Routt County Planning Department
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Routt County Planning Commission Handbook

March, 2015
PI2014-007
Introduction

Welcome to the Planning Commission

The Planning Commission is one of the most visible groups responsible for planning in unincorporated Routt County including the communities of Milner, Phippsburg, Toponas and Hahns Peak.

The Planning Commission is an appointed board of residents with commissioners selected from four different districts and four municipalities in Routt County (North Routt – District 1, Land around Steamboat Springs – District 2, West Routt - District 3, and South Routt – District 4, the Towns of Yampa, Hayden, Oak Creek, and the City of Steamboat Springs) established as an advisory group for the Board of County Commissioners on planning matters and to perform other duties authorized by state statute. Even though you may have been appointed from a certain area, your job is to represent the whole community. The Planning Commission’s principle responsibility is neither to the developer nor to any opposition to a particular development. The Planning Commission is responsible to the long term interests of the community.

You will attend regular meetings, special meetings and work sessions, evaluate projects and proposals and make tough decisions about community development projects and policies. You will gain more knowledge about activities happening in Routt County and develop a greater understanding about government and public decision making.

A good planning commissioner takes the future seriously, works hard, is patient, and willing and able to make decisions.

This handbook will help you understand the legal and policy framework for planning. It will also provide you with a reference for the powers and duties of the planning commission. As a planning commissioner you must have some understanding of the following topics:

1. Comprehensive planning.
2. Zoning and platting.
3. How the planning commission operates and the role and responsibilities of each individual member.
4. The authority and duties of the commission.
5. Legal aspects of commission conduct.

This Planning Commission Handbook covers all of these topics and you will be given copies of the Routt County Zoning and Subdivision Regulations and the Routt County Master Plan. There are other community plans that have been adopted by Routt County. These plans are located at the Routt County Planning Department and are online for you to review. They are the Steamboat Springs Area Community Plan, Upper Elk River Valley Community Plan, West Steamboat Springs Area Plan, Stagecoach Community Plan, Routt County Open Lands Plan, and the Sarvis Creek Area Plan (collectively called Sub-Area plans). In addition, there are jointly adopted municipal plans.

Although being a planning commissioner will always be challenging, this handbook will provide reference to meeting the challenge.

In most states, the existence of a planning commission is a matter of law. None of these laws insures that a planning commission will be worthwhile. Only the people who become planning commissioners can do this.
Community planning in the United States is not a new concept. Early developers designed and planned towns where the streets, public buildings, businesses and homes were built.

The planning process helps elected officials when making decisions that will affect the future of their community. The process attempts to ensure that the decisions made by the community will benefit the community as a whole. Planning takes place when residents, helped by planners, study their town or community and decide what they want their community to be like in the future.

Planning can promote and support economic development. The planning process allows residents and decision-makers to examine alternatives and choose courses of action that can promote employment and economic well-being.

Planning can protect property and property values by separating a potentially harmful or disagreeable land use from surrounding residential and commercial uses and by helping to protect neighborhoods. Property values can also be enhanced when the community plans for parks, trails, playgrounds and other amenities. Planning can also help integrate business and residential neighborhoods to promote supportive communities.

Planning can reduce environmental damage and conserve resources. Planning can help a community identify areas where development may be inadvisable because of environmental conditions or for the protection of wildlife, sensitive habitat or scenic areas.

Planning provides a forum for reaching consensus. The Routt County Master Plan was developed as a guide to support the community values and community-wide consensus of the future goals to which the community has agreed.

The Routt County Zoning Regulations were adopted to help achieve planning goals in Routt County. Zoning is the legal regulation of the way land is used in unincorporated areas of Routt County. Zoning tries to ensure that there is appropriate area for different activities and the location of these activities is appropriate for the area.

The Routt County Subdivision Regulations control the way land is divided and sold. These regulations set standards which subdivisions must meet in order to make sure that development is in an orderly way and that services and utilities are provided appropriately.

Zoning determines how different areas of land can be used, while subdivision regulations outline the standards that must be met and the procedures to be followed when developing a specific piece of land for the uses that zoning allows.

Together, the plans and tools guide elected officials when making decisions.

Zoning Regulations:
- Guides overall development
- Separates incompatible uses
- Describes standards for development

Subdivision Regulations:
- Regulates division of land into building lots
- Assures that lots are adequate in size and shape
- Ensures placement of public facilities
- Ensures adequate access and services
Chapter 1

The Role of the Commission

Colorado state statutes set out the responsibilities of the Planning Commission (CRS sections 30-28-103 and 30-28-106). The Planning Commission’s primary function is to prepare and adopt a comprehensive plan. This process has been completed and Routt County has an adopted Master Plan which will guide you in your decision making. The Master Plan and other Sub-Area plans should be reviewed and updated as needed to reflect the goals of the County.

Often the most controversial role of the Planning Commission is to review planning applications. Planning Commission will review applications based on the Routt County Zoning and Subdivision Regulations and conformance with the Routt County Master Plan and Sub-Area plans.

The Planning Commission reviews, through public hearings, proposed zoning changes, subdivisions, replats as well as dedication and vacations of public land, rights-of-ways and easements, Special Use Permits (SUP), Conditional Use Permits (CUP) and Site Plan reviews. The Commission is closely involved in the preparation and amendment of land use regulations and provides recommendations to the Board of County Commissioners.

Qualifications of a Planning Commission Member

The most important qualification that a commission member must have is a belief that planning is essential to the community. There are many opinions as to what good planning is and on this, the Planning Commission need not (and probably will not) agree. You will be asked to devote a considerable amount of time and energy to the job and must be willing to be objective and make decisions that further the best interests of the whole community and support the Routt County Master Plan and Zoning and Subdivision Regulations. You must be open minded, willing to learn, and to change ideas in the light of new evidence. You must have the ability to define what is at issue and the strength to make effective decisions.

Responsibility of a Planning Commission Member

To conduct effective meetings, Planning Commission members must be informed of the application and the issue(s) associated with the application. Preparation is key to being an effective planning commissioner and it starts with knowledge of the Master Plan and Zoning and Subdivision Regulations.

In addition, an effective commissioner comes prepared for the meeting. This means that, in advance of the meetings, you prepare for meetings by reading all reports with time, if needed, for you to contact staff with any questions before the meeting. By being prepared you will be able to examine the facts on an issue, process public comments and create dialog which will be the basis of a decision.

The success of a meeting depends on active participation from a wide range of people – that is why the meeting is held. The Planning Commission should be a forum for discussion of issues and people should feel free and encouraged to express their opinions. Planning Commission members should act in a fair, ethical

Chapter 1 - Page 1
and consistent manner while maintaining an acceptable and objective position. Decisions should not be based on personal philosophy or opinion.

**Chairmanship**

Knowing the role of the Chairman will help all planning commission members during a Planning Commission meeting.

The chair or vice-chair plays a vital role in how well the Planning Commission functions. The ability of the chair to run a meeting is important and essential if the commission is to get its work done. Commission members will expect the chair to display leadership skills and to run well-organized and purposeful meetings. In turn, a Planning Commission member should be up to date on regulations and the information pertaining to the meeting to help support the chair.

**Role of the Chair**

The attitude and abilities of the chair are critical to the successful operation of the Planning Commission. A capable chair understands the issues, understands his or her fellow members, can maintain order, and is able to bring the commission to a decision even on complicated or controversial issues. A person should be named as chair for his or her leadership abilities, in addition to having other qualities such as preparedness, integrity and fairness.

The chair is somewhat "removed" from the meeting in that he or she may not participate as fully in the meeting as the other members. It is the chair’s job to preside over the meeting and to lead the group toward making a decision.

**Responsibilities of the Chair**

The chair has two types of responsibilities: those contained in the commission's Articles of Association, Robert’s Rules of Order and those that are more related to his or her leadership abilities.

**Responsibilities of the chair include:**

**Running the meeting.** It is the chair's responsibility to run an orderly meeting and conduct the commission's business in a fair and timely manner. Other commissioners, the staff, and the public will look to the chair for leadership.

**Maintaining order.** Do not allow members of the public to clap, cheer, whistle, and so on either for or against testimony that is being presented or in response to comments by commission members during their deliberations. This type of display not only interrupts the meeting, but can intimidate members of the public, the applicant and other commission members. The chair should "gavel down" this kind of behavior and run an orderly meeting. The chair should not permit members of the commission to accuse or overtly challenge one another, members of the public, or persons testifying.

**Keeping business moving.** The commission should not endlessly mull over matters, continually request new information, and otherwise delay making a decision when the information needed for doing so has been presented. The chair should move the meeting along by summarizing the facts and the positions presented by commission members and bringing matters to a vote. Failure to do so is unfair to the governing body, which may be relying on the commission's recommendation, and to the applicant, whose proposal may be unfairly delayed by indecision. There are certainly applications that may result in a tabling and it should be made clear to staff and the applicant.
what information the commission needs to make a decision.

