Planning and Land Use Basics

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“Top Ten” Planning Principles

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Planning Principle #1
Community planning should be comprehensive

Planning Principle #2
Specific area plans should be consistent with the comprehensive plan

Planning Principle #3
Capital improvement programming and “functional” plans should be consistent with the comprehensive plan

Planning Principle #4
Land use regulations should be consistent with the comprehensive plan
Planning Principle #5
Community planning should be inclusive

Planning Principle #6
Think regionally

Planning Principle #7
Determine where it makes sense to grow by first determining where it doesn’t make sense to grow

Planning Principle #8
Stable neighborhoods + regional employers + community amenities = economic development

Planning Principle #9
Link transportation and land use

Planning Principle #10
Adopt sustainable development practices
**Key Principles and Recent Developments in Colorado Land Use Law**

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### Master or Comprehensive Plan
- A required duty of the municipal planning commission. C.R.S. 31-23-206.
- Approved by the municipal governing body before filing with the county clerk and recorder. C.R.S. 31-23-208.
- The plan is generally advisory, unless it is “made binding by inclusion in the municipality’s adopted subdivision, zoning, planting, planned unit development, or other similar land development regulations, after satisfying notice, due process, and hearing requirements for legislative or quasi-judicial processes as appropriate.” C.R.S. 31-23-206(1).
- The plan is always regulatory with respect to streets, parks, public way, ground or open space construction, public buildings, structures, or publicly or privately owned public utilities. C.R.S. 31-23-209.

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### Land Use Regulations
**Necessarily Restrict the Use of Property**
- No right to the "highest and best use" of private property.
- In general, land use regulations do not constitute a “taking” of property rights unless the effect is to leave the property with no economic use whatsoever.
- Legislation in 1999 creates a cause of action for "regulatory impairment of property rights," but is restricted to challenging conditions imposed on land use approvals: C.R.S. 29-20-201, et seq.

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### Exactions, Conditions and Impact Fees
- **Exactions** typically result in money, land or facilities paid for by the developer but owned by the municipality. (parks, trails, street improvements)
- **Conditions** generally involve required construction which remains in the ownership of the developer (landscaping, parking requirements, snow storage, lighting)
- **Impact fees** are an exaction paid to fund improvements to capital facilities made necessary by the development.

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### Exactions, Conditions and Impact Fees (Cont.)
- For exactions and conditions, there should be an essential nexus between the requirement and a legitimate local government interest: Noland v. California Coastal Commission (1987), as well as rough proportionality between the size of the impact and the size of the exaction or condition: Dolan v. City of Tigard (1994).
- These Supreme Court principles are codified at C.R.S. 29-20-204(2)(c)and(d).

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### Exactions, Conditions and Impact Fees (Cont.)
- The impact fee statute, C.R.S. 29-20-104.5, imposes a series of standards for impact fee regulations:
  - Schedule of fees must be legislatively adopted.
  - Fees must be generally applicable to a broad class of property.
  - Fees must be intended to defray the projected impacts on capital facilities caused by the proposed development.
  - No fee or similar development charge may be imposed to remedy a deficiency in capital facilities that exists prior to the development.
  - “Double dipping” is prohibited: local government may not both impose an impact fee as well as a site-specific dedication or improvement to meet the same need for capital facilities.
### Quasi Judicial Matters & Ex-Parte Contacts: A Refresher

- Actions of the governing body and planning commission on zoning or site planning matters, and the BOA on variance requests or appeals from administrative officials, are all quasi-judicial, not legislative actions.

- This is true because the decision involves a specific property, rather than a policy affecting the entire municipality. The consequences of the fact that an action is quasi-judicial are several:
  - Notice and public hearing are required
  - The applicant has the right to present witnesses and evidence
  - The applicant has the right to legal argument
  - No ex-parti contacts with the applicant or opponents are allowed

### Adequacy of Water Supply for New Development

- Municipalities have long had broad authority to require adequate water supply for development, as a matter of zoning authority.
- C.R.S. 20-301, et seq. (2008) added additional standards for this review.
- C.R.S. 29-20-302 defines "adequate" in the context of water supply: a water supply that will be sufficient for build-out of the proposed development in terms of quality, quantity, dependability, and availability to provide a supply of water of the designated type that may include reasonable conservation measures and water demand management measures to account for hydrologic variability.
- C.R.S. 29-20-303 mandates that a local government shall not approve a development permit unless the applicant has demonstrated the proposed water supply will be adequate.
- This determination is made by the local government in its sole discretion.
- The local government has the discretion to determine the stage in the development permit approval process when it makes the determination: at pre-application, scheduling, preliminary plan, final plan or plat, building permit or certificate of occupancy.

### Home Rule and Land Use Control:

#### The 2008 Telluride Case

- The Colorado Supreme Court upheld Telluride’s condemnation of the "Valley Floor," adjacent to but outside of the Town, for open space and park purposes.
- The Town’s authority to acquire by condemnation trumped a conflicting statute.
- The Court relied on the home rule amendment to the Colorado Constitution at Article XX Sections 1 and 6.

### Annexation: Current Developments

- Railroad rights-of-way and are not “public rights of way, including streets and alleys,” meaning that they may be annexed to create enclaves under C.R.S. 31-12-106. Sinclair Marketing v. Commerce City, 225 P.3d 1239 (Colo.App.2009).
- Municipalities are now using a single petition and multiple ordinances to support flag pole annexations based on private ownership of the flag as a small fraction of the overall property annexed, and relying on state or county highways without the need for signature on the petition by the state or county governments.
- Increased use of these annexations triggers the requirement, added in 2001 that landowners adjacent to the “pole” be permitted to petition for annexation on the same conditions. C.R.S. 31-12 - 105(1)(E.3).

### Additional Resources

- The State of our Cities and Towns: CML; January 2010
- [www.apacolorado.org](http://www.apacolorado.org)