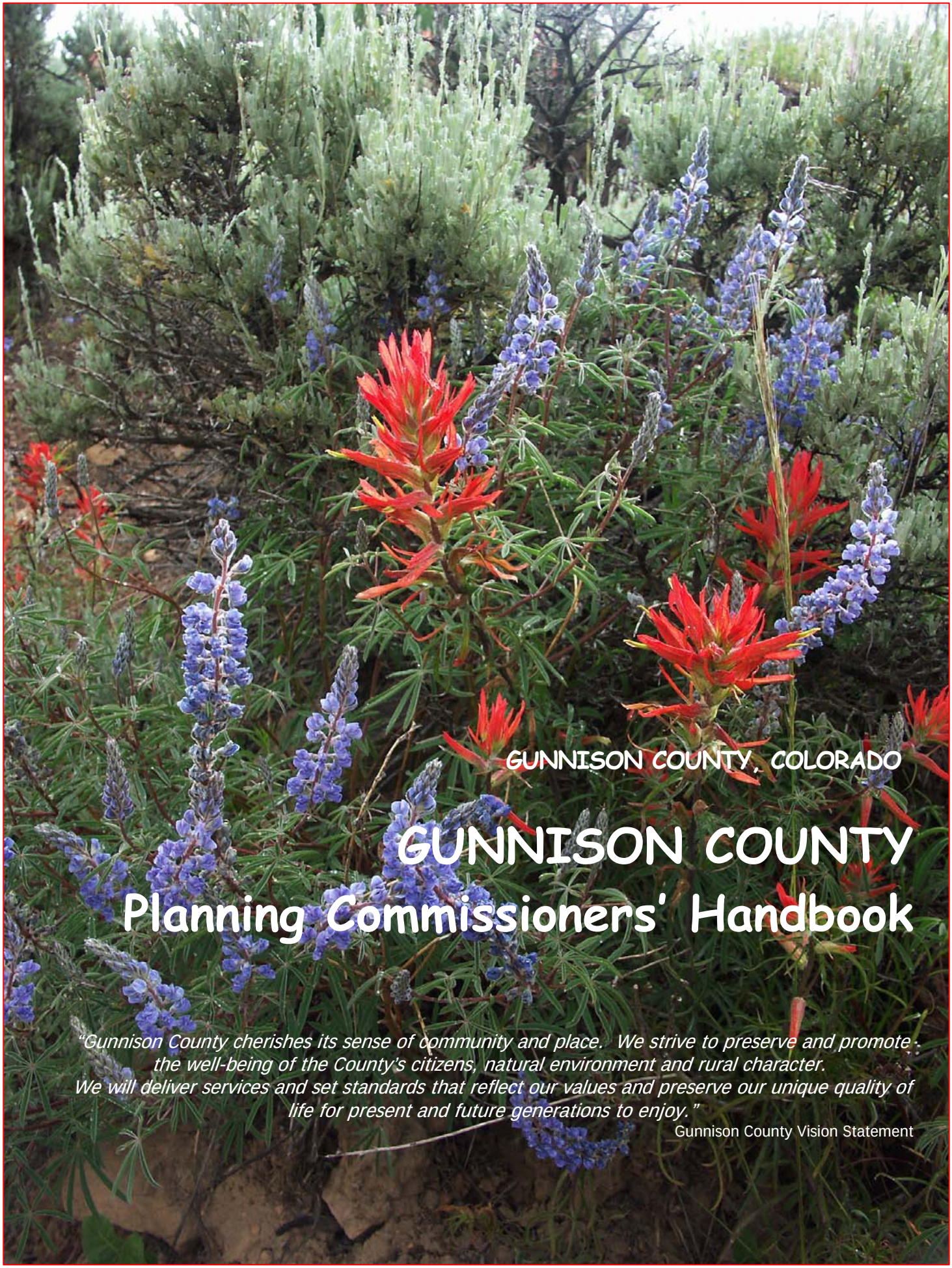

GUNNISON COUNTY, COLORADO

GUNNISON COUNTY
Planning Commissioners' Handbook

"Gunnison County cherishes its sense of community and place. We strive to preserve and promote the well-being of the County's citizens, natural environment and rural character. We will deliver services and set standards that reflect our values and preserve our unique quality of life for present and future generations to enjoy."

Gunnison County Vision Statement

Created by the Gunnison County, CO Community Development Department, 2010

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Selected articles are reprinted in this Handbook with permission of the editor of *Planning Commissioners' Journal*, a publication that provides volunteer Planning Commissioners with basic and updated tools to succeed in their work on the Commission. Each Gunnison County Planning Commissioner receives a subscription to the monthly *Journal*, which is distributed in the commissioner packets.

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

- Colorado Division of Water Resources, website: http://water.state.co.us
- *Colorado Land Planning and Development Law*, Seventh Edition, 1998. Colorado Chapter, American Planning Association.
- Rocky Mountain Land Use Institute, *Land Use From A to Z* (Videos)
- Solnit, Albert, *The Job of the Planning Commissioner*, Third Edition, Revised. Planners Press, American Planning Association.
- The Institute for Local Government, 1400 K Street, Suite 205 Sacramento, CA 95814.
- "The Zoning Board," by The Land Use Education Center, College of Natural Resources and Cooperative Extension, University of Wisconsin at Stevens Point
- Municipal and Services Center of Washington, 2601 Fourth Avenue, Suite 800 Seattle, WA 98121-1280
- *Alaska Planning Commission Handbook*
- Colorado Counties Inc. *2009 County Commissioner Handbook:* Several sections specifically related to Colorado planning law and the role of Planning Commissioners have been copied almost verbatim with CCI permission and at the urging of our County Attorney, who has updated those sections to reflect current law.

LEGAL DISCLAIMER

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

WELCOME!

…TO THE GUNNISON COUNTY PLANNING COMMISSION

As you're undoubtedly aware (and you volunteered anyway!), the County's Planning Commission is on the forefront of some of the major ongoing issues in Gunnison County.

The Planning Commission's roles are to plan and regulate land use to ensure orderly development and care for the environment consistent with protection of constitutional rights. It is guided in those roles by federal and state laws and standards adopted by the Board of County Commissioners in the *Gunnison County Land Use Resolution* and other County regulations.

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

This Handbook is intended to provide basic information to help Planning Commissioners understand how and why land use regulations and planning commissions exist; to explain land use permitting and planning processes; to address the practices of the Gunnison County Planning Commission, and to define some of the "jargon" that you will hear as you meet with developers, consultants, planners and the public.

It is not a summary of the County's land use regulations, and it does not replace the Planning Commission's "Organization and Procedural Guidelines," though it may help you better understand and use those documents.

We intend that this is a dynamic tool that will evolve and change with time and as planning issues, legislation and your own experiences continue to shape regulations and practice. Planning Staff and Planning Commission will annually jointly review the Handbook. The loose-leaf format is designed so that new information can be added as it becomes available and routine practices updated. If you'd like a digital copy, we can provide it on CD and/or email a copy to you.

The Board and staff appreciate the time and effort that you have offered to commit to this demanding and complex responsibility.

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

The Gunnison County Board of Commissioners,
and Staff of the Gunnison County
Community Development Department

WHY HAVE A PLANNING COMMISSION?

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

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

The Gunnison County Planning Commission is the Board of County Commissioners' (the three elected people who set policy for the County) advisor on land use planning, though the Board may choose to follow the recommendations of the Commission or not and may reverse or modify Commission actions or send development proposals back to the commission for further review. Planning Commission decisions may be appealed to the Board,; "the buck stops" with the Board, or sometimes in a court of law.

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

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

Gunnison County Boards of Commissioners have generally felt that having a single planning commission whose members have varying perspectives but an overall knowledge and understanding of the county as a whole can best maintain a sense of "community," and best respond to a wide variety of applications and constituents. Gunnison County has had a separate appointed planning commission since the 1960's.

HOW DOES THE PLANNING COMMISSION WORK IN GUNNISON COUNTY?

Terms

Each member of the Planning Commission is required to be a resident of the county. A regular member is appointed for a three-year term; alternates for one year. Usually the Board first appoints a new member as an alternate, then as a regular member. Serving as an alternate for a year gives the opportunity for a planning commissioner to learn about the job, and determine if it is a position for which they have time. Appointments are made by the Board in early February each year; a planning commissioner whose term is ending generally stays on until a replacement member is appointed. A chair and vice chair are elected at the first meeting after new members are appointed.

Compensation

Planning Commissioners are compensated at a rate determined by the Board. Currently the rate is $125 per meeting. Lunch is provided if the meeting includes a "work-through" during the noon hour. Federal law requires that compensation over $600/year be reported; the County Finance Office provides planning commissioners with required 1099 tax forms.

Meeting days and times

The Planning Commission generally meets twice monthly in full-day meetings, on the first and third Fridays of the month. Additional meetings are required when the Commission conducts site visits or has special meetings that require larger blocks of time than a regular meeting agenda can provide. Meetings are rarely scheduled in the evenings. Occasionally the Commission will conduct meetings in Crested Butte or Marble when development or other issues are of interest to citizens in those areas.

The Commission and the Board meet quarterly; the March meeting will generally be in a "retreat" format, scheduled for a half or full-day, to discuss policies, processes, and other matters of interest to both organizations.

Homework: Information packets and email

"Homework" arrives in the form of meeting packets about a week before a scheduled meeting. In the packet that arrives in the mail are copies of staff reports, application materials and maps, the agenda, minutes of previous meetings, draft recommendation or decision documents, general information unrelated to upcoming agenda items, and monthly, a copy of the national *Planning Commissioner's Journal.* Often the staff will also e-mail copies of those same documents to the Commission. Seasoned members note that the amount of review and reading to prepare for each meeting can be voluminous, complex and require a significant amount of time for review.

Electronic documents and use of laptops and email

Most Planning Commissioners now use home PC"s and laptops to receive and send documents and communicate with the Community Development Department by email. If you don't have access to a computer and email, please let the Planning Staff know; we'll provide you with information by hard copy and phone.

You are welcome to bring your laptop to the meeting if that is a tool that you would find helpful.

