



**ARAPAHOE COUNTY**  
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# Planning Commission – Roles & Responsibilities



# Overview



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- County Organization/
- The Comprehensive Plan
- Legislative and Quasi-Judicial Actions
- Deliberations and Concluding the Process

*Some content adapted from Colorado Department of Local Affairs Planning 101 (APA State Conference 9/30/2022) and CIRSA Quasi-Judicial Proceedings Presentations (Littleton, CO – 7/17 & 7/25/2019)*



# County Organization



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- Board of County Commissioners – *elected policy makers*
- Planning Commission – *appointed*
- Staff – *policy administration*



# Grounding Authority

The rights of government to establish laws and ordinances to preserve public order and tranquility and to promote the public health, safety, and general welfare.

Generally referred to as “police power” in legal jargon.

Many rules rely on police power: sign codes, historic preservation, tree preservation, etc.



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*Image source: Pinterest*

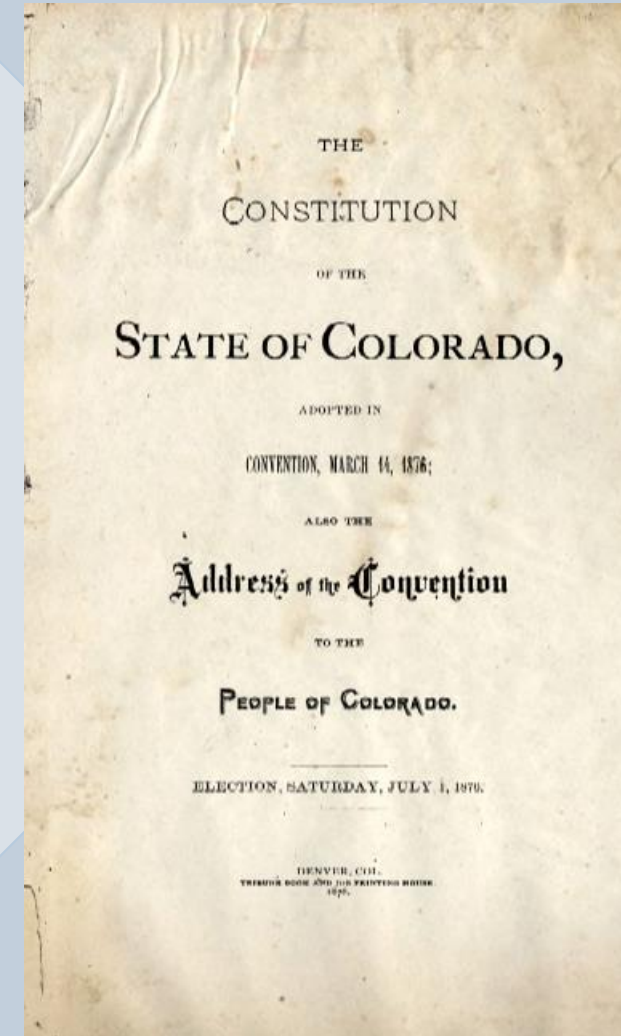


# Colorado Authority



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- Statutory Authority for land use planning (mostly Title 30, Article 28)
  - 30-28-106 (master plans)*
  - 30-28-111 (zoning plan)*
  - 30-28-133 (subdivision regulations for counties)*
- Regulations must be tied to **valid public purpose** (substantive due process) and be enacted and implemented so those directly affected have a **meaningful opportunity to participate** (procedural due process)



# Planning Commission Role – It Depends on the Case



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- Planning Commission decision:
  - Comprehensive Plan*
  - Location & Extent*
  - Specific Development Plan (3-step PUD)*
- Planning Commission recommendation:
  - Zoning (PUD, change of zone)*
  - Amendments to the Land Development Code*
  - 1041 (Areas & Activities of State Interest)*
  - Metro Districts/Special Districts*
  - Preliminary Plat/Minor Subdivision*
  - Use by Special Review for private utility company*





