

Land Use Basics for Elected Officials

Colorado Municipal League and
Colorado Department of Local Affairs
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Speakers

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Today's Presentation

- Welcome and Introductions
- Planning Fundamentals - Planning
- Planning Fundamentals – Law
- Jeopardy
- Lunch
- Zoning: What It Can Do Well and Where it Can Go Awry
- How to Get the Development You Want
- Wrap-Up

What is Land Use?

Land use laws are the body of statutes, regulations, permits or approvals, and plans that govern what structures can be constructed and uses can be engaged in on a property.





Planning Fundamentals 1: What Your Planners Want You to Know

Tina Axelrad and Elizabeth Garvin

Planner



What society thinks I do



What my friends think I do



What applicants think I do



What the APA thinks I do



What I think I do



What I really do

Planning and Regulatory Authority

- Sources of authority: Colorado Statutes and local home rule authority (will be discussed later this morning)
- Comprehensive plan is the policy guide to your local regulatory process
 - Not a “legal” document but definitely a “working” document
 - Will certainly be used by a court in land use litigation
- Most judges are not land use lawyers, your plan teaches them how to look at your community

What is a Comprehensive Plan

What You May Hear/Think

- Peace and harmony
- Significant public squabbling input
- Synergistic multi-level solutions
- More consultant fees

What the Plan Should Do For You

- Policy Document
- Development Framework
- Priority List
- System Instructions
- Funding Guide

What is a Comp Plan Supposed to Be?

- Future-oriented **guide to incremental attainment of goals and objectives**
- **Continuous, dynamic, living document that is periodically reevaluated and updated**
- **Based on a realistic determination of present and projected conditions identified through plan creation**
- **Comprehensive look at complete systems in the community**
- **Not an end product**
- **Not a specific blueprint**
- **Not happy thoughts about future civic projects**
- **Not a single project**

Why Should Elected Officials Care?

- Jobs
- Neighborhoods
- Education
- Transportation/Infrastructure
- Natural Resources
- Safety

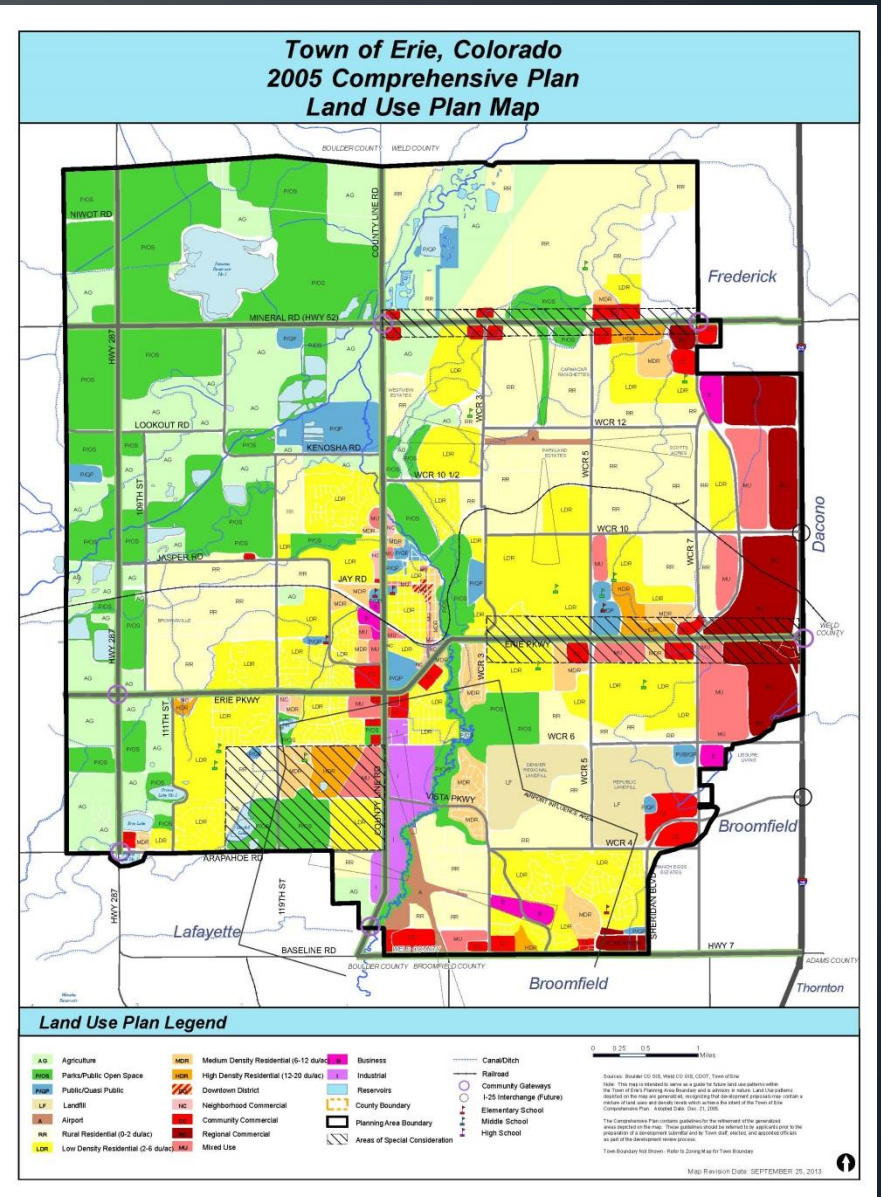
And also because:

“Two-thirds of Americans — across political affiliations and size of community — believe their community needs more planning to restore and sustain prosperity. Americans see their neighbors, business leaders, and community planners as the most likely players to be able to lead the necessary efforts to rebuild the economy and improve communities.”

APA Planning in America (2012)

Plan Content

- Vision
- Goals/Policies (general and by element)
- Plan Elements
 - Land Use
 - Environment
 - Transportation
 - Recreation
- Future Land Use Map
- Investment Priorities
- Implementation Instructions



Plan Link to Regulations: Information

- Three Aspects of Good Regulations

- Understandable

- Predictable

- Consistent

- This Means

- Applicants, staff, officials can all interpret requirements

- Applicant can understand how application will be evaluated

- Regulations will be applied in same manner across different applications

Plan Link to Regs: Policy Frame for Zoning

Ft. Collins, Colorado

Division 4.18 Community Commercial District (A)

Purpose. The Community Commercial District provides a combination of retail, offices, services, cultural facilities, civic uses and higher density housing. Multi-story buildings are encouraged to provide a mix of residential and nonresidential uses. Offices and dwellings are encouraged to locate above ground-floor retail and services.

Chandler, Arizona

Neighborhood Commercial, 35-1200 Purpose.

The uses permitted in this district are intended primarily to serve the needs of the surrounding residential neighborhood by providing goods and services that are day-to-day needs generally classed by merchants as "convenience goods and services." Businesses which tend to be a nuisance to the immediately surrounding residential area are excluded even though the goods and services offered might be in the convenience classification

Plan to Regs: Objective Criteria

1. The proposed zoning or rezoning promotes the purposes of this Zoning Ordinance as stated in Section 17.1.2; and
2. The proposed zoning or rezoning is compatible with existing surrounding land uses or the land uses envisioned in the Comprehensive Plan; and
3. The proposed zoning or rezoning meets at least one of the following additional criteria:
 - a. The proposed zoning or rezoning promotes implementation of the Comprehensive Plan; or
 - b. There has been a material change in the character of the neighborhood or in the City generally, such that the proposed zoning or rezoning would be in the public interest and consistent with the change; or
 - c. The property proposed for zoning or rezoning was previously zoned in error.