Primary tasks of a Planning Commission

The Commission is primarily a recommending body that makes recommendations to the Board on Land Use Change Permit applications and changes to existing regulations. Unlike most other counties in Colorado, the *Gunnison County Land Use Resolution* has delegated decision-making authority to the Commission for all Minor Impact Projects that are not subdivisions. Additionally, the Commission has the authority under Colorado statute to create a master plan, or comprehensive plan for the County.

Colorado's Open Meetings Law: Letting the public know

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

THE COMMUNITY DEVELOPMENT DEPARTMENT

The Gunnison County department that administers current land use for the unincorporated areas of Gunnison County used to be the "Planning Department." As of January 1, 2010, it became the Gunnison County Community Development Department, a name that better represents its wide variety of land-use responsibilities and customer services related not just to current planning, but to building and environmental health.

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"The Mission of the Gunnison County Community Development Department is to provide planning, building, and environmental health services to the public, developers, contractors, and other governmental entities so they can obtain accurate information and County permits in a timely manner to assist in the protection of the environment, economy, and community values."

Gunnison County Community Development Department Business Plan

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Who we are

Members of the Community Development Department staff include Joanne Williams, Director; Neal Starkebaum, Assistant Director; Beth Baker, Services Manager; Cathie Pagano, Planner; Rich Wojdakowski, Building Inspector; Richard Stenson, Environmental Health Specialist; Crystal Lambert, Assistant Building Inspector / Environmental Health Specialist and Administrative Assistant Michelle Spain.

What we do

The department is responsible for reviewing applications and administering permits for land use changes, special events, building, individual sewage disposal systems, long-term camping, lot clusters, flood plain elevation certifications, outdoor vending, temporary and permanent mobile home installations, woodstoves, special development projects, Special Areas and signs.

It administers and maintains the *Gunnison County Land Use Resolution*, *Gunnison County Individual Sewage Disposal System Regulations*, *Gunnison County Special Development Resolution*, the *Temporary Oil and Gas Regulations*, Special Area plans, intergovernmental agreements affecting land use, floodplain studies and County classification for FEMA-related floodplain insurance, and Gunnison County's amended versions of adopted international building codes.

We conduct plan reviews, site inspections and initial hazard site reviews, facilitate dispute resolution between land uses, enforce violations, are involved in consumer protection, Gunnison Sage-grouse habitat protection and mitigation, provide information and work closely with federal and state agencies on a wide variety of issues. We maintain a computer database and permit tracking system that was initiated about 15 years ago to provide access to archived and current permit and parcel information. to provide greater access by other County departments and the public and to improve analysis of existing information.

The department's *Strategic Business Plan*, developed by the Department and approved by the County Manager, identifies those key tasks, the staff responsible for their completion, and performance measures. It functions hand-in-hand with the Board of Commissioners' *Gunnison County Strategic Plan*, a coherent, results-oriented plan based on the Board's priorities and that is the guiding force behind the County's "Managing for Results" program.

We work under the direction of the County Manager and provide staff support for the Board of Commissioners, Planning Commission, Environmental Health Board, Board of Adjustments and the Board of Building Appeals.

HOW LAND USE CHANGE, BUILDING AND ISDS PERMITS ARE PROCESSED

Land Use Change Permits:

Land Use Change Permit applications are reviewed under the *Gunnison County Land Use Resolution* and are primarily processed by the Assistant Director and Planner. Larger "megaprojects" will be reviewed under the *Gunnison County Special Development Projects Resolution;* it is likely that review would be coordinated by the Community

Development Director and require the expertise of a considerable number of specialists hired by the County and funded by an applicant. Staff reviews of Land Use Change Permits or Special Development Projects applications include preparation of staff reports, work with applicants and public, researching information for the Planning Commission, and preparing decision and recommendation documents for the Commission and Board.

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

Review by County departments and other agencies; preparation of a staff report
Once an application is determined to be complete, it is sent to applicable reviewing agencies and County departments. A staff report is created describing the project, analyzing its initial compliance with standards of the *Land Use Resolution*, including pertinent comments by agencies and departments, and identifying the role of the Planning Commission in reviewing it at that step.

Work sessions
The Planning Commission conducts one or more work sessions that are informal sessions among applicants, the public and the Commission in which the applicant describes and the Commission and public start to become familiar with the proposed project, identify conflicts with County standards and possible mitigation of those conflicts, and to itemize a list of information or other tasks to be accomplished by the applicant and/or staff before a next meeting.

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

Public hearings
Public hearings are the official designated times in which an applicant may present his/her proposal to the public, and the public may present its opinions and ask its questions about a proposed project. It is the opportunity for the Planning Commission and/or Board to hear a full-range of testimony about the application and help inform its determination of the proposed project's compliance with County standards. Public hearings for all subdivisions and all other Major Impact projects are conducted jointly by the Board and the Planning Commission.

Recommendations and Decisions
For Minor Impact subdivisions, and for all Major Impact Projects and Special Development Projects, Planning Commission members assess a proposed project's compliance with the standards of the *Land Use Resolution*, and/or the *Special Development Project Resolution*, and recommend approval, approval with conditions, or to denial of a proposed project based upon their observations of a proposed site and the other evidence in the record.

Draft recommendation and decision documents are prepared by the Planning Staff, and include project descriptions, descriptions of testimony received at public hearings, compliance with applicable standards, findings, and a statement of recommendation or decision. (More information is included in Appendix 1: "Key Points to Look For in a Recommendation or Decision Document.")

A Planning Commission decision on any Minor Impact project that is not a subdivision is final, but may be appealed to the Board. On all other Land Use Change Permit applications, the Planning Commission recommends approval, conditional approval, or denial. The Commission also recommends actions to the Board on new regulations, and on amendments proposed for existing regulations. The Board takes final action on those recommendations.

Building and ISDS Permits

All Building Permits and Individual Sewage Disposal System (ISDS) Permits are reviewed for compliance with the *Land Use Resolution* by the County Planner and/or the Assistant Building Inspector/Environmental Health Official. A compliance checklist is prepared for each application.

Questions of applicability or the need for a more technical review are evaluated by the department "team," which includes the Director and/or Assistant Director, Planner, Building Official and/or Environmental Health Official.

Site plans are routed to the Public Works Department and any other applicable County department, local or state agency (such as the Colorado Geologic Survey, City of Gunnison) for review and comment. Building Permits are not issued until Access, Reclamation, and ISDS Permits and, if required, Land Use Change Permits have been issued.

GENERAL LAND USE REGULATION IN COLORADO AND GUNNISON COUNTY

The authority to plan for and regulate the use of land in the unincorporated area of the county is one of the most important and controversial aspects of a Planning Commissioner's job. In a very basic sense, Colorado is a local control state when it comes to land use planning and decision-making. This places Commissioners at "ground zero" in the growth management debate. As the state continues to experience rapid growth, issues like traffic congestion, sprawl, loss of open space and agricultural land, availability of affordable housing, and private property rights will continue to dominate public conversations about land use.

As a County Planning Commissioner, you will work side by side with the Board of Commissioners, your Community Development Department staff and the citizens of Gunnison County to guide future development in the unincorporated areas of Gunnison County.

County or Regional Comprehensive Plans

A comprehensive plan (sometimes referred to as a "master plan," or "comp plan," for short) is a planning document intended to guide the growth and long-term development of a community. It is an advisory document only; it is not the equivalent of zoning and is not binding upon the Planning Commission or Board in their decision making. However, a Board is authorized to make its Comprehensive Plan, or any part of the plan binding through zoning, regulations or other land use codes. (C.R.S. §30-28-106) A comprehensive plan is a regulatory document only when the Board formally adopts it as a regulation.

The criteria that may be incorporated into a comprehensive plan have been expanded in the last few years to include the availability of affordable housing, wildlife areas, waterways and waterfronts, mass transit routes, cultural, historical and archeological buildings and formations, geological hazards, floodways, and wildfire hazards. Counties required to adopt master plans include those with populations of: 1) 100,000 or more or 2) 10,000 and a 10% growth rate between 1994 and 1999 or any 5-year period ending in 2000 or any subsequent year. Counties required to adopt master plans must include a recreational and tourism element in their plans. (C.R.S. §30-28-106) A zoning resolution provides the detailed means of giving effect to the principles in a comprehensive plan. (Theobald v. Board of County Commissioners, Summit County, 644 P. 2d 942, (1982))

The Planning Commission must send copies of its comprehensive plan to the Board and all planning commissions of municipalities within the county.

"Corridor Plans" in Gunnison County

Long-term planning is performed by the Gunnison County Geographic Information Services Department. The County does not have a master plan that includes the entire County, but has adopted two "Gunnison County Comprehensive Plan Corridor Plans" that include existing land use maps, results from surveys conducted within those two areas, and a variety of data collected from state and regional agencies.

The Planning Commission adopted the "Gunnison County Comprehensive Plan Crested Butte/Gunnison Corridor Plan" October 7, 2005 and the "Upper Crystal River Valley Master Plan" September 16, 2005. Areas included in each of the study areas s are available online at the County's website: Crested Butte/Gunnison Corridor Plan: http://www.gunnisoncounty.org/gis_pdf/Figure%2011.pdf and the Upper Crystal River Valley Master Plan Land Use: http://www.gunnisoncounty.org/gis_pdf/Marble%20Exhibit%203.pdf.

Both plans are "general, conceptual statements of intended land use and environmental practices "in the areas included in the Plans. The Plans are "planning" and not "regulatory" documents.

Each provides a foundation for decisions and policies that guide and direct the physical, social, economic and environmental development for each corridor. The Plans are long-term in nature and will require periodic updating as needs and issues arise in the County in general and the Crested Butte/Gunnison corridor and Upper Crystal River Valley in particular; they are therefore flexible and subject to change and modification.

The Plans are divided into elements, each developed by separate citizen focus groups. The Plans do not attempt to reconcile conflicting goals between the elements included in them, but leave the outcome of each focus group relatively intact. Goals of each element must be balanced with the goals in other elements as the County implements the plans over time.

