



# Town of Eagle

## Planning and Zoning Commission Handbook

200 Broadway  
Eagle, Colorado 81631

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## Planning and Zoning Commission Handbook

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## Chapter 1 – Introduction

### Welcome to the Planning and Zoning Commission

The Planning and Zoning (P&Z) Commission is one of the most visible groups responsible for planning in the Town of Eagle (TOE). The P&Z Commission is an appointed board of residents selected as an advisory and decision group by the Town Council on land use planning matters. The P&Z Commission may perform other duties authorized by State Statute and Town. The P&Z Commission's principal responsibility is neither to the developer nor to any opposition to a particular development. The Commission is responsible to the long-term interests of the community through enforcement of the Comprehensive Plan and Development Code (Title 4 of the Municipal Code).

Overall, the P&Z Commission's tasks are placed into five (5) categories:

1. Current Planning. Simply put, current planning is processing land use applications made by members of the public. These include projects such as Planned Unit Developments (PUD's), Subdivisions, and Developments Permits, and
2. Long-Range Planning. These are typically Town-initiated projects such as revision of the Development Code and Comprehensive (including sub-area) Plans, and
3. Zoning variance applications (when an applicant believes that a project should be approved even though it is against one or more zoning requirements),
4. Appeal of certain decisions made by the Building Official through the Building Permit process (Section 13.16 of the Municipal Code), and
5. Hear and decide appeals to an order, requirement, decision, or determination made by the Community Development Director

You will attend regular meetings, special meetings & work sessions, evaluate projects & proposals, and make tough decisions about community development projects & policies. You will gain more knowledge about activities happening in the TOE and Eagle County and develop a greater understanding about government and public decision making. A good planning commissioner takes the future seriously, works hard, is patient, and willing and able to make decisions. Keep in mind that the Town Council appointed you to the P&Z Commission and expects to hear your comments through either the recording of the meeting or in the minutes taken.

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

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

The TOE understands that, at least initially, members of the Commission might not have a useful understanding of the six items above. To assist, the TOE has created this handbook and TOE staff will

perform annual training. If any members believe that additional training is required, contact the Community Development Director. This Handbook covers all these topics, and you will be given copies of the Development Code, Comprehensive and Sub-Area plans upon request. Usually, online versions are preferred over paper copies.

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

## Overview of Variances

The Commission acts as the Town's Board of Adjustments (BOA) to determine if a variance should be approved under specific criteria in Section 4.05.020 of the TOE Development Code that are used to determine hardships.

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

1. How the BOA operates
2. The authority and duties of the Commission
3. Legal aspects of Commission conduct
4. Standards for BOA and Commission decision-making

The handbook covers these topics. Also included in this handbook are sections of the TOE Municipal Code which is dedicated to the adjustments. The Appendix in this handbook also contains additional information for you to review.

You can also access the TOE Development Code and the TOE Comprehensive Plan and Sub-Area plans online at the TOE Community Development Department website.

## A Brief History of Planning, Platting and Zoning

***"Nothing is permanent but change." - Heraclitus***

Community planning in the United States is not a new concept. Early developers designed and planned towns where the streets, public buildings, businesses, and homes were built. The planning process helps elected officials when making decisions that will affect the future of their community. The process attempts to ensure that the decisions made by the community will benefit the community as a whole. Planning (long range) takes place when residents, helped by planners, study their town or community and decide what they want their community to be like in the future.

## Planning Elements

- Planning can promote and support economic development. The planning process allows residents and decision-makers to examine alternatives and choose courses of action that can promote employment and economic wellbeing.
- Planning can protect property and property values by separating a potentially harmful or disagreeable land use from surrounding residential and commercial uses and by helping to protect neighborhoods. Property values can also be enhanced when the community plans for parks, trails, playgrounds, and other amenities.

