

## Staff Report – Code Text Amendment

### April 3, 2012 Planning & Zoning Commission Meeting

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**To** The Avon Planning and Zoning Commission  
**From** Jared Barnes, Planner I  
**Date** March 30, 2012  
**RE:** Resolution 12-03, A Resolution Recommending Approval Of Amendments To Section 7.04.100, Fees, Avon Municipal Code, And Amending The Development Review Fee Schedule To Allow The Town Council To Adopt Flat Fees For Certain Application Types

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#### Summary

Town Staff is presenting a modification to Section 7.04.100, *Fees*, of the Avon Municipal Code as well as an updated Development Review Application Fee Schedule. The combination of these two modifications will allow the Town to set certain application types (i.e. Minor Design and Development Plan, Sign Design, Sign Programs, Railroad Bridge Banners, Alternative Equivalent Compliance, etc.) as flat fees and others will remain pass-through accounts with billable staff time. This code text amendment is a required public hearing and staff noticed this meeting in the Vail Daily on March 9<sup>th</sup>, 2012. The Public Hearing on March 20<sup>th</sup>, 2012 was continued to the April 3<sup>rd</sup>, 2012 meeting.

#### Update

The Planning and Zoning Commission (PZC) held a public hearing at their March 20<sup>th</sup>, 2012 meeting. The recommended code text was discussed and was sufficient for the PZC, but much of the discussion centered on the updated Development Review Fee Schedule. The PZC requested that several fee categories be revised or added, such as 1041 Permits, Railroad Bridge Banners, and Work Sessions. Staff has reviewed the request and modified the proposed Fee Schedule (“**Exhibit B to PZC Resolution 12-03**”, **Attachment A**) to include 1041 Permits and updated the language for the Railroad Bridge Banners.

With regard to the Work Session fee category, Staff recommends that a flat fee be required, but allow the Director of Community Development to waive the fee for a single instance only on specific work session requests that are minor in nature. This direction will be consistent with the direction Staff has received from the Town Council regarding Work Sessions as well as the current execution of Work Session Reviews. Eric Heil, Town Attorney, has provided input on Work Session reviews (**Attachment B**) and expresses concern over potential legal issues related to pre-judgment of an applicant during these reviews. He does recognize the importance of work session reviews when potential projects are utilizing town property for improvements.

The Town has yet to charge applicants additional costs associated with special meetings. The Staff time required for these meetings are billed against the application deposit regularly, but it does not account for commissioner time. In practice these special meetings have been few and far between. Staff recommends that special meetings should be only scheduled if the Director of Community Development and PZC chairman agree that the application addresses a pressing matter that cannot wait until the next regularly scheduled meeting. Furthermore, special meetings should only be scheduled if enough members can attend the meeting to have a quorum.

#### Background

The adoption of Title 7 of the Avon Municipal Code included changing how the Town of Avon collected fees and billed for Staff review time. Prior to the adoption of Title 7, all fees charged for Development Review Applications were considered flat fees that did not change depending on the amount of staff review time. During the adoption of Title 7, the Planning and Zoning Commission (PZC) and Town Council (TC) discussed changing the process to require development review applications to “pay their way”. This was in response to some applications consuming a large amount of staff time beyond the amount of time anticipated in the development review fee. Title 7, along with the adoption of the Development Review Fee Schedule (**Attachment C**), requires all development applications to be treated

as pass-through accounts whereby the applicant is liable for all costs incurred by the Town associated with the review. Additional fees are requested if the initial fee is not sufficient to cover the cost of the application review. Likewise, if the billable review time is less than the application fee, the applicant is entitled to a reimbursement.

In December 2011, Town Staff presented a summary of Fees collected during the 2011 calendar year (Table 1) to the Community Development Subcommittee (CDS). The CDS discussed the amount of staff time associated with processing refunds and questioned the appropriateness of the new process for smaller, less complex development review applications. In January, 2012, Town Staff presented the CDS decision to the Town Council and requested that the Town Council initiate a Code Text Amendment to allow for certain application types to revert back to flat fees.