Requirement that County projects comply with County regulations

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

Gunnison County's *Land Use Resolution* specifically states that the requirement to obtain a Land Use Change Permit applies to federal, state, county and municipal governments and special districts, their agencies and their subdivisions unless the unit of government is expressly exempted from the requirement. The *Special Development Project Resolution* also requires that a Special Development Project that meets certain criteria of size or type of use and is proposed by a governmental entity must be reviewed under that regulation.

Notification to the County of Municipal Development or Annexation

The council of any municipality within which a development of five or more acres is proposed is required by statute to notify the County Board of Commissioners before approving any related zoning change or issuance of any subdivision or building permit. (C.R.S. §31-23-225) A municipality wishing to annex into the boundaries of an existing development plan to which a county is a party and the municipality is not, is required to notify the county of the proposed annexation.

The County is required to participate in an annexation transition committee whenever a proposed annexation has more than 100 residents and includes more than 50 acres. (C.R.S. §31-12-106) A county that is a party in a

development plan may file an objection to the petitioning municipality's proposed annexation. Counties filing such objections may also seek mediation of any disputes; costs of such mediations are the responsibility of the objecting county. (C.R.S. §24-32-3209)

Subdivision regulations

Colorado Statute requires that every Board of County Commissioners must adopt and enforce subdivision regulations for unincorporated areas within their counties and must hold a public hearing before adopting or revising any subdivision regulations. (C.R.S. §30-28-133(1)) Gunnison County adopted subdivision regulations in 1972 that were incorporated into the *Gunnison County Land Use Resolution* when it was first adopted in 1978.

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

- Property survey and ownership of the surface and mineral estates, if applicable;
- Relevant site characteristics and analyses applicable to the proposed subdivision;
- A plat and other documentation showing the layout or plan of development;
- Adequate evidence that an adequate water supply is available for the proposed subdivision;
- Oil and gas/mineral estate notification (C.R.S. §24-65.5-101); and
- Evidence the developer has made access and sites available for electric and natural gas utility service.
- Subdivision regulations adopted by a county must also include, as a minimum, provisions for:
  - Suitable areas for schools and parks (reserved for acquisition by the county and dedicated to the county); payment-in-lieu-of dedication not exceeding the full market value of the sites; or a combination of such dedications and payments not exceeding the full market value;
  - Standards and procedures applicable to storm drainage plans and designs to insure proper drainage ways;
  - Standards and procedures to insure sanitary sewer plans and design (including soil percolation testing) and rates and site design standards for on-lot sewage disposal systems when necessary; and
  - Water systems standards and technical procedures. (C.R.S. §30-28-133(4) 3-6).
  - Street and highway plans, plots, plats and re-plats of land subdivided for building lots (and their streets, alleys and other public ways) must be approved by the Planning Commission and the Board before they may be recorded. (C.R.S. §30-28-110(3)(a).)

Subdivision Plan Referral

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

- The applicable **school district** for recommendations on school sites and "structure adequacy"; statute requires the district be notified only when 20 or more residences are involved; Gunnison County sends to the applicable district any application for any Major Impact project that includes residences or lots.
- Any community or **municipality** likely to be affected by the proposal; statute requires this be done only for municipalities within two miles of the proposed subdivision.
- Utility, local improvement and service districts, and ditch companies, when applicable;
- The **Colorado State Forest Service**.
- The **United States Forest Service**, **Bureau of Land Management**, or **National Park Service**, when applicable.

- The appropriate local **Natural Resources Conservation Office**/Soil Conservation Service Board for review of soil suitability and flooding problems.
- The **Colorado Department of Public Health and Environment** for review of sewage treatment works and water quality. The Board may not approve a subdivision unless the appropriate health agency has approved proposed sewage disposal facilities.
- The **Colorado Division of Minerals and Geology**;
- The **Colorado Division of Water Resources** (the "State Engineer") for an opinion on the effect of the subdivision on water rights.
- The **Colorado Division of Wildlife**.
- The **Colorado Department of Transportation**.
- The **Gunnison County Trails Commission**.
- The **Gunnison County Historic Preservation Commission**.
- The **Gunnison County Emergency Services Office**.
- Other agencies, entities, and groups that the Community Development Department, Planning Commission, or Board may deem advisable.

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

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

Plat Corrections
The Board may approve technical corrections of subdivision plats and corrections to an approved plat without a hearing or without compliance with any of the submittal, referral or agency review requirements that were required of the original approved plat. (C.R.S. §30-28-133(9))

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

Municipal Three-Mile Extraterritoriality
When the Board approves a subdivision within three miles of a corporate municipal boundary, the subdivision must conform to major street plans of that municipality. (C.R.S. § 31-23-212)

The municipalities of Gunnison, Crested Butte and Mt. Crested Butte have adopted Three-Mile Area Plans. Neither Marble nor Pitkin has. Though the County is not required to adopt or to consider any element of a Three-Mile Plan other than a major street plan, Gunnison County does strongly consider the objectives and policies of any municipality's Three-Mile Area Plan, and as a courtesy submits Minor and Major Impact Land Use Change Permit applications to a municipality when a proposal is located within its Three-Mile Plan Area.

Impact Fees

Before 2001 counties lacked explicit statutory authority to levy impact fees. However, several counties imposed impact fees for road construction/maintenance and fire protection by citing the broad land use authority found in the *Local Government Land Use Enabling Act* and the *Planned Unit Development Act*. (C.R.S. §29-20-101, *et seq.*

and C.R.S. §24-67-101, *et seq.*) Some counties also required dedication or fees-in-lieu for parks, school sites and storm drainage facilities during the subdivision process. (C.R.S. §30-28-133(4).

In 2001, the Colorado General Assembly granted counties the authority to impose impact fees as a condition of issuing development permits. Local governments wishing to impose impact fees must legislatively adopt fees that are generally applicable to a broad class of property owners and will defray projected impacts on capital facilities caused by proposed development. Double-charging developers an impact fee for the same facility for which a jurisdiction has already imposed an exaction must be avoided. Impact fees may be waived for low or moderate income housing. Developers subject to the fee may seek judicial review of such fees while development proceeds. (C.R.S. § 29-20-104.5.)

Impact fees collected by Gunnison County
There are two impact fees currently collected by Gunnison County, and they are attached to Building Permits:

1) The Essential Housing Workforce Linkage Fee. The fees were adopted to fund "Workforce Housing," providing residences for people who earn their living in Gunnison County in professional or service capacities (i.e., health care service providers, waiters, janitors, teachers, small business owners, and mechanics). Funding this workforce housing through linkage fees is part of an overall housing program to ensure that the community is able to keep its service and professional employees by providing rental and homeownership opportunities for people who are employed in Gunnison County whose annual incomes do not exceed 120 percent of the area median income established by the U.S. Department of Housing. The fees are deposited into the Gunnison County Housing Fee Fund, administered by the Gunnison County Board of Commissioners.

2) A fee collected for the Crested Butte Fire Protection District for construction occurring within that District. The District uses the funds to recover costs for impacts of development.

Intergovernmental Agreements:
Colorado statutes authorize and encourage local governments to cooperate or contract with other units of government to plan or regulate development of land (i.e., mutually binding and enforceable comprehensive development plans, regional Planning Commissions or for revenue sharing). Intergovernmental agreements involving one or more municipalities or other local governmental entities are authorized by the Act. C.R.S. §29-20-101, *et seq.*

Intergovernmental Agreements between Gunnison County and municipalities.
Gunnison County has only one general intergovernmental agreement with any of its municipalities, the City of Gunnison, which sets out guidelines for the processing of the Land Use Change Permit applications within the urban growth area and Three-Mile Plan area around the City. A separate agreement with the City regulates the extension of wastewater treatment collection lines, and gives the City the power to refuse to extend services to commercial development outside the City.

Though there have been several attempts between the Towns of Crested Butte and Mt. Crested Butte and the County to try to forge intergovernmental agreements between them, those efforts have not yet succeeded.

"Takings," Vested Rights and other County Land Use Elements

The "Takings" Issue
One of the perennial issues commissioners face when addressing land use decisions is the "takings" issue. The issue derives from a clause in the Fifth Amendment to the *U.S. Constitution*, which states, "…nor shall private property be taken for public use without just compensation."

At the crux of the matter is the following question: At what point does a land use regulation or decision go too far and "take" private property, thus entitling an owner to compensation? There have been numerous court cases regarding the matter, with the U.S. Supreme Court rendering the 1994-benchmark decision in the case of *Dolan v. City of Tigard.* (512 U.S. 374). The *Dolan* decision states local governments may only exact conditions on a permit that are roughly proportional to the impact of the project being proposed. A 1987 case, *Nollan v. California Coastal Commission* (483 U.S. 825) stated there must be an "essential nexus" between the conditions being placed on a permit and a legitimate government interest. The legislature codified the holdings, setting up standards for exactions and conditions placed on land use permits. (C.R.S. §29-20-201, *et seq*)

Vested Rights

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

Not withstanding the limitations included within that legislation, the County has the authority to adopt and enforce a new or amended regulation when necessary for "the immediate preservation of public health and safety."

"Rule 106 Review"

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

Agricultural Land Preservation, Open Space and Conservation Easements

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

Additional funding and technical assistance is available from organizations like Great Outdoors Colorado, the Endangered Species Trust Fund, the Land and Water Conservation Fund and American Farmland Trust. In addition, there are a number of land trust organizations around the state willing to assist in acquiring open space. One of the more unique ones is the Colorado Cattleman's Agricultural Land Trust, which specializes in preserving working farms and ranches.

In Gunnison County, the Gunnison Ranchland Conservation Legacy, the Crested Butte Land Trust and other state or regional conservation organizations have been key to brokering and/or holding parcels that have resulted in some 15,000+ acres being conserved in open space and/or retained for active ranching. The County's Land Preservation Fund, funded by voter-approved tax revenue, and has assisted in providing match monies to leverage purchases with other funding partners.

