County Land Use Overview

A significant Commissioner Responsibility
Presented by:

Lance J. Ingalls, Esq.
County Attorney

Douglas County
Zoning

30-28-102. Unincorporated territory

- The boards of county commissioners of the respective counties within this state are authorized to provide for the physical development of the unincorporated territory within the county and for the zoning of all or any part of such unincorporated territory in the manner provided in this part 1.
§ 30-28-118. Appeals to board of adjustment

(1)(a) Appeals to the board of adjustment may be taken by any person aggrieved by his inability to obtain a building permit or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of the zoning resolution.
Variances and Appeals

§ 30-28-118(2)(c) Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the regulation or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation enacted under this part 1 would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, to authorize, upon an appeal relating to said property, a variance from such strict application so as to relieve such difficulties or hardship if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning resolutions.
Subdivision Regulations

Every Board of County Commissioners must adopt and enforce subdivision regulations for unincorporated areas within the county. The Board must publish notice and hold a public hearing prior to adoption or revision of any subdivision regulations. C.R.S. §30-28-133(1).

A “subdivision” or “subdivided land” means any parcel of land of less than 35 acres which is used for single family residences, condominiums, apartments or any other multiple-dwelling.
§ 30-28-103. County planning commission

(1) Except as otherwise provided in this subsection (1), the board of county commissioners of any county within the state is authorized to appoint a commission of not less than three and not more than nine members, to be known as the county planning commission; except that, in counties of the state having a population of fifteen thousand or less desiring to establish a commission, the board of county commissioners may constitute the commission, or the board of county commissioners may appoint a separate body to serve as the commission. In counties of the state having a population of one hundred thousand or more, the board of county commissioners is authorized to appoint a commission of not less than three and not more than fifteen members.
Planning Commission (Cont.)

(2) Each of such members of the commission shall be a resident of the county. The term of appointed members of the commission shall be three years and until their respective successors have been appointed, but the terms of office shall be staggered by making the appointments so that approximately one-third of the members' terms expire each year. Members of the commission on July 1, 1977, shall serve the remainder of the terms for which they were appointed. Thereafter, members shall be appointed pursuant to this subsection (2).
(3) The members of the commission shall receive such compensation as may be fixed by the board of county commissioners, and the board of county commissioners shall provide for reimbursement of the members of the commission for actual expenses incurred. The board of county commissioners shall provide for the filling of vacancies in the membership of the commission and for the removal of a member for nonperformance of duty or misconduct. The board of county commissioners may appoint associate members of such commission, each of whom shall be a resident of the county, and, in the event any regular member is temporarily unable to act owing to absence from the county, illness, interest in any matter before the commission, or any other cause, his place may be taken during such
Comprehensive Master Plan:

§ 30-28-106 (1) It is the duty of a county planning commission to make and adopt a master plan for the physical development of the unincorporated territory of the county. When a county planning commission decides to adopt a master plan, the commission shall conduct public hearings, after notice of such public hearings has been published in a newspaper of general circulation in the county in a manner sufficient to notify the public of the time, place, and nature of the public hearing, prior to final adoption of a master plan in order to encourage public participation in and awareness of the development of such plan and shall accept and consider oral and written public comments throughout the process of developing the plan.
Location and Extent:

§ 30-28-110 (1)(a) Whenever any county planning commission or, if there is none, any regional planning commission has adopted a master plan of the county or any part thereof, no road, park, or other public way, ground, or space, no public building or structure, or no public utility, whether publicly or privately owned, shall be constructed or authorized in the unincorporated territory of the county until and unless the proposed location and extent thereof has been submitted to and approved by such county or regional planning commission.
In 1974, the legislature passed HB 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. Such 1041 powers authorize counties to select and create criteria over statutorily defined areas and activities of state level interest and to exercise local control and local permitting over such areas and activities.

