located within the boundary of the Pueblo West Metropolitan District. The District is responsible for the maintenance of the County roads within its boundary pursuant to the previously discussed intergovernmental agreement with the County. The Division is also responsible for the maintenance of 104 bridges; 135 culverts 48 inches or larger in diameter; numerous cattle guards; traffic control devices and related appurtenances. Maintenance of transportation-related infrastructure consists of pothole patching; roadway grading; roadway graveling; traffic control device maintenance; snow removal; roadway reconstruction and realignment; overlays; chip-sealing; culvert cleaning; culvert installation and replacement; bridge repair and replacement; weed control; tree and brush removal and various other related maintenance functions.

Engineering Division

The Engineering Division provides such functions as project surveying; roadway and bridge design; construction monitoring; land use review; capital improvement project management; hydrological studies; excavation and access permit management; transportation infrastructure planning; project planning; weed management and various other engineering-related functions. The Division's staff is supplemented through contractual arrangements with private sector consultants for such services as road and bridge replacement design, electrical system analysis and hydrologic analysis. The services provided by the Engineering Division are funded by the Road and Bridge Fund.

Land Use Review by Engineering Division

As part of their Land Use Review function, the Engineering Division reviews Land Use applications for compliance with the Pueblo County *Roadway Design and Construction Standards*. These standards are available on-line at <http://www.codes.co.pueblo.co.us/>. They also advise the Planning Commission on impacts of a proposed development on County infrastructure and design and construction issues related to County roads, utilities and driveway locations.

Other Permits

Planning Commission review of Land Use applications often include requirements for other permits. The Public Works Department is responsible for administering the following “other” permits:

- Revocable Right-of-Way Permits: Needed for any type of improvement placed in the road right-of way.
- County Roadway Access Permits: Necessary when a driveway will access a county road. If not accessing a county road, a driveway waiver may be issued by the Public Works Director or Engineering Representative.
- Road Right-of-Way Excavation Permits: Needed for any work done on a county road.

Access and excavation permits may be applied for on-line at:

<http://www.co.pueblo.co.us/cgi-bin/webformbroker.wsc/savesession.p?dept=431000>

Pueblo Regional Building Department

The Pueblo Regional Building Department is a joint City-County 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 through teamwork and personal pride, and to enhance the relationship with the public and building community. Building permits may be applied for and inspections scheduled online at the following websites:

<http://www.co.pueblo.co.us/cgi-bin/webformbroker.wsc/savesession.p>

<http://www.prbd.com/insprequest/>

Plan Review System

Pueblo Regional Building accepts plans for review electronically. Applicants will need to set up an account in order to upload plans. Please contact the building department at 719-543-0002 or email prbd@prbd.com in order to set up an account. Plans may be uploaded in either PDF, DWG, or DXF formats. Please note that this system is a work in progress. When complete, it will provide you with substantial information regarding the progress of your review and will allow for uploads of both original sets and revisions.

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

Closed: New Years, Memorial Day, July 4th, Labor Day, Thanksgiving + Friday, Christmas

Pueblo Regional Building Commission

Members of the Building Commission are appointed by the Board of County Commissioners, as well as the Pueblo City Council. The Commission reviews and acts on appeals filed by contractors or others about decisions made by the Building Official about building plans or during construction.

Pueblo County Attorney's Office

The County Attorney's Office provides legal counsel to the Board of County Commissioners, the Planning Commission, Board of Appeals, and to all elected Pueblo County officials, and various Pueblo County Departments, including Planning and Development.

Under the direction of the County Attorney's office, legal counsel attends Planning Commission meetings, and is always available for requested legal opinions. Staff from the County Attorney's Office and Planning and Development Department meet regularly to review land use cases and issues and/or to jointly work on projects.

Pueblo County Geographic Information Systems Department

In Pueblo County, the Geographic Information System (GIS) Department assists the planning staff in the preparation of Pueblo County's Comprehensive Plans and provides a variety of other planning-related services that allow citizens, businesses and government departments to view, understand, question, interpret, and visualize data in many ways.

Pueblo County GIS maintains an online map viewer

(<http://maps.co.pueblo.co.us/pueblocounty/>) that allows anyone the ability to visually find detailed information about any location within Pueblo County. Staff will provide a subsequent training session to the Planning Commission on how to use this tool.

Land Use Inspection

The Department of Planning and Development has a full time Land Use Inspector who ensures follow up on zoning complaints and often verifies that permit conditions issued as part of a land use approval are completed. The Inspector may also join forces with other key departments, such as the Sheriff's Department, to ensure that unresolved notices of violations of regulations are properly served, when

necessary. The Inspector, Planning and Development Director and County Attorney meet regularly to review the status of violations, determine alternatives for resolution, and, as appropriate, refer them to the Board for direction. When directed, the issue is then filed for action with the court.

Pueblo City-County Health Department and the Board of Health

The Pueblo City-County Health Department is a joint department serving both the City and County. Typically, it is the Environmental Health Division that interfaces with the Planning and Development Department on issues related to septic systems, air quality and solid waste. Most land use cases are forwarded to that department for review and comments as a referral agency, which are then incorporated into the Staff reports for the Planning Commission's consideration.

The Board of Health members are appointed with two members appointed by the Board of County Commissioners, two members appointed by the Pueblo City Council and one member appointed jointly. There are five regular members, currently including a member of the Board of Commissioners. The Board meets monthly on the fourth Wednesday of the month at noon. If there are items pertaining to variances to the Board of Health Individual Sewage Disposal Systems Regulation No. VIII, the Board will hear such variances or appeals at that time. Most requests for variances are distances for a septic system from a well, going from 150 feet per the local regulations down to 100 feet per the state's regulations; installation of vaults for temporary use, generally during commercial construction; and composting toilet installations.



