

# Land Use 101

A Practical Overview for New Municipal Attorneys

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McAskin

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# Who am I?



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# Who are you?



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# Resources

- *Colorado Land Planning and Development Law*, Donald L. Elliott, Managing Editor
- Colorado Municipal League (cml.org)
- Colorado Counties, Inc. (ccionline.org)
- American Planning Association (planning.org) / Planetizen (planetizen.com)
- Law of the Land, A blog on land use law and zoning (<https://lawoftheland.wordpress.com/>)



# What is Land Use?

... **Land use** typically includes

- (1) *the human placement or erection of a solid material on land;*
- (2) *the grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource;*
- (3) *the subdividing of land; and*
- (4) *the construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.*

- LAND USE, *Black's Law Dictionary* (12th ed. 2024)

# What is Land Use?

*... [Z]oning and subdivision control should make everyone's list of land use control law subtopics. ... **The uncertainty centers around how many related areas should be included.** § 1:2. Scope of this book, *Land Use Planning and Development Regulation Law* § 1:2 (3d ed.)*

*... in the context of the legal powers to regulate the use of land and the history of planning in North America, **the term [“land use”] is laden with numerous meanings.** -Planetizen  
(<https://www.planetizen.com/definition/land-use>)*



# The Scope of “Land Use” is HUGE.

- Annexation
- Private restrictive covenants
- Sign codes (on-premises / off-premises)
- Colorado Common Interest Ownership Act
- Takings, equal protection, first amendment, procedural and substantive due process
- Religious Land Use and Institutionalized Persons Act
- Fair Housing Act
- American with Disabilities Act
- Floodplain regulations
- Oil and Gas
- Telecommunications law
- Mining – Notification of Surface Development
- Affordable housing legislation
- Short-term rentals
- Federal, state, and local marijuana laws
- Historic / landmark preservation
- Design guidelines
- Laws re: mobile homes / manufactured housing



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# What does a Municipal Land Use Attorney's practice *mostly* look like?



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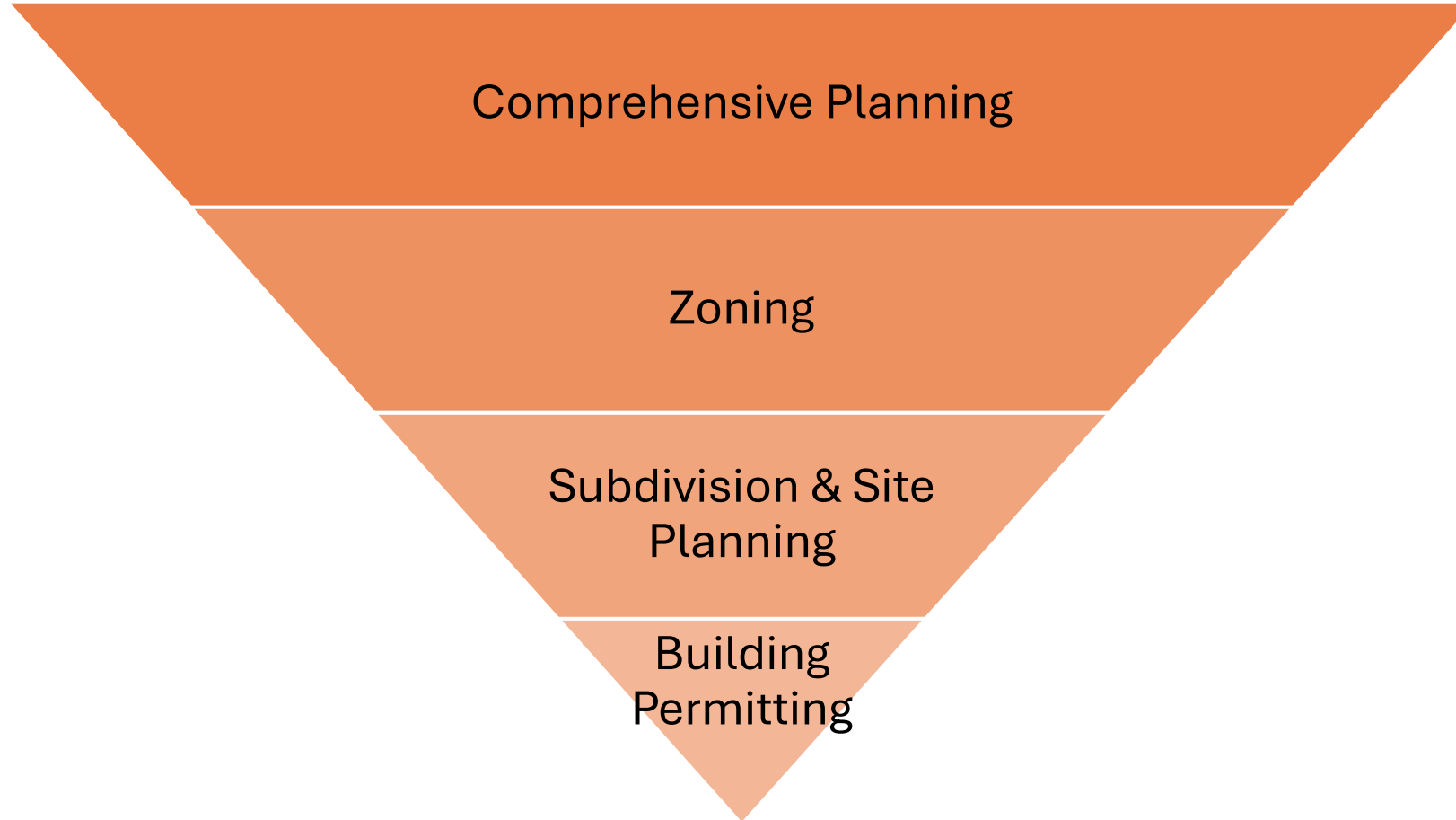
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# What are we going to [try] to cover?