While the outright purchase of selected parcels is an effective way to preserve open space, it is often cost prohibitive and sometimes controversial since the land is removed from the County tax rolls. One alternative is to

seek the purchase or donation of a conservation easement on property targeted for preservation. A conservation easement is a partial interest in a piece of property that holds the development right of the property. By purchasing or receiving the donation of a development right (conservation easement), a county can ensure the parcel in question will never be developed. Conservation easements may also be held in reservation; meaning the County could establish and retain the easement. This option may be exercised if and when a county decides to sell off property. At the same time, the land owner retains ownership of the land and can continue to use it for ranching (C.R.S. §38-30.5-101, *et seq.*)

Transfer of Development Rights

Another method of preserving open space in the unincorporated area is the establishment of transferable development rights (TDR) programs. In these programs, development rights are "transferred" from the areas the county wants to retain as open space and/or farmland and directed to areas either within the incorporated area or in direct proximity to developed areas where they can be annexed easily. Developers commonly purchase the development rights from rural landowners in "sending" areas and are then able to develop at a higher density in the "receiving" areas where development is desired.

Gunnison County recently amendment the Land Use Resolution to in include a voluntary "residential density transfer," which allows for the transfer of residential lots by providing the option of increased density through a reduction in the required open space in a new subdivision in exchange for a cash payment to Gunnison County for the purchase of undeveloped land and/or conservation easements in areas where lower density development is desirable.

Right-To-Farm Ordinances

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

Gunnison County includes a "Right-to-Ranch" Policy in the *Land Use Resolution* (Article 15) that reflects these values, and for years has distributed a copy of our *Code of the West: How to Avoid Surprises and Be a Good Neighbor When You're Buying, Building and Developing in Gunnison County* to prospective land buyers and builders.

"1041 POWERS" AND OTHER ENABLING LAND USE STATUTES

"1041 Powers"

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

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

Local governments also may designate certain activities of state interest in order to realize increased regulatory authority over the following types of projects. Upon designation, the Board may establish rules and regulations related to development in these areas, provided that those rules and regulations meet certain statutory minimum criteria. (C.R.S. §24-65.1-100, *et seq.*)

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

Gunnison County used this legislation as one element of primary enabling legislation in its adoption of the *Special Development Projects Regulations in* 1990 and its 2009 amendment of the document to become the *Special Development Projects Resolution.*

Local Government Land Use Control Enabling Act of 1974

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

- Regulating development and activities in hazardous areas;
- Protecting wildlife areas from development;
- Preserving historically and archaeologically important areas;
- Regulating roads on federal lands;
- Regulating significant population density increases; and
- Providing for orderly land use.

Planned Unit Development Act Of 1972

State statute allows the Board to authorize "Planned Unit Developments (PUD's)" by resolution designating the objectives of such developments. As a practical matter, most entities that allow PUD's consider them a zoning designation. Because there is no zoning in Gunnison County Gunnison County's *Land Use Resolution* is based upon a system that allows a developer to design a development specific to a proposed site, the design and review process for land use changes in the county are very much like a PUD process in other entities. The Land *Use Resolution* includes the PUD statute as one that enabled the County to adopt land use regulation.

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

Gunnison County Board of Commissioners

The Board makes decisions on recommendations from the Planning Commission on all Major Impact projects, and on Minor Impact subdivisions, and is responsible for final decisions regarding amendments to the *Land Use Resolution*, all related codes or resolutions and appeals of Planning Commission and staff administrative decisions.

Gunnison County Public Works Department

The Public Works Department reviews Land Use Change Permit applications for compliance with the *Gunnison County Specifications for Road and Bridge Construction,* advises the Planning Commission on impacts of a proposed development on County infrastructure, design and construction issues related to County roads, utilities and driveway locations, and oversees the preparation and implantation of development-specific weed-management plans.

The Public Works Department is responsible for administering, the following Permits; Planning Commission review of Land Use Change Permit applications often include considerations of requirements included within these other permits:

- **Reclamation Permits:** Needed anytime ground is disturbed for construction purposes.
- **Access Permits:** Necessary when a driveway will access a county road. If not accessing a county road a driveway waiver may be issued by the Public Works Director or Engineering Representative.
- **Road Cut Permits:** Needed for any work done on a county road.
- **Surface Alteration Permits:** Needed for any work done on the shoulder or in the right-of-way of a county road.
- **Revocable Right-of-Way Permits:** Needed for any type of improvement placed in the road right-of way.
- **Permit for Oversize Load:** Needed when transporting over length, width or weight vehicles on County Roads.

In addition, the Department maintains 850 miles of County, Forest Service and BLM roads, construction and snow plowing of approximately 215 miles of road; operates the Gunnison County Landfill; implements and maintains the Gunnison River Watershed Integrated Weed Management Plan in accordance with the *Colorado Noxious Weed Act*, and maintains and operates the Dos Rios Sewer collection system, the North Gunnison interceptor sewer and collection, Antelope Hills collection system and lift station, and maintain the sewer system in the community of Somerset.

Gunnison County Attorney's Office

The County Attorney's Office provides legal counsel to the Board of County Commissioners, the Planning Commission, Board of Adjustments, Environmental Health Board, Board of Appeals and to all elected Gunnison County officials, and various Gunnison County Departments, including but not limited to, Administration, Alternative Services, Assessor, Clerk, Coroner, Gunnison/Crested Butte Regional Airport, Gunnison Valley Hospital, Health Care Center at Gunnison Living Center, Housing Authority, Human Services, Library, Community Development Department, Public Health, Public Works, Sheriff and Treasurer.

The County Attorney also represents various other County boards and commissions, such as the Gunnison Valley Hospital Board of Trustees, Library Board, Health & Human Services Board, and Weed Commission.

The County Attorney is available as scheduling permits to attend Planning Commission meetings, and is always available for requested legal opinions. The County Attorney's Office and Community Development Department staffs meet once weekly to review issues and jointly work on projects.

Gunnison County Housing Authority

The mission of the Gunnison County Housing Authority is to assist in providing suitable housing and an acceptable environment for the elderly, the handicapped, and the disadvantaged; and to encourage private investment in housing to help meet the housing needs of all citizens. The Authority is the agency that reviews and acts on requests for exemptions from the Workforce Housing Linkage fee when customers apply for Building Permits.

The Authority is responsibility for updating existing housing needs assessment studies that are considered in Land Use Change Permit reviews, and has also provided review services for proposed subdivisions when developers have voluntarily offered affordable residences within their proposed subdivisions.

Gunnison County Geographic Information Services Department

In Gunnison County, the Geographic Information System Department serves as the long-range planning staff, and prepares and oversees Gunnison County's Comprehensive Plans and provides a variety of other planning-related services, including project site planning, computer graphics for presentations, planning coordination with other jurisdictions, federal project reviews, and special projects.

The Community Development Department uses the GIS Department–provided Map Maker software to conduct initial analyses of every Building Permit, ISDS Permit and Land Use Change Permit application. The GIS Department that provides all vicinity and more site-specific maps as requested for review of individual Land Use Change Permit applications.

The two departments also work together and with the Gunnison County Emergency Management Coordinator and Dispatch Office in assigning addresses to new construction, and to "clean up" old addressing protocols and road name duplications to ensure the highest level of clear communication and accessibility for emergency management providers.

Gunnison County Wildlife Coordinator

The Gunnison Sage-grouse, a unique species of North American grouse, is a year-around resident of Gunnison County. In 1995 local Stockgrowers, environmental groups, Gunnison County and State and Federal agencies formed a "Local Working Group" to address concerns about the future of this species and completed the *Gunnison Sage-grouse Conservation Plan* in 1997. In response to a petition in 2000, the U.S. Fish and Wildlife Service designated the Gunnison Sage-grouse as a Candidate species for threatened or endangered status under the Endangered Species Act (ESA). In 2005, the status of the species was upgraded on the Candidate list for consideration of listing.

On April, 12, 2006, the U.S. Fish and Wildlife Service announced that after review, the Gunnison Sage-grouse was not warranted for listing under the ESA, stating that threats to the species are "neither imminent nor of such magnitude that they threaten or endanger the existence of the species." Please follow the links on this page to the Fish and Wildlife Service for further information. As of the end of 2009, the potential listing is again being considered, and the County is again assessing whether the relevant section of the *Land Use Resolution* currently in place is sufficient to address the issue.

Having long been involved with management of the Gunnison Sage-grouse, Gunnison County has been and will continue to be proactive to ensure the preservation of this unique and important species, and Wildlife Conservation Coordinator Jim Cochran works with the Board of County Commissioners, the Gunnison Basin Sage-grouse Strategic Committee, Federal and State agencies, private landowners, and interested citizens to plan, manage and coordinate the development of the Gunnison Sage-grouse Conservation Action Plan.

Each application for Building Permit, Access Permit, Land Use Change Permit and Individual Sewage Disposal System Permit is reviewed for its location in and impact to Sage-grouse habitat and leks. The County's Wildlife Conservation Coordinator and Community Development Department staff, and the Colorado Division of Wildlife representatives jointly review a parcel on site to ensure that the proposed development best meets the landowner's needs but protects the bird. The Coordinator and DOW also provide general wildlife information and site-specific review and comments as needed about other wildlife populations in the county.

Gunnison County Enforcement Team

The Gunnison County Enforcement Team combines the efforts of key departments to ensure that unresolved notices of violations of regulations and permit conditions issued by the Community Development and Public Works Departments are completed by additional legal action, when necessary. For many years, the County debated hiring

an Enforcement Official, but ultimately determined that a stronger prosecution arm was the missing piece of the enforcement process, and instituted the team follow-up approach.

Representatives of the Community Development and Public Works Departments, the County Attorney and the County Manager meet twice monthly to review the status of violations, determine alternatives for resolution, and, as appropriate, refer them to the Board for direction. When directed, the issue is then filed for action with the court.