**Managing public testimony.** Testimony from witnesses should be held to a reasonable length of time, particularly if a large number of people want to address the commission. Testimony should pertain to the matter under deliberation. The chair should discourage successive witnesses from repeating the same testimony over and over again. The commission also needs to show that it is interested in what the witnesses have to say.

**Preventing arguments.** The chair should prevent sharp exchanges from occurring between commission members and persons testifying and between commission members themselves. He or she should limit the dialogue between commission members and persons testifying to fact gathering that will contribute to the commission's decision-making ability. This is important to prevent a loss of the commission's objectivity and credibility.

**Understanding parliamentary procedure.** Robert's Rules will usually be used. This is crucial to the chair's ability to run an orderly meeting. He or she must be familiar with parliamentary procedure. The chair must understand motions and amendments to motions, the order in which business is conducted, topics that are and are not debatable, and so on.

**Tying things together.** This is the ability to take into account public testimony, commission deliberations, and the issue at hand, in guiding the commission toward a decision. It is based on the chair's ability to discern a position that a majority of the commission can support and that is fair to the public.

**Qualities of a Good Chair**

The chairman must be strong enough to make sure the meetings are run by the rules but fair enough to be above cutting people off before they have had their say or squelching arguments with which he does not agree. In other words, the chair's “gavel” should be wielded by someone who can use its power properly.

The ability of the chair to run a meeting is important if the commission is to get its work done. Commission members will expect the chair to display leadership skills and to run well-organized and purposeful meetings. A good chair will be:

**Tactful.** The chair must show tact with other members and the public. A rude or insulting chair will reflect poorly on the whole commission and will alienate other commissioners and members of the community.

**Decisive.** The chair may have to think and act quickly in overseeing the conduct of the commission's business. This may include summarizing positions, clarifying motions, and giving direction to staff based on the differing views of commission members.

**Respected.** A chair, whose judgment has been tested and found to be good, whose opinion is

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**The Role of Planning Staff**

- Administers the land use regulations
- Prepares staff reports and notices for meetings
- Researches planning, land use, and development issues
- Advises and assists the planning commission
- Educates and assists the public
- Knows and interprets laws and ordinances
- Conducts community project planning
- Negotiates, facilitates, and coordinates between agencies, developers and the public
- Enforces code and conditions of approval stipulated by the commission
- Provides continuity – policy, documents, and people
sought out, or who has support from diverse elements of the community has earned the respect of his or her peers. This can only help in conducting the commission’s business and enhancing its role in community decision-making.

Knowledgeable about the Issues. Of all members, the chair must be able to understand the business before the commission. Failure to understand an item which the commission is to act on can lead to confusion and result in poor decision-making. The chair needs to put in extra effort studying the agenda items and preparing for the meeting.

Quorum
The Planning Commission is made up of nine voting members and two alternates. The Articles of Association (located in the Appendix Section) explain the establishment rules of the commission. A quorum is the minimum number of commission members needed in order to conduct business. If all 11 members are present, the two alternates do not vote. There must be five members in attendance for a meeting to be held (quorum). When a quorum of five (5) members is present, the applicant must obtain at least a 3-2 vote for approval.

It is imperative that Planning Commission members notify the Planning Department well in advance when they know that they will be absent for meetings, such as vacations, or otherwise not able to attend a meeting. Applications before Planning Commission have had to meet legal requirements for processing and notification. Applicants and staff have spent hours working on projects and every effort should be made to make sure that an application is heard and that the applicant and the public receive a fair and complete review.
Chapter 2

Planning Commission Meetings

Types of Planning Commission Meetings

The Commission may use several different types of meetings in order to conduct its business. These include regular meetings, special meetings and work sessions.

Planning Commission meetings are held the first and third Thursday of every month and begin at 6 p.m. Dinner is provided at the meeting. The meetings are held at the Historic Courthouse at 522 Lincoln Ave., 3rd floor hearing room. You will be mailed a packet prior to the meeting which contains all of the items to be heard. You can also choose to view the packets on-line or you can pick it up at the Planning Department. These packets are completed the Wednesday or Thursday, of the week prior to the meeting.

Agenda

A typical meeting agenda is as follows:

I. Call to Order
   a. Roll call
   b. Approval of minutes
   c. Announcements
   d. Consent Agenda items

II. Public comment – This time is for comments from members of the public on items that are not being heard on the agenda. No action is taken, but comments are taken under review if needed. Planning Commission comments are not appropriate during public comment time.

III. Applications

IV. Planning Director update

V. Adjournment

General Application Review

I. Applicant presents application

II. Staff presents any updates, new information or overview

III. Planning Commission questions of the applicant and/or staff

IV. Public comments

V. Public comment closed

VI. Applicant’s response to public comment

VII. Staff response

VIII. Planning Commission additional questions of applicant if needed

IX. Round table comments. (This time is dedicated to comments and discussion from each Planning Commission member. They express their opinions and comments to members of the Planning Commission prior to a motion and which direction that they are planning to vote. This time can also be used to discuss proposed Conditions of Approval (COA’s) as presented in the staff report and suggested changes or additions.)

X. Motion

   A motion can be made by any member including alternate members.

XI. Vote

   If a member has a dissenting vote – the member will be asked to explain the reason for their vote.
Alternate members cannot vote if there are nine regular members in attendance. Alternate 1 would vote if one regular member is absent or ineligible and both alternates would vote if two regular members are absent or ineligible.

Meeting Hints and Process

- Implementing the Master Plan and enforcing the Zoning and Subdivision Regulations are always the main task of the Planning Commission.
- Review of an application may contain many different levels of presentation. Applicants and the public will present testimony and information which must be weighed in order to base a decision.
- Discussion should stay on the facts and not the presenters of the facts. Recommendations and decisions shall be based on fact and not on opinion or hearsay.
- Each proposal must be evaluated on its own merits, always remembering that each decision you make is part of a whole, the cumulative effect of all these discussions might be quite different.
- Do not get bogged down in details or side issues.
- Do not give opinions or judgments on complex technical matters, only on policy.
- If ‘experts’ are brought in by either side, the commission should not be afraid to make sure it is getting facts. Question the experts and the applicants.
- Do not bring up the pro’s and con’s of an item before all evidence is presented; the public will lose confidence in the Planning Commission if they think their minds are made up prior to round table discussions. Keep an open mind until the end of discussions and the motion.
- Throughout your decisions there is a need for consistency in order for planning to be effective. Consistency leads to predictability, a necessary quality in order for applicants to be able to produce information and plans that will meet the regulations and not waste the time of all parties involved.
- Basing decision on the Master Plan, Sub-Area Plans and criteria outlined in the Zoning and Subdivision Regulations will go a long way to ensure this consistency and predictability as well as making decisions legally defensible.
- Clearly define the major issues involved in each case and address them before making a recommendation.

Once all opinions have been given, a summation of these should be proposed in the form of a motion. The motion should be based on finding of facts.
Findings of fact

Findings are nothing more than a statement by the commission for the evidence and reasoning it used to arrive at a decision. Findings are important in helping the public and the applicant understand the Commission’s conclusion and reason for granting or denying the application. Findings shall be based on the regulations, plans and evidence and should be clear and concise. Findings based on the Routt County Master Plan and Zoning or Subdivision Regulations are suggested in the staff report. Planning Commission should use this as a tool in creating a motion. Findings of fact should be presented as part of the motion to support the motion whether the motion is for approval or denial.

A common reason that courts overrule commission decisions is that the commission failed to prepare findings to support their decision.

Motion

Along with the finding of facts, the motion should be clear in explaining the decision of the commission. Stating a motion places a matter before the commission for its consideration and permits debate to take place. Additional comments or adding supporting language to a motion can be suggested. Discussion can clarify conditions, suggest the addition or removal of conditions, and/or make amendments to conditions. If amendments or changes are proposed to a motion with a second, this can be done with a consensus of the commission. This should be clearly stated before the vote is taken.

A motion to table should clearly state why the application is being tabled and what additional information it needs for further review in order to make a decision. An application can be tabled to a specific hearing date or if it is uncertain how long it will take to get the additional information, the item can be tabled indefinitely.

A motion to deny should include findings to support the motion specifically setting forth the reasons why the application does not meet the standards of the Master Plan, Sub-Area plans, Zoning Regulations, or Subdivision Regulations. During discussion on the motion, members give their reasons for either supporting or not supporting the motion as stated. It can be important for commission members to give their reasons for voting ‘yes’ or ‘no’ on a motion. The reasons given for or against a given matter are needed to support the commission’s decision.

If a decision is appealed, the findings of fact and motion will support the Planning Commission’s decision in the appeal process.
Chapter 3

Decision Making

Types of Commission Decisions

Planning Commission decisions can be either legislative or quasi-judicial. Substantive due process (reasonableness of decision) rules apply to legislative decision making while procedural due process (fairness of the process) rules apply to quasi-judicial proceedings.