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# The Comprehensive Plan

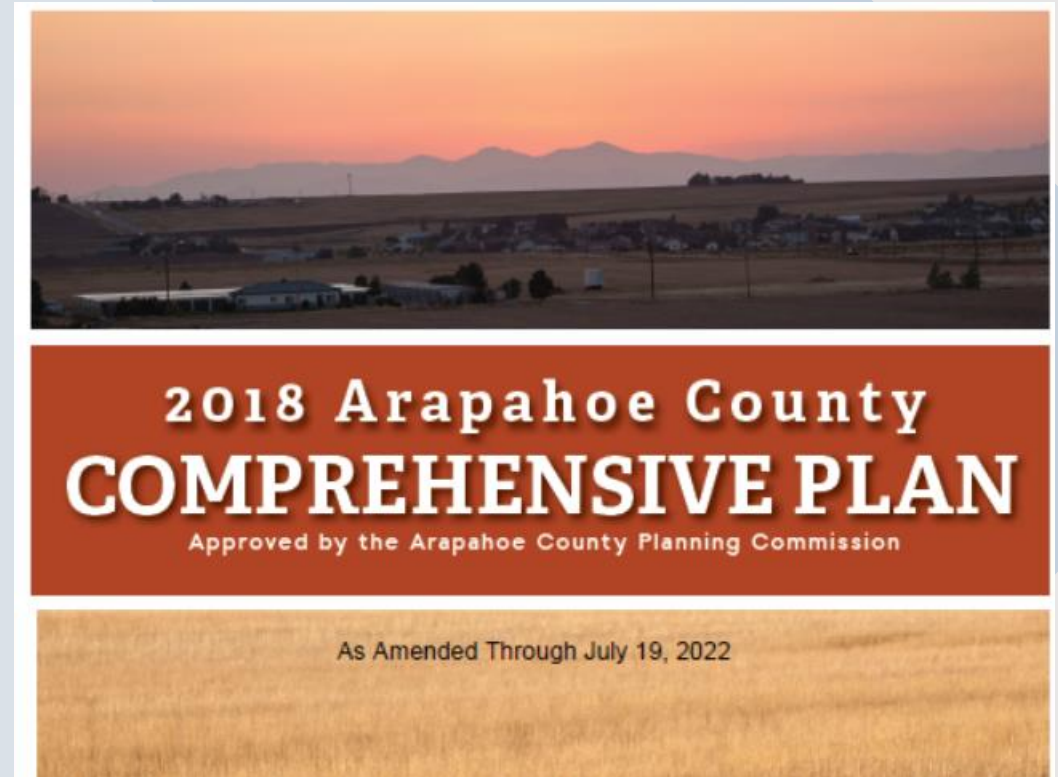


# Comprehensive Plan



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- Advisory document, adopted by the County Planning Commission
- Serves as community's vision
- May include sub-area plans or other plans (Transportation Plan, Sub-Area Plans, Hazard Mitigation Plan, Open Spaces Plan)





# Colorado: Elements of a Comprehensive Plan



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Educational Facilities	Housing	Energy
Environmental	Economic Development	Cultural/Historical
Parks and Open Space	Hazards/Safety	Recreation & Tourism
Natural Resources	Water*	
Transportation	Urban Influence Area	Utilities & Facilities