### Discussion

Town Staff presented Table 1 to the CDS and Town Council, showing the total number of planning and subdivision applications received in 2011. Table 1 includes the initial fee accepted with the application, the average final fee for each type of application, and the number of refunds and additional fees required from each type of application.

**Table 1 Planning and Subdivision Fee Intake and Refunds -2011**

PLANNING AND SUBDIVISION FEES					
	Number of Applications	Initial Fee	Average Final Fee	Application Refunds	Additional Fees Required
Major Design & Development Plan	2	\$1,100	\$1,360	1	1
Minor Design & Development Plan	32	\$75	\$77	11	9
Alternative Equivalent Compliance	3	\$250	\$144	3	0
PUD	1	\$150	\$403	0	1
Sign Design	11	\$100	\$86	6	1
Special Review Use	7	\$500	\$216	7	0
1041 Permit	1	\$10,000	\$1,291	1	0
Subdivision	1	\$675	\$497	1	0

The Community Development Subcommittee reviewed the information provided in Table 1 and concluded that the average time associated with the process of refunding overpayments and requesting additional fees on smaller projects did not justify the amount of additional fees refunded or collected.

Attached to this memo is Resolution 12-03 (Attachment A), which outlines the proposed changes to section 7.04.100, *Fees*. The proposed changes expand the sentence that requires pass-through accounts for all development review applications to allow the Town Council, through a resolution, to adopt flat fees. In addition to re-classifying certain application types, Staff also took this opportunity to clean up redundancies in the fee schedule and simplify the information conveyed to the public. For example, the currently adopted fee schedule splits Major Development Plan and Design Review into two separate fee categories. In practice, Staff always requires both of these fees for any Major Design and Development Plan application. Simplifying this information will assist the public in understanding the required fee at the time of submission.

The proposed amendments will promote the goals of Title 7, Avon Municipal Code (Development Code), by creating a more streamlined process for smaller and less complex project types. Furthermore, the proposed amendments will directly respond to changed conditions and create less negative feedback for smaller and less complex project types. Staff has determined that the proposed amendments comply with the Review Criteria for Code Text Amendments as set forth in §7.16.040(c), Avon Municipal Code.

### Review Criteria

#### §7.16.040(c), Code Text Amendment Review Criteria

The PZC and Town Council shall use the following review criteria as the basis for recommendations and decisions on applications to amend the text of the Development Code:

- (1) The text amendment promotes the health, safety and general welfare of the Avon Community;

- (2) The text amendment promotes or implements the goals and policies of the Avon Comprehensive Plan;
- (3) The text amendment promotes or implements the purposes stated in this Development Code; or
- (4) The text amendment is necessary or desirable to respond to changed conditions, new planning concepts or other social or economic conditions.

**Recommendation**

Staff recommends that the PZC approve Resolution 12-03, A Resolution Recommending Approval Of Amendments To Section 7.04.100, Fees, Avon Municipal Code; and, Amending The Development Review Fee Schedule To Allow The Town Council To Adopt Flat Fees For Certain Application Types.

**Attachments:**

- A. Resolution 12-03, A Resolution Recommending Approval Of Amendments To Section 7.04.100, Fees, Of The Avon Municipal Code And Amending The Development Review Fee Schedule To Allow The Town Council To Adopt Flat Fees For Certain Application Types.
- B. Email from Eric Heil, Town Attorney, regarding Work Session Reviews
- C. Approved Development Review Fee Schedule

**TOWN OF AVON, COLORADO  
PLANNING COMMISSION RESOLUTION 12-03  
SERIES OF 2012**

**A RESOLUTION RECOMMENDING APPROVAL OF AMENDMENTS TO SECTION  
7.04.100, FEES, AVON MUNICIPAL CODE; AND, AMENDING THE DEVELOPMENT  
REVIEW FEE SCHEDULE TO ALLOW THE TOWN COUNCIL TO ADOPT FLAT  
FEES FOR CERTAIN APPLICATION TYPES**

**WHEREAS**, the Avon Municipal Code was amended to require all development applications to be treated as pass-through accounts whereby the Applicant shall be liable for all costs of review incurred by the Town; and