- Planning can also help integrate business and residential neighborhoods to promote supportive communities.
- Planning can reduce environmental damage and conserve resources. Planning can help a community identify areas where development may be inadvisable because of environmental conditions or for the protection of wildlife, sensitive habitat, or scenic areas.
- Planning provides a forum for reaching consensus. The TOE Comprehensive Plan was developed as a guide to support the community values and community-wide consensus of the future goals to which the community has agreed. The Development Code was adopted to help achieve planning goals in the TOE. Zoning and subdivision regulations are the legal requirements governing the way land is used within Town limits.
- The subdivision requirements within the Development Code control the way land is divided and/or separated. These regulations set standards which subdivision proposals must meet in order to make sure that development takes place in an orderly fashion, support community goals, and that services and utilities are provided appropriately.
- Zoning tries to ensure that there is appropriate land for different uses/activities and that the location of these activities is appropriate when considering surrounding uses. The zoning requirements determine how different areas of land can be used and outline the standards that must be met when developing a specific piece of land. Together, the plan policies and regulations guide elected officials when making decisions.

## Chapter 2 – The Planning and Zoning Commission

### The Role of the Planning and Zoning Commission

Colorado state statutes set out the responsibilities of the Commission (C.R.S. §§ 31-23-201 through 314). The Planning Commission's primary function is to prepare and adopt a comprehensive plan. This process has been completed and the TOE has an adopted Comprehensive Plan which will guide you in your decision making. The Comprehensive Plan and other Sub-Area plans should be reviewed and updated as needed to reflect the goals of the community. Often the most controversial role of the Planning Commission is to review current planning applications. The Commission will review applications based on conformance with the TOE Development Code and the TOE Comprehensive Plan and Sub-Area plans. In the Town of Eagle, new P&Z Commissioners are required to sign an oath stating they will support the Constitution and laws of the United States, the Constitution and laws of the State of Colorado, and the Ordinances and Codes of the Town.

The Planning Commission reviews, through public hearings, proposed zoning changes, subdivisions, replats, as well as dedication and vacations of public land, rights-of-way, easements, Special Use Permits (SUP), and Development Permits. The Commission is closely involved in the preparation and amendment of land use regulations and provides recommendations to the Town Council.

While the TOE Development Code requires strict application of requirements for all properties in the TOE, Colorado State Statutes require that the Town Council of any town which enacts zoning regulations provide for a Board of Adjustment (CRS 31-23-307). The TOE Planning and Zoning Commission also serves as the Board of Adjustment.

A variance is the appeal process for a property owner to request exemption from certain required Town regulations. Typically, variances are requested for areas of the Development Code that establish minimum setback, lot width, lot area, floor area, and maximum allowable building height. Three of the four TOE criteria must be met in order for a hardship to be determined and a variance to be approved – specifically a and b and either c or d of Section 4.05.020. The criteria are as follows:

1. *A variance from the strict application of any zone district requirement or supplementary regulation of this chapter may be granted by the Planning Commission following the procedures and conditions herein, except that no use shall be allowed in any zone district in which it is not listed as a permitted or special use. The Planning Commission may grant a variance provided it finds both Subsections (A)(1)(a) and (b) of this section and either Subsection (A)(1)(c) or (d) of this section are applicable.*
  - a. *That the variance granted is without substantial detriment to the public good and does not impair the intent and purposes of the Town's regulations, goals, policies and plan, including the specific regulation in question; and*
  - b. *That the variance granted is the minimum necessary to alleviate the hardship; and*
  - c. *That there exists on the property in question exceptional topography, shape, size or other extraordinary and exceptional situation or condition peculiar to the site, existing buildings, or lot configuration such that strict application of the zone district requirements from which the variance is requested would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property in question; or*
  - d. *That such exceptional situation or condition was not induced by any action of the applicant and is not a general condition throughout the zone district.*

These four criteria are placed in your staff report for your review and will include the applicant's and staff's comments.

### **Burden of Proof**

In cases of variance and certain appeals, the Commission's task is not to solve each problem brought to it, but instead to only determine whether the necessary standards of hardship have been met and whether granting a variance will not injure the public health, safety, and welfare. The burden of proof is upon the applicant to prove that the criteria for a hardship has been met. The job of the commissioner is to strictly interpret the local regulations; meaning that the variance must be denied if certain requirement has not been proven.

