

Virtual Planning Refresher Workshop

October 28, 2021



COLORADO
Department of Local Affairs
Division of Local Government



Delta County
COLORADO
Canyons • Rivers • Mountains



Logistics & Disclaimers

- Training is anticipated to run ~2 hours
- Please join in (chat or unmute)
 - Ask questions along the way
 - Offer stories & examples
 - Respond to scenario questions
- Topics are anticipated to be 90% applicable

Legal Disclaimer: This training is intended to provide general information only and does not, and is not intended to, constitute legal advice. Participants should not act or refrain to act based on the information in this training and should contact their attorney to obtain advice with respect to any particular legal matter.

What We'll Cover Today

- Welcome and Introductions
- Why Plan and Planning Authority
- Roles and Responsibilities
- Long Range Planning and Implementation
- Effective Meetings and Decision-Making
- Legal and Ethical Issues
- Scenarios (throughout)
- **Extra: Planning During Disruptions**

About DOLA



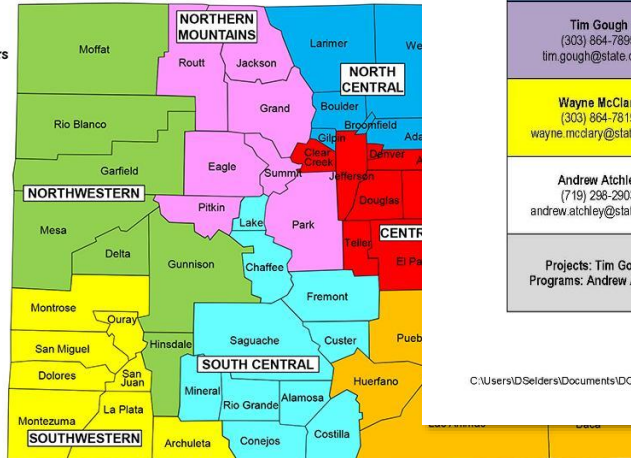
COLORADO
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DOH DEVELOPER REGIONAL ASSIGNMENTS

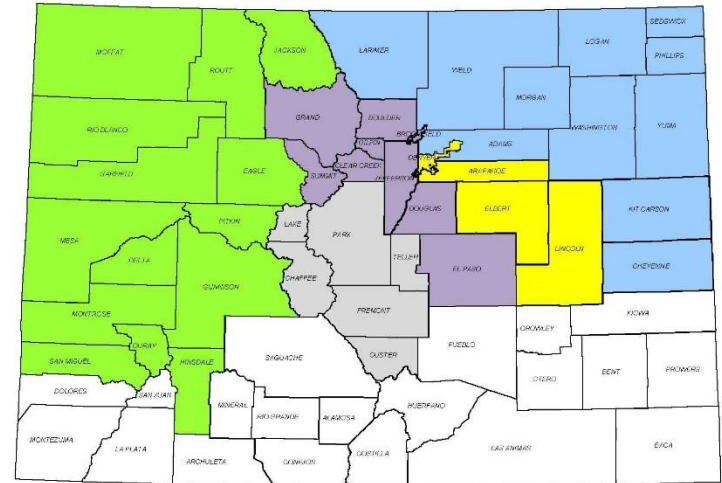


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REGIONAL MANAGERS AND REGIONAL ASSISTANTS



Jennifer Stapleton (970) 640-7576 jennifer.stapleton@state.co.us
Spencer Bollacker (303) 864-7811 spencer.bollacker@state.co.us
Tim Gough (303) 864-7895 tim.gough@state.co.us
Wayne McClary (303) 864-7819 wayne.mcclary@state.co.us
Andrew Atchley (719) 298-2903 andrew.atchley@state.co.us
Projects: Tim Gough Programs: Andrew Atchley



C:\Users\IDelders\Documents\DOLA\Devo - HR\Developer Regional Assignment MAP-7.30.2018.docx

REGIONAL MANAGERS	SOUTHWESTERN Patrick Rondinelli P.O. Box 997 Duray, CO 81427 970-749-0138 patrick.rondinelli@state.co.us	NORTH CENTRAL Chris La May 150 E. 29th St., Suite 215 Loveland, CO 80538 970-679-7679 chris.la.may@state.co.us	CENTRAL Clay Brown 15220 S. Golden Road Golden, CO 80401 303-273-1787 clay.brown@state.co.us	SOUTH CENTRAL Christy Doon P.O. Box 251 Creede, CO 81130 719-580-1313 christy.doon@state.co.us
	NORTHWESTERN Dana Hlavac 222 S. 6th St., Room 409 Grand Junction, CO 81501 970-903-0230 dana.hlavac@state.co.us	NORTHERN MOUNTAINS Greg Winkler PO Box 687 Lake George, CO 80827-0687 970-668.6160 greg.winkler@state.co.us	NORTHEASTERN Greg Eti 109 N. Front St. / P.O. Box 1191 Sterling, CO 80751 970-380-4065 greg.eti@state.co.us	SOUTHEASTERN Tara Marshall 200 West 8 St, Suite 222 Pueblo, CO 81003 719-544-6577 tara.marshall@state.co.us
REGIONAL ASSISTANTS	Katherine Boozell 222 S. 6th St., Room 409 Grand Junction, CO 81501 970-473-4947 katherine.boozell@state.co.us	Robert Thompson 150 E. 29th St., Suite 215 Loveland, CO 80538 970-290-2381 robert.thompson@state.co.us	Denise Lindom 15220 S. Golden Road Golden, CO 80401 303-273-1712 denise.lindom@state.co.us	Randi Sneed P.O. Box 251 Creede, CO 81130 719-924-2087 randi.sneed@state.co.us
	Delta, Dolores, Eagle, Garfield, Gunnison, Hinsdale, Mesa, Moffat, Montrose, Ouray, Pitkin, Rio Blanco, Routt, San Juan, San Miguel	Adams, Boulder, Broomfield, Cheyenne, Gilpin, Grand, Jackson, Kit Carson, Larimer, Lincoln, Logan, Morgan, Phillips, Sedgewick, Washington, Weld, Yuma	Arapahoe, Chaffee, Clear Creek, Custer, Denver, Douglas, El Paso, Elbert, Fremont, Jefferson, Lake, Park, Summit, Teller	Alamosa, Archuleta, Baca, Bent, Conejos, Costilla, Crowley, Huerfano, Kiowa, La Plata, Las Animas, Mineral, Montezuma, Otero, Prowers, Pueblo, Rio Grande, Saguache



COLORADO
Department of Local Affairs

DOLA Planning Resources

- Technical and financial assistance
- Community Development Office
 - Land use and planning assistance
 - Integrating land use (water, housing, hazards)
 - Downtown revitalization assistance - Main Street
- Website: cdola.colorado.gov/community-development-planning



DOLA Planning Resources



COLORADO
Department of Local Affairs

Search



Assessment Appeals

Disaster Recovery

Housing

Local Government

Property Taxation

[Home](#) > [Community Development & Planning](#) > Planning Commissioner Resources

Planning Commissioner Resources

COVID-19 Relief for
Local Governments >

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Civil Asset Forfeiture
Reporting

Colorado Main Street
Program >

Colorado Resiliency

Following are resources that summarize many land use planning topics of importance to Colorado planning commissioners, staff, and elected officials. These are short and easy-to-read handouts, helpful to new as well as seasoned staff and elected and appointed officials involved in local land use planning efforts.

Planning Overview & Authority

[What is Planning and Why Should a Community Plan?](#)
[Local Government Land Use Authority in Colorado](#)

Long-Range Planning

[Master Plan Primer](#)
[Three-Mile Plans](#)

Meetings &, Decision-Making

[How to Encourage Citizen Involvement](#)

DOLA Planning Resources

Colorado Land Use Survey

The 2020 survey report is being finalized!

2015 Results!



COVID-19 Relief for Local Governments >

Account Login

Civil Asset Forfeiture Reporting

Colorado Main Street Program >

Colorado Resiliency Office

Community Development & Planning ▾

1041 Regulations

Colorado Land Use Survey

Comprehensive Plans

High Performance Certification Program

Intergovernmental Agreements (IGAs)

Land Use Codes

Land Use Dispute Resolution

Planning Commissioner Resources

Public Involvement

The Department of Local Affairs, in partnership with the Association Colorado Chapter, released the results.

The Land Use Survey provides a snapshot of the current planning practice conducted in 1983, 1992, 2004, and 2010. Efforts were made to keep the survey in a longitudinal analysis. A few new questions were added to reflect current issues.

Municipal Results

[Municipal summary \(pdf\)](#)

[Tabular results \(pdf\)](#)

County Results

[County summary \(pdf\)](#)

[Tabular results \(pdf\)](#)

Previous Survey Summaries

[2010 Municipal](#)

Special thanks to our Land Use Survey partnering agencies.



DOLA Planning Resources



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Assessment AppealsDisaster RecoveryHousingLocal GovernmentProperty Taxation

[Home](#) > [Colorado Main Street Program](#) > [Main Street Toolkits](#)

Main Street Toolkits

COVID-19 Relief for Local Governments >

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Colorado Main Street Program ▾

Join Main Street

Main Street Communities

Main Street Data

Main Street Resources



Colorado Downtown Streets

Great streets are more than infrastructure: they are the fundamental building blocks of successful communities. This publication and accompanying materials are designed to help local leaders, community members, and technical professionals work together to transform their streets into safe, accessible, and vibrant places. Download the toolkit and learn more below.



COLORADO
Department of Local Affairs

DOLA Planning Resources



The screenshot shows the homepage of the 'PLANNING FOR HAZARDS' website. The header features a logo with three green triangles containing a water drop, a snowflake, and a lightning bolt, followed by the text 'PLANNING FOR HAZARDS' and 'Land Use Solutions for Colorado'. A search bar is in the top right. A navigation menu includes 'Home', 'Hazards', 'Tools', 'Models', 'Resources', 'About', and 'Contact Us'. A large banner with a mountain background says 'Check out upcoming events related to Planning for Hazards'. Below the banner are two main sections: 'Introduction' and 'Read the Guide'. The 'Introduction' section describes the guide's purpose and includes a graphic of three colored boxes (blue, yellow, red) with hazard icons. The 'Read the Guide' section includes a 'Table of Contents' button. A large blue banner at the bottom right contains the website URL.