Gunnison County Board of Adjustments

Boards of Adjustments are common to most entities and are designed to be the "safety valve," to determine when a specific requirement within a regulation should not be applicable to an individual property. The Board of Adjustments is statutorily required in Colorado, and members are appointed by the Board of Commissioners. Board members in Gunnison County specifically are required:

- To hear and decide appeals from any order, requirement, decision or determination of the Building Inspector.
- To make a decision if a variance can be granted, when "exceptional narrowness, shallowness or shape of a piece of property at the time of the enactment of the *Land Use Resolution*, or by reason of topography or other conditions, the strict application of requirements of the Resolution relating to setback, minimum lot area, minimum floor area or maximum building height would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property.
- To make a decision when there is a question or dispute as to whether a piece of property does or does not lie within or partly within a designated hazard zone or resource area, and to interpret official maps.

Gunnison County Environmental Health Board

Members of the Environmental Health Board are appointed by the Board of Commissioners. Four are regular members; two are alternates. The Board meets as needed, to review and act on requests for variances and appeals from requirements of the Gunnison County Individual Sewage Disposal System Regulations. Most requests for variances are those for lots that are smaller than the acre required for an individual system.

Gunnison County Building Board of Appeals

Members of the Board of Appeals are appointed by the Board of County Commissioners. The Board reviews and acts on appeals filed by contractors or others about decisions made by the Building Official about building plans or during construction.

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

Gunnison County is not regulated by traditional "Euclidian zoning." Instead, Land Use Change Permit applications are evaluated for their potential impacts to the community, environment and adjacent land uses, and for their compliance with the *Gunnison County Land Use Resolution*.

Gunnison County had no land use regulation *per se* until 1971, when it adopted "hard," or "Euclidian" zoning. The Board decided in the mid 1970's that implementation of "performance standards," allowing applicants to establish most uses anywhere in the county so long as impacts of the uses were mitigated, was better-suited to the county's needs. The performance system seemed a more flexible approach, better serving a very large, environmentally, geographically and geologically diverse county. After a two-year process of meetings with special interest groups—attorneys, Stockgrowers, business owners, Realtors, environmental advocates, and others—and using the assistance

of a technical advisory group comprised of people from federal and state agencies—Bureau of Land Management, U.S. Forest Service, Colorado state agencies and others--the new system was implemented. The traditional zoning districts and maps were abandoned and the *Land Use Resolution* adopted in 1978.

In the mid-1990's the then Planning Department and Commission responded to complaints from developers and public that the document was vague and arbitrary, and initiated a major revision to include more "prescriptive" standards to provide the foundation for more defensible decisions, and to more clearly state the County's requirements for development proposals. The major revision of the *Resolution* was adopted January 8, 2001. It has been significantly amended since, and republished in March 2006. Amendments to it may be proposed by the Planning Commission, Board, the public, or the Community Development Department staff.

OTHER GUNNISON COUNTY REGULATIONS AFFECTING LAND USE:

Several regulations that had been in place for many years were incorporated into the *Land Use Resolution*, with the idea that regulations that would directly affect the design or operation of a development should be located in one document, a "development code."

Special Development Projects Resolution

The *Gunnison County Regulations for Special Development Projects* was adopted in 1990, amended in 1994, and fully revised in 2009 (now titled the *Special Development Projects Resolution*) to address larger projects such as transmountain water diversion, expansion of or large recreational developments, new utility construction and large mining projects. The process of review generally mirrors the assessment process of the National Environmental Protection Agency, so that duplication of effort—on the parts of the developer, the County and the public—is minimized, and the two processes can occur jointly. Only one application for such a project has ever been submitted for review: the proposed expansion of the Crested Butte Mountain Resort ski area; that application was withdrawn by the applicant before the process was completed.

Temporary Oil and Gas Regulations

The purpose of the *Temporary Oil and Gas Regulations* was to establish temporary regulations that provided "reasonable limitations and safeguards for the exploration and production of oil and gas resources in the County." The goal was to provide a framework for the responsible exploration and production of oil and gas resources so that natural resources and surrounding land uses are protected, protects the public health, safety, welfare and adverse impacts are minimized.

These *Regulations* are "stand-alone" and are not an amendment to or a Section of the *Gunnison County Land Use Resolution* or the *Special Development Projects Resolution*. They apply to oil and gas operations, and maintenance to or on oil or gas well, production facility, or pipeline. All those operations must also comply the *Gunnison County Standards and Specifications for Road and Bridge Construction* and the *Gunnison County Overweight Vehicle Permit requirements.*

Individual Sewage Disposal System Regulations

The *Individual Sewage Disposal System Regulations* were first adopted in 1972, and included the requirement that one system could be located on one acre, but could be reduced to two units per acre. They primarily address the installation of standard individual sewage disposal systems, but also support alternative technologies, and require that development located within 400 feet of a municipal line that is part of a central wastewater treatment system tie onto that system.

Variances and review of alternative technologies that are subject to these *Regulations are* subject to review and action by the Gunnison County Environmental Health Board.

International Building Code

The International Code Council (ICC) was established in 1994 as a nonprofit organization dedicated to developing a single set of comprehensive and coordinated national model construction codes. The founders of the ICC are Building Officials and Code Administrators International, Inc. (BOCA), International Conference of Building Officials (ICBO), and Southern Building Code Congress International, Inc. (SBCCI).

Gunnison County has adopted the *International Building Code*, the *International Fuel Gas Code*, the *International Mechanical Code*, the *International Residential Code*, the *International Energy Conservation Code*, and amended each to reflect policies or practices unique to building in Gunnison County. A copy of each of the Codes is available for review but not for sale in the Community Development Department.

Uniform Fire Code and Fire District Standards

The *Uniform Fire Code* has been adopted by the Crested Butte Fire District, but not the Gunnison Volunteer Fire District. The County and the Crested Butte Fire District have entered into an agreement that, with some modification, any new construction that occurs within that district must meet its standards, and be reviewed and approved by it.

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

"Police power"

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

Nuisances next door

Regulation of the use of property and use of police power began in identification and regulations of "nuisances," activities whose very existence or use in a particular place cause damage, or diminish another's property values. Governmental decisions that preceded zoning law were based on "nuisance theory" the belief that people ought to be protected from nuisances. Nuisance regulations were originally adopted to separate residential uses from existing commercial uses that were considered "nuisances." Before zoning, the only way a property owner had of protecting his own property was to assert that another use was a nuisance, and some of earliest case law was created because of locations of mortuaries or gas stations close to residences.

Zoning

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

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

The Board must file a copy of any approved resolution, zoning regulations or maps with the clerk and recorder, who indexes the certified copy as if it were an instrument of title to land. (C.R.S. §30-28-125.)

The following are commonly-used terms in "hard" zoning:

"Use by right"
The use a landowner can expect to be able to do without a higher level of review, such as a house on land that has been zoned residential; may have to meet certain requirements, such as height, bulk and plane, setbacks, etc. Gunnison County also allows one house per parcel by right, with required design standards; some of those standards require the house to undergo review by the Planning Commission, and, in some cases, the Board of County Commissioners.

"Use by special review"
Use that is not by right, but requires more review, such as a church in a residential area. Gunnison County's land use regulatory review follows this same concept: Most uses are allowed after review.

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

Village of Euclid v. Ambler Realty (272 U.S. 365, 1926)
When you hear the term "Euclidian Zoning," it's about this case.

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

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

Lucas vs. South Carolina Coastal Council (1992)
In 1986, Lucas bought two residential lots on the Isle of Palms, a South Carolina barrier island. He intended to build single-family homes as on the adjacent lots. In 1988, the state legislature enacted a law which barred Lucas from erecting permanent habitable structures on his land. The law aimed to protect erosion and destruction of barrier islands. Lucas sued and won a large monetary judgment. The state appealed.

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

"Zoning Out" Manufactured Housing in the County
The County may not exclude manufactured housing (mobile homes or other prefabricated homes) from the county by "zoning out." However, it may exclude manufactured housing from certain areas in the county so long as it does not completely exclude such housing from all areas of the county.

"Performance" zoning. "Performance zoning," land use regulation based upon the application of specific performance standards, is an alternative to "hard" zoning, and is the primary concept behind Gunnison County's current land use planning and regulatory program. Certain uses of land are not prohibited as they usually are in "hard" zoning; certain adverse impacts are prohibited, or are required to be mitigated.

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

In any case, the burden of proving that standards are met, and/or impacts are mitigated lies with the applicant for a Land Use Change Permit.

RECIPE FOR AN EFFECTIVE PLANNING COMMISSION

Effective Planning Commissions share certain qualities, including:

Being prepared, and interacting with the staff before a meeting
The most functional planning review process for customers happens when the Commission and Staff work as a team., and it's the Board's and Staff's intention that will be the norm.

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

If you have questions about an upcoming agenda item, please don't wait till the meeting to ask. Contact the Planning Staff: They're glad to have that conversation before the meeting, and it gives them time to prepare additional information if necessary, including contacting the County Attorney or other County departments. Meetings run more smoothly and the public is better served when the staff and Commission members are on the same page before the meeting starts.

At a meeting or hearing, commissioners should be able to both ask and answer questions about a project, its relationship to the *Land Use Resolution* and other regulations, and its potential impacts on the community.

Though the County Attorney is not present as a regular staff member at Commission meetings, if legal questions arise, the Commission or staff can and should call a "time out" to ask for legal advice. Planning Staff members are not attorneys, and attorneys representing developers or other members of the public are not there to provide legal opinions to guide the Commission. Don't take legal advice from anyone but the County's own lawyer.

Maintaining an open flow of ideas
The chairperson and the other commissioners share responsibility for seeing that there is a continuing flow of ideas and discussion among all parties, including applicants, staff, members of the public, and the commissioners themselves. Be objective and ask questions. There can be a fine line between maintaining this "open flow," and overstepping a legal boundary into negotiation, or as part of a quasi-judicial action. The County Attorney is a helpful advisor in defining the difference.

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

Though dress is casual in Gunnison County, Planning Commissioners are looked to as professional leaders by the Board, the public and the Planning Staff. Commissioners can affect their credibility and the initial impression the public has of the County organization by dressing the part and maintaining body language that shows respect for the honor and responsibility of this appointed position. Even when you're not in a meeting, you are still viewed as a representative of the County.

Your appearance and performance will create in the public's minds the picture that they will always carry with them of "the way the County is run."

Make it as professional a picture as possible.