See C.R.S. § 24-65.1-101 et. seq.
Examples of 1041 Areas and Activities

Mineral Resource Areas, Natural Hazard Areas, impacts to archaeologically, historically, or natural significant resources, Areas around “key facilities,” site selection of airports, rapid or mass transit terminals, arterial highways and interchanges, major facilities of a public utility, “new communities,” and much more
§ 24-68-101. Legislative declaration

(1) The general assembly hereby finds and declares that:

(a) It is necessary and desirable, as a matter of public policy, to provide for the establishment of vested property rights in order to ensure reasonable certainty, stability, and fairness in the land use planning process and in order to stimulate economic growth, secure the reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning.

(b) The ability of a landowner to obtain a vested property right after local governmental approval of a site specific development plan will preserve the prerogatives and authority of local government with respect to land use matters, while promoting those areas of statewide concern described in paragraph (a) of this subsection (1).

(c) The establishment of vested property rights will promote the goals specified in this subsection (1) in a manner consistent with section 3 of article II of the state constitution, which guarantees to each person the inalienable right to acquire, possess, and protect property, and is therefore declared to be a matter of statewide concern.
Water Adequacy

(1) The general assembly:
(a) Finds that, due to the broad regional impact that securing an adequate supply of water to serve proposed land development can have both within and between river basins, it is imperative that local governments be provided with reliable information concerning the adequacy of proposed developments' water supply to inform local governments in the exercise of their discretion in the issuance of development permits;
(b) To that end, declares that while land use and development approval decisions are matters of local concern, the enactment of this part 3, to help ensure the adequacy of water for new developments, is a matter of statewide concern and necessary for the preservation of public health, safety, and welfare and the environment of Colorado;
(c) Finds that it is necessary to clarify that, where a local government makes a determination whether an applicant for a development permit has demonstrated the proposed water supply is adequate to meet the needs of the development in accordance with the requirements of this part 3, the local government, in its sole discretion, not only makes the determination but also possesses the flexibility to determine at which stage in the development permit approval process the determination will be made; and
(d) Further finds that it is also necessary to clarify that the stages of the development permit approval process are any of the applications, or any combination of the applications, specified in section 29-20-103(1) as determined by the local government, and that none of the stages are intended to constitute separate development permit approval processes for purposes of section 29-20-303.
Public Hearings
Quasi-Judicial or Legislative?

It is important to determine what type of hearing you are holding. Quasi-Judicial Hearings have more procedural requirements.

The existence of a statute or ordinance mandating notice and a hearing to those persons whose interests are likely to be affected by the decision is a clear signal that the governmental decision is to be regarded as quasi-judicial for the purpose of judicial review under C.R.C.P. 106(a)(4). The fact that there is no such statute or ordinance, however, does not detract from the quasi-judicial nature of the proceeding so long as the decision itself and the underlying process are otherwise consistent with the exercise of quasi-judicial authority, as distinguished from some form of legislative or executive authority. In the absence of legislatively prescribed notice and hearing requirements, it is incumbent upon the governmental body to provide adequate notice and an opportunity to be heard to those persons whose protected interests are likely to be affected by the governmental decision. See, e.g., Eggert, 647 P.2d at 223; Juzek, 225 A.2d at 342.

Quasi-judicial action is characterized by the following factors: (1) a local or state law requiring that notice be given before the action is taken; (2) a local or state law requiring a hearing before the action is taken; and (3) a local or state law directing that the action results from the application of prescribed criteria to the individual facts of the case. See Hadley v. Moffat County Sch. Dist., 681 P.2d 938, 945 n. 3 (Colo.1984). Such criteria may include broadly stated provisions of an agency's enabling act, regulations promulgated thereunder, or both. See Zamarripa v. Q & T Food Stores, Inc., 929 P.2d 1332, 1342 (Colo.1997). Quasi-legislative action involves the formulation of regulatory policy of general application to an affected group.

Quasi-judicial action focuses on the application of legislative or quasi-legislative requirements to an individual under a particular set of facts. See Colorado Ground Water Comm'n v. Eagle Peak Farms, 919 P.2d 212, 217 (Colo.1996).