Legislative Decision

Legislative decisions are decisions that make or interpret policy. The decision may be broad ranging such as recommending the adoption of a comprehensive plan or very specific, such as recommending amendment to the Zoning and Subdivision Regulations. The key element of legislative decisions is that they apply equally (or are meant to apply equally) to everyone in the community, not just to a specific individual.

Quasi-Judicial Decision

Generally, quasi-judicial proceedings involve decisions that have a direct effect on the right and liability of a single person or, occasionally, a small group of identified persons. Quasi-judicial proceedings deal with matters in which a determination will be made on whether a person has shown that they have met all of the established requirements that give them a right to a permit or other entitlement. The commission must determine whether, from all the evidence presented, the required standards have been met.

If you are uncertain if an item is a legislative or quasi-judicial decision you should speak with the Planning Director. A partial list is included in the Appendix section.

Due Process

No person shall ...be deprived of life, liberty, or property without due process of law; ...” – Fifth Amendment of the US Constitution.

Generally, quasi-judicial proceedings must be conducted in accordance with procedural due process. That means adequate proper notice and an opportunity to be heard; a basic fairness in procedure, including some type of impartial decision maker. The application must be processed so that parties believe in the fairness of the process and be given a fair
hearing or an opportunity to be heard. An unfavorable decision perceived to be the result of an impartial consideration may be bearable, but an unfavorable decision tainted by even the appearance of partiality cannot be condoned.

**Ex Parte Contact**

Direct communication between a citizen and a commissioner is common for Planning Commissioners because of their visibility in the community and the nature of their work. Discussions with members of the public outside of the public forum can be a beneficial way to exchange information and help keep commissioners informed of residents’ attitudes. However, a distinction must be drawn between contact on general or legislative matters and contact on quasi-judicial matters that are currently before the commission or scheduled to come before the commission. While such contact may be permissible on a legislative matter, it is not permissible in a quasi-judicial proceeding.

*Ex parte* is a Latin term that means “from or on one side only.” It is the label for private communication between an interested party in a quasi-judicial proceeding and a member of the body that is hearing the matter. The essential feature of an *ex parte* contact is that someone with an interest in a quasi-judicial decision before the commission (an applicant, representative of an applicant or opponent of the application, an adjacent property owner, or member of the public) is attempting to influence a decision outside of the public forum. Unless corrected, *ex parte* communication can result in a violation of procedural due process.

**What to Do When It Occurs**

*Ex parte* contact can occur in a number of ways, and many are quite innocent and unintentional. Telephone calls, informal meetings or even a casual encounter on the street can present the opportunity for citizens to express facts or an opinion about a quasi-judicial matter to a commission member. As soon as a commissioner senses that he or she is about to be involved in an *ex parte* contact, he or she should stop the citizen and explain that commissioners are not permitted to discuss anything about the matter except at the hearing and recommend that the citizen submit comments in writing or attend the meeting.

**Correcting Ex parte Contacts**

If you have been involved in an *ex parte* contact under any circumstance, you may be able to overcome the fairness problem by disclosing the contact and the substance of what was related to you at the beginning of the application review. This will get the evidence you received on the record and out into the public realm. Then, you should state whether you believe that the contact has swayed your view and whether you can give an unbiased view to all of the evidence presented. (Also see Conflict of Interest below)

**Site Visits**

Occasionally, a site visit will be scheduled by the Planning Department for the Commissioners to view an area subject to an application. These visits can be beneficial to the commission to help make a decision, but should be handled carefully, particularly if the applicant or an opponent is present. All discussion during the site visit should be heard by commissioners at the same time and no side-bar discussion should occur. Site visits are
usually scheduled the same day as the hearing so that all members in attendance will also hear the application at the meeting.

Individual site visits are discouraged, especially if you will encounter an individual involved in the application.

A ‘drive by’ the site is acceptable to look at the area. You can stop to view the site, but must avoid any discussions with the public, petitioner or owner of the property while in the area. Please keep in mind that even though you are involved in the review of this site, accessing the site without permission is not appropriate.

**Conflict of Interest**

Impartiality may be lost by a conflict of interest. The Appendix has additional information with regard to conflict of interest. Commission members can determine a possible conflict by the following questions:

1. Do you have any financial interest in this petition or will you benefit from any approval of this petition in any way?
2. Does a relative or you stand to gain from this petition in any way, financially, or is a relative an adjacent property owner to the property being petitioned?
3. Do you have strong outside influences that may affect your decision?
4. Can you make a strong impartial decision on this petition?
5. Based upon these questions, does Planning Commission see an appearance of impropriety?

If you feel that you might have a conflict of interest, your concerns should be discussed prior to the meeting with the Planning Director. If you need to step down from a meeting, Planning staff will need time to determine if a quorum will be in attendance. If it is determined that you probably do not have a conflict of interest you still must bring up the subject to the commission prior to the hearing so that Planning Commission is aware of the possible conflict and so that they can make a determination if there might be an appearance of impropriety.

If you have a conflict of interest, you cannot participate in the decision or the meeting. The commission member with the conflict should vacate his or her seat and leave the meeting during the discussion. This reduces the possibility and appearance that the commissioner’s presence is affecting or influencing the decision of the Planning Commission.
Appendix

Legislative or Quasi-judicial Information

Articles of Association of the Routt County Planning Commission

Conflict of Interest Materials and Guidance documents

Conflict of Interest, Code of Ethics, Rules of Conduct
Legislative or Quasi-Judicial Decisions

Following is a list of Routt County permitted and review processes that are reviewed by the Planning Commission. In order to avoid any conflict of interest, but to still be an effective and informed member of the planning commission, the following list should help you determine what level of discussions can occur outside of the meeting room. If you have any doubts or questions if there could be a conflict of interest you should contact the Planning Director.

Conditional Use Permit – Quasi-Judicial NOTE: CUP’s are heard by Planning Commission for a final hearing. They are not an advisory application to the Board of Commissioners.
Special Use Permit – Quasi-Judicial
Site Plan Review – Quasi-Judicial
Conceptual PUD – Quasi-Judicial
Final PUD – Quasi-Judicial
Zone Change – Quasi-Judicial
LPS – Major and Non-Contiguous Parcel – Quasi-Judicial
Sketch Subdivision – Quasi-Judicial
Preliminary Subdivision – Quasi-Judicial
Final Subdivision – Quasi-Judicial

Community Plan reviews - Legislative
Master Plan Amendment review – Legislative
Zoning and Subdivision Regulation Amendment reviews - Legislative
Vacation of Right of Way or Public Utility Easement Legislative
A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF
ROUTT COUNTY, COLORADO, ADOPTING AMENDED AND RESTATED
ARTICLES OF ASSOCIATION OF THE ROUTT COUNTY PLANNING
COMMISSION

WHEREAS, pursuant to C.R.S. § 30-28-103 the Board of County Commissioners is
authorized to appoint a commission of not less than three and not more than nine members, in
addition to associate or "alternate" members, to be known as the county planning commission;
and

WHEREAS, C.R.S. § 30-28-105 provides that a group of municipalities together with the
board of county commissioners of any county in which such municipalities are located may
cooperate in the creation of a regional planning commission; and

WHEREAS, C.R.S. § 30-28-105(9) provides that a regional planning commission may,
to the extent provided for in a resolution of the board of county commissioners, perform the
functions of a county planning commission; and

WHEREAS, on April 1, 1973, the Routt County Regional Planning Commission (the
"Regional Planning Commission") was established pursuant to Articles of Association (the
"Original Articles"), recorded in Book 375 at Page 466 of the official records of the Routt
County Clerk and Recorder, approved by Routt County, the City of Steamboat Springs, the
Town of Hayden, the Town of Oak Creek, and the Town of Yampa (the "participating
governments"); and

WHEREAS, since its creation the Regional Planning Commission has performed all
functions of a county planning commission for Routt County pursuant to resolutions of the Routt
County Board of County Commissioners (the "Board"), and

WHEREAS, the Board intends to withdraw from membership in the Regional Planning
Commission and adopt new articles of association (the "Amended Articles") for the Routt
County Planning Commission, so that the functions and duties of a county planning commission
will be performed by the Routt County Planning Commission, as constituted under the Amended
Articles, rather than by the Regional Planning Commission as constituted under the Original
Articles; and

WHEREAS, on the 24th day of April, 2001, the Board, by motion and vote at a regularly
scheduled meeting, approved the withdrawal of Routt County from the membership of the
Regional Planning Commission; and
WHEREAS, on the 26th day of April, 2001, the Board delivered written notice of withdrawal from the Regional Planning Commission to the Chairman of the Regional Planning Commission; and

WHEREAS, pursuant to Article VII, Section 1 of the Original Articles, the effective date of the withdrawal from the Regional Planning Commission will be 90 days after delivery of such written notice of withdrawal, or in this case, July 25, 2001; and

WHEREAS, the adoption of Amended and Restated Articles of Association for the Routt County Planning Commission was considered by the Board at a regularly scheduled and duly noticed public meeting on May 1, 2001, and was approved after motion, second, and unanimous vote of the Board.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Routt County, Colorado, that:

The Amended and Restated Articles of Association of the Routt County Planning Commission, in the form attached to this Resolution, are hereby adopted and shall go into effect on the 25th day of July, 2001, which day is ninety (90) days after delivery to the Regional Planning Commission Chairman of the written notice of withdrawal from the Routt County Regional Planning Commission.