PLANNING FOR HAZARDS
Land Use Solutions for Colorado

Home Hazards Tools Models Resources About Contact Us

Check out upcoming events related to Planning for Hazards

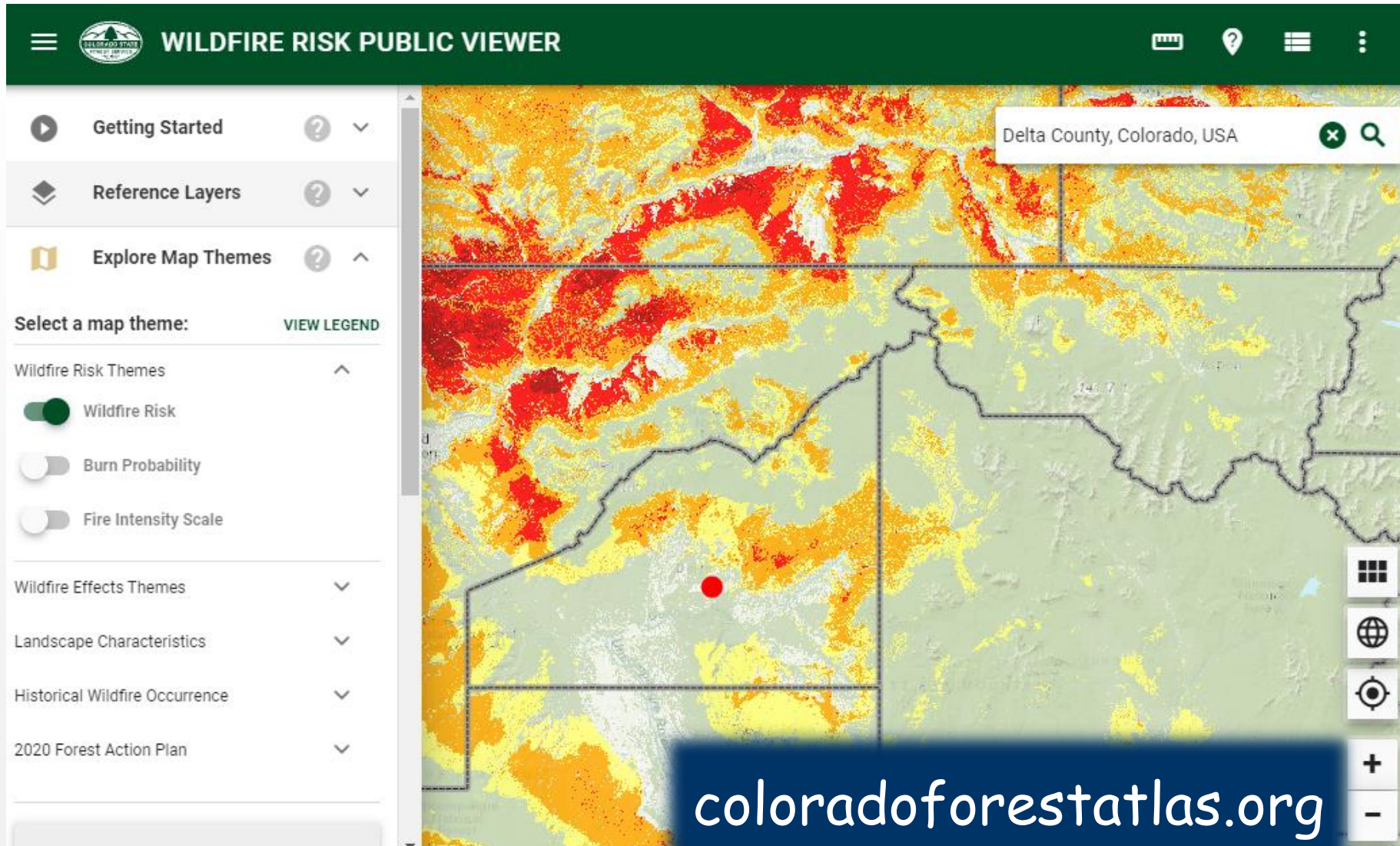
Introduction
This guide provides detailed, Colorado-specific information about how to assess a community's risk of hazards and how to

Read the Guide
To read the guide or specific chapters, look for the purple Table of

Table of Contents

planningforhazards.com

Planning Resources



Planning Resources

The screenshot displays the "WILDFIRE RISK PUBLIC VIEWER" interface. The top navigation bar is dark green with a menu icon, the Colorado Forest Service logo, and the title "WILDFIRE RISK PUBLIC VIEWER". On the right side of the bar are icons for a keyboard, location, layers, and a settings menu.

The left sidebar contains a menu with the following items:

- Getting Started (with a question mark icon)
- Reference Layers (with a question mark icon)
- Explore Map Themes (with a question mark icon and an expand/collapse arrow)

Below the menu, there is a section titled "Select a map theme:" with a "VIEW LEGEND" link. The themes listed are:

- Wildfire Risk Themes (with a collapse arrow)
- Wildfire Effects Themes (with a collapse arrow)
- Landscape Characteristics (with an expand arrow)
 - Surface Fuels (toggle switch)
 - Vegetation (toggle switch)
 - Wildland Urban Interface (toggle switch, currently active)
- Historical Wildfire Occurrence (with a collapse arrow)
- 2020 Forest Action Plan (with a collapse arrow)

At the bottom of the sidebar, there is a section for "Adjust Theme Transparency:".

The main map area shows a topographic map of Delta County, Colorado, USA. The map is overlaid with various wildfire risk themes, including a prominent red dot in the center. The map includes labels for "Garfield", "Delta", "Gunnison", "White River National Forest", "Grand Mesa National Forest", "Black Canyon of the Gunnison National Park", and "Gunnison National Forest". Elevation markers such as "10889 ft", "10573 ft", and "14137 ft" are visible. A search bar at the top right of the map area contains the text "Delta County, Colorado, USA".

At the bottom right of the map area, there is a large blue banner with the text "coloradoforestatlas.org".

Demographic Resources



COLORADO
Department of Local Affairs



[Home](#) | [Population](#) | [Births, Deaths, Migration](#) | [Economy & Labor Force](#) | [Housing & Households](#) | [Census & ACS](#)



STATE DEMOGRAPHY OFFICE

The State Demography Office is the primary state agency for population and demographic information.

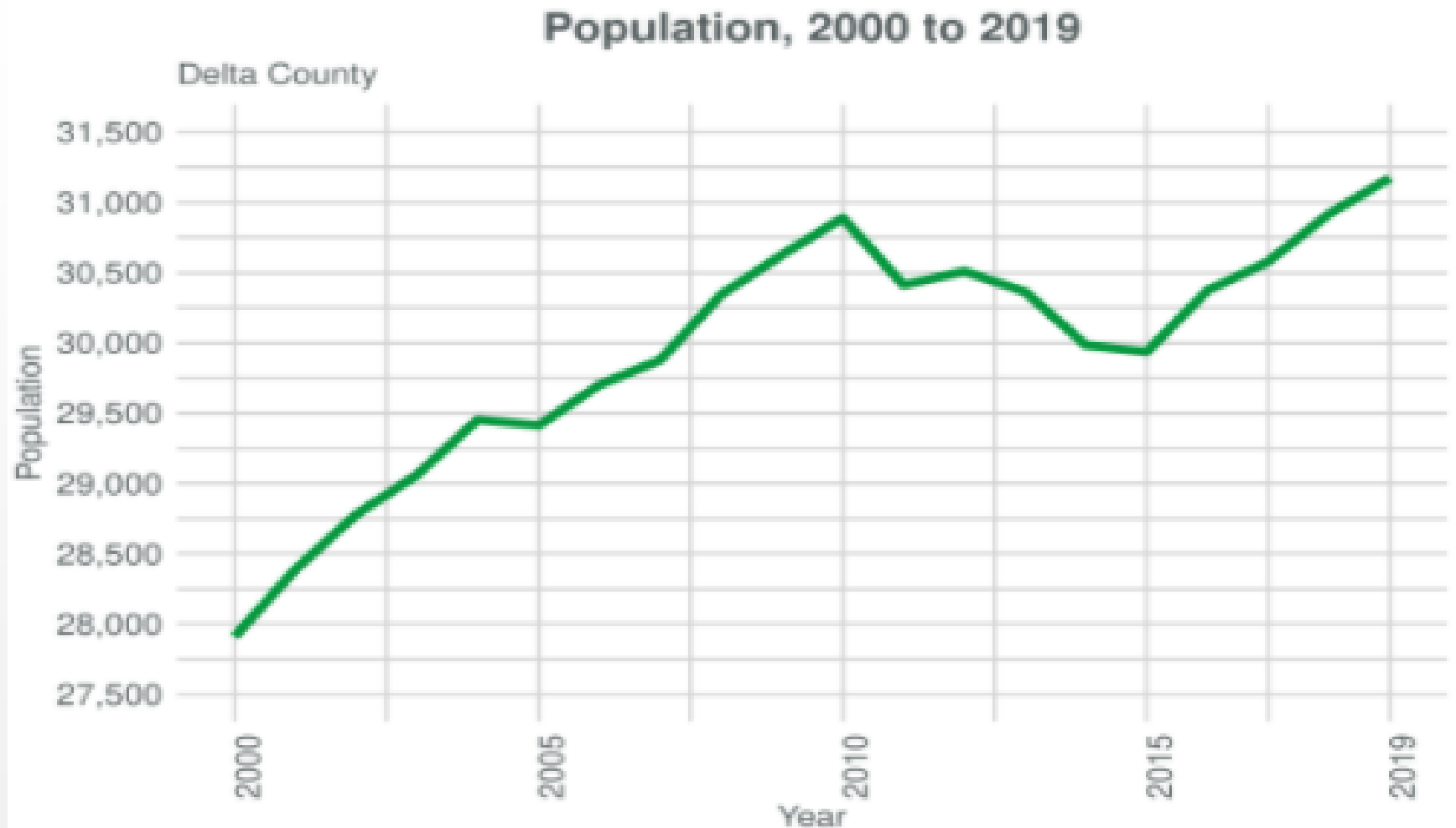
[Demographic Dashboard](#)