- Land use planning and regulatory process
  - Comprehensive (Master) Planning
  - Zoning
  - Subdivision
  - Site Planning
- Sources of land use authority in Colorado
- Legislative v. quasi-judicial decision-making
- Constitutional requirements for land use decision-making

# Land use planning and regulatory process



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# Comprehensive Planning

*“Comprehensive plans are **visioning documents**. They seek to **access the state of a community at the time of the plan**, based on history and resources, and **project a future** based on community values and demographics.”*

-Dawn Jourdan and Erick J. Strauss, *Planning for Wicked Problems: A Planner's Guide to Land Use Law*, 2016.

# Comprehensive Planning

- Data collection, community surveys, interactive public gatherings with staff and consultants, open house/charettes (*think* - post-it notes on maps)
- Study sessions and meetings with planning commissions
- Public hearings before planning commissions and governing bodies
- **Goals, policies, and objectives** on variety of issues – not just land use.
- 10-, 20-, 30-year planning horizon

# Comprehensive Planning – *In Colorado*

- **General Purpose:** “... guiding and accomplishing coordinated [] and harmonious development ... which will, in accordance with present and future needs, best promote health, safety, order, convenience, prosperity, [] general welfare, [] efficiency and economy in the process of development ...” C.R.S. 31-23-207.
- Term interchangeable with “Master Plan”
- *Required* and *permissible* considerations and elements. CRS 31-23-206
  - **Land use only one element.**
- Planning commission and government body roles.
  - **Typically, PC recommends or approves followed by Governing Body ratification or approve.**

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-City of Westminster 2040  
Comprehensive Plan

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-Estes Forward Comprehensive Plan,  
December 2022

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# Comprehensive Planning – *In Colorado*

- Advisory in nature. **BUT** not really:

*“The master plan of a municipality is an **advisory document** to guide land development decisions; **however, the master plan or any part thereof may be made binding** by inclusion in the municipality’s zoning, platting, planned unit development, or other similar land development regulations ...” – C.R.S. 31-23-206.*

# Comprehensive Planning – *In Colorado*

- **How to make binding? / What does “inclusion in the municipality’s . . . land development regulations” look like?**
  - A proposed **rezoning** shall comply with the requirements of the Comprehensive Plan.
  - The **special use** shall be consistent with the Comprehensive Plan.
  - The **site plan** shall support the goals and objectives of the Comprehensive Plan.
  - The **preliminary plat** shall be in conformance with the goals, objectives, and policies of the Comprehensive Plan.

