



# **VTSV Planning Commission**

September 26, 2022

**Presented by: Jake Caldwell, Caldwell Law Firm, LLC**

# Logistics & Disclaimers

- Presentation is anticipated to run appx. 2 hours
- Ask Questions any time
- Ask for a Break any time
- This is NOT legal advice. Ask your attorney if you need that.

# What We'll Cover Today

- Welcome and Introductions
- Why Plan and Planning Authority
- Roles and Responsibilities
- Effective Meetings and Decision-Making
- Legal and Ethical Issues
- Scenarios (throughout)

# Resources: Legal Authorities

- <https://www.nmag.gov/get-help/>
  - [NM Open Meetings Act Compliance Guide](#)
  - [NM Governmental Conduct Act Compliance Guide](#)
- [NMSA Compilation](#)  
(nmonesorce.com)
  - [Planning and Platting](#) (3-19-1 to 3-19-12)
  - [Subdivision](#) (3-20-1 to 3-20-16)
  - [Zoning](#) (3-21-1 to 3-21-26)

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# Other Planning Resources

- APA [American Planning Association public official and Commission membership](#)
- Planning Commissioners Journal <https://plannersweb.com/>

## Building Your Local Economy

Planner  
Gwendolyn Hallsmith offers a progressive take on planning for local economic development in this five-part series starting with [Coping With Economic Meltdown](#).

Also, take a look at our extended reprints from economic development planner Della Rucker's excellent book, [The Local Economy Revolution](#).

## Pro-Forma 101 – Getting

What is a FBC?



between FBCs and traditional zoning.

## Part 1: What Is a Form-Based Code?

by Mary Madden and Joel Russell

An introduction to the use of form-based codes — how they work and how they differ from conventional zoning. In Part 1: an overview of the origins of form-based zoning and its primary objectives.

## Improving Your Planning Commission's Effectiveness

If there were one thing that would most improve the effectiveness of your community's planning commission, what would that be?

## Strengthening the Planning Commission – Governing Body Relationship

We hear back from our survey respondents with ideas on how to strengthen the relationship between the planning commission and governing body.

## Holding Effective Public Meetings

What are the most important things a planning commission or planning staff can do in order to hold an effective public meeting or hearing? Results from our

# **Why Plan & Planning Authority**

# Why Plan?

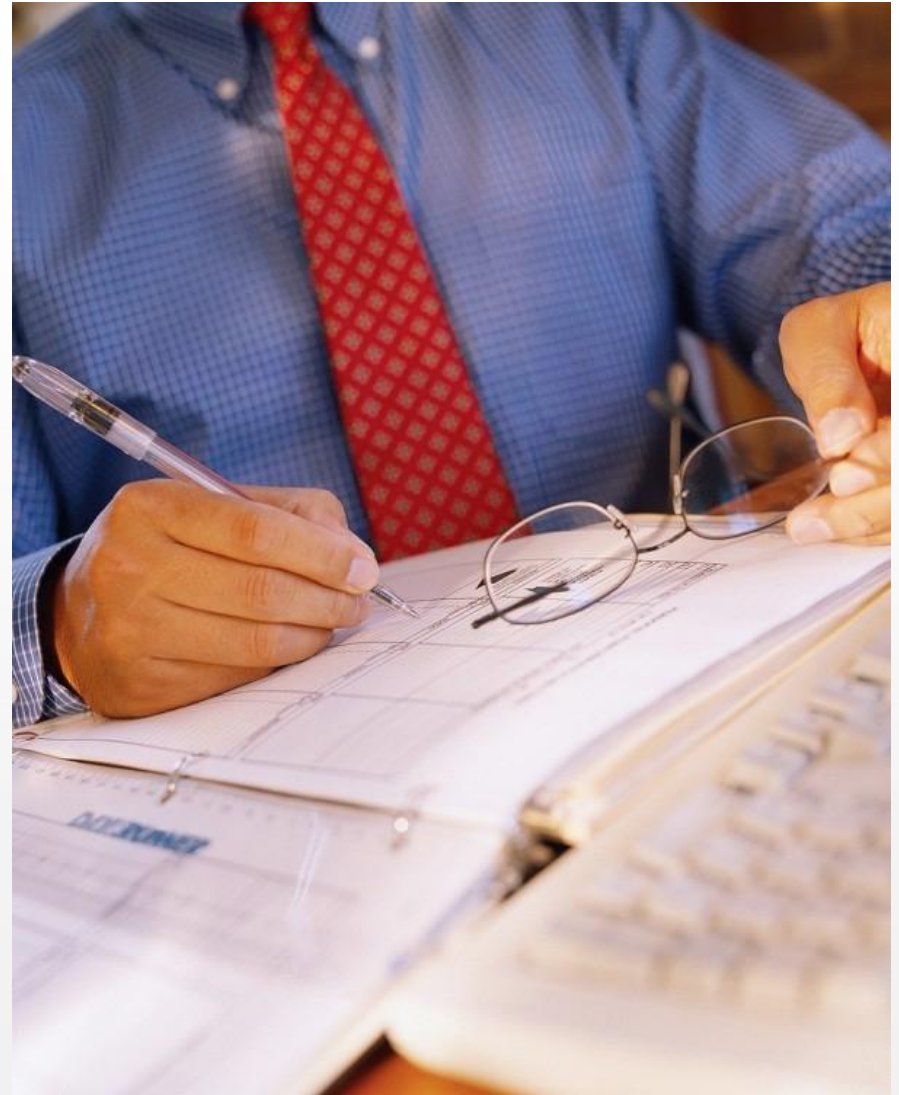
- Helps government to be more efficient and effective
- Helps community seize opportunities
- Prevents undesirable development