[Download Data](#)

[Interactive Data](#)

[Learn More](#)

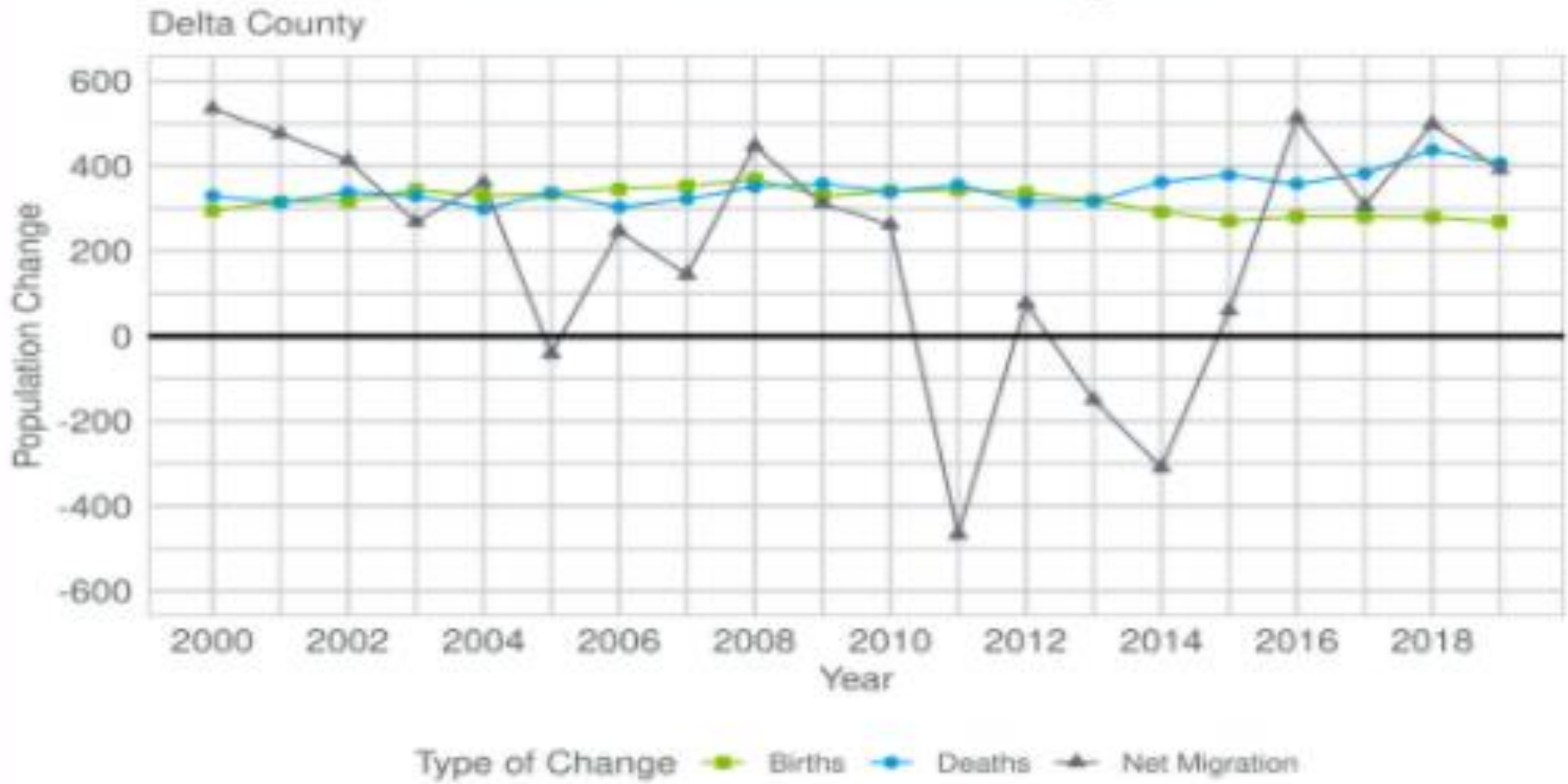
Demographic Resources



Source: State Demography Office, Print Date: 10/26/2021

Demographic Resources

Components of Change:
Births, Deaths, and Net Migration

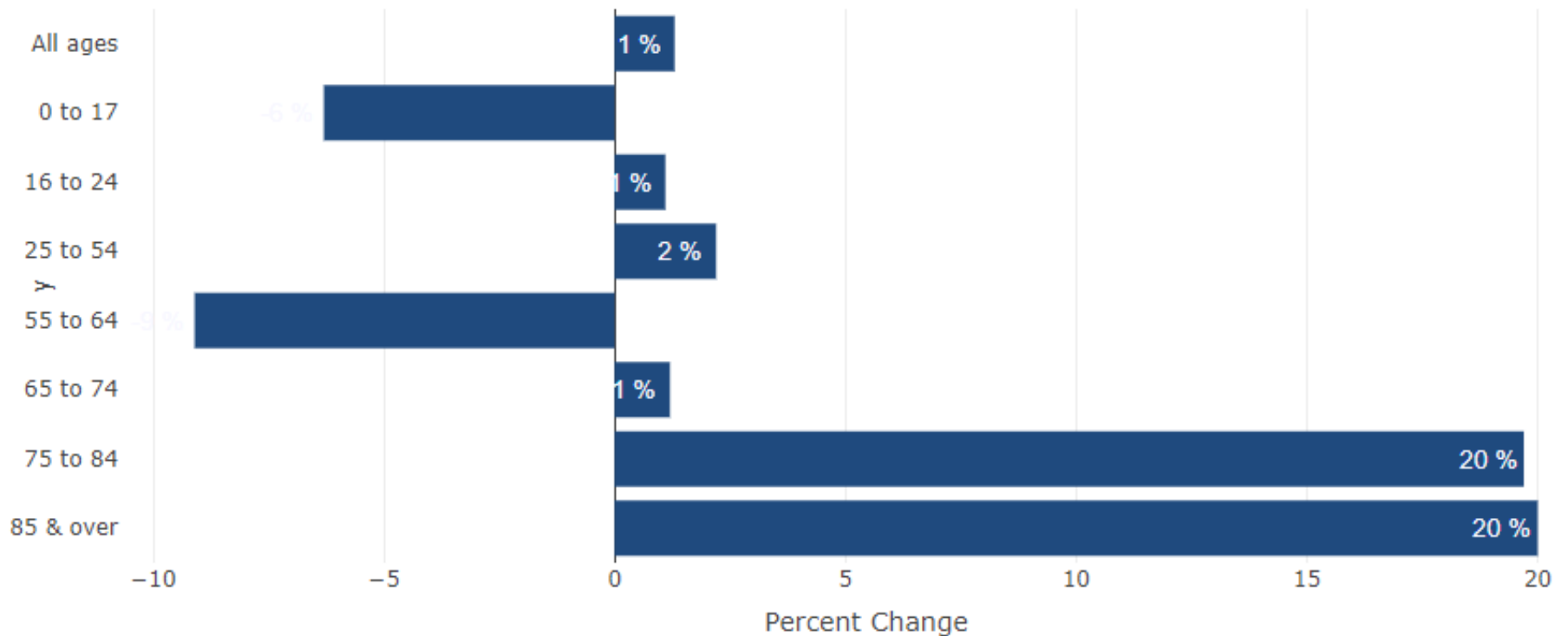


Demographic Resources

Select a county:

Delta

Projected Population Change by Age Group, 2020 to 2025



Demographic Resources

Delta County

Housing Unit Type	Owner-Occupied Units		Rental Units		All Units
	Units	Percent	Units	Percent	Units
All Housing Units	→ 8,751	73.6%	3,132	26.4%	→ 11,883
Single Unit Buildings	→ 7,668	82.4%	1,638	17.6%	→ 9,306
Buildings with 2 to 4 Units	15	2.9%	506	97.1%	521
Buildings with 5 or More Units	24	8.5%	257	91.5%	281
Mobile Homes	1,040	61.2%	658	38.8%	1,698
RVs, Boats, Vans, Etc.	4	5.2%	73	94.8%	77
Median Year of Construction	1985		1982		1984
Average Number of Persons Per Household	→ 2.48		2.39		2.46

Note:

Source: U.S. Census Bureau, 2015-2019 American Community Survey, Print Date: 10/26/2021

EVERYONE

COUNTS

*Census
2020*

- First data product released late April 2021
 - CO resident population as of April 2020:
5,773,141
 - 2020 population represents a 14.8% increase over 2010 Census population
 - CO 2010-2020 growth percentage was the 6th highest among U.S. states
 - CO will gain an additional seat in the U.S. House of Representatives based on these 2020 Census results
- More detailed data starting November 2021