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

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

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

The Gunnison County Attorney annually meets with the Commission to review the current legal implications for *ex parte* communications, and how to avoid them. (Also see a memorandum from that office and a related *Planning Commissioners' Journal* article in Appendix 3: *Ex parte Communications*.)

Taking advantage of educational opportunities outside the County's training sessions
The Board may have talked with you during your initial interview about your availability to attend conferences and training sessions outside the county that will help you in your role as a Planning Commissioner. Depending upon budgetary constraints, you are heartily encouraged to take advantage of the annual fall conference of the Colorado Chapter of the American Planning Association, which often offers sessions designed just for Planning Commissioners.

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

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

Site Visits
Site visits should be led by a staff person, Planning Commission Chair or Vice Chair, or the proposed project's Project Coordinator (the designated Planning Commissioner who oversees the Commission's project review). The Commission chair and/or staff explains the purposes and rules of the site visit at its beginning to prevent misunderstandings about the purpose and protocol of the meeting. Though these visits are not recorded, they are still regularly scheduled meetings of the Commission and are subject to the Colorado Open Meetings Law requirements for notice.

The purpose of the site visit is to familiarize the commissioners with the site and how the proposed project fits into the site; it is not a hearing; statements and questions from neighbors should be presented at the hearing so that these can become part of the record; if the applicant is willing, questions can be addressed to him or her at the end of the site visit.

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

Commissioners must refrain from offering suggestions or opinions about the project during the site visit; such discussions should occur at a recorded meeting or hearing scheduled for the project.

Specific commission concerns should be directed to staff so these concerns can be researched and addressed prior to action by the commission.

People who own property adjacent to the site and other neighbors should be encouraged to put their concerns in writing for the commission in advance of the scheduled meeting or hearing.

Observations by Commission members from site visits are scheduled as regular agenda items on the meeting after the date on which the site visits are conducted.

(See additional information in Appendix 5: *Site Visits*.)

Helpful Tools to Bring to Meetings

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

- The packet of information about the meeting, including the meeting agenda, staff reports, maps and other documents that are sent to you a few days before the meeting. The staff emails those documents that are in formats that can be emailed, and you will likely receive those before you receive the hard copies.
- Your copy of the *Land Use Resolution*. Seasoned Planning Commissioners will usually keep margin notes, or tab the document when it helps them find certain sections that they use frequently.
- A pad of paper and pencils, or a notebook that's your best way of keeping notes of projects.
- Some Commissioners like to bring their laptops with digital files of regulations and emailed documents. There have been mixed opinions about whether this creates a "visual barrier" between the Commission and the audience in a meeting versus the convenience of having searchable documents. There is no County policy regarding the use of laptops at meetings, and Commissioners will generally decide among themselves what their own practice should be.

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

"Abandoned Townsites"

In Colorado "abandoned townsites" are old towns that were once incorporated municipalities, but which, in the 1970's, were formally and legally "abandoned." In the process of abandonment, counties were deeded ownership of the townsite streets. The lots and blocks as they appeared in the platted townsite maps are all "legal lots," i.e. they each can be issued a well permit by the Division of Water Resources, and can obtain Building Permits if they meet all other requirements.

In Gunnison County, however, because a minimum of one acre is required to install an individual sewage disposal system when no central treatment system is available, more than one lot is required to be able to build. (The County has created the "Lot Cluster Agreement" process that, at little cost, allows a lot owner to combine lots to help meet the one acre requirement.)

Among the abandoned townsites in Gunnison County are Crystal, Gothic, Bowerman, White Pine, North Star, Vulcan, Iris, Irwin, Ohio City, Schofield, Floresta, Moscow, Anthracite, Petersburg, Ruby, Spencer, Tomichi, and Tincup.

"Capital Improvements Plan"

Gunnison County adopted its capital improvements program to establish a timetable of permanent improvements, budgeted to fit the County's future fiscal capabilities. Such programs usually project improvements over five year periods.

Some entities charge their Planning Commissions with doing that task. In Gunnison County, the Finance Office and County Manager prepare the plan for review and approval by the Board of Commissioners. Each department or elected office annually identifies the programs and/or equipment it needs that will require a capital expenditure over a projected five-year period, and includes that request as part of their budget.

"Conflict of Interest"

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

The Gunnison County *Planning Commission Organization and Procedural Guidelines* states that a member of the Commission is considered in a position of conflict of interest if any of the following situations is in evidence relative to a specific Land Use Change Permit application or special project scheduled for discussion:

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

Gunnison County practice is that when there is a question of conflict of interest, a Planning Commissioner meets with the County Attorney, describes the perceived conflict, and the Attorney provides an opinion about the specific situation. The Planning Commissioner must then decide whether to recuse him/herself based upon his/her understanding of the situation, the Planning Commission *Guidelines*, and the Attorney's opinion.

"Due Process"
When a process that is required by a regulation is followed, "due process" has been accomplished. Generally, it takes two forms: procedural and substantive.

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

"Exaction"
A government has "exacted" something from a development when a contribution or payment is required as a precondition to receiving a development/Land Use Change permit. It usually refers to mandatory dedication or the payment of fees in lieu of dedicating land.

"Exclusionary Zoning"
Zoning (or in Gunnison County's case, an action approving or denying a Land Use Change Permit application, or a requirement within a regulatory document) that has the effect of keeping out a racial minority, poor people, or some other specific part of the population is considered "exclusionary." Techniques such as large-lot zoning or minimum residential floor area requirements that are thought to increase housing costs have been challenged in other entities nationwide because they may exclude certain groups of people. Such standards that are imposed by entities in which land is not zoned may still result in the same consequences, whether they are intended or not.

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

Findings are included in all the Commission's recommendation and decision documents for Land Use Change Permit applications, and when the Board disagrees with, or has considered additional information that overturns the Commission's findings, the Board must make its own findings to support its decision.

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

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

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

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

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

These entities all took the positions that the direction and extent of development is heavily influenced by public investment in the provision of roads, transit, schools, and water and sewer services, and that growth ought to be, and could be directed to specific areas of a community by controlling the timing and availability of these services.

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

A "Legal Lot" in Colorado
A "valid" or "legal" building lot refers to lots that were created in compliance with Colorado statutes and the County's subdivision regulations that were in effect at the time the parcel was created. A determination whether a parcel is considered a valid building lot must be made before an Individual Sewage Disposal System Permit or Building Permit can be approved for the property. If a lot is "invalid," a Land Use Change Permit is required to "validate" it, i.e. to review and approve it through the subdivision review process.

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

Many building lots in Gunnison County are in platted subdivisions, which meet this "valid" or "legal" lot requirement. There are, however, many parcels in the County which are not in platted subdivisions. Documents must be submitted that demonstrate that these parcels met state statutory and subdivision regulations in effect at the time they were created. This can most often be demonstrated by providing the history of deeds back to the recorded date when the parcel was created, and deeds to adjacent parcels when necessary. A history of deeds to property can first be checked in the County Assessor's Office in the courthouse. They can provide basic information on the past

few changes in ownership and size of the property. The Clerk and Recorder's Office (also located in the courthouse) keeps tract indexes which maintain the history of transactions which have occurred on property, and can make copies of the deeds. They have more resources (such as the grantor/grantee indexes) for finding older deeds.

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

"Metes and bounds"
A system of describing and identifying land by measures ("metes") and direction "bounds") from an identified monument or other marker or some other (hopefully) permanent feature.
"Pre-emption"
A county regulation and a state statute may both remain in effect so long as their express or implied conditions do not irreconcilably conflict with each other. (*Bd. of County Commissioners v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045 (Colo. 1992).)

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

There is a similar framework for determining whether a county regulation is preempted by federal law or because the activity to be regulated is on federal land. (See: *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707 (1985).) Under the relevant part of the "property clause" of the U.S. Constitution, "(t)he (C)ongress shall have power to dispose and make all needful rules and regulations respecting the territory or other property belonging to the United States." (*U.S. Const. art. IV*, sec. 3, cl.2.) Additionally, Congress has regulated the use and disposition of federal lands under the *Mineral Leasing Act of 1920*, the *Mineral Leasing Act for Acquired Lands of 1947*, the *Federal Onshore Oil and Gas Leasing Reform Act of 1987*, and the *Energy Policy Act of 2005*, the *National Forest Management Act*, and the *Federal Land Policy Management Act*.

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

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

those kinds of parcels. "Interests" includes any and all interests on the surface of land but excludes any and all subsurface interests.

"Subdivision" and "subdivided land" and resulting subdivision regulations do not apply to any division of land that creates parcels of land each of which comprises 35 or more acres of land and none of which is intended for use by multiple owners. It also does not apply to rural land use processes involving cluster developments (such as developments created under Gunnison County's Large Parcel Incentive Process). (C.R.S. §30-28-101(10).)

"Sustainable Development"

An old idea, an updated name. In 1733 a plan was created for Savannah, GA, locating gardens and farms around the city's core, permitting the community to provide for the full range of its needs to maintain both its existence and unique character. (Thomas Jefferson also advocated a nation grounded in agriculture and local self-sufficiency.

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

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

The American regional planning movement of the 1920s envisioned that growth would be directed to metropolitan areas to preserve small villages and farmland. Towns and communities which could meet residents' needs, not just for housing, but for work, shopping, food, and recreation were built in "greenbelts" during the 1930s (Greenhills, Ohio; Greendale, Wisconsin; and Greenbelt, Maryland). Today the same concepts are reflected in the growing number of "new urbanist" communities.

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

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

APPENDIX 1: KEY POINTS TO LOOK FOR IN A RECOMMENDATION OR DECISION DOCUMENT

The Planning Office staff in the Community Development Department drafts recommendation and decision documents for the Planning Commission, which then makes its changes and adopts the document as its action on Land Use Change Permit applications or other issues. The following elements guide the staff in its drafting, and are those that Commission members should find helpful in reviewing and acting on draft documents:

Reasons to include any information in a Land Use Permit Application recommendation or decision document:

- To inform the Planning Commission and/or Board and public about the details of the proposed project.
- To present the record of public testimony.
- To identify key issues related to the proposed project.
- To identify the *Land Use Resolution* standards that apply and those that don't, and compliance of the proposed project with applicable standards,
- To list the reasons that the recommending body or the decision-making body is recommending approval or denial, or is approving or denying an application (i.e. in "findings" about the key issues), and
- To state a recommendation or decision to deny or approve the application (with any conditions of approval) based upon the findings.