Pueblo City-County Health Dept.

THE LAND USE REGULATIONS: A UNIQUE LEVEL PLAYING FIELD FOR ALL TYPES OF DEVELOPMENT

Pueblo County had no land use regulations until 1963, when it adopted zoning for the inner core area (St. Charles Mesa, Vineland, etc.), and subsequently, in 1967 when the rest of the County was zoned. Along with the zoning code were a set of maps which identified various “zone districts” in which the various zoning regulations applied. For instance, an owner whose property has an A-4 zoning designation on the Official Zoning Map, should reference the A-4 Agricultural zone district regulations in Chapter 17, Zoning in order 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, Board, the public, or the Planning and Development Department Staff, following public hearing procedures.

The County’s zoning code is typical “Euclidian zoning” (more on this later) and has had some text amendments to it through the years, but never a wholesale re-write to reflect zoning “state of the art”. Based on direction from the Board of Commissioners, the Planning Department will be working closely with the Planning Commission to update the Land Use Regulations in 2012-2013.

The link to the Zoning Regulations is:

<http://www.codes.co.pueblo.co.us/DATA/TI/TLE17/index.html>



Avondale Bridge

OTHER PUEBLO COUNTY 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.

Individual Sewage Disposal System (ISDS) Regulations

Pueblo County's Individual Sewage Disposal System (ISDS) Regulations were first adopted in 1972, and include the requirement that one system can be located on one acre (which can be reduced with approval). They primarily address the installation of standard individual sewage disposal systems, but also support alternative technologies. The regulations also require that development located within 400 feet of a municipal line that is part of a central wastewater treatment system, must tie onto that system (with a few notable exceptions).

Variations and review of alternative technologies that are subject to these

Regulations are subject to review and action by the Pueblo County Health Board.

International Building Code

As of the date of this Handbook, the Pueblo Regional Building Department uses the following Building Codes and Design Criteria (please check the Pueblo Regional Building Department website to ensure all codes are current <http://www.prbd.com/index.php>):

- 2009 IRC - International Residential Code
- 2009 IBC - International Building Code
- 2009 IECC - International Energy Code
- 2009 UPC - Uniform Plumbing Code
- 2009 IMC - International Mechanical Code
- 2009 IFGC - International Fuel Gas Code
- 2008 NEC - National Electrical Code
- Snow Load: 20LB Ground load for City & Pueblo West, Variable with altitude in County
- Wind Load: 90MPH
- Seismic: B

Links to the various building codes are available at:

<http://www.prbd.com/bcodes.php>

Housing Code

The Pueblo Regional Building Department is responsible for the enforcement of housing codes in the City and County of Pueblo. For

Information regarding housing complaints, contact JD Potter at jd_potter@prbd.com.

International Fire Code

The Board of Commissioners has adopted the *International Fire Code (IFC)*, 2009 edition (except as amended in Section 2 of the Pueblo County Code) as published by the International Code Council; and the *International Wildland-Urban Interface Code (IWUIC)*, 2009 edition (except as amended in Section 3 of the Pueblo County Code), as published by the International Fire Code Council, Inc. Together, these documents are referenced as the *Fire Codes of Pueblo County*. Access to the Health and

Safety Regulations are provided at the following site:

http://www.codes.co.pueblo.co.us/DATA/TILE08/Chapter_8_16_UNIFORM_FIRE_CODE_ADO/index.html

Fire Board of Appeals

In order to hear and decide appeals of orders, decisions or determinations made by the *fire code official* relative to the application and interpretation of the Fire Codes of Pueblo County, a board of appeals has been established. The Board of Appeals members are appointed by the Pueblo Board of County Commissioners.



A VERY BRIEF HISTORY AND PROCESS OF LAND USE REGULATION IN THE U. S.

Police Power

The legal basis for land use regulation comes from “police power,” the general government authority to enact regulations that protect public health, safety and welfare. Aspects of the police power may be delegated by state legislatures to local governments. A local government must act specifically in accordance with the powers and procedures delegated to it.

Nuisances Next Door

Regulation of the use of property and use of police power began in identification and regulations of “nuisances,” activities whose very existence or use in a particular place cause damage, or diminish another’s property values. Governmental decisions that preceded zoning law were based on “nuisance theory” the belief that people ought to be protected from nuisances. Nuisance regulations were originally adopted to separate residential uses from

existing commercial uses that were considered “nuisances.” Before zoning, the only way a property owner had of protecting his own property was to assert that another use was a nuisance, and some of earliest case law was created because of locations of mortuaries or gas stations close to residences.

Zoning

“Hard” or “Euclidian” (named after a court case involving the town of Euclid, OH) zoning is the process of dividing and classifying land according to its intended use (residential, commercial, industrial, agricultural, etc.). It divides a community or county into districts or zones and regulates the land and use, heights, and areas of buildings for the purpose of conserving and promoting health, safety and morals, and the general welfare of people. In theory, zoning separates incompatible uses. The primary “plus” is that the general public and developers know exact densities and types of uses that are allowed in specific areas.

The Board may zone all or part of the unincorporated area of the county (C.R.S. §30-28-102) by having the Planning Commission prepare a zoning plan for the Board’s review, conducting a public hearing and adopting the plan. The Board must file

a copy of any approved resolution, zoning regulations or maps with the Clerk and Recorder, who indexes the certified copy as if it were an instrument of title to land. (C.R.S. §30-28125.)

The following are commonly-used terms in “Euclidian” zoning:

Use by Right

The use a landowner can expect to be able to do without a higher level of review, such as a house on land that has been zoned residential, but may have to meet certain requirements, such as height, bulk and setbacks, etc. Pueblo County allows one house per parcel or lot by right.