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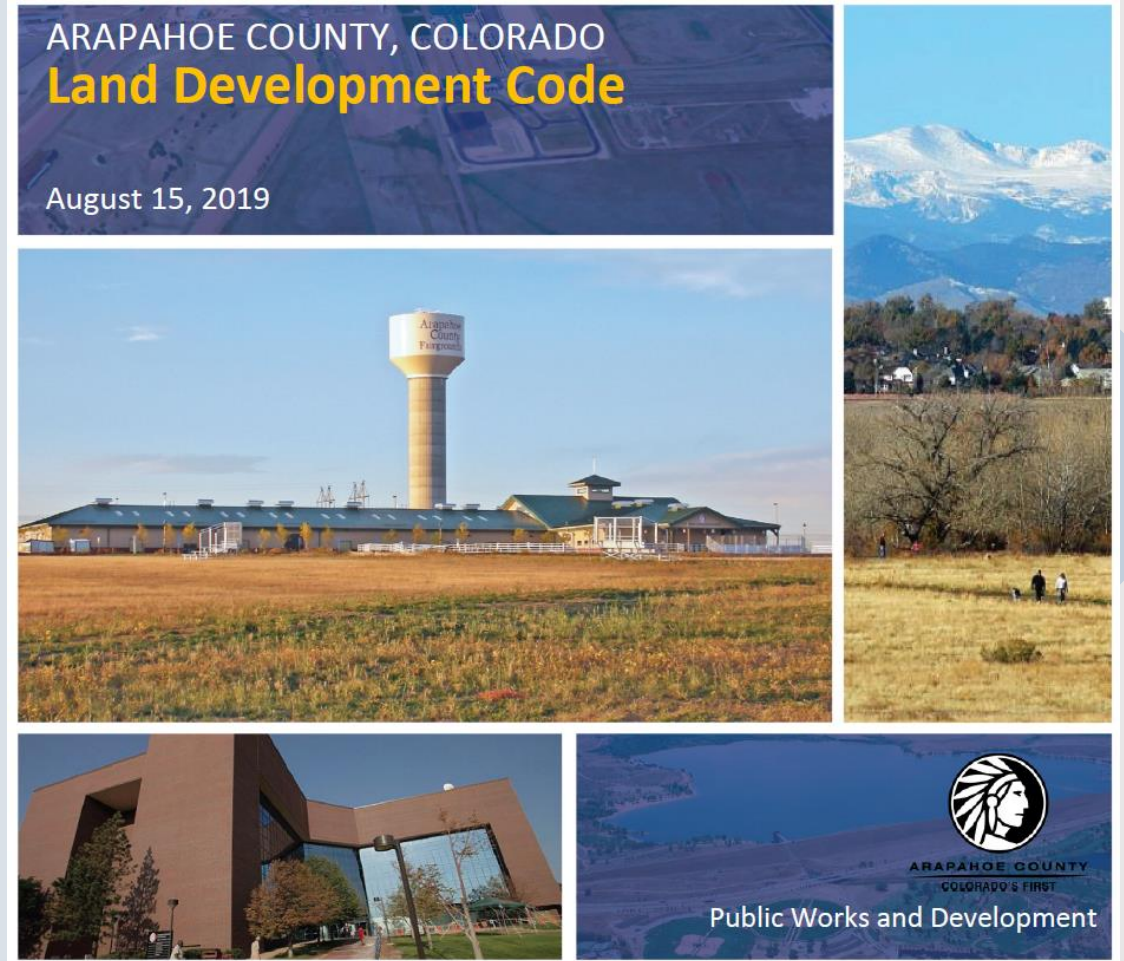
# Vision → Action

## Specific Documents

- Land Development Code (Zoning and Subdivision)
- Zoning Map
- Development Application Manual
- Infrastructure Design Standards
- Planned Unit Developments
- Building Codes
- Areas and Activities of State Interest (1041 Regulations)



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# Vision → Action

- Land Development Code changes
- Rezoning requests/zoning map changes
- Planned Unit Developments
- Zoning Map
- Site Plans
- Impact Fees
- Capital Improvements Programs
- Often tied to Comprehensive Plan goals/policies/strategies



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# Legislative and Quasi-Judicial Actions





# Legislative and Quasi-Judicial Actions



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Legislative	Quasi-Judicial
<p>Public policy relating to matters of a permanent or general character, not restricted to an individual (or individual site).</p> <ul style="list-style-type: none"><li>- General policies</li><li>- Acting as legislators/law makers</li><li>- Apply generally to all or to a general class of properties and uses, not generally to a specific property</li><li>- Not normally restricted to a particular individual or entity</li></ul>	<p>Involves determination of rights or obligations of an individual; use of legislated rules to make a determination on an application.</p> <ul style="list-style-type: none"><li>- Determines the rights of a specific person/entity for specific property.</li><li>- Applies <u>specific standards</u> to a specific type of case (subdivision of property; use by special review)</li><li>- Decision-makers are acting more like judges in a courtroom: listening to evidence and applying criteria/standards</li></ul>



