



CITY COUNCIL WORK SESSION

448 E. 1st Street, Room 190 Salida, Colorado 81201
December 18, 2023 - 6:00 PM

AGENDA

Please register for the City Council Work Session

<https://attendee.gotowebinar.com/register/8054749917914710285>

After registering, you will receive a confirmation email containing information about joining the webinar.

DISCUSSION ITEMS

- [1.](#) DOLA Presentation- Roles and Responsibilities
- [2.](#) Quasi-Judicial Legal Overview Workshop
- [3.](#) Short Term Rental Discussion

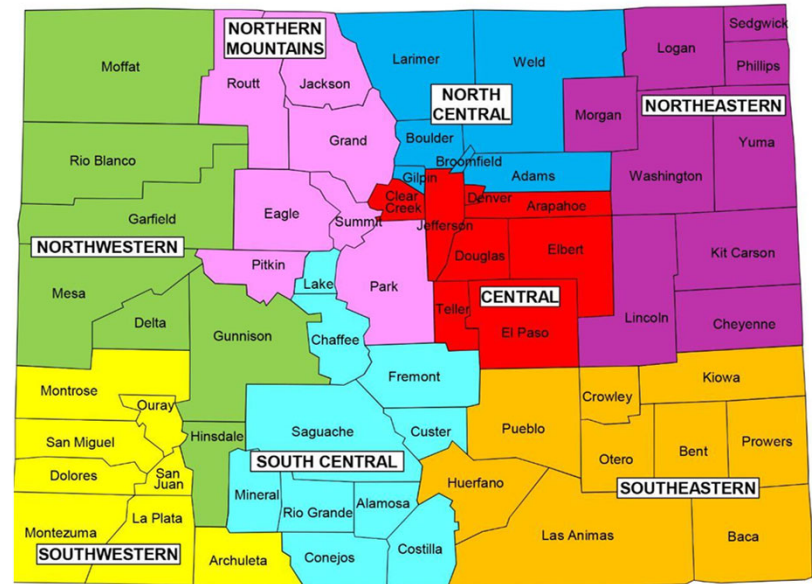
Board Training & Refresher Workshop



December 18, 2023

About DOLA

Strengthening Colorado Communities



COLORADO
Department of Local Affairs
Division of Local Government

Logistics & Disclaimers

- Please speak up to:
 - Ask questions along the way
 - Offer stories & examples
 - Respond to scenario questions
- Topics are anticipated to be 90% applicable

What We'll Cover Today

- Welcome and Introductions
- Roles and Responsibilities (Authority)
- Relationship Building (Working together as a board)
- Establishing Goals and Setting Priorities
- Ethical Issues
- Scenarios (throughout)

Roles & Responsibilities

Grounding Authority

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



Local Governments

Health and Safety – police, fire, immunization, hospitals, roads, drinking water and groundwater protection

Welfare – education, libraries, museums, parks, recreation facilities, housing and economic development

Housekeeping – birth/death records, marriages, property ownership, tax collection and elections.

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)



Roles & Responsibilities



Elected Officials

- Set policy
- Fiduciary responsibility for the budget
- 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
- Support staff