Use by Special Review

A Use that is not by right, but requires more review, such as a church in a residential area. Pueblo County’s land use regulations require a Special Use Permit review by the Planning Commission.

Zoning laws are relatively recent (20th Century). Cases resolved in the U.S. Supreme Court have shaped current land use regulation:

Village of Euclid v. Ambler Realty (272 U.S. 365, 1926)

When you hear the term “Euclidian Zoning,” it’s about this case, which is summarized below:

The City of Euclid, OH, six zones, first attempt to locate specific uses. Industrial use proposed location; plaintiff attacked concept of zoning, via 14th amendment that it deprived a landowner due process of law and denied the property owner equal protection. Supreme Court denied challenge and upheld zoning ordinance. Court decision noted that as population grows, more problems develop...such regulations are justified just as traffic regulations; scope of regulations would have been condemned as arbitrary and unreasonable. New and different conditions: must find justification in the police power for the protection of the public welfare.

Principles established by this case: 1) Zoning that fits a city may not be appropriate to a rural area; 2) nuisance is determined by circumstances and locality; and 3) regulation must have relation to legitimate aim of the government so that proponents of new development are afforded due process; the County does not “retain unfettered discretion,” and the basis for the County’s decision is clear “for purposes of reasoned judicial review.”

Lucas vs. South Carolina Coastal Council (1992)

In 1986, Lucas bought two residential lots on the Isle of Palms, a South Carolina barrier island. He intended to build single-family homes on the adjacent lots. In 1988, the state legislature enacted a law which barred Lucas from erecting permanent habitable structures on his land. The law aimed to protect erosion and destruction of barrier islands. Lucas sued and won a large monetary judgment. The state appealed.

The question of the case as it went to the U.S. Supreme Court was, *“Does the construction ban depriving Lucas of all economically viable use of his property amount to a ‘taking’ calling for ‘just compensation’ under the Fifth and Fourteenth Amendments?”* The Court determined, “yes.” In a 6-to-2 decision, the Court relied on the trial court's finding that Lucas's lots had been rendered valueless by the state law. *“[W]hen the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good...he has suffered a taking.”*

“Zoning Out” Manufactured Housing in the County

The County may not exclude manufactured housing (prefabricated homes) from the County by “zoning out.” However, it may exclude mobile homes from certain areas in the County so long as it does not completely exclude such housing from all areas of the County.

Performance Zoning

Performance zoning is a land use regulation based upon the application of specific performance standards, as an alternative to Euclidian zoning. Although many cities and counties, including Denver, have adopted this more modern approach to zoning, Pueblo County's current land use planning and regulatory program remains Euclidian.

Performance standards can limit the intensity of development, control the impacts of development on nearby land uses, limit the effects of development on public infrastructure, and protect the natural environment. Performance standards can be “prescriptive” (specific setbacks, maximum allowed noise levels, maximum height requirements) or they can describe impacts that must be mitigated, and methods of mitigation (buffers between land uses, location of homes

below ridgelines, etc.). In any case, the burden of proving that the standards are

met, and/or impacts are mitigated, lies with the applicant for a Land Use Permit.



Walking Stick Subdivision

RECIPE FOR 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, and it is the Board's and Staff's intention that this will be the norm.

The staff's responsibility is to provide as much "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 that will affect a particular project.

If you have questions about an upcoming agenda item, please don't wait until the meeting to ask. Contact the Planning Staff: they're glad to have that conversation before the meeting, and it gives them time to prepare additional information if

necessary, including contacting the County Attorney or other County departments. Meetings run more smoothly 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 should be able to both ask and get answers to questions about a project, its relationship to the Land Use Regulations and other regulations, and its potential impacts on the community.

The County Attorney is present at regular Commission meetings, if legal questions arise. If for some reason the County Attorney is not present at the meeting, the Commission or staff can and should call a "time out" 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 County's own lawyer.**

Maintaining an Open Flow of Ideas

The Chairperson and the other Commissioners share responsibility for seeing that 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. There can be a fine line between maintaining this “open flow,” and overstepping a legal boundary into negotiation, or as part of a quasi-judicial action. The County Attorney is a helpful advisor in defining the difference.

Dressing and Acting as Though It Matters...Because It Does

Members of the public are the County’s customers. A Planning Commission meeting may be the first important contact that many of the people in the audience have with Pueblo County. For some, this is the most important matter in which they have ever been involved. Many will never be back again and many will never have another such contact and experience. Some are frightened just to be there; some dislike and distrust government as a whole.

Planning Commissioners are looked to as professional leaders by the Board, the public and the Planning Staff. Commissioners can affect their credibility and the initial impression the public has of the County organization by dressing the part and maintaining body language that shows respect for the honor and

responsibility of this appointed position. Even when you’re not in a meeting, you are still viewed as a representative of the County. Your appearance and performance will create in the public’s minds the picture that they will always carry with them of “the way the County is run.”

Avoiding Inappropriate Comments That Create an Unprofessional Environment

Staff and the general public have expectations that Planning Commission meetings and interactions will be professional, and will be free from sexual innuendo, intimidation, or other inappropriate comments or actions.

County employees are legally protected in their work environment from unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. Just use common courtesy and common sense in your interaction; if you have questions about the legal concerns related to these issues, the County Attorney is glad to discuss them with you.