*“Who would invest in a corporation if it didn’t have a business plan? ... the same is true for a community if it doesn’t have a plan. Every successful institution, whether a corporation or a community, needs to plan.”*

-Ed McMahon (*PlannersWeb*)





# 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

(reserved to states,  
granted to local  
governments through  
statutes)



# Authority to Plan

- Local control
- Few statutory planning requirements
- Grant of authority for land use planning:
  - Statutory authority



# Statutory Authority

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)



# Statutorily Required/Authorized Planning

## **3-19-1 to 3-19-4**

Creation and powers of Planning Commission (may)

## **3-19-9 to 3-19-12**

Master plan; purposes (shall)

## **3-19-6**

Subdivision Regulations (shall)

## **3-21-1 to 3-21-26**

Zoning (may)



# Planning Commission Creation and Powers

## 3-19-1. Creation of planning commission.

A municipality is a planning authority and may, by ordinance:

A. establish a planning commission;

B. delegate to the planning commission:

(1) the power, authority, jurisdiction and duty to enforce and carry out the provisions of law relating to planning, platting and zoning; and

(2) other power, authority, jurisdiction and duty incidental and necessary to carry out the purpose of Sections 3-19-1 through 3-19-12 NMSA 1978;

C. retain to the governing body as much of this power, authority, jurisdiction and duty as it desires; and

D. adopt, amend, extend and carry out a general municipal or master plan which may be referred to as the general or master plan.

# Planning Commission Creation and Powers

## **3-19-2. Appointment, term, removal of commission.**

A. A planning commission shall consist of not less than five members who shall be appointed by the mayor with the consent of the governing body of the municipality. Administrative officials of the municipality may be appointed as ex-officio, nonvoting members of the planning commission.

B. On the first planning commission a majority of the members shall be appointed for one-year terms and the balance of the members shall be appointed for two-year terms. Each subsequent term of a member on a planning commission shall be for two years or less in order to maintain the original staggering of terms of membership. A vacancy in the membership of the planning commission shall be filled for the remainder of the unexpired term.

C. After a public hearing and for cause stated in writing and made part of the public record, a mayor with the approval of the governing body may remove a member of the planning commission.

# Planning Commission Creation and Powers

## **3-19-3. Chairman; regular meetings; records.**

A planning commission shall:

- A. elect one of its members chairman for a one-year term;
- B. create and fill other offices;
- C. hold at least one regular meeting each month;
- D. adopt rules for the transaction of business; and
- E. keep a public record of its transactions, findings, resolutions and determinations.



# Planning Commission Creation and Powers

## 3-19-4. Powers of commission.

A. A planning commission shall have such powers as are necessary to:

- (1) fulfill and perform its functions;
- (2) promote municipal planning; and
- (3) carry out the purposes of Sections 3-19-1 through 3-19-12 NMSA 1978.

B. A planning commission may:

- (1) make reports and recommendations for the planning and development of the municipality to:
  - (a) public officials and agencies;
  - (b) public utility companies;
  - (c) civic, educational, professional and other organizations; and
  - (d) citizens; and
- (2) recommend to the administrative and governing officials of the municipality programs for public improvements and their financing.

# Planning Commission Creation and Powers

## 3-19-4. Powers of commission (continued)

C. Members and employees of the planning commission, in the performance of its function, may:

- (1) enter upon any land;
- (2) make examinations and surveys; and
- (3) place and maintain necessary monuments and markers upon the land.