# Comprehensive Planning – *In Colorado*

- **Common issue:** What does it *mean* to comply, be consistent with, support, conform with a Comprehensive Plan?
  - The whole plan?
  - Future land use goals, policies, objectives and map?
  - OR goals, policies, and objectives for all elements of plan?
  - Some? A majority? A couple?
  - A couple goals and objectives in a big way?
  - A lot of goals and objectives in a small way?
  - What if comply with some but conflict with others?
- **Consider:** If Regulations are legislatively adopted by governing body after finding compliance with Comprehensive Plan and a development application complies with Regulations, must/should approving body find application complies with Comprehensive Plan?

# Comprehensive Planning – *In Colorado*

- **Tips:**

- When drafting approval criteria for development applications, municipal attorneys should think critically and confer with clients about whether to require compliance (conformance, consistency, support) with Comprehensive Plan.
  - Consider General Assembly’s invitation for municipalities to make a “part” of master plan binding, instead of the whole thing.
  - What goals, policies, and objectives might be relevant to each type of development application? Can we provide more clarity in approval criteria for applicants, municipal staff, and recommending and decision-making bodies?

# Zoning

## 1. Regulations (the “Text”)

- Implement vision, goals, policies, objectives of Comprehensive Plan
- Codified as part of / incorporated in municipal/town code - Zoning Code or part of Uniform Land Development Code
- Establish uniform use, dimensional, and other standards for each **zone district** in Regulations. (I.e., Wherever R-1 zone district mapped, same regulations apply.)
- Establish requirements, procedures, approval criteria for **development applications**

## 2. Official Zoning Map

- Zone districts shown on map.

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# Zoning

- **Use regulations**

- Use Categories – Residential, Commercial, Agricultural, Institutional, Industrial, Etc.
  - Specific Uses within each Use Category -
    - By-Right
    - With Limitations (e.g., liquor store shall be 1,000 feet from schools, use shall be enclosed, hours of operation, outdoor lighting, etc.)
    - By Special Review / Conditional Use
- Temporary uses (e.g., special events, garage sales, outdoor or seasonal sales)
- Accessory uses – common and customary; explicitly identified
  - Home occupations
  - Car wash to automobile service use
  - Conference center to hotel
  - Drive thru (bank / restaurant) ?
- Non-conforming uses – uses legally established under prior regulations and continually maintained may continue as-is.

# Zoning

- **Accessory structures**










- Fences
- Play structures / tree houses
- Garages / carports / pools
- Sheds
- Drive-thru?