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 County 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 Pueblo County 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 County’s Training Sessions

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

In addition, there are often training sessions conducted in other communities by Colorado state agencies that will expand your knowledge of Colorado water law, geologic information and other issues that will better inform your decisions on Land Use Permit applications. The staff maintains a library of both books and audio/video media that can be used on your laptop, PC, or VCR, and can provide lists of the subject matter. While these informative tools may have nothing to do with individual applications being reviewed by the Commission, the broader the understanding a Commissioner has with the land use planning field in general, the better your understanding of how current practices shape staff reviews and land use decisions around the country.

The staff will periodically provide you with information about these opportunities. The Board encourages you to take advantage of them.

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 regular agenda items on the meeting after the date on which the site visit is conducted. (See additional information in Appendix 5: Site Visits).

Helpful Tools to Bring to Meetings

It will be helpful to you to bring the following to meetings:

- The packet of information about the meeting, including the meeting agenda, staff reports, maps and other documents that are sent to you in advance of the meeting. Beginning in 2012, the Staff will also send you an e-mail with a link to those documents, and you will likely receive those

before you receive the hard copies in the mail.

- Your copy of the Land Use Regulations. Seasoned Planning Commissioners will usually keep margin notes, or tab the document when it helps them find certain sections that they use frequently.
- A pad of paper and pencils, or a notebook that's your best way of keeping notes of projects.
- Some Commissioners like to bring their laptops with digital files of regulations and

e-mailed documents. There have been mixed opinions about whether this creates a "visual barrier" between the Commission and the audience in a meeting versus the convenience of having searchable documents. There is no County policy regarding the use of laptops at meetings, and Commissioners will generally decide among themselves what their own practice should be.



TERMS COMMONLY THROWN ABOUT BY PLANNERS AND OTHERS INTERESTED IN LAND USE PLANNING IN PUEBLO COUNTY

Capital Improvements Plan (CIP)

A capital improvements program (or CIP) is developed to establish a timetable of permanent improvements, budgeted to fit the County's future fiscal capabilities. Such programs usually project improvements over a five-year period.

Some entities charge their Planning Commissions with doing that task. In Pueblo County, the Finance Office and Public Works Director prepare the plan for review and approval by the Board of Commissioners. Typically, departments or elected officers annually identify the programs and/or equipment it needs that will require a capital expenditure over a projected five-year period, and includes that request as part of their budget.

Conflict of Interest

A conflict of interest occurs when a public official, an employee, or a professional has a private or personal interest that is sufficient to appear to influence the objective exercise of his or her official duties. A conflict of interest exists even if no improper act results from it but can create an appearance of impropriety that can undermine confidence in the conflicted individual or organization.

Typically, a member of the Commission is considered in a position of conflict of interest if any of the following situations is in evidence relative to a specific Land Use application or special project scheduled for discussion:

The member is 1) an identified buyer of the subject property; 2) the seller of the subject property; 3) the broker or Realtor for the property; 4) the applicant, or applicant's employee, spouse, parent, child, sibling or a member of the applicant's household; 5) the owner, lessor or lessee, adjacent to the subject property; or 6) the member stands to be beneficially or detrimentally affected in a financial way by action taken on the property.

The practice is that when there is a question of conflict of interest, a Planning Commissioner should meet with the County Attorney, describe the perceived conflict, and allow the Attorney to provide an opinion about the specific situation. The Planning Commissioner must then decide whether to recuse him/herself from the discussion based upon his/her understanding of the situation and the Attorney's opinion.

Due Process

When a process that is required by a regulation is followed, "due process" has been accomplished.

"Procedural due process" means that everyone involved in a process (i.e., the developer and the public) is treated fairly and equally; necessary information is available to the public to have a clear understanding of the development or regulation that is proposed; and the applicant (if a development is being reviewed) has the opportunity to represent his proposal.

Exaction

A government has "exacted" something from a proposed development when a contribution or payment is required as a

precondition to receiving a development or Land Use approval. It usually refers to mandatory dedication or the payment of fees in lieu of dedicating land. In Pueblo County, we typically exact rights-of-way for future road improvements.

Exclusionary Zoning

Zoning that has the effect of keeping out a racial minority, poor people, or some other specific part of the population is considered "exclusionary." Techniques such as large-lot zoning or minimum residential floor area requirements that are thought to increase housing costs have been challenged in other entities nationwide because they may exclude certain groups of people.

Finding

A finding is a conclusion, based on evidence, prepared by the recommending or decision-making body in support of the body's action. Findings are based upon evidence as it relates to the standards of the Land Use Regulations (or other applicable regulations). Decisions require findings, and findings require facts; neither facts nor findings can be "gut" feelings, preferences or beliefs about a project.

Findings are included in all the Commission's recommendation and

decision documents for Land Use Permit applications, and when the Board of County Commissioners disagrees with, or has considered additional information that overturns the Commission's findings, the Board must make its own findings to support its decision.

Growth Management

A series of closely grouped actions in the early 1970s laid the foundation for the now widely accepted concept of "growth management." It does not inherently mean opposition to, or a method to stop growth.

Ramapo, New York, a township about thirty miles north of New York City, established a "point system," based on its comprehensive plan policies and linked to its capital improvements program, to evaluate development applications. New York's highest court noted that: *"The Town ... has utilized its comprehensive plan to implement its timing controls and has coupled with restrictions provisions for low and moderate income housing on a large scale. Considered as a whole it represents both in its inception and implementation a reasonable attempt to provide for the sequential, orderly development of land."*

Petaluma, California, an agricultural community north of San Francisco, limited the total number of building permits issued in any one year for large-scale developments, based on the town's establishment of a target population well below that which building trends would otherwise have resulted in.

Livermore, California, imposed a moratorium on new residential construction until after the city completed improvements to its schools, and to its sewer and water systems.

The State of Oregon established a state land use system requiring communities and counties to create "urban growth boundaries" so that the state's natural areas would be preserved.