Plan Link to Regs: Staff Report with Development Applications

SUMMARY:

The applicant proposes to rezone 60.506 acres from PCD to PD, for development of a single-family residential subdivision. The PD zoning designation will allow for uses including but not limited to: single-family dwellings and accessory buildings, in-home daycare (subject to the licensing requirements of the State), foster family care (subject to the licensing of the State), public and quasi-public recreation facilities including parks and playgrounds, trails and bike paths, and their accessory structures, and essential permitted services. The Board of Trustees previously approved at its January 21, 2014 meeting, an annexation and rezone to PD for two small parcels adjacent to the proposed development. These parcels are on the east, and west edges of the development, and are part of the overall rezone map.

The Rezone is being reviewed concurrently with a Preliminary/Final PD Site Plan application and a Preliminary/Final Plat of the property.

CONFORMANCE WITH THE MONUMENT COMPREHENSIVE PLAN AND TOWN CODE

The site is located in an area designated by the Monument Comprehensive Plan for Mixed-Use Development. The proposed rezoning promotes the following principles and policies of the Comprehensive Plan:

- Land Use Principles
 - LU-I.iii – Protect natural environmental features, particularly flood prone lands and drainageways.
 - LU-I.iv – Stage growth in the community and promote infill development on vacant land, with particular attention to the Downtown core.
- Land Use Policies
 - LU 3 – Carefully consider the environmental, visual, economic, and land use impacts of new development and, where possible, incorporate, mitigate, and buffer or visually screen land uses that differ in type and density.
- Transportation Principles
 - TR-I – Provide an efficient, safe, continuous, and connected transportation system.
- Transportation Policies
 - TR 1 – Identify and prioritize transportation deficiencies and future transportation improvements.
 - TR 7 – Substantially reduce risks to public safety within the transportation system, including, but not limited to, turn and acceleration lanes.
 - TR 8 – Encourage the dedication and/or acquisition of additional roadway rights-of-way.

Plans Link to Regulations: Decisions

- Land use decisions presented to governing body
- Written findings
- Official discussion about future of the community

O. The staff report found that the amendment met all the decision criteria for approval of a Comprehensive Plan amendment as prescribed by SMC 17G.020. Comprehensive Plan Amendment Procedure.

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Running Better Meetings

The Good, the Bad and the Ugly

Why Should You Care?

- **A well-run meeting is important because:**
 - Public meetings/hearings are a primary forum for many “due process” principles
 - Impressions of local government credibility and integrity are at stake
 - Citizens must be treated fairly and with respect
 - Good decisions must be documented (your lawyers will like this!)

What does a “bad” meeting look like?

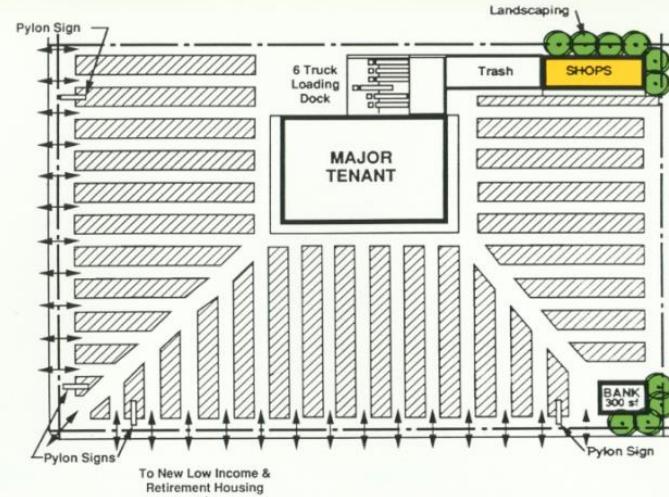
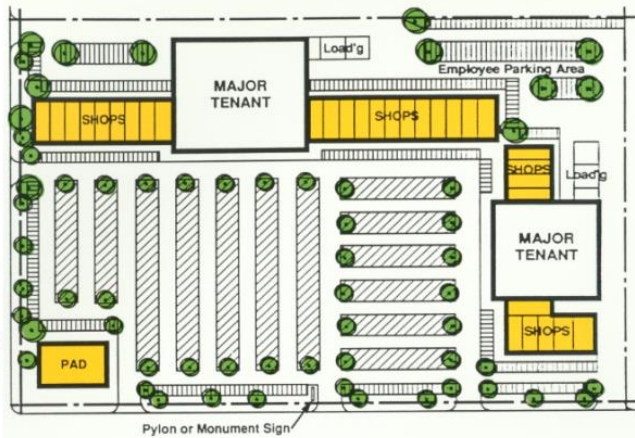
- Sloppy mix of public and council/board discussions and debate
- Negotiations and deal-making on the fly
- Confusing conclusions/decisions
- Post-meeting murmurings can provide clues:
 - “What just happened?”
 - “How did they come up with that decision?”
 - “It was a done deal from the start.”

What does a “good” meeting look like?

- It follows a clear and consistent procedural framework
- Decisions are based on the record and testimony in front of you and always relate to the review criteria in your codes
- Orderly and even-handed public testimony and utmost respect for all perspectives
- User-friendly and not intimidating

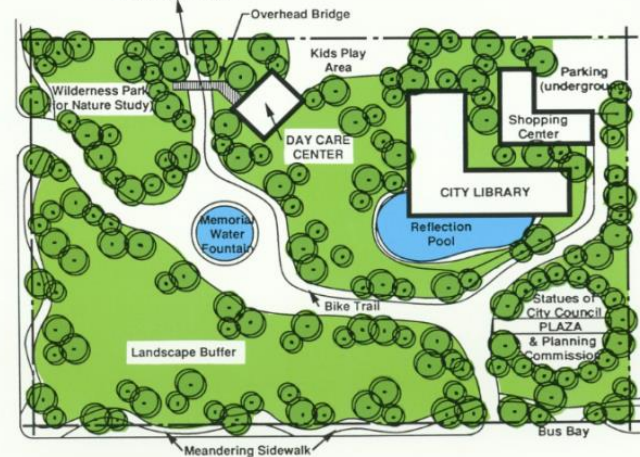
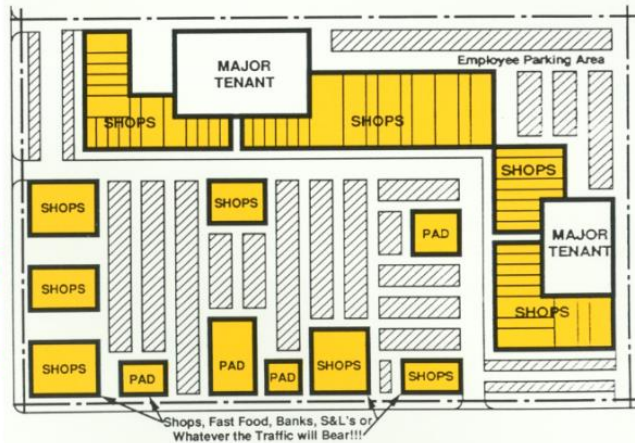
We all see things differently . . .