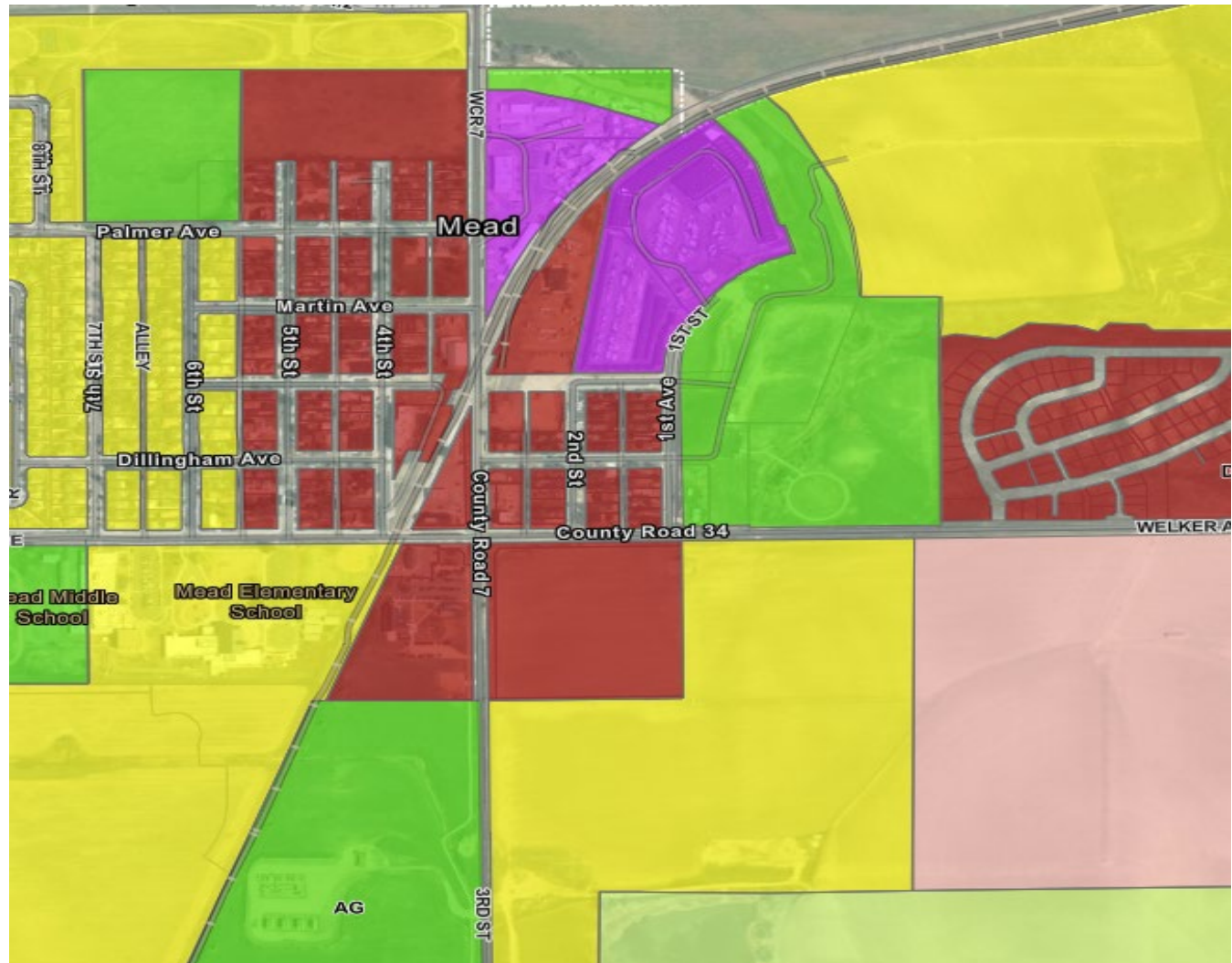
- **Dimensional standards**

- Height
- Step-backs
- Setbacks
- Lot coverage
- Floor area ratio (total building floor area to lot area)
- Bulk plane
- Density (e.g., max dwelling units/acre, max square footage)
- Building envelopes
- Building footprints
- Open space minimum
- Lot width / street frontage
- Lot size

# Zoning

## Mead Zoning

-  Agricultural
-  Downtown Mixed Use
-  General Commercial
-  Highway Commercial
-  Light Industrial
-  Residential Single Family - 1
-  Residential Single Family - 4
-  Residential Single Family - 8
-  Residential Multi Family - 8
-  Residential Multi Family - 14
-  Residential Single Family - Estate



Town of Mead Official Zoning  
Map (segment)

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# Zoning

Town of Mead Land  
Use Code (segment of  
use table), 16-3-40

A - Allowed by right  
C Conditional Use

Limited Use – those  
with a section  
reference in last  
column

Blank - prohibited

Use Category	Specific Use Type	Residential					Nonresidential				T	Specified Use Standard (Reference No.)
		RSF-E	RSF-1	RSF-4	RMF-8	RMF-14	DMU	HC	GC	LI	AG	
RESIDENTIAL												
Household Living	Accessory dwelling unit	A	A	C			A				A	
	Duplex				A	A	C	C				
	Manufactured housing park			C	C	A	C					
	Multi-family units				A	A	A	C	C			16-3 50(14)
	Rooming/boardings house				A	A	A					
	Single-family detached (include manufactured housing)	A	A	A	A	A	C				A	
	Townhomes				A	A	A	C	C			
	All other household living			A	A	A	A	C	C			
Group Living	Assisted living facility	C	C	C	C	C	C	C	C		C	<a href="#">16-3-50</a> (9)
	Large group living facility				C	C	C	C	C	C		
	Small group living facility	C	C	C	C	C	C	C	C		C	
	Treatment facility	C	C	C	C	C	C	C	C	C	C	
INSTITUTIONAL AND CIVIC												
Colleges & Vocational Schools	Colleges & universities				C	C	C	A	A	C		
	Vocational/technical/trade schools						C	A	A	A		
	All other educational institutions						C	C	C	C		
Community Service	Community facility	A	A	A	A	A	A	A	A		C	
	All other community services	C	C	C	C	C	C	A	A	C	C	
Cultural	Museums, art galleries						A	A	A	C	C	

