



Town of Avon Planning & Zoning Commission
Meeting Agenda

Tuesday, June 3 2014

Avon Town Council Chambers

Meetings are Open to the Public

Avon Municipal Building – One Lake Street

- I. Call to Order – 5:00pm
- II. Roll Call
- III. Swearing in of David Baum
- IV. Appointment of Chair, Vice-Chair
- V. Additions & Amendments to the Agenda
- VI. Work Session with Town Attorney and Town Manager
Description: Training session and case study review with Town Staff.
- VII. Consent Agenda
 - Meeting Minutes from: May 20, 2014
- VIII. Other Business
 - a) Recent Staff Approvals:
 1. MNR14015 Lot 25, Block 2, Wildridge- June Creek Corner duplex units: modifications to previously approved plans to include removing glazing from garage doors; lowering exterior hip roof at entry; adding one side window; reducing one window size at side; using “Teak 730” wood trim at windows and garage only.
- IX. Adjourn.



Staff Memorandum

TO: Town of Avon Planning and Zoning Commission
FROM: Matt Pielsticker, AICP, Planning Manager
DATE: June 3, 1014 Regular Meeting
RE: Work Session

Summary

The Town Attorney will be leading a training session at your June 3, 2014 meeting. This is intended to be both a thorough refresher to continuing members of PZC, and also a great opportunity for newer members to become familiar with facets of the Commissioner role. The session will cover fundamental aspects of the Commissioner role (open meetings law, conflicts of interest, rules of conduct, etc.). Following the training refresher we will explore recent case studies and sort through upcoming work plan elements for your feedback.

Desired Outcomes

- PZC members become acquainted or reacquainted with legal powers, open meetings law, conflicts of interest, and rules of conduct.
- Roles and responsibilities for 1) Staff, 2) property owners, and 3) PZC members will be better defined.
- Staff will be able to produce schedules and a roadmap for upcoming special project work.
- June 24, 2014 “hot topics” that PZC would like to discuss with Council will be provided to Staff for review by Council in advance of the joint session.

Tentative Agenda

1. Town Attorney Presentation
 - a. PZC Rules and Responsibilities
 - b. Public Hearing vs. Public Comment
 - c. Findings and Conditions
 - d. Arbitrary and Capricious
 - e. 106 Rulings?
2. Work Plan Discussion
 - a. Wildland Fire Regulations
 - b. Multi-modal Parking & Transportation Plan
 - c. Comprehensive Plan Amendment
 - d. East Village Annexation
 - e. Wildridge PUD Amendments
3. Case Studies – What went right? What went wrong?
 - a. Walgreen’s (PZC)
 - b. Wyndham (PZC/TC)

- c. Christy Sports (Staff)
 - d. Annex Color (PZC/TC)
 - e. Northside Coffee and Kitchen (PZC)
4. Design Standard Discussion

Attachments

Memo from Eric Heil, Town Attorney

TO: Avon Planning and Zoning Commission
FROM: Eric J. Heil, Town Attorney
RE: Introduction and Refresher on Planning Commission Legal Basics and Discussion of Select Topics in the Avon Development Code
DATE: May 29, 2014

Summary: This memorandum provides an introduction for new members and refresher for other members of the Avon Planning and Zoning Commission (“PZC”) regarding basic legal issues for municipal planning commissions.

Colorado Open Meetings Act: The Colorado Open Meetings Act (“Sunshine Law”) prohibits 3 or more members of the PZC from meeting and discussing Town business unless the meeting has been publically noticed. A “chance social meeting” of 3 or more PZC members where PZC business is not discussed does not violate the Sunshine Law. The intent of the Sunshine Law is that the formulation and adoption of public policy must occur in open public meetings. It is not a violation for 3 or more PZC members to attend another meeting, such as a County meeting on a topic of interest to Avon, provided that the PZC members do not discuss or adopt policy for Avon. Avon’s practice is to err on the side of noticing any meeting where we believe 3 or more PZC members may attend, even if it is not an official PZC meeting and there is no agenda.

