



# Erie Planning Commission Training

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# Topics for Training

- ▶ Sources of Planning Commission Authority
  - ▶ State Statute
  - ▶ Town Ordinances
- ▶ Duties of the Planning Commission
- ▶ Development Review Procedures under the Code
  - ▶ Order of a Hearing
  - ▶ Approval Criteria
- ▶ Decision Making Considerations
  - ▶ Legislative v. Quasi-Judicial Acts
  - ▶ Procedural Due Process
  - ▶ Public Comment

# Source of Planning Commission Authority – State Statute

- ▶ Required by statute
  - ▶ C.R.S. § 31-23-201 (Planning)
  - ▶ C.R.S. § 31-23-301 (Zoning)

# Powers and Duties – State Statute

- ▶ Development of a Master Plan under C.R.S. § 31-23-206
  - ▶ “It is the duty of the commission to make and adopt a master plan for the physical development of the municipality, including ...”
    - ▶ Streets, roads, bridges, waterways, transportation plans
    - ▶ Public facilities, schools, historically significant sites, playgrounds, airports, open spaces, trails
    - ▶ Public utility terminals, capital facilities, transfer facilities
    - ▶ Location and extent of adequate suitable water supply, water conservation policies
    - ▶ A zoning plan
    - ▶ ....and MUCH more!
  - ▶ Largely an advisory document, but zoning regulations must be made in accordance with the comprehensive plan (See C.R.S. § 31-23-303)
  - ▶ The Town generally updates every 10 years, with the last update to the [Comprehensive Plan](#) in 2015

# Powers and Duties – State Statute

- ▶ The Town has broad police powers related to enacting zoning regulations.
- ▶ Make recommendations to the Board under C.R.S. § 31-23-306:
  - ▶ “In order to avail itself of the powers conferred by this part 3, the governing body shall appoint a commission, known as the zoning commission, to **recommend the boundaries of the various original districts and appropriate regulations to be enforced therein**. Such commission shall make a preliminary report and **hold public hearings** thereon before submitting its final report. The governing body shall not hold its public hearings or take action until it has received the final report of such commission. Where a municipal planning commission already exists, it shall be appointed as the zoning commission.”

# Source of Planning Commission Authority- Town Ordinances

- ▶ Created by § 3-1-1 of the Erie Municipal Code (the “Code”)
- ▶ 7 members; 4-year staggered terms; appointed by BOT; must be residents of Town
- ▶ Meetings first and third Wednesday of each month, unless cancelled or moved by motion
- ▶ No pay; may not hold any other Town office
- ▶ May be removed by the BOT for neglect of duty, conflict of interest, or malfeasance in office
  - ▶ May be removed for failure to attend three consecutive regularly scheduled meetings without a leave of absence approved by majority of the Commission
- ▶ Code § 3-1-2(G): Biennially prepare a written report which shall be presented orally to the BOT, with the first report and presentation occurring after the first of the year and the second prior to the start of the town's budget consideration for the following year.

# Powers and Duties – Overview

- ▶ Under the Code, the Planning Commission reviews and makes recommendations on the following types of development applications:
  - ▶ Rezoning
  - ▶ Rezoning to PUD
  - ▶ Initial Zoning to PD
  - ▶ Subdivision: Preliminary Plat
  - ▶ Subdivision: Final Plat
  - ▶ Subdivision: Minor Subdivision
  - ▶ Vacation
  - ▶ Site Plan Review
  - ▶ Special Use Review
  - ▶ Text Amendments to the Town's Development Code
  - ▶ Wireless Communication Facilities (WCF)
  - ▶ Type A Oil and Gas Permits

# Common Development Review Procedures

- ▶ Found in Code § 10-7-2, these are the default procedures the Commission will use when considering an application, unless a different procedure is called for elsewhere for the particular type of development application.
- ▶ Any person may appear at a public hearing and submit evidence. However, the Commission has the authority to exclude testimony or evidence that it finds to be irrelevant, immaterial, or unduly repetitious.
- ▶ The Commission may by motion or at the request of any person continue the public hearing to a fixed date, time and place, with or without re-publication and re-noticing.