### **Variance Guidance**

Hardship should not be self-imposed. The development of the property should be designed to meet the regulations, not the criteria or wishes of the applicant. Only conditions specifically affecting the land or lot should be considered. In general, when the property owner would have a reasonable use of their property without the variance, the variance request should be denied. A variance should not be granted due to financial reasons. An application should not be approved just because it is more convenient to have the variance.

### **Additional Standards**

In granting a zoning variance, the Commission shall modify the application of the regulation so that the spirit of the title is observed, public safety and welfare secured, and substantial justice done. Pursuant to C.R.S. § 31-23-307, as amended, the Commission may vary or modify the application of zoning regulations for the purpose of considering access to sunlight for solar energy devices.

### **Appeals to Building Official Decisions**

The 2015 International Building Code (IBC) Section 113.1 authorizes a creation of a Board of Appeals in *order to hear and decide appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The IBC commentary states, This section provides an aggrieved party with a material interest in the decision of the building official a process to appeal a such a decision before a board of appeals. This provides a forum, other than the court of jurisdiction, in which to review the building official's actions.*

Per the TOE Municipal Code Section 13.16.010, the Commission has been appointed as the Board of Appeals to hear any appeals of a decision made by the Building Official relating to the adopted Building Code. A Board of Appeals provides an applicant a way to hear any grievance created by a decision rendered by the Building Official.

The 2015 IBC Section 113.2 Limitations on Authority states; *An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall not have the authority to waive requirements of this code.*

The IBC commentary states, *This section establishes the grounds for an appeal, which claims the building official has misinterpreted or misapplied a code provision. The board is not allowed to set aside any of the technical requirements of the code.* The Commission's purpose is not to provide a variance to the

code provision, only whether or not the code has been applied correctly. The Commission shall find/rule upon any appeal as compliant with the code or not.

### Qualifications of a P&Z Commissioner

The most important qualification that a commission member must have is a belief that planning is essential to the community – specifically through the creation and enforcement of the Comprehensive Plan. You will be asked to devote a considerable amount of time and energy to the job and you must be willing to be objective and make decisions that further the best interests of the whole community and support the TOE Comprehensive Plan and Development Code. You must be open minded, willing to learn, and to change ideas in the light of new evidence. You must have the ability to define what is an issue and the strength to make effective decisions. As for the duties specific to deciding on variances, the commissioner must take the position that the TOE Development Code is essential, worth defending, and should only be varied when strict compliance creates a defined hardship.

### Responsibility of a P&Z Commissioner

To conduct effective meetings, Commissioners must be informed of the application and the issue(s) associated with the application. Preparation is key to be an effective planning commissioner and it starts with knowledge of the Comprehensive Plan and Development Code. In addition, an effective commissioner comes prepared for the meeting. This means that, in advance of the meetings, you prepare for meetings by reading all materials included in the staff packet. Remember, these current planning applications are submitted by fellow citizens. By being prepared you will be able to examine the facts on an issue, process public comments and create dialog which will be the basis of a decision.

The success of a meeting depends on active participation from a wide range of people. The P&Z Commission should be a forum for discussion of issues and people should feel free and encouraged to express their opinions. Commissioners should act in a fair, ethical, and consistent manner while maintaining an acceptable and objective position. Decisions should not be based on personal philosophy or opinion. Rationale for decisions must always be divulged.

### Chairmanship

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

### Role of the Chair

The attitude and abilities of the chair are critical to the successful operation of the Commission. A capable chair understands the issues, understands their fellow members, can maintain order, and is able to bring the commission to a decision even on complicated or controversial issues. “Punting” to the Town Council on land use issues is not an option. A person should be named as chair for his or her leadership abilities, in addition to having other qualities such as preparedness, integrity, and fairness. The chair is somewhat “removed” from the meeting in that she or he may not participate as fully in the meeting as the other members. It is the chair’s job to preside over the meeting and to lead the group toward making a decision. If a chair is too forceful in the display of opinion, this can be perceived as using undue influence in the outcome – as opposed to a “regular” Commissioner.

