

**CITY OF TRUTH OR CONSEQUENCES
PLANNING & ZONING COMMISSION
AGENDA
TUESDAY, OCTOBER 13, 2026**

REGULAR MEETING

Regular meeting of the Planning & Zoning Commission of the City of Truth or Consequences, New Mexico to be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico, on Tuesday, October 13, 2026 at 4:00 p.m.

INTRODUCTION:

ROLL CALL:

Chris Sisney, Chairman
Molly Hammer, Vice Chairman
Esther Luchini, Member
Lisa Kent, Member
Susan Buhler, Member

1. APPROVAL OF AGENDA:

2. APPROVAL OF MINUTES:

- a. September 14, 2026

3. COMMENTS FROM THE PUBLIC (3 Minute Rule Applies):

4. PUBLIC HEARING:

- a. Discussion/Action: Summary Plat Amendment at 401 and 403 Silver Street.

5. NEW BUSINESS:

- a. Presentation/Review of Municipal League Zoning Officials Conference

6. WORKSHOP:

- a. Various Items Update.

7. REPORTS FROM THE BOARD

8. REPORTS FROM STAFF

9. ADJOURNMENT

**CITY OF TRUTH OR CONSEQUENCES
PLANNING & ZONING COMMISSION
MINUTES
MONDAY, SEPTEMBER 14, 2026**

REGULAR MEETING

Regular meeting of the Planning & Zoning Commission of the City of Truth or Consequences, New Mexico to be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico, on Monday, September 14, 2026 at 4:00 p.m.

INTRODUCTION:

ROLL CALL:

Chris Sisney, Chairman
Susan Buhler, Vice Chairman
Esther Luchini, Member Absent
Lisa Kent, Member
Molly Hammer, Member Absent

ALSO PRESENT:

Traci Alvarez, Assistant City Manager
Katy Martinez, Deputy Clerk

1. APPROVAL OF AGENDA:

Vice Chairman Buhler made a motion to approve the agenda with tabling item 5. Member Kent seconded the motion. Motion carried unanimously.

2. APPROVAL OF MINUTES:

a) August 13, 2026.

Member Kent made a motion to approve the minutes. Vice-Chairman Buhler seconded the motion. Motion carried unanimously.

3. COMMENTS FROM THE PUBLIC (3 Minute Rule Applies)

There were no comments from the public.

4. New Business:

a) Discussion/Action: Re-organization of Chairman and Vice-Chairman.

Vice-Chairman Buhler made a motion to recommend Chris Sisney as Chairman of the Planning and Zoning Board and Molly Hammer as Vice-Chairman of the Planning and Zoning Board. Member Kent seconded the motion. Roll call vote was taken. Motion carried unanimously.

This item was Tabled

5. WORKSHOP:

a) Various Items Update.

6. REPORTS FROM THE BOARD:

No Reports from the Board

7. REPORTS FROM STAFF:

Assistant City Manager Alvarez: I just want to update you at the next meeting for the item 5 that we are tabling. I'm going to be bringing in kind of a spread sheet that I did. It goes over everything you guys have discussed in the workshops. It has everybody's positions that they had. It will be a general idea of where we are at so we can start formalizing that and getting some things prepared. Then we can figure out what still needs discussion or still needs to be addressed. I put it all on one sheet because it's hard to review everything individually.

8. ADJOURNMENT:

Chairman Sisney adjourned the meeting at 4:02 p.m.

PASSED AND APPROVED ON THIS 13th DAY OF OCTOBER, 2026.

Chris Sisney, Chairman
Planning & Zoning Board



CITY OF TRUTH OR CONSEQUENCES
PLANNING AND ZONING COMMISSION ACTION FORM
DATE: 10-13-2026

ITEM: Public Hearing/Discussion/Action: Summary Plat Amendment – 401 and 403 Silver Street

BACKGROUND:

The applicant is requesting approval of a Summary Plat Amendment under Sec. 15-15 (Alternate Summary Procedure) to combine four previously platted lots—Lots 1, 2, 3, and 4, Block 27, La Vista Addition—into one parcel identified as Lot 4A. The resulting parcel contains approximately 16,790 square feet (0.39 acres). The replat eliminates three interior lot lines and does not create any additional lots. All affected lots are within the same previously platted block, and no vacation of street dedications or utility easements is proposed. The resulting parcel meets the applicable lot-size requirement and has direct, legal, unobstructed access to existing City-maintained streets and existing City water and wastewater utilities, consistent with Sec. 15-15.

Findings of Fact: The proposed combination of the existing lots into one parcel is not anticipated to impair light or air to adjacent property; unreasonably increase traffic; increase fire danger or endanger public safety; deter orderly growth and development; unreasonably impair surrounding property values; impair the public health, safety, or general welfare; or constitute spot zoning. The request changes parcel boundaries only and does not propose a zoning district change or additional development as part of this action.

SUPPORT INFORMATION:

- Summary Replat – Lot 4A (formerly Lots 1, 2, 3 & 4, Block 27, La Vista Addition)
- Notice of Public Hearing – October 13, 2026
- Municipal Code Sec. 15-15 – Alternate Summary Procedure
- Findings of Facts Checklist

Name of Drafter: Traci Alvarez	: Assistant City Manager	
E-mail: talvarez@torcnm.gov	Phone: 575-952-0565	

SUMMARY REPLAT
"Lot 4A" formerly "Lot 1, Lot 2, Lot 3, & Lot 4"
Block 27, La Vista Addition
Truth or Consequences, Sierra County, New Mexico

SHEET 2 OF 2
SEE SHEET 1 OF 2 FOR SURVEYOR CERTIFICATE,
ACKNOWLEDGEMENT AND APPROVAL BLOCKS

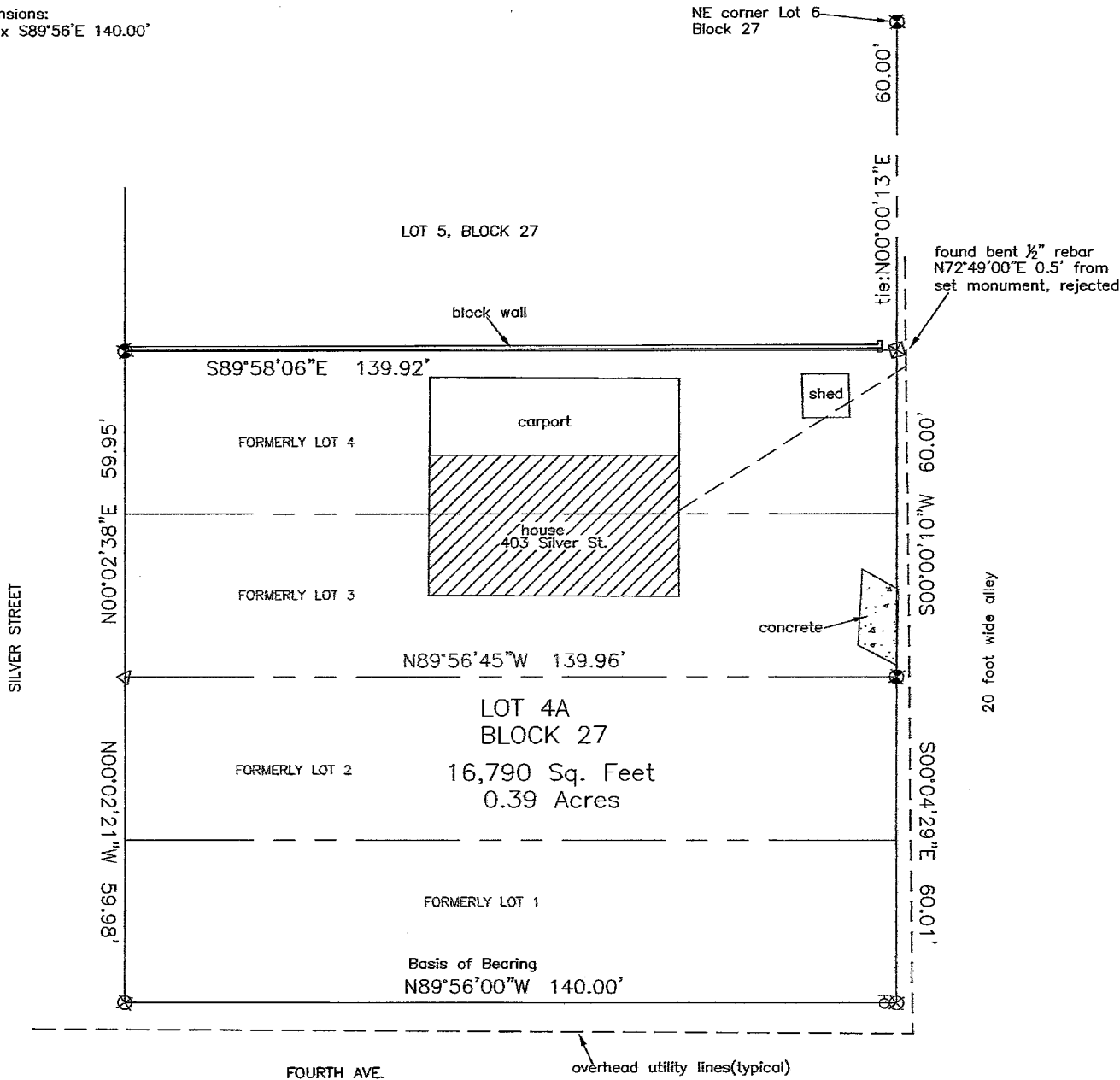
Reference:

Lots 1 & 2: Warranty Deed filed 9/30/2016 in
Book 127 Page 735, Assessor Owner #3226
Boundary Survey Plat filed 9/30/2016 in
Book 127 Pages 736-737

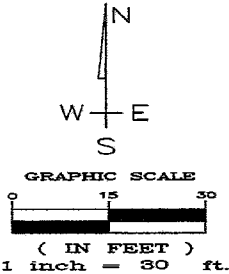
Lots 3 & 4: Warranty Deed filed 8/23/2010 in
Book 116 Page 2907, Assessor Owner #1196

The La Vista Addition to the Town of Hot Springs
Plat of Resurvey filed January 27, 1939 as Plat #19-B.
Reference document for lots in Block 27, streets, alley,
Basis of Bearing, record lot dimensions.

Record lot dimensions:
N0°01'30"W 30' x S89°56'E 140.00'



- ⊗ = found 1/2" rebar with illegible plastic survey cap
 - ⊙ = found 1/2" rebar
 - ▽ = found 1/2" rebar with 1"x3" aluminum tag impressed 12129
 - ⊠ = set 1/2" rebar with 1" plastic survey cap stamped 13984
 - ⊕ = telephone pedestal
- All monument dimensions are "outside diameter"
- Found and accepted monuments tagged with a 3/4" brass disc stamped 13984



RICHTER LAND SURVEYING
614 BROADWAY, P.O. BOX 1648
TRUTH OR CONSEQUENCES, NM 87901
575 894-2348

26010

INDEXING INFORMATION FOR COUNTY CLERK

Juan A. Fuentes
Sec 34, T13S, R4W
La Vista Addition

SUMMARY REPLAT

"Lot 4A" formerly "Lot 1, Lot 2, Lot 3, & Lot 4"
Block 27, La Vista Addition
Truth or Consequences, Sierra County, New Mexico

SHEET 1 OF 2
SEE SHEET 2 OF 2 FOR DOCUMENT CITATIONS
AND SUMMARY REPLAT

The replat of lots as shown and designated on Sheet 2 of 2 is hereby approved

Mayor, City of Truth or Consequences, NM _____ Date _____



SURVEYORS CERTIFICATE

I, Jeff L. Richter, New Mexico Professional Surveyor No. 13984, do hereby certify that this Summary Plat and the actual survey on the ground upon which it is based were performed by me or under my direct supervision; that I am responsible for this survey; that this survey meets the Minimum Standards for Surveying in New Mexico; and that it is true and correct to the best of my knowledge and belief.

Jeff L. Richter 9-4-2026
Jeff L. Richter N.M.P.S. #13984 Date

The replat of lots as shown and designated on Sheet 2 of 2 is in accordance with the wishes and desires of the undersigned, to wit:

Juan A. Fuentes 9-8-26
Date

COUNTY OF SIERRA)
STATE OF NEW MEXICO)

The foregoing instrument was acknowledged before me this 8 day of September, 2026, by Juan A Fuentes.

Janet L. Godfrey
NOTARY PUBLIC MY COMMISSION EXPIRES 6/22/2028



State of New Mexico
Notary Public
Janet L. Godfrey
Commission Number 1128938
Expiration Date 6/22/2028

RICHTER LAND SURVEYING
614 BROADWAY, P.O. BOX 1648
TRUTH OR CONSEQUENCES, NM 87901
575 894-2348

INDEXING INFORMATION FOR COUNTY CLERK
26010
Juan A. Fuentes
Sec 34, T13S, R4W
La Vista Addition

Rolf Hechler
Mayor

Destiny Mitchell
Mayor Pro-Tem

Amanda Forrister
Commissioner



505 Sims St.
Truth or Consequences, New Mexico 87901
P: 575-894-6673
www.torcnm.gov

Ingo Hoeppe
Commissioner

Chaz M. Glines
Commissioner

Gary Whitehead
City Manager

NOTICE OF PUBLIC HEARING

NOTICE is hereby given that the City of Truth or Consequences Planning & Zoning Commission will hold a Public Hearing during their regular scheduled meeting on Tuesday, October 13, 2026, to receive input regarding the following:

Public Hearing/Discussion/Action: Summary Plat Amendment at 401 and 403 Silver Street. The applicant wishes to combine the parcels as per Sec. 15-15 (Alternate Summary Procedure)

The meeting will be held in the City Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico starting at 4:00 p.m.