A
TYPICAL
SHOPPING
CENTER



A
SHOPPING
CENTER
AS SEEN BY
MAJOR
TENANT

A
SHOPPING
CENTER
AS SEEN BY
DEVELOPER



A
SHOPPING
CENTER
AS SEEN BY
THE CITY

Meeting Preparation

- **Pre-Meeting Preparation – your Check-List:**
 - What type of decision am I being asked to make?
 - What actions are needed before I make my decision?
 - Have all those actions been completed correctly?
 - What review criteria will apply to my decision?
 - Do I have all the information I need from staff and preceding reviews?
- **Read the staff report when there is one**

Preparation ~ Example

- Rezoning of a single parcel:
 - ✓ Complete application submitted
 - ✓ Neighborhood meetings held
 - ✓ Planning commission recommendation
 - ✓ Staff report complete with analysis of request against the review criteria and staff recommendation
 - ✓ Likelihood of substantial public testimony? (Should I alert the family & bring snacks?)

Process Supports Substance

- Not your job to decide whether an application presents a good idea or one that you like or don't like
- Your job is to relate the application and facts presented to a set of standardized review criteria and required procedures, and decide whether the application meets them all
- A good process will give you all the relevant standards, criteria, and facts to make a justifiable decision

Running the Meeting

- **Chair runs the meeting and keeps procedural order**
 - May also help re-direct substantive discussion on point
 - Chair as “meeting manager” vs. substantive participation
- **General procedural order of meetings:**
 - Staff presents its analysis and recommendation
 - Applicant presents its case – especially details of specific project, public outreach, compromises/changes made
 - Public testimony
 - *Board/council asks clarifying questions during fact-finding*
 - Public hearing closed
 - Board/council deliberations
 - *This is where you can take stands and announce positions*
 - Board/council decision

Fact-Finding

Deliberation
& Decision


Beware!

Dangers of Drafting at the Podium

- **Negotiations and conditions on the fly – what's the problem?**
 - Appeasement and placation vs. substance-based, deliberative decision-making
 - **Remember, consensus not unanimity**
 - Application may need to go back for renewed process
 - Administrative and legal implications
- **Remember who you are: fact- and substance-based decision-makers**
 - Make conditions judiciously and only when obviously related to meeting the standards and review criteria

Other Meeting Tips

- Use of electronics during meeting
- Side conversations
- Time limits on applicant / public presentations
- Making clear motions
- Use of Roberts Rules of Order and similar formal procedural rules

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Planning Fundamentals – Part 2

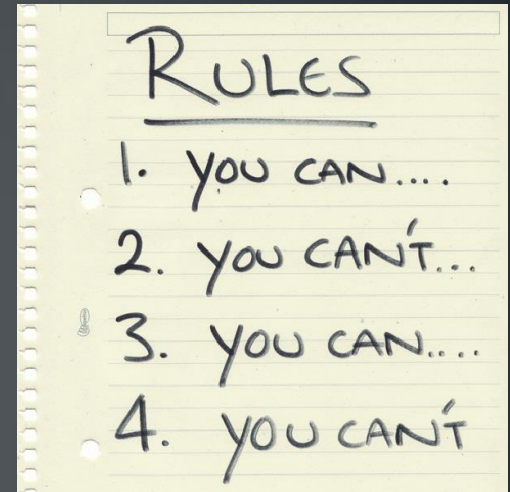
What Your Attorney Wants You to Know

Carolyn White and Eric Heil

Follow the Procedures (Procedural Due Process)

Fundamentally, due process consists of two things:

- Notice
- Opportunity to be heard



Notice

- **What notice is required?**
 - Colorado Revised Statutes
 - **Annexation, vested rights**
 - Municipal Code
- **Types of notice**
 - Mailed
 - **Who is entitled to receive?**
 - Newspaper
 - Posting – on property
 - Posting – officially designated agenda posting location



Attendance at hearing creates presumption of notice; right to challenge notice is waived



Opportunity to be Heard

- Applicant
 - When can applicant submit additional information?
 - Packet deadline v. close of hearing
 - When do changes to the application rise to the level of a new application v. modifications, conditions of approval?
 - What problems are created by new/late information and how can they be addressed?



Opportunity to be Heard

- **Public**
 - Time limits for public testimony
 - Limitations on evidence that can be presented
 - Limits on who can testify
 - **Group testimony by residency, proximity to property site**



Fun with Land Use Acronyms



NIMBY - Not in my backyard

NOPE - Not on Planet Earth

BANANA – Build absolutely nothing anywhere near anything

LULU – Locally Undesirable Land Uses

CAVE – Citizens Against Virtually Everything

DUDE – Developers Under Delusions of Entitlement



Richard
ANDREW
MATT THURMAN
2010

THE TERM
NIMBY IS
UNFAIR AND
INACCURATE...



WE ARE ALSO
OPPOSED TO
DEVELOPMENT IN
OUR SIDE YARDS
AND FRONT YARDS



Types of Decisions

- Legislative
 - Quasi-judicial
 - Administrative
-
- Not a bright-line distinction.
 - Criteria from case law and CRCP 106(a)(4), not statutory.



Legislative Actions

- Public policy relating to matters of permanent or general character.
- Of general application.
- Concerns an area usually general by legislation.

(State Farm v. City of Lakewood, 788 P.2d 808 (Colo. 1990))



Legislative Actions

- Generally prospective in nature.
- Usually relates to a matter of public policy.
- No limits on communication with decision makers.
- When you undertake legislative action, you are *making law*.



Legislative Actions



- **May be challenged only by initiative or referendum**
 - Initiative – Citizens power to initiate a new law by proposing it for a vote of the people.
 - Referendum – Citizens power to refer a law passed by the legislative body to a vote of the people.

Legislative Actions



- Governing law
 - Colorado Constitution – Article V, Section 1
 - Colorado State Statutes – C.R.S. Sec. 31-11-101
 - Municipal charter
- Powers of initiative and referendum liberally construed, and any governmental action that has the effect of curtailing the people's fundamental right to legislate is viewed with close scrutiny.

McKee v. City of Louisville, 616 P.2d 969 (Colo. 1980).

Quasi-judicial Decisions

- Courts look to three factors to decide whether something is quasi-judicial:
 - State or local law requiring **notice** to the community.
 - State or local law requiring **public hearing** following notice, and **opportunity for citizens to be heard** and present evidence.
 - State or local law requiring the body to make a determination by applying facts of a specific case to certain criteria established by law.
- If these three things are true, it is probably a quasi-judicial type decision.
- Practice pointer: code should state which types of decisions the municipality considers to be quasi-judicial.

Quasi-judicial Actions

- Generally involves determination of rights, duties, or obligations of specific individuals by applying existing legal standards to facts developed at a hearing conducted for the purpose of resolving the particular interests in question.
- No “litmus test” for identifying a quasi-judicial action (*Cherry Hills Resort Dev. Colo. V. City of Cherry Hills Village*, 757 P.2d 622 (Colo. 1988)).
- Generally reactionary, not prospective, and apply to specific individuals, situations, or parcels of land (*Jafay v. Bd. Of County Commissioners of Boulder County*, 848 P.2d 892 (Colo. 1993)).

In a quasi-judicial proceeding, you are acting like a **judge**.



Quasi-judicial Actions

- *Ex parte* communications prohibited
- Why?
 - Decision makers should make decision based only on what's in the record.
 - Potential for real or perceived bias/influence.
 - Compare a court case – would you want to find out the judge spoke privately to the other side?
 - Can invalidate the decision.

Quasi-judicial Actions

- Difficulty for elected officials – conflict between need to listen to and represent constituents, and need to make a fair and impartial decision.





Quasi-judicial Actions

- May be challenged only under C.R.C.P. 106(a)(4)
 - 28 days
 - Review is on the record – no discovery
 - Municipality must “certify” the record
 - Expedited process
- Court will only overturn Council’s decision if it is
 - abuse of discretion
 - exceeds Council’s jurisdiction
 - arbitrary and capricious
- Court will uphold Council’s decision if “any scintilla” of evidence in the record supports the decision.”