ADOPTED this ___ day of May, 2001.

BY THE BOARD OF COUNTY COMMISSIONERS OF ROUTT COUNTY, COLORADO.

Nancy J. Stahoviak, Chairman

Vote: Daniel R. Ellison (Aye) (Nay) ABSENT
Douglas B. Monger (Aye) (Nay)
Nancy J. Stahoviak (Aye) (Nay)

ATTEST:

Kay Weiland, Routt County Clerk and Recorder

549525
AMENDED AND RESTATED ARTICLES OF ASSOCIATION

OF THE

 ROUTT COUNTY PLANNING COMMISSION

ARTICLE I

1. Organization

These Amended Articles of Association shall regulate and govern the affairs of the Routt County Planning Commission (the "Planning Commission") which shall be and perform all functions, powers, and duties of a county planning commission pursuant to Part 1, Article 28, Title 30 of the Colorado Revised Statutes, as amended, and pursuant to any other law or regulation. The Planning Commission shall not be, and shall have no powers or duties of, a regional planning commission under Part 1, Article 28, Title 30 of the Colorado Revised Statutes, as amended.

2. Prior Articles

The functions, powers, and duties of a county planning commission have previously been served in Routt County by the Routt County Regional Planning Commission, established pursuant to the Articles of Association of the Routt County Regional Planning Commission, effective April 1, 1973 recorded in Book 375 at Page 466 of the official records of the Routt County Clerk and Recorder (the "Original Articles"). Routt County has withdrawn from participation in the Routt County Regional Planning Commission and is no longer subject to the Original Articles. These Amended Articles of Association shall, from their effective date forward, supplant any and all prior Articles, including specifically the Original Articles.

ARTICLE II

1. Appointment of Members

The Planning Commission shall consist of no more than nine (9) regular members and two (2) associate or "alternate" members to be appointed by the Board of County Commissioners of Routt County (the "Board") as follows:

Five (5) regular members to be appointed by the Board, one (1) resident from each District shown on the map attached hereto as Exhibit A and one (1) member at-large,
Four (4) regular members to be appointed by the Board after each municipality in Routt County, specifically the City of Steamboat Springs, the Town of Hayden, the Town of Oak Creek, and the Town of Yampa, has had an opportunity to nominate one such member, provided that the Board shall have the ultimate discretion to make such appointments and shall not be bound to appoint any person nominated by any such municipality.

Two (2) alternate members, at-large, appointed by the Board.

2. Terms of Members

The term of each member shall be for three (3) years, and until a successor has been appointed. Current appointments to Planning Commission as of the effective date of these Amended Articles are hereby ratified and the terms of the various positions on the Planning Commission as of the effective date of these Amended Articles shall be as follows, with subsequent terms following in three-year increments:

<table>
<thead>
<tr>
<th>No. of Members</th>
<th>Position</th>
<th>Term Expires</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Oak Creek Nomination</td>
<td>March 31, 2002</td>
</tr>
<tr>
<td>1</td>
<td>Steamboat Springs Nomination</td>
<td>March 31, 2002</td>
</tr>
<tr>
<td>1</td>
<td>Routt County--District 4</td>
<td>March 31, 2002</td>
</tr>
<tr>
<td>1</td>
<td>Routt County--Alternate 2</td>
<td>March 31, 2002</td>
</tr>
<tr>
<td>1</td>
<td>Hayden Nomination</td>
<td>March 31, 2003</td>
</tr>
<tr>
<td>1</td>
<td>Routt County--District 1</td>
<td>March 31, 2003</td>
</tr>
<tr>
<td>1</td>
<td>Routt County--District 2</td>
<td>March 31, 2003</td>
</tr>
<tr>
<td>1</td>
<td>Routt County--District 3</td>
<td>March 31, 2003</td>
</tr>
<tr>
<td>1</td>
<td>Yampa Nomination</td>
<td>March 31, 2004</td>
</tr>
<tr>
<td>1</td>
<td>Routt County--At-Large</td>
<td>March 31, 2004</td>
</tr>
<tr>
<td>1</td>
<td>Routt County--Alternate 1</td>
<td>March 31, 2004</td>
</tr>
</tbody>
</table>

3. Residency of Members

a. All members of the Planning Commission shall be residents of Routt County, Colorado. Any Member who moves out of the County shall give notice to the Planning Commission, shall no longer be a Member of Planning Commission, and shall be replaced pursuant to these Articles.

b. At-Large and Alternate Members shall have no other residency requirement.

c. Members appointed from Districts 1 through 4, as depicted on the Map attached as Exhibit A, shall be residents of their respective Districts, which include the
incorporated municipalities within such Districts. If a District Member moves out of the District such Member shall give notice to the Planning Commission. If a District Member remains a County Resident but moves out of the District within six (6) months of the end of his or her term, then such Member may serve out the remainder of such term, but shall not be renewed for another term in that District. If a District Member remains a County Resident but moves out of the District more than six (6) months before the end of his or her term, then such Member shall be removed from the Planning Commission and replaced by the Board with a new Member who is a current resident of such District.

d. Members appointed from nominations by the municipalities may be residents of either the respective municipality or the District surrounding such municipality, as depicted on the Map attached as Exhibit A. (1) Members who are residents of the District shall give notice to the Planning Commission and the municipality when they move out of the District. Such Members may either serve their terms or be replaced in accordance with the same rules established in Section 3.c., above, except that the municipality may nominate the replacement. (2) Members who are residents of the municipality shall give notice to the Planning Commission and the municipality when they move out of the municipality. The municipality shall have 30 days following such notice to determine whether it desires to nominate a different person who is a resident of such municipality as a Member. If so, the municipality shall have 90 days to nominate for appointment another person who is a resident of the municipality to serve the remainder of the term.

e. Planning Commission Members removed and replaced due to a change in their residency may be reappointed to vacant positions on the Planning Commission for which they qualify by their new residency.

4. Removal for Non-Performance or Misconduct

The Board may remove a member at any time for excessive absenteeism or the non-performance or misconduct of the member while serving on the Planning Commission.

5. Vacancies

Whenever a vacancy occurs in any position on the Planning Commission, whether by completion of a term or by resignation or other termination during a term, the Board shall appoint a replacement to fill such vacancy. For a vacancy in a position nominated by a municipality, the Planning Administrator shall notify the appropriate municipality of such vacancy, and the municipality shall have 90 days in which to nominate a candidate to fill such vacancy, unless the opportunity to nominate such member has been waived in writing by the municipality. The Board may, in its own discretion, appoint the candidate nominated by the municipality, provided such nomination occurred within the above time period, or any other person meeting the applicable residency requirements of the position. If a municipality fails to nominate a candidate for the Planning Commission within such
time period, then the Board may appoint any resident of Routt County to serve in that position. Such appointment by the Board shall not preclude the opportunity to make subsequent nominations by such municipality pursuant to these Amended Articles when there is a future vacancy in the position.

ARTICLE III

1. Officers

The Planning Commission shall elect from its regular members a Chairman, a Vice Chairman, and any other officers it may deem necessary. The Chairman and Vice Chairman shall hold office for a period of one (1) year with eligibility for re-election.

2. Staff

The Board shall appoint a Planning Administrator, and such other staff as it deems necessary to provide support to the Planning Commission. Said Planning Administrator and other staff shall be employees of the Board.

3. Alternate Members

Alternate members shall attend Planning Commission meetings like any other member and may participate in the discussion of any matter before the Planning Commission, but they may not vote unless fewer than the nine (9) regular members are present at the meeting or eligible to vote on a matter. In the case that there is one regular member absent or ineligible, then Alternate 1, if he or she is present, shall sit as a regular member and may vote; if Alternate 1 is absent, then Alternate 2 may vote, if present. In the case that there are two or more regular members absent or ineligible, then both alternate members, if they are present, shall sit as regular members and may vote.

ARTICLE IV

1. Meetings

The Planning Commission shall meet at least once each month and at such other times as may be decided by the Planning Commission or as the Chairman may direct, pursuant to the Rules of Order of the Planning Commission.

2. Quorum

A quorum shall consist of not less than five regular and alternate members of the Planning Commission present at a meeting and eligible to vote. No action or opinion
shall be rendered by the Planning Commission at any meeting unless a quorum is present, except that fewer than a quorum present for any meeting or eligible to vote on any matter on the agenda may adjourn any meeting or table any matter to a date certain.

3. **Vote**

A majority of votes cast at any meeting shall be required to take any action under consideration by, or adopt any matter before, the Planning Commission. All votes shall be cast in person by the voting member.