Should you have any questions regarding this Public Hearing, please contact Traci Alvarez at (575) 952-0565 or by email at talvarez@torcnm.gov.

The agenda may be obtained on Friday, October 9, 2026 on the city website calendar at www.torcnm.gov; by contacting the City Clerk's Office at 575-894-6673; or by email to: torcclerk@torcnm.gov.

/s/ Angela A. Torres, CMC, City Clerk

Publish on the following date:

- Sentinel— Thursday, September 17, 2026

Sec. 15-15. - Alternate summary procedure.

A. *Approvals by Planning and Zoning Commission:* The Planning and Zoning Commission may approve or deny the following types of subdivisions:

1. A re-plat of a previously filed subdivision when:

- a. No more lots are created than exist in the area at the time of the submittal of the replat application; and,
- b. All lots to be created have direct, legal, unobstructed access to an existing City maintained street;
- c. All lots to be created have direct, unobstructed legal access to existing City water and wastewater lines;
- d. The subdivider files with the City a Letter of Credit for funds adequate to pay for connecting the lots to the City's water and wastewater lines, or, pays to the City the City's fees for connecting the lots to the City's water and wastewater lines;
- e. The new lots comply in all ways with the standards for lots contained within the City's Comprehensive Planning and Zoning Code;
- f. All new lots are laid out in a manner which allows utility service to be provided to the purchasers of said lots;
- g. All lots to be eliminated or created exist within the area of a single block of lots in a previously platted and filed subdivision; and,
- h. No vacation of street dedications or utility easements is proposed; or,
- i. Lots are to be eliminated.

2. The subdivision of previously unsubdivided land when:

- a. No more than two lots are created;
- b. Both lots to be created have direct, legal, unobstructed access to an existing City maintained and paved street with curb gutter and sidewalk;
- c. Both lots to be created have direct, unobstructed legal access to existing City water and wastewater lines;
- d. The subdivider files with the City a Letter of Credit for funds adequate to pay to connect both lots to the City's water and wastewater lines, or, pays to the City funds for connecting both lots to the City's water and wastewater lines;
- e. The new lots comply in all ways with the standards for lots contained within the City's Comprehensive Planning and Zoning Code;
- f. The new lots are laid out in a manner which allows utility service to be provided to the purchasers of said lots; and,
- g. No vacation of street dedications or utility easements is proposed.

B. *Limit on number of summary procedures:* The summary procedure shall be used only once on any one property, or within any group of contiguous or adjacent properties owned by a subdivider, unless the property has been master-planned, legally subdivided, and is zoned for industrial uses, and wherein the streets within those subdivisions have been dedicated to and accepted by the City. No subdivider who has received approval of a subdivision shall utilize the summary procedure to subsequently increase the number of lots within said subdivision.

C. *Elective pre-application procedure:*

1. Prior to filing a summary plat, the subdivider may submit a conceptual plan of the proposed subdivision to the City's Zoning Administrator. The conceptual plan shall provide enough

information for the Zoning Administrator to locate the proposed subdivision and to comprehend its scope and potential impacts. Neither a written application nor an application fee are required for submittal of a conceptual plan.

2. The City's Zoning Administrator shall place the proposed summary subdivision on the next possible agenda of the Planning and Zoning Commission for discussion, when the Planning and Zoning Commission shall consider the proposal with the subdivider or the subdivider's representative and shall indicate changes, if any, that will be required for the submittal process.

D. *Summary plat submittal requirements summary plat submittal requirements are:*

1. Application, signed by all property owners, including all parties having an equitable interest, trustees of an estate and all persons having a specific "power of attorney" in such land;
2. A record of any pending litigation or any final order entered by any court of law regarding the ownership of the subject property;
3. Application fee as established by the City;
4. Documentation from the Sierra County Assessor's Office that the current year's property taxes are paid and that no taxes are owed on the property;
5. A plat conforming to section 15-13.A of this Code; and,
6. Releases by the Public Utilities Advisory Board, and all utility companies which are proposed as providers for the subdivision.

E. *Submittal and review procedures:*

1. Incomplete submittals will not be accepted for review.
2. The subdivider shall submit all required materials to the City's Zoning Administrator.
3. The City's Zoning Administrator shall review all materials, and shall within three working days from the date the application is determined to be complete, request opinions of applicable City departments, other governmental agencies, and utility companies for review, comments and recommendations. City departments shall have ten calendar days in which to review and respond in writing to any such request. Within three working days of receiving any written reports, comments or recommendations from any City department, governmental agency, or utility company, the Zoning Administrator shall make available to the subdivider a copy of such materials.
4. The Zoning Administrator shall have the right to require that the subdivider provide additional information or to make amendments to the plat and supporting information if the Zoning Administrator determines that the information originally submitted by the subdivider was incomplete, incorrect or invalid.
5. The subdivider shall have ten working days in which to make any corrections or additions required by the Zoning Administrator, or to request a postponement of action by the Zoning Administrator for up to 135 days.
6. If a subdivision application does not meet the requirements of this Code within 180 days of its original submittal, the Zoning Administrator shall summarily reject the application and notify the applicant in writing of the reasons for the rejection.
7. At such time as the subdivider meets the requirements of this Code, the subdivider shall provide the Zoning Administrator with a copy of the final plat.
8. At such time as receiving a submittal that meets all requirements of this Code, the Zoning Administrator shall recommend that the Planning and Zoning Commission approve the final plat by consent agenda action during its next regularly scheduled meeting, and the Planning and Zoning Commission shall approve the subdivision by consent agenda action during its next regularly scheduled meeting.

9. The subdivider shall file a signed copy of the final plat in the records of the County Clerk of Sierra County, and shall provide the City with one of the signed copies.
- F. *Divisions for the purpose of mortgage:* Divisions for purposes of mortgage are not allowed. If a property is to be mortgaged it must be done so in its entirety or properly subdivided as required in this chapter.

(Ord. No. 555, 5-23-06)

PLANNING AND ZONING COMMISSION FINDINGS OF FACTS CHECKLIST

Request Date_____ Address_____

Findings of facts for recommendations and decisions.

In considering all requests, the Planning and Zoning Commission shall review applicable plans and determine whether the request will:

1. Impair an adequate supply of light and air to adjacent property;
2. Unreasonably increase the traffic in public streets;
3. Increase the danger of fire or endanger the public safety;
4. Deter the orderly and phased growth and development of the community;
5. Unreasonably impair established property values within the surrounding area;
6. In any other respect impair the public health, safety and general welfare of the City; or
7. Constitute a spot zone* and therefore adversely affect adjacent property values.

All actions or recommendations by the Planning and Zoning Commission shall be based on Findings of Facts as to the impacts of the proposal, using the criteria listed in numbers 1 through 7, above. The Planning and Zoning Commission shall review each of the above listed factors and accord each factor the necessary weight on a case-by-case basis in making its determination.

*Spot Zoning: The singling out of a lot or small area for a District change, which is out of harmony with the comprehensive plan and surrounding land to secure special benefits for a particular property owner without regard for the rights of adjacent landowners.



CITY OF TRUTH OR CONSEQUENCES
PLANNING AND ZONING COMMISSION ACTION FORM
DATE: 10-13-2026

ITEM: Discussion/Review of Municipal League of Zoning Officials Conference and Planning and Zoning Commission Procedures

BACKGROUND:

Tyler and Gary attended the recent Municipal League Zoning Officials Conference and will provide the Planning and Zoning Commission with an overview of information and key topics presented during the conference.

SUPPORT INFORMATION:

New Mexico League of Zoning Officials Handbook

Name of Drafter: Traci Alvarez	: Assistant City Manager	
E-mail: talvarez@torcnm.gov	Phone: 575-952-0565	



New Mexico League of Zoning Officials Handbook

PUBLISHED BY
NEW MEXICO MUNICIPAL LEAGUE
SEPTEMBER 2026

TABLE OF CONTENTS

Getting Down To Business – Tips on Conducting an Effective Commission Meeting.....	3
Example Chair Agenda Script – Los Ranchos Planning & Zoning Commission.....	6
Example Chair Agenda Script – Rio Rancho Planning & Zoning Board.....	19
Parliamentary Rules of Procedure Guide.....	21
Creating Findings of Fact Guide – Correctly Explaining How You Reached Your Decision.....	24
P&Z Commission Guide to Variances and Other Quasi-Judicial Matters.....	29
Building Permit Process.....	33

Disclaimer: This document is intended as a sample template and reference guide only. For legal guidance please consult your municipal attorney. It should be reviewed and modified as necessary to meet the specific needs, ordinances, and legal requirements of your municipality.

GETTING DOWN TO BUSINESS

Tips on Conducting an Effective Commission Meeting

WHY IT MATTERS

An effective meeting conducted by a Planning and Zoning Commission doesn't happen by accident. It takes intentional effort to thoughtfully establish a process that is orderly, based on fairness, legally sound, and understandable to everyone participating in the meeting (including commissioners). It may seem to be a tall order, but the resulting land use decisions made by the commission during a public meeting will likely have long-term effects on the community, and therefore, should be considered accordingly. Additionally, members of the public should be secure knowing that commissioners are sufficiently prepared on the issues, that everyone has been provided with a meaningful opportunity to participate, and that the resulting decision is grounded in adopted standards rather than ad hoc judgement.

BEFORE THE MEETING

Sufficient preparation establishes the foundation of a successful meeting. Commissioners should review the agenda packet thoroughly before the meeting, including reading all staff reports, studying the related application materials, and evaluating any related correspondence. Pre-meeting questions regarding procedural issues should be directed at staff for clarification to avoid unnecessary back-and-forth debates during the meeting that result in preventable delays or needless confusion. When commissioners are familiar with the materials and associated legal standards for each case, the quality of the discussion is improved, and the likelihood of inefficiency is reduced.



Common courtesy dictates that Commissioners refrain from unnecessary use of their phones or other devices during a public hearing.

DURING THE MEETING

The Commission plays an important role in setting the tone for public hearings and meetings. Although such proceedings need not be conducted with absolute formality, a sufficient level of decorum should be maintained to promote professionalism, respect, and public confidence in the process. Meetings should begin on time and follow the published agenda. Commissioners should dress appropriately and be sure not to spend unnecessary time on their phones or computers while individuals are providing testimony. Members of the commission should ensure that all remarks are directed into the microphone to facilitate an accurate recording of the proceeding and remain aware that microphones may be active at all times. Side discussions with other commissioners or unrelated comments that are not intended for the record should be avoided.

The Commission Chair plays the central role in preserving the effectiveness and integrity of the meeting process. By upholding the appropriate procedural framework – whether under Robert’s Rules of Order, the Commission’s own adopted rules, or a combination of both sets of standards – the Chair ensures that proceedings are conducted fairly, consistently, and in accordance with due process protections. This disciplined approach also strengthens the legal defensibility of the Commission’s decisions. Consistent achievement of these guidelines promotes a predictable and orderly process for commissioners and participants, minimizes duplicative questions or testimony, and reduces the potential for personal attacks or procedural disruptions.

The Chair also helps to monitor the Commission’s motions for clarity, appropriateness, and their connection to the issues discussed. A well-crafted motion should clearly state the action being taken, identify the findings or standards that support that action, and when necessary, include conditions required for compliance with the adopted rules. Clear, specific motions reduce confusion for staff, applicants, and members of the public by limiting any uncertainty about what was approved (or disapproved) and why. Direct motions also ensure that meeting minutes and written determinations accurately reflect the Commission’s intent and their consideration of the applicable criteria in reaching their decision, and help to provide a stronger record if a decision is appeal or reviewed by another hearing body or court.

While it isn’t always easy, an organized Planning and Zoning Commission meeting is not only possible but necessary for the effective administration of public business. Sufficient preparation, respectful public engagement, and appropriate discussion with proper motions help the Commission to not only be transparent in their operations but provide a strong legal basis for their determinations. When these practices are followed, hearings don’t become “marathon meetings” where only the strong survive but an efficient and effective process to shape community growth and public confidence in local government actions.

Begin the meeting at the scheduled time.

Begin promptly. Starting late rewards those who are delayed and disadvantages those who arrive on time.

State the meeting purpose and process.

State the meeting's purpose, agenda, criteria, and process so participants understand how business will be handled, especially first-time attendees.

Assign strict time limits and stick to them.

Set clear time limits for presentations, testimony, and public comment. Manage speaker time and limit repetitive remarks to keep the meeting moving and ensure fairness. Avoid granting extra time to maintain consistency for all participants.

Keep comments focused on the matter at hand.