## Responsibilities of the Chair

In a nutshell, make sure the meetings go as smoothly as possible while consistently applying the Development Code and Comprehensive Plan. Specifically, the chair has two types of responsibilities: those contained in the commission's handbook and basic parliamentary rules.

### Elements of a Successfully Run Meeting:

- **Meeting management.** It is the chair's responsibility to run an orderly meeting and conduct the Commission's business in a fair and timely manner. Other Commissioners, the staff, and the public will look to the chair for leadership. However, in certain confusing or controversial times, the Community Development Director can assist the chair by providing support and clarity.
- **Maintaining order.** Do not allow members of the public to clap, cheer, whistle, and so on either for or against testimony that is being presented or in response to comments by Commissioners during their deliberations. This is not entertainment – this is the public process! This type of display not only interrupts the meeting, but can intimidate members of the public, the applicant, and other Commissioners. The chair should "gavel down" this kind of behavior and run an orderly meeting. The chair should not permit members of the commission to accuse or overtly challenge one another, members of the public, or persons testifying.
- **Keeping business moving.** The Commission should not endlessly mull over matters (analysis paralysis), continually request new information, and otherwise delay decision making when the information needed for doing so has been presented. The chair should move the meeting along by summarizing the facts and the positions presented by Commissioners and bringing matters to a vote. Failure to do so is unfair to the Town Council (which may be relying on the commission's recommendation), to the applicant, and to others who may be unfairly burdened by a delay. There are certainly applications that may result in a motion for tabling/continuance (to a date-specific or indefinitely) if the Commission needs more information to make a decision. It should be made clear to staff and the applicant what information the commission needs.
- **Managing public testimony.** Public testimony may be limited to 3 minutes (no less), but all must be given the same limitation. In the case where many citizens wish to comment, the chair may assign a timekeeper and clearly state the maximum time for comments prior to the opening of public comment. Testimony should pertain to the matter under deliberation. The chair should discourage successive witnesses from repeating the same testimony over and over again. The chair may interrupt speakers who are repetitive, rambling, or speaking on issues not related to the proposal at-hand. The Commission also needs to show that it is interested in what the witnesses have to say.
- **Preventing arguments.** The chair should prevent sharp exchanges from occurring between Commissioners and persons testifying and between commission members themselves. The Chair should limit the dialogue between Commissioners and persons testifying to fact gathering that will contribute to the Commission's decision-making ability. This is important to prevent a loss of the commission's objectivity and credibility.
- **Understanding parliamentary procedure.** The Commission should be clear about hearing procedure, which is usually based on elements of Robert's Rules of Order. This is crucial to the Chair's ability to run an orderly meeting. The Chair must be familiar with parliamentary procedure. The chair must understand motions and amendments to motions, the order in which business is conducted, topics that are and are not debatable, and so on.
- **Tying things together.** This is the ability to take into account public testimony, Commission deliberations, and the issue at hand in guiding the Commission toward a decision. It is based on the chair's ability to discern a position that a majority of the commission can support and that is

fair to the public. The chair should avoid comments like “I would entertain a motion to approve” because that could be perceived as improper influence on controversial or split-vote decisions.

### Qualities of a Good Chair

The chair must be strong enough to make sure the meetings are run by the rules but fair enough to be above cutting people off before they have had their say or squelching arguments with which (s)he does not agree. In other words, the chair’s “gavel” should be wielded by someone who can use its power properly. The ability of the chair to run a meeting is important if the commission is to get its work done. Commissioners will expect the chair to display leadership skills and to run well-organized and purposeful meetings. A good chair will be:

- Tactful. The chair must show tact with other members and the public. A rude or insulting chair will reflect poorly on the whole commission and will alienate other commissioners and members of the community.
- Decisive. The chair may have to think and act quickly in overseeing the conduct of the commission's business. This may include summarizing positions, clarifying motions, and giving direction to staff based on the differing views of Commissioners.
- Respected. A chair, whose judgment has been tested and found to be good, whose opinion is valued. This is key to conducting the commission's business and enhancing its role in the community decision-making process.
- Knowledgeable about the Issues. Of all members, the chair must be able to understand the business before the commission. Failure to understand an item which the Commission is to act on can lead to confusion and result in poor decision-making. The chair needs to put in extra effort studying the agenda items and preparing for the meeting.