Why Plan & Planning Authority

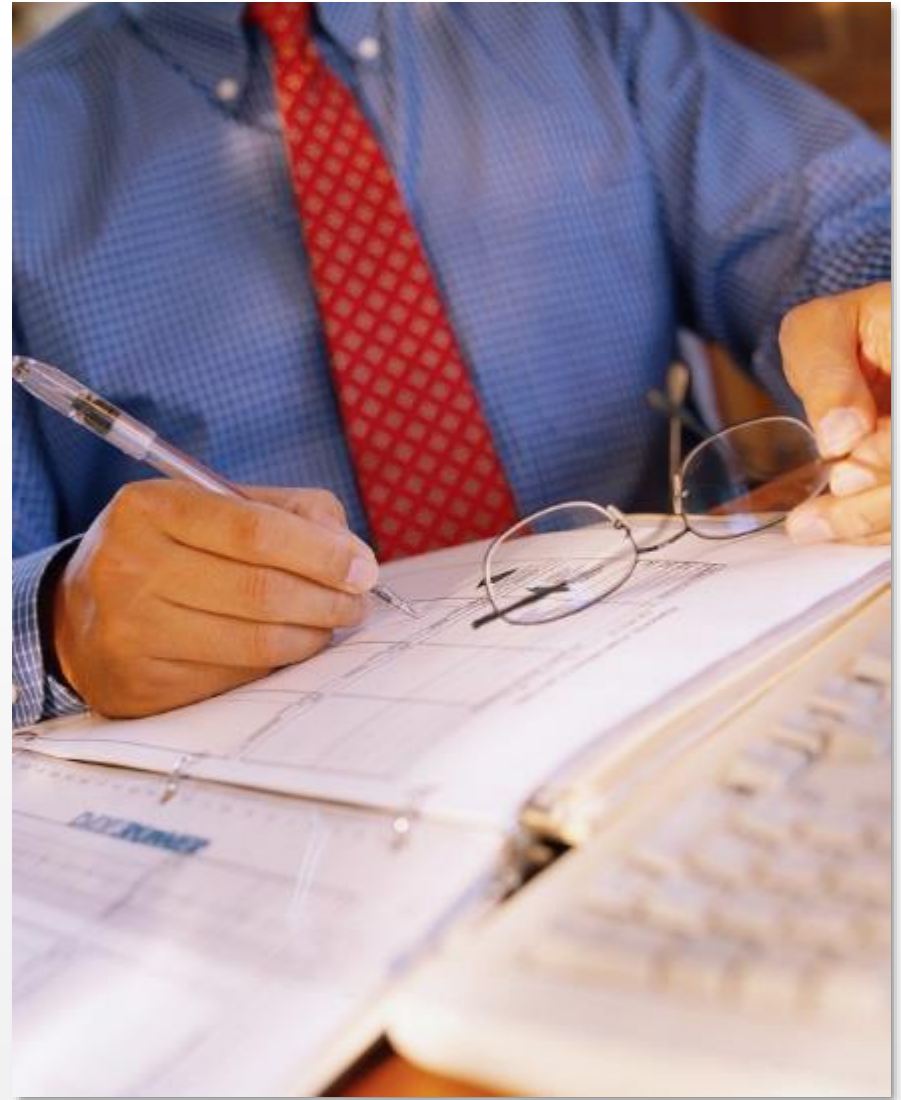
Why Plan?

- Helps government to be more efficient and effective
- Helps community seize opportunities
- Prevents undesirable development



“Who would invest in a corporation if it didn’t have a business plan? ... the same is true for a community if it doesn’t have a plan. Every successful institution, whether a corporation or a community, needs to plan.”

-Ed McMahon (PlannersWeb)



Grounding Authority

The rights of government to establish laws and ordinances to preserve public order and tranquility and to promote the public health, safety, and general welfare

(reserved to states, granted to local governments through statutes)



Authority to Plan - Colorado

- Local control
- Few state statutory planning requirements
- Grant of authority for land use planning:
 - Statutory authority
 - Home rule



Statutory Authority

Regulations must be tied to **valid public purpose** (substantive due process) and be enacted and implemented so those directly affected have a **meaningful opportunity to participate** (procedural due process)



Statutorily Required Planning

30-28-106 4(c) and 31-23-206 4(a)

Master plans for local governments that meet statutory criteria for population and growth rate

30-28-133

Subdivision regulations for counties

31-12-105

Three Mile Plans for municipalities

***NEW*: HB 20-1095**

Water in comprehensive plans*



Roles & Responsibilities

Roles & Responsibilities



- Elected Officials
- Planning Commission
- Staff
- Citizens
- Applicants

Elected Officials

- Make policy and legislate
- Use enabling authority and charter to protect public interest
- Hire staff and appoint boards that will further the mission
- Provide general direction and ongoing two-way communication



Planning Commission

- Appointed (not elected)
- Advisory to elected board
- Prepare master/comprehensive plan
- Apply current policy and regulations
- Provide planning/land use expertise
- Review development applications
- Adopt and consistently use by-laws
- Regularly assess planning policies and regulations, visioning



Staff

- Staff and consultants provide technical expertise and guidance
- Provide information and training
- Assist with research
- Write staff review/report
- Notice meetings, communicate with applicants, etc.
- Ensure good communication
- Offer professional opinions



Citizens

- Participate fully
- Advise appointed and elected officials
- Ask questions
- Offer input and solutions



Applicants

- Learn and respect adopted rules and processes
- Expect fair and predictable process
- No “working the system”
- Communicate issues and concerns
- Have realistic expectations and an understanding of the role of government



Slow Down and Reflect Together



- What isn't working well? What is?
- Where are we seeing issues emerge? Trends?
- Recommend annual meetings with elected board

Make recommendations to the elected board for changes to policies, regulations, standards

Roles & Responsibilities - Scenarios

The PC makes a unanimous decision, but the town board overturns it. In fact, this happens often. ***What actions could the PC take to address their concern about being overturned?***

- a) Talk with staff for feedback; ask for regular check-ins (once or twice a year) with the town board for two-way communication to cover topics such as this
- b) Call the mayor to find out more details
- c) Attend the town board's next public meeting and raise the issue for discussion
- d) Post a letter on social media to make the PC's point of view known and understood by the community

Long Range Planning & Implementation

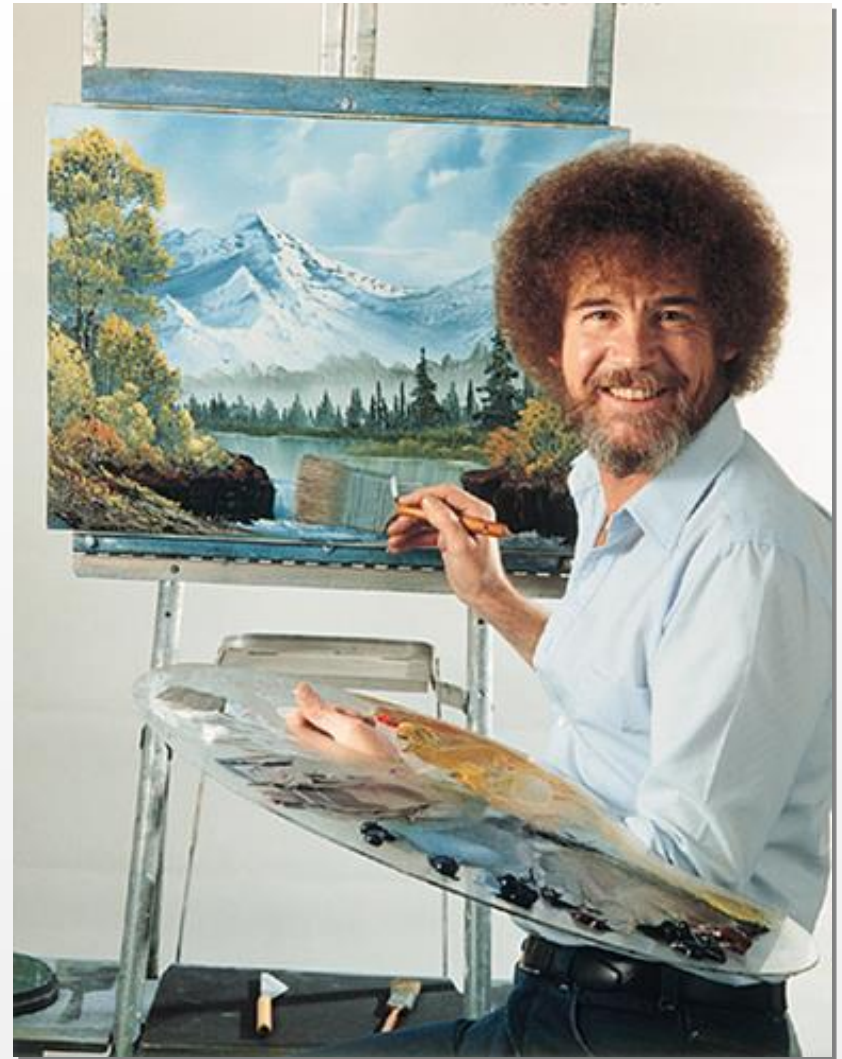
Planning Tools:

Vision → Comp Plan → Tools

- Master Plan/Comprehensive Plan
- Three Mile Plan
- Annexation Policies
- Intergovernmental Agreements (IGAs)
- Planned Unit Developments (PUDs)
- Areas of State Interest (“1041” powers)
- Subdivision Regulations
- Zoning
- Building Codes
- Incentives and Programs

Master/Comprehensive Plan

- Community's vision
- Serves as a roadmap
- Most master plans are advisory
(*Theobald v. Summit Co*, 1982)
- Can be mandatory if adopted with sufficient detail as a regulation
(*BOCC v. Conder*, 1997)



Standard Plan Elements

- Transportation
- Utilities & Facilities
- Housing
- Environmental
- Cultural/Historical
- Hazards/Safety
- Natural Resources
- Urban Influence Area
- Educational Facilities
- Energy
- Economic Development
- Parks & Open Space
- Recreation & Tourism
- Water*

HB 20-1095: Local Governments Water Elements In Master Plans

- **Does not require** that local governments incorporate a water element into their comprehensive plan
- States that **if a community chooses to do so**, then the local government must
 - Consult with the entities that supply their water "to ensure coordination on water supply and facility planning"
 - "Identify water supplies and facilities sufficient to meet the needs of the public and private infrastructure reasonably anticipated or identified in the planning process"
 - Include water conservation policies (ideally tied to the Colorado Water Plan)
- **Directs DOLA to provide technical assistance to interested local governments with a dedicated position**

DOLA Planning Resources

Online ServicesState

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Water and Land Use Integration

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[Colorado Resiliency Office](#)

The Community Development Office (CDO) coordinates the State of Colorado's work to identify and promote local government best practices for integrating land use and water planning. Land use is a local decision; in order to ensure community identity, heritage, economic health, and plans for growth align with available supplies of clean water resources, communities should incorporate water into long range planning processes. Water and land use integration is also a key goal of the [Colorado Water Plan](#).