Participants may raise issues outside the matter under consideration. Redirect off-topic comments politely but firmly so discussion stays focused on the applicable criteria. *"Thank you for that point. However, it falls outside the criteria listed in the code for this type of application. You are welcome to connect with staff afterward to discuss ways to address your concerns."*

Demonstrate active listening.

Active listening shows respect and supports a strong public process. Reflecting key points from testimony, even without agreement, helps participants feel heard and considered.

Remain focused during the hearing.

Commissioners should remain fully present during the hearing and deliberations. Only one commissioner should speak at a time, side conversations should be avoided, and phones should be silenced. Unless necessary, texting and emailing should not occur during the meeting.

Maintain order and decorum.

Land use matters can generate strong emotions. Do not allow cheering, booing, applause, or heckling, which can give some participants undue influence. Keep public hearings orderly and focused on the issues under consideration.

Establish the appropriate level of formality.

Maintain an appropriate level of formality to reflect the importance of the Commission's work. Address other commissioners by title and last name. Use respectful forms of address for members of the public to reinforce inclusion and respect.

Disclaimer: *This document is intended as a sample template and reference guide only. For legal guidance please consult your municipal attorney. It should be reviewed and modified as necessary to meet the specific needs, ordinances, and legal requirements of your municipality.*

CHAIR AGENDA SCRIPT
April 9, 2024, Regular Meeting
6:00 pm in Warren J. Gray Hall

Items in PINK must be read in their entirety

Items in BLUE are instructional

Items in PURPLE are meeting headings and should be announced

1. CALL TO ORDER

GAVEL

"I call the April 9, 2024, Regular Meeting of the Planning and Zoning
Commission to order at _____. [state exact time]"

A. Roll Call

Call each name and wait for a response:

- Commissioner Barrow?
- Commissioner Martinez?
- Commissioner Edward?
- Commissioner Baldwin?
- Commissioner Tagliapietra?
- Commissioner Heywood?
- Commissioner Homan?

"Let the record reflect that a quorum is present for the meeting."

B. Approval of the Agenda

"Director Rubin, are there any changes to the agenda?"

<<There are currently no changes as of 4:00 pm on April 9th>>

"Is there a motion to approve the agenda?"

“Commissioner _____ moved to approve the agenda.”

“Commissioner _____ seconded the motion.”

Vote must be called via a roll-call vote:

- Commissioner Barrow?
- Commissioner Martinez?
- Commissioner Edward?
- Commissioner Baldwin?
- Commissioner Tagliapietra?
- Commissioner Heywood?
- Commissioner Homan?

“The motion carries unanimously.”

OR state how many commissioners voted AYE or NAY (_____ to _____)

2. PUBLIC COMMENT PERIOD

“Village residents may address the Planning and Zoning Commission to comment on issues, problems, or successes on topics that do not appear elsewhere on the agenda. Audience members will be given an opportunity to comment on agenda items as they are called. All speakers must register with Village staff prior to being given an opportunity to testify. If you haven’t done so already and wish to provide general public comment at this time, please register on the corresponding signup sheet at the back of the room.”

Wait for staff to bring signup sheet to the dais.

“I have the list of those signed up to provide general public comment. Please come up to the podium after your name is called. Speakers will have three (3) minutes.”

Go through the list of names and call each individual who has signed up to speak.

As each speaker gets to the podium:

“Please state your full name and mailing address for the record.”

After all in-house speakers have had an opportunity to speak:

“Staff, do we have any members of the public joining us online?”

If no, move to item #3 CONSENT AGENDA.

If yes:

“Anyone participating online who wishes to speak during this Public Comment period, please use the ‘Raise Hand’ tool at the bottom of your screen.”

Wait for online participants to raise their hand and for staff to call their name.

To the speaker:

“Please state your full name and mailing address for the record.”

Continue this process until there are no more speakers for Public Comment.

3. CONSENT AGENDA

“All matters listed on the Consent Agenda are considered to be routine matters and will be enacted on with one (1) motion. There will be no separate discussion of these items. However, if the Commission desires discussion on a specific item, that item will be removed from the Consent Agenda and will be considered separately.”

A. Approval of the Minutes – March 12, 2024, Regular Meeting

“Are there any corrections or comments from commissioners?”

If there are questions/comments, have the commissioner clarify their reasoning.

If there are corrections to the Minutes, as for a motion to approve the minutes as corrected.

“Is there a motion to approve the Consent Agenda?”

“Commissioner _____ moved to approve the Consent Agenda.”

“Commissioner _____ seconded the motion.”

Vote must be called via a roll-call vote:

- Commissioner Barrow?

- Commissioner Martinez?
- Commissioner Edward?
- Commissioner Baldwin?
- Commissioner Tagliapietra?
- Commissioner Heywood?
- Commissioner Homan?

“The motion carries unanimously.”

OR state how many commissioners voted AYE or NAY (to)

4. PUBLIC HEARINGS & APPLICATIONS

“Will all those who will be speaking before the Commission tonight about a public hearing request please stand to be sworn in? This is for the applications listed on the agenda, and includes applicants, their agents, and any individuals in support or opposition to a specific request.”

Wait for everyone to stand.

“Attorney Chappell will now swear in those providing testimony tonight.”

Wait for Attorney Chappell to swear in the speakers.

A. V-24-01: A request by Thomas and Mary McConnell for a variance to Section 9.2.7(C)(5)(a) that limits the size of a guesthouse to 1,000 square feet of heated floor area. The property is located at 1742 Deitz Pl. NW and is legally described as Tracts E-1 and E-2, a Land Division of Tract 39, MRGCD Map No. 31 and the western 14 feet of Lot 1, Block 3, Rio Grande Meadows Subdivision. The property contains approximately 1.513 acres in area.

“The Village Planning and Zoning Department has deemed this request to be a quasi-judicial matter. As such, there are certain standards that must be met for each commissioner to participate in this public hearing. If a commissioner has a conflict of interest or has engaged in ex parte communication about this request, please provide a declaration to this effect now. Are there any members of the Planning and Zoning Commission who will recuse themselves from this item?”

Wait for commissioner(s) to respond.

“Director Rubin, may we have the planning report for this item?”

Planning Report is presented.

To the Commission:

“Are there any questions from the Commission for Director Rubin regarding her planning report?”

Wait for questions/answers.

To the audience:

“Is the applicant or their agent present tonight?”

To the speaker:

“Please state your full name and mailing address for the record.”

Allow the speaker to state name/address.

“Thank you. As a reminder you are under oath. Please tell us about your application request. You have 15 minutes.”

After applicant/agent has completed their presentation:

“Are there any questions from the Commission for the applicant/agent regarding their presentation?”

Allow commissioners to ask questions about the application.

“Let’s now allow members of the public who have signed up to speak on this matter an opportunity to testify. When your name is called, please come to the podium. Each speaker will have two (2) minutes.”

Call each name listed.

To the speaker:

“Please state your full name and mailing address for the record.”

Allow the speaker to state name/address.

“Thank you. As a reminder you are under oath. Please begin by telling us if you are in support or opposition to this application request. You have two (2) minutes.”

After all in-house speakers have had an opportunity to speak:

“Staff, do we have any members of the public joining us online for this item?”

If yes, wait for each speaker to be let into the meeting and have Attorney Chappell swear each one in.

To the online speaker:

“Please state your full name and mailing address for the record.”

Continue this process until there are no more speakers for the item.

If applicable:

“Would the applicant/agent like to respond to any of the questions or comments raised by members of the public?”

Wait for applicant/agent to provide responses.

“Are there any further comments or questions from the Commission?”

Allow commissioners to comment and discuss. Ideally, all commissioners are given an opportunity to speak once before a commissioner speaks again.

Repeat until there are no more questions/comments.

“The floor is now closed.”

Is there a motion for approval or denial for this item?”

Wait for motion.

After motion:

“Commissioner _____ has moved to approve/deny V-24-01.”

Wait for second.

“Commissioner _____ has seconded the motion.”

Vote must be called via a roll-call vote:

- Commissioner Barrow?
- Commissioner Martinez?
- Commissioner Edward?
- Commissioner Baldwin?
- Commissioner Tagliapietra?
- Commissioner Heywood?
- Commissioner Homan?

“The motion carries unanimously.”

OR state how many commissioners voted AYE or NAY (to)

“The request has been approved / denied.”

“Let the record reflect that the public hearing for item V-24-01 is formally closed.”

B. CU-24-06: A request by Sean Hollowa, agent for Pete Marquez and 411 Equipment, LLC, for conditional use approval for vehicle sales as allowed by Section 9.2.12(B). The property is located at 7324 4th St. NW and is legally described as Tract B2A, Plat of Tracts B1A and B2A, Lands of Giant Industries. The property contains approximately 1.6725 acres in area.

“The Village Planning and Zoning Department has deemed this request to be a quasi-judicial matter. As such, there are certain standards that must be met for each commissioner to participate in this public hearing. If a commissioner has a conflict of interest or has engaged in ex parte communication about this request, please provide a declaration to this effect now. Are there any members of the Planning and Zoning Commission who will recuse themselves from this item?”

Wait for commissioner(s) to respond.

“Director Rubin, may we have the planning report for this item?”

Planning Report is presented.

To the Commission:

“Are there any questions from the Commission for Director Rubin regarding her planning report?”

Wait for questions/answers.

To the audience:

“Is the applicant or their agent present tonight?”

To the speaker:

“Please state your full name and mailing address for the record.”

Allow the speaker to state name/address.

“Thank you. As a reminder you are under oath. Please tell us about your application request. You have 15 minutes.”

After applicant/agent has completed their presentation:

“Are there any questions from the Commission for the applicant/agent regarding their presentation?”

Allow commissioners to ask questions about the application.

“Let’s now allow members of the public who have signed up to speak on this matter an opportunity to testify. When your name is called, please come to the podium. Each speaker will have two (2) minutes.”

Call each name listed.

To the speaker:

“Please state your full name and mailing address for the record.”

Allow the speaker to state name/address.

“Thank you. As a reminder you are under oath. Please begin by telling us if you are in support or opposition to this application request. You have two (2) minutes.”

After all in-house speakers have had an opportunity to speak:

“Staff, do we have any members of the public joining us online for this item?”

If yes, wait for each speaker to be let into the meeting and have Attorney Chappell swear each one in.

To the online speaker:

“Please state your full name and mailing address for the record.”

Continue this process until there are no more speakers for the item.

If applicable:

“Would the applicant/agent like to respond to any of the questions or comments raised by members of the public?”

Wait for applicant/agent to provide responses.

“Are there any further comments or questions from the Commission?”

Allow commissioners to comment and discuss. Ideally, all commissioners are given an opportunity to speak once before a commissioner speaks again.

Repeat until there are no more questions/comments.

“The floor is now closed.”

Is there a motion for approval or denial for this item?”

Wait for motion.

After motion:

“Commissioner _____ has moved to approve/deny V-24-01.”

Wait for second.

“Commissioner _____ has seconded the motion.”

Vote must be called via a roll-call vote:

- Commissioner Barrow?
- Commissioner Martinez?
- Commissioner Edward?
- Commissioner Baldwin?
- Commissioner Tagliapietra?

- Commissioner Heywood?
- Commissioner Homan?

“The motion carries unanimously.”

OR state how many commissioners voted AYE or NAY (to)

“The request has been approved / denied.”

“Let the record reflect that the public hearing for item CU-24-06 is formally closed.”

C. TA-24-01: Discussion and recommendation for a text amendment for Ordinance No. 299, a proposal to amend Ordinance No. 284, rescinding the Pilot Project Program allowing up to three (3) conservation development projects within the Village, removing “Pilot Project” approval process from the Zoning Ordinance Use Matrix, adding an approval process for Conservation Development projects, and amending Conservation Development application standards.

“For clarification, this agenda item is a legislative matter, which is different in nature than the previous quasi-judicial proceedings the Commission previously heard tonight. The basic difference in a legislative matter is that this proposal could affect the Village at large, rather than the site-specific requests considered by the Commission earlier this evening. Additionally, the Commission does not render a determination on legislative matters but makes a recommendation to the Board of Trustees.”

“Director Rubin, may we have the planning report for this item?”

Planning Report is presented.

To the Commission:

“Are there any questions from the Commission for Director Rubin regarding her planning report?”

Wait for questions/answers.

“Let’s now allow members of the public who have signed up to speak on this matter an opportunity to testify. When your name is called, please come to the podium. Each speaker will have two (2) minutes.”

Call each name listed.

To the speaker:

“Please state your full name and mailing address for the record.”

Allow the speaker to state name/address.

“Thank you. As a reminder you are under oath. Please begin by telling us if you are in support or opposition to this application request. You have two (2) minutes.”

After all in-house speakers have had an opportunity to speak:

“Staff, do we have any members of the public joining us online for this item?”

If yes, wait for each speaker to be let into the meeting and have Attorney Chappell swear each one in.

To the online speaker:

“Please state your full name and mailing address for the record.”

Continue this process until there are no more speakers for the item.

If applicable:

“Director Rubin, would you please respond to the questions or comments raised by members of the public regarding this item?”

Wait for applicant/agent to provide responses.

“Are there any further comments or questions from the Commission?”

Allow commissioners to comment and discuss. Ideally, all commissioners are given an opportunity to speak once before a commissioner speaks again.