Items to be included in a recommendation or decision document, in the following sequence:

1. **Heading:**
   - **Identification of the subject** about which the recommendation or decision document is written:
     - When the document is a recommendation from the Planning Commission to the Board, reference to that fact
     - Name of the applicant.
     - Name of the development and the Land Use Change Permit application number.
     - Names of the applicant's representative(s) (engineers, attorneys) may be included if relevant.
     - Phase number or the level of review (Sketch, Preliminary, Final), if applicable
   - **Date** of the Planning Commission or Board meeting for which the action is scheduled.
   - **Name of the staff person** who has prepared the document

2. **Project Description**:
   - **A concise, but detailed description** of the project on which the action is to be taken, including a statement that the approval or denial is based upon the original plan, or that the project has been modified during the review process
   - The following statement regarding plans and documents included in the record of the application:

     "This review and recommendation incorporates, but is not limited to, all the documentation submitted to the County and included within the Planning Office file relative to this Sketch/Preliminary/Final/Minor Impact application, including all exhibits, references and documents included in the initial submittal dated _____, and all such exhibits, references and documents submitted by the applicants and interested parties subsequent to that. Among those submitted by the

applicant are site plans and narrative submittals that inform this review and in some cases reflect changes to the plan in response to Planning Commission and public comment throughout the Sketch/Preliminary/Final/Minor Impact review process, and include, but are not limited to:"

The statement is then followed by:

- **A list of all engineering plans**, plats, site plans, any related schematic details that have informed the discussion, by title, date and preparer, and number of sheets, as applicable.
- **A list of narrative Documents and/or oral discussion**, including emails, letters, site plans, and/or discussion that has occurred during meetings in which the plan has been modified, including dates of the documents or the meetings in which the relevant discussion occurred, and names of those who have sent the documents.
- Reference by title and date to draft or final protective covenants, deed restrictions, separate design guidelines documents.

- **Any illustrative tables or other visual tools** that demonstrate comparative densities of the area, etc.
- **An identification of key issues** specific to the proposed project and identified both in the initial staff report, and by staff, Planning Commission and public throughout the review of the proposed project. They may relate to such elements as affordable housing, easements, locations and descriptions of specific physical characteristics of the property that affect the location and/or timing of the development, comparative densities and identification of the "neighborhood," adjacent land uses.

3. **A list of work session dates.**
   - Any pertinent observations or other information that was presented or discussed at any work sessions (i.e., submittal of requested information, discussions in which an applicant identifies a change in plan, agreement for mitigation, etc. Those oral statements are part of the record and are noted.)

4. **Site visit record.**
   - Date of site visit, and whether additional separate site visits were made by any individual Planning Commission member.
   - Observations in a bullet list (not quoting or listing Planning Commissioners by name; that is appropriately included in minutes) that are relevant to the elements of the application, made either onsite or at a follow-up meeting on which time has been scheduled to report observations.
   - Description of other observed characteristics of the site, the weather, levels of traffic noise, time of day, etc., when that information bears on key issues of the application. For example, if there is likely to be public concern about noise generation onsite, note the time of day the site visit occurs (during rush hour versus mid-afternoon), weather conditions (windy? a blanket of heavy snow?), and similar ambient characteristics.

5. **Review agency comments.**
   - An introductory paragraph is included: "A copy of the application/Sketch/Preliminary Plan was distributed to the following agencies: Those who responded, and their comments, include:"
   - Each agency is listed in bold, followed by a discussion of its response that includes:
     - Identification of who the individual is who wrote the letter, by name and title.

- Excerpts of the comments that identify the agency's concerns, their responses to technical reports included in the application, their onsite observations, etc.
- Specific recommendations by the agency: These may be excerpts, or may need to be included exactly as they appear in the agency response, depending upon how they're written and how they can best provide clear information to the public and Planning Commission.

6. **Public hearing:**
   - Reference the date of the public hearing, and if there were continuances, the dates the continued hearing was conducted, and the reason for the continuance.
   - Note that minutes of the hearing are part of the record.
   - Include a bullet list identifying the public's questions, issues raised in opposition to, and reasons stated for support of the proposed project. At least some of the issues listed will require specific response in analysis of compliance with standards, to explain that there is no standard to address a concern, that the County has no authority to require a requested mitigation, that a certain mitigation is required and that is a condition of approval, etc.

7. **Compliance of applicable standards of the *Land Use Resolution*.**
   - This section of the document is included after discussion of the project description, meetings, site visits, and agency reviews because each of those elements is expected to inform the analysis of whether or not individual standards are applicable, and if and how the application complies.
   - For those sections that are applicable, the discussion includes reference to relevant reports, to agency review comments, and how the application has complied.
   - For those sections that are not applicable, include a statement of the reason and individual standard does NOT apply (i.e., Section: Day Care Center, the response would be "Not applicable; no day care center is proposed.")

8. **Submittals responding to Sketch or Preliminary Plan conditions.**
   In a recommendation document for Preliminary or Final Plans for a Major Impact application, a section is included that:
   - Itemizes in boldface each of the conditions of the previous plan's approval.
   -
   - An analysis that discusses how the current application has responded (or has not) to each of the conditions, including specific references to submitted reports.

9. **Findings.**
   - Findings address at least five audiences: the Board, the general public, interested parties, other governmental entities, and courts.
   - Generally, findings are not sufficient if they just recite the very language of the *Land Use Resolution*. While a finding that indicates the proposed use "complies with all standards of the Land Use Resolution," is necessary, it should follow a series of findings that address the identified how specific standards have been met to address the identified key issues of the proposed project.
   - Must be supported by substantial evidence in light of the entire record.
   - Avoid phrases like "could cause," "might result in," or "may increase."
   - One of the simplest techniques to assure that findings sufficiently draw a connection between action and underlying impact or rationale of the proposed action is to use the word *"because,"* which connects the reasoning to the legal principle. For example:

"The project does not comply with Section *because* open space only totals 25 percent of the site plan, instead of the required 30 percent."

"The location of the proposed use within the 25-foot Inner Restrictive Buffer is acceptable *because*, as illustrated in the *Inner Restrictive Buffer Relative to Development in the Proposed Williams Parcel* report, dated January 20, 2009 by John Doe, P.E., that location is unavoidable due to the size of the parcel, the existence of slopes over 30 percent and easements in which building may not occur."

- (The Board adopts Planning Commission findings by reference, but must state its own findings when it disagrees with, or has additional reasons for its action based on evidence in the record.)
- When a section of the *Land Use Resolution* states specific findings required for specific actions, those are included.

10. Recommendation or decision documents for actions on Land Use Change Permits will include the following introductory paragraph: "The Gunnison County Planning Commission, having considered the submittals and record of the _____ Plan, onsite observations and public testimony, has reached the above Findings, and recommends that the _____Plan be approved with the following conditions:"

APPENDIX 2: REDUCING RISKS OF PERSONAL LIABILITY: GUNNISON COUNTY ATTORNEY'S GUIDANCE TO PLANNING COMMISSION MEMBERS

MEMORANDUM

TO: **Joanne Williams**
FROM: **David Baumgarten, County Attorney**
DATE: **April 22, 2009**
RE: **Reducing Risks of Personal Liability**

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

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

2. Avoid any conflict of interest. See: C.R.S. 24-18-101 *et seq.* Avoid any conflict of interest and the appearance of a conflict and do not act from personal motivation; otherwise, your conduct may be outside the scope of your official or public duties. As a practical matter, the likelihood of suit can increase if personal motivations appear to be involved, emotions may rise, making resolution of the suit more difficult, and judges and juries are less likely to be sympathetic to your position.

Understand the rules applicable to your actions and decisions, follow the rules, apply the rules even-handedly and don't play favorites; change the rules if they don't work.

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

4. Establish and follow where required, understandable, practical, and legally sufficient procedures which meet due process requirements. Due process violations often provide a basis for federal civil rights act claims, particularly with respect to land use, licensing and permitting decisions. Typical claims often allege inadequate or

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

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

6. Keep good records of what you do and why you do it. Being right is good; being able to prove you're right is even better. The increasing volume of paperwork becomes frustrating at times, but it is vital that accurate records of your official activities be kept, that proper and lawful reasons are expressed for the actions you take, and that those reasons are recorded in some fashion.

While staff maintain records of formal meetings of the commission, it is wise to keep your own personal records and calendar of those significant events, if any, which occur outside recorded meetings. Lawsuits can take months or years to bring and years to conclude. Determining what happened in preceding years may be important to successfully resolving the lawsuit. Memories fade, but documents often remain available.

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

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

Communications in Quasi-Judicial Proceedings: Gunnison County Attorney's Guidance to Planning Commission Members:

MEMORANDUM

FROM: **David Baumgarten, County Attorney**
DATE: **April 22, 2009**
RE: ***Ex parte* Communications In Quasi-Judicial Proceedings**

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

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

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

Nonetheless, *ex parte* contacts in quasi-judicial proceedings do have perils; they may cause damage to the applicant, to the public and to the integrity of the process. Courts give guidance to judges and to one acting as the equivalent of a judge. The United States Supreme Court has stated that "the tribunals of the country shall not only be impartial in the controversies submitted to them but shall give assurance that they are impartial . . ." Berger v. United States, 255 U.S. 22, 35-36 (1921). Basic to our system of justice is the precept that a judge must be free of all taint of bias and partiality. A judge ". . . must meticulously avoid any appearance of partiality, not merely to secure the confidence of the litigants immediately involved, but to retain public respect and secure willing and ready obedience to their judgments". People v. Hrapski, 718 P.2d 1050 (Colo. 1986). A trial judge must "conduct himself at all times in a manner that promotes public

confidence in the integrity and impartiality of the judiciary". A.B.A. Standards, The Function of the Trial Judge 1.5. Code of Judicial Conduct, Canon 2, provides that a judge should avoid the appearance of impropriety in all activities. Code of Judicial Conduct Canon 3(A)(4) provides in pertinent part: "A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding . . .".