Administrative or Executive Actions

- Generally non-discretionary
- Don't involve application of a set of criteria or standards to a set of facts.

Legislative v. Quasi-Judicial

Function	Legislative	Quasi-Judicial
Master plan/general, specific plan	x	
Comprehensive zoning	x	
Zoning text amendments	x	
Piecemeal rezonings	x	x
Special exceptions		x
Variances/conditional use permits		x
Subdivision approvals		x
Zoning or use permit issuance & violations		x

Zoning is BOTH legislative AND quasi-judicial AT THE SAME TIME

Legislative v. Quasi-judicial Land Use Actions

- The following matters have been held to be quasi-judicial in character:
 - Rezoning - *Snyder v. City of Lakewood*, 189 Colo. 421, 541 P.2d 371 (1975);
 - Subdivision applications, *Vick v. Bd. of County Commissioners*, 689 P.2d 699 (Colo. App. 1984) and *Reynolds v. City Council of the City of Longmont*, 680 P.2d 1350 (Colo. App. 1984);
 - Applications for approval of development plans, *Cherry Hills Resort Development Co. v. City of Cherry Hills Village*, *supra*;

Legislative v. Quasi-judicial Land Use Actions

- Variance requests, *Danielson v. Zoning Board of Adjustment*, 807 P.2d 541(Colo. 1990);
- Applications for licenses, *Scott v. City of Englewood*, 672 P.2d 225 (Colo. App.1983);
- Special assessments, *Cline v. City of Boulder*, 35 Colo. App. 349, 532 P.2d 770 (1975);
- Liquor license matters, *Norris v. Grimsley*, 41 Colo. App. 231, 585 P.2d 925 (1978).



“Hybrid” Actions

- Rezoning, under Colorado law, is always **BOTH** quasi-judicial, for purposes of ex parte communications being prohibited, and the ability to challenge under C.R.C.P. 106(a)(4), **AND** legislative, for purposes of challenge by initiative and referendum. (*Margolis v. District Court*, 638 P.2d 297 (Colo. 1981)).



Follow the Review Criteria (Substantive Due Process)

- Decisions must be based on compliance with review criteria; otherwise, decisions are arbitrary and capricious
- Courts give **SOME** deference to agency interpretation, may use states purposes
- Criteria must not be **VAGUE** – a regulation is unconstitutionally void if “persons of common intelligence must necessarily guess as to its meaning and differ as to its application.”
- Conclusory statements of compliance are not sufficient, must state **WHY** application meets review criteria

Standing to sue

- Persons with a legally protected interest
- Applicant
- Adjacent Property Owners
- Property Owners who receive notice
- Sometimes adjacent Home Rule Municipality
- “Facial” challenge to legislative acts can be brought by any party potentially affected by the adopted land use law

Takings

Takings is a violation of the 5th and 14th Amendments of the Constitution

3 Points to Know

1. Essential Nexus
2. Loss of All Economic Value
3. Rough Proportionality

Takings

1. The regulations must have an **ESSENTIAL NEXUS** to the public purpose to be advanced.

Nollan v California Coastal Commission – 1987

RATIONALE: New house created wall of residential development that would prevent public psychological awareness of public beach.



Takings

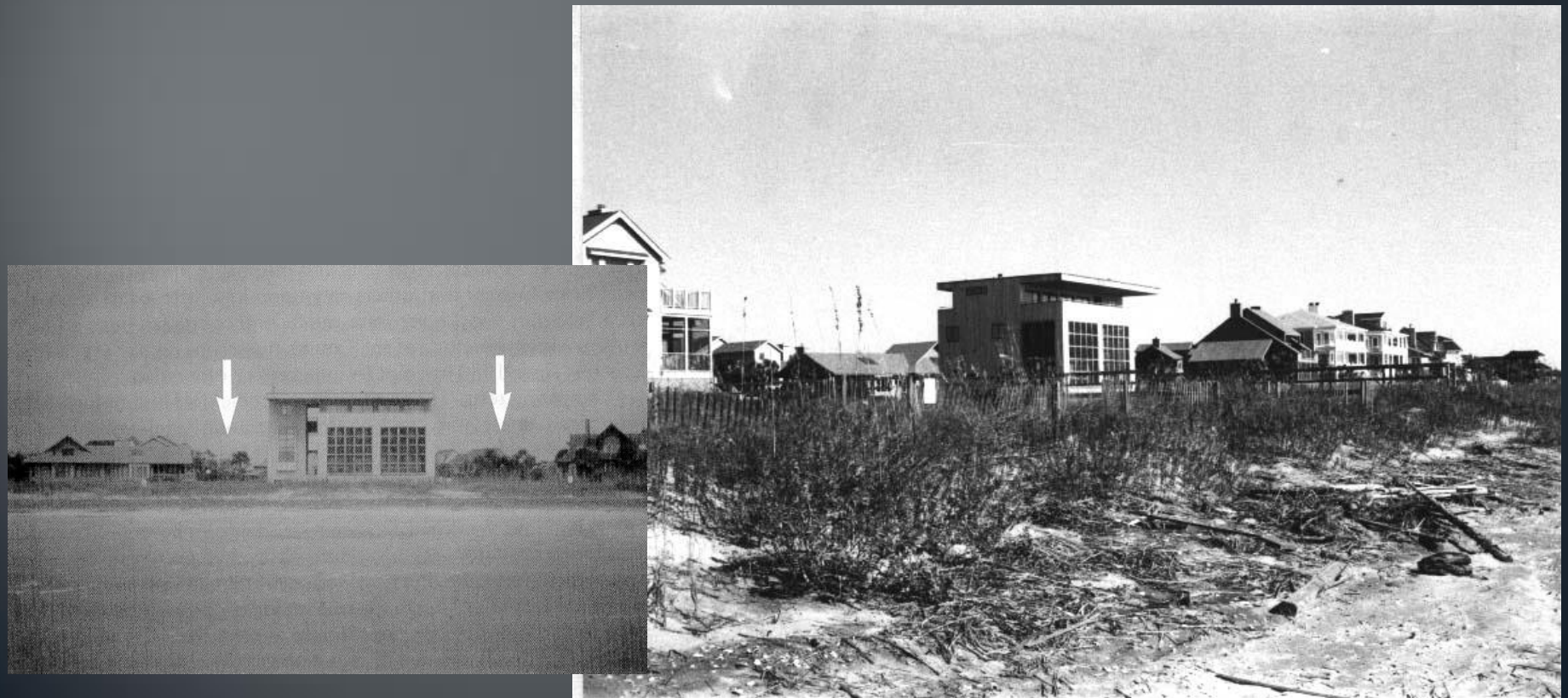
2. Deprivation of All Economic Value: Inverse Condemnation
Property Owners are not entitled to the “highest and best use”



Takings

Deprivation of all economically viable use is an unconstitutional takings – *Lucas v South Carolina Coastal Commission*, 1992

After purchasing lots, Beachfront Management Act enacted that barred new homes on 2 remaining vacant lots.



Takings

Lucas's lots today



Takings

Exactions and Land Dedications must have a rough proportionality to the impact or demand caused by the development.