Repeat until there are no more questions/comments.

“The floor is now closed.”

Is there a motion for a recommendation of approval or denial for this item?"

Wait for motion.

After motion:
"Commissioner _____ has moved to recommend approval /denial of TA-24-01."

Wait for second.

"Commissioner _____ has seconded the motion."

Vote must be called via a roll-call vote:

- Commissioner Barrow?
- Commissioner Martinez?
- Commissioner Edward?
- Commissioner Baldwin?
- Commissioner Tagliapietra?
- Commissioner Heywood?
- Commissioner Homan?

"The motion to recommend approval / denial to the Board of Trustees carries unanimously."

OR state how many commissioners voted AYE or NAY (_____ to _____)

"The request has been recommended for approval / denial."

"Let the record reflect that the public hearing for item TA-24-01 is formally closed."

5. OLD BUSINESS

There is no Old Business to discuss this evening.

6. NEW BUSINESS

There is no New Business to discuss this evening.

7. DEPARTMENT REPORTS

"Director Rubin, would you please give us this month's department report?"

Department Report is presented.

To the Commission:

“Are there any questions from the Commission for Director Rubin regarding her department report?”

Wait for questions/answers.

8. COMMISSIONER’S REPORTS

“Are there any reports or information that any members of the Commission would like to share at this time?”

Wait for reports/information.

9. ADJOURNMENT

“Is there a motion to adjourn?”

Wait for motion.

After motion:

“Commissioner _____ has moved to adjourn. Is there a second?”

Wait for second.

“Commissioner _____ has seconded the motion.”

“All in favor?”

“The meeting for April 9, 2024, is adjourned at _____. [state exact time]

GAVEL

PLANNING & ZONING BOARD MEETING

March 25, 2025

PLEASE SILENCE ALL ELECTRONIC DEVICES WHILE ATTENDING PLANNING & ZONING MEETINGS.

For the record, I will take roll by calling each Planning and Zoning Board member's name. Please acknowledge your presence by saying PRESENT.

- Scottie Richardson
- Kevin Kofchur
- Fred Radosevich
- Robert Gabaldon
- Andrea Hankins
- Lisa Hardisty
- Sal Tortorici

Virtual Planning and Zoning members who wish to speak, please state your name so I can recognize you for the record prior to speaking.

This hearing is being held in accordance with the Boards, Commissions, Committees & Advisory Bodies Rules of Procedure which can be found on the City Website under Board and Commissions. Strict Decorum will be enforced, please refrain from clapping, cheering, booing or other disruptive behavior.

Everyone who wished to speak on items listed on the agenda should have submitted a completed oath form before 6pm, but if you have not signed up please sign up now and bring a completed form which can be found on the table in the middle of the room to the Recording Secretary to my left. For those wanting to speak who are online, please send a message to staff. Once staff begins presenting on the item, registration to speak will be closed.

The schedule for tonight's meeting will be that staff will present items followed by a presentation by the applicant. After the presentations, I will call for a motion and then we will start the comment period. For items being presented concurrently, please provide your comments for both items at the same time. This will allow us to take into account all of the comments at one time prior to voting on the items. The comment period will be broken into two groups, those in favor of the item and those opposed.

Please limit comments to 2 minutes. The Recording Secretary will be keeping time and when the beeper sounds, please finish your remarks.

For those signed up to speak, you should have either received notice of tonight's meeting or have a direct personal or pecuniary interest, or a property right, which is affected by the decision being considered by the Board. Your interest must be an immediate and substantial consequence of the decision, and not merely nominal or remote.

If you have submitted comments before 4pm today, the Board has those comments in the agenda packet. In the interest of time, I suggest you don't repeat your written comments.

Please keep your comments addressed to the Board; this is not a back and forth conversation so your questions will not be answered when you ask during public comment, but the Board will either ask staff or the applicant to address questions during the discussion portion of the meeting. Once the public comment period has closed and discussion from the Board has begun, there will be no further comments or questions taken from the public.

When you get to the podium, each person shall give their name and either City Council District or address.

Parliamentary/Rules of Procedure Guide

For Planning & Zoning Commissions

Robert's Rules of Order, commonly known as parliamentary procedure or rules of procedure, were developed to ensure that meetings are fair, efficient, democratic, and orderly. There are also many other published "rules of order" available for consideration. If the municipality hasn't already adopted meeting procedures to use, the Planning Commission should adopt rules.

The chairperson of a good Planning & Zoning Commission will rely on these standards to run a successful and productive meeting without being overwhelmed.

- Follow the agenda to keep the group moving toward its goals
- Let the group do its own work; don't over command
- Control the flow of the meeting by recognizing members who ask to speak
- Let all members speak once before allowing anyone to speak a second time
- When discussions get off-track, gently guide the group back to the agenda or applicable criteria
- Model courtesy and respect, and insist that others do the same
- Help develop the board's skills in parliamentary procedure by properly using motions and points of order
- Give each presenter your undivided attention
- Keep an emotional pulse on the discussions
- Allow a consensus to have the final authority of the group

Types of Motions

1. Main Motion: Introduce a new item
2. Subsidiary Motion: Change or affect how to handle a main motion (vote on this before main motion)
3. Privileged Motion: Urgent or important matter unrelated to pending business
4. Incidental Motion: Questions procedure of other motions (must consider before the other motion)
5. Motion to Postpone: Delays a vote (can reopen debate on the main motion)

Every Motion Has 6 Steps:

1. Motion: A member signals the chairperson.
2. Second: Another member agrees with the motion.
3. Restate motion: The chairperson restates the motion.
4. Debate: The members discuss the motion.

5. **Vote:** The chairperson restates the motion, and then first asks for affirmative votes, and then negative votes.
6. **Announce the vote:** The chairperson announces the result of the vote and any instructions.

TIP! If the body is in obvious agreement, the chairperson may save time by stating, “If there is no objection, we will adopt the motion to...”, then wait for any objections. Then say, “Hearing no objections, (state the motion) is adopted”, and state any associated instructions. If a member objects, the chairperson should first ask for debate, then vote and announce the results of the vote.

Requesting Points of Something

Certain situations need attention during the meeting, but they don’t require a motion, second, debate, or vote. It’s permissible to state a point during a meeting where a chairperson needs to handle a situation immediately. Members of the hearing body can declare a Point of Order, Point of Information, Point of Inquiry, or Point of Personal Privilege.

Point of Order: Draws attention to a breach of the rules, improper procedure, breaching established practices, etc.

Point of Information: Allows a member of the hearing body to bring up an additional point or add pertinent information (in the form of a non-debatable statement) so that other members can make a fully informed vote.

Point of Inquiry: Used to ask for clarification in a report to make better voting decisions.

Point of Personal Privilege: Applied to address issues affecting the physical comfort of the setting, such as room temperature or noise. Members may also use it to address the accuracy of published information or the accuracy of another member’s conduct.

A member may make a motion to reconsider something that was already disposed; however, the reconsidered motion may not be subsequently reconsidered. A motion to reconsider must be made during the same meeting and can extend to a meeting that lasts for more than one (1) day.



Disclaimer: This document is intended as a sample template and reference guide only. For legal guidance please consult your municipal attorney. It should be reviewed and modified as necessary to meet the specific needs, ordinances, and legal requirements of your municipality.

CREATING FINDINGS OF FACT

Correctly Explaining How You Reached Your Decision

Why Findings of Fact Matter

Clear findings of fact are one of the most important components of any zoning decision. Whether the request involves a rezoning request, conditional use permit, variance, or site plan approval, the written findings become the foundation of the decision-making body's determination and the primary defense if the matter is challenged in court. Well-crafted findings demonstrate that the decision was based on adopted regulations and sufficient evidence in the record, rather than emotion, politics, speculation, or personal preference. They also promote transparency by helping applicants, neighboring property owners, and the public understand how and why the decision was reached.

What is a Finding Fact?

Findings of fact are essentially the written explanation connecting the evidence presented during the public hearing to the statutory or ordinance criteria that govern the request. A common mistake made by local boards and commissions is to simply approve or deny an application without clearly explaining how the evidence satisfied or failed to satisfy the applicable standards. Statements such as "the request is in compliance," "the use is inappropriate," or "the neighbors are opposed to the project" are conclusions, not findings of fact. Courts generally expect local governments to demonstrate a logical connection based on the evidence presented and the final decision or recommendation.

The first step in preparing effective findings of fact is identifying the exact legal criteria that apply to the application. Those standards usually come from the zoning ordinance, subdivision regulations, state statutes, adopted plans, or other formally adopted policies. Each criterion should be addressed individually. For example, a conditional use permit may require findings regarding compatibility with surrounding land uses, sufficient public infrastructure, considerations for traffic impacts, compliance with the comprehensive plan, and protection of public health and safety. Organizing findings around each criterion creates a structured and defensible process to demonstrate how the decision was made.

The Three-Part Formula

A strong finding of fact generally contains three (3) components: the applicable criterion, the evidence presented in the record, and the conclusion explaining whether the criterion was met. This structure is often described as “criterion, evidence, and reasoning.”

For example:

The zoning ordinance requires that the proposed use be compatible with surrounding development. Evidence presented during the hearing established that the surrounding area contains commercial and mix-use properties on three sides of the subject site. The applicant testified that the size of the property was sufficient in size and shape to meet all applicable development requirements for yards, open space, parking, loading, and landscaping; that all outdoor lighting fixtures will be shielded and pointed downward; and that all noise-generating activities would occur indoors. Based on this evidence, the Planning and Zoning Commission finds that the proposed use is compatible with the surrounding area.

This type of finding clearly demonstrates that the decision was based on the evidence in the record and tied directly to the ordinance standards.

Evidence vs. Opinion

Another important aspect of drafting findings is distinguished between factual evidence and unsupported opinion. Public testimony often contains both. Statements supported by measurable facts, professional studies, photographs, traffic counts, expert reports, or firsthand observations generally carry more weight than generalized fear and speculation. For example, testimony that “traffic at the intersection already backs up during school dismissal hours” is more useful than a statement that “this project will ruin the neighborhood.” Findings should acknowledge relevant testimony while explaining the evidentiary basis for the decision.

Decision-makers should also avoid findings based on personal preference or subjective dislike of a project. Courts frequently overturn land use decisions when officials rely on arbitrary reasoning, or they fail to follow their own adopted standards. If an ordinance contains objective review criteria, the findings should focus on those criteria rather than external political pressure or emotional arguments. Consistency

is especially important. Similar applications should generally be treated similarly unless the record establishes meaningful distinctions.

Addressing Conflicting Evidence

Findings should also address conflicting evidence when it exists. In many controversial hearings, the record contains competing expert testimony, differing public opinions, or contradictory reports. Ignoring unfavorable evidence can weaken the defensibility of the decision. Instead, the findings should explain why the governing body found certain evidence more persuasive or credible.

For example:

Although several residents expressed concerns regarding increased traffic congestion, the traffic impact analysis prepared by a licensed traffic engineer concluded that the project increase would remain within acceptable level-of-service standards established by the city. The Planning and Zoning Commission assigns substantial weight to the professional traffic analysis submitted with this request because it was based on measurable data and accepted engineering methodologies.

This type of explanation shows that opposing testimony was considered rather than disregarded.

Why Detailed Findings Matter

Transparency is another major benefit of detailed findings of fact. Citizens are more likely to respect a decision, even one they disagree with, when they understand the reasoning behind it. Clear findings help demonstrate that the hearing body carefully reviewed the evidence and applied the law consistently. This is particularly important in emotionally charged hearings where accusations of bias or predetermined outcomes may arise. A detailed written record reinforces public confidence in the fairness and integrity of the process.

Findings of fact are also essential during judicial review or appeal. Courts generally do not substitute their judgement for that of local decision-makers if the decision is supported by substantial evidence and complies with applicable law. However, if findings are vague, conclusory, or absent altogether, a court may remand the case

back to the local government or overturn the decision entirely. Judges reviewing appeals often focus heavily on whether the record clearly explains how the decision-making body reached its conclusions. Comprehensive findings therefore act as a protective legal shield.

Best Practices

One effective practice is preparing draft findings before the hearing based on the staff report and statutory criteria. These draft findings can be modified during deliberation to reflect testimony and evidence presented during the hearing. This approach helps ensure that no criterion is overlooked and that the final decision remains organized and thorough. Staff reports should also avoid conclusory language and instead summarize factual evidence relevant to each review standard.

Additionally, hearing bodies should clearly separate findings of fact from conditions of approval. Findings explain why a decision is justified, while conditions impose operational or design requirements intended to ensure ongoing compliance. Mixing the two concepts can create confusion. For example, a finding may state that adequate buffering exists to reduce visual impacts, but a condition may require installation of a six-foot wall prior to occupancy.

Training elected officials, planning commissioners, and board members on findings of fact is equally important. Many local officials are not attorneys or planners, and they may not initially understand the legal significance of the record. Encouraging decision-makers to reference ordinance criteria during deliberations can greatly improve the quality of the findings. Phrases such as “based on the evidence presented regarding traffic” or “this application satisfies Section 9.2.23(E)(4) of the zoning code because...” help create a stronger and more defensible record.