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# Zoning

- **Regulations – Development Applications / Procedures**
  - **Application Types**
    - Use permit
    - Conditional Use permit
    - Variances
      - Relief from dimensional standards
      - Relief to allow unpermitted use – VERY UNCOMMON
    - Rezoning (i.e., amendment to the Official Zoning Map, but not the Zoning Code)
      - Landowner (different from legislative rezoning)
    - Site Plan / Site Improvement Plan
  - **Application requirements**
  - **Roles of staff, referral agencies, planning commission, board of adjustment, governing body**
  - **Public hearing or meeting requirements**
  - **Noticing requirements**
  - **Approval criteria**

# Zoning



Dividing municipality into separate zoning districts for separate land uses okayed by SCOTUS. -*Village of Euclid v. Amber Realty Co.*, 272 U.S. 365 (1926)]



# Site Planning

- **Regulations**

- Codified or otherwise incorporated into municipal code as part of Zoning Code or Uniform Land Development Code
- Application requirements
- Roles of staff, referral agencies, planning commission, governing body
- Approval criteria

- **Purposes**

- Ensure compliance with zoning use and dimensional standards and subdivision regulations
- Consistency with design guidelines/standards, if any

# Site Planning

- **Technical in Nature**
  - Prepared by land planning professionals, engineers, architects
  - Technical studies – adequacy of public infrastructure and services
- Construction plans must comply with site plans
- Site plans required before building permit
- If property not already subdivided, often contemporaneous with subdivision
- **Site Plan Agreements**

# Subdivision

- **Regulations**

- Codified or otherwise incorporated into municipal code; Subdivision Code; Part of Uniform Land Development Code
- Governs division of land into lots and tracts
- Application requirements
- Roles of staff, referral agencies, planning commission, governing body
- Approval criteria

- **Purposes**

- Facilitate sale and development of land
- Provide for public infrastructure to service lots
  - Dedication of rights-of-way to governing body
  - Identify easements for storm, water, sewer, and other utilities

# Subdivision

- **Types**

- Sketch, preliminary, final plats
- Minor subdivisions
- Replats
- Lot Line Modifications

- **Technical in Nature**

- Prepared by professional land surveyor
- Technical studies – adequacy of public infrastructure and services

- ***Tip:*** Closely review dedication and acceptance language.

- **Subdivision Improvement Agreement**

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# Colorado - Sources of Land Use Authority

- **Home rule cities and towns**

- Home Rule Charter – (see Colo. Const. Art. XX, Sec. 6)
- Statute
  - Statutes presumably apply to home rule jurisdictions unless statute says otherwise or charter or local law supersedes statute.\* –Colo. Const. Art. XX, Sec. 6; C.R.S. 31-1-102.
  - **Tips:**
    - Check if a statute defines “municipality”, “town”, “city”, “local government” etc. to see if home rule jurisdictions are expressly included.
    - Look out for statements of “statewide concern” in statutory provisions.
- Local code
  - Fleshes out Charter
  - Respective roles of managers, directors, planning commissions, boards of adjustment, historic/landmark preservation commissions, and governing bodies

# Colorado - Sources of Land Use Authority

- **Statutory cities and towns**

- Powers must be explicitly stated or implied by state statute

- **C.R.S. Title 31. Government—Municipal**

- Article 23 – Planning and Zoning (C.R.S. 31-23-101 to 31-23-316)**

- Part 1 – Plats of Cities and Towns**

- Part 2 – Planning Commission**

- Part 3 – Zoning**

- **Also:**

- Planned Unit Development Act of 1972, C.R.S. 24-67-101 et seq.

- Vested Property Rights, C.R.S. 24-68-106

- Local Government Land Use Control Enabling Act of 1974, C.R.S. 29-20-101 et seq. (“1034 powers”)



# Colorado - Sources of Land Use Authority

- **Statutory cities and towns**
  - Local code
    - Respective powers/duties of managers, directors, planning commissions, boards of adjustment, historic/landmark preservation commissions, and governing bodies.

# Colorado - Sources of Land Use Authority

- **Statutory cities and towns**

- **Part 2 of C.R.S. Title 31, Art. 23 – Planning Commission**

- Powers, duties, and make-up of Planning Commission
  - Includes duty to adopt “**master plan** for the physical development of the municipality” ... “subject to the approval of the governmental body” – C.R.S. 31-23-206
- “... applies to municipalities, **including home rule** ..., insofar as constitutionally permissible and **except** as limits are placed upon its application within the boundaries of home rule [jurisdictions] by the charter or ordinance [of home rule jurisdictions].” –C.R.S. 31-23-226

# Colorado - Sources of Land Use Authority

- **Statutory cities and towns**

- **Part 2 of C.R.S. Title 31, Art. 23 – Planning Commission**

- Governing body may assume power granted by Part 2 to Planning Commission.
- Governing body may delegate to Planning Commission or other municipal body powers/duties placed on governing body by Part 2.
- ***Take Home:*** MUST review Local Code to really figure out which body/person is responsible for what!

