

MEMO

TO: Boulder Planning Commission

FROM: Lee Nellis, FAICP

DATE: January 9, 2023

RE: Draft Bylaws

Here is a draft of PC bylaws that I propose be followed until June, then amended as need be, an adopted for continuing use.

This draft includes a number of edits for clarity and some edits and additions that reflect helpful comments provided by John Veranth.

Revised Draft of 1/9 - Planning Commission Bylaws

Boulder Town, Utah

Adopted \_\_\_\_\_

Purpose-Authority \_\_\_\_\_

1. ***What is the purpose of these bylaws?*** These bylaws ~~are adopted to~~ guide the Planning Commission (PC) in fulfilling the duties assigned to it by the Town’s ordinances in an accountable and well-organized manner, consistent with the community interest expressed in the general plan. These bylaws will also help applicants and the public understand and follow PC procedures.
2. ***What if these bylaws do not resolve a procedural question?*** Procedural questions not resolved in these bylaws may be resolved by reference to Robert’s Rules (Rules of Order Newly Revised, 11<sup>th</sup> Ed, or a more current edition if adopted into Utah law).
3. ***Under what authority does the PC serve? Under what authority are these bylaws adopted?*** The PC is established as required by Utah Code 10-9a-301 and §153.042 of the Boulder Town Code of Ordinances. §153.042(A)(10) requires the adoption of these bylaws.

Membership – Officers \_\_\_\_\_

4. ***How many members serve on the PC? How are PC members appointed?*** These and similar questions about the PC’s organization are answered in §153.042 of the Boulder Town Code of Ordinances. An excerpt from the code is provided on the next page for easy reference.
5. ***Do PC members receive training in their duties?*** State law does not require training for PC members in small municipalities, but the Boulder PC will endeavor to conduct or participate in a substantive training session once each quarter.

## Meetings – Agendas

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6. ***Are all PC meetings open to the public?*** Yes. The PC must operate in accord with the Open and Public Meetings Act, Utah Code 52-4-101, et seq. ~~The PC has no authority to hold executive sessions.~~
7. ***When are regular PC meetings?*** Regular meetings of the PC shall be the second Thursday of each month. The PC will convene at 6:00 PM during the months of November-April and at 7:00 PM during the months of May-October.
8. ***May the PC hold special meetings? Are there limitations on such meetings?*** §153.042(F)(2) of the Boulder Town Code of Ordinances authorizes special meetings. Such meetings may be held only after the required notice has been posted. The agenda of a special meeting will be limited to the topic for which it was called. Special meetings may not be called for the initial consideration of a proposed ordinance or development when, as allowed by ordinance

### Excerpt from Boulder Town Code, §153.042

(C) *Membership; appointment, removal, terms and vacancies.*

(1) The Planning Commission shall be composed of five regular members, and one alternate member, appointed by the Mayor, with the advice and consent of the Council.

(2) The Council, after finding cause, may remove any member of the Commission for a violation of this chapter or any policies or procedures adopted by the Commission following receipt of a written complaint filed against the member. The Council shall provide the member with a hearing, if requested.

(3) Members of the Commission may be compensated on a per diem basis, based upon meetings actually attended and reasonable and necessary expenses, as determined by the Council.

(4) All members of the Commission, including the alternate member, shall serve a term of five years. No member shall serve more than two consecutive full terms. If any member begins serving his or her term and then resigns, or is unable to complete his or her term, a replacement shall be appointed. The service of a replacement member during the remainder of an unexpired term shall not constitute a full term. Consequently, a replacement member may serve the remainder of a former member's term and then be eligible to also serve two consecutive full terms, if so appointed.

(5) At an annual organizational meeting to be held the first regular meeting in January, and at other times as required, the members of the Commission shall elect one of their members as Chair and one of their members as Vice-Chair. In the absence of the Chair, the Vice-Chair shall act as Chair and shall have all powers of the Chair. The Chair shall serve a term of two years. No member shall serve as Chair for more than two consecutive terms.

(6) The Chair, or in the Chair's absence the Vice-Chair, shall be in charge of all proceedings before the Commission, and shall take such actions as necessary to preserve order and the integrity of all proceedings before the Commission.