**WHEREAS**, the Avon Town Council adopted the Fee Schedule for Zoning, Subdivision, Design and Development Review Applications through Resolution 10-34 on December 14, 2010; and,

**WHEREAS**, the Avon Community Development Subcommittee and Avon Town Council determined that certain development applications would be better suited as a flat fee, thus reducing the amount of staff time required to process payments and refunds; and

**WHEREAS**, the Town Council initiated an amendment to the text of Title 7 of the *Avon Municipal Code* in accordance with Section 7.16.040, Code Text Amendment, Avon Municipal Code; and

**WHEREAS**, the Planning and Zoning Commission of the Town of Avon held public hearings on March 20, 2012 and April 3, 2012, after posting notice of such hearing in accordance with the requirements of the Avon Municipal Code, and considered all comments provided before making a recommendation to the Town Council; and

**WHEREAS**, it is the Planning and Zoning Commission's opinion that the health, safety and welfare of the citizens of the Town of Avon would be enhanced and promoted by the adoption of the amendments to Section 7.04.100, *Fees*, of the *Avon Municipal Code*.

**NOW THEREFORE, BE IT RESOLVED**, that the Planning and Zoning Commission hereby recommends that the Town Council of the Town of Avon approve the attached amendments ("Exhibit A to Resolution 12-03") to Section 7.04.100, *Fees*, of the Avon Municipal Code; and, ("Exhibit B to Resolution 12-03") amendments to the Development Review Fee Schedule, with the following findings:

(1) The changes to Section 7.04.100, *Fees*, of the Avon Municipal Code comply with the criteria set forth in Section 7.16.040(c) of the Avon Municipal Code; and,

(2) The Planning and Zoning Commission have determined that certain development applications should be processed as flat fees to reduce the amount of staff time required to process the payments and refunds.

**ACCEPTED, APPROVED AND ADOPTED THIS \_\_\_\_\_ APRIL, 2012**

**AVON PLANNING AND ZONING COMMISSION**

**Signed:**

**Attest:**

\_\_\_\_\_  
Chris Green, Chair

\_\_\_\_\_  
Scott Prince, Secretary

**“Exhibit A to PZC Resolution 12-03”**

**7.04.100 Fees**

(a) **Fees.** Reasonable fees sufficient to cover the costs of administration, peer review by professionals qualified in fields relevant to development applications, inspection, publication of notice and similar matters will be charged to applicants for all development applications. The Town Council may adopt, amend and update a schedule of fees by resolution. The Director may require additional fees when deemed necessary and reasonable based on the nature and character of the review required or where unusual issues are presented which may require additional review.

(b) **Pass Through Accounts.** All development applications shall be treated as pass-through accounts, unless otherwise stated in the schedule of fees adopted by the Town Council through a resolution, whereby the Applicant shall be liable for all costs of review incurred by the Town. Additional review fees may be requested if the initial amount designated in the Fee Schedule is not sufficient for the cost of application review. Upon request by the Applicant, the Town shall provide an estimate of the cost for review of a development application. The Director may withhold processing and review of a development application where the Applicant has not provided sufficient fees to continue or complete the application review. The Town shall return the balance of any unused application review fees when the application process is complete.

(c) **Payment In-Full Required.** All development applications shall be required to pay the Town in full for all costs incurred for the review of a development application. Payment in full to the Town of the costs incurred for development application review shall be a condition to each and every development application. The failure to pay the Town in full for the costs incurred for development application review within thirty-five (35) days of final approval shall render any such approval null and void. The Town Council may waive this requirement, reduce fees, or extend the time period for payment.

(d) **Interest on Delinquent Fees.** Development application review fees and charges which are not paid within thirty (30) days of sending an invoice shall be deemed to be past due and shall bear interest at the rate and according to the terms set forth in Chapter 3.32.

(e) **Lien for Delinquent Fees.** All delinquent development application review fees and charges along with such interest that has accrued thereon shall be subject to a lien on the property which the development application concerned and all such delinquent charges may be certified to the Treasurer of Eagle County, Colorado and may be collected and paid over to the Town of Avon by the Treasurer of Eagle County, Colorado in the same manner as taxes are as authorized by Title 31 of the Colorado Revised Statutes.