D. Upon request, a public official shall furnish within a reasonable time available information which the planning commission requires for its work.

# **Roles & Responsibilities**

# Roles & Responsibilities



- Elected Officials
- Planning Commission
- Staff
- Citizens
- Applicants

# Elected Officials

- Make policy and legislate
- Use enabling authority and charter to protect public interest
- Hire staff and appoint boards that will further the mission
- Provide general direction and ongoing two-way communication



# Planning Commission

- Advisory to elected board
- Prepare master/comp plan
- Apply current policy and regulations
- Provide planning/land use expertise
- Review development applications
- Adopt and consistently use procedural rules
- Regularly assess planning policies and regulations



# Staff

- Staff and consultants provide technical expertise and guidance
- Provide information and training
- Assist with research
- Staff review/report
- Notice meetings, communicate with applicants, etc.
- Ensure good communication
- Offer professional opinions





# Citizens

- Participate fully
- Advise  
appointed and  
elected officials
- Ask questions
- Offer input and  
solutions



# Applicant

- Learn and respect adopted rules and processes
- Expect fair and predictable process
- No “working the system”
- Communicate issues and concerns
- Have realistic expectations and an understanding of the role of government



# Slow Down and Reflect Together



- What isn't working well?
- Where are we seeing issues emerge?  
Trends?
- Regular meetings with elected board

Make recommendations to the elected board for changes to policies, regulations, standards.

# Decision-Making - Scenarios

PC makes a unanimous decision,  
but the council overturns it (this happens  
often).

*Question: What actions could the PC take to  
address their concern about being overturned?*

# Decision-Making - Scenarios

Developer brings updated plans to the staff the day before the hearing.

*Question: Do you allow the applicant to make last-minute changes? If you do, how do you ensure staff and the PC/elected board will have enough time to review the information?*