# Colorado - Sources of Land Use Authority

- **Statutory cities and towns**
  - **Part 3 of C.R.S. Title 31, Art. 23 – Zoning**
    - ***Governing body*** empowered ***to regulate***:
      - height, stories, and size of buildings and structures,
      - percentage of lot that may be occupied,
      - size of yards, courts, and other open spaces,
      - density,
      - height and location of trees and other vegetation,
      - location and use of buildings, structures, and land for trade, industry, residence, or other purposes.
      - flood prevention and control

–C.R.S. 31-23-301

# Colorado - Sources of Land Use Authority

- **Statutory cities and towns**

- **Part 3 of C.R.S. Title 31, Art. 23 – Zoning**

- **Governing body** may divide municipality into zone districts, and within districts may regulate erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. –C.R.S. 31-23-302
- **Governing body** may authorize Planned Unit Developments. –C.R.S. 31-23-313; C.R.S. 24-67-101, et seq.

# Colorado - Sources of Land Use Authority

- **Statutory cities and towns**

- **Part 3 of C.R.S. Title 31, Art. 23 – Zoning**

- Regulations shall be made “in accordance with a **comprehensive plan**” – C.R.S. 31-23-303
- Regulations shall be designed to:
  - lessen street congestion,
  - secure public safety,
  - promote health and general welfare,
  - provide adequate light and air,
  - prevent overcrowding,
  - promote energy conservation,
  - facilitate adequate public services.–C.R.S. 31-23-303

# Colorado - Sources of Land Use Authority

- **Statutory cities and towns**

- **Part 3 of C.R.S. Title 31, Art. 23 – Zoning**

- Governing body shall appoint a “**Zoning Commission**” to *make recommendations* on zoning regulations and districts. – C.R.S. 31-23-306.
  - “**Planning Commission**” established under Part 2 shall exercise powers of “Zoning Commission” granted under Part 3. -C.R.S. 31-23-211
- Regulations shall provide for variances by a **Board of Adjustment**. -C.R.S. 31-23-301; C.R.S. 31-23-307.
- **Board of Adjustment** shall hear appeals from administrative zoning decisions. –C.R.S. 31-23-307.

# Planned Unit Developments

- Zone district with customized zoning regulations set forth in PUD plan.
- Application to rezone from straight zone district (Residential, Commercial, Industrial) to a PUD with the PUD plan
- Official Zoning Map will show “PUD” – with ordinance no. referenced.
- No two PUD zone districts alike.
- Statutory purposes (among others)
  - Innovations in development and renewal
  - Greater variety in type, design, and layout of buildings
  - Conservation and more efficient use of open space ancillary to buildings
  - More efficient use of land and services
  - Lessen burden of traffic
  - Encourage best features of modern design
- Authority to adopt PUD regulations –*C.R.S. 31-23-313; C.R.S. 24-67-101, et seq.*
- Apply to home rule unless superseded by charter or local law. –*C.R.S. 24-67-107*



# Vested Rights

- Generally: A vested right protects owner from imposition of new regulations after owner has reasonably relied to their detriment, in good faith, on earlier development approval.
- Two Types in Colorado
  1. Common Law – Action (more than spending money) in reliance of building permit.
  2. Vested Property Rights Act, C.R.S. 24-68-106 – Right to develop per “**site specific development**” (SSDP)
    - Municipality decides which approvals are SSDPs (e.g., PUD plan, subdivision plat, development agreement)
    - If statutory and local procedures following, 3-year vesting unless longer period approved by governing body in a development agreement.
    - **Tip/Note:** Magic language and specific noticing. **Not as common as you’d think!**
- VPRA purpose: Ensure reasonable certainty, stability, and fairness in land use process to stimulate economic growth, secure owners’ reasonable-investment backed expectations, foster public-private cooperation in land use. –C.R.S. 24-68-101 (purpose is matter of “statewide concern”).
- VPRA applies to home rule jurisdictions. –C.R.S. 24-68-102(2) (definition of “local government”)
- **Tip:** BE SPECIFIC in SSDP regarding what terms are vested.