Conversations by e-mail to 3 or more PZC members can constitute a public meeting. For this reason, Avon’s practice has been for elected and appointed officials to not respond to group e-mails and not engage in dialogue on Town business matters via e-mail with 3 or more elected or appointed officials. An exception to the open meetings requirement is the limited ability to convene into executive session. The most common reason for convening into executive session is to receive legal advice. On rare occasions, PZC may also convene into executive session for real estate and general negotiating purposes.

Colorado Open Records Act: The Colorado Open Records Act (“CORA”) defines public documents as all documents held by the Town, by Town employees, by elected and appointed officials and by consultants or contractors engaged by the Town, except confidential and privileged attorney client materials and materials related to the deliberative process. Public records can include all forms of electronic communications related to Town business, including e-mails, text messages, phone records, calendar appointments, etc. For the purposes of PZC, you should be aware that any electronic records related to PZC business will likely constitute a public record. The determination of whether an electronic record is a potential public record is based on the content of the message and not the device or account used to communicate the message. PZC members are encouraged to use the PZC e-mail account provided by the Town for PZC business and not use it for any personal messages and to not use other e-mail accounts for messages related to PZC business. Any information received by PZC members is not subject to the municipal records retention schedule as Town staff has such records and administers the records retention requirements.

Litigation and Subpoenas: On occasion, municipalities are sued over land use decisions. When this occurs, opposing parties may be able to subpoena all paper and electronic records of elected and

appointed officials. This can include all paper documents, such as copies of applications and packet materials with your personal notes on them. You are strongly encouraged to never make derogatory comments (about anyone or any application) as such comments may be subject to the legal discovery process and may prove to be embarrassing and damaging. Lastly, when a lawsuit is filed or threatened a "litigation hold" may be put in place that puts all Town staff and elected and appointed officials on-notice to not destroy any records related to the subject matter of the litigation. Unless a litigation hold is in effect, PZC members are not restricted from destroying and purging their materials and notes that they may have accumulated.

Town Code of Ethics: The Avon Town Code of Ethics is codified in Chapter 2.30 of the Avon Municipal Code. Generally, a conflict exists when there is potential for financial benefit directly arising from performing an official act. Each PZC member is required to disclose when a conflict of interest exists and any PZC member can raise the question of whether a conflict of interest exists at any time. If a conflict of interest is deemed to exist then the PZC member with the conflict must refrain from voting and participating on the vote and must leave the room during consideration of the matter. The PZC determines whether a conflict of interest exists (rather than the Town Attorney or the individual member). In practice, we have acknowledged obvious conflicts of interest such as employment with an applicant or consultant retained by the applicant without the formality of PZC discussing and voting on whether an actual conflict exists. In matters that involve an "official act under circumstances which give rise to an appearance of impropriety on the part of the officer" it is the province of PZC as a body to discuss the circumstances and determine whether such action is prohibited under the Code of Ethics. PZC members are not restricted from participating on legislative matters which may directly affect PZC members (such as voting on a development code amendment to increase the height of fences when such PZC member desires to build a higher fence).

PZC members should also be aware of the gift reporting requirements in Section 2.30.170 of the Avon Municipal Code (anything of value in excess of \$50 received due to status as a PZC member must be reported to the Town Clerk).

Avon Development Code: The Avon Development Code ("ADC") was adopted in 2010 and consolidated prior Title 16 on Zoning, Title 17 on Subdivision, the former Design Review Guidelines and other Avon Municipal Code sections concerning the Avon Planning and Zoning Commission duties and composition. Section 7.12.040 of the ADC sets forth the PZC duties. In addition to the specific review authority and duties set forth in the ADC, PZC has other duties and authorization as determined by Council, "upon request and direction by the Council."