Ultimately, findings of fact are the bridge between the law and the decision. They transform a vote into a legally supportable action grounded in evidence, adopted standards, and reasoned analysis. Well-written findings improve transparency, strengthen public trust, reduce accusations of arbitrariness, and provide essential protection during appeals. When local governments consistently produce detailed findings based on established criterion that is supported by substantial evidence, they place themselves in the strongest possible position to defend their decisions while maintaining the integrity of the public hearing process.

Disclaimer: *This document is intended as a sample template and reference guide only. For legal guidance please consult your municipal attorney. It should be reviewed and modified as necessary to meet the specific needs, ordinances, and legal requirements of your municipality.*

P&Z Commission Guide to Variances and Other Quasi-Judicial Matters

Quasi-judicial Matters

In New Mexico, any planning and zoning commission considering a specific land-use or zoning request is required to meet quasi-judicial standards. These types of requests include variances, conditional use, special use permits, zone change proposals for a lot, site plan approvals, or an appeal of the zoning administrator's determination. The role of the commissioners in a quasi-judicial matter requires them to investigate facts during a scheduled public hearing, determine the rights of specific individuals or properties, and apply existing legal standards similar to a court of law. During the hearing, the body weighs the evidence presented by the parties and ultimately makes a decision to approve or deny the request based on the local community planning and development regulations.

A quasi-judicial hearing must meet state and constitutional procedural due process requirements, including fundamental fairness to all parties throughout the process, decision makers who are unbiased and ethical in their participation during the matter, and opportunities for all parties to be able to participate in the hearing and provide testimony about the request. The commission must also ensure that sworn testimony is provided, that parties have a chance to cross-examine all witnesses, that a formal recording of the proceedings is made, and that their resulting decision is made in writing and includes specific findings of fact that outline how and why the commission reached their conclusions about the request.



In *Battershell v. City of Albuquerque*, the court determined that land use bodies must follow proper quasi-judicial procedures and provide fair process when reviewing zoning matters.

Similarly, substantive due process protections must also be included throughout the procedure. These safeguards require that the public body's decision is based on recognized government interests and purposes, that their determination is supported by the evidence in the record, that the existing standards are applied in a consistent and rational manner, and that there is a logical, rational connection between the facts presented, the existing code criteria, and the decision.

Variances

Variance requests are one of the most common types of quasi-judicial matters that will come before a planning and zoning commission. Section 3-21-8 NMSA 1978 (the state law governing municipal zoning regulations) sets out the statutory minimum standards to allow a commission to grant a variance from the standards of their zoning ordinance. These include provisions that the requested variance is not contrary to the public interest, that the subject site possesses unique characteristics causing unnecessary hardship if strict application of the standards is used, that the spirit of the zoning ordinance is observed and that fairness among similarly situated properties has been accomplished, and that the stated goals and objective of the comprehensive plan are implemented through the decision [ref. §3-21-8.C.(1)(a) – (d)].

Practical Application

Variance requests can often be difficult for a planning and zoning commission to decide because they must balance legal standards, property rights, and public interest, all while appreciating and working within their limited discretion. Commissioners are required to act like judges in deciding a request by applying strict legal standards and must determine that a proposed variance is associated with a physical hardship unique to the subject site, that the hardship was not self-created, and that the variance is limited to the extent necessary to allow the property owner the same rights and privileges as other owners in the same situation. Pressures from participants and community members who are unfamiliar with the standards and provide emotional testimony, report widespread neighborhood opposition or support, or have stanch opinions on community development often conflict with the listed criteria for approval because the true purpose of a variance is meant to offer rare relief from the strict application of zoning regulations and not a way to make flexible planning decisions. These standards may feel restrictive to commissioners, especially when an applicant is sympathetic.

Demonstrating a property's exceptionality is generally determined by comparison of the subject site to similar lots in the area under the same conditions (same zoning designation, comparable topography, etc.). Any stated exceptional characteristics of the site should be obvious enough to be observed with little explanation. Commissioners should also understand the connection between the unique features of the site and the hardship experienced by the owner. Many applicants experience challenges in completing their development ideas for their property, but not all challenges qualify as a legal hardship. Arguments for approval that focus on personal preference, economic advantage or loss, or "minimal" deviations from the established standard fall short of the necessary hardship consideration.

A planning and zoning commission must also ensure that the record produced supports the resulting decision. Courts commonly review variance decisions based on the established record of the hearing. If findings are weak, unclear, or not tied to the evidence presented, a court may overturn the decision, even if commissioners believed they were acting reasonably. As such, commissioners must recognize the applicable criteria, tie the evidence presented to the criteria, and clearly explain their analysis and determination of the request based on the criteria. These standards ensure that a commission's determination remains legally defensible.

The “Hardship” Distinction

Determining that a legal hardship affecting a property is a land-related condition preventing reasonable use of the land without relief can be difficult to verify. Here’s how to make that determination:

LEGAL HARDSHIP

- It’s property-specific
 - The reported hardship is caused by the land itself (shape, size, topography, location or other physical constraints)
- It’s not self-created
 - The owner didn’t cause or purchase the property with the existing problem (e.g., construction without required permits)
- It deprives reasonable use of the land
 - Strict adherence to the zoning standard makes normal use impossible
- It’s unique to the subject site
 - The reported characteristics are not shared broadly by nearby properties

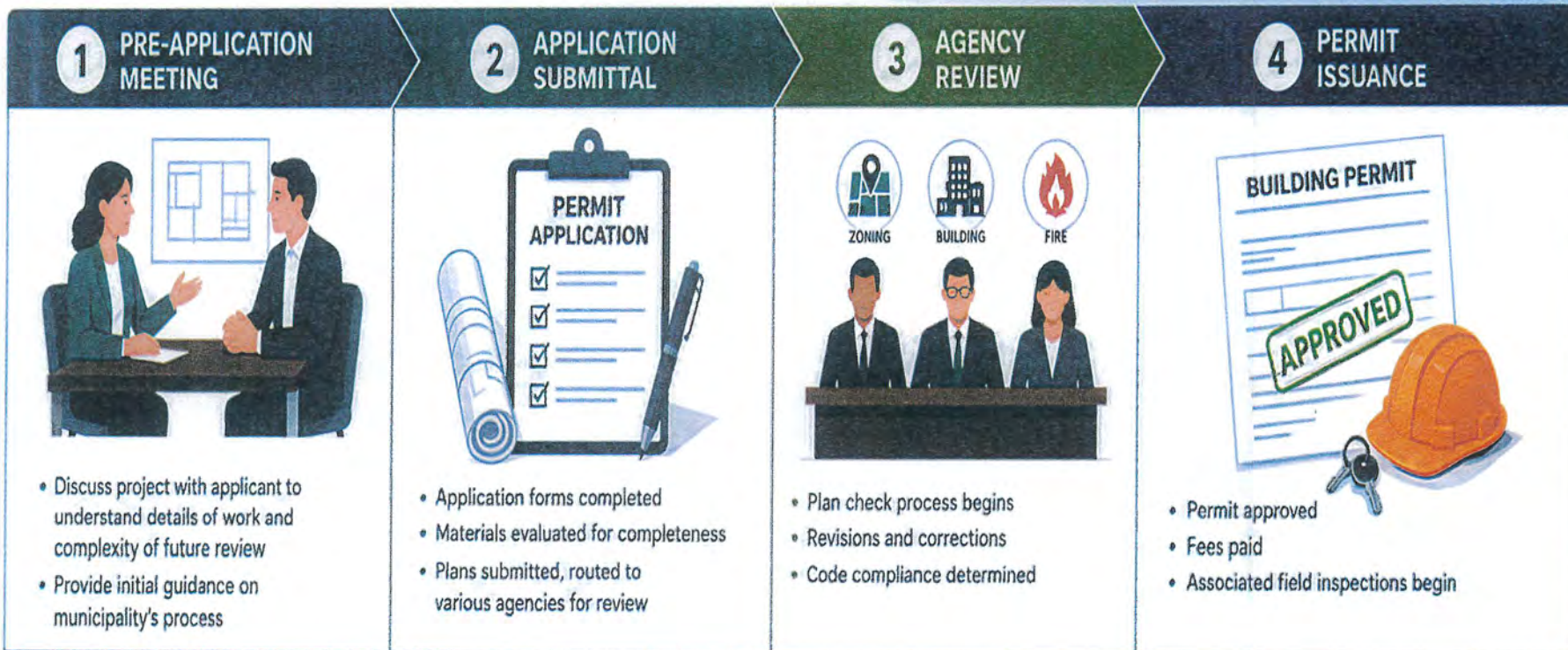
NON-LEGAL HARDSHIP (not valid for variance approval)

- It’s based on personal desires of the applicant or centered only on financial considerations
- It would allow greater convenience, better aesthetics, or achieve personal lifestyle preferences of the owner
- It is the result of a self-imposed problem

Disclaimer: This document is intended as a sample template and reference guide only. For legal guidance please consult your municipal attorney. It should be reviewed and modified as necessary to meet the specific needs, ordinances, and legal requirements of your municipality.

BUILDING PERMIT PROCESS

A clear roadmap from application to approval.



BEST PRACTICES	BEST PRACTICES	BEST PRACTICES	BEST PRACTICES
 • Scheduled, reoccurring pre-application meetings help applicants understand what's required for their project and improves project design and compliance • These meetings also help establish realistic timelines and associated steps in the process, particularly for new or non-local applicants • Provide sample plans or "good example" exhibits, especially for smaller, less complex projects • Involve all relevant departments early to avoid conflicting comments	 • Complete, up-to-date checklists and forms help ensure that applicants provide all of the necessary information and materials for their proposal • Making these documents available in a variety of methods (on your website, in the office, etc.) and forms (hard copy, online tables, etc.) makes it easier for customers to obtain at their preference • Communication with applicants regarding the steps involved and who they can contact with questions is recommended	 • Established review periods for different project types should be published for the public (one-day review period for single-family homes, 10-day review for commercial projects, etc.) to help applicants understand expected review timelines • Standardized review comments and specific code section citations help guide applicants on necessary changes and/or additional required information; avoid jargon and truncated instructions	 • Similar to application forms, inspection checklists by trade and phase (footing, framing, rough MEP, final, etc.) help contractors understand the process to avoid mistakes • When possible, offer same-day inspections or provide defined inspection windows (AM/PM blocks) • Provide clear, actionable inspection results • Ensure consistency with plan review comments and inspection alignment to help projects move faster



- CODE OF ORDINANCES
Chapter 2 - ADMINISTRATION
ARTICLE IV. - BOARDS, COMMISSIONS, AND COMMITTEES
DIVISION 2. PLANNING AND ZONING COMMISSION

DIVISION 2. PLANNING AND ZONING COMMISSION¹

Sec. 2-226. Creation.

There is hereby created a Planning and Zoning Commission consisting of five members to be appointed by the Governing Body, whose terms shall be for two years, except that three of the first appointees shall serve for two years and two for one year. There after all terms of the Planning and Zoning Commission members shall be for two years, so that there will be overlapping tenures of office. Each term shall expire on June 30, provided, however, that any member of the Board shall continue to hold his office until his successor is appointed and qualified.

(Code 1962, § 2-1-1; Ord. No. 456-97, § 1, 5-11-98)

Sec. 2-227. Vacancies.

Vacancies in the office of Planning and Zoning Commission shall be filled by the City Commission. The City Commission shall have the authority to remove any member for cause, which cause shall be stated in writing and made a part of the hearing.

(Code 1962, § 2-1-2)

Sec. 2-228. Oath; organization.

The Planning and Zoning Commission shall take and subscribe to an oath of office within ten days after the notice of appointment. It shall elect a Chairman from among its members for a term of one year with eligibility for reelection and may fill such other offices as it may create, in the manner provided by the rules of the Planning and Zoning Commission.

(Code 1962, § 2-1-3)

Sec. 2-229. Meetings.

The Planning and Zoning Commission shall hold at least one regular meeting each month and shall adopt rules for the meetings and for the transaction of business. It shall keep a record of the resolutions, transactions, findings, and determinations, which shall be kept at City Hall and shall be a public record.

(Code 1962, § 2-1-4)

¹State law reference(s)—Authority to create a planning commission, NMSA 1978, § 3-19-1.

Sec. 2-230. Expenditures; duties.

The Planning and Zoning Commission shall serve without compensation. It shall incur no expenditure of money without previous authorization of the City Commission. It shall take over the duties of the Zoning Board, which is hereby abolished, and it shall perform all the activities and duties required by state law.

(Code 1962, § 2-1-5)

Sec. 2-231. Reserved.

Editor's note(s)—Section 1 of Ord. No. 657, adopted Aug. 14, 2014, repealed § 2-231, which pertained to term limits, and derived from Ord. No. 643, § 1, adopted Oct. 22, 2013.

Secs. 2-232—2-245. Reserved.

Sec. 11-2-2. The Planning and Zoning Commission.