# Quasi-Judicial Due Process



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- The Land Development Code provides the rules for a fair process:
- *Public notice format (newspaper, letters, and/or signs)*
- *Public notice timing*
- *Who receives public notice*
- *Application review criteria*
- The staff report, supplemental materials, and public hearing provide evidence to consider
- The decision should include reasons (included in the draft motions: referencing the findings in the staff report)







# Hearings

- Review the packet – staff report will include an analysis of the criteria
- Confirm compliance with the noticing requirements in the Land Development Code and/or State statute (establishes jurisdiction and is required in the event of a legal challenge)
- Consider the review criteria--what the hearing is and is not about
- Keep the tone civil – avoid off-the-cuff comments
- Mind the record – the meeting recording/transcript is a major part of the record



# Hearings and Avoiding Trouble

- Be unbiased and impartial – both in fact and appearance
- Avoid *ex parte* contacts: do not speak to one side or the other before a hearing
- Make the decision based on relevant criteria
- Don't sign any pro/con petitions
- Avoid social media to the extent feasible and do not comment on potential future hearings
- Ask questions – staff is here to help!



# Avoiding Trouble – *Ex Parte* Communication



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- *Ex parte* – in this context, it's any written or verbal communication initiated outside of a regularly-scheduled public hearing: encounter at a grocery store, offer of a personal site tour by an applicant, email, etc.
- Steer contacts to the public hearing
- Explain why you cannot talk (due process for both the public and the applicant)
- Check with staff and potentially disclose the contact at the hearing





# Avoiding Trouble – Conflict of Interest

- If you are a member of the governing body (Planning Commission) **and** you have a “personal or private interest” in the matter proposed or pending before you
- Colorado law (24-18-108.5 and -109):
  - *Shall disclose the conflict to staff/at the hearing*
  - *Shall not vote*
  - *Shall not attempt to influence the votes of others*
- *Except...*

## **24-18-109(3)(a) C.R.S.:**

*A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.*



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# Deliberations and Concluding the Process





# Typical Public Hearing Process

1. Staff presentation (& confirmation of adequate public notice)
2. Applicant presentation
3. Questions for staff/applicant
4. Public comments
5. Applicant/staff responses to questions/comments
6. Additional Planning Commission questions for applicant/staff
7. Motion, second, findings, discussion, and vote



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# After the Public Comment

- Another opportunity for questions (to answer public comment items, to clarify review criteria, etc.)
- Our motions include references to the review criteria...
- But there's also an opportunity to highlight/emphasize certain criteria or elements of the Comprehensive Plan as part of your findings
- Last chance to provide comments on the record



# Making a Decision/Findings of Fact



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- Questions to staff or applicant can be used to gather evidence related to the standards
- Facts must address standards
- Standards can include “subjective” statements that can form the basis of a decision for or against:
  - “general conformance with the Arapahoe County Comprehensive Plan”*
  - “assure compatibility between the proposed development, surrounding land uses, and the natural environment”*
- Support statements with the criteria and evidence from the record:
  - *NO: “Development means more traffic. That’s the price of progress.”*
  - *YES: “The traffic study shows that the street network can accommodate additional trips from the proposed development.”*
  - *NO: “I like the building design.”*
  - *YES: “The building design in the applicant’s PowerPoint meets and exceeds the County’s design standards; the use of brick columns helps reduce the building massing.”*





## Some Decision-Making Hints

- It's all about the criteria: sometimes we are asked to review the application in front of us and not the application we would prefer to see
- Related—be wary of “let’s make a deal” or of recommending significant design changes to a submittal during the hearing
- Conditions should be clear: who does what, and where, and by when
- It's all about the criteria: sometimes, after a hearing, “no” is an appropriate response



*Image source: USA Today*



# After the Hearing

- Be cautious after the vote – let the record speak for itself
- Support the process – sometimes that means supporting the group decision when you were in the minority
- Direct any questions to the record and the findings (Reporter: why did you vote 'no'? Correct answer: read the minutes or watch the video)
- Don't write letters to the editor "explaining" the decision; same goes for social media



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# Thank you for your public service!