# **Long Range Planning & Implementation**

# Master/Comprehensive Plan

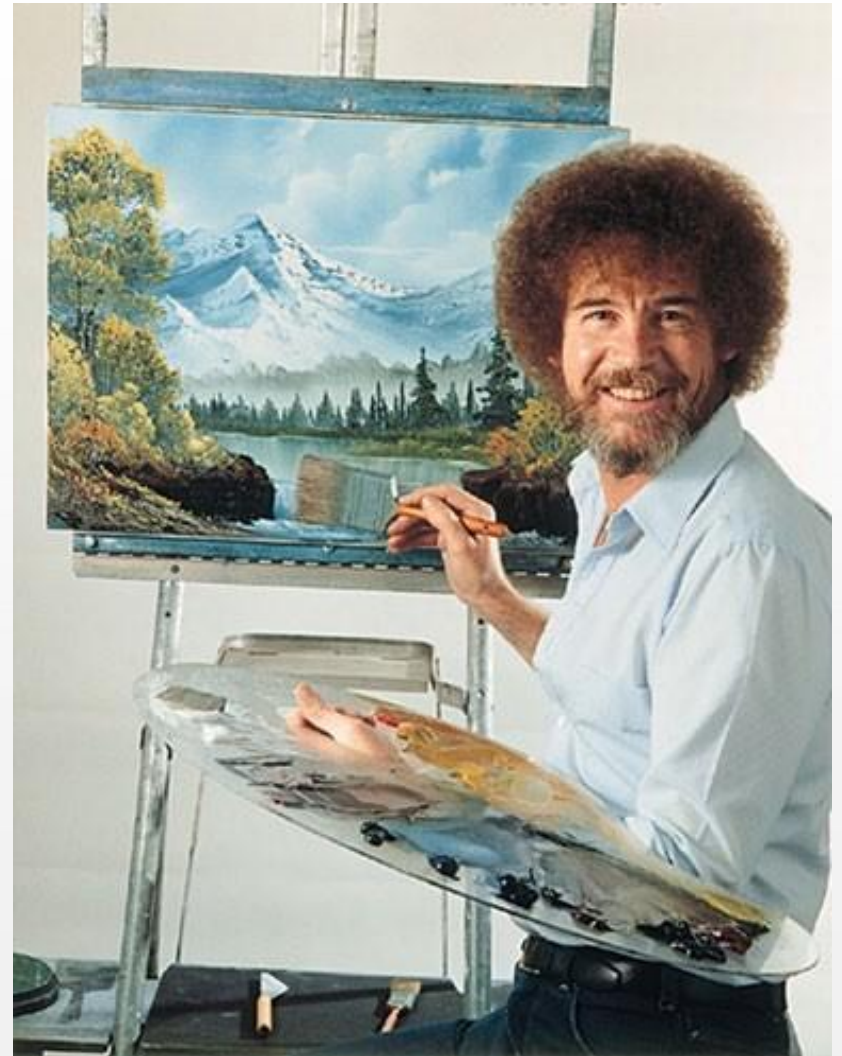
## **3-19-9. Master plan; purposes.**

A. The planning commission shall prepare and adopt a master plan for the physical development of the municipality and the area within the planning and platting jurisdiction of the municipality which in the planning commission's judgment bears a relationship to the planning of the municipality. The planning commission may amend, extend or add to the plan or carry any part or subject matter into greater detail. In preparing the master plan, the planning commission shall make careful and comprehensive surveys and studies of existing conditions and probable future growth of the municipality and its environs. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the municipality which will, in accordance with existing and future needs, best promote health, safety, morals, order, convenience, prosperity or the general welfare as well as efficiency and economy in the process of development.



# Master/Comprehensive Plan

- Community's vision
- Serves as a roadmap
- Master plans are advisory (Dugger v. City of Santa Fe, 1992-NMCA-022)



# Standard Plan Elements

- Land Use
- Transportation
- Utilities & Facilities
- Affordable Housing
- Environmental
- Cultural/Historical
- Hazards/Safety
- Natural Resources
- Educational Facilities
- Economic Development
- Parks & Open Space
- Recreation & Tourism
- Water



# Master Plan Provides Guidance for:

- Zone change requests
- Land use code, incentives, etc.
- Annexation requests
- Decisions about expansion of major infrastructure
- Decisions about location of new infrastructure



# Cooperative Planning

- Planning issues are complex and interrelated
- Planning issues and growth impacts do not respect political boundaries
- Applicants shop for the best deal
- Incompatible standards make for rough transitions



# TRENDS AND KEY ISSUES IN PLANNING

- Plan for an aging demographic, public health, livability
- Integrate hazards into development decision-making, resilient policies, and consider mitigating and adapting to effects from climate change
- Plan for protecting and ensuring sufficient water supply & quality (redundancy)
- Create opportunities for affordable housing
- Strategize toward economic diversification
- Consider social equity