COLORADO
Department of Local Affairs
Division of Local Government

Elements to consider

Be Professional

Be Accountable

Be a Big-Picture Thinker

Be a Good Steward

Be an Advocate

Be a Community Builder

Be a Decision Maker

Be Ethical

Town Administrator

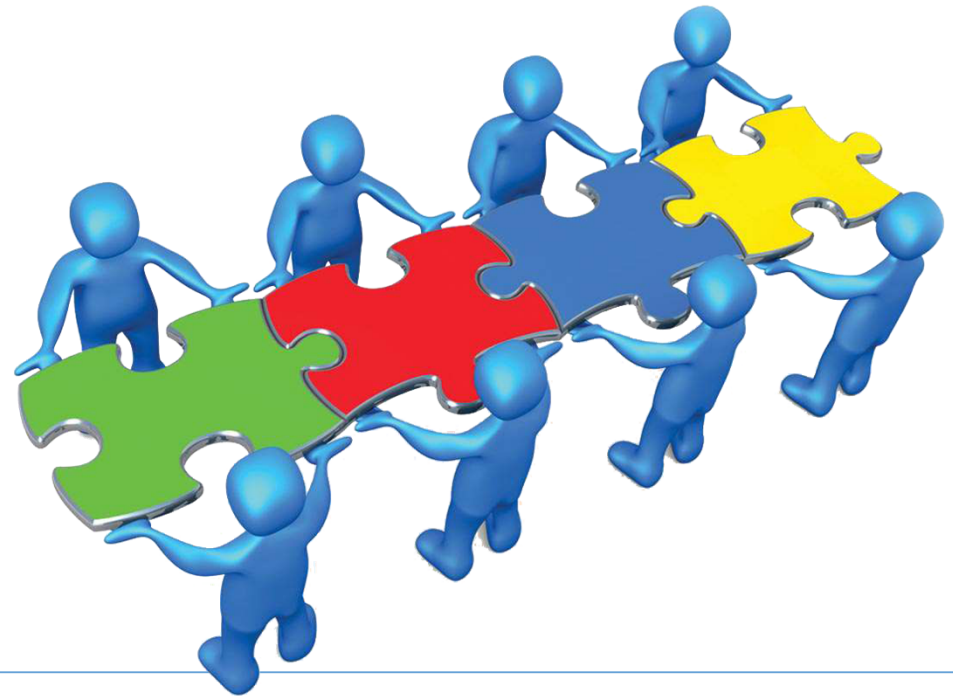
- Prepares a budget for Board consideration
- Recruits, hires, terminates, and supervises staff
- Serves as the Town Board's chief advisor
- Carries out the Board's policies
- Provides complete and objective information about local operations
- Discusses the pros and cons of alternatives and offers an assessment of the long-term consequences of a Board's decisions
- Serves at the pleasure of the governing body
- Traditionally works as an exempt or salaried employee
- Makes policy recommendations to the Town Board for consideration and final decision
- Is bound by whatever action the Town takes, and control is always in the hands of the elected representatives of the people

<i>Role of the Board</i>	<i>Role of the Manager</i>
Elected and accountable to the citizens	Appointed by and accountable to the Board
Appoints the Administrator (and possibly others)	Appoints all remaining staff
Represents the organization to the wider community/stakeholders	Manages day-to-day contact
Ensures the organization is abiding by the law	Manages the organization in order to ensure its compliance
Governs the organization	Manages the organization
Responsible for policy formation	Responsible for policy implementation, informing and guiding the Board on realistic and achievable goals
Develops and prioritizes long term goals	Delivers on short-term goals and implements long-term Board goals
Approves annual budget	Prepares annual budget
Establishes financial and other policies	Implements financial and other policies
Ensures annual audit is complete	Serves as liaison with auditors and provides all financial records
Manages Board/Council Meetings	In conjunction with Mayor or District Chair, sets agenda for Council Meetings



Staff

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



Citizens

- Participate fully in a welcoming environment
- Participate in a way that's accessible to them
- Advise appointed and elected officials
- Ask questions
- Offer input and solutions



COLORADO
Department of Local Affairs
Division of Local Government

Relationship Building - Working Together as a Board

A strong board/staff partnership =
A stronger, more prosperous Salida



Obstacles in developing a successful partnership

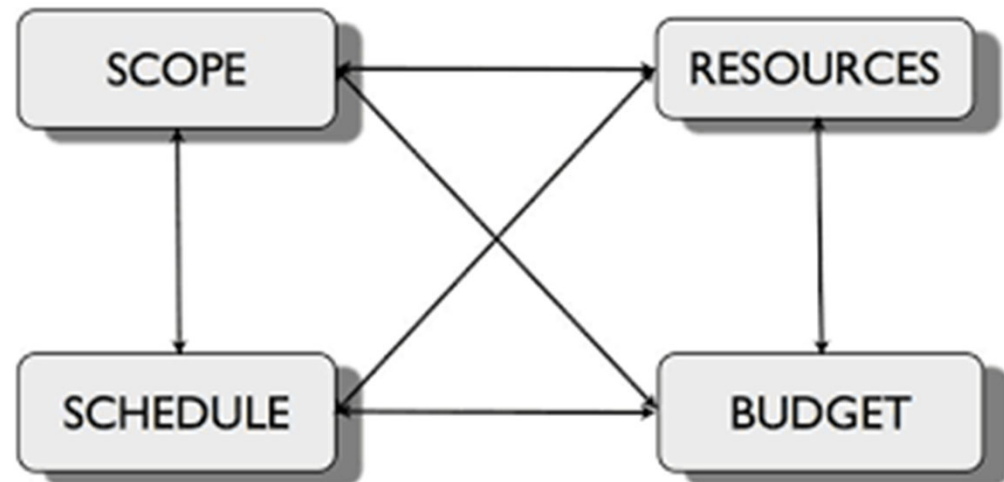
- All Board members may not see themselves as members of the same team
- Difficulty in “moving on” after a close vote or contentious issue
- Board and Staff don’t always speak the same language