4. **Conduct of Business and Conduct of Members**

The business of the Planning Commission and the conduct of individual members shall be subject to these Amended Articles, any Rules of Order adopted by the Planning Commission and consistent with these Amended Articles, and the requirements of state law, specifically C.R.S. § 24-6-401 et seq. (the Colorado Open Meetings Law) and C.R.S. § 24-18-101 et seq. (regarding standards of conduct and conflict of interest of public officers).

**ARTICLE V**

1. **Statutory Powers and Duties**

The Planning Commission shall have the power to perform all duties and functions of a county planning commission authorized by Part 1, Article 28, Title 30 of the Colorado Revised Statutes, or by any other law or regulation, as amended. The Planning Commission shall not have the powers or duties of a regional planning commission.

2. **Appropriations**

The Routt County Planning Administrator on behalf of the Planning Commission shall submit annually to the Board of County Commissioners an estimate of the budget requested for the operation of the Planning Commission during the ensuing calendar year. The Board of County Commissioners shall appropriate for the operation of the Planning Commission such monies under such conditions as it may, at its sole discretion, deem necessary.

3. **Compensation and Expenses**

Subject to Art. V, Section 2, above, members of the Planning Commission shall receive such compensation as may be fixed by the Board and the Board shall provide for reimbursement of the members of Planning Commission for authorized expenses actually incurred.

5 of 6
ARTICLE VI

1. Amendment of Amended Articles

The Board may amend these Amended Articles at any time by resolution of the Board.

2. Dissolution of Planning Commission

The Planning Commission may be dissolved at any time by resolution of the Board.

These Amended Articles are approved by the Board pursuant to Resolution No. 2001-P-035 this 15th day of May, 2001, to be effective as of July 25, 2001.

ROUXT COUNTY
BOARD OF COUNTY COMMISSIONERS

By:  Nancy J. Stahoviak, Chairman

ATTEST:

Kay Weinland, Routt County Clerk
**Conflict of Interest**

A conflict of interest arises when there is a potential for bias or influence in the performance of duties due to personal, financial, or other interests. It is important to identify and manage conflicts of interest to ensure impartiality and integrity in decision-making processes.

### Table 1

<table>
<thead>
<tr>
<th>Conflict of Interest</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Election to other public office</td>
<td></td>
</tr>
<tr>
<td>Holding appointment in other public commissions</td>
<td></td>
</tr>
<tr>
<td>Special standing in financial institutions</td>
<td></td>
</tr>
<tr>
<td>Holding personal accounts, commercial accounts, or lines of business</td>
<td></td>
</tr>
<tr>
<td>Serving as officer or board member of a nonprofit organization</td>
<td></td>
</tr>
<tr>
<td>Holding membership in or serving as officer of a professional or trade association</td>
<td></td>
</tr>
</tbody>
</table>

**Potential Conflict of Interest**

In the context of decision-making, a potential conflict of interest exists when an individual's personal or professional interests could influence their decisions. It is crucial to disclose such conflicts to ensure transparency and maintain the integrity of the decision-making process.


A member in doubt as to the existence of a conflict of interest should consult the legal counsel of the board of directors before proceeding with the discussion of the matter. If the legal counsel of the board of directors indicates that a conflict of interest exists, the member should also consult the legal counsel of the board of directors before proceeding with the discussion of the matter.

Recommendation

A member wish to recuse from the matter. The member should indicate this to the chair at the beginning of the meeting.

Potential conflicts of interest should be discussed in advance of the meeting. The chair should ensure that any member who has a potential conflict of interest recuses from the discussion of the matter.

A conflict of interest is a situation in which a member has a personal interest that could affect the member's objectivity in the discharge of the member's duties. A conflict of interest may arise from a personal or financial relationship with another person or entity. A conflict of interest may also arise from a personal or financial relationship with another organization.

Table 2

<table>
<thead>
<tr>
<th>Relationship Type</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family Relationship</td>
<td>Spouse, sibling</td>
</tr>
<tr>
<td>Legal Relationship</td>
<td>Attorney, accountant</td>
</tr>
<tr>
<td>Business Relationship</td>
<td>Competitor, supplier</td>
</tr>
</tbody>
</table>

References


Compliance with the provisions of this policy is mandatory for all members of the board of directors. The chair of the board of directors is responsible for ensuring compliance with this policy.

Revised: [Date]

[Review and Approval Signatures]
5. Use and Abuse of the Commission (Page 149)
4. Use and Usefulness of the Shield (Page 143)
3. Conflict of Office (Page 77)
2. Reasonable, Nonarbitrary, and Noncapricious Decision
1. Character and Intention of Applicant (Page 29)

The reader may wish to review the related topics.

Related Topics

Testimony of other parties.

Participation — may influence deliberations of the commission members who have reached a decision. The presence of a member — even though no longer a member of the chamber until the decision is reached — may influence the deliberations. The withdrawal from the chamber until the decision is reached.

Exspecious finds that the issue is so sensitive that if she should withdraw from the chamber until the decision is reached.

When a member who has decided the decision of interest is still a member, the decision is reached.

5. When a member who has decided the issue of interest.

Shall I respect the issue.

Having decided the issue of interest, the member should be consulted. The conflict does not preclude commission deliberations. Once the conflict is resolved, the member should be consulted on the issue of interest. The conflict should be resolved to the satisfaction of the member.

Further participation of the member in the decision of the issue of interest.

Shall I respect the decision of the issue of interest.

A member who has decided the issue of interest.

Formal Aspect of Decision-Making

However, the member who has decided the decision of interest, if he should not be seated.
Dealing with Bias and Conflicts of Interest

By Mark S. Dennison

Zoning officials must be mindful of ethical dilemmas and prevent improper influences from swaying their decision making. A landowner applying for variances, special use permits, rezonings, and other local zoning approvals is entitled to a fair and impartial decision by the local zoning body. If an official has a personal bias or conflict of interest regarding any aspect of the application, he should remove himself from the proceedings to ensure a decision free from any taint of bias.

This issue of Zoning News examines various types of ethical dilemmas faced by local zoning and planning officials and offers guidance on how to handle potential conflicts and improper influences during the decision-making process.

Bias and Conflicts of Interest

Although zoning ordinances and state enabling legislation provide standards and criteria for deciding variances and other types of applications, zoning decisions do not always turn on straightforward assessments of objective factors. Community pressures and outside interests often infiltrate the process and threaten an applicant's right to an impartial decision. Unfortunately, the ad hoc, discretionary nature of many zoning decisions exposes them to potential abuse and unfairness.

Zoning officials are susceptible to community pressures, political influences, and personal bias because of the localized nature of zoning regulation. Zoning officials are generally appointed because of their close contact with the community, understanding of community needs, and interest in promoting the public welfare. But an official's close association with the community increases the chance of bias or conflict of interest arising in regard to a particular zoning decision.

Quasi-Judicial vs. Quasi-Legislative Decisions

The distinction between quasi-judicial and quasi-legislative zoning actions can be especially important in challenges alleging zoning bias. Some courts will accord substantial deference to decisions labeled quasi-legislative, declining to question the motives for the zoning body's decision, notwithstanding the possible presence of bias or conflict of interest.

For purposes of reviewing zoning decisions, this distinction arises predominantly in the context of rezonings. Courts universally agree that decisions on variances and special use permits, building permits, and the like are quasi-judiciary in nature and, therefore, subject to judicial review for evidence of zoning bias. On the other hand, most courts consider rezonings to be legislative in nature. The rezoning is presumed to be as valid as the enactment of the original ordinance, and the burden is on the challenger to overcome that presumption. The court will not invalidate the grant or denial of a rezoning on grounds of bias or conflict of interest—or for any other reason—unless the rezoning is clearly shown to be "arbitrary and capricious," "an abuse of discretion," "totally lacking in relationship to the public health, safety, and welfare," or some variation on the highly deferential standard applied to legislative acts.

This legislative label may not settle the issue, however, because some courts will look beyond the legislative label to evaluate the type of rezoning action taken by the zoning body. [See, e.g., North Point Breeze Coalition v. Pittsburgh, 60 Pa. Commw. 298, 431 A.2d 398 (1981) (when a governing body applies specific criteria to a single applicant and a single piece of property, the governing body is acting in its adjudicative capacity and not its legislative capacity).] A minority of jurisdictions including Oregon, Washington, and Idaho make a distinction between comprehensive rezonings and piecemeal rezonings that affect single or small parcels of land. These courts characterize small parcel rezonings as quasi-judicial in nature. [See Fauno v. Board of County Commissioners, 264 Ore. 574, 507 P.2d 23 (1973).]