- A. *Purpose.* A Municipal Planning and Zoning Commission is hereby established for the purpose of interpretation of this Code, approving certain actions, receiving requests for modifications to this Code and re-zoning, and making recommendations to the City Commission concerning matters pertaining to zoning within the City.
- B. *Administrative review and interpretations.*
1. The Planning and Zoning Commission shall review an administrative action of the designated Zoning Administrator when it is alleged that there is an error in the order, requirement, determination, or refusal made by the designated Zoning Administrator and reverse, affirm, or modify the administrative action.
 2. The Commission shall interpret this Code when the designated Zoning Administrator is in doubt as to the exact meaning of the text.
 3. The Commission shall interpret the Official Planning and Zoning District Map in accordance with the standards set forth in the Comprehensive Planning and Zoning Code when the designated Zoning Administrator is uncertain as to the exact boundary of a District shown on the Official Planning and Zoning District Map.
- C. *Powers and duties.*
1. Recommend to the City Commission either approval, denial or modification of a request for annexation, special use permit, variance, subdivision, zoning, amendment of this Code, or any other land use consideration within the planning and zoning jurisdiction of the City.
 2. Grant final approval or denial of a home occupation or conditional use permit after public meeting, provided there is not an appeal to the City Commission within fifteen (15) days in accordance with Article 7 of this Code.
- D. *Composition of the Planning and Zoning Commission.* The Planning and Zoning Commission shall consist of five (5) members each to be appointed by a simple majority of the City Commission. Eligibility requirements for membership shall be established by the City Commission. Members shall serve staggered terms of two (2) years each. A recording secretary shall be provided to assist the Planning and Zoning Commission by the City. The recording secretary shall not be a member of the Planning and Zoning Commission and shall be only responsible for those duties requested by the Planning and Zoning Commission and approved by the City Manager.
- E. *Organization of the Planning and Zoning Commission.* The Planning and Zoning Commission shall elect a chairman, vice-chairman, and second vice-chairman in July of each year, or as required due to unforeseen vacancies. They shall serve for one (1) calendar year following their elections.
- F. *Voting.* A simple majority vote of a quorum of the Planning and Zoning Commission is required for approval of all Planning and Zoning Commission actions. A quorum requires at least three members of the Commission present.
- In order for a vote to be valid on a particular issue, a quorum must actually vote regarding the measure. A member who abstains from voting on an issue is deemed to have not voted on the issue.
- G. *Findings of facts for recommendations and decisions.* In considering all requests, the Planning and Zoning Commission shall review applicable plans and determine whether the request will:
1. Impair an adequate supply of light and air to adjacent property;
 2. Unreasonably increase the traffic in public streets;

-
3. Increase the danger of fire or endanger the public safety;
 4. Deter the orderly and phased growth and development of the community;
 5. Unreasonably impair established property values within the surrounding area;
 6. In any other respect impair the public health, safety and general welfare of the City; or
 7. Constitute a spot zone and therefore adversely affect adjacent property values.

All actions or recommendations by the Planning and Zoning Commission shall be based on Findings of Facts as to the impacts of the proposal, using the criteria listed in numbers 1 through 7, above. The Planning and Zoning Commission shall review each of the above listed factors and accord each factor the necessary weight on a case-by-case basis in making its determination.

- H. *Report to the City Commission.* The Planning and Zoning Commission shall provide written minutes, with recommendations as necessary, to the City Commission on all matters that are brought before the Commission. Such minutes shall include a statement of the findings of facts that were the basis of any decision or recommendation made by the Planning and Zoning Commission.

Sec. 11-7-2. Hearings of the Planning and Zoning Commission.

The following applications reviewed by the Planning and Zoning Commission may be done only after a public hearing at which all parties in interest and citizens shall have an opportunity to be heard.

- A. *Requirements of public notice.* A Public Notice for Conditional Use Permits, Special Use Permits, Level III Home Occupation Permits, Annexations, Change of Districting, Variances, or Amendments to this Code, shall state the time and place of the public hearing, shall be published at least fifteen (15) days prior to the date of the hearing in one newspaper of general circulation in the City.
- B. *Requirement of notice to property owners.*
 - 1. Notice of the public hearing shall be mailed by certified mail, return receipt requested, to the owners as shown by the records of the County Treasurer, of lots or land within the area proposed to be changed and within one hundred (100) feet, excluding public right-of-way, of the area proposed to be changed. Whenever:
 - i. A change of Districting is proposed for an area of one block or less
 - ii. An application is for a Conditional Use, Special Use, Variance, or Level III home occupation permit.
 - 2. Whenever a change in Districting is proposed for an area of more than one block, the procedure stated in the preceding paragraph shall be following except that property owners shall be advised by first class mail. If a notice by first class mail to an owner is returned undelivered, City staff shall attempt to discover the owner's most recent address and shall remit the notice by certified mail, return receipt requested, to that address.
 - 3. Notice shall be mailed not less than fifteen (15) days prior to the required public hearing.
 - 4. Notice of the proposed hearing date, time, and location shall be placed on the subject property fifteen (15) days prior to the required public hearing.
 - 5. Fees and costs: The applicant shall bear the cost of mailing, envelopes and publication of all notices and shall provide the maps and property owner information to the City staff in a timely manner. The City staff shall calculate the costs of mailing and publishing and require payment prior to publishing the notice or sending out the mailed notices. The application form shall specify the manner and format in which the mailing list (property owners) shall be delivered to the City staff. The City staff may charge an additional fee as specified by Commission Resolution for doing the research required to create the property owner list.
- C. *Recommendations of the Planning and Zoning Commission.* Recommendations of the Planning and Zoning Commission shall be made in accordance with the criteria stated in Article II of this Code.
- D. *Report to the City Commission.* The Planning and Zoning Commission shall provide a written recommendation within its minutes and in a special letter to the City Commission on all matters.



CITY OF TRUTH OR CONSEQUENCES

RESOLUTION NO. 41 22/23

RESOLUTION ADOPTING RULES OF PROCEDURE FOR THE CITY OF TRUTH OR CONSEQUENCES, PLANNING AND ZONING COMMISSION

WHEREAS, the City Commission finds it necessary and desirable to adopt Rules of Procedure for the City of Truth or Consequences Planning and Zoning Commission, and

WHEREAS, the Powers and duties of the City Planning and Zoning Commission are set forth in the City Code of Ordinances in Section 11-2-2, et seq. The specific powers and duties are described in 11-2-2(c). The purpose of these rules are to facilitate the implementation of the aforesaid ordinances.

NOW THEREFORE, BE IT RESOLVED that the following Rules and Procedure are adopted for the City's Planning and Zoning Commission:

I. General Rules of Conduct and Procedures

1. A Planning & Zoning Commissioner shall not engage in Ex Parte communication about any filed or prospective application requiring a quasi-judicial proceeding with any person or organization interested in such an application. For purposes of these rules, an *ex parte* communication shall be defined as a substantive communication, outside the public hearing process, between a member of the Planning & Zoning Commission and any member of the public. Ex Parte communication by a Planning & Zoning Commissioner shall be grounds for recusal.
2. Any material received by a Planning & Zoning Commissioner from any person or organization concerning an issue that may be considered by the Commission shall be forwarded to the Planning and Zoning staff for distribution to the Planning & Zoning Commission.
3. In quasi-judicial proceedings, all communications, written or verbal, with Planning & Zoning Commission must be made through the Planning and Zoning staff, not directly with any member of the Planning & Zoning Commission.
4. Planning & Zoning Commissioners shall not conduct independent fact finding investigations for any property that is subject to quasi-judicial proceedings before the Planning & Zoning Commission. However, driving by the subject property to familiarize themselves with the

location and environs of such property does not constitute an independent fact finding investigation and is permitted.

5. Planning & Zoning Commissioners shall confine their remarks to the question under discussion or debate, avoiding personalities. No Planning & Zoning Commissioner shall engage in private discourse or commit any other act tending to distract the attention of the Planning & Zoning Commission from the business before it.
6. Actions by the Commission are in the form of an approved motion. No motions shall be entertained or debated until announced by the Chair, and every motion shall be seconded to be considered for action. The following additional motion(s) may also be propounded:
 - a) To reconsider
 - b) To table an item in order to conduct a further investigation of relevant items
 - c) To move the previous question
 - d) To postpone to a time certain (to defer)
 - e) To amend or substitute
 - f) To postpone indefinitely
 - g) To adjourn
 - h) To recess
 - i) Any other motion

7. Voting

The votes during all Planning & Zoning Commission meetings should be transacted as follows:

- a) Except for the election of the Chair and Vice Chair, when the chair calls for a vote on a motion, every member, in the Commission Chambers, must give his/her vote.
- b) The passage of any motion shall require the affirmative vote of at least a majority of a quorum of the entire Planning & Zoning Commission. In case of a tie in votes on any proposal, the proposal shall be considered lost.
- c) The New Mexico Zoning Act (3-21-1 et. seq.) requires certain votes of the Planning & Zoning Commission to be determined by more than simple majority of the Planning & Zoning Commission's quorum (e.g. 3-21-6; 3-21-14).
- d) Planning & Zoning Commission shall be allowed to change his/her vote, but only before the result has been announced.
- e) Any Planning & Zoning Commissioner shall have the right to express dissent from, or protests against, any item being acted on by the Planning & Zoning Commission, and to have the reason therefore entered in the minutes.
- f) If a motion is not carried by at least a majority of Planning & Zoning Commission's quorum, the proposal shall be considered lost.
- g) A record of each Planning & Zoning Commissioners vote shall be entered in the minutes of each meeting.

8. Agendas

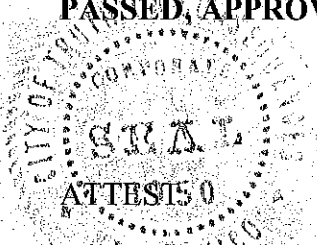
- a) The City Administration and the City Clerk shall prepare and disseminate the agenda.
- b) A copy of the agenda and supporting materials shall be prepared for Commissioners and made available to them within a reasonable time before the hearing but no later than 72 hours prior to the Regular Administrative hearing. The agenda, as well as supporting documents that are a part of agenda documentation, shall be available for review.
- c) Planning & Zoning Commissioners shall attend meetings prepared to conduct business. This shall include a diligent review of the agenda packet before the meetings.
- d) Attendance at meetings and punctuality are of paramount importance. If a Commissioner is more than fifteen (15) minutes late for a meeting, and such Commissioner's attendance is required in order to achieve a quorum, such meeting shall be canceled. Where practical, the agenda items will be assigned to the City Commission's agenda for their next regular meeting.

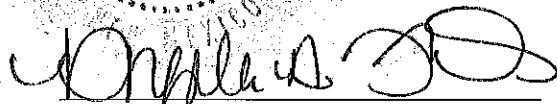
II. Public Meeting Procedure

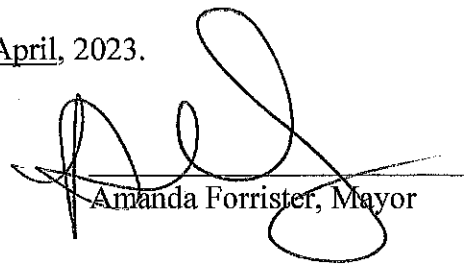
All Public Hearings shall be conducted in accordance with the "Battershell Procedure" which is attached hereto as **EXHIBIT 1**.

In order to facilitate compliance with the Battershell Procedure, the City Commission has also included a publication known as "Complying with Battershell", which is attached hereto as **EXHIBIT 2**.

PASSED, APPROVED AND ADOPTED this 26th day of April, 2023.




Angela A. Torres, City Clerk


Amanda Forrister, Mayor

CHAPTER XIII

COMPLYING WITH *BATTERSHELL*

In 1989, the Court of Appeals in New Mexico decided *Battershell v. City of Albuquerque* 108 N.M. 658, 777 P.2d 386 (Ct. App. 1989) which expanded a long line of cases dealing with Due Process requirements in land use decisions. *Duke City Lumber v. Environmental Improvement Division* 95 N.M. 401, 622 P.2d 709 (Ct. App. 1980) was one of the first of such decisions. In *Duke City*, the Court of Appeals announced a new definition for "quasi judicial":

Quasi-judicial is a term applied to administrative boards or officers empowered to investigate facts, weigh evidence, and draw conclusions as a basis for official actions.

There is no question that planning and zoning commissions engage in such activities when considering special exemptions, variances, and conditional uses, it is less clear when large scale zone changes are considered. What does this mean for planning and zoning commissions?

New Mexico courts have consistently required that procedural due process be afforded the parties before an administrative body acting in an adjudicatory or quasi-judicial role. In affording procedural due process, the body must swear the witnesses and provide for cross examination of witnesses. The body must also avoid *ex parte* contacts that would improperly interfere with its role. In addition, all evidence that is presented and admitted into the record must be considered by the body.

A. Swearing of Witnesses

Battershell made it clear that in quasi judicial proceedings, any person giving testimony will be required to do so under oath or affirmation. Although it is far from a unanimous position among the several states, the general rule with respect to zoning hearings is that witnesses should be sworn, and their testimony taken only on an oath or affirmation. The purpose for the oath is to awaken the witnesses' conscience and impress the witnesses' mind with the duty to tell the truth in both direct testimony and cross examination. See SCRA 11-603. *Duke City* was the first case to hold that witnesses before quasi judicial bodies must be sworn:

Under NMSA 1978, Evid. R. 603, every witness, before testifying, must declare by oath or affirmation that he will do so truthfully. The parties have not cited us to any authority in New Mexico exempting witnesses at an administrative hearing from that rule, and we have found none.