In Colorado, Pitkin County and the City of Aspen jointly developed the first Growth Management program that controlled growth through an annual competition that included the requirement that affordable housing be included as part of a development proposal.

These entities all took the positions that the direction and extent of development is heavily influenced by public investment in

the provision of roads, transit, schools, affordable housing, and water and sewer services, and that growth ought to be, and could be directed to specific areas of a community by controlling the timing and availability of these services.

Leapfrog Development

Development that occurs at some distance beyond municipalities or established growth areas (such as Pueblo West) and leaves vacant land in between is "leapfrogging." Bypassing the "next in line" lands at the fringes of urban areas results in a haphazard, shotgun pattern of urbanization called "sprawl."

A "Legal Lot" in Colorado

A "valid" or "legal" building lot refers to lots that were created in compliance with Colorado statutes and the County's subdivision regulations that were in effect at the time the parcel was created. A determination whether a parcel is considered a valid building lot must be made through Zoning Authorization before a Building Permit can be approved for the property. In Pueblo County, if a lot is not legal, a "parcel of record" approval, a "subdivision exemption" approval or a subdivision may be required to "legalize" it.

In 1972, Colorado's Senate Bill 35 became state law, requiring counties to pass regulations to control the subdivision of land which created any parcel smaller than 35 acres. The result of this bill is that since August 31, 1972 any parcel created that is less than 35 acres must have gone through the subdivision regulations and been approved by the Pueblo County Board of Commissioners to be considered "legal".

Many building lots in Pueblo County are in platted subdivisions, which meet this "legal" lot requirement. There are, however, many parcels in the County which are not in platted subdivisions. Documents must be submitted that demonstrate that these parcels "pre-dated" the subdivision regulations when they were created. This can most often be demonstrated by providing the history of deeds back to the recorded date when the parcel was created, and deeds to adjacent parcels when necessary.

A history of deeds to property can first be checked in the County Assessor's Office in the courthouse. They can provide basic information on the past few changes in ownership and size of the property. The Clerk and Recorder's Office (also located in the courthouse) keeps records of the

history of transactions which have occurred on property, and can make copies of the deeds. They have more resources (such as the grantor/grantee indexes) for finding older deeds.

The Planning and Development Department staff advises a property owner that if they need assistance with searching for these documents they may want to hire a title company, which will have personnel trained in doing this type of research, or an attorney. Once it can be confirmed that a parcel is a valid, legal building lot, the staff can complete the Zoning Authorization process required for a Building Permit.

Metes and Bounds

A surveying system of describing and identifying land by measures (“metes”) and direction (“bounds”) from an identified monument or other marker or some other (hopefully) permanent feature.

Pre-emption

A county regulation and a state statute may both remain in effect so long as their express or implied conditions do not irreconcilably conflict with each other. (Bd. of County Commissioners v. Bowen/Edwards Assocs., Inc., 830 P.2d 1045 (Colo. 1992).)

A state statute may “pre-empt” a county regulation where (1) the statute expressly pre-empts all local authority over the subject matter; (2) the implied legislative intent is to occupy completely a given field; or (3) the county regulation’s operational effect would “materially impede or destroy the state interest.” (Bowen/Edwards, supra. 830 P.2d at 1059.) Note: Determination of the first two types of pre-emption can be determined by a “facial review” of the relevant statutes and regulations; that is, such a determination can be accomplished without a specific application in front of the county. Determination of the third type of pre-emption must be made on an “*ad-hoc basis under a fully developed evidentiary record.*” (Bowen/Edwards, supra. 830 P.2d at 1060.) That is, determination of the third type of pre-emption requires that the county have fully completed its review of a specific application.

There is a similar framework for determining whether a county regulation is pre-empted by federal law or because the activity to be regulated is on federal land. [See: Hillsborough County v. Automated Med. Labs., Inc., 471 U.S. 707 (1985).] Under the relevant part of the “property clause” of the U.S. Constitution, “(t)he (C)ongress shall have power to dispose and

make all needful rules and regulations respecting the territory or other property belonging to the United States.” (U.S. Const. art. IV, sec. 3, cl.2.) Additionally, Congress has regulated the use and disposition of federal lands under the Mineral Leasing Act of 1920, the Mineral Leasing Act for Acquired Lands of 1947, the Federal Onshore Oil and Gas Leasing Reform Act of 1987, and the Energy Policy Act of 2005, the National Forest Management Act, and the Federal Land Policy Management Act.

However, these statutes do not explicitly pre-empt local law, so one must determine whether there is an implied pre-emption regarding a particular subject [that is, whether the *“federal law so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for the States to supplement it.”* (Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516 (1992).)] The general rule is that states (and therefore local governments) are entitled to impose environmental controls on land uses occupying federal lands, but not to zone federal lands. (California Coastal Commission v. Granite Rock, 107 S. Ct. 1419 (1987).

Subdivision or Subdivided Land

A “subdivision,” or “subdivided land” in Colorado means any parcel of land less than 35 acres that is used for single-family residences, condominiums, apartments or any other multiple-family residences (unless such land when it was previously subdivided was accompanied by a filing which complied with the provisions of C.R.S. §30-28-101), or that is divided into two or more parcels, separate interests or interests in common. Subdivision regulations apply only to those kinds of parcels. “Interests” include any and all interests on the surface of land but excludes any and all subsurface interests.

“Subdivision” and “subdivided land” and resulting subdivision regulations do not apply to any division of land that creates parcels of land each of which comprises 35 or more acres of land and none of which is intended for use by multiple owners. It also does not apply to rural land use processes involving cluster developments. (C.R.S. §30-28-101(10).)