Director Administrative Authority: The ADC also included specific authorization and direction for the Director of Community Development in Section 7.12.050. The ADC includes more detailed language to define the Director's authority and authorization for administrative approvals. The Director's authority includes interpretations of the ADC, Administrative PUDs, Administrative Subdivisions, Minor Development Plans, and minor amendments to any approved development application. Section 7.16.020(g) governing the Director's authority to approve minor amendments is reprinted for convenience as follows:

(g) Minor Amendment. The applicant may apply to the Director for minor amendments to an approved development application. Minor amendments to an approved development application may be approved, approved with conditions or denied administratively by the Director. The Director

is authorized to approve minor amendments only if the development approval, as so amended, complies with the standards of the Development Code. The Director may refer a minor amendment to the decision-making body that was responsible for the original approval if the Director determines that the amendment may result in a material change to the approved development application. Proposed amendments to an approved development application which are determined by the Director to not be a minor amendment shall be reviewed and processed in the same manner as would be required under this Development Code for the original application for which the amendment is sought and shall include full application fees. Minor amendments shall consist of any of the following:

- (1) Any change to any permit or other form of approval that was originally subject only to administrative review and was approved by the Director, provided that such change would not have disqualified the original application from administrative review under this Development Code had it been requested at that time; and provided that the minor amendment does not result in an increase of more than ten percent (10%) in the amount of square footage of a land use or structure and does not result in a change in the types of uses in the project.
- (2) Correction of any errors caused by mistakes that do not materially alter the substance of the development plan or plat as represented to the Council.
- (3) A change to an approved design which results in a ten-percent or less increase to lot coverage; ten percent (10%) or less increase to building height; adjustments to building footprints, access and parking configurations which are less than ten (10) feet; alterations to the landscaping plan or drainage plan which substantially comply with the original approval; and changes to doors, windows, roofs or building articulation which are less than two (2) feet and which do not alter or diminish the overall design character as approved; as are all determined by the Director.
- (4) Changes to an approved development application which do not result in:
 - (i) An increase in the approved number of dwelling units;
 - (ii) An increase in the amount of square footage of a nonresidential land use or structure;
 - (iii) A change in the housing mix or use mix ratio; or,
 - (iv) A change in the character of the development.

Review and Decision: The ADC has a well defined process in Section 7.16.020(f) for review and decision making on applications which reflects general case law in Colorado regarding actions on land use applications. The importance of making and adopting findings and basing decisions on compliance with specific review criteria is paramount to the legal enforceability of Town decisions on development applications. The process is re-printed below for convenience:

(f) Step 6: Review and Decision. The following rules shall apply to review, recommendations and decisions conducted at public hearings:

- (1) Review Criteria. The reviewing authority shall be Director when the Director has the authority to administratively approve a development application. The reviewing authority shall be the PZC and/or Town Council for all development applications which are subject to public hearing. The reviewing authority shall review development applications for compliance with all relevant standards and criteria as set forth in the specific procedures for the particular application

in this Development Code, as well as the following general criteria which shall apply to all development applications:

- (i) The development application is complete;
- (ii) The development application provides sufficient information to allow the reviewing authority to determine that the development application complies with the relevant review criteria;
- (iii) The development application complies with the goals and policies of the Avon Comprehensive Plan; and
- (iv) The demand for public services or infrastructure exceeding current capacity is mitigated by the development application.

(2) Authority to Require Additional Studies. If the reviewing authority finds that the submittal materials are not adequate to evaluate the development against the review criteria, it may require additional studies as necessary. In doing so, the reviewing authority shall indicate the specific consequence(s) or concern(s) for which the standard submittal requirements fail to provide adequate means of evaluation and the data or information needed for proper evaluation. The results of any study or analysis shall not dictate either approval or disapproval of the proposed project.

(3) Findings. The reviewing authority shall adopt written findings which document that a recommendation or decision is based upon a determination of whether the development application complies with the applicable review criteria. The written findings shall state the conditions or mitigation.

(4) Conditions. The reviewing authority may recommend approval or may approve a development application with conditions where such conditions are deemed necessary to ensure compliance with the applicable review criteria and the purpose and intent of this Development Code. Conditions shall be in written form and attached to the approved plan, plat or permit. Conditions may include specific time limits for performance of any condition. Conditions may include financial performance guarantees from the applicant where the condition requires improvements for mitigation, where deemed necessary to public health, safety or welfare or where deemed necessary to protect adjacent property or public infrastructure. Financial performance guarantees shall be in the form of an agreement which is acceptable to the Town and shall be executed by the applicant.