(D) *Recording Secretary.* The Council shall appoint a Recording Secretary to serve the Commission. The Recording Secretary shall keep the minutes of all proceedings of the Commission, which minutes shall be the official record of all proceedings before the Commission, attested to by a majority vote of the members of the Commission. The Recording Secretary shall be compensated as approved by the Council.

(E) *Quorum and necessary vote.* No meeting of the Commission may be called to order, nor may any business be transacted without a quorum consisting of at least three members of the Commission being

present. The Chair and the alternate member shall be included for purposes of establishing a quorum and shall act as a voting member of the Commission. The alternate member shall attend the meetings and, in the event of any absence of any regular member at a meeting, the alternate shall assume a regular member place on the Commission and shall vote in that place at that meeting. In the event that all five regular members are in attendance, the alternate shall sit in on the meeting and have a voice, but shall not have a vote. All actions of the Commission shall require a roll call vote of the Commissions duly seated at a meeting with a majority of said members voting in the affirmative.

(F) *Meetings, hearings and procedure.*

(1) The Commission shall establish a regular meeting schedule.

(2) Special meetings may be requested by the Council, the Chair of the Commission or a majority of the members of the Commission.

(3) If a matter is postponed due to lack of a quorum, the Chair shall reschedule the matter to the next available Commission meeting. The Recording Secretary shall notify all interested parties and all members of the Commission of the date when the rescheduled matter will be heard by the Commission.

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~~an exception to this rule may be made when~~ consideration of a proposed ordinance or development has been delayed by the absence of a quorum or an error made by the Town.

- 9. *How are PC meeting agendas set?*** Meeting agendas must be made available to the public in advance, as required by State law. Agendas will be assembled and posted by the Recording Secretary in collaboration with the Zoning Administrator (ZA) and Chair. The agenda will be reviewed and adopted as the PC's first action at every regularly-scheduled meeting. An item may be added at this time by simple majority vote of the members present. ~~Initial Action on consideration of~~ a proposed ordinance or development may not be added to an agenda as allowed here. Posted notice is required for all such ~~discussions~~ actions.
- 10. *May the PC manage the length of its meetings to ensure proper consideration of all matters?*** Yes. When numerous items are proposed for the PC to consider at a given meeting, the agenda shall be limited to the number of items the Chair determines can be properly addressed in a meeting that ends at approximately 10:00 PM. When this is necessary, the PC may schedule one or more special meetings to address items that were deferred.
- 11. *May the PC encourage development consistent with the general plan by giving certain applications priority on its agendas?*** Yes. Applications for developments that provide permanent protection of open space resources and/or perpetually affordable housing shall be ~~placed~~ the first hearings on the agenda.
- 12. *How may the public be involved in PC meetings?*** There are two opportunities for public involvement in PC meetings. The procedures for the second, participation in public hearings, are described later in these bylaws. First, however, the ~~third~~ final agenda item at every regularly scheduled PC meeting shall be a time for public questions and comments. This question and comment time may be informal, involving all present in discussion, but with the clear understanding that the PC is making no decisions. ~~It shall be limited in time to ensure that the listed agenda items receive proper consideration.~~ Whoever is presiding is empowered to insist that questions and comments be relevant and respectful. Neither proposed ordinances nor proposed developments for which a PC consideration hearing has been scheduled and posted may be addressed at this time.
- 13. *How will minutes of PC meetings be taken?*** All PC meetings must be recorded. Minutes of PC meetings will be produced based on the recording and notes taken during the meeting, distributed to the PC, and made available to the public, as required by law, by the Recording Secretary. Whoever is presiding will appoint a person to take minutes if the Recording Secretary is absent.
- 14. *How will PC meeting minutes be approved?*** Review of the minutes of previous meetings will be the PC's second action at every regularly scheduled meeting. Whoever is presiding will first ask for corrections, which may be made by consensus if there is no disagreement, then for a motion to approve the minutes as corrected. A simple majority of the members present is required for approval of minutes, but note that a member who was not present at a meeting may not vote on approval of the minutes of that meeting.

**Development Review** -----

**15. *Is preapplication review required for some proposed developments?*** Yes. Concept plan review is required for proposed subdivisions. It is not required for proposed plat amendments or conditional use permits. Prospective applicants may, however, request time to informally discuss a potential application for a plat amendment or CUP at any regularly scheduled PC meeting at which time is available for that purpose.