### Quorum

The P&Z Commission is made up of seven (7) voting members and one (1) alternate. A quorum is the minimum number of Commissioners needed in order to conduct business. There must be four (4) Commissioners in attendance for a meeting to be held (quorum). If all seven (7) Commissioners are present, the alternate does not vote.

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

### The Role of Planning Staff

- Provides professional land use expertise to support the community and decision makers.
- Administers the land use regulations.
- Prepares staff reports and notices for meetings.
- Researches planning, land use, and development issues.
- Advises and assists the Planning and Zoning Commission.
- Educates and assists the public.
- Knows and interprets laws and ordinances.
- Conducts community planning projects.

- Negotiates, facilitates, and coordinates between agencies, developers, and the public.
- Enforces the Development Code and conditions of approval stipulated by P&Z and Council.
- Provides continuity throughout the years.

## Gifts & Favors

The acceptance of honoraria (compensation for speech or participation in public events as an official of the Town) is prohibited. The acceptance of any other gift or favor from persons during business with the Town or desiring to do business with the Town is also prohibited if the gift or favor might reasonably be construed as compensation for an official decision or as something that would tend to impair the committee member's independence of judgement in the performance of his or her official duties.

The following specific items are excluded from the definition of prohibited gifts or favors and may be accepted:

- Nonpecuniary awards for public service.
- Reimbursement for expenditure for attending job-related conferences or other meetings.
- Invitations to social functions or meetings which are not extraordinary when viewed in the light of the position held by the board or commission member.
- Perishable or nonpermanent items that are insignificant in value, such as meals, lodging, travel, tickets to sporting, recreation, educational, or cultural events.
- Salary from outside employment.

## Chapter 3 – P&Z Commission Meetings

### Types of Planning Commission Meetings

The Commission may use several different types of meetings in order to conduct its business. These include regular meetings, special meetings and work sessions. Regular Commission meetings are held the first and third Tuesdays of every month and begin at 6 p.m. The meetings are held at the TOE Town Hall, 200 Broadway Street in the Council Chambers. With restrictions such as those put in place as a result of the COVID-19 pandemic, meetings may be held virtually. You will be mailed/mailed a packet prior to the meeting which contains all of the items to be heard. You can also choose to view the packets on-line or you can pick it up at the Community Development Department. These packets are usually completed the Thursday or Friday of the week prior to the meeting.

### Agenda

A typical meeting agenda is as follows:

- I. Call to Order
- II. Roll call
- III. Public comment - This time is for comments from members of the public on items that are not being heard on the agenda, but comments are taken under review if needed. Commission comments are not appropriate, and no action is taken during public comment time. However, the Commission may direct staff to schedule the topic of comment for an upcoming agenda.
- IV. Approval of Minutes
- V. Announcements
- VI. Consent Agenda items
- VII. Applications (files) and/or work sessions
- VIII. Community Development Director update
- IX. Adjournment

### P&Z Current Planning Application Review Process

- I. Applicant presents application
- II. Staff presents any updates, new information, or overview
- III. P&Z's questions of the applicant and/or staff (no opinions at this time)
- IV. Public comments
- V. Public comment closed
- VI. Applicant's response to public comment
- VII. Staff response
- VIII. Planning Commission additional questions of applicant or staff if needed
- IX. Deliberation. (This time is dedicated to comments and discussion from each commissioner. Members express their opinions and comments to members of the Planning Commission prior to a motion and which direction that they are planning to vote. This time can also be used to discuss proposed Conditions of Approval (COA's) as presented in the staff report and suggested changes or additions.)
- X. Motion. A motion can be made by any Commissioner including an alternate. A round of discussion takes place after the motion is seconded. If a motion dies due to lack of a second, another motion is necessary. When a motion is made, the maker must include findings of fact that relate the decision to specific elements of the Development Code and Comprehensive Plan.
- XI. Vote. Roll call stating yea or nay will be taken on all motions in virtual meetings, and during in-person meetings, only when there is a split vote. Alternate members cannot vote if there are

seven (7) regular members in attendance but can make a motion and participate in discussion.