The Hearing Examiner or Commission may, in its discretion impose reasonable limitations on the number of witnesses to be heard, and on the nature and length of their testimony.

B. Cross Examination

The cross examination of all witnesses giving testimony is another essential element of procedural due process. In *Battershell*, the Albuquerque EPC denied the parties the right of cross examination. The Court of Appeals held that it was error for the EPC to refuse to permit reasonable cross examination of witnesses. This does not mean that an exhaustive, long-winded and comprehensive cross examination is required. A

reasonable opportunity to confront and cross examine witnesses is all that is required by the Due Process Clause. In conducting the hearing, the body need not adhere strictly to the evidentiary standards applied by a court for examination and cross examination, but the body must adhere to the fundamental principles of fairness and due process. A reasonable opportunity to cross examine involves the right to ask questions bearing on the testimony presented or the position taken by the witness. It might include exploration of motivation or bias on the part of the witness, and might even touch on issues involving conflicts of interest. Cross examination must always be conducted politely and professionally; a witness should never be subjected to badgering or unreasonable attack by the cross examiner.

The Hearing Examiner or Commission may, in its discretion impose reasonable limitations on the number of people entitled to cross examine witnesses (may be limited to parties only) and on the nature and length of their cross examination.

C. Parties

It is important, for a variety of reasons for the Hearing Examiner or Commission to determine who the parties are early in the proceedings, preferably before the commencement of the hearing. In an effort to streamline the hearing process it is permissible to limit the right of cross examination to interested people designated as parties. A person who is a party is also entitled, as a matter of law to receive a copy of the written decision and order of the Commission. Parties may also be afforded extra presentation time over those individuals who simply want to state their support or opposition to a proposed project or measure.

A party may include the applicant, or his/her agent or representative, an owner of property located within a short distance of the property that is the subject of the hearing (usually within 100 feet), an organized neighborhood association that has adopted by-laws and that includes the area affected by the hearing or land within 100 feet, the municipality or county, and any other people or organizations that can demonstrate a significant interest in the subject matter of the hearing. This interest may be pecuniary or some other direct interest in the outcome of the hearing. The decision concerning whether a person is a party is going to rest largely on the level of participation and involvement of the particular individual.

A Hearing Examiner or Commission should first undertake to establish who the respective parties to the hearing are in order to properly preserve the parties right to participate in the hearing. Non-parties to the hearing will still be entitled to express their views and opinions on the proposed action that is the subject of the public hearing, they simply may not have the opportunity to cross examine other witnesses and may not be automatically entitled to receipt of the final written decision of the Commission.

D. *Ex Parte* Communications

Ex Parte communications by, with, or among Commissioners is strictly prohibited during the pendency of quasi-judicial matters. The prohibition against *ex parte* communications is not applicable if the decision making process is Legislative in nature.

1. An *ex parte* communication is any communication, whether oral or written that:

- a) Involves fewer than all the parties having a legal interest in the matter;
- b) is about a pending or impending matter within the jurisdiction of the administrative body;
- c) made to or initiated by a commission member having jurisdiction over the matter;

2. An *ex parte* communication may include:

- a) communications with people involved in the subject matter pending before the commission;
- b) communications with people not involved in the pending matter at all;
- c) independent investigations such as visiting the site proposed for development;
- d) communications made with the best of intentions.

3. Permissible *ex parte* communications include:

- a) communications for the purpose of scheduling, administrative matters or emergency purposes;
- b) communications with the municipal attorney;
- c) communications with commission staff (if any)

NOTE: This is not to be confused with communications with the municipal planning and zoning department; which usually has a position on planning and zoning matters and with whom such *ex parte* communications would be IMPERMISSIBLE.

4. *Ex Parte* communications are prohibited for a variety of reasons:

- a) It is not fair to the other party because the decision maker may be improperly influenced;
- b) It is not fair to the other party because the decision maker may be inaccurately informed;
- c) It is not fair to the other party because the decision maker is only provided with one side of the issue;
- d) In the absence of actual influence or misinformation, the other side may nevertheless feel cheated and believe the proceedings have been tainted;
- e) The commission can acquire a reputation for being susceptible to improper influence;
- f) Improper *ex parte* communications can invalidate the actions of the commission.

E. Sample Provisions for Implementation of *Battershell* Proceedings

1. Designation of Parties

The Hearing Examiner or Chair of the Commission should determine, prior to the commencement of the hearing, the parties to the hearing, because the parties will be afforded certain rights that do not extend to other participants. Clearly announce that the applicant or the applicant's agent or representative as well as the municipality are parties to the hearing. Other people may be designated as parties by the Hearing Examiner or Commission if they can demonstrate eligibility.

2. Testimony under oath. All people (other than New Mexico licensed attorneys appearing on behalf of a client and presenting only legal arguments) giving testimony before the Commission shall be sworn in under oath before the proceeding by the Commission Administrator, Commission staff member, Chairman of the Commission, or other qualified notary public, and shall be obligated thereby to testify in a truthful manner. To assist in the orderly presentation of evidence, people giving testimony will be divided into three groups: (1) proponents; (2) opponents; and (3) interested people. To further assist in the orderly presentation of testimony and preparation of the minutes of the Commission, all people wishing to testify, (as well as attorneys representing clients) will be required to provide their names and addresses in written form to the Commission staff prior to being permitted to testify or address the Commission.

3. Manner of presentations to the Commission.

a) Applicants. Applicants are asked to address and explain the material which is the subject of their application in a succinct manner, confining their comments to matters relevant to the application and the Commission's jurisdiction and decision making responsibilities. At the conclusion of the applicant's testimony, Commissioners may question the applicant to assist in the Commissioner's understanding of the matter to be considered. This may be followed by cross examination by municipal staff. Following questions by the Commissioners and staff, other parties may pose questions in the nature of cross examination to the applicant. (NO TESTIMONY WILL BE TAKEN AT THIS TIME).
If the Commission has not restricted the right of cross examination to parties

members of the public may pose questions to the applicant. If the right of cross examination is reserved to parties, omit this final step.

b) **Staff.** Municipal staff will present their direct testimony and position with respect to the application or matter at hand. In the same manner, the staff will stand for questions by the Commissioners and cross examination by the applicant and other parties. [Some Commission have staff proceed first to set out the issues for the Commission. This is in the discretion of the Commission].

c) **Opponents.** Opponents to the application will proceed with their direct testimony. In the same manner, the opponents will stand for questions by the Commissioners and cross examination by the staff, applicant and other parties.

d) **Members of the public.** Similarly, any interested member of the public may make a statement concerning the application pending before the Commission. Anyone making such a statement will be sworn, and subject to questioning by members of the Commission, staff, the applicant, opponents and other parties to the hearing.

e) **All people giving testimony.** All testimony and all questioning of witnesses will be confined to matters relevant to the application pending before the Commission and the Commission's decision making authority concerning the pending application. No questions shall be asked of any individual Commissioner by applicants or others testifying before the Commission except through the Chair of the Commission. All people participating in the proceedings are expected to conduct themselves in a courteous manner,

4. Evidence. The Chair of the Commission shall mark for identification and enter into evidence, to be made a part of the record, any relevant written document tendered by any person during the course of the proceedings.

CITY OF TRUTH OR CONSEQUENCES NEW MEXICO

BATTERSHELL PROCEDURE FOR PUBLIC HEARINGS BEFORE THE CITY PLANNING AND ZONING COMMISSION

The agenda item referencing this procedure requires that the City Planning and Zoning (P & Z) Commission hold a hearing where it acts in an adjudicatory or quasi-judicial role as to the matter being brought before it. While acting in such role, the City P & Z Commission is required to afford parties appearing before it, procedural due process. Procedural due process requires that City P & Z Commission swear the witnesses and provide for cross examination of witnesses. This does not mean, however, that an exhaustive, long-winded and comprehensive cross examination is required. A reasonable opportunity to confront and cross examine witnesses is all that is required by the Due Process Clause. The City P & Z Commission must also avoid ex-parte contacts. Further, all evidence that is presented and admitted into evidence must be considered by the City P & Z Commission. The role of the City P & Z Commission is to serve as unbiased decision makers. The hearing is intended to protect the due process rights of all parties and to provide for the orderly conduct of the hearing.

The following procedures are mandated by the New Mexico Court of Appeals in the case styled as *Battershell v. City of Albuquerque*, 108 N.M. 658, 777 P.2d 386 (Ct. App. 1989) and will apply only to the agenda item referencing this procedure.

Presiding Officer

In order to assist in the orderly conduct of the hearing, the Chairperson, or in his/her absence, the Vice-Chair, shall serve as the presiding officer who will ensure that the hearing is followed and enter into evidence any relevant written document tendered by any person during the course of the proceedings. No questions shall be asked of any individual Commissioners except through the Chairperson serving as presiding officer. It is the duty of the presiding officer to keep the questioning and testimony on track and to avoid irrelevant issues and endless repetition of the same arguments or testimony.

Testimony Limited To Subject Matter

Testimony will be limited to the relevant matter of the agenda item referencing this procedure.

Cross Examination

Cross examination should always be conducted politely and professionally; a witness should not be subjected to badgering or unreasonable attack by the cross examiner.

Oath

The Chairperson, Clerk, or a duly authorized designee, shall conduct the oath on all witnesses substantively as follows:

“Do you swear to tell the truth, the whole truth, and nothing but the truth”

To assist in the preparation of the minutes of the City P & Z Commission meeting, all persons wishing to testify, (as well as attorneys representing clients) shall be required to state their name and address to City P & Z Commission prior to being permitted to testify or address City P & Z Commission.

Protocol

In order to assist in the orderly presentation of evidence, people giving testimony will be divided into four (4) groups: (1) staff, (2) proponents, (3) opponents, and (4) public.

STAFF PRESENTATION:

- Staff is sworn in
- Staff presentation
- Commission questions staff to assist in their understanding of the matter to be considered
- Proponents may cross-examine staff
- Opponents may cross-examine staff
- Continue same process for each individual staff member

PROPOSERS PRESENTATION:

- Proponents are sworn in
- Proponents presentation
- Commission questions the proponents to assist in their understanding of the matter to be considered
- Staff may cross-examine the proponents
- Opponents may cross-examine the proponents
- Continue same process for each individual proponent

OPPONENTS PRESENTATION:

- Opponents are sworn in
- Opponents presentation
- Commission questions opponents to assist in their understanding of the matter to be considered
- Staff may cross-examine the opponents
- Proponents may cross-examine opponents
- Continue same process for each individual opponent

PUBLIC PRESENTATION:

- Individual public members are sworn in
- Public members presentation
- Commission questions individual public members to assist in their understanding of the matter to be considered
- Staff may cross-examine the individual public members
- Proponents may cross-examine the individual public members
- Opponents may cross-examine the individual public members
- Continue same process for each individual public member

COMMISSION ACTION:

- A Commission Member makes a motion
- There is a second to the motion
- There is discussion of the motion
- The Commission is prepared to vote
- The City Clerk takes roll call of the Commission
- The motion passes or fails

Roberts Rules of Order – Simplified

Guiding Principles:

- Everyone has the right to participate in discussion if they wish, before anyone may speak a second time.
- Everyone has the right to know what is going on at all times. Only urgent matters may interrupt a speaker.
- Only one thing (motion) can be discussed at a time.

A **motion** is the topic under discussion (e.g., "I move that we add a coffee break to this meeting"). After being recognized by the president of the board, any member can introduce a motion when no other motion is on the table. A motion requires a second to be considered. If there is no second, the matter is not considered. Each motion must be disposed of (passed, defeated, tabled, referred to committee, or postponed indefinitely).

How to do things:

You want to bring up a new idea before the group.

After recognition by the president of the board, present your motion. A second is required for the motion to go to the floor for discussion, or consideration.

You want to change some of the wording in a motion under discussion.

After recognition by the president of the board, move to amend by

- adding words,
- striking words or
- striking and inserting words.

You like the idea of a motion being discussed, but you need to reword it beyond simple word changes.

Move to substitute your motion for the original motion. If it is seconded, discussion will continue on both motions and eventually the body will vote on which motion they prefer.

You want more study and/or investigation given to the idea being discussed.

Move to refer to a committee. Try to be specific as to the charge to the committee.

You want more time personally to study the proposal being discussed.

Move to postpone to a definite time or date.

You are tired of the current discussion.

Move to limit debate to a set period of time or to a set number of speakers. Requires a 2/3rds vote.

You have heard enough discussion.

Move to close the debate. Also referred to as calling the question. This cuts off discussion and brings the assembly to a vote on the pending question only. Requires a 2/3rds vote.

You want to postpone a motion until some later time.

Move to table the motion. The motion may be taken from the table after 1 item of business has been conducted. If the motion is not taken from the table by the end of the next meeting, it is dead. To kill a motion at the time it is tabled requires a 2/3rds vote. A majority is required to table a motion without killing it.

You believe the discussion has drifted away from the agenda and want to bring it back.
 "Call for orders of the day."

You want to take a short break.
 Move to recess for a set period of time.