(5) Final Decision. A decision by the Director or the PZC shall become final unless a written appeal is timely submitted to the Town in accordance with Section 7.16.160, Appeal. The date of the decision shall be the date that the reviewing authority renders a decision. The Town shall mail the written findings and notification of decision to the applicant within five (5) working days of the decision of the reviewing authority. The Town Council reserves the authority to render a final decision on all decisions rendered under this Development Code, and only a decision of the Town Council may be subject to legal challenge. The failure to timely submit a written appeal of a decision of the Director or the PZC shall be deemed to be a waiver of any right to legally challenge such decision.

Rule 106 Challenge – Arbitrary and Capricious: A “Rule 106” challenge refers to Colorado Rule of Civil Procedure 106(a)(4) which permits an aggrieved party to seek judicial relief where a quasi-judicial body exceeds its jurisdiction or abuses its discretion. Exceeding jurisdiction means taking action when not authorized by procedure or by the substance of a matter. A governmental action will be invalidated if it is arbitrary or capricious. Colorado courts hold that there is a presumption that local government regulations are valid. Courts provide deference to local government interpretation and application of such regulations. Colorado courts will generally uphold a local government decision if there is any reasonable evidence to support the decision; however, the fact finding and reasoning must be directly related to adopted review criteria. Courts will invalidate a decision to deny an application or the imposition of a condition when such action is not directly related to an adopted review criteria.

Although courts provide deference to local government interpretation and application of regulations, the development standards must be sufficient to advise ordinary and reasonable persons as to the conduct which the regulations seek to proscribe or direct. Where an ordinance vests unreviewable discretion in a zoning authority, the ordinance is void for vagueness. A legislative enactment violates due process requirements when it contains language so vague that it fails to provide fair notice of what conduct is prohibited or fails to provide law enforcement authorities with sufficiently definite standards for non-arbitrary, nondiscriminatory enforcement of the law.

There are rarely disputes about the enactment and application of specific measurable development standards (e.g. building height or required parking spaces). However, it is often difficult to identify every possible factual detail associated with development applications and enact a regulation that directly addresses every possible detail. Disputes often arise when regulations are interpreted and applied to a development application in situations where compliance with development standards is interpretative. Courts allow considering the goals and purposes of regulations as a basis for interpreting and applying the regulation. The ADC has goals and purposes stated in many different sections which may be used when interpreting and applying regulations.

Decisions of the PZC must be based upon compliance with the specific review criteria. Section 7.16.020(f) establishes a rigid format to ensure that decisions on development applications meet minimum legal requirements to withstand challenge.

Quasi-Judicial: Quasi-Judicial acts are distinguished from legislative and administrative acts and are generally defined to include a determination of rights, duties or obligations of a specific applicant by applying the facts of a specific case to certain criteria established by law. Applicants are entitled to a fair and impartial hearing and consideration of their application, therefore special rules apply to quasi-judicial proceedings. Property owners have certain constitutional rights which include both procedural rights and substantive rights. PZC members must not make a decision on an application until all the evidence is presented and the public hearing is closed.

Ex-Parte Contact: Ex-Parte Contact is any communication by a PZC member concerning a pending quasi-judicial development application outside of the public meeting and public hearing. This may include communications with Town staff, with the applicant and with the general public. Generally, it is permissible to communicate questions to Town staff concerning an application which can be answered to all of PZC through public correspondence. If a PZC member discusses a pending application with anyone outside of

the public meeting and public hearing, then the conversation must be disclosed to the PZC at the public hearing.