### Findings of Fact

Findings are a statement by the Commission for the evidence and reasoning it used to arrive at a decision. Findings are important in helping the Town Council, public, and the applicant understand the Commission's conclusion and reason for granting or denying the application. Findings shall be based on the regulations, plans, and evidence and should be clear and concise. Findings based on the TOE Comprehensive Plan and Development Code are suggested in the staff report, and included in the resolution prepared by staff. A common reason that courts overrule commission decisions is that the commission failed to express findings to support their decision.

### Motion

The motion should be clear in stating the decision of the Commission. Stating a motion places a matter before the Commission for its consideration and permits debate to take place. Additional supporting language to a motion can be included as conditions of approval or finding of fact. Discussion can clarify conditions, suggest the addition or removal of conditions, and/or make amendments to conditions. If amendments or changes are proposed to a motion with a second, this can be done with majority approval of the Commission – even if the motions maker or one who seconded opposes. The motion, conditions, and findings should be clearly stated before the vote is taken.

A motion to table should clearly state why the application is being tabled and what additional information it needs for further review in order to make a decision. An application can be tabled to a specific hearing date or, if it is uncertain how long it will take to get the additional information, the item can be tabled indefinitely. A motion to deny should include findings to support the motion specifically setting forth the reasons why the application is not in compliance with the Comprehensive or Sub-Area plans, and/or individual requirements of the Development Code. During discussion on the motion, Commissioners give their reasons for either supporting or not supporting the motion as stated. It is important for Commissioners to give their reasons for voting yea or nay on a motion. In cases where the Commission is giving a recommendation, Town Council will benefit from this level of detail.

If a decision is appealed, detailed findings of fact will support the Planning Commission's decision in the appeal process.

### Appeals

If a Commission decision (not a recommendation) is appealed as outlined in the Development Code, the proposal would then be heard by the Town Council. Decisions on variances and certain appeals are filed in District Court and cannot be appealed to the Town Council. The District Court looks at whether the Commission acted in excess of its jurisdictions (not following legal standards) or abusing discretion (making findings of fact not supported by competent evidence in the record). Again, detailed findings of fact and motion will support the Zoning Commission's decision in the appeal process.

### Meeting Tips

- Keep in mind that implementing the Master Plan and enforcing the Zoning and Subdivision Regulations are always the main task of the Commission.
- Review of an application may contain many different levels of presentation. Applicants and the public will present testimony and information which must be considered in order to base a decision.

- Discussion should stay on the facts and not the presenters of the facts. Recommendations and decisions shall be based on fact and not on opinion or hearsay and consistently relate to the enforcement of the Comprehensive Plan and the Development Code.
- Each proposal must be evaluated on its own merits.
- Do not get bogged down in details or side issues.
- Do not give opinions or judgments on complex technical matters.
- If 'experts' are brought in by either side, the Commission should not hesitate to make sure it is getting facts. Question the experts and the applicants.
- Do not bring up the pro's and con's of an item before all evidence is presented; the public will lose confidence in the Commission if they think their minds are made up prior to round table discussions. Keep an open mind until the end of discussions and the motion is made.
- Throughout your decisions there is a need for consistency. Consistency leads to predictability, a necessary quality in order for applicants to be able to produce information and plans that will meet the regulations and not waste the time of all parties involved.
- Basing decision on the Master Plan, Sub-Area Plans and criteria outlined in the Zoning and Subdivision Regulations will go a long way to ensure this consistency and predictability as well as making decisions legally defensible.
- Clearly define the major issues involved in each case and address them before making a recommendation.