Sustainable Development

In 1733, a plan was created for Savannah, GA, locating gardens and farms around the city's core, permitting the community to provide for the full range of its needs to maintain both its existence and unique

character. Thomas Jefferson also advocated a nation grounded in agriculture and local self-sufficiency.

In the 19th Century, the benefits of self-sufficiency and a sustainable way of living were depicted in the writings by Ralph Waldo Emerson and the "transcendentalists," including Henry David Thoreau.

Toward the end of the 1800s, leading planners in England (such as Ebenezer Howard) and the United States were seeking ways of balancing explosive urban growth with a sustainable pattern of living; the Garden City movement sought to limit the size of cities to about 32,000 people; surround the cities with broad belts of agricultural land; and assure the continued existence of neighborhood-scale commercial, educational, and employment centers. This laid the groundwork for an interest in managing growth, and structuring the community based on development of stable neighborhoods.

The American regional planning movement of the 1920s envisioned that growth would

be directed to metropolitan areas to preserve small villages and farmland. Towns and communities which could meet residents' needs, not just for housing, but for work, shopping, food, and recreation were built in "greenbelts" during the 1930s (Greenhills, Ohio; Greendale, Wisconsin; and Greenbelt, Maryland). Today, the same concepts are reflected in the growing number of "new urbanist" communities.

Most sustainable development programs seek to promote compact development, conserve farm and ranchlands and woodlands, preserve close-in habitat for wildlife, reduce erosion from runoff, promote local shopping areas, encourage energy efficiency, and facilitate walking, bicycling, and efficient transit services.

Planning for sustainability also has begun to include the concept that communities should encourage a pattern of development that provides for all economic segments of a community, including affordable homes, within reach of job opportunities. The American Planning Association has adopted these goals in its policy guides on housing and on smart growth.

APPENDIX 1: RULES OF PROCEDURE FOR THE PUEBLO COUNTY PLANNING COMMISSION

(Approved April 24, 2012)

Article I. General Provisions

- Section 1: These rules are to supplement the provisions of the Land Use Regulations of the County of Pueblo as they may relate to procedures of the Pueblo County Planning Commission, hereinafter referred to as the "Commission." In the event of a conflict between the provisions of these rules and the Land Use Regulations, the provisions of the Pueblo County Land Use Regulations shall prevail.
- 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 zoning resolution including the zoning map, which authority is reserved to the Pueblo County Board of Commissioners.
- Section 4: The County Attorney or his/her designee shall be consulted in cases where the powers and duties of the Commission are not clearly defined.
- Section 5: The office of the Commission shall be located at the office of the Pueblo County Department of Planning and Development, 229 West 12th Street, Pueblo, Colorado 81003.
- 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 a 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 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 Chairperson and Vice Chairperson may be elected to succeed themselves. The Pueblo County Director of Planning and Development or their assign(s) 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. He/she 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; shall keep recordings of the meetings in the event that a verbatim transcript of a hearing is needed; shall record the names and addresses of all persons appearing before the Commission; shall, subject to the Commission and Chairperson, conduct the correspondence of the Commission and have published in a local newspaper public notices of meetings or hearings as required by law; shall file said minutes and records in the office of the Commission, 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 Pueblo County.

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 Board of County Commissioners 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 at 5:00 p.m. on the fourth Tuesday 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. When necessary, the Commissioners will be notified of the change in venue at least twenty-four (24) hours prior to the time set for such meetings.

Section 2: Regular meetings may be cancelled by the Chairperson 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 or in consultation with the Chairperson, the Pueblo County Director of Planning and Development at his/her 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 five (5) 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 published along with all new items on the next agenda in accordance with the then current practice of published notice 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) Chairman's Report.
- (d) Director's Report, including Acceptance of Map Amendments, Correspondence, Continuances and Withdrawals, Board of County Commissioners' Action, Administrative Reviews and other reports and communication as necessary.
- (e) Statement of hearing procedures by Chairperson.
- (f) Call of cases on agenda and hearing of requests for continuance.

Continuances may be granted at the discretion of the Commission in any case for good cause shown per the Land Use Regulations.

- (g) Hearing of cases on agenda.
- (h) Unfinished business.
- (i) New business.
- (j) Reports of committees.
- (k) Adjournment.

Article VI. Notices for Hearings

Section 1: The Secretary of the Commission shall give notice of the time and place of the hearing for an application to the applicant either in person or by first class mail, postage prepaid, not less than ten (10) days or more than forty-five (45) days prior to the hearing.

Section 2: Notice of such hearing shall be mailed, posted and published in a newspaper of general circulation in the County at least ten (10) days before the public hearing. 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 Pueblo County Clerk and Recorder's Office. The purchaser of the subject property shall be considered the owner for the purposes hereof, only if they are indicated as the applicant on the application. Proof of compliance with this section shall be by the written statement of the County Director of Planning and Development or his/her assigns, giving the names and addresses of the persons to whom the notice was mailed and the date of mailing, a statement that the required 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 on his/her own behalf or may be represented by his/her counsel or agent.

Section 2: The staff planner assigned to the case will make a brief presentation that introduces the request, describes the subject property location and neighboring properties and the facts associated with the case, and recommendation.

Section 3: The Chairperson will ask the Commissioners if they need any further clarification from the staff planner who will then answer any questions or clarify the issues.