**“Exhibit B to PZC Resolution 12-03”**

**Development Review Application Fees**

<b>TYPE OF REVIEW</b>	<b>FLAT FEE</b>
<b>Alternative Equivalent Compliance</b>	\$250
<b>Extensions to Final Design &amp; Development Plans</b>	½ of Design & Development Plan Review Fees
<b>Individual Sign</b>	\$100.00
<b>Master Sign Program (MSP) or MSP Amendment</b>	\$300.00
<b>Minor Design &amp; Development Plan</b>	
Residential	\$75.00
Mixed Use/Other	\$250.00
<b>Pre-Application Review</b>	No Charge
<b>Railroad Bridge Banner Review and Installation</b>	\$100
<b>Work Session</b>	\$250, but may be waived at the discretion of the Director of Community Development
<b>TYPE OF REVIEW</b>	<b>INITIAL DEPOSIT FEE</b>
<b>Planning &amp; Zoning Fees</b>	
<b>1041 Permit</b>	\$10,000.00
<b>Annexation</b>	\$3,500.00
<b>Appeals</b>	
Heard by PZC	\$250.00
Heard by Council	\$250.00 + \$50.00 to Town Clerk
<b>Code Text Amendment</b>	\$3,500.00
<b>Comprehensive Plan Amendment</b>	\$3,000.00
<b>Location, Character and Extent Review</b>	\$250
<b>Major Design &amp; Development Plan Review</b>	
<i><b>Residential</b></i>	
1-3 Dwelling Units (DU)	\$700.00
4-9 DU	\$1,100.00
10-20 DU	\$1,600.00
21-40 DU	\$2,300.00
41-60 DU	\$3,300.00
61-100 DU	\$4,500.00
100 + DU	\$7,000.00
<i><b>Mixed Use, Commercial, Industrial</b></i>	
Up to 1,000 Sq. Ft. Gross Floor Area	\$925.00
1,000-2,499 Sq. Ft. Gross Floor Area	\$1,300.00
2,500-4,599 Sq. Ft. Gross Floor Area	\$1,500.00
5,000 – 9,999 Sq. Ft. Gross Floor Area	\$2,000.00
10,000 – 19,999 Sq. Ft. Gross Floor Area	\$3,000.00
20,000 – 49,999 Sq. Ft. Gross Floor Area	\$4,500.00
Over 50,000 Sq. Ft. Gross Floor Area	\$6,500.00
<b>Planned Unit Development (PUD)</b>	
1-4 Dwelling Unit (DU) Residential Only	\$1,000.00
5-50 DU Residential Only	\$2,000.00
50+ DU Residential Only	\$2,000.00 Base Fee + \$15.00 per DU
Mixed Use to 50 DU	\$2,000.00
Mixed Use over 50 DU	\$2,000.00 Base Fee + \$15.00 per DU
Minor Change to Preliminary PUD	\$150
Minor Amendment to Final PUD	\$150
<b>Rezoning</b>	\$2,000.00