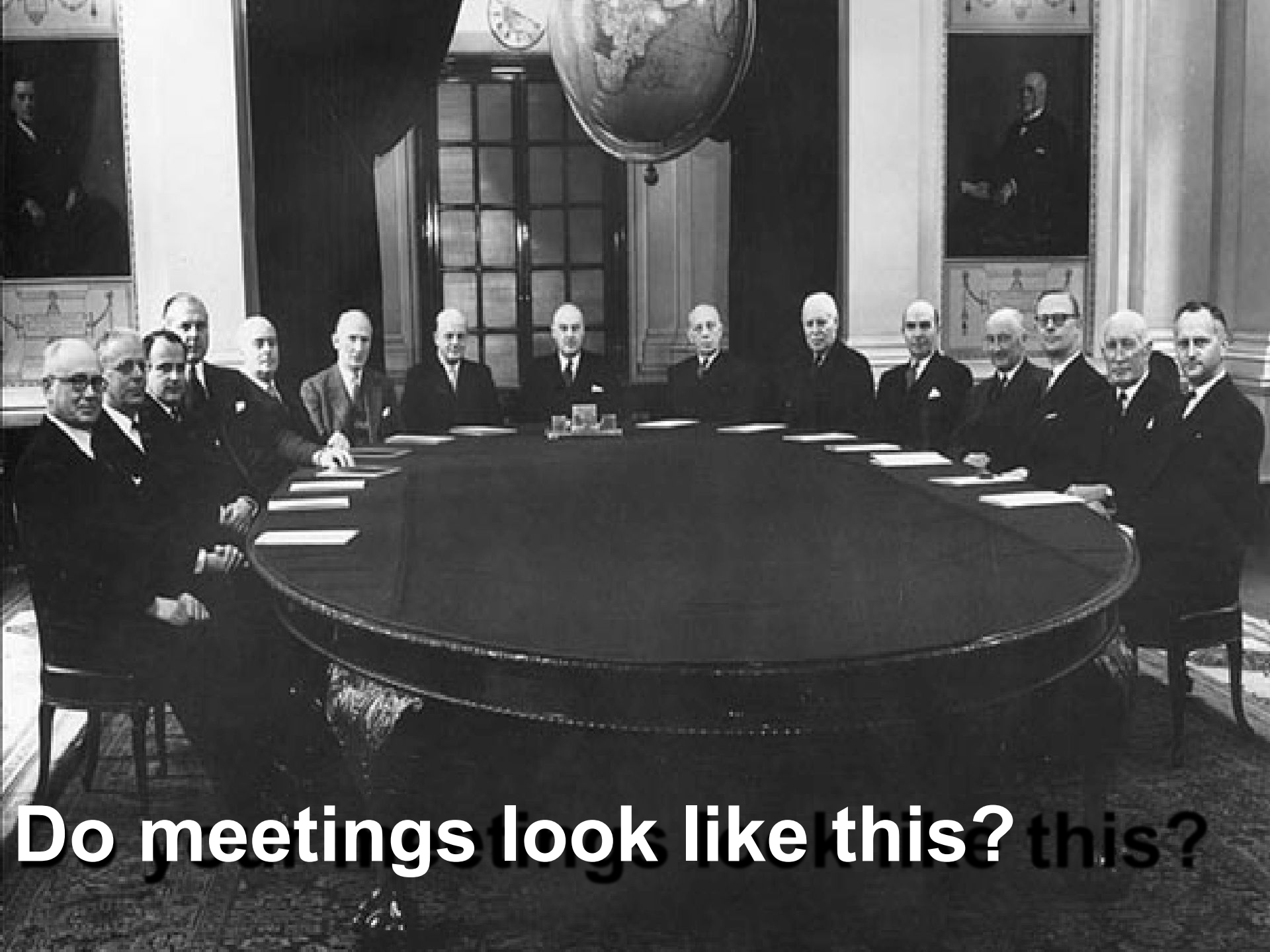






# **Meetings & Decision Making**





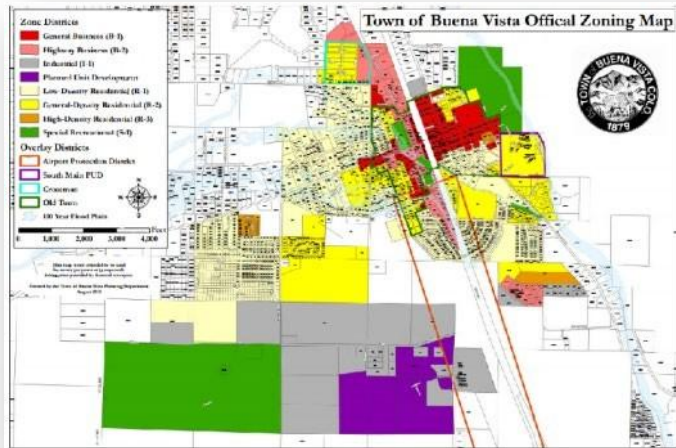
**Do meetings look like this?**

# Or this?





# Types of Action



## **Legislative:**

Reflective of a public policy relating to matters of a permanent or general character, not restricted to an individual



## **Quasi-Judicial:**

Involves determination of rights or obligations of an individual; use of legislated rules to make a determination on an application

# Public Meetings (Legislative Hat)

- Seek input
- Champion broad, inclusive public participation
- Explain context, big picture & process/timeline
- Demonstrate active listening
- Limit the jargon and acronyms
- Help make it relevant
- Act as community ambassadors
- Remain courteous (no matter what)



# Public Hearings (Quasi-Judicial Role)

## *Due process protection*

- Announce rules in advance and enforce consistently
- Remain unbiased while hearing evidence
- Show you're listening
- Importance of strong chair, supportive board
  - Stay on task – avoid tangents
- Input only during noticed public hearing
- Ask questions- does this application meet our **standards?**
- Make careful motions



# Decision-Making

## What makes a meeting effective?

- Everyone had meaningful opportunity to participate
- People feel they were heard
- Relevant issues (related to standards) were addressed
- No long tangents or discussions about issues your code and plan don't address (tip: start with staff report)
- Commission's decision was clear (what and why)
- Commission's decision was reasonably defensible



# Decision-Making

## A strong chair helps make a meeting effective

- Great communicator
- Sets the tone (what's the right tone?)
- Ensures civility
- Strong listener
- Time-keeper
- Enforcer



*Don't hand over control of the meeting!*

# Decision-Making

## The Role of the Chair

- Chair as air traffic controller

*“Focus on the next plane not on each moment.”*

-Jerry Dahl





# Decision-Making

## More on the Chair

- Time-keeper
- Enforcer
- No “dead air”