Dolan v Tigard, 1994
Koontz v St. Johns River
Management District, 2013



Section 1983

- Federal Cause of Action for violation of constitutional rights
- Often included as a claim for relief in land use cases
- Allows for recovery of attorneys' fees

Continuance, Complete Record, Findings

- ***Don't rush to a bad decision!***
- **Continuance is appropriate if:**
 - there is new information,
 - if there is any uncertainty about the application of review criteria,
 - if there is any threat of litigation by applicant or neighbors
- **The record must be complete before the decision is final**
- **The record should include detailed findings to support the decision**

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What Zoning Does Well

Zoning for World Peace

- Remember the old saying:

“When the only tool you have (and love) is a hammer, everything begins to look like a nail.”

What is Zoning Anyway?

RULES & REGULATIONS THAT ATTACH TO THE LAND

- Promotes the public health, safety, and general welfare
- Controls the physical character and form of what may be built on land in particular locations
- Controls the way buildings and sites are used in particular locations
- Regulates compatibility of new development and uses with existing neighborhoods

What Does Zoning Do Well?

- Implements long-range plans and policies for future land use development and growth
- Regulates new development and uses
- Directs allowance & location of desired land uses
- Prevents establishment of or separates incompatible land uses
- Directs general shape and form of buildings
 - Height, bulk, massing, lot coverage
 - Distance from streets and property lines (setbacks)
 - Amount and location of parking
- Sets minimum building design requirements
 - Ground-floor entrances and transparency
- Controls the “what” (buildings and land use) rather than the “who” (owners, renters, operators)

Example: Zoning vs. Licensing to regulate Home-Sharing

- City of Denver, Colorado

Zoning vs. Licensing

	Zoning	Licensing
What do rules apply to?	Land	Person or business
Policy impetus?	<ul style="list-style-type: none">• Implement long-range land use plans/policies• Ensure prohibition or control of incompatible uses	<ul style="list-style-type: none">• Ensure public safety & welfare• Raise revenue to offset cost of regulatory system or fund general govt.
Retroactive or prospective in applicability?	Prospective (typical) – applies to new development & uses	Both retroactive & prospective – applies to new and existing businesses
What do rules address?	<ul style="list-style-type: none">• Location or density of land uses• Physical form of development or land use• Use of land, buildings, or structures	<ul style="list-style-type: none">• Location or density of businesses• Day-to-day operation of business• Qualifications and/or character of business operator

Zoning vs. Licensing

	Zoning	Licensing
Renewal of right required?	No (typical) – zoning rules and rights run with land	Yes – regular renewal required to ensure compliance/inspections
How are rules administered and applied?	Upon applicant request to build or expand a building, or establish/change a land use at a particular location	Upon applicant request to license new or existing business
What are remedies for noncompliance?	Order for compliance; permit may be revoked; civil fines or criminal penalties	License may be suspended or revoked; civil fines or criminal penalties

Zoning –Where it Can Go Awry



Zoning Issues – Property Owner's Perspective

- What is the current zoning?
- Does it allow for my planned/proposed use?
- If not, what is the process to change it, and how much risk, time and resources are involved?
- What is the property's designation in the applicable planning document?
- Is the property currently in compliance with zoning?
- Is the current use legal, non-conforming, accessory, or illegal?
- Is the site located within an "overlay" district?
- Are there any restrictions specific to zoning?
- What are the adjacent zoning and uses of the property? Will adjacent property owners think my use is incompatible with theirs?
- Are there any special requirements due to adjacent zoning?
- **Lenders will also be interested in the answers to these questions**

Zoning – Source of Authority

- **Police power**
 - Health, Safety and Welfare
- **Emanates from Tenth Amendment, U.S. Constitution**

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”
- **C.R.S. §31-15-4-1 – General Police Powers of Municipalities**
 - *Police; health, suppression of disease; removal of weeds brush and rubbish; prevent and suppress riots; restrain and punish loiterers; prohibit and punish cruelty to animals; establish and erect jails; regulate running at large of animals; regulate and license pawnbrokers; enact and enforce gambling ordinances; etc. . . .*

Colorado Municipal Home Rule Authority

Article XX, Section 6

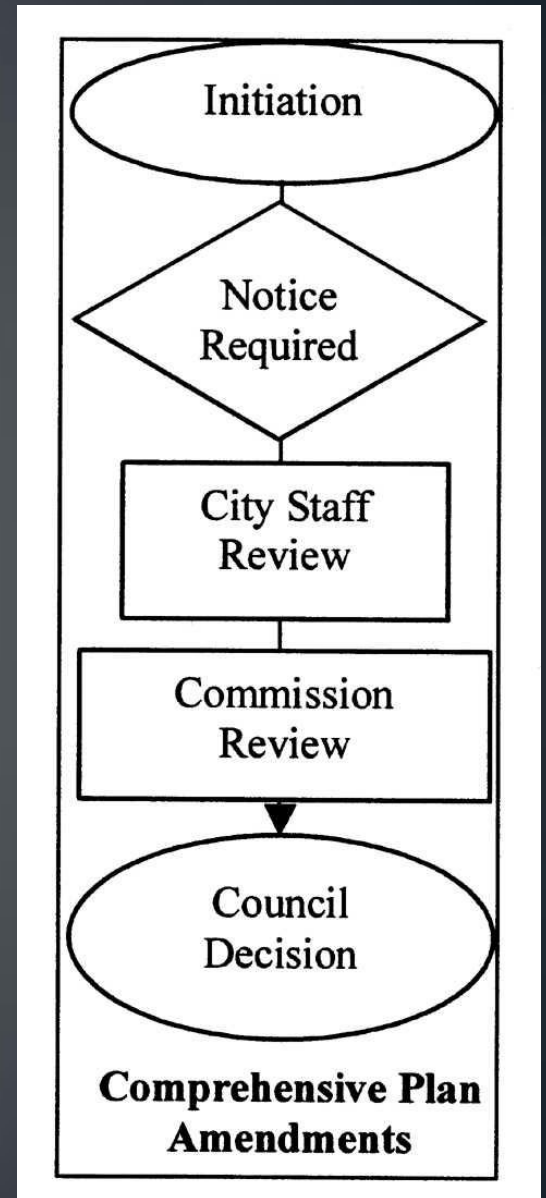
- *The people of each city or town of this state, having a population of two thousand inhabitants as determined by the last preceding census taken under the authority of the United States, the state of Colorado or said city or town, are hereby vested with, and they shall always have, power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters.*
- *Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith.*

Poorly drafted standards

Subjective Standard	Objective standard
“Preservation of Existing Character”	<ul style="list-style-type: none">• May not demolish structures older than 50 years without special review• New structures must use same architectural style• Create standards for new development that includes setbacks, detached sidewalks, tree lawns, etc., which are the same as existing
“Proportionate”	“Maximum 25% greater in height than closest adjacent structures at time of application”
“Harmonious”	
“Compatible”	Two or three story buildings must step back to one story within 25 feet of property line when adjacent to single story development
“Park-like”	One tree and three shrubs per 20 linear feet

Lack of Procedural Guidance

- Hard to win the game when you don't know the rules
- Good zoning code not only tells you *what* you may do, but *how* you must ask permission to do it



Negotiated Development

- Planned Unit Development or Planned Development (PUD or PD)

Ad hoc decision making

- Spot zoning
- Special conditions



Capacity of Staff to Enforce

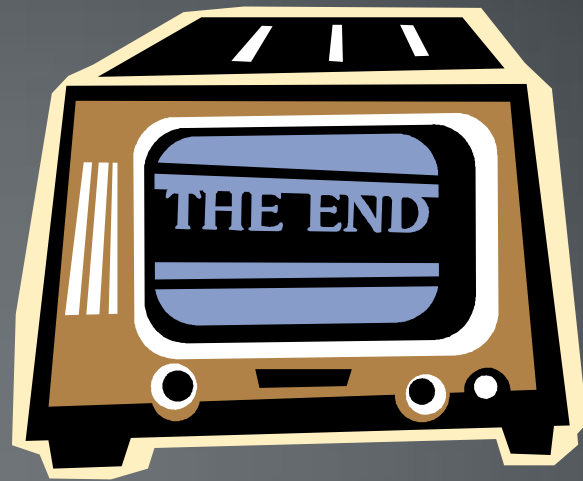
Zoning
cannot
regulate
behavior



Capacity of Staff to Enforce

- Zoning cannot override a recorded covenant.
- Zoning is not the “architecture police.” It cannot and should not be used to ensure that houses are “pretty.”