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

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

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

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

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

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

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

(Copyright, Planning Commissioners Journal)

This column will focus on another common ethical problem facing Planning Commissioners: "*ex parte*" contacts.

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

First, any contact that you have with a party involved, or potentially involved, in a matter before the Planning Commission outside of the public hearing process is known as an "ex-parte" contact. Ex-parte contacts can present difficult ethical problems for Planning Commissioners. Most people tend to think of *ex parte* contacts as referring to contacts that occur outside of the meeting. While that is generally true, the literal meaning of the term "*ex parte*" is "one-sided."

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

For many of you, it is simply impossible to avoid all contacts involving matters before you outside of the hearing process. In those cases, each of you must judge your own community's tolerance for such type of activities. While you should refrain as much as possible from engaging in ex-parte contacts, let me caution you that if you are going to discuss matters with interested parties outside of the hearing process, that you make yourself available to all sides. Also, any substantive information or facts that you receive during the course of those contacts that relate to the matter at hand ought to be made a part of the public record so that it can be available for consideration or challenge by all interested parties. This can be done by way of a public statement by you at the commission meeting.

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

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

C. Gregory Dale, FAICP, is a Principal with the planning and zoning firm of McBride Dale Clarion in Cincinnati, Ohio. Dale manages planning projects and also regularly conducts training for planning officials throughout the country. He regularly writes for the "Planning Commissioner's Journal." The Community Development Department and Board of Commissioners hired Mr. Dale in 2009 to facilitate a retreat among the Board, Planning Commission and Planning Staff to assess communication and processes among the three, and recommend tools to improve interaction and application processing.

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

MEMORANDUM

TO: Planning Commission
FROM: David Baumgarten, County Attorney
Tom Dill, Deputy County Attorney
RE: Colorado Open Meetings Law
DATE: December 15, 2008

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

1. C.R.S. 24-6-402(2)(b) states that "All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times." (Emphasis added.)

2. C.R.S. 24-6-402(2)(c.)states that "Any meeting at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place…. No less than twenty four hours prior to the holding of the meeting." (Emphasis added.)

3. C.R.S. 24-6-402(2)(d)(III) states: "If elected officials use electronic mail to discuss… public business among themselves, the electronic mail shall be subject to the requirements of the is section."

4. C.R.S. 24-6-402(4) states that the members of a local public body, upon the announcement by the local public body to the public of the topic for discussion in the executive session, and upon the affirmative vote of two-thirds of the quorum present, may hold an executive session only at a regular or special meeting; no adoption of any formal action shall occur at any executive session.

5. C.R.S. 24-6-402(4)(f)(I) authorizes a local public body to conduct an executive session on "(p)ersonnel matters except if the employee who is the subject of the session has requested an open meetings."

6. C.R.S. 24-6-402(8) states that no action of a local public body shall be valid unless taken or made at a meeting that meets the law's requirements.

7. C.R.S. 24-6-402(9) authorizes the County or District courts to enforce this law on behalf of any citizen, and, if the court finds a violation of this law, to award costs and attorney's fees.

A fair reading of the law demonstrates that it is the explicit policy of the state that meetings of the Board be given public notice; that public notice can be easily accomplished; and that a personnel matter

can be discussed in an executive session <u>except</u> if the employee who is the subject of the session has requested an open meeting.

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

APPENDIX 5: SITE VISITS

"Site Visits: Necessary But Tricky" ***by C. Gregory Dale, FAICP***

(Copyright, Planning Commissioners Journal, Summer, 2000)

Consider this scenario. As part of your preparation for an upcoming Planning Commission meeting, you accept an offer from an applicant to tour a site that is subject to a zone change request.

After all, how can you make a decision about a zone change without seeing the property, and who is better able to show you the property than the owner? However, as you are touring the site, you notice nearby residents suspiciously watching the tour from driveways and back yards. For reasons that you cannot fully explain, you feel guilty, as if you were doing something improper. Are you doing anything wrong?

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

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

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

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

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

Thus, the issue becomes how to conduct site visits while respecting the sensitivities of ex- parte contacts. My experience is that communities have successfully handled site visits in several ways.

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

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

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

Some communities organize group site visits for their commissions. This can be helpful in that it ensures that everyone is seeing the same thing. However, this would typically be considered a public meeting that is subject to public notice. If your community is interested in this approach, I urge you to work with your legal counsel to structure it in a legally defensible manner. For example, if you travel to a site in a single vehicle, you should not be discussing the merits of the case with each other. Also, you may need to make provision to allow others (such as the applicant, neighbors, and other interested citizens) to accompany you at the site. There are many "open meetings" aspects to group site visits that must be considered.

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

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

"When They Speak, Do You Listen?" *by Elaine Cogan*

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

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

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

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

It is possible that no amount of public discussion would have changed the opinions -- and the votes -- of the Planning Commissioners, and it is entirely within their rights to reaffirm their original opinion. But once they opened up the discussion to the citizens, they should have showed by their questions and other responses that they considered the public's input seriously before they took another vote. "Why did we bother to come? They didn't even hear what we were saying," is a reasonable public evaluation of the proceedings that occurred. The seeds of an apathetic or militant citizenry are nurtured in such unfertile ground.

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

Another nonverbal behavior pattern that annoys citizens is seeing commissioners chat with each other or staff when the public is speaking. While you may be discussing the subject at hand, or have another legitimate purpose, you appear to be disinterested in the public comment or just rude. Still another habit to avoid is drumming your fingers or a pencil on the table as if you are impatient to get this all over with.

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

If you are not personally acquainted, give your memory a boost by jotting down their names as they introduce themselves. Then, take care to couch your response or comments in terms the citizen has raised. "Yes, Mrs. Jones, I can understand your concern that widening the street will take out those

two old oak trees. Several of your neighbors have also raised that issue. Let's ask staff to respond. I know they've looked into the matter."

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

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

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

"Leading the Commission: The Effective Chair" ***by Elaine Cogan***

(Copyright Planning Commissioners' Journal, Fall 1993)

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

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

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

Another sign of problems is when there is little or no discussion on major issues. If this happens consistently, the leader's style may either have bored or bullied the other commissioners into apathy or submission. Either way, the process is in trouble. It is far better to have more discussion about important matters than less, no matter how heated the debate.

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

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

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

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

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

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

by their first names when you address others more formally. Shirtsleeves and denims or business attire? This is dictated more by the mores of your community than by any style manual.

Display energy and enthusiasm, even at a hearing that has dragged on into the early morning hours. Of course, a good leader will not have allowed the meeting to go on that long, but in any event, you must always strive to be upbeat and positive, fair and courteous.

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

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

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

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

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

There are two different classes of wells in Colorado:

Household Use Only Wells

These types of well permits are issued for ordinary household uses in one single-water rights. Depending on under what provisions the well permit is issued, the well may be able to serve up to three single-family dwellings, irrigate one acre or less of lawn and garden, and provide water for the individual's domestic animals and livestock.

Exempt Wells

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

Commercial Exempt Wells

- These types of well permits are available for small businesses located on lots that were created prior to June 1, 1972, or by an exemption to the subdivision law. The use of the well is limited to a commercial business, like a convenience store, and is limited to the pumping of one-third acre-foot (108,600 gallons) of water per year. The uses of water are restricted to drinking and sanitation facilities inside a single business. Outside water uses are not allowed. Well metering devices are required. Examples of commercial that would not qualify under this provision are motels, commercial kennels, horse-Boarding operations, and any commercial business with outside uses. These uses are non-exempt and a well permit would not be available in over-appropriated areas of the state without augmentation.

Domestic and Livestock Wells

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

Monitoring and Observation Wells

These types of well permits are for the construction of a well to be used for the purpose of locating water, pump or aquifer testing, monitoring ground water, or collection of water quality samples. A monitoring and observation well

may be converted from an existing monitoring and observation hole and permitted for the uses as stated above, or as a recovery well or a dewatering system. A well constructed under a monitoring and observation well permit may be converted by permit to other uses.

Augmentation Plans

An augmentation plan is a court-approved plan designed to protect existing water rights by replacing water used in a new project. Augmentation plans are usually required in areas where there is a shortage of water during part or all of the year. New development creates new water users, with water rights that are "junior" (or later in time) to certain other water rights that have priority over the new use by virtue of past use of water and confirmation of this use by the water court. The priority protects these water rights that are therefore senior (or earlier in time). When a shortage occurs, senior water rights may place a call for water, which may result in junior water rights being ordered to stop some or all water use so the seniors can receive their water. Simply put, augmentation is a method to allow an individual or larger development to use a well, the junior water right, when a call has been placed, without reducing water available to senior water rights.

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

When property is subdivided, the Division usually requires that a water augmentation plan be obtained by the applicant. The Division requires that augmentation facilities be physically proven capable of holding water, and that augmentation plans specify actual uses proposed in a development.
An applicant must apply for an augmentation plan through the water court. The application must explain exactly where the water will be obtained, where water is to be used, what it will be used for, how much will be used, what the source of augmentation water is, when and where augmentation water will be acquired, how much augmentation water is required, and how the augmentation plan will be operated. The application should be supported by an engineering analysis, usually prepared by a water resources engineer, which shows how the water needs of the project were determined and how the new water use can occur without affecting senior water rights.

Springs

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

Water measure equivalents

1 cubic foot	7.48 gallons	62.4 pounds
1 acre-foot	43.560 cubic feet	325,829 gallons
1 cubic foot/second (cfs)	44949 gallons/minute	
1 cfs	646,272 gallons/day	
	For 24 hours	1.983 acre-feet
	For 30 days	59.5 acre-feet
	For 1 year	724 acre-feet
1 million gallons	3.07 acre-feet	
1 million gallons/day (mgd)	1.121 acre-feet/year	
1,000 gallons/minute (gpm)	2.23 cfs	4.42 acre-feet/day