- Section 4: The applicant or his/her representative may then make a presentation outlining the nature of his/her request or may simply state that they concur with the staff presentation and recommendation.
- Section 5: The Chairperson will ask the Commissioners if they need any further clarification from the applicant who will then answer any questions or clarify the issues.
- Section 6: The Chairperson then opens the public testimony portion of the public hearing. Evidence shall be presented in the following order:
- (a) Chairperson may give a statement of the case before the Commission. The Chairperson may, in his/her discretion, at any time during the hearing give a restatement of the case.
 - (b) Other persons, and/or their representatives present evidence in support of the application.
 - (c) Commission members may examine any person or representative who presents evidence in support of the application. If needed, the Commission members may ask the applicant, or its representative to clarify or respond to any questions or issues raised by those in favor of the application.
 - (d) Persons and/or their representatives present evidence in opposition to the application.
 - (e) Commission members may examine any person or representative who presents evidence in opposition of the application. If needed, the Commission members may ask the applicant, or its representative to clarify or respond to any questions or issues raised by those in opposition of the application.
 - (f) The applicant and/or its representative may present evidence to rebut evidence previously presented in opposition to the application.
 - (g) The Commission may present evidence which the Chairperson, in his/her discretion, feels is relevant to the consideration of the application.
 - (h) The Chairperson will ask for a motion to close the public testimony portion of the public hearing.
- Section 7: The Chairperson shall then ask the Commissioners to discuss and deliberate the merits of the request.
- Section 8: The Chairperson may, in his/her discretion, and in the interests of fairness and orderly expedition of the matters being presented, alter the order of presentation prescribed in the above section. 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.

Section 9: An applicant or objector, or his/her agent or attorney, may submit a list of the persons favoring or opposing the application. Such list will be accepted as an exhibit if it contains nothing more than a brief statement of the position of the persons favoring or opposing the appeal or application, together with the signatures and addresses of the persons subscribing to such statement.

Section 10: The Chairperson shall, with the advice of legal counsel, rule on all questions relating to the admissibility of evidence, which may be overruled by a majority of the Commission.

Article VIII. Decisions

Section 1: Subject to Section 2 of this Article, final decisions or recommendations shall be made at the meeting at which the matter is presented, subject to the right of the Commission to continue a matter to a date certain for a final decision.

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 determines 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 Board of County Commissioners.

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: All decisions of the Commission shall be made at a public meeting by motion made and seconded, and by the Chairperson either calling for a voice vote or by polling the membership by a roll call vote. The motion which decides the issue may be in the form of findings of fact and may state the reasons for the findings by the Commission, or simply by reference to a draft resolution prepared by the planning staff that incorporates findings of fact for consideration by the Commission. Additional findings should be verbalized in the motion if the draft resolution does not adequately reflect the findings of the Commission at the hearing. If any new conditions are imposed in the granting of a special use permit or in recommending any action to the Board of County Commissioners, such new conditions shall be included in the motion. The date of action at a public hearing or meeting on a land use case, whether the action is to approve or deny the case, shall be considered the final date of action, and NOT the date of the signing of a final resolution.

Section 6: Notice of the decision in the form of a resolution signed by the Chairperson and attested to by the Secretary of the Commission or their assigns shall be given to the applicant and other interested parties after the decision is reached. Such resolution shall include the date that the decision became final.

Article IX. Records

Section 1: A file of materials and decisions relating to each case shall be kept by the Secretary 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.

The foregoing Rules of Procedure for the Pueblo County Planning Commission were adopted on April 24, 2012.

APPENDIX 2: REDUCING RISKS OF PERSONAL LIABILITY IN PUEBLO COUNTY

[Reproduced here from a memo from David Bumgarten, legal counsel to the Gunnison County Planning Commission, but also applicable to the Pueblo County 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 County 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 County 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 County Planning Commission, but also applicable to the Pueblo County 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 County 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 County 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 Board 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 County Planning Commission, but also applicable to the Pueblo County 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 County 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 Board 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.

APPENDIX 7: WATER AND LAND USE IN COLORADO: INDIVIDUAL WELLS, AUGMENTATION PLANS AND OTHER WATER-RELATED ISSUES

Planning Commissioners are expected to have a general understanding of Colorado water law as it affects land use changes. Generally, the applications that are reviewed by the Planning Commission and Board of Commissioners will include as their water supplies the uses of individual wells, a central well or wells serving several users, or springs. The Colorado Division of Water Resources is the agency that administers water in Colorado; the County has no authority over issuance of well permits, or assignment of water rights. The Division of Water Resources website pertaining to wells and ground water is:

<http://water.state.co.us/groundwater/grounderwater.asp>

There are two different classes of wells: those that are *exempt* from water rights administration and are not administered under the priority system, and those that are *non-exempt* and are governed by the priority system.

Household Use Only Wells

These types of well permits are issued for ordinary household uses in one single family dwelling and do not allow for outside water or livestock watering. Generally, individuals may obtain this type of permit if

they own a lot in a subdivision that was created prior to June 1, 1972, or the parcel was created by an exemption to the subdivision laws by the local county planning authority.

Exempt Wells

There are several types of exempt well permits whose uses vary depending upon the situation. Uses are limited specifically by the conditions of approval stated on the permit when it is issued. In most cases, exempt well permits limit the pumping rate to no more than fifteen gallons per minute. Generally, individuals may obtain this type of permit if they own a lot in a subdivision that was created prior to June 1, 1972, or the parcel was created by an exemption to the subdivision laws by the local county planning authority.

Commercial Exempt Wells

These types of well permits are available for small businesses located on lots that were created prior to June 1, 1972, or by an exemption to the subdivision law. The use of the well is limited to a commercial business, like a convenience store, and is limited to the pumping of one-third acre-foot (108,600 gallons) of water per year.

The uses of water are restricted to drinking and sanitation facilities inside a single business. Outside water uses are not allowed. Well metering devices are required. Examples of commercial that would not qualify under this provision are motels, commercial kennels, horse-boarding operations, and any commercial business with outside uses. These uses are non-exempt and a well permit would not be available in over-appropriated areas of the state without augmentation.