Bias: Bias is when a member of the reviewing body has evidenced a pre-decision on the matter that renders such member unable to consider the application fairly and impartially. Bias is different than conflict of interest and arises from a predisposition against the person (e.g. "I dislike applicant X and will therefore vote against the application") or the nature of the application (e.g. "I'm against tall buildings and will therefore vote against the development even though it complies with the building height allowance"). A finding of bias is rare, and even more so when PZC members are cognizant of their duty to remain fair and impartial.

Thank you, Eric



Town of Avon Planning & Zoning Commission Meeting Minutes

Tuesday, May 20, 2014

Avon Town Council Chambers

Meetings are open to the public

Avon Municipal Building / One Lake Street

I. Call to Order

The meeting was called to order at 5:05pm

II. Roll Call

All current Commissioners were present

III. Additions & Amendments to the Agenda

There were no additions or amendments

IV. Conflicts of Interest

There were no conflicts of interest

V. AEC14002 - Alternative Equivalent Compliance

Long Sun 5151 LLC – Two New Single-Family-Detached Homes

Property Location: Lot 48, Block 4 Wildridge Subdivision

Property Address: 5151 Long Sun Lane

Description: The applicant is seeking relief from the Development Code roof pitch requirement of 3:12 minimum pitch for a metal roof by proposing a metal roof that is 2 ½:12 pitch.

Discussion: The PZC requested the secondary roof on the proposed north unit be omitted. The applicant agreed to remove the secondary roof thereby eliminating the need for AEC on the north unit.

Action: Commissioner Prince moved to approve the application with Staff recommended findings, and Commissioner Minervini seconded the motion. The motion passed with a 6-0 vote.

VI. MJR14003 - Major Development Plan

Long Sun 5151 LLC – Two New Single-Family-Detached Homes

Property Location: Lot 48, Block 4 Wildridge Subdivision

Property Address: 5151 Long Sun Lane

Applicant/Owner: Long Sun 5151 LLC – PO Box 2322 Avon, CO 81620

Description: The proposal is to construct two new single-family-detached homes on the property.

Discussion: The PZC requested the secondary roof on the proposed north unit be omitted. The applicant agreed to remove the secondary roof thereby eliminating the need for AEC on the north unit.

Action: Commissioner Prince moved to approve the application with Staff recommended findings, and Commissioner Prince seconded the motion. The motion passed with a 6-0 vote.

VII. **MJR14004 – Major Development Plan**

Barandy Residence – New Single-Family Home

Property Location: Lot 11, Block 3, Wildridge

Property Address: 4040 Wildridge Road East

Description: New single-family home on a duplex property near the intersection of Wildridge Road and Bear Trap Roads. The home is 5,171 square feet (gross) and the exterior is predominantly rough sawn wood siding, with stucco on the lower level.

Action: Commissioner Minervini moved to approve the application with the following findings and conditions:

Conditions:

1. Lighting. The lighting plan will be revised to include all “full cut-off” fixtures, as defined by the Avon Municipal Code, for Staff approval.
2. Landscaping. Landscape Plan will be revised to redistribute and/or increase the amount of landscaping in front of the proposed structure.

Findings:

1. As presented, the Lighting Plan does not meet the intent of §15.30, *Outdoor Lighting Ordinance*.
2. The application was reviewed pursuant to §7.16.080(f), *Development Plan*, and §7.16.090(f), *Design Review*, and was determined to be compliant with the review criteria.
3. The application is compliant with the Wildridge standards contained within §7.28.090(e).

The motion passed unanimously.

VIII. **Consent Agenda**

- May 6, 2014 Meeting Minutes

Action:

IX. **Other Business**

A. Develop Agenda for June 10 Joint Session with Council

B. Nottingham Park Stage Update and Schedule Overview

C. Recent Staff Approvals:

1. MNR14012. L29A, B1, WR 2150 Long Spur. Landscape plan for backyard consisting of new plantings, fenced vegetable garden and patio.
2. MNR14014. L21, B2, BMBC 182 Avon Road. Exterior modifications to the Christy sports unit including new storefront windows, entry canopy on west elevation, new siding, and canopies on the north elevation. Landscaping reviewed with separate application.

X. **Adjourn**

The meeting was adjourned at 7:00pm