*Use cues: “We are on item 2 and it’s now 9pm.”*

*Back up the Chair to help consistent enforcement of the rules*



# Improving Meetings – A few more tips

- Set the right tone –civil and professional
- Provide information on procedures
- Thank people for their testimony
- Watch non-verbal cues
- Show extraordinary patience



# Decision-Making

## Common Hurdles & Mistakes

- Not being prepared
- Not asking enough questions
- Asking for a vote of the audience
- Showing bias before decision is made
- Attempting to be the



# Decision-Making (Hearings)

## Common Hurdles & Mistakes

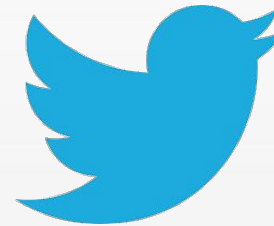
- Avoid Let's Make a Deal
  - Does the project meet your standards?



# Decision-Making

## Common Hurdles & Mistakes

- Avoid showing bias
- Consider your intent
- Front page newspaper test; do not use social media to argue, condemn, attack, or even to “set the record straight”
- Leave it to staff
- Establish and discuss (often) social media policy





# Decision-Making (Hearings)

## Defensible Procedures

- Notice
- Opportunity to be heard
- Clear rules
- Follow your process, rules
- Findings
- Unbiased and timely decisions
- Complete records



# Decision-Making

## Motions

- Well-prepared motions take some effort
- Motions explain to applicant and audience how the decision was made
- Agree on procedures that will be used for meetings and for motions

Sometimes it takes a team effort!



# Decision-Making

## Motions – Avoid Getting Tripped Up

- Before voting as one complex motion, vote on conditions one at a time
- Move to approve for reasons listed in staff report (includes staff report in findings)





# Decision-Making

## Findings of Fact

- Factual foundations for your conclusions as to whether your standards are met; legal footprints or breadcrumbs
- Facts must address the standards
- Ask questions designed to get evidence related to the standards
- Adopted process was followed
- Conforms with the master plan and regs
- Can't make a decision based on opinion or "gut"
- **Tip:** raise highlights from any work session



# Decision-Making

## Final Tips

- Detailed deliberation informs better motions, the community, and the judge on how a decision was made
- Avoid vague or non-specific motions (would someone understand a few years later why that decision was made, or even what was decided?)
- Watch for bias against difficult people; look for legitimate points and solutions
- Don't be afraid to say, "I don't know"
- You don't need to explain or apologize for the process (e.g., minority voter)
- **If they don't like the outcome, they are likely**



# Decision-Making - Conclusion

*A popular decision is not always a good decision, and a good decision is not always popular.*

It is your responsibility to protect the (current and future) public health, safety, and welfare, even if it's not a popular decision in the moment.

# Decision-Making - Scenarios

An unpopular development application would likely go over a lot better if it had a better design. You decide to impose a condition of approval - a design standard (that the town has not adopted) because you know it will calm opponents and make it a better project.

*Question: Possible outcome?*

# Decision-Making - Scenarios

Citizen at the hearing wants to take a vote of the audience.

*Question: Possible outcome? What approaches can you take to avoid this kind of outburst or to handle it once it happens?*



# Decision-Making - Scenarios

Citizen in audience wants to question the applicant

*Question: Is this acceptable?*  
*Possible outcomes?*



# Decision-Making - Scenarios

Opponent of a project challenges the time limit, demanding the full time she needs to provide her testimony

*Question: Possible outcome?*



# Decision-Making - Scenarios

The chair has asked people not to repeat testimony, but someone is saying pretty much the same thing as the last guy.

*Question: Possible approaches?*

*Pros and cons of cutting him/her off?*

# Decision-Making - Scenarios

Someone testifies and argues your point/contradicts you in the public hearing.

*Question: Do you engage in a debate to ensure the correct point is heard?*

# Decision-Making - Scenarios

It becomes clear the PC must deny the project. The applicant feels he has not been treated fairly and implies he may sue if his project isn't approved.

*Question: How do you ensure your decision is defensible?*

# Decision-Making - Scenarios

The applicant claims the PC's decision has essentially removed the highest and best use of her property.

*Question: Is this a reasonable expectation?*

# **Legal and Ethical Issues**



# Legislative v. Quasi-Judicial

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



# Ex Parte Contact Defined

Any **written or verbal communication initiated outside of a regularly noticed public hearing** between an official with decision-making authority and one or more of the parties (but not all the parties), about a subject that is under, or about to be under, consideration by that official and that **seeks to influence or present information** about that subject.