Questions?



Trends and Hot Topics in Zoning

Trendy and Hot, Zoning is Not!

New Urbanism

- Traditional Neighborhood Development
- Congress of New Urbanism

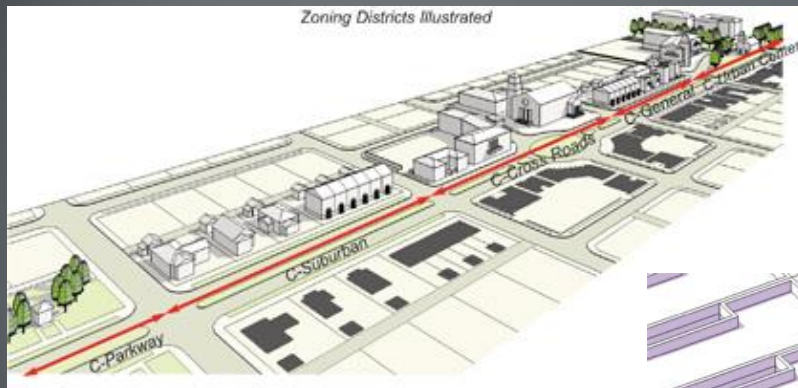


Many examples in Colorado –Stapleton, Lowry, Prospect, Belmar, South Main



Form-Based Codes

Form-Based Codes focus on siting, orientation, mass and scale and design of buildings rather than use.



Form-Based Code Institute:

Approximately 282 Form-Based Codes have been adopted in the U.S.



Tactical Urbanism

- “Pop-Up” uses such as sidewalk cafes
- Guerrilla urbanism – art, public seating
- Low-cost, little or no approval process, temporary uses



IF YOU SEE SOMETHING REMOTELY PROGRESSIVE...

.....**REPORT IT!**



ONLY YOU CAN STOP URBANISM!

BROUGHT TO YOU BY THE CITY OF HAMILTON DEPARTMENT OF ROADWAY SECURITY AND ASPHALT RELOCATION

Disaster Resilience/Sustainability

- Resilient Design: *Diverse, Redundant, Passive, Durable*
- Improved planning implementation for natural hazard areas
- Improved redundancy in essential infrastructure and emergency response services



Energy: Fracking, Solar, Wind

- Challenges of Balancing Private Property, Economic, and Public Interests with New Industries



Increased Administrative Authority

- Expand administrative approval for applications which meet review standards
- Development and Investment sectors favor clarity in regulations and predictability in approval process.
- Private sector to often perceives review by elected and appointed official as arbitrary, subjective and political
- Concerns about noticing and process
- Administrative review process can serve as a significant encouragement to simply meet all review criteria

The background of the slide features a light gray gradient with numerous thin, vertical, slightly wavy lines in a darker gray color. A solid dark blue horizontal bar spans the width of the slide, positioned below the background pattern. The main title is centered within this bar in a white, bold, sans-serif font with a thin black outline.

How to Get the Development You Want

Sticks and Carrots

Plans, Regulations, Partnerships, Money

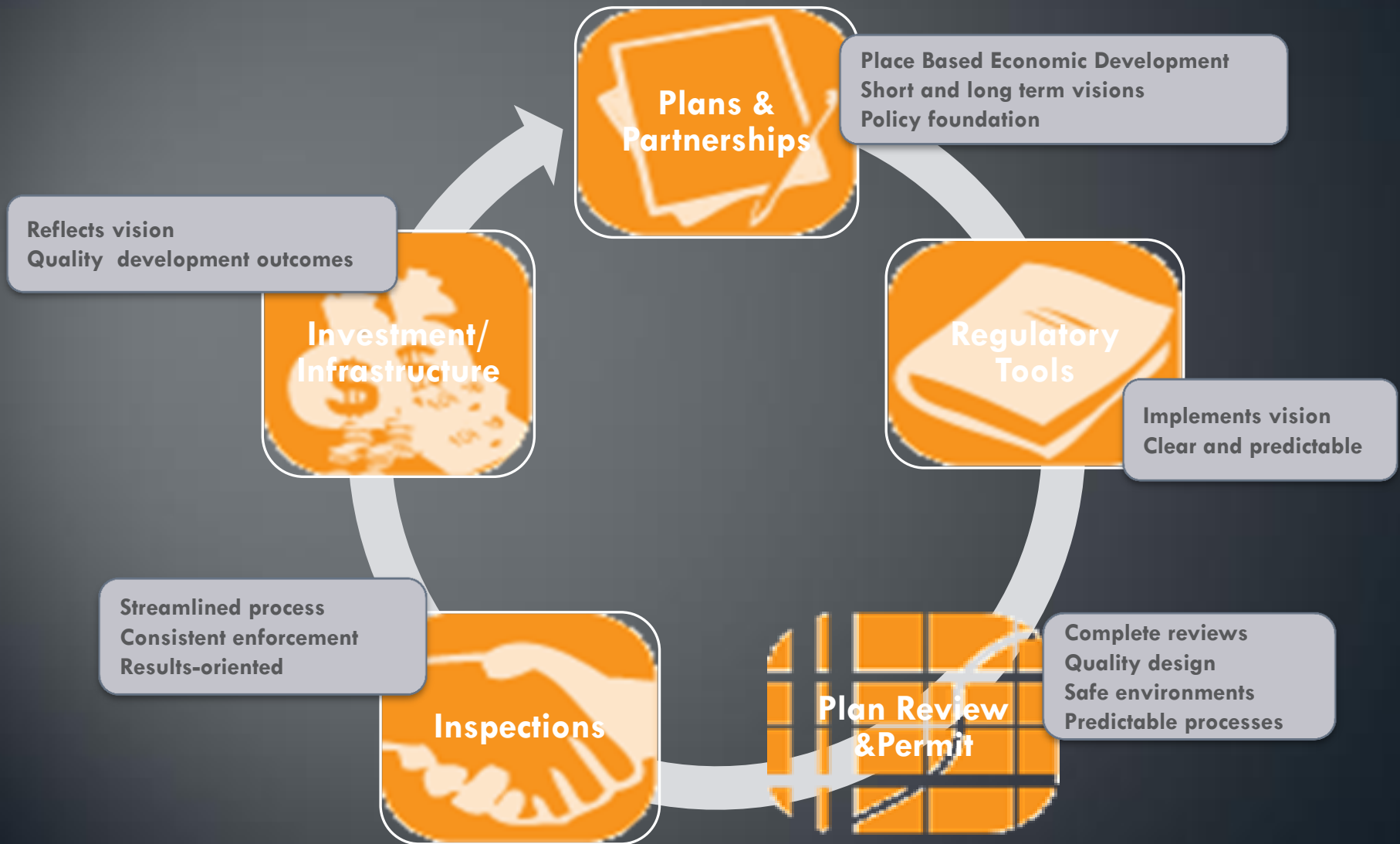
- Comprehensive plan leads the implementation process
- Accomplished through early buy-in:
 - Citizens
 - Developers
 - Business Community
 - Special Interest Groups