## Chapter 4 - Types of Commission Decisions and Responsibilities

Planning Commission decisions can be either legislative or quasi-judicial.

### Legislative Decision

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

### Quasi-Judicial Decision

Generally, quasi-judicial proceedings involve decisions that have a direct effect on the right and liability of a single property or, occasionally, a small group of identified properties. Quasi-judicial proceedings deal with matters in which a determination will be made on whether an application meets all the established requirements for a permit or other entitlement. The Commission must determine whether, from all the evidence presented, the required standards have been met.

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

### Due Process

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

Generally, quasi-judicial proceedings must be conducted in accordance with procedural due process. That means adequate proper notice and an opportunity to be heard, and a basic fairness in procedure, including some type of impartial decision maker. The application must be processed so that parties believe in the fairness of the process and be given a fair hearing and an opportunity to be heard.

### Ex Parte Contact

Direct communication between a citizen and a Commissioner is common because of Commissioners' visibility in the community and the nature of their work. Discussions with members of the public outside of the public forum can be a beneficial way to exchange information and help keep Commissioners informed of residents' attitudes. However, while such contact may be permissible on a legislative matter, it is not permissible in a quasi-judicial proceeding.

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

### **What to Do When It Occurs**

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

### **Correcting *Ex Parte* Contacts**

If you have been involved in an *ex parte* contact under any circumstance, you may be able to overcome the fairness problem by disclosing the contact and the substance of what was related to you at the beginning of the public hearing. This will get the evidence you received on the record and out into the public realm. Then, you should state whether you believe that the contact has swayed your view and whether you can give an unbiased view to all of the evidence presented. If the answer is that you can remain unbiased, you may continue, but if not, you must recuse yourself from the discussion and vote.

### **Site Visits**

Occasionally, a site visit will be scheduled by the Community Development Department for the Commissioners to view an area subject to an application. These visits can be beneficial to the Commission to help make a decision but should be handled carefully. All questions regarding site issues during the visit should be heard by all Commissioners at the same time and no side-bar (or any other) discussion should occur. Site visits are usually scheduled the same day as the hearing so that all members in attendance will also hear the application at the meeting. Individual site visits are discouraged, especially if you will encounter an individual involved in the application.

A 'drive by' individual visit is not encouraged. If you drive by the site (it is not expected for you to detour around a site), you must avoid any discussions with the public, petitioner, or owner of the property while in the area. Please keep in mind that even though you are involved in the review of this site, accessing the site without permission is not appropriate. During the roundtable, the P&Z should summarize the details of the site visit, especially if there were members not present.

### **Conflict of Interest or Bias**

Impartiality may be lost by a conflict of interest. The Appendix has additional information with regard to conflict of interest. A conflict of interest arises when a Commissioner would receive a direct financial benefit from voting a particular way on an application. It is not a conflict of interest if a Commissioner happens to live next door to a property that is the subject of the application, even if approving or denying the application would affect that Commissioner's property value. The financial interest must be direct. If you have any questions about whether you have a conflict of interest, you may contact the Community Development Director, or if your question involves confidential financial information, the Town Attorney.

If you have a conflict of interest, you cannot participate in the discussion or the decision. The Commissioner with the conflict should vacate their seat and leave the meeting during the discussion. This reduces the possibility and appearance that the Commissioner's presence is affecting or influencing the decision of the Commission.

## Appendices

### Legislative or Quasi-Judicial Decisions

Following is a list of The TOE permitted and review processes that are reviewed by the Planning Commission. If you have any questions if there could be a conflict of interest you should contact the Community Development Director.

