

County Land Use Overview



Presented by:

Lance J. Ingalls, Esq.
County Attorney

Douglas County

Zoning

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... C.R.S. § 30-28-102



Planning Commission

C.R.S. § 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.

All counties must have a planning commission. C.R.S. 30-28-133(1)

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.

Board of Adjustment (zoning appeals)

§ 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.

Variations/appeal

§ 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

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. C.R.S. §30-28-101 (10)(a)

1041 Powers-Areas and Activities of State Interest

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.

§ 24-65.1-101

Vested Rights – Development Agreements

§ 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

All Board decisions require some form of notice and an opportunity to be heard. Not all decisions are subject to the same process and limitations, however.

The type of hearing will dictate the type and formality of the process.

Legislative vs. Quasi-Judicial

This determination is the most critical for determining what type of process is required.

Quasi-Judicial v. Legislative

- Legislative Action: Prospective in nature, of general application, and reflects a balancing of judgment and discretion.
- Quasi-Judicial Action: Involves a determination of rights of specific individuals, through the application of preexisting legal standards, to facts developed at a hearing, conducted for the purpose of resolving the particular interests in question.

Due Process Concerns

Proper Notice

Meaningful Opportunity to be Heard

Ex Parte Communications

Predetermination

Conflict of Interest

Decision Based Upon the Record

Examples

- Mary Citizen approaches you at church to ask why she can't build a motor-cross track on her 10 acre parcel just outside the County seat. What do you do?

Examples

- Mary Citizen wants you to initiate changes to County regulations to potentially allow her to use her large lot property for a large wedding venue. Can you discuss this with her?

Examples

- Mary Citizen has applied to the County for a new land use for her property and wants to explain it to you so there is no confusion as to what she is seeking. What do you do?

QUESTIONS?