SB 15-008

In 2015, Governor Hickenlooper signed SB 15-008 into law. Among other water efficiency-related measures, the law calls for the Colorado Water Conservation Board (CWCB) to work with DOLA's Division of Local Government (DLG) to develop and provide training and make recommendations regarding how to better integrate water demand management and conservation planning with land use planning. Since 2015, DOLA and CWCB have collaborated and leveraged the work of

Comp Plan Provides Guidance for:

- Rezoning requests
- Land use code, incentives, etc.
- Annexation requests
- Decisions about expansion of major infrastructure
- Decisions about location of new infrastructure
- Overall vision for growth and development



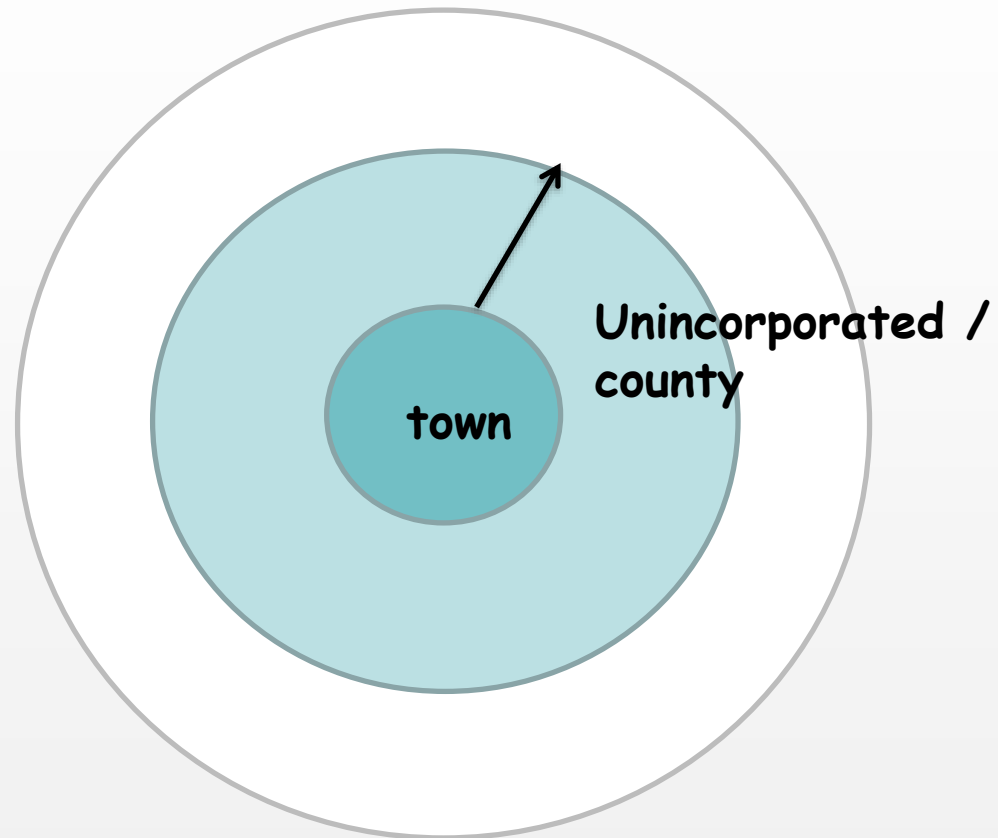
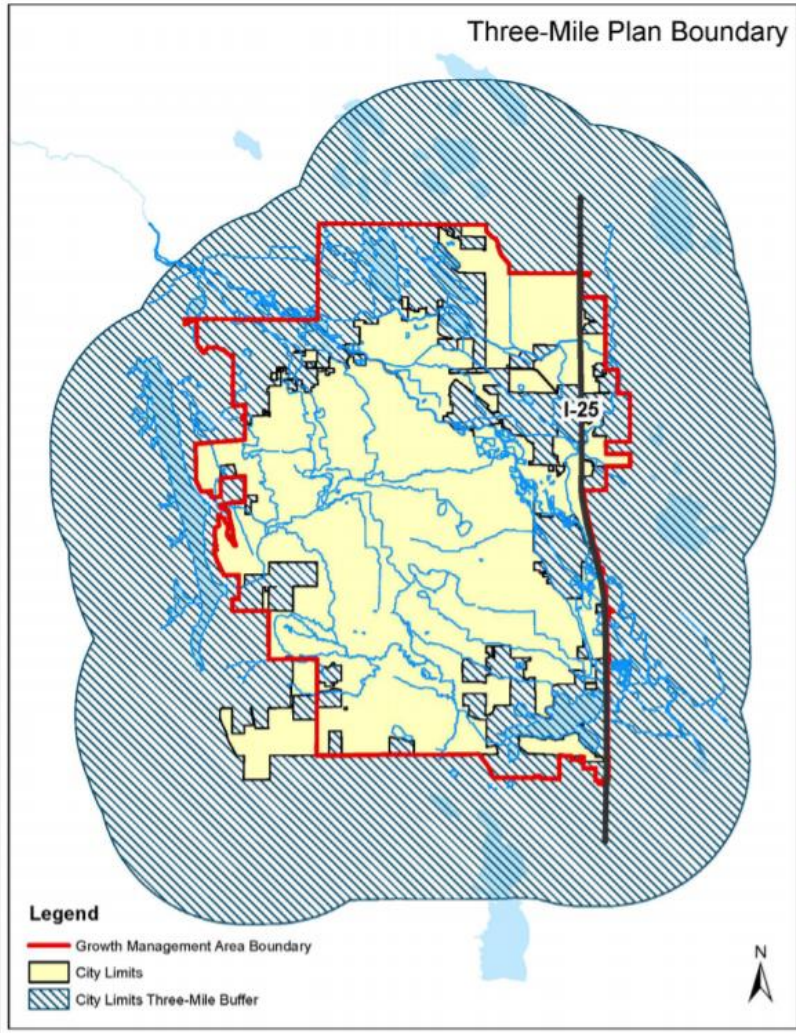
Other Long-Range Plans

- Subarea Master Plans
- Capital Improvements Plan
- Water Conservation Plan
- Open Space & Trails Plan
- Hazard Mitigation Plan
- Downtown Plan
- Parks & Recreation Plan
- Stormwater Management Plan

Do they support or conflict with each other?



Three Mile Plan



Cooperative Planning

- Planning issues are complex and interrelated
- Planning issues and growth impacts do not respect political boundaries
- Applicants shop for the best deal
- Incompatible standards make for rough transitions
- Uses tax dollars more efficiently



CRS 29-20-105 through 107

Cooperative Planning

Long Range Planning

- “Growth” area IGAs
- Engagement in comp plan updates and other applicable planning for issues that cross boundaries
- Revenue sharing
- Develop shared vision for certain areas/issues (e.g., delineate sewer service area, partner on affordable housing solutions, etc.)

Development Review

- Refer applications and consider comments
- Refer applications within a specific area of common interest or town interest, giving the town a chance to annex first
 - County could develop at county standards
 - County could use town’s standards for development

Trends and Key Issues in Planning

- Plan for an aging demographic, public health, livability
- Integrate hazards into development decision-making, resilient policies, and consider mitigating and adapting to effects from climate change
- Plan for protecting and ensuring sufficient water supply & quality
- Create opportunities for affordable housing
- Strategize toward economic diversification
- Consider social equity