#### Quasi-Judicial

Minor Development Permit – NOTE: MDP's are heard by Planning Commission for a final hearing. They are not an advisory application to the Council but may be appealed to Council. Special Use Permit

Major Development Permit Final PUD

Zoning Change (rezoning) Sketch Subdivision Preliminary Subdivision Final Subdivision

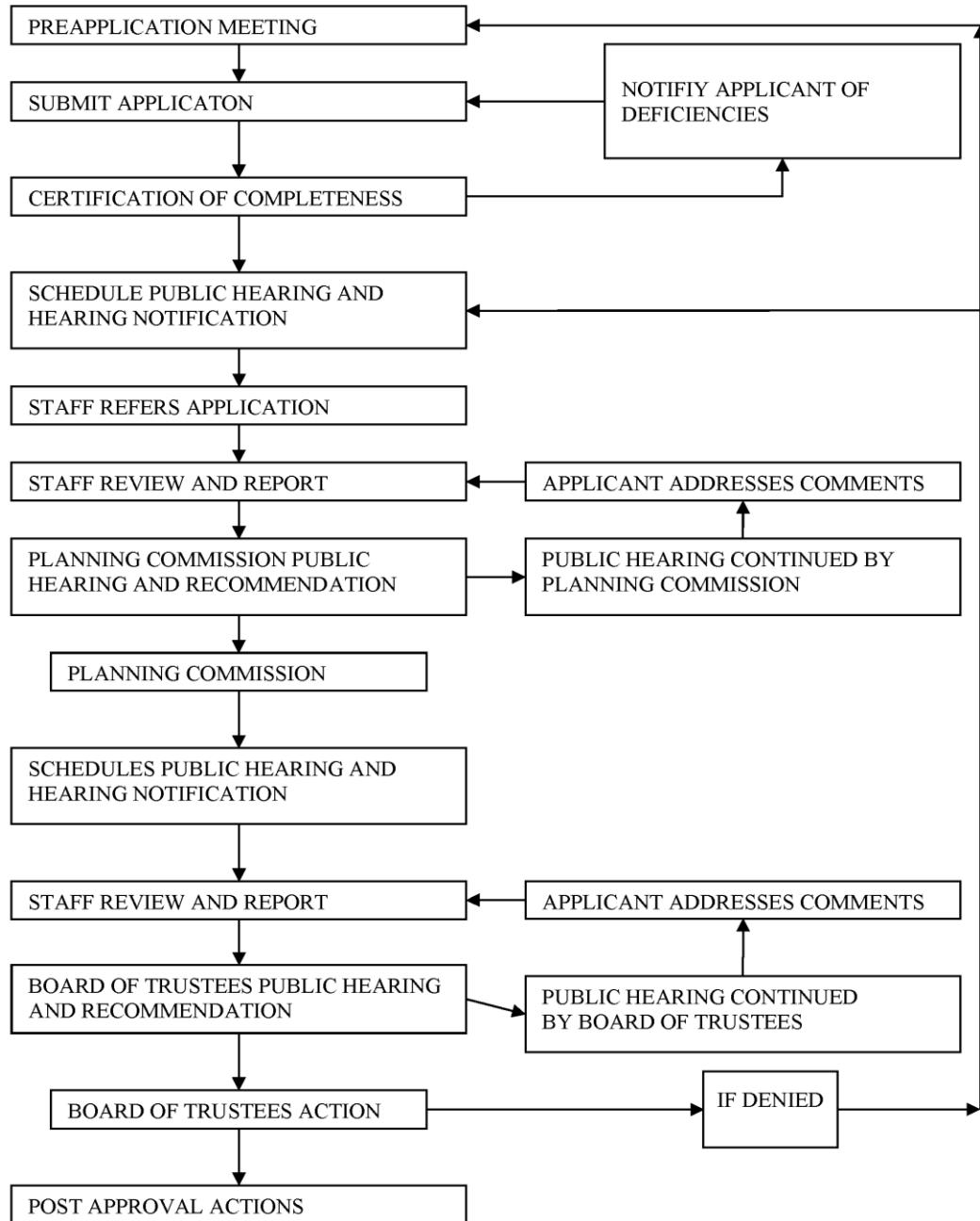
Zoning Variance NOTE: The P&Z Commission's decisions may not be appealed to the Council.

#### Legislative

Community Plan reviews Comprehensive Plan Amendment review

Development Code Amendment reviews - Vacation of Right of Way or Public Utility Easement

## Summary of Review Procedures



Amended 05/22/07