Board Constraints

- Volunteer, for the most part
- No hierarchy
- No *measurable* feedback or evaluation of performance
- Open meetings requirement

Staff Constraints

- Multiple bosses
- Changing agendas
- Limited resources
- Mixed messages





When working together....

- Your conduct impacts your effectiveness
- You set the tone for the entire organization
- Your words and actions may have unintended consequences, which could affect others
- Discussion and disagreement are part of the process, but it must be done respectfully

Characteristics of Highly Effective Boards

Ability (and capacity!) to deal with issues as a team

Willingness to address difficult issues – “big picture” conversations

Successful and effective relationship with professional staff

-John Nalbandian

Use your manager (and other staff) as a resource

- Use your manager to help you do what you want to do and look good while you are doing it
- Provide clear direction and messaging to help your manager implement your collective and agreed upon policy direction

Establishing Goals and Setting Priorities

Constants of Government

Safety - creating a community where people feel safe and are protected

Infrastructure - water, wastewater, electric, gas, broadband, streets and drainage

Economy - Working with the business community to develop a strong local economy

Board Goals.....

Challenge the process....**search for opportunities**

Promote a shared vision....**enlist others**

Enable others to act....**encourage collaboration**

Model the way....**set the example**

Encourage the heart....**recognize contributions and celebrate accomplishments**

Your challenge

Understand the views of your colleagues, sort out the goals and priorities you each have

What is most important to you?

Where can you compromise?

Establish a singular set of goals and priorities which can be implemented

The Theory of Public Value

Political Support - The Board, after investigation and deliberation, has determined that this project must go forward for the benefit of the County;

Operational Capacity - The Board in conjunction with the Manager has determined through investigation that the organization has the capability, both financially and technically to undertake the project;

Public Support - The Board has publically explained the project, has answered all of the publics' concerns and has determined that the project can go forward

How do we get public support?

- . There is a problem or an opportunity that just has to be addressed.
- . The Town is the appropriate entity to address the problem or opportunity.
- . The solution that the Board is proposing is reasonable, responsible and accountable.
- . You do care, you do listen and just because you are moving forward with the project doesn't mean you don't listen and don't care.

Tools for Implementation



Meetings & Decision Making

Necessary tools for meetings

Agenda

Copy of the minutes

Back up material on key issues to be discussed



These should be provided to you in advance by staff –
HOWEVER it is your responsibility to read all the information
PRIOR to the meeting

Regular meetings

Happen on a consistent basis

Time and location specified

Noticed

Open to the public “at all times”

Typically comprised of procedural and non-procedural items

Special meetings

Held at a different time than regular meeting

Must be open to the public “at all times”

Noticed

“Used to consider only one or two items of business” that require immediate action prior to regular meetings

Worksession

Held at a different time than a regular meeting

Must be open to the public “at all times”

Do not have to occur in chambers

Noticed

Used to discuss town board business, where no action is necessary on a specific item

Executive Session

- Announce topic in open meeting with statutory citation
- $\frac{2}{3}$ vote is needed
- No formal action can occur
- Session must be recorded and kept for 90 days
- Defer to your legal counsel for all things ES