**16. *How is concept plan review conducted by the PC?***

- Applicants are expected to be familiar with the Town's general plan and ordinances before submitting a concept plan for discussion. They are also expected to have contacted and, as necessary, negotiated with their neighbors.
- The applicant must submit a concept plan to the ZA at least 20 days before the meeting at which concept plan review is requested.
- The ZA will notify the Recording Secretary and Chair that a concept plan review has been requested. They will add it to the agenda of the next regularly scheduled meeting at which time will permit its proper consideration. No determination of completeness is required for a concept plan, but applicants should seek the ZA's advice if they have questions about what to submit.
- Concept plan reviews may be conducted on site. Where this is done, the posted meeting notice will provide directions to the site and the applicant will be responsible for ensuring safe access and parking.
- It should be clearly understood that concept plans are a basis for an informal conversation that may result in significant changes in the applicant's initial ideas. ~~They do not require substantial upfront investment in surveying or engineering.~~
- The ideal concept plan will be presented as an overlay over a recent aerial image of the site. It will show accurate site boundaries, proposed building sites, proposed roads, and proposed open spaces. The applicant may also provide photographs and other supporting materials.
- Review of the concept plan will be informal, with the interested public involved. Whoever is presiding is empowered to ensure that public comment is relevant and respectful.
- When there has been sufficient discussion, whoever is presiding will ask PC members to list their concerns and recommendations for consideration by the applicant. A five (5) day period after the concept plan review will be allowed for submittal of written comments. Following that, the ZA Recording Secretary, with the assistance of the ZA Recording Secretary and any PC member assigned to the task, will prepare a written list of concerns and recommendations that will be conveyed to the applicant within 20 days after the concept plan review.

- It is expected that the PC's concerns and recommendations will be reflected in the application for subdivision approval, if one is submitted. To help achieve this goal, the applicant may request time on the agenda of any regularly scheduled PC meeting at which time allows for additional discussion at the concept level before submitting an application.
- Concept plan reviews expire after two (2) years.

**17. Is there a deadline for filing applications for development review?** Yes. All applications for PC review must be submitted to the ZA at least 20 days before the meeting at which a hearing is requested. Additional materials, clarifications, or corrections requested by the ZA must be received at least five (5) days before the date a hearing notice must be posted.

**18. Will the PC review incomplete applications?** Never. The completeness of applications will be determined by the Zoning Administrator before any action on an application is scheduled.

- The completeness of applications for conditional use permits will be determined using a checklist of site development plan requirements established by §153.150(B) of the Boulder Town Code of Ordinances.
- The completeness of applications for RSTRs will be determined by their compliance with the requirements of §152.204(E) of the Boulder Town Code of Ordinances.
- The completeness of applications for plat amendments will be determined using a checklist of submittal requirement established by 152.116(C) of the Boulder Town Code of Ordinances.

*Additional discussion is needed before saying specifically how it will be determined that applications to create subdivisions are complete.*

**19. How will public hearings on development reviews be scheduled? How will notice of such hearings be provided?** The ZA will notify the Recording Secretary that an application has been determined to be complete. The Recording Secretary will then add a hearing on the application to the agenda of the next regularly scheduled meeting for which the notice required by State law can be posted and at which time will allow its proper consideration,

**20. How will applications for Conditional Use Permits (CUPS) be reviewed?** All applications for CUPs shall be reviewed as provided by §§153.150, et seq. of the Boulder Town Code of Ordinances and the procedures adopted in these bylaws.

**21. How will applications for RSTRs be reviewed?** Proposed RSTRs will be reviewed as provided in §152.204 of the Boulder Town Code of Ordinances.