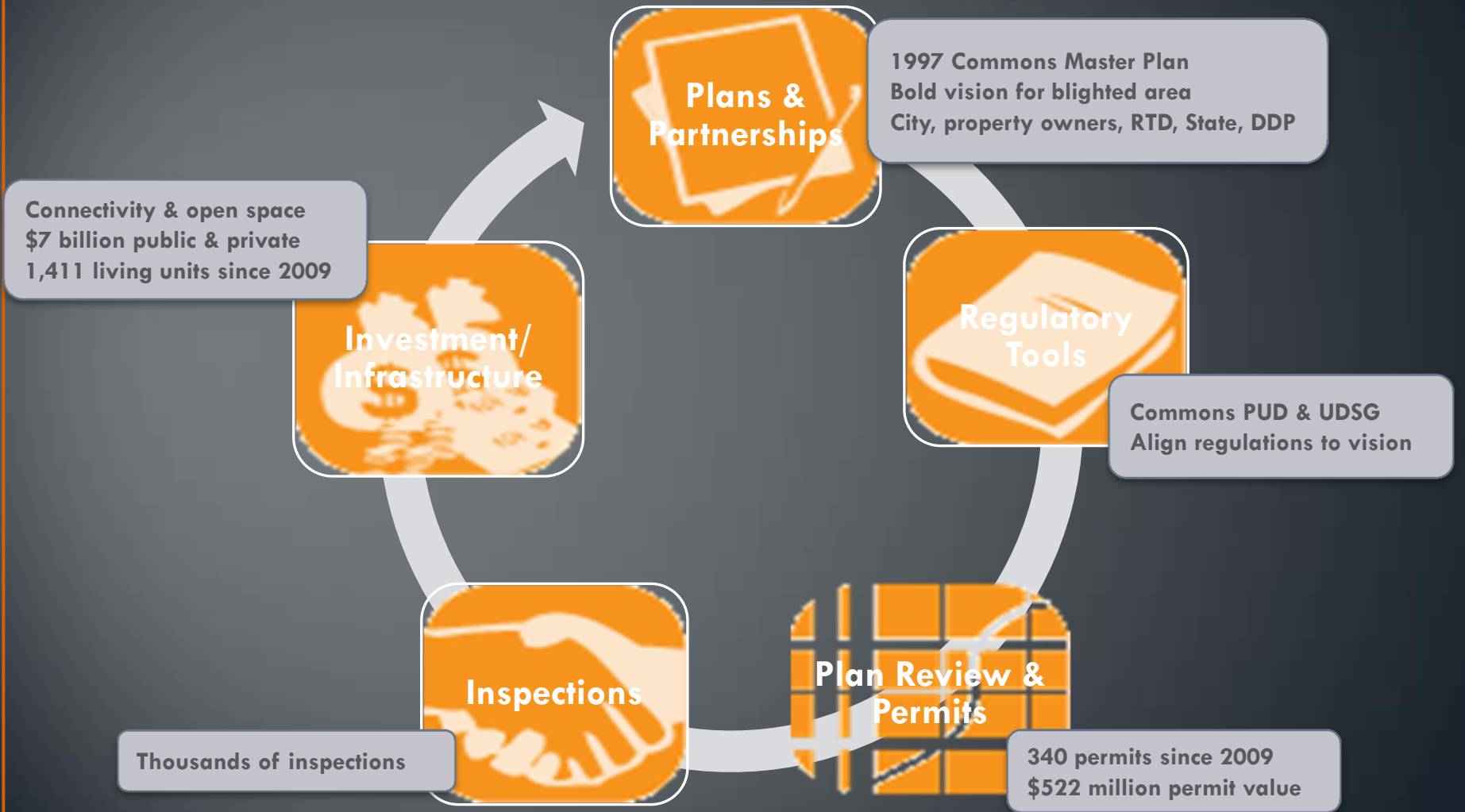
How to get the development you want: CIP & Budgeting

Follow the Money!

Place-Based Economic Development (& Budgeting)



Denver's Central Platte Valley







Cuernavaca Park

Prospect Housing

Coors Field

LODO Historic District

Commons Park

DUS

NEW PARK AVENUE OVERPASS

NEW 20TH STREET OVERPASS

NEW WEWATTA STREET

REMOVAL OF 16TH STREET VIADUCT

NEW TRAIN OML

NEW 15TH STREET AND UNDERPASS

SOUTH PLATTE RIVER GREENWAY





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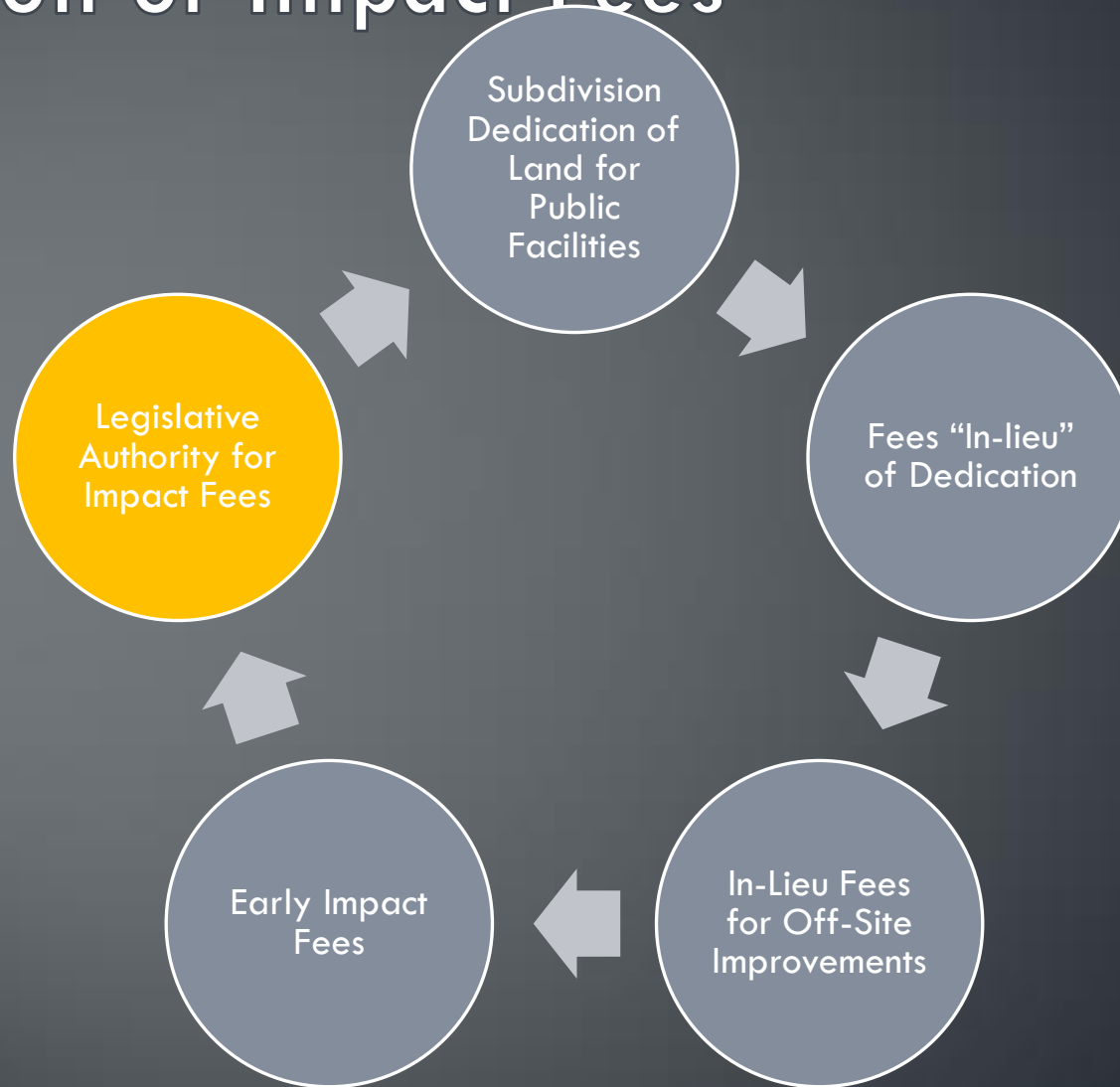
How to get the development you want: Impact Fees