<b>Right-of-Way Vacation</b>	\$250
<b>Special Review Use</b>	
Residential	\$250.00
Commercial/Industrial	\$500.00
<b>Temporary Use</b>	\$100.00
<b>Variance</b>	\$500.00
<b>Vested Property Rights</b>	Billable Hourly Rate by Town Attorney
<b>SUBDIVISION FEES</b>	
<b>Administrative Subdivision</b>	
Condominium & Timeshare Subdivision	\$500.00
Technical Correction	\$500.00
Lot Line Adjustment	\$500.00
<b>Major Subdivision</b>	
<i><b>Preliminary Plan</b></i>	
<b>Land Subdivision</b>	
10 Lots or Less	\$675 + \$67.50 per Lot
Over 10 Lots	\$1,350 + \$35.00 per each Lot over 10
<b>Condominium/Townhouse Subdivision</b>	
5- 10 Units	\$675 + \$67.50 per DU
Over 10 Units	\$1,350.00 + \$10.00 per each DU over 10
<i><b>Final Plat</b></i>	
<b>Land Subdivision</b>	
5-10 Lots	\$675 + \$67.50 per Lot
Over 10 Lots	\$1,350 + \$35.00 per each Lot over 10
<b>Condominium/Townhouse Subdivision</b>	
5- 10 Units or Less	\$675 + \$67.50 per DU
Over 10 Units	\$1,350.00 + \$15.00 per each DU over 10
<b>Minor Subdivision</b>	\$675.00
<b>Subdivision Exemption</b>	\$500.00
<b>STAFF HOURLY RATES</b>	
Director and Town Engineer	\$79.00/hour
Senior Planner/Project Engineer	\$63.00/hour
Planner II/Engineer II	\$57.00/hour
Planner I/ Engineer I	\$53.00/hour
GIS Analyst	\$53.00.hour
Town Attorney	\$240.00/hour



**Jared Barnes**

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**From:** Eric Heil Email  
**Sent:** Thursday, March 29, 2012 3:49 PM  
**To:** Jared Barnes; Eric Heil  
**Cc:** Matt Pielsticker  
**Subject:** RE: Fees paragraph

Jared and Matt, you asked for me to provide some comments from a legal perspective concerning work sessions and potentially establishing fees for conducting work sessions.

Conducting work sessions with a prospective applicant has the potential to raise legal issues such as bias, pre-judgment of an application and other challenges to due process rights of interested parties with standing. Specifically, making statements about one's support or non-support of a potential application can lead to claims of bias and pre-judgment. Also, the general public and neighboring property owners may have criticisms of the process if statements are made in favor of an application prior to the scheduling of a public hearing. In addition, expressing support for a project at a work session, then changing one's position to non-support can lead to confusion and criticism by an applicant who may feel misled. For these reasons, I do not recommend using work sessions for applicants to "test the waters" for the applications prior to a submittal.

On the other hand, I recognize that work sessions can be valuable for situations which do not directly implicate review of an application or elicit comments on the merits of an application. Specifically, work sessions can be valuable for complex development applications when the applicant has questions concerning the type and scope of required studies and other application submittal materials. Also, work sessions can be valuable when a property owner seeks a better general understanding of community goals and the comprehensive plans without presenting a specific development application. Work sessions can also be productive and appropriate where unusual situations arise, such as the Wyndam's proposal to use, development and encroach upon portions of Town right-of-way.

Please let me know if I can be of any further assistance on this matter.

Thank you, Eric

Eric J. Heil, Esq., A.I.C.P.

**HEIL LAW**

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**From:** Jared Barnes [<mailto:jbarnes@avon.org>]