Due Process

“In order to establish a procedural due process violation, a plaintiff must prove that he or she was deprived of an opportunity ... granted at a meaningful time and in a meaningful manner for a hearing appropriate to the nature of the case.” Brady v. Town of Colchester, 863 F.2d 205, 211 (2d Cir.1988); see also Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971). When a state affords reasonable remedies to rectify legal errors by local administrative bodies, including avenues of appeal, and when no challenge is raised as to the regulatory or statutory scheme itself, allegations that the local administrative body reached its decision on erroneous reasoning or made demands which exceeded its statutory authority are not sufficient to establish a procedural due process claim. Creative Environments, Inc. v. Estabrook, 680 F.2d 822 (1st Cir.1982); see also Bello v. Walker, 840 F.2d 1124 (3d Cir.1988).

Here, plaintiffs were accorded the opportunity for a public hearing on their application, and they could have availed themselves of a C.R.C.P. 106(a)(4) procedure for judicial review of the county commissioners' decision. We conclude that this comports with procedural due process requirements. See Van Sickle v. Boyes, 797 P.2d 1267 (Colo.1990).

Because, as pertinent here, the county procedures, and the state procedures which plaintiffs chose not to utilize, meet all constitutional procedural due process requirements, plaintiffs' due process claim under 42 U.S.C. § 1983 is precluded as a matter of law. See Brady v. Town of Colchester, supra; Rogin v. Bensalem Township, 616 F.2d 680 (3d Cir.1980).

Due Process Concerns

- Simple Fairness
- Notice and an Opportunity to be heard
- No Bias
- No Predetermination
- No Conflict of interest
- Limited to the Record-no Ex-Parte Communication
What Rules Apply?

- Zoning - As adopted unless “pending ordinance”
- Subdivision - As adopted at the time of application...period.
30-28-133.5. Review of plats and other plans

(1) The process for review and approval of any plat or other plan required by section 30-28-133 or 30-28-133.1, for any agreement required by section 30-28-137, or for plans for extensions, betterments, or additions to buildings, structures or plant or other equipment of a public utility under section 30-28-127 shall be conducted pursuant to duly adopted county resolutions, ordinances, or regulations that are available to the applicant prior to commencement of such process. The denial of a plat, plan, or agreement shall be supported by written findings specifying the provisions that the plat, plan, or agreement failed to address or satisfy. The denial of any plat, plan, or agreement shall be based on a failure to conform to the requirements of the adopted resolution, ordinance, or regulation.
C.R.C.P. Rule 106 Appeals: Judicial Review

(4) Where any governmental body or officer or any lower judicial body exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law:

(I) Review shall be limited to a determination of whether the body or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer.
(b) Limitations as to Time. Where a statute provides for review of the acts of any governmental body or officer or judicial body by certiorari or other writ, or for a proceeding in quo warranto, relief therein provided may be had under this Rule. If no time within which review may be sought is provided by any statute, a complaint seeking review under subsection (a)(4) of this Rule shall be filed in the district court not later than 28 days after the final decision of the body or officer. A timely complaint may be amended at any time with leave of the court, for good cause shown, to add, dismiss or substitute parties, and such amendment shall relate back to the date of filing of the original complaint.
Hypotheticals

- **Scenario 1:** You have heard the evidence and you love a proposed project. It meets most of your approval criteria, but not all. Can you approve it?

- **Scenario 2:** You heard the evidence and really dislike a proposed project. It meets all of your criteria, but you feel the criteria is out dated or simply wrong. Can you deny it?
Unsolicited Advice

- Land use hearings can be some of the most contentious and emotional issues a Commissioner will encounter.
- Your actions and demeanor will be judged continually from the minute you enter the room.
- Practice patience, kindness, and sympathy/empathy.
- Control your emotions...always
- Have reasonable hearing processes and follow them...always.
And more…

- The record is the record
- Make a voting record and make comments you can live with.
- Listen
- Your rules are your rules and your decision must follow your rules
- Less is more
Questions?