Impartiality Standards

The law governing bias and conflicts of interest in zoning decision making has been refined through ongoing judicial analysis. A finding of zoning bias depends on individual facts and circumstances. If the evidence shows that a zoning decision was tainted, the usual remedy is for the court to invalidate the decision because the biased decision maker should have disqualified himself from participation. Courts have said that when a zoning official must disqualify himself because of bias or a conflict of interest, the disqualification is absolute and cannot be waived. [See, e.g., McVey v. Board of Adjustment of the Township of Montclair, 213 N.J. Super. 109, 516 A.2d 634 (App. Div. 1986).]
A biased decision maker’s participation in the actual vote on a zoning application is not necessary for invalidation. A biased zoning official may disqualify herself from voting, and the court will still invalidate the decision if it finds that she participated in the proceedings or otherwise influenced the zoning body’s voting members. See, for example, Szoke v. Zoning Board of Adjustment of the Borough of Monmouth Beach, 260 N.J. Super. 341, 616 A.2d 942 (App. Div. 1992); Manoski v. Blaine County, 112 Idaho 697, 735 P.2d 1008 (1987).

Likewise, the decision would be invalidated if the biased official voted, even though the zoning action would carry without the necessity of counting that vote. Further, courts may invalidate a zoning decision even when the biased official is only a member of an advisory board that makes findings and recommendations to the zoning body that ultimately makes the decision. See Diell v. City of Bremerton, 80 Wash. 2d 518, 495 P.2d 1358 (1972) (biased planning board member participated in recommendation to city council concerning zoning change).

Courts have said that the self-interest of one official infects the action of the other members of the zoning body regardless of their disinterestedness. One court denounced a township supervisor’s appearance before the zoning board over which he had appointment powers as an imposition of duties on other members of the decision-making body and a violation of basic due process. The supervisor appeared on behalf of a variance applicant. Abrahamson v. Wendell, 76 Mich. App. 278, 256 N.W.2d 613 (1977).

Courts have developed a number of approaches and standards for evaluating problems of bias and conflicts in zoning decisions. These approaches vary by state and take particular factual circumstances into account. Courts have articulated several tests or standards for addressing zoning bias. Many courts may use a combination or variation of more than one approach.

**Actual Bias.** The actual bias standard is the most stringent test and distinguishes between situations where a clear benefit will be conferred on a zoning decision maker and instances where only a potential for benefit exists. Courts applying this approach require clear and tangible evidence of actual bias as opposed to the mere appearance of impropriety or the potential for partiality.

**Substantial Interest or Temptation.** Under this standard, an aggrieved landowner must show more than a mere appearance of unfairness but need not prove the existence of “actual” bias. This standard is premised on the need to remove public officials from situations where a potential conflict of interest would have the capacity to taint or improperly influence an official’s decision. Under this test, direct and substantial interests provide grounds for disqualifying an official from participation in a zoning decision, whereas indirect or remote interests do not. Thus, the focus centers on the probability that particular interests may affect the ultimate outcome of a zoning decision.

**Appearance of Unfairness.** Some courts, in weighing evidence of potential bias, will disqualify an official and invalidate the zoning body’s decisions if a mere appearance of unfairness exists. Courts using this lesser standard, most notably those in the state of Washington, emphasize the need for public perceptions of fairness and confidence in the zoning process.

In virtually every zoning bias case, the courts will discuss the importance of the appearance of fairness in zoning decisions. Most courts will not, however, rely on it as a separate standard and will not hold that an appearance of unfairness alone suffices to invalidate a zoning decision. Instead, they will consider the appearance of fairness in combination with evidence of “actual” bias or “substantial interest or temptation.” In this sense, threat to public confidence in the zoning process is viewed as coterminous with actual or potential conflicts and operates as an additional rationale for regulating bias.

### Types of Bias or Conflict of Interest

In applying their various approaches to determining bias and conflicts of interest in zoning decisions, the courts will review evidence of several relevant factors. The various types of zoning bias and conflicts of interest can be grouped into fairly distinct categories, one or more of which determines every zoning bias case.

**Financial Influences.** Financial interests represent the most prevalent type of conflict. When zoning decision makers stand to benefit financially from ruling in a certain way on a zoning application, the zoning official’s failure to disqualify himself from participating in the decision clearly arouses an appearance of unfairness and may be evidence of actual bias or “substantial temptation,” which may provide sufficient justification for the court to invalidate the zoning decision. Zoning decisions tainted by financial influences especially undermine public confidence in the process because this type of bias creates a strong impression of local government corruption and dealmaking.

Courts have invalidated zoning decisions both in cases where a local official actually benefited and in situations where the decision maker could potentially benefit. Zoning decisions have been struck down when a zoning official stood to gain financially as a neighboring landowner, as an employee, as a business associate of an affected landowner, or as the seller or purchaser of property impacted by the zoning decision. The most obvious type of financial conflict arises when the zoning official’s property will be affected financially by a proposed zoning (c.

**Associational Interests.** This type of bias arises in situations where a zoning official’s impartiality may be compromised because she has a personal or business relationship with

### State Zoning Bias Statutes

**State Laws Regulating Zoning Conflicts of Interest**

Ala. Code § 11-43-54 (prohibits councilmen from deciding issues where special financial interest exists).

Ala. Code § 36-25 (code of ethics for all governmental officials and employees).

Alaska Stat. § 29.20, 010 (prohibits having a “substantial financial interest”).

Ariz. Rev. Stat. Ann. § 11-222 (member of board of county supervisors shall not vote upon any measure in which he, any member of his family, or his partner is pecuniarily interested).


Conn. Gen. Stat. Ann. § 8-11 (prohibits participating when there is a direct or indirect, personal or financial interest).


Ga. Code Ann. § 36-30-6 (illegal for a council member to vote on any matter in which he/she is personally interested).

Ga. Code Ann. § 69-204 (prohibits participation when it concerns a matter "in which [the decision maker is] personally interested").

Mark Deming is an attorney and author who practices environmental, land-use, and zoning law in Ridgewood, New Jersey.
someone who will be affected by the decision. Although this relationship may not involve a financial conflict of interest, courts recognize that the associational interest is just as improperly bias the zoning official's decision.

Although the evidence is generally circumstantial that a zoning official's familial, business, or other relationship actually has caused a biased decision, an appearance of unfairness is usually evident. Courts applying this standard will invalidate decisions where an associational interest raises the specter of impropriety.

As with other types of potential conflicts of interest, the courts must weigh the evidence to determine whether the associational conflict is great enough to justify invalidating the zoning decision. They will generally examine the nature of both the association and the underlying interest to determine whether it warrants invalidation. Generally, the underlying interest has a greater impact on the court's determination of the issue of impartiality, but a close personal relationship may indicate just as strong a propensity toward bias.

Close family relationships are usually subject to greater judicial scrutiny. More distant familial relationships are generally tolerated, although the nature of the underlying interest may justify invalidating the zoning decision.

The potential for bias also may exist because of a zoning official's relationship to various community organizations, although the nature of the underlying interest is usually the determining factor. For instance, courts have found that mere membership in a church that has an interest in proceedings before the zoning body is not enough to warrant invalidating a zoning decision without evidence of actual bias.

Prejudice and Bias. This category is generally based on statements made by a zoning official that reflect a prejudgment of the merits of a particular zoning application. If the landowner can prove that the zoning decision maker was somehow predisposed to decide his application in a certain way, a court may choose to invalidate the decision. However, a zoning official's particular political view or general opinion on a given issue will generally not suffice to show bias.

Courts recognize that public officials have opinions like everyone else and inevitably hold certain political views related to their public office. In fact, zoning officials are typically chosen to serve in their official capacity because they are expected to represent certain views about local land-use planning and development. For instance, a zoning official may have campaigned for office on a pro- or antidevelopment stance. The courts tolerate this type of opinion because it is part of the political process. Moreover, official opinions concerning land development generally represent community values and preferences that may implicate important public welfare concerns.

Only when the opinion rises to a level of personal or self-interest or shows prejudgment of a specific situation is the right to an impartial decision violated. This might occur if a zoning official made statements prior to or outside of the ordinary decision-making process that indicated a strong presentiment about the decision. Whether a particular statement would be strong enough evidence of bias is a fact-based determination for the courts. In one case, a Rhode Island court found sufficient evidence of bias when a zoning board member told opponents of a variance application prior to the hearing that "we are going to shove it down your throat." ([Barbara Realty Co. v. Zoning Board, 128 A.2d 342, 343 (R.I. 1957)].)

Ex Parte Contacts. Proof of ex parte contacts may also show that a zoning decision was tainted by bias, although the courts may tolerate this as a part of the political process. Ex parte contacts—discussions of a topic outside official proceedings—frequently occur through lobbying efforts by various interest groups seeking to influence the decisions of public officials. In the context of quasi-legislative decisions, such as rezonings, the courts are especially reluctant to scrutinize ex parte lobbying efforts because of the separation of powers and First Amendment rights to influence the political process. However, when ex parte contacts are present in the context of quasi-judicial zoning decisions, such as variances and special use permits, courts will be more receptive to challenges on grounds of zoning bias.