Cost of Admission

The Impact Fee

- Regulatory device
- Encourages orderly development of land
- Coordinates development/facilities
- Features distinguish it as a land use regulation:
 - Only exacted on new growth
 - Only exacted for capital facilities
 - Fees do not exceed costs to accommodate growth (proportionate share)
 - Fees spent for capital facilities: benefit

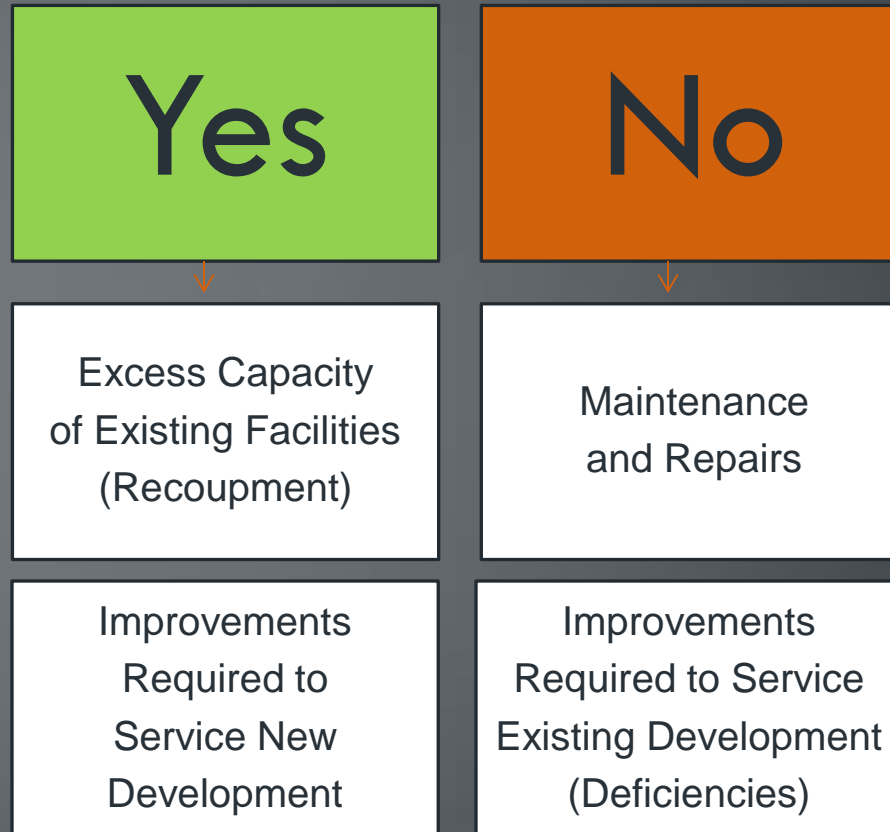
Evolution of Impact Fees



Impact Fees

- **Impact fees under Colorado home rule powers**
 - Imposed on new development to fund capital facilities
 - Rational nexus principles govern
- **Impact fees adopted under Colorado Statutory Authority (SB 15)**
 - Imposed as condition of development permit issuance
 - Imposed to fund capital facilities to serve new development
 - Legislatively adopted

Costs Fundable by Impact Fees



Why Consider Impact Fees?

- Significant Actual/Projected Growth Rate
- Need for Costly Public Facilities Due to New Growth
- Need for Equity Between Existing Residents and New Growth
- Limited Alternative Revenue Sources
- Maintenance of Quality of Life, as Defined by Public Facilities and Services

Key Considerations During Implementation

- Fully consider legal limitations and implications
- Work with legal counsel in design of fee program
- Prepare and adopt support study
 - Base fees on up-to-date CIP or LOS
 - Comply with “directly related” nexus standard
 - Identify past deficiencies and correct
 - Ensure benefit; consider benefit districts as option
- If waivers are provided, must replenish impact fee account with non-impact fee revenues

Key Considerations During Implementation

- Draft detailed legislative findings to show:
 - Fees are “directly related to” new development
 - All impact fee eligible expenditures are for “capital facilities”
 - Facilities for which impact fees are collected are required by the charter or general policy
 - Fees will not be used to cure past deficiencies

Key Considerations During Implementation

- **Be prepared for careful administration**
 - Keep good records; track fees paid and revenues spent in the event of challenge
- **Provide for refunds if monies not spent**



How to Get the Development You Want – Financing Tools

Let's Make a Deal!

Revenue Sharing

- Home Rule cities have authority to share sales tax revenue
- No authority to share property tax revenue
 - **Exceptions**
 - Enterprise zones
 - Tax increment financing



Special Districts

- Title 32 Metropolitan Districts
- Improvement Districts
 - SID - Special Improvement District - organized by a city or town. 31-25-501, et seq. Some charters refer to LID
 - Not independent political subdivision, no separate corporate existence
 - Commonly used for specified packages of improvements – road, sidewalk, water or sewer
 - Raise revenue through special assessments, not mill levy
 - Examples:
 - Denver – 14th Street GID

Improvement Districts

- GID – General Improvement District - organized by a city or town. 31-25-601, *et seq.*
- GID is a separate political subdivision
- May levy a property tax, as well as an assessment, or fees or charges



Improvement Districts

- BID -- A business improvement district organized by a municipality. 31-25-1201 *et seq.*
 - Purpose is to finance, construct, own operate or maintain public improvements, but also may undertake economic development, and business-related services such as marketing.
 - Separate political subdivision under state law; may exercise a variety of powers.
 - May include only non-residential property within its boundaries.



Community Development Block Grants (CDBG)

- HUD allocates funding to states; states distribute according to regulations
- All activities must meet one of the following national objectives for the program:
 - Benefit low and moderate-income persons
 - Prevent or eliminate slums or blight
 - Fulfill community development needs that have a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community

Program Contact

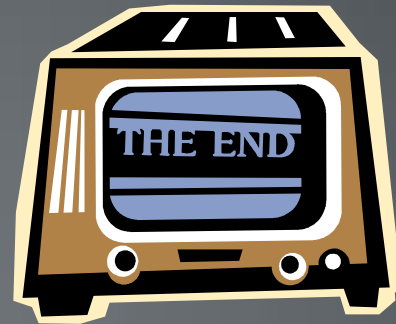
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of Financial Assistance, 303-
864-7724,
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o.us](mailto:rachel.harlow_schalk@state.co.us)



Other Tools

- **Tax Increment Financing**
 - only available in a Downtown Development Authority (DDA) or Urban Renewal Authority (URA)
- **Public Private Partnerships (P3)**
- **Other Federal Funding**





Questions?

Land Use Basics for Elected Officials

Colorado Municipal League and
Colorado Department of Local Affairs
October 24, 2014