**Sent:** Thursday, March 29, 2012 3:16 PM

## Development Review Application Fees

TYPE OF REVIEW	INITIAL APPLICATION FEE
<b>Pre-Application Review</b>	No Charge
<b>Comprehensive Plan Amendment</b>	\$3,000.00
<b>Code Text Amendment</b>	\$3,500.00
<b>Rezoning</b>	\$2,000.00
<b>Planned Unit Development (PUD)</b>	
1-4 Dwelling Unit (DU) Residential Only	\$1,000.00
5-50 DU Residential Only	\$2,000.00
50+ DU Residential Only	\$2,000.00 Base Fee + \$15.00 per DU
Mixed Use to 50 DU	\$2,000.00
Mixed Use over 50 DU	\$2,000.00 Base Fee + \$15.00 per DU
<b>Minor Change to Preliminary PUD</b>	<b>\$150</b>
<b>Minor Amendment to Final PUD</b>	<b>\$150</b>
<b>Special Review Use</b>	
Residential	\$200.00
Commercial/Industrial	\$500.00
<b>Variance</b>	\$500.00
<b>Alternative Equivalent Compliance</b>	<b>\$250</b>
<b>Right-of-Way Vacation</b>	<b>\$250</b>
<b>Vested Property Rights</b>	<b>Billable Hourly Rate by Town Attorney</b>
<b>Location, Character and Extent Review</b>	<b>\$250</b>
<b>Appeals</b>	
Heard by PZC	\$250.00
Heard by Council \$	250.00 + \$50.00 to Town Clerk
<b>Annexation</b>	\$3,500.00
<b>Minor Development Plan</b>	
Residential	\$75.00
Mixed Use/Other	\$250.00
<b>Design Review</b>	
<b>Residential</b>	
1-3 Dwelling Units (DU)	\$300.00
4-9 DU	\$500.00
10-20 DU	\$700.00
21-40 DU	\$1,000.00
41-60 DU	\$1,400.00
61-100 DU	\$1,800.00
100 + DU	\$2,500.00
<b>Mixed Use, Commercial, Industrial</b>	
Up to 1,000 Sq Ft Gross Floor Area	\$425.00
1,000-2,499 Sq Ft Gross Floor Area	\$500.00
2,500-4,599 Sq Ft Gross Floor Area	\$500.00
5,000 – 9,999 Sq Ft Gross Floor Area	\$500.00
10,000 – 19,999 Sq Ft Gross Floor Area	\$1,000.00
20,000 – 49,999 Sq Ft Gross Floor Area	\$1,500.00
Over 50,000 Sq Ft Gross Floor Area	\$2,500.00
<b>Major Development Plan</b>	
<b>Residential</b>	
1-3 Dwelling Units (DU)	\$400.00
4-9 DU	\$600.00
10-20 DU	\$900.00

TYPE OF REVIEW	INITIAL APPLICATION FEE
21-40 DU	\$1,300.00
41-60 DU	\$1,900.00
61-100 DU	\$2,700.00
100 + DU	\$4,500.00
<b>Mixed Use, Commercial or Industrial</b>	
Up to 1,000 Sq Ft Gross Floor Area	\$500.00
1,000-2,499 Sq Ft Gross Floor Area	\$800.00
2,500-4,599 Sq Ft Gross Floor Area	\$1,000.00
5,000 – 9,999 Sq Ft Gross Floor Area	\$1,500.00
10,000 – 19,999 Sq Ft Gross Floor Area	\$2,000.00
20,000 – 49,999 Sq Ft Gross Floor Area	\$3,000.00
Over 50,000 Sq Ft Gross Floor Area	\$4,000.00
<b>Extensions to Final Design and Development Plans</b>	One-half of Plan Review and Design Review Fees
<b>SUBDIVISION FEES</b>	
<b>Minor Subdivision</b>	\$675.00
<b>Major Subdivision</b>	
Preliminary Plan	
<b>Land Subdivision</b>	
10 Lots or Less	\$675 + \$67.50 per Lot
Over 10 Lots	\$1,350 + \$35.00 per each Lot over 10
<b>Condominium/Townhouse Subdivision</b>	
5- 10 Units	\$675 + \$67.50 per DU
Over 10 Units	\$1,350.00 + \$10.00 per each DU over 10
Final Plat	
<b>Land Subdivision</b>	
5-10 Lots	\$675 + \$67.50 per Lot
Over 10 Lots	\$1,350 + \$35.00 per each Lot over 10
<b>Condominium/Townhouse Subdivision</b>	
5- 10 Units or Less	\$675 + \$67.50 per DU
Over 10 Units	\$1,350.00 + \$15.00 per each DU over 10
<b>Administrative Subdivision</b>	
Condominium & Timeshare Subdivision	\$500.00
Technical Correction	\$500.00
<b>Lot Line Adjustment</b>	<b>\$500.00</b>
<b>Subdivision Exemption</b>	\$500.00
<b>SIGN FEES</b>	
Individual Sign	\$100.00
Master Sign Program (MSP)	\$300.00
Master Sign Program Amendment	\$300.00
<b>STAFF HOURLY RATES:</b>	
Director and Town Engineer	\$79.00/hour
Senior Planner/Project Engineer	\$63.00/hour
Planner II/Engineer II	\$57.00/hour
Planner I/ Engineer I	\$53.00/hour
GIS Analyst	\$53.00.hour
Town Attorney	\$240.00/hour