Diversity, Equity, and Inclusion

Equity Continuum

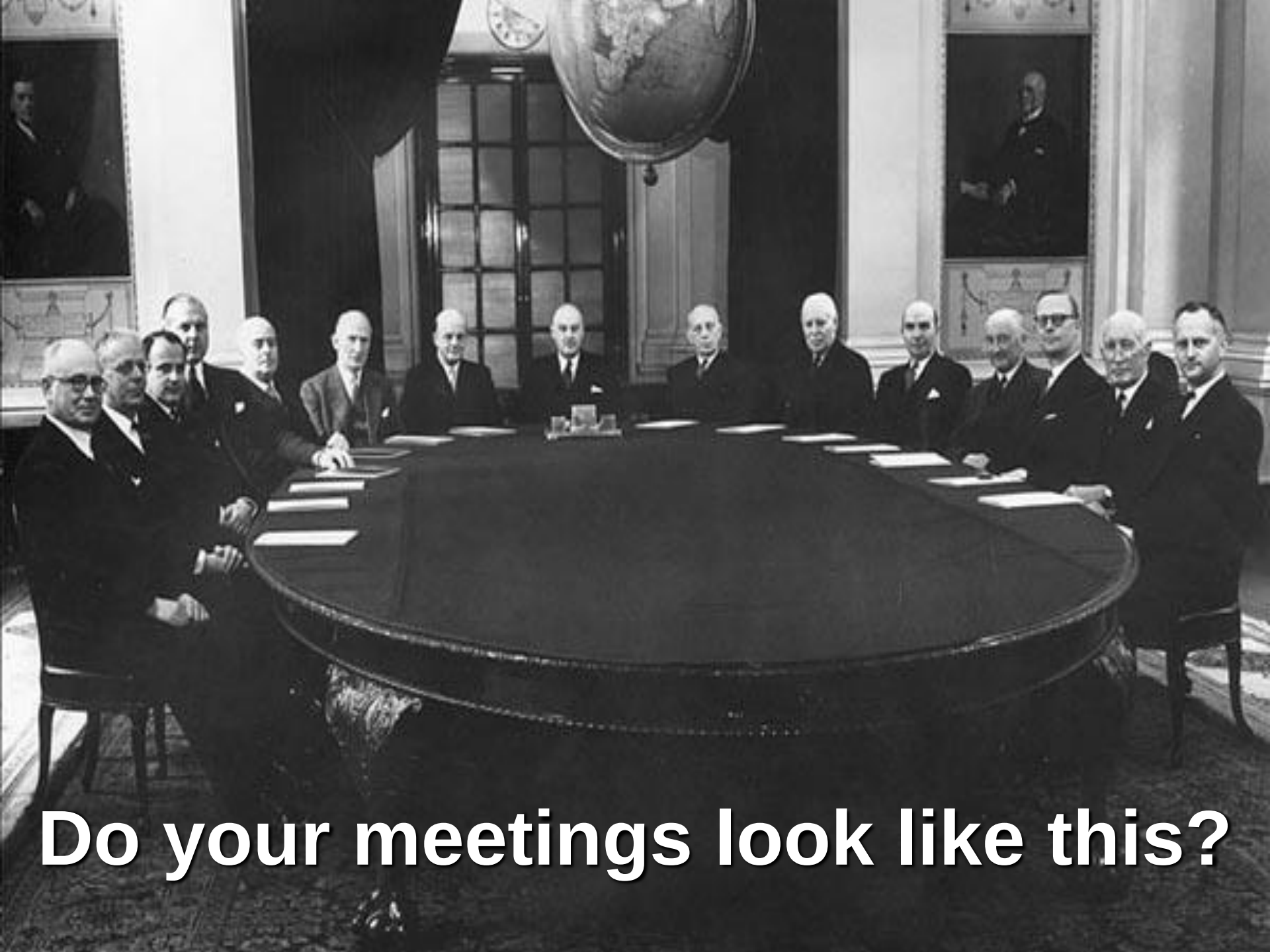


	<i>"A description of your differences"</i>	<i>"What you DO with your diversity"</i>	<i>"Giving everyone the same access"</i>	<i>"Leveling the playing field"</i>
<i>What it looks like in practice</i>	- Not always strategic; it can happen accidentally - Does not describe how people function or work - It is possible to be "diverse" and not "include" people or communities	- Requires intentional action to make everyone feel welcomed and valued: inclusion is not a natural consequence of diversity - Goes beyond simply "becoming diverse" by truly leveraging abilities, unique qualities and perspectives of individuals - Focuses on the real experiences of individuals and communities	- Achieved by making sure that everyone is supported by providing the same resources or treatment - Ensures everyone is recognized and respected	- Recognizes that there are both advantages and barriers to accessing resources, and as a result we don't all start from the same place - Tailoring platforms for success and working to correct and address systemic barriers
<i>How success is defined</i>	- Success (and failure) is often defined by simple statistical performance (i.e. we hired x% of women; we have x% Black participants, y% Latinx participants, and z% white participants).	- Success is defined through retention, trust and engagement of employees/community/individuals	- Success is often defined by assuring that all groups/people have the same.	- Success is often defined by treating groups/people differently based on historic injustices and present-day barriers so everyone has the opportunity to thrive.

Diversity, Equity, and Inclusion



Meetings & Decision Making



Do your meetings look like this?

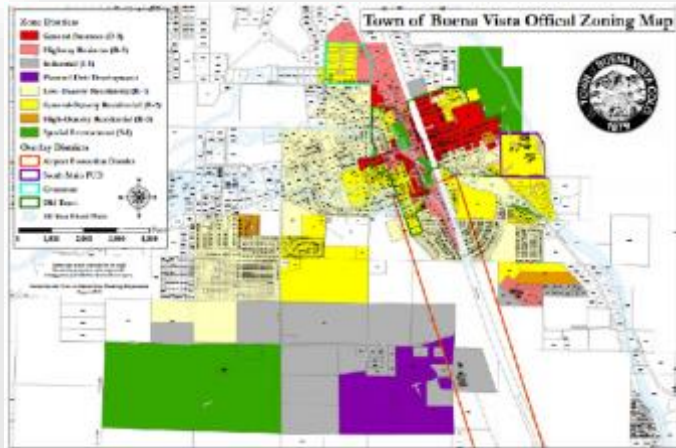
Or this?



Or this?



Types of Action



Legislative:

Reflective of a public policy relating to matters of a permanent or general character, not restricted to an individual

Quasi-Judicial:

Involves determination of rights or obligations of an individual; use of legislated rules to make a determination on an application

...And Administrative!

**CHAFFEE COUNTY
PLANNING & ZONING DEPARTMENT**
P.O. BOX 699 PHONE (719) 530-5565
SALIDA, CO 81201 FAX (719) 539-7442
WEBSITE www.chaffee-county.org

APPLICATION TO BOARD OF ADJUSTMENT
Application Fee \$120.00 Application filing deadline is the second Friday of each month for next months' hearing

GENERAL INFORMATION

REQUEST (SETBACK VARIANCE, SIGN, ETC.)	_____
PROPERTY ADDRESS OR GENERAL LOCATION	_____
NAME OF APPLICANT	_____
MAILING ADDRESS	_____
TELEPHONE	_____ FAX _____
E-MAIL ADDRESS	_____
EXISTING ZONING	_____
LEGAL DESCRIPTION	_____

The following information must be submitted by the second Friday of the month prior to appointment with the Board of Adjustment. Seven (7) copies of the application must be packaged in a bound or file form with each set containing all the required information.

Public Meetings (Legislative Hat)

- Creating public policy of permanent or general character, widely applicable (*State Farm v. City of Lakewood*)
- Seek input and champion broad, inclusive public participation
- Explain context, big picture & process/timeline
- Demonstrate active listening
- Limit the jargon and acronyms
- Help make it relevant
- Act as community ambassadors
- Remain courteous (no matter what)



Making law

Public Hearings (Quasi-Judicial Hat)

What is Procedural Due Process?

- Notice
- Opportunity to be heard



Public Hearings (Quasi-Judicial Hat)

Due process protection tips

- Announce rules in advance and enforce consistently
- Remain unbiased while hearing evidence
- Show you're listening
- Importance of strong chair, supportive board
 - stay on task – avoid tangents
- Input only during noticed public hearing
- Ask questions- does this application **meet our standards?**
- Make careful motions

Decision-Making

What makes a meeting effective?

- Everyone had meaningful opportunity to participate
- People feel they were heard
- Relevant issues (related to standards) were addressed
- No long tangents or discussions about issues your code and plan don't address (tip: start with staff report)
- Commission's decision was clear (what and why)
- Commission's decision was reasonably defensible



Decision-Making

A strong chair helps make a meeting effective

- Great communicator
- Sets the tone (what's the right tone?)
- Ensures civility
- Strong listener
- Time-keeper
- Enforcer



Don't hand over control of the meeting!

Decision-Making

Role of the Chair

- Chair as air traffic controller

“Focus on the next plane not on each moment.”

-Jerry Dahl



Decision-Making

More on the Chair

- Time-keeper
- Enforcer
- No “dead air”

Use cues: “We are on item 2 of 6 and it’s now 9pm.”

Other PC members back up the Chair to help consistent enforcement of the rules



Improving Meetings – More Tips

- Set the right tone: civil and professional
- Evaluate equipment
- Provide information on procedures ahead of time and repeat if needed throughout the meeting
- Thank people for their testimony
- Watch non-verbal cues
- Acknowledge that planning decisions are political and personal
- Show extraordinary patience

Decision-Making

Common Hurdles & Mistakes

- Not being prepared
- Not asking enough questions
- Asking for a vote of the audience
- Showing bias before decision is made
- Attempting to be the architect, applicant, etc.



Decision-Making (Hearings)

Common Hurdles & Mistakes

Avoid Let's Make a Deal

Does the project meet your standards or not?



Decision-Making

Common Hurdles & Mistakes

- Avoid showing bias
- Consider your intent
- Front page newspaper test; do not use social media to argue, condemn, attack, or even to “set the record straight”
- Leave it to staff and PIOs
- Establish and discuss (often) social media policy



Decision-Making

Technology



- Is it acceptable to be on your phone meeting or hearing?
 - What if you're using your phone to send out a link to something relevant?
 - When does an email thread/text thread become subject to open meetings law?
- Case law: Davison V. Randall (Fourth Circuit) 2019
 - Commissioner's Facebook page "as a tool of governance"

Decision-Making (Hearings)

Defensible Procedures

- Noticing
- Opportunity to be heard
- Clear rules
- Follow your process, rules
- Findings of fact
- Unbiased and timely decisions
- Complete records



Decision-Making (Hearings)

Defensible Procedures – Why?

- Quasi-judicial actions may be challenged via C.R.C.P. 106(a)(4)
- Overturned if abuse of discretion, exceeds jurisdiction, arbitrary & capricious
- Upheld if record of decision demonstrates otherwise



Decision-Making

Motions

- Well-prepared motions take some effort
- Motions explain to applicant and audience how the decision was made
- Agree on procedures that will be used for meetings and for motions

Sometimes it
takes a team
effort!



Decision-Making

Motions – Avoid Getting Tripped Up

- Before voting as one complex motion, vote on conditions one at a time
- Move to approve for reasons listed in staff report (includes staff report in findings)



Decision-Making

Findings of Fact

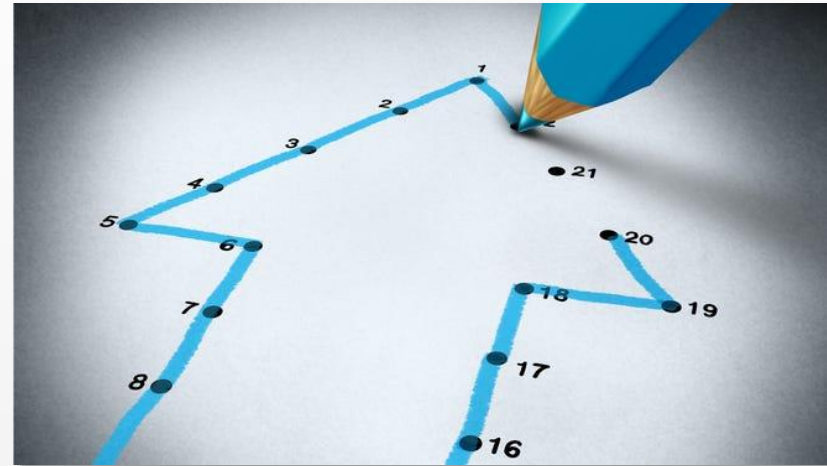


- Factual foundations for your conclusions as to whether your standards are met; legal footprints or breadcrumbs
- Facts must address the standards, so ask questions designed to get evidence related to the standards
- Adopted process was followed
- Conforms with the comprehensive plan
- Can't make a decision based on opinion or "gut"
- **Tip:** raise highlights from work sessions

Decision-Making

Following Review Criteria

- Protects substantive due process
- Decisions based on compliance with criteria
- Criteria are not vague (or will be “unconstitutionally void”)
- Conclusions must state *why* an application meets criteria