Idaho Code § 67-6501 (prohibits participation by members of governing boards or committees in matters in which there is an economic interest by self or by relations).
Idaho Code § 67-6506 (regulates the economic interest of members of the governing board, their relatives, employer, and employees).
Ind. Code Ann. §§ 36-7-4-223, 36-7-6-909 (regulating planning commission and board of adjustment conflicts).
Md. Ann. Code art. 40A, § 3-101 (prohibits public officials from participating in matters in which they have a conflict of interest).
Mo. Ann. Stat. § 105.462 (prohibits participation by member where decision may result in direct financial gain or loss to him).
Mont. Code Ann. § 2-2-125(b) (prohibits an officer or employee of a local government from participating in official acts in which he has a direct and substantial financial interest).

N.M. Stat. Ann. § 3-10-5 (any member of a governing board having any possible financial interest in any policy or decision is required to disclose matters).
N.Y. Gen. Mun. Law § 800-809 (prohibiting conflicts of interest of municipal officers and employees).
Ore. Rev. Stat. § 244.120(1)(a) (requiring elected public officials other than legislators to announce potential conflicts prior to acting thereon).
R.I. Gen. Laws § 36-14-4 (prohibits participation when there is a "substantial conflict of interest").
S.C. Code Ann. § 8-13-410 (no municipal official or employee shall use his/her position for financial gain).
Wis. Stat. Ann. § 19.46 (no public official shall take official action on any matter in which he/she has a substantial financial interest).
Courts that apply the "appearance of unfairness" standard of impartiality are the most likely to consider ex parte contacts as evidence of partiality in zoning decisions. In one case, a Washington court declared that ex parte communications, however innocent they might be, . . . tend to create suspicion, generate misinterpretation, and cast a pall of partiality, impropriety, conflict of interest, or prejudgment over the proceedings to which they relate. . . . [Chrobuck v. Snohomish County, 78 Wash. 2d 858, 480 P.2d 489 (1971).]

**State Conflict-of-Interest Statutes**

A few state statutes specifically regulate bias and conflicts of interest in zoning decisions. Three states—Indiana, New Jersey, and New Hampshire—have statutes that prohibit members of a planning commission or zoning board of adjustment from participating in hearings in which they have a direct or indirect substantial interest. These statutes prohibit all members of these bodies from participating in any hearing or decision in which they have either a direct or indirect personal or financial interest.

Several other states have general governmental ethics and conflict-of-interest statutes that provide a basis for regulating various types of bias and conflicts by public officials. At least 19 states have statutes that prohibit the participation of local officials in decisions in which they or a particular associate have a financial interest. Relatively few cases have been decided under these statutes, however, so the precise scope of their application in the context of zoning bias is uncertain.

**In the Public Interest**

Zoning officials should make every conceivable effort to protect the integrity of the zoning and land-use planning process through impartial decision making. Biased decisions not only undermine public confidence in the local zoning body but are more susceptible to unwanted and costly court challenges.

**Big Box Retail in the Big Apple?**

The New York City planning department wants to give big retailers the key to the city—and much of the small business community is preparing to change the lock if it does. Seeking to reverse the city's significant decline in retail sales and employment, the department is proposing to change the zoning of manufacturing and industrial districts to encourage specialized discount retailers and warehouse stores. The 20,000 acres targeted include all the land in the local zoning body in every borough but Manhattan.

Current zoning allows only 10,000 square feet for food, department, and clothing stores and an array of other retail uses within areas zoned for light and heavy manufacturing. Large retail stores seeking to locate in these districts must apply for a special permit, which can take years. The proposal would allow any retail development up to 100,000 square feet to be permitted as of right on wide streets. Others would need a special permit from the planning commission. The planning department argues that making it easier for discount stores to locate in abandoned industrial areas will promote investment in new retail developments, generate employment opportunities, and increase sales and property tax revenues.

But many small storekeepers oppose the plan, claiming it creates an unfair playing field. Should Mayor Rudolph Giuliani support it, the city planning commission would then review it. A state-mandated environmental impact study and approval by both the borough presidents and community boards would follow before it could go to the city council.

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**Montgomery County Open Space Preservation: Program Recommendations**


Late last year, Montgomery County in suburban Philadelphia approved a 10-year, $100 million program for open space acquisition. This document details the rationale behind the program as developed by the task force assigned by the county board to study the issue.

**Modeling Future Development on the Design Characteristics of Maryland's Traditional Settlements**

Maryland Office of Planning (in cooperation with the School of Architecture, University of Maryland), 301 W. Preston St., Room 1101, Baltimore, MD 21201, August 1994. 112 pp. $2.

Neotraditional and cluster designs for rural and suburban communities have been attracting increased attention in recent years as planners seek new solutions to the problem of urban sprawl. This effort, the result of a university research seminar on small town paradigms, examines a series of traditional Maryland communities and concludes with alternative models for zoning ordinance language to facilitate traditional design. The appendices include sample provisions of local comprehensive plans and zoning ordinances from existing communities.
PUBLIC HEARINGS

The purpose of a public hearing is to receive evidence to which the Planning Commission, or City Council, applies the criteria for review. It is the task of the Commission to determine whether the evidence presented is relevant and whether it is competent or credible. After sifting through the evidence, the Commission or Council makes certain findings of fact, and then makes its decision of approval or denial of the application. The member of Council or Commission should take the opportunity to question staff, applicant, and members of the public in order to develop evidence on the record. A member’s personal experiences can be verified by effective questioning. If it is not in the record, a judge will not sustain your decision.

ABUSE OF DISCRETION

It is an abuse of discretion when the findings do not support the decision of the Commission; for example, when the findings show that a particular application is compatible, but the decision is denial. It is also an abuse of discretion when the evidence does not support the findings. If, for example, evidence is presented that there are significant traffic impacts for a development proposal, the Council could not make a finding that there are no traffic impacts. When the record of the evidence supports the findings and the findings are consistent with the conclusion, a court must uphold the decision of Planning Commission or City Council.

Remember:

Decision = Evidence Developed on the Record
Criteria Established by City Code

IMPARTIAL DECISION

It is important for Commission and Council to be impartial in its decision making. Every decision that involves
quasi-judicial review must be made impartially. The Commissioner or Council Member cannot make a decision on a proposal until after all the evidence has been received. A decision cannot be based on matters outside of the record. If, for example, a Commissioner has visited the site of a proposed development, and has noticed certain physical characteristics that may influence that Commissioner's decision, it is important for the Commissioner to bring this information up in the public hearing. This provides an opportunity for staff, the applicant, and neighborhood groups to comment on the information. Planning Commission has the authority to defer the decision in order to obtain more information.

EX PARTE CONTACTS

It may happen that applicants or neighborhood groups may try to influence a decision by calling the Council Member or Commissioner on the phone, and explaining a project or explaining their opposition to a project, or by asking the Commissioner to come down to review project plans and architectural elevations and the like. Because the decision is based upon the evidence presented at the public hearing, the best thing to do is to suggest to the person or group that they should attend the public hearing and present their evidence to the whole Commission or Council because only evidence developed at the hearing can be considered in the decision making. If, however, a Commissioner has a neighborhood meeting or a meeting with an applicant, and certain information arises from that meeting that may have some influence on the Member's decision, the Commissioner or Council Member should divulge that information at the public hearing so that the applicant, staff, or neighborhood groups can respond.
Conflicts of Interest, Bias, Ex parte Contacts and Public Meetings

1. Quasi-judicial acts, legislative acts and administrative acts: To apply the rules concerning conflicts of interest, bias, and ex parte contacts, you must first determine whether you will be involved in a quasi-judicial act, a legislative act or an administrative act. A quasi-judicial act is applying established rules to a particular application or property. Most of what the Planning Commission does is quasi-judicial. A legislative act involves making or recommending rules of general applicability (e.g. recommending changes to zoning or subdivision regulations). An administrative act relates to running the organization such as giving direction to the Executive Director to do a particular thing. Generally speaking, you must not have a bias, prejudice or conflict of interest when involved in a quasi-judicial act. When involved in either a legislative act or an administrative act you may bring your general views and beliefs to the table and act on them. However, there are still rules concerning conflicts of interest that must be observed.

2. Bias: In any quasi-judicial proceeding, a Planning Commission member should step down and not participate in any matter in which he or she has a bias or prejudice concerning the applicant, an opponent or the application. If you are not completely confident that you can set aside your feelings about a project or an individual and fairly apply the established rules to the application you should step down and not participate in the hearing in any fashion. In this respect, your membership on the Planning Commission may mean that you will give up your right to speak for or against a particular project. The alternative is to resign from the Planning Commission.

3. Conflicts of Interest: Any local government official is subject to the obvious prohibitions against accepting or seeking bribes and self-dealing, but is also subject to portions of the Colorado Code of Ethics. The portions of the Code applicable to Planning Commission members are set out below. As a member of the Planning Commission you are a “Local Government Official” as that term is used in the Code.

4. Ex parte Contacts and Public Meetings. Planning Commission members should avoid ex parte contacts with anyone in connection with a quasi-judicial act. As a local governmental body, the Planning Commission must conduct its business only in a public meeting, unless an executive session is permitted by statute. As a matter of fairness and due process, a quasi-judicial decision should be made only on facts and considerations of which all parties are aware and have an opportunity to challenge. Ex parte contacts are ones which occur outside of a public meeting. They can be as simple as a neighbor calling you to discuss a pending application.