# Ex Parte Contact Defined

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To preserve public confidence and due process, the board/commission should **ensure the public and interested parties have the opportunity to know, and respond to, all information** the board considers in making its decisions. The board should also ensure that each board member has the opportunity to know and consider the information available to other board members.

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**“Help! What should I do if someone attempts an ex parte contact with me before a hearing?”**



# Ex Parte Contact

- **Stop** the person
- Explain why contact is inappropriate
- Disclose the contact (to staff, then at meeting)
- Recusal, leave the room
- Consider adopting formal procedures



## **Ex Parte – Outreach & Education**


“Please note that it is inappropriate to personally contact individual County Commissioners or Planning Commission members while an application is pending. Such contact is considered ex parte communication and will have to be disclosed as part of the public hearings on the matter. If you have any concerns, you should contact staff, write a letter or present your concerns at the public meeting so your comments can be made part of the record.”

**Website language**

# Ex Parte Contact

How do you know  
when an  
application is  
received and you  
can no longer  
discuss it until the  
public hearing?

Village of Taos Ski Valley  
Planning & Community Development Department  
**LAND USE & DEVELOPMENT APPLICATION**



Applicant/Developer: \_\_\_\_\_ Property Address: \_\_\_\_\_  
Current Owner Address: \_\_\_\_\_ Lot/Block: \_\_\_\_\_  
Architect/Engineer: \_\_\_\_\_ Subdivision: \_\_\_\_\_  
Contractor: \_\_\_\_\_

**Authorization and Acknowledgment**  
I, the undersigned, am the owner of the above described property, or am authorized to represent the owners (proof of such authorization is attached). I recognize the fees paid with the application may not constitute the total cost to process this request and that I will be responsible for the additional costs incurred by the Village of Taos Ski Valley to review and process this request. I agree to pay these costs upon receipt of a statement from the Village.

Owner or Representative \_\_\_\_\_ Date \_\_\_\_\_

SUBDIVISION		APPLICATION INFORMATION	
	FEE		FEE
Sketch Plat:		ZONING	
Parcel Conceptual Plan (CVZ)	\$1,000	Conditional Use	\$1,500
Preliminary Plat:	\$500	Zone Change	\$1,500
Category I - less than 3 lots		Variance	\$800
Category II - less than 10 lots	\$1,250	Variance (minimum)	\$250
Category III- 10 - 20 lots	\$2,500	Special Use	\$500
Each lot > 20	\$4,000	CERTIFICATE of COMPATIBILITY	\$1,000
Final Plat (½ cost of preliminary plat)	\$250	PUBLIC NOTICE SIGNS	\$50
Summary Subdivision	\$500	APPEALS	\$250
Lot Line Adjustment	\$250	PERMITS	
Variance	\$500	Fence Tree Sign Lighting	\$25
		Accessory Structure	\$25
		Excavation / Grading	\$250

Application Received: Date: \_\_\_\_\_  
Received by: \_\_\_\_\_ (VTSV staff)

Total Fees Paid: \$ \_\_\_\_\_



# Legal and Ethical Scenarios



# Ethical Scenarios

You're on a site visit before the hearing. The owner/rep meets you just to let you in and does not talk with you (but shadows you). You notice a couple of neighbors watching from their properties.

or

You're on a site visit and one of the neighbors voices some concerns.

*Question: What do you do?*

# Ex Parte Contact

Other ideas/tips?



# Conflicts of Interest

## 10-16-3. Ethical principles of public service

- A public officer shall treat the public officer's position as a public trust. The public officer shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.
- Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

