

HUBBARD COUNTY BOARD

RECOMMENDED UPDATES TO THE