One on one

Meeting with constituent or staff

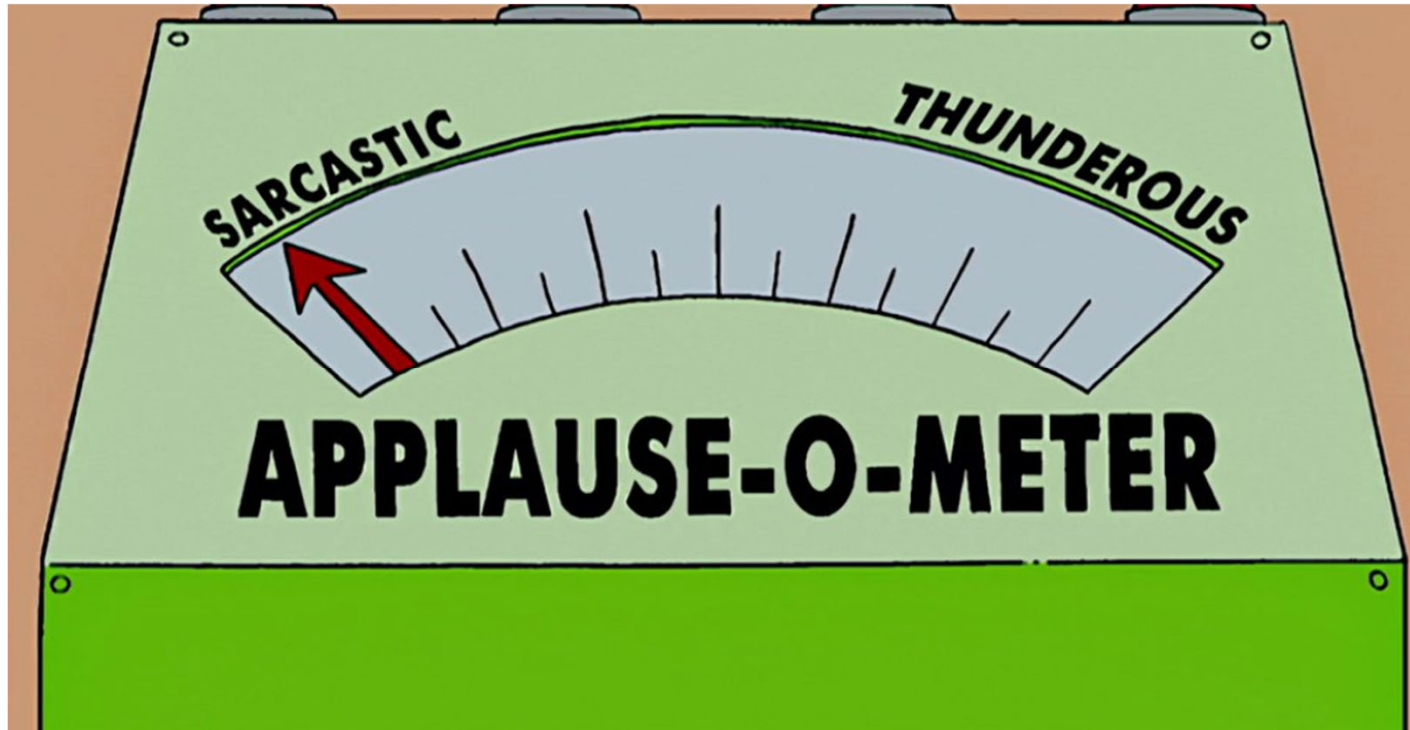
No quorum allowed

Be careful of ex parte communication

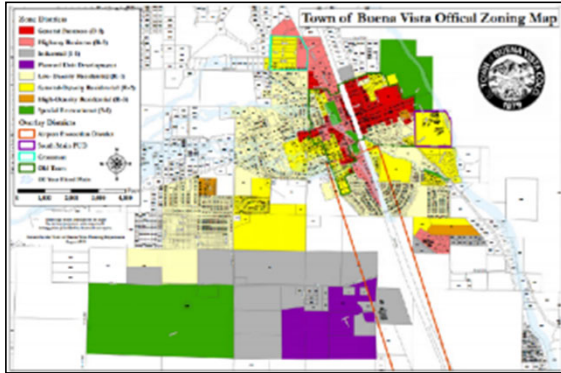


COLORADO
Department of Local Affairs
Division of Local Government

How Some People Think You Make Decisions



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) 530-5555
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 month's 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.



COLORADO
Department of Local Affairs
Division of Local Government

Public Meetings (Legislative Hat)

- Seek input
- 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)

Decision-Making

What make 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)
- Board's decision was clear (what and why)
- Board's decision was reasonably defensible



Decision-Making

A strong chair helps making a meeting effective

- Great communicator
- Sets the tone
- Ensures civility
- Strong listener
- Time-keeper
- Enforcer

Don't hand over control of a meeting



COLORADO
Department of Local Affairs
Division of Local Government

Improving Meetings

- Set the right tone: civil and professional
- 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: 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: Social Media

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



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!