You want to end the meeting.
 Move to adjourn.

You are unsure the president of the board announced the results of a vote correctly.
 Without being recognized, call for a "division of the house." A roll call vote will then be taken.

You are confused about a procedure being used and want clarification.
 Without recognition, call for "Point of Information" or "Point of Parliamentary Inquiry." The president of the board will ask you to state your question and will attempt to clarify the situation.

You have changed your mind about something that was voted on earlier in the meeting for which you were on the winning side.
 Move to reconsider. If the majority agrees, the motion comes back on the floor as though the vote had not occurred.

You want to change an action voted on at an earlier meeting.
 Move to rescind. If previous written notice is given, a simple majority is required. If no notice is given, a 2/3rd vote is required.

Unanimous Consent:

If a matter is considered relatively minor or opposition is not expected, a call for unanimous consent may be requested. If the request is made by others, the president of the board will repeat the request and then pause for objections. If none are heard, the motion passes.

- **You may INTERRUPT a speaker for these reasons only:**
 - to get information about business –point of information to get information about rules– parliamentary inquiry
 - if you can't hear, safety reasons, comfort, etc. –question of privilege
 - if you see a breach of the rules –point of order
 - if you disagree with the president of the board's ruling –appeal
 - if you disagree with a call for Unanimous Consent –object

Quick Reference					
	Must Be Seconded	Open for Discussion	Can be Amended	Vote Count Required to Pass	May Be Reconsidered or Rescinded
Main Motion	√	√	√	Majority	√
Amend Motion	√	√		Majority	√
Kill a Motion	√			Majority	√
Limit Debate	√		√	2/3 ^{rds}	√
Close Discussion	√			2/3 ^{rds}	√
Recess	√		√	Majority	
Adjourn (End meeting)	√			Majority	
Refer to Committee	√	√	√	Majority	√
Postpone to a later time	√	√	√	Majority	√
Table	√			Majority	
Postpone Indefinitely	√	√	√	Majority	√

Planning & Zoning Workshop / Position Paper Matrix

Updated Working Matrix – Workshop Positions, Current Code, Areas of Agreement/Disagreement & Commission Decision Points

Note: This matrix summarizes individual workshop comments and position papers contained in the materials reviewed. Unless specifically noted otherwise, these are not formal recommendations adopted by vote of the Planning & Zoning Commission.

Topic	Current Code / Existing Situation	Chris Sisney	Susan Buhler	Esther Luchini	Lisa Kent	Molly Hammer	Agreement / Disagreement	Commission Decision Points
Tiny Homes	No comprehensive tiny-home framework identified. Existing zoning primarily relies on dwelling-size, setback and district standards.	No separate written position located. General workshop concerns included appropriate residential uses/density.	Position materials favor compliance with zoning/building standards; no comprehensive separate framework located.	≤400 SF; IRC/state compliance; City utilities; skirted; aesthetically pleasing; meet setbacks without routine variance; fire requirements; comply with City code.	Concerned with appropriate zoning/location and particularly impacts within Historic/Hot Water area.	Supports tiny homes with clear standards. Suggested 200–400 SF, appropriate density, aesthetics, height limitations, privacy protections and determining STR eligibility.	Agreement: Clear definition, safety, setbacks, utilities, aesthetics and appropriate zoning are needed. Unresolved: exact size, foundation, density, permitted districts and STR eligibility.	Define Tiny Home; minimum/maximum SF; foundation; permitted districts; units per parcel; setbacks; parking; utilities; height; aesthetics; STR eligibility.
Accessory Dwelling Units (ADUs)	No comprehensive stand-alone ADU framework identified.	No separate written position found.	Position materials generally support conventional residential/building standards.	General preference for compliance with City/state standards.	Discussed relationship among ADUs, tiny homes and zoning districts; no final separate position found.	Raised policy questions including number of ADUs, relationship to primary home, foundation, kitchen/bath, parking, separate sale, STR restrictions and distinction from RVs.	General agreement that ADU, tiny home and RV need separate definitions. Number per parcel and STR use remain unresolved.	Create separate ADU ordinance? Number allowed; size relative to primary residence; parking; foundation; utilities; sale/subdivision; STR eligibility.
Short-Term Rentals / Airbnb / VRBO	Existing City taxation/regulatory framework applies; workshop materials identify questions concerning registration, tax collection and long-term stays.	No distinct written position found.	No distinct written position found.	No distinct written position found.	Raised registration/compliance questions and possible caps, location restrictions and rental-day limits; questioned treatment of hot-spring properties.	Generally supports STRs for tourism/economic reasons but favors registration, safety requirements, taxation, host education and platform cooperation. Raised >30-day rental/tax issues.	General recognition that STR rules/taxation should be clear. No documented consensus on caps, geographic restrictions or rental-day limitations.	Registration/license? Inspections? Occupancy/parking/noise? Caps? Geographic restrictions? >30-day exemption? Platform tax collection? Hot-spring lodging treatment?
Shipping Containers / Conex Boxes	Sec. 11-10-4 regulates containers. Residential districts generally require CUP; containers cannot be dwellings; size, subordinate-use, setback, sight-distance and nuisance standards apply. Historic/MainStreet placement also requires CUP.	No detailed written position located.	One per lot; strict zoning compliance; container not larger than main house; no containers in historic area; street-visible containers screened by approximately 6-ft solid wall/fence. Raised possible retroactive application subject to legal review.	No City utility connection facilitating residential use; painted/aesthetically pleasing; behind primary dwelling; CUP renewed annually; nontransferable to new owner; restrictions on separate rental/lease.	Strong concern about Historic District treatment and broader zoning consistency.	Behind principal building; no stacking; occupancy only with proper building/fire compliance; consider number per lot; setbacks/easements; good repair; no unpermitted utilities; screening/landscaping; painting; reduced street visibility; possible architectural compatibility.	Strong agreement: improve appearance/location standards and address Historic District. Open: prohibition vs CUP in historic area; maximum number; retroactivity; annual renewal.	Allowed districts; Historic-area prohibition vs CUP; number per lot; location behind principal structure; screening; painting/maintenance; utility connections; CUP renewal; grandfathering.
Variance Requests	Existing variance provision provides relief from dimensional/distance/parking/setback requirements based upon property conditions and hardship.	Emphasized appropriate findings/safety during broader discussion.	Specifically emphasized the seven Findings of Fact and safety.	Questioned why applicants should be able to seek relief when the property/use does not meet the code.	Strong distinction between genuine hardship and applicant preference; unusual lot/property conditions are appropriate basis.	Supports tightening/clarifying the variance process rather than eliminating legitimate variances.	Strong consensus: Variances should address legitimate property hardship—not convenience, cost or simply wanting something the code prohibits.	Limit eligibility to unique physical/property hardship; identify matters not eligible; require written findings; application screening; address after-the-fact applications.
Special Use Permits	Existing language broadly describes Special Use as a use not permitted by right, while individual districts also identify particular Special Uses.	No independent written position found.	Participated in discussion; no comprehensive separate recommendation located.	Questioned why uses not otherwise permitted should be allowed to proceed through Special Use/Variance processes.	Discussion demonstrated need for clearer terminology and distinction from temporary/special-event uses.	Questioned distinction among Special Use, Conditional Use and temporary activities.	Agreement: terminology/process is confusing and should be clarified. Unresolved: broad authority vs only specifically enumerated uses.	Limit Special Uses to expressly listed uses? Define duration/permanence; establish criteria; clearly distinguish from Conditional Use and Variance.
Conditional Use Permits	CUPs are tied to specifically identified uses and provide continuing oversight. Existing provisions include annual review/non-transferability concepts.	No separate written position found.	No comprehensive written position located.	Shipping-container position favors annual renewal and non-transferability.	Recognized distinction between continuing CUP oversight and more permanent approvals.	Sees annual review/non-transferability as useful for uses requiring continued oversight.	General support for CUP where continuing City oversight is appropriate. Open: which existing Special Uses should become Conditional Uses.	Identify uses better handled by CUP; retain annual review? Administrative vs public review? Revocation criteria? Ownership/business changes?
Historic / Hot Water / MainStreet Area	Existing planning documents identify historic areas, but zoning treatment does not provide all protections discussed by members.	No separate comprehensive position located.	Supports prohibiting shipping containers in historic area.	Supports aesthetic standards generally.	Strongest advocate for separate/special treatment of Historic/Hot Water area rather than treating it exactly like other districts.	Supports additional privacy/aesthetic considerations, particularly with tiny homes/ADUs.	General interest in greater protection. No consensus on separate zoning district vs overlay vs use-specific restrictions.	Establish boundary; overlay vs separate zone; shipping containers; architectural/aesthetic requirements; height/privacy; signage; applicability to existing development.
Zoning Map / District Boundaries	Map and district structure need targeted review; annexation toward airport raised mapping/designation questions.	No specific written map position found.	Raised questions concerning T-1/City boundaries.	No comprehensive map position found.	Began citywide review but determined it was too broad; shifted attention to problem areas, especially Historic District.	Agreed entire map review was too large for one position paper/workshop.	Agreement: do not attempt wholesale rezoning in one effort. Address specific problem areas.	Phased map review; Historic/Hot Water first? Airport/annexation area? Reconcile annexations/plats; consider overlays rather than changing base zoning.
Manufactured Homes / Manufactured Home Parks	Existing code contains manufactured-home and district standards. Identified as a future review topic.	No written position found.	No detailed position found.	No detailed position found.	No completed position identified.	Did not identify an urgent problem; viewed as a longer-term roadmap item.	Not developed enough for consensus.	Determine whether existing code needs amendment before undertaking additional work. If yes: age, aesthetics, permitted districts, parks and relationship to tiny homes.
RVs / RV Parks / Permanent RV Occupancy	Existing discussion indicates RVs are not intended as dwellings on ordinary lots; established RV parks are treated separately.	Recognized that residents are using available housing options and the issue may increase.	Concerned about permanent RV living and fire/life safety; favored owner responsibility.	No separate written position found.	Recognized RVs generally are not designed for permanent occupancy but favored reasonable standards for existing parks.	Raised overlap among RVs, park models, tiny homes and ADUs; favors clearer definitions.	Agreement: safety and definitions need attention. Unresolved: extent of regulation/inspection of existing parks.	Permanent occupancy; fire/safety standards; inspections; grandfathering; compliance period; owner responsibility; distinguish RV/park model/tiny home.
Kennels	Current zoning permits/restricts kennels depending on district/use.	Questioned whether kennels should be permitted in residential districts, particularly R-1.	No separate position found.	No separate position found.	No separate detailed position found.	Proposed significant setbacks from residential property, possible reduction if soundproofed, plus noise/odor standards.	Agreement that residential impacts warrant additional review. Difference: exclusion/restriction vs allowing with performance standards.	Allowed districts; commercial vs private kennel; animal limits; setbacks; noise/odor/sanitation; annual review.
Sign Height / Sign Regulations	Sign Heights was specifically placed on the May 11, 2026 agenda for discussion.	Raised dark-sky considerations.	No separate position located.	No separate position located.	Concerned with visual prominence/illumination of large signage.	Had comments/material relating to sign issue.	Concerns center on height, illumination, visibility and neighborhood/community impact. No final consensus located.	Maximum height by district; illumination; dark-sky standards; electronic signs; residential/historic-area restrictions; existing signs.
Abandoned / Dilapidated Properties	Primarily identified as possible future topic rather than developed zoning amendment.	No stated position found.	No stated position found.	No stated position found.	Raised unsafe structures, rodents/animals, weeds, mosquitoes, fire hazards and possible community cleanup efforts.	No detailed position found.	Not sufficiently developed for consensus.	First determine whether issue belongs under zoning, nuisance/code enforcement or dangerous-building provisions. Then determine enforcement vs assistance/cleanup approach.
River Rules / Signage / Motorized Vessels	Not part of the core zoning rewrite, but specifically raised during P&Z discussion. Jurisdiction may involve City, private property and BOR.	Participated in discussion.	Specifically requested follow-up regarding river rules, powered vessels/jet skis, glass and signage.	No separate position located.	No separate position located.	No separate position located.	Request for information/follow-up, not a developed P&Z policy position.	Staff determine jurisdiction/current rules first; then determine whether any portion requires P&Z action.
Public Permit Education	Members discussed situations where work occurs before zoning/building approval.	No separate position identified.	No separate position identified.	No separate position identified.	Raised concern about applicants seeking forgiveness after work is completed and need for education.	Participated in broader discussion.	General support for better public education.	Primarily staff action: permit guide, website/social media, utility bill information, signage, etc.
Overall Chapter 16 / Code Review	Chapter 16 workbook was distributed so members could identify individual sections requiring amendment.	Supports clearer/enforceable standards based on workshop participation.	Emphasizes clear rules and safety criteria.	Frequently questioned processes that allow applicants to seek exceptions from otherwise clear requirements.	Favors addressing specific problem areas rather than attempting an entire-code rewrite simultaneously.	Supports clearer definitions and standards rather than repeated case-by-case interpretation.	Strong overall agreement: code needs clearer language, but work should be broken into manageable subjects.	Establish formal priority list; complete one policy package before moving to next; use explicit Permitted / Conditional or Special / Prohibited structure where practical.