# Conflicts of Interest

**There is a conflict of interest when:**

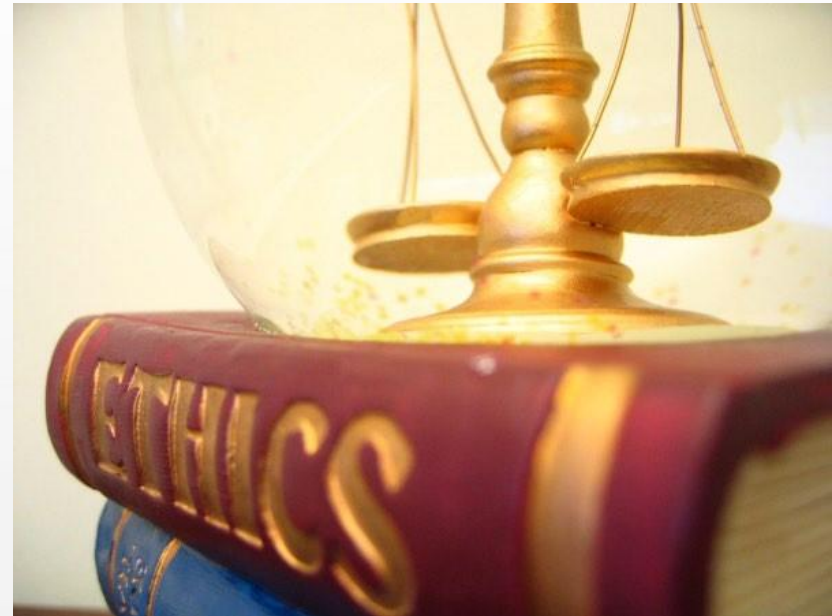
- You are a member of the governing body, and
- You have a “personal or private interest” in the matter proposed or pending before you.



# What Should I do if I have a Conflict?

**Best Practices suggest ALL of the following:**

- Disclose (staff, hearing)
- Do not vote
- Do not attempt to influence the votes of others





# Define Conflicts of Interest in Policy

## SECTION 1.4

### Communication Between Applicants and Decision-makers Limited in Quasi-Judicial Matters.

- Section 1.4.1**     **Quasi-Judicial Proceedings:** Members of the Planning Commission, Board of Adjustment, and Board of County Commissioners may act in quasi-judicial capacities when participating in public hearings under these regulations. As such, only the highest degree of integrity in the process by a member ensures the public trust in an impartial decision.
- Section 1.4.2**     **Conflict of Interest:** A member of a decision-making body shall not participate in or vote on any quasi-judicial matter in a manner that would violate an applicant's or party's right to a fair and impartial decision. Impermissible conflicts include, but are not limited to, a member having prejudged or fixed his or her opinion on a matter prior to hearing the evidence and argument of all parties at the public hearing, bias of a member due to disclosed or undisclosed ex-parte communications, family, business, or other associations or relationships of a member with an interested person, when a member is a party, or when a member has a present or potential financial interest in the outcome of the matter. In instances of conflicts of interest, the member shall disclose the conflict of interest on the record and recuse himself or herself from the particular hearing and leave the hearing room for purposes of that hearing. If an objection is raised to a member's participation, and the member has not voluntarily recused himself or herself or refuses to recuse himself or herself, the Chairman and remaining voting members present shall rule on the conflict of interest by majority vote, which vote is final. If the majority determines the member has a conflict of interest, that member shall leave the hearing room for purposes of that hearing.



# Ethical Scenarios

An applicant claims one of the PC members has a conflict of interest because he always votes “no” on her projects.

*What if...* The PC member has publicly stated he doesn't trust this applicant.

*Question: Is there a conflict of interest?  
Should the PC member be allowed to vote on this proposal?*

# Decision-Making - Scenarios

You are convinced your fellow PC member has a conflict of interest.

*Question: What do you do?*

# Open Meetings

- NM Open Meetings Act - **NMSA 10-15-1**
- Public notice required for meetings where formal action occurs, public business is discussed, OR quorum present, usually by posting agenda at least 72 hours prior to meeting.
- Except for emergency matters, only items on agenda should be discussed.
- Minutes required when formal action occurs.
- Suggested rule of practice: All open, all noticed and minutes for formal actions.

# Ethical Scenarios

After a particularly rough public hearing, the planning commissioners all agree to grab a beer to relax and unwind.

*Question: Any issues/concerns?*

*Does your answer change if they decide, for example, to have lunch before a public hearing?*

# Ethical Scenarios

The Mayor, who has been an elected or appointed leader for decades, calls up the newest planning commissioner a few days before the public hearing to give some background information on the development application that will be on the agenda.

*Question: Is there an issue with this approach?  
If so, what?*

# Ethical Scenarios

After the vote at the PC hearing, a PC member decides to testify at the elected board meeting to represent the minority opinion.

*Question: Is this acceptable? Better approach?  
What if the elected board sends it back to the PC?*

# Review



# Planning Refresher Wrap-Up

## REVIEW

- Importance of and authority to plan
- Relationship with staff, electeds, other commissions, applicants and public
- Integrate and implement your plans/policies
- Consider meeting management and decision-making carefully
- Leave solid findings and record of decision
- Talk about ethical issues together

# Thank You!

*Your role is very important to the long-term quality of life of your community. Thank you for dedicating your time and expertise to serve your community.*

**Jake Caldwell**

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