COLORADO
Department of Local Affairs
Division of Local Government

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 (include staff report in findings)



COLORADO
Department of Local Affairs
Division of Local Government

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 is not a popular decision in the moment.



Decision-Making: Scenario

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: Scenario

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: Scenario

It becomes clear the Board 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 Board 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 Chair should call her after the project to better explain why it had to be denied and make sure she feels heard.

Final Thoughts

You don't need to know EVERYTHING – use the resources available, take part in training

Governing is complicated – take your time to make good decisions

Take care of yourself as much as you are taking care of your community

Thank you for your commitment to your community!

Quasi-Judicial Workshop

By: Nina P. Williams,
City Attorney

Quasi-Judicial and Ex Parte:

De-mystifying Latin terminology

Item 2.

Quasi-Judicial versus Legislative

Legislative: Broad application, announcing policy, making law

- Amending municipal code, resolutions and proclamations
- Examples: Short term rental ordinance; nuisance, building, zoning and land use codes

Quasi-judicial: Narrow application, does not make policy, applies policy

- Applies existing law to a specific set of facts (and specific property)
- Examples: Specific land use approvals, licensing hearings, nuisance abatement

Quasi-Judicial and Ex Parte:

De-mystifying Latin terminology

Item 2.

Why is this important?

- “No state shall deprive any person of life, liberty or property without Due Process of law”
 - (14th Amendment of the United States Constitution)
- So that everyone with an interest in the case, and all members of the decision-making body, hear the *same* evidence at the *same* time from the *same* sources
- To ensure opportunity for fair hearing before unbiased decision makers and that each of the Councilmembers have the benefit of the same input
- Final decisions can be appealed by anyone adversely affected by decision (with legal standing)

Quasi-Judicial and Ex Parte:

De-mystifying Latin terminology

Item 2.

Impartiality is the standard. May be affected by:

- (1) Ex parte Communications:** defined as communications between the Council/Commission/Board and one party, outside the presence of the other parties to the case, or affected individuals.
Eg) a neighbor comes up to you at Sweetie's to express their concern with a certain development application
- (2) Pre-judgment or bias:** You gave a speech or signed a petition advocating for a specific land use approval. You posted on Facebook that you will never approve any application with affordable housing.
- (3) Conflict of Interest:** You (or immediate family) have a personal or private interest in the matter proposed (pecuniary interest, financial benefit)
Eg) Your spouse owns a restaurant seeking a liquor license

Quasi-Judicial and Ex Parte:

De-mystifying Latin terminology

Item 2.

► How do you cure?

■ Either:

- Disclosure (on the record); or
- Recusal

■ Ask yourself:

- Is your ability to decide the case fairly, impartially and based solely on the evidence presented at the hearing affected?
- Does an actual legal conflict exist?
- Does a perceived conflict exist?
- Did you express a pre-judgment bias?



Pro Tip: When in doubt, ask your City Attorney!

Quasi-Judicial and Ex Parte:

De-mystifying Latin terminology

Item 2.

Suggestions

- Follow the process set out in the Code
 - Analyze, review and apply those factors or standards in an objective manner
 - *Versus:* personal opinions, subjective feelings or individual preferences
 - Base your decisions on the facts, law, evidence and testimony in front of you
 - Public Hearing creates and completes a “record”
 - Which a judge reviews (should your decision be appealed to District Court)
 - Deliberation is important
 - Consider “thinking out loud” – so your reasoning is included in the record
- ➡ Reminder: in Quasi-Judicial proceedings, you serve as the judge!

A CONVERSATION ON QUASI-JUDICIAL AND EX PARTE ISSUES

The following is a transcript of a real-life (imaginary) conversation between a newly appointed municipal commission member and her municipal attorney, meeting over coffee for a little legal training. (It could happen. And, if it did, it might go something like this.)

(Commissioner)

Thanks for the invitation to discuss legal issues! After I was appointed to the commission, my first thought was, "I cannot wait to delve into some ancient legal concepts."

(Attorney)

Of course, I think everyone feels that way. We will even sprinkle in some Latin later. Let's start with quasi-judicial issues.

My son has some Nike Kwazi high-tops; loves 'em.

Right. This is a little different. Quasi-judicial issues are those that apply or vary the legal requirements for a specific project, individual or property. Quasi-judicial issues involve the determination of the rights, duties, or obligations of specific people or property by applying the code or other law to the unique set of facts, all in the context of a hearing.