# Order of a Hearing - Code § 10-7-2

- ▶ The order of the proceedings at the public hearing shall be as follows:
  - ▶ Opening of public hearing
  - ▶ Staff Report Presented
  - ▶ Applicant Presentation
  - ▶ Public Testimony
  - ▶ Applicant Response
  - ▶ Staff Response
  - ▶ Close of Hearing
  - ▶ Consideration of the Application
  - ▶ Issuance of Decision

# Issuing a Decision-Code § 10-7-2

- ▶ After the hearing, the Commission makes a recommendation to the Board of Trustees to “**approve**, **approve with conditions**, or **deny** the application based on its compliance with the applicable approval criteria...”
- ▶ To recommend **approval** of an application, the Commission must first determine and find that the development application:
  - ▶ Has satisfied and followed the applicable procedural requirements of the Code;
  - ▶ Has satisfied and followed the general intent of the town's comprehensive master plan and other town plans; and
  - ▶ Meets all the approval criteria required for the particular development application.
- ▶ To recommend **denial** of an application the Commission shall determine and find that the development application has not satisfied one or more of the above.
- ▶ Planning Commission may place **conditions** on recommended approval **BUT** conditions must be directly related to the impacts of the proposed use or development and must be roughly proportional in both extent and amount to the anticipated impacts of the proposed use or development.

# Approval Criteria

- ▶ Approval criteria under the Code varies by the type of application being considered but will always be specified by staff in staff's presentation and written recommendation.
- ▶ Examples of approval criteria:
  - ▶ Will promote the public health, safety, and general welfare (Most applications)
  - ▶ Is generally consistent with the town's comprehensive master plan and the purposes of this UDC (Most applications)
  - ▶ Adequate facilities and services will be available to serve the subject property while maintaining adequate levels of service to existing development (Rezoning)
  - ▶ Will not result in significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation, or such impacts will be substantially mitigated (Subdivision)
  - ▶ Does not create an irregular right-of-way or easement configuration which could create difficulty in the provision of services or installation of public improvements (Vacation)

# Decision Making: Legislative v. Quasi-Judicial Acts

## ▶ Legislative

- ▶ Broad applicability, prospective, affects the rights of the public generally, reflects public policy generally, matters of a permanent or general character
- ▶ Not usually restricted to identifiable people or groups
- ▶ Planning Commission does not typically act in a legislative capacity, but does review and make recommendations to the Board on legislative text amendments to the Code

# Decision Making: Legislative v. Quasi-Judicial Acts

## ▶ Quasi-Judicial

- ▶ Notice required; public hearing required; application of criteria to specific facts
- ▶ In land use context often commenced by an application of a property owners seeking approvals
- ▶ Applying broad policy in the light of ascertained facts
- ▶ Determining rights, duties or obligations of specific individuals, using past or present facts

# Decision Making: Legislative v. Quasi-Judicial acts

- ▶ “...the exercise of quasi-judicial authority, unlike legislative authority, is conditioned upon the observance of traditional procedural safeguards against arbitrary governmental action.” *Cherry Hills Resort Development Co. v. City of Cherry Hills Village*, 757 P.2d 622, 625 (Colo. 1988).

# Decision Making: Procedural Due Process

- ▶ "...a course of formal proceedings (such as legal proceedings) carried out regularly and in accordance with established rules and principles..." *Meriam Webster*
- ▶ Follow the procedures outlined in the Code

# Procedural Due Process

- ▶ When an application is before you, you can assume:
  - ▶ It is complete and ready for action
  - ▶ Staff has evaluated the applicable Code criteria and flagged any issues for you
  - ▶ Staff has suggested conditions if needed to address known concerns



# Procedural Due Process

- ▶ A limited right to continue a public hearing exists under the Code, typically exercised for purposes of allowing public comment or allowing staff to research and respond to new issues
- ▶ This allows more evidence
- ▶ Once a hearing is closed, a decision is due and deliberation should be open, clear and prompt
- ▶ Decision may be followed later by written findings

# Public Comment

- ▶ Part of a public hearing
- ▶ Public comment is generally one-way, but an applicant may wish to address concerns
- ▶ PC may instruct staff to investigate and return with new information
- ▶ Continue to a date certain and make the decision then

# Justifying a Decision

- ▶ Recommendation (based upon approval criteria) must be supported by competent evidence in the record
- ▶ Not arbitrary or capricious



Questions?