# Constitutional Requirements for Land Use Decision-Making

1. Due Process
2. Takings
3. First Amendment – e.g., Signs (see prior session); also, assembly.

# Constitutional Requirements for Land Use Decision-Making

## *Due Process*

**5<sup>th</sup> Amendment, U.S. Constitution:** No person shall be deprived of life, liberty, or property without due process of law.

**14<sup>th</sup> Amendment, U.S. Constitution:** Nor shall any State deprive any person of life, liberty, or property without due process of law.

**Art. II, Section 25, Colo. Constitution:** No person shall be deprived of life, liberty or property without due process of law.

○Also embodied in **C.R.S. 29-20-201 et seq.** (Regulatory Impairment of Property Rights).

# What Process is *Due* in Land Use decisions?

## ➤ Legislative Decisions v. Quasi-Judicial Decisions

- Determines due process requirements.

## ➤ Legislative matters:

- Governing body makes all legislative *decisions*.
- Planning commission sometimes provides a *recommendation*.
- Judgments re: community interest
- Affect individual persons only in the abstract
- Prospective in nature

## ○ EXAMPLES:

- ❖ Text amendments to local code
- ❖ Comprehensive Plan adoption and updates
- ❖ Large-scale or City-wide rezonings (i.e., amendments to Official Zoning Map)

# What Process is *Due* in Land Use decisions?

## ➤ Quasi-judicial matters:

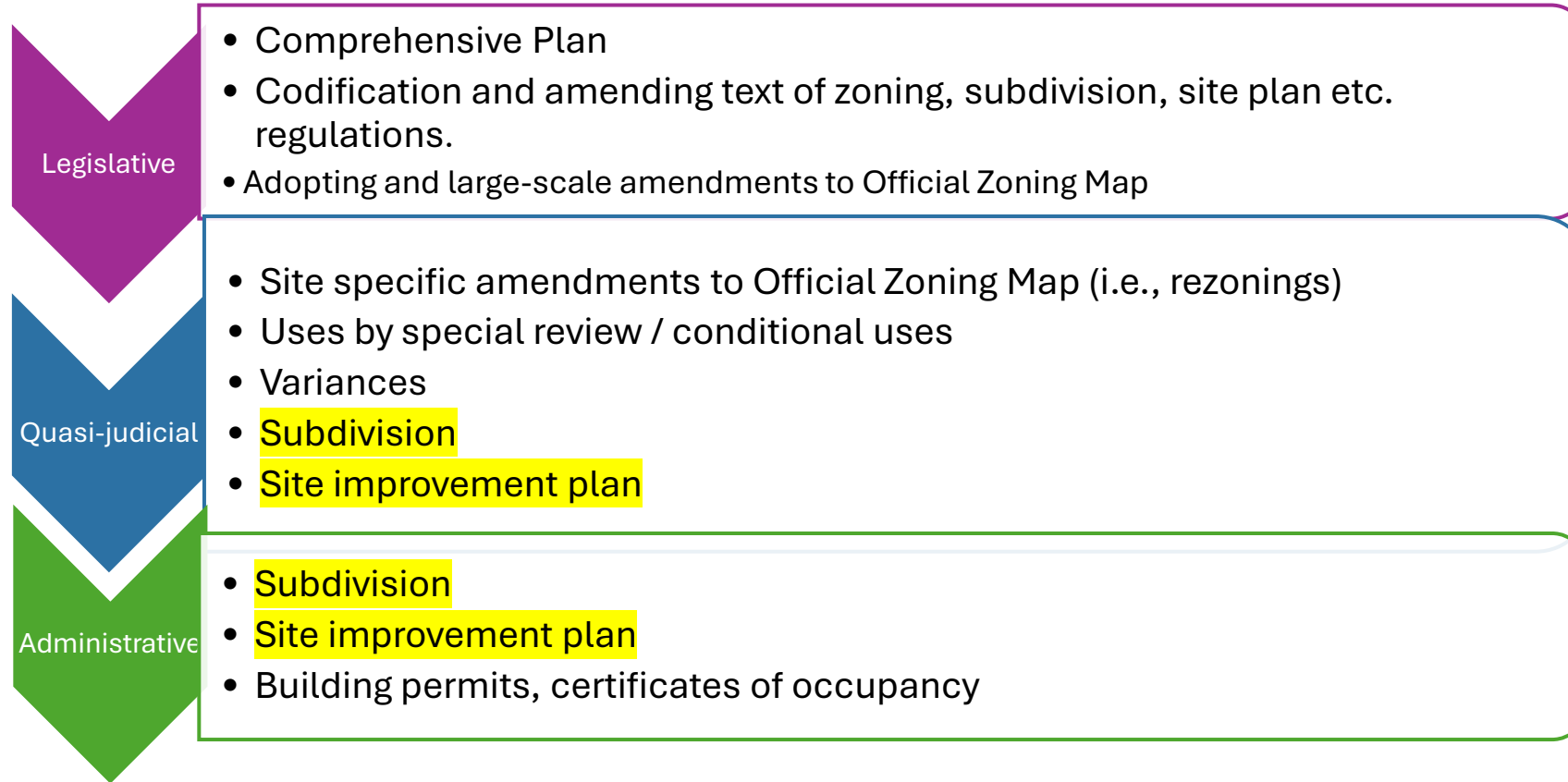
- *Cherry Hills Resort Dev. Co. v. City of Cherry Hills Village*, 757 P.2d 622 (Colo. 1988), appeal after remand, 790 P.2d 827 (Colo. 1990):
  - Focus on nature of decision and process to reach decision.
  - Reasonable certainty an action is quasi-judicial if decision:
    1. Likely to affect specific individuals; and
    2. Reached by applying pre-existing standards to the facts of a specific case.
- EXAMPLES:
  - ❖ Site-specific rezonings
  - ❖ PUDs
  - ❖ Conditional uses / Uses by special review
  - ❖ Variances
  - ❖ ***Depending on jurisdiction's process:*** Subdivision and site planning