**22. How will applications to create land divisions be reviewed?**

- Proposed plat amendments shall be reviewed following the procedures adopted in §152.116 of the Boulder Town Code of Ordinances and the procedures adopted in these bylaws.
- Proposed subdivisions will be reviewed as provided in Title 152 of the Boulder Town Code of Ordinances. *This provision of the bylaws will need to be amended following the adoption of improved subdivision standards.*

## Public Hearings – Decisions

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### **23. What is the PC's public hearing procedure?**

- Whoever is presiding will open the hearing by stating its topic, noting that proper notice was given, when, and how (this should be in the hearing record); then asking if any member wishes to declare ~~or discuss~~ a potential conflict of interest or an ex parte communication.
- The PC will discuss potential conflicts of interest and ex parte communications that are declared by members. This may ~~include result in~~ asking members to refrain from participation while the alternate takes their place. It may also include, when necessary to have a quorum, allowing a member to participate once everyone has a clear understanding of the nature and extent of the potential conflict or ex parte communication.
- Whoever is presiding will ask the ZA to briefly describe the project. This description will include a history of the project so far in order to put the date of the concept plan review, if one was required, and follow-up; the date when the application was determined to be complete, and similar procedural facts into the hearing record.
- Following the ZA's presentation, whoever is presiding will ask if there are factual questions about the project. This is a time for clarification, not comment. Whoever is presiding will direct people to save comments for the next step in the procedure.
- Factual questions will be answered by the ZA or a PC member based on the content of the general plan, the ordinances, and the application. The purpose here is to help those in attendance understand the application and the basis for its review. The PC will not respond to questions during a hearing.
- The PC may impose a time limit on statements before a public hearing begins. It may also ask people to make statements in the order they signed a register made available for this purpose before the hearing.
- Whoever is presiding will remind everyone that statements are to address compliance with the general plan and ordinances as specifically as possible, then ask for statements, beginning with a statement from the applicant or applicant's representative.

- Any person making a statement is required to begin with their name and address.
- Whoever is presiding will use the gavel to maintain focus and civil conduct if necessary. Irrelevant or unduly repetitive statements may be judiciously cut off.
- PC members may ask questions for the clarification of any statement. They should, however, refrain from commenting on questions of compliance until all statements have been taken and discussion begins.
- People may be allowed to speak a second time to clarify their statement if time allows.
- When everyone who wishes to speak has, whoever is presiding will, with the assistance of the Recording Secretary, read all written statements that were submitted into the record. This may be done by reference, without reading the entire text.
- Whoever is presiding will then close the public hearing.

#### ***24. How does the PC make decisions following a public hearing?***

- Whoever is presiding will guide the PC in identifying areas of agreement and topics that require discussion. This discussion may be based on recommendations submitted by the ZA.

*Checklists help the PC sort and focus on what really requires attention. I haven't mentioned them here because you don't have checklists for every type of decision yet.*

- Members may inform their discussion by asking questions of the applicant, the applicant's representative, anyone who gave a statement, or anyone present who may have the knowledge needed.
- The PC may adopt a motion accepting the ZA's recommendations in whole or in part. It may also make separate decisions about compliance item by item, followed by a final decision based on those decisions.
- All votes taken in the process of reviewing a proposed ordinance or an application for development shall be by roll call.
- The PC shall impose any conditions that it believes are necessary to ensure compliance with specifically cited provisions of the ~~general plan and/or~~ ordinances on the approval of any application.
- The PC must give reasons that are based in specifically cited provisions of the ~~general plan and~~ ordinances for the denial of an application.



**25. May the PC table a decision?** Yes, by simple majority vote of the members present, for a cause stated in the motion to table, and to a date certain, which may be a regularly scheduled or special meeting.

**26. How will the applicant and others be notified of PC decisions or recommendations?**

The ZA will provide a written record of decision, including all conditions imposed or all reasons for denial, to the applicant and others who have requested that record in writing within ~~15~~ 20 days following the decision. The ZA may seek the review of the Chair, the Recording Secretary, or other members before completing the record of decision.

**27. May an applicant begin work or offer land for sale on an approved project before receiving the record of decision.** Not wisely. In many cases, an administrative permit will be required before work begins and no such permit may be issued until the record of decision is complete. In all cases, the applicant proceeds entirely at his or her own risk before receiving the record of decision.

**28. Will these bylaws be reviewed on a regular basis? How may they be amended?** The

PC will include a review of these bylaws on the agenda of its first regularly scheduled meeting every year. They may be amended at that time, or at any other time at which discussion of the bylaws appears on the posted agenda. Amendments to these bylaws must be made with the approval of a majority of the entire PC. Amendments must be transmitted to the Town Council for review.