Decision-Making

Final Tips

- Detailed deliberation informs better motions, the community, and the judge on how a decision was made
- Avoid vague or non-specific motions (would someone understand 10 years later why that decision was made, or even what was decided?)
- Watch for bias against difficult people; look for legitimate points and solutions
- Don't be afraid to say "I don't know"
- You don't need to explain or apologize for the process
- Beware side conversations, similar use of electronics during meeting
- **If they don't like the outcome, they are likely to attack the process**

Decision-Making: Case Study

Lakewood Speaks 2019 Data

Meeting Participation



12%

In-Person

88%

Via online

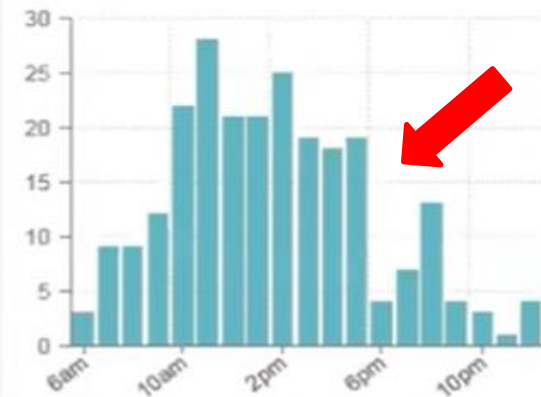


Public input

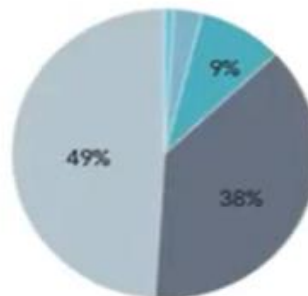
66%

of total comments are
from online

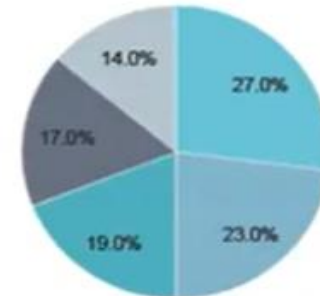
When do people comment online?



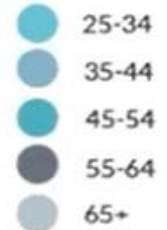
Commenters by Age



In-Person Participation



Online Participation



Decision-Making - Conclusion

A popular decision is not always a good decision, and a good decision is not always popular.

It is your responsibility to protect the (current and future) public health, safety, and welfare, even if it's not a popular decision in the moment.

Decision-Making - Scenarios

A local developer brings updated plans to the staff the day before the hearing. There is tremendous pressure for staff to allow the applicant to make last-minute changes. ***What should staff do?***

- a) Quickly forward the new information to the PC members/elected board and amend the staff report.
- b) Explain to the developer why this last-minute action is not appropriate or workable.
- c) Explain that the locally-adopted process is the one that must be followed to ensure staff, referral staff and agencies, and boards and commissions have sufficient time to review.

Decision-Making - Scenarios

An unpopular development application would likely go over a lot better if they had a better design. You decide to impose a condition of approval - a design standard (that the town has not adopted) because you know it will calm opponents and make it a better project. ***Is this a worthwhile and pragmatic solution?***

- a) Yes
- b) No

Decision-Making - Scenarios

You have been so busy, you did not get a chance to review your packet before the hearing. ***What should you do?***

- a) Don't show up to the meeting.
- b) Contact staff to find out if there will be a quorum. Get their advice.
- c) Email the other board/commission members before the meeting to get their thoughts on how you should vote.
- d) Call your chair to see what he/she/they think.

Decision-Making - Scenarios

A well-respected citizen at the public hearing stands up and asks the PC to take a vote of the audience to demonstrate how many people are there in opposition to the proposed project. ***What should the Chair do?***

- a) Ask the citizen to please sit down and then take control of the vote of the audience.
- b) Thank the citizen for showing up to provide comments and explain how the process works to provide input.
- c) Remind the person that everyone's voice needs to be heard individually. Explain audience votes and similar outbursts can dissuade people from expressing opposing viewpoints.
- d) Have police immediately escort the person out of the room.

Decision-Making - Scenarios

A citizen in the audience starts asking the applicant questions.

Is this acceptable?

- a) Yes, you can't stop or hinder free speech.
- b) No, questions must be directed or raised to the board/commission to maintain control of the proceeding.

Decision-Making - Scenarios

An opponent of a project challenges the time limit, demanding the full time she needs to provide her testimony.

What should the Chair do?

- a) Thank her for her testimony and remind her there is a time limit which must be followed consistently and fairly.
- b) Go ahead and give her one more minute.
- c) Allow her to exceed the time limit only if others in the audience will give her their time.

Decision-Making - Scenarios

The Chair has asked people not to repeat testimony, but someone is saying pretty much the same thing as the last guy.

What should the Chair do?

- a) Cut him off as quickly as possible so it doesn't get out of hand; you don't want to be here all night!
- b) Allow people giving testimony their allotted time despite whether they repeat what others have said. Often people feel they are restating important concepts that must be considered, possibly from different angles.

Decision-Making - Scenarios

Someone testifies and argues your point/contradicts you in the public hearing. ***Do you engage in a debate to ensure the correct point is heard?***

- a) No, you are not there to win people over to your viewpoint; you are there to hear and consider all the facts and testimony and then make your decision based on whether the proposal meets the regulations.
- b) Yes, the record must be made clear who is right and what facts are correct.
- c) No, avoid debate but when his testimony is complete restate your point concisely to avoid confusion.

Decision-Making - Scenarios

It becomes clear the PC must deny the project. The applicant feels she has not been treated fairly and implies she may sue if her project isn't approved. ***What should the PC do?***

- a) Approve the project but with several conditions you expect she will not be able to meet.
- b) Be sure the motion used to deny the project is clear and the staff report/discussion clearly lays out which standards were not met to make it clear why it was denied.
- c) Deny the project but the PC Chair should call her after the project to better explain why it had to be denied and make sure she feels heard.

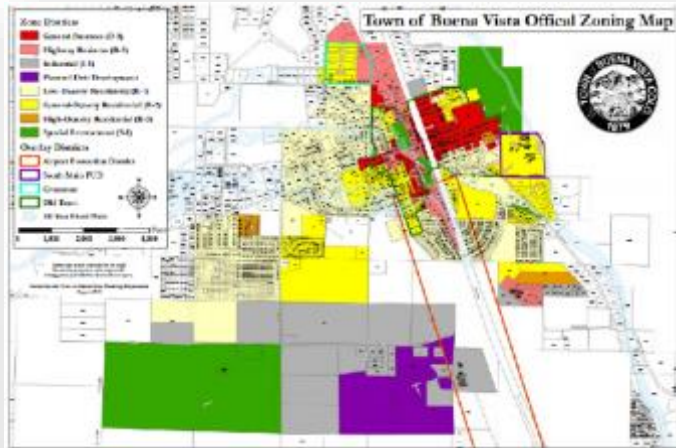
Decision-Making - Scenarios

The applicant claims the PC's decision has essentially removed the highest and best use of their property. ***Is this a reasonable expectation?***

- a) No, case law supports that no one has the right to expect the highest and best use of their property but can expect a reasonable use of their property (so that not *all* viable economic use has been stripped from the land).
- b) Yes, the constitution protects everyone's ability to do what they please with their land.

Legal and Ethical Issues

Types of Action



Legislative:

Reflective of a public policy relating to matters of a permanent or general character, not restricted to an individual

Quasi-Judicial:

Involves determination of rights or obligations of an individual; use of legislated rules to make a determination on an application

**CHAFFEE COUNTY
PLANNING & ZONING DEPARTMENT**
P.O. BOX 699 PHONE (719) 530-5565
SALIDA, CO 81201 FAX (719) 539-7442
WEBSITE www.chaffeecounty.org

APPLICATION TO BOARD OF ADJUSTMENT
Application Fee \$120.00 Application filing deadline is the second Friday of each month for next months' hearing

GENERAL INFORMATION

REQUEST (SETBACK VARIANCE, SIGN, ETC.)	_____
PROPERTY ADDRESS OR GENERAL LOCATION	_____
NAME OF APPLICANT	_____
MAILING ADDRESS	_____
TELEPHONE	_____ FAX _____
E-MAIL ADDRESS	_____
EXISTING ZONING	_____
LEGAL DESCRIPTION	_____

The following information must be submitted by the second Friday of the month prior to appointment with the Board of Adjustment. Seven (7) copies of the application must be packaged in a bound or file form with each set containing all the required information.

Legislative v. Quasi-Judicial

Function	Legislative	Quasi-Judicial
Master plan/general, specific plan	x	
Comprehensive zoning	x	
Zoning text amendments	x	
Piecemeal rezonings	x	x
Special exceptions		x
Variances/conditional use permits		x
Subdivision approvals		x
Zoning or use permit issuance & violations		x

Rezoning is both!



Ex Parte Contact Defined

Any **written or verbal communication initiated outside of a regularly noticed public hearing** between an official with decision-making authority and one or more of the parties (but not all the parties), about a subject that is under, or about to be under, consideration by that official and that **seeks to influence or present information** about that subject.



Ex Parte Contact Defined

To preserve public confidence and due process, the board/commission should **ensure the public and interested parties have the opportunity to know, and respond to, all information** the board considers in making its decisions. The board should also ensure that each board member has the opportunity to know and consider the information available to other board members.

“Help! What should I do if someone attempts an ex parte contact with me before a hearing?”



Ex Parte Contact

- **Stop** the person
- Explain why contact is inappropriate
- Disclose the contact (first to staff, then again at meeting)
- Recusal, leave the room
- Consider adopting formal procedures
- Encourage participation in the process



Ex Parte – Outreach & Education

“Please note that it is inappropriate to personally contact individual County Commissioners or Planning Commission members while an application is pending. Such contact is considered ex parte communication and will have to be disclosed as part of the public hearings on the matter. If you have any concerns, you should contact staff, write a letter or present your concerns at the public meeting so your comments can be made part of the record.”

- Chaffee County PC webpage

Ex Parte Contact

What else can I do to stop the ex parte contact but still be helpful and keep people engaged?