In contrast, think of an issue that affects the entire municipality, or a substantial portion of the population — that sort of issue is legislative — making law. Then, think of an issue that affects one homeowner, or one business owner, one particular party, or a singular piece of property — that sort of issue is quasi-judicial — applying the law to particular facts. For example, an ordinance authorizing short-term rentals in the municipality is a legislative issue. Your neighbor requesting a variance to build an addition to her home is a quasi-judicial issue.

It also may help to picture your commission acting as a judge, rather than as a legislator. The commission is not making or recommending new laws when it reviews a quasi-judicial issue, but it is rather applying existing laws to specific facts concerning one person or a discrete group of people rather than the entire neighborhood.

The most common quasi-judicial issues are zoning and land use decisions affecting an individual property. Other examples are



licensing hearings, for liquor licenses and marijuana business licenses, and hearings concerning nuisance abatement, towed vehicles, and tax liabilities.

I thought I was now a commissioner, not a "judge."

Well, think of it as if the entire commission is the judge, not just one single member. The decisions you make are important and can have a significant impact on your neighbors. Also, the commission's decision may be appealed to and reviewed by a higher court, just like a real judge's decision.

So, every time that we meet, we are having a public "hearing"?

Not necessarily. Sometimes the commission can be meeting to discuss and address a larger issue affecting the community, such as affordable housing or a change to a particular portion of the land use code. Often, the governing body will seek the input of the commission on these sorts of legislative issues, even though the ultimate authority to change the laws remains with the governing body. The commission acts as the "land use advisor" to the governing body, so they welcome your input on legislative topics. Meetings on these general topics are not "hearings," but they are open to the public. All of your meetings are open to the public.

But when a meeting does include a public hearing, the commission is required to give a certain amount of notice prior to the hearing; the notice period may depend on the type of quasi-judicial issue being considered. Also, all evidence that the commission considers must be presented at the public hearing.

OK. So now I know what a quasi-judicial issue is. Why is it important that I know that?

Because if an issue is "quasi-judicial," there are certain procedures required to afford due process to those individuals who may be affected by the decision.

You also need to make sure that with quasi-judicial public hearings, you aren't having any ex parte communications.

A party at a commission meeting? Now we're talking! Tell me more about that.

Ha! I wish. It is not as fun as it sounds. Ex parte is an old Latin term meaning "from one part," or "concerning one party alone." An ex parte decision would be one decided by the judge or commission without requiring that all parties to the controversy be present. An ex parte communication is between the judge or commission and one party, and outside the presence of the other parties to the case, or affected individuals.

The prohibition against ex parte contacts in quasi-judicial hearings was developed to ensure that everyone with an interest in the case, and all members of the decision making body, hear the same evidence at the same time, from the same sources. It is to ensure basic notions of fairness and justice.

Wait. You're telling me that I have to block out my neighbors and friends who want to talk to me about something important? That seems wrong. I thought it was a good thing to talk to people, get the community sentiment — do my "homework" on an issue.

I know this all sounds frustrating, especially to a well-intentioned active community volunteer such as yourself. However, it is important to remember that this rule is designed to protect the rights of everyone involved: applicants, opponents, and other interested parties and residents who may be ultimately affected by your decision. It also ensures the opportunity for a fair hearing before unbiased decision makers, and that each of the other commissioners have the benefit of the same input.

I am still skeptical. What is the worst that could happen if I have an ex parte conversation?

Please don't give your lawyer a heart attack. This is actually a very important rule to follow. When a decision maker engages in ex parte discussions about a case, and then proceeds to participate and vote on the matter, anyone adversely affected by that decision (with legal standing, which we don't need to get into) could

appeal the decision to district court. If the appealing party proves that the commission failed to provide due process, the decision can be vacated and the matter sent back to the commission for a second look. Holding a second hearing is obviously costly, and creates a long delay for the applicant and for the community. And we did not even mention the negative press the city would inevitably receive.

Yikes! I wouldn't want to jeopardize the commission's decision. But what if someone says something to me before I tell them that I cannot talk about it? I cannot "un-hear" what I have already heard.

First, you would need to disclose the communication on the record, in as much detail as possible, at the beginning of the public hearing. If you truly and sincerely believe that the ex parte communication did not affect your ability to decide the case fairly, impartially, and based solely on the evidence presented at the hearing, you may be able to participate in the hearing after the disclosure. You and I should consult on this topic prior to the hearing. If you know that the ex parte communication has biased you, despite the fact that you have openly disclosed and discussed it, you should "recuse" or remove yourself from the hearing, discussion, and the vote.