# What Process is *Due* in Land Use decisions?

## ➤ Quasi-judicial matters:

- Decisionmakers are like *judges*
- Parties have the right to present witnesses and evidence.
- Applicant has burden of proof.
- Applicant has right of rebuttal.
- Rules of evidence are relaxed and informal.
- **Decisions based only on evidence presented during hearing.**
  
- **RULES OF CONDUCT for decisionmakers and recommending bodies:**
  1. Avoid *ex parte* contacts
  2. Be impartial, fair, unbiased and avoid prejudgment
  3. Avoid conflicts of interest

# What Process is *Due* in Land Use decisions?



# Constitutional Requirements for Land Use Decision-Making

## *Takings – Judicially recognized categories*

1. Physical takings – per se

### *Regulatory:*

2. All economically beneficial use – per se
3. Less than all / balancing test
  - Economic effect on landowner
  - Extent of interference with reasonable investment-backed expectations
  - Character of government action
4. Exaction as condition of land use approval



# Regulatory Impairment of Property Rights Act, C.R.S. 29-20-201, et seq.

(1) In imposing conditions upon the granting of land-use approvals, no local government shall require an owner ... **to dedicate** real property to the public, **or pay money or provide services** to a public entity in an amount that is determined **on an individual and discretionary basis**, unless there is an **essential nexus** between the dedication or payment and a legitimate local government interest, and the dedication or payment is **roughly proportional** .... This section shall not apply to any legislatively formulated assessment, fee, or charge that is imposed on a broad class of property owners by a local government.

...

(2) No local government shall impose any discretionary condition upon a land-use approval unless the condition **is based upon duly adopted standards that are sufficiently specific** to ensure that the condition is imposed in a rational and consistent manner ...

-C.R.S. 29-20-203

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# What are “sufficiently specific standards”?

*-Bethlehem Evangelical Lutheran Church v. City of Lakewood, 626 P.2d 668 (1981)  
(Predates RIPRA)*

*-Quaker Court Limited Liability Co. v. Board of County Commissioners of the  
County of Jefferson, 109 P.3d 1027 (Colo. App. 2004)*

*-Beaver Meadows v. Board of County Commissioners of Larimer County, 709 P.2d  
928 (1985)*

**Tip:** If local code does not have “sufficiently specific standards” to put applicant on notice of possible condition, and decisionmaker can’t find approval criteria met without condition – request applicant’s **voluntary consent to condition on the record**. If applicant does not consent, deny.

# Questions?



*-This image was generated by ChatGPT.*

# Thank you!

Text for closing slide



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