Ex Parte Contact

How do you know when an application is received and you can no longer discuss it until the public hearing?

Littleton Colorado

Sent January 8, 2019

Applications Under Review Or Scheduled For Public Hearing or General Business

These applications have ex-parte communication restrictions with liability implications. Council, Board, and Commission members should not have discussions with applicants regarding these applications.

Applications for Board of Adjustment

Project Name: None At This Time

Applications for Historical Preservation Board

Project Name: New Rooftop Units at [REDACTED] Address: [REDACTED]

Applications for Building Board of Appeals

Project Name: [REDACTED] Address: [REDACTED]

Appeal on: [REDACTED] Address: [REDACTED]

Appeal on: [REDACTED] Address: [REDACTED]

Planning Projects - YTD

■ Active* ■ Approved

Ethical Scenarios

You're on a site visit before the hearing. The owner/rep meets you just to let you in the gate and does not talk with you (but shadows you).

You are pretty sure one of the neighbors has seen you.

What do you do?

- a) You do not need to stir up suspicion by disclosing the owner/rep let you onto the property. You know you didn't talk with him and that's what matters. It is not an ex parte conversation.
- b) Disclose at the hearing the owner/rep let you in but you two didn't discuss the property or project; proceed to vote.
- c) Call staff ahead of time to give them a heads-up and get advice.
- d) Don't go on any site visits anymore.

Ex Parte Contact

Other ideas/tips?



Conflicts of Interest

There is a conflict of interest when:

- You are a member of the governing body, and
- You have a “personal or private interest” in the matter proposed or pending before you.



What Should I do if I have a Conflict?

Colorado Law requires you to do **ALL of the following:**

- Disclose (staff, hearing)
- Do not vote
- Do not attempt to influence the votes of others



31-4-404(2)

...Except?

Ethical Scenarios

An applicant claims one of the council members has a conflict of interest because he always votes “no” on her projects. That council member should not vote on this project because of the appearance of a conflict and the importance of due process.

- a) True
- b) False

Ethical Scenarios

You are convinced your fellow PC member has a conflict of interest. ***What do you do?***

- a) Talk with the PC member at least a few days before the hearing.
- b) Set up an informal meeting with a few other PC members so they can help you explain why it's a conflict to this PC member.
- c) Talk with staff for guidance.
- d) Raise your concern in the PC meeting before that proposal is heard.

Open Meetings

- Colorado Sunshine Law - **24-6-402, CRS**
- Public notice required for meetings where formal action occurs, public business is discussed, OR quorum present
- Minutes required when formal action occurs
- Suggested rule of practice: All open, all noticed, and minutes for formal actions



Public policy is public business.

Ethical Scenarios

After a particularly rough public hearing, the planning commissioners all agree to grab a beer to relax and unwind.

Any issues/concerns?

- a) This could be seen as an unnoticed public meeting at which the PC may have discussed public business.
- b) The perception could be this is where the *real* work is done and decisions are made about upcoming policies or projects.
- c) It's okay *after* a public hearing but not before.

Colorado Governmental Immunity Act

Protects government officials when acting within the scope of their duties.

24-10-101, et. seq.



How to Lose Your Immunity

- Prejudge a matter
- Engage in ex parte contacts
- Make a decision that clearly violates established laws
- Act beyond scope of your authority
- Ignore or go against publicly given legal advice
- Ignore or act outside bounds of established procedures or ordinances



Ethical Scenarios

The Mayor, who has been a community leader for decades, calls up the newest planning commissioner or council member a few days before the public hearing to give some background information on the development application that will be on the agenda at the next meeting. ***Is there an issue with this approach?***

- a) While the intention may be noble, the Mayor is engaging in an ex parte contact and threatening the decision of the board, which could be overturned if challenged on these grounds.
- b) It is inappropriate because the new board member may feel pressured to vote in alignment with the Mayor's view.
- c) As long as the Mayor just gives background this new member probably doesn't know (from years ago) and doesn't tell the new member how to vote, it is fine.

Ethical Scenarios

After the vote at the PC hearing, a PC member decides to testify at the town board meeting to represent the minority opinion. ***Is this an okay approach?***

- a) A PC member does not give up her right to testify as a citizen. It can be helpful for the board to hear her perspective and benefit from her insights and experience.
- b) It can be divisive to allow the “losing side” of the PC vote to essentially appeal their decision to the town board directly. It sets up a more politicized, win-lose dynamic in future PC meetings as well as town board meetings.
- c) If the town board remands the decision back to the PC to reconsider the proposal in light of new information, this PC member would not be allowed to hear the matter because they engaged in an ex parte conversation by attending or speaking at the town board hearing.

Ethical Scenarios

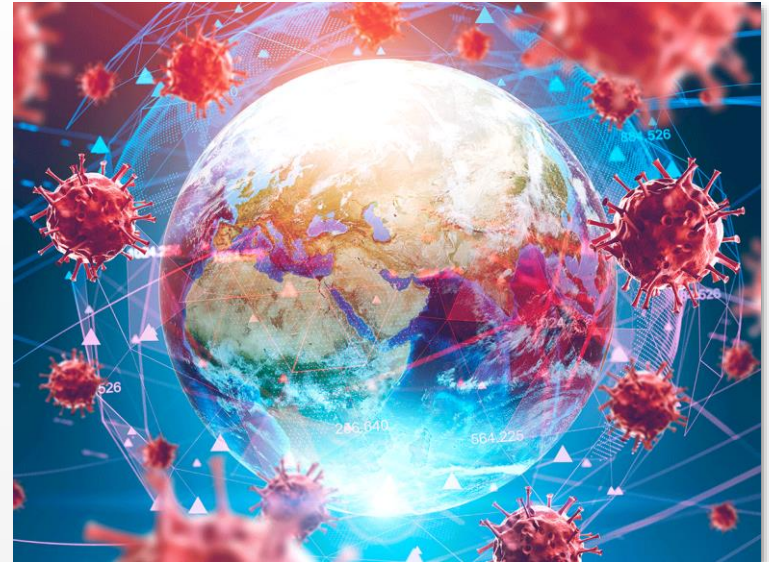
An elected official (board member/commissioner) decides to attend the PC public hearing for a controversial project and provide public testimony. ***Is this an okay approach?***

- a) The elected official does not give up his right to testify as a citizen. It can be helpful for the PC to hear his perspective before they vote regardless of whether the board/commission will decide on this project after the PC hearing.
- b) It's okay as long as the PC has the final decision making power on this project and it will not go on to the board/commission.
- c) This could be perceived as the elected official influencing the PC. It could also be perceived as prejudging if the project is called up to the board/commission after the PC hearing.

Extra: Planning During Disruptions

Lessons from Planning in a Pandemic

- Setting up recovery teams
- **Budgeting and fiscal health** ←
- **Equity and inclusivity** ←
- **Public space and facilities** ←
- Built environment & public health
- Data and demographics
- Local economy (recovery & resiliency)
- **Exacerbated affordable housing shortage** ←
- Public engagement and messaging



Resources: DLG Website

Continuity of Operations Resources

COVID-19 Relief for
Local Governments ▼

Financial Advice and
Assistance

Continuity of
Operations
Resources

Reduction of
Administrative
Burdens

Additional Resources

Account Login

Civil Asset Forfeiture
Reporting

Colorado Main Street
Program >

Colorado Positioning

The division's [Regional Managers](#) are assisting local governments with myriad issues and concerns in order to keep local government operating. See the resources below but please call your Regional Manager if you would like additional technical advising or assistance.

Budget

- Local Government Budget Law: The Local Government Budget Law provides circumstance for changes to the budget (CRS 29-1-109). [Resource on amending budgets](#)
- [Government Finance Officers Association Fiscal First Aid Resource Center](#)
- [Colorado Government Finance Officers Association](#)

TABOR

- Consult with your attorney about use and repayment of the 3% TABOR emergency reserves before accessing them. TABOR's definition of "emergency" excludes economic conditions, revenue shortfalls, and salary or fringe benefit increases.

Elections

- [Governor's Election Guidance to Municipalities](#) - specific to municipal elections held April 7 due to COVID19 concerns
- [Colorado Municipal League: Elections Fact Sheet](#)
- [DLG Special Districts Election Guidance](#)
- [CDC Recommendations for Polling Locations](#)

Taxes

- Property Tax: As of 4/7/2020 property tax collection and remittance is unchanged. However, the timing of the reporting of certain annually-appraised property new valuation information to County Assessors is being adjusted.

Resources: CRO Website



HOME COVID-19 UNDERSTAND PLAN ACT RECOVERY RESOURCES CRF UPDATE CONTACT

RESILIENCY FRAMEWORKS

INTEGRATING RESILIENCY INTO EXISTING PLANS

COVID-19 Resources

A Special Note from the Colorado Resiliency Office: The COVID-19 situation is one that is unprecedented. The CRO is working with our partner State agencies and local communities in our collective effort to address community and economic impacts and recovery.

The CRO has developed a [COVID-19 recovery resources page](#) that will be updated regularly. For the most up-to-date information on the overall situation, please visit the State's COVID-19 site: <https://covid19.colorado.gov>.

The [Colorado Department of Local Affairs](#) Colorado Resiliency Office supports and helps empower resilient in the face of natural disasters and other major challenges. The CRO coordinates over numerous multi-disciplinary local, state, federal, and private partners in setting priorities, lever

[coresiliency.com](https://www.coresiliency.com)

Review

Planning Refresher Wrap-Up

REVIEW

- Importance of and authority to plan
- Relationship with staff, elected officials, other commissions, applicants, and public
- Integrate and implement your plans/policies
- Consider meeting management and decision-making carefully
- Leave solid findings and record of decision
- Talk about ethical issues together
- Resources:

cdola.colorado.gov/community-development-planning

Recommended Next Training Sessions, Speakers, Meetings

- Water provider(s)
- Fire department
- Police department
- Assessor's office
- Other service providers
- AAA – Area Agency on Aging
- Independent learning



Thank You!

Your role is very important to the long-term quality of life of your community. Thank you for dedicating your time and expertise to serve your community.



KC McFerson - Community Development Office



COLORADO
Department of Local Affairs
Division of Local Government