Domestic and Livestock Wells

These types of well permits are issued on tracts of land of 35 acres or more where the proposed well will be the only well on the tract, or on tracts of land of less than 35 acres in limited areas of the state where the surface drainage system is not over-appropriated or where the well will produce from a deeper source, thus having minimal impact on surface water rights. Depending on under what provisions the well permit is issued, the well may be able to serve up to three single-family dwellings, irrigate one acre or less of lawn and garden, and provide water for the individual's domestic animals and livestock.

Monitoring and Observation Wells

These types of well permits are for the construction of a well to be used for the purpose of locating water, pump or aquifer testing, monitoring ground water, or collection of water quality samples. A monitoring and observation well may be converted from an existing monitoring and observation hole and permitted for the uses as stated above, or as a recovery well or a dewatering system. A well constructed under a monitoring and observation well permit may be converted by permit to other uses.

Augmentation Plans

An augmentation plan is a court-approved plan designed to protect existing water rights by replacing water used in a new project. Augmentation plans are usually required in areas where there is a shortage of water during part or all of the year. New development creates new water users, with water rights that are "junior" (or later in time) to certain other water rights that have priority over the new use by virtue of past use of water and confirmation of this use by the water court. The priority protects these water rights that are therefore senior (or earlier in time). When a shortage occurs, senior water rights may place a call for water, which may result in junior water

rights being ordered to stop some or all water use so the seniors can receive their water. Simply put, augmentation is a method to allow an individual or larger development to use a well, the junior water right, when a call has been placed, without reducing water available to senior water rights.

For an example of an augmentation plan, assume that a developer wants wells in a proposed subdivision where there are senior water rights on a nearby stream. An augmentation plan must be designed to put water in the stream to prevent reductions in streamflow, caused by pumping wells, from affecting senior water rights. This allows the junior water right to keep pumping water when a call is placed.

When property is subdivided, the Division usually requires that a water augmentation plan be obtained by the applicant. The Division requires that augmentation facilities be physically proven capable of holding water, and that augmentation plans specify actual uses proposed in a development. An applicant must apply for an augmentation plan through the water court. The application must explain exactly where the water will be obtained, where water is to be used, what it will be used for,

how much will be used, what the source of augmentation water is, when and where augmentation water will be acquired, how much augmentation water is required, and how the augmentation plan will be operated. The application should be supported by an engineering analysis, usually prepared by a water resources engineer, which shows how the water needs of the project were determined and how the new water use can occur without affecting senior water rights.

Springs

Although the Colorado state statutes don't specifically define a spring, a hydrologic definition is a discharge of ground water on the surface in sufficient quantities to produce a current of flowing water. This office receives many calls regarding springs. The typical caller states that there is a flowing spring located on their property, and they would like to know if they could develop it and put the water to some beneficial use. One issue that quickly arises is whether or not the spring is actually a well. A well is defined by statute as, any structure or device used for the purpose or with the effect of obtaining ground water for beneficial use from an aquifer. A change in the law in 1995 provided an exception to the definition of a well for certain limited excavated springs.

Water Measure Equivalents

1 cubic foot 7.48 gallons 62.4 pounds

1 acre-foot 43,560 cubic feet 325,829
gallons

1 cubic foot/second (cfs) 44,949
gallons/minute

1 cfs 646,272 gallons/day

For 24 hours 1.983 acre-feet

For 30 days 59.5 acre-feet

For 1 year 724 acre-feet

1 million gallons 3.07 acre-feet

1 million gallons/day (mgd) 1.121 acre-
feet/year

1,000 gallons/minute (gpm) 2.23 cfs

4.42 acre-feet/day

APPENDIX 8: SUSTAINABILITY PRINCIPLES (AS ADOPTED BY THE COUNTY PLANNING COMMISSION ON 9/27/11 AS AN AMENDMENT TO THE PUEBLO REGIONAL DEVELOPMENT PLAN)

Maintain and, When Possible, Enhance Environmental Quality

- Develop and support policies and programs that mitigate the negative impacts of population growth and consumption. This includes ensuring efficient use of, and reduced demand for, natural resources while taking necessary precautions to prevent toxic pollution and waste and protect human health, safety and welfare.

Promote and Support Clean, Renewable Energy

- Actively encourage the use of renewable energy throughout County Planning Principles and projects.
- Develop internal Energy Efficiency and sustainable office and supply acquisition methods
- Seek out and support large and small-scale renewable energy projects.
- Promote development and energy applications to reduce dependence on fossil fuels and seek renewable alternatives to fission and other systems that propagate radioactive or similar waste.

Protect Land and Eco-systems

- Encourage development and redevelopment efforts that consider sustainable land use practices such as compact, mixed-use projects, farming, water-wise, utilization of intelligent transportation systems and maintaining and adding to existing open space.

Plan Regionally

- Encourage: measured development, land and water conservation, transportation and housing that have a regional or multi-community sustainability benefit. Consider life-cycle costs and benefits.

Encourage Development that Advances Energy Efficiency, Minimizes Waste, and Utilizes Recycling and Reuse Concepts

- Encourage 'reduce, recycle and reuse' concepts for new development via code development.
- Encourage development that involves Leadership in Energy and Environmental Design (LEED®) certified building concepts. Continue new code development according to the latest standards i.e., IGCC.

Encourage Planning and Development Practices that Conserve Non-Renewable Resources

- Development and utilization of planning tools to enable measurement of conservation actions in support of long-term economic, environmental and socially responsible decision-making.

Foster Community Health and Social Amenities

- Parks, playgrounds, meeting places, senior facilities