What if I have a question before a hearing that I really want answered going into the hearing? Is there anything I can do to try to get it answered?

You can contact staff, me, or your other municipal attorneys. We can determine the best way to address the question.

Anything else you think I should know?

Please know that your attorneys are not trying to be annoying or needlessly picky when we bring up these distinctions or cautions. These rules exist not only to protect you, but more importantly, they are in place to ensure the kind of fairness and due process our constitution was built upon.

And I forgot my wallet. How much cash do you have?



WORKSESSION MEMORANDUM

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - Interim City Administrator	December 18, 2023

ITEM

Short Term Rental Tax Evaluation and Use of Funds

BACKGROUND

In 2022, Salida City Council submitted ballot questions to the voters (Ordinance 2022-17) asking if they wanted to see an annual \$1000 license tax on all short-term rental licenses (Question 2A). The second ballot question raised the occupational lodging tax on short-term rentals to \$15 and changed the code language from occupied room per night to per night, per room (Question 2B). The change in code language in Question 2B was proposed due to the challenge of tracking “occupied” rooms, by both the owner and the City. Unlike a hotel or motel, Short Term Rentals often rent out the property as a whole. There is an expectation that if the home is rented, there is not an opportunity for the owner to rent out additional rooms that are unoccupied by the renter. In 2022, staff recommended the change to “per room, per night” to ensure consistent and auditable tax forms for the future.

Proceeds from 2A were estimated to raise up to \$275,000 and proceeds from 2B were estimated to increase taxes by \$525,000, totaling \$800,000 in new taxes. Both questions were approved by voters – 2A by a margin of 55% yes/45% no, and 2B by a margin of 51% yes/49% no. The City began collecting these taxes on January 1, 2023. The City has collected \$717,956 for the first three quarters of 2023. Revenues from both would be used towards affordable housing.

A group of citizens submitted a petition on June 20, 2023, to repeal and replace the taxes approved in November of 2022 – to a \$540 license tax on out-of-County license holders and to \$5 per night per bedroom on all STRs. On June 29th the City Clerk sent the Letter of Initial Sufficiency to the petitioners. On August 9, 2023, after the 40-day protest period, the City Clerk sent the Final Determination letter. The petition and Citizen’s Ordinance (2023-12) to repeal and replace the taxes approved in November of 2022 was submitted to Council on August 15, 2023. This question was rejected by Salida voters by a margin of 60%yes/40% no, thus not effecting the current taxing structure.

Currently, there are 221 STR licenses and 62% of these are held by people to reside outside of Chaffee County.

Staff has identified three primary affordable housing projects, listed below, where the funds could be used over the next several years–

1. 1st and D Workforce Housing – estimated to cost approximately \$8m
2. South Arkansas Neighborhood – infrastructure and housing approximately \$14m
3. Potential Low-income Tax Credit/Senior Living Project – purchase of land approximately \$350,000

While the taxes collected from the current STR tax structure are not enough to fully fund any one of the larger projects, staff is aware of grant opportunities and low-cost financing that would allow the city to leverage the local dollars collected.

Staff have indicated that the most recent changes to the structure took approximately 8 months to implement with our software provider and numerous additional hours on the part of staff to communicate changes with STR owners, updating the website and forms.



WORKSESSION MEMORANDUM

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - Interim City Administrator	December 18, 2023

Staff were directed by Council to evaluate various iterations of the STR tax structure. Below is an analysis which shows revenues based on a number of scenarios.

License Tax / STR Tax Scenarios

Rates	Currently in Place	Alternative Scenario Considerations		
		A	B	C
License Fee	\$ 1,000	\$ 1,000	\$ 1,000	\$ 800
STR Tax Rate	\$ 15.00	\$ 10.00	\$ 7.50	\$ 10.00
<u>Anticipated Housing Fund Revenue</u>				
License Fee	\$ 228,000	\$ 228,000	\$ 228,000	\$ 182,400
STR Tax*	652,474	478,481	358,861	478,481
	<u>\$ 880,474</u>	<u>\$ 706,481</u>	<u>\$ 586,861</u>	<u>\$ 660,881</u>

* Each scenario assumes a 10% increase in bookings over current due to lower rates.