In a small community they are often difficult to avoid but you should, if at all possible, do so. For example, if your neighbor did call, you could say: “Listen Fred, before you continue, I need to explain something. This application has to be considered at a public hearing. I will be required to report our conversation at the hearing and let everyone know what we have discussed. I think it would be a lot better if you would wait until the hearing and discuss your concerns with the whole Planning Commission then.”
If you can not avoid the contact, then you must disclose it and its contents at the hearing. If it is known by all that you do this routinely, it is likely that you will have fewer *ex parte* contacts to deal with.

*Ex parte* contacts are not prohibited in connection with legislative or administrative acts although they may negatively impact public debate.

**Getting Help and Answers:** It is very important to Routt County and to individual Planning Commission members that issues concerning conflicts of interest, bias, *ex parte* contacts and public meeting requirements are promptly and properly dealt with. If you have any questions concerning these issues you should let the Planning Director know.

**CODE OF ETHICS**

§ 24-18-101. Legislative declaration

The general assembly recognizes the importance of the participation of the citizens of this state in all levels of government in the state. The general assembly further recognizes that, when citizens of this state obtain public office, conflicts may arise between the public duty of such a citizen and his or her private interest. The general assembly hereby declares that the prescription of some standards of conduct common to those citizens involved with government is beneficial to all residents of the state. The provisions of this part 1 recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

§ 24-18-102. Definitions

As used in this part 1, unless the context otherwise requires:

1. "Business" means any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization carrying on a business, whether or not operated for profit.
2. "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.
3. "Employee" means any temporary or permanent employee of a state agency or any local government, except a member of the general assembly and an employee under contract to the state.
4. "Financial interest" means a substantial interest held by an individual which is:
   a. An ownership interest in a business;
   b. A creditor interest in an insolvent business;
   c. An employment or a prospective employment for which negotiations have begun;
(d) An ownership interest in real or personal property;
(e) A loan or any other debtor interest; or
(f) A directorship or officership in a business.

(5) "Local government" means the government of any county, city and county, city, town, special district, or school district.
(6) "Local government official" means an elected or appointed official of a local government but does not include an employee of a local government.
(7) "Official act" or "official action" means any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.
(8) "Public officer" means any elected officer, the head of a principal department of the executive branch, and any other state officer. "Public officer" does not include a member of the general assembly, a member of the judiciary, any local government official, or any member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses.
(9) "State agency" means the state; the general assembly and its committees; every executive department, board, commission, committee, bureau, and office; every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof; and every independent commission and other political subdivision of the state government except the courts.

§ 24-18-103. Public trust - breach of fiduciary duty

(1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.
(2) A public officer, member of the general assembly, local government official, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The district attorney of the district where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the state or local government. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such public officer, member of the general assembly, local government official, or employee.

§ 24-18-104. Rules of conduct for all public officers, members of the general assembly, local government officials, and employees

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust. A public officer, a member of the general assembly, a local government official, or an employee shall not:
(a) Disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal financial interests; or
(b) Accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value:
   (I) Which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or
   (II) Which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.
(2) An economic benefit tantamount to a gift of substantial value includes without limitation:
   (a) A loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services; or
   (b) The acceptance by a public officer, a member of the general assembly, a local government official, or an employee of goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the state or a local government under a contract or other means by which the person receives payment or other compensation from the state or local government, as applicable, for which the officer, member, official, or employee serves, unless the totality of the circumstances attendant to the acceptance of the goods or services indicates that the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the officer, member, official, or employee does not receive any substantial benefit resulting from his or her official or governmental status that is unavailable to members of the public generally.
(3) The following are not gifts of substantial value or gifts of substantial economic benefit tantamount to gifts of substantial value for purposes of this section:
   (a) Campaign contributions and contributions in kind reported as required by section 1-45-108, C.R.S.;
   (b) An unsolicited item of trivial value;
   (b.5) A gift with a fair market value of fifty-three dollars or less that is given to the public officer, member of the general assembly, local government official, or employee by a person other than a professional lobbyist.
   (c) An unsolicited token or award of appreciation as described in section 3 (3) (c) of article XXIX of the state constitution;
   (c.5) Unsolicited informational material, publications, or subscriptions related to the performance of official duties on the part of the public officer, member of the general assembly, local government official, or employee;
   (d) Payment of or reimbursement for reasonable expenses paid by a nonprofit organization or state and local government in connection with attendance at a convention, fact-finding mission or trip, or other meeting as permitted in accordance with the provisions of section 3 (3) (f) of article XXIX of the state constitution;
   (e) Payment of or reimbursement for admission to, and the cost of food or beverages consumed at, a reception, meal, or meeting that may be accepted or received in
accordance with the provisions of section 3 (3) (e) of article XXIX of the state constitution;

(f) A gift given by an individual who is a relative or personal friend of the public officer, member of the general assembly, local government official, or employee on a special occasion.

(g) Payment for speeches, appearances, or publications that may be accepted or received by the public officer, member of the general assembly, local government official, or employee in accordance with the provisions of section 3 of article XXIX of the state constitution that are reported pursuant to section 24-6-203(3) (d);

(h) Payment of salary from employment, including other government employment, in addition to that earned from being a member of the general assembly or by reason of service in other public office;

(i) A component of the compensation paid or other incentive given to the public officer, member of the general assembly, local government official, or employee in the normal course of employment; and

(j) Any other gift or thing of value a public officer, member of the general assembly, local government official, or employee is permitted to solicit, accept, or receive in accordance with the provisions of section 3 of article XXIX of the state constitution, the acceptance of which is not otherwise prohibited by law.

(4) The provisions of this section are distinct from and in addition to the reporting requirements of section 1-45-108, C.R.S., and section 24-6-203, and do not relieve an incumbent or elected candidate to public office from reporting an item described in subsection (3) of this section, if such reporting provisions apply.

(5) The amount of the gift limit specified in paragraph (b.5) of subsection (3) of this section, set at fifty-three dollars as of August 8, 2012, shall be identical to the amount of the gift limit under section 3 of article XXIX of the state constitution, and shall be adjusted for inflation contemporaneously with any adjustment of the constitutional gift limit pursuant to section 3 (6) of article XXIX.

§ 24-18-105. Ethical principles for public officers, local government officials, and employees

(1) The principles in this section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.

(2) A public officer, a local government official, or an employee should not acquire or hold an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which he has substantive authority.

(3) A public officer, a local government official, or an employee should not, within six months following the termination of his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term of employment. These matters include rules, other than rules of general application, which he actively helped to formulate and applications, claims, or contested cases in the consideration of which he was an active participant.
(4) A public officer, a local government official, or an employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.

(5) Public officers, local government officials, and employees are discouraged from assisting or enabling members of their immediate family in obtaining employment, a gift of substantial value, or an economic benefit tantamount to a gift of substantial value from a person whom the officer, official, or employee is in a position to reward with official action or has rewarded with official action in the past.

§ 24-18-108.5. Rules of conduct for members of boards and commissions

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) A member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest.

§ 24-18-109. Rules of conduct for local government officials and employees

(1) Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust.

(2) A local government official or local government employee shall not:
   (a) Engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;
   (b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or
   (c) Accept goods or services for his or her own personal benefit offered by a person who is at the same time providing goods or services to the local government for which the official or employee serves, under a contract or other means by which the person receives payment or other compensation from the local government, unless the totality of the circumstances attendant to the acceptance of the goods or services indicates that the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the official or employee does not receive any substantial benefit resulting from his or her official or governmental status that is unavailable to members of the public generally.

(3) (a) A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

   (b) A member of the governing body of a local government may vote notwithstanding paragraph (a) of this subsection (3) if his participation is necessary to
obtain a quorum or otherwise enable the body to act and if he complies with the voluntary disclosure procedures under section 24-18-110.

(4) It shall not be a breach of fiduciary duty and the public trust for a local government official or local government employee to:
   (a) Use local government facilities or equipment to communicate or correspond with a member's constituents, family members, or business associates; or
   (b) Accept or receive a benefit as an indirect consequence of transacting local government business.

§ 24-18-110. Voluntary disclosure

A member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses, a member of the general assembly, a public officer, a local government official, or an employee may, prior to acting in a manner which may impinge on his fiduciary duty and the public trust, disclose the nature of his private interest. Members of the general assembly shall make disclosure as provided in the rules of the house of representatives and the senate, and all others shall make the disclosure in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his interest. If he then performs the official act involved, he shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act. Such disclosure shall constitute an affirmative defense to any civil or criminal action or any other sanction.
Receipt of Planning Commission Handbook

I have received and read the Routt County Planning Commission Handbook.

I understand the role of a Planning Commission member and will, to the best of my ability, uphold the policies, regulations and community plans of Routt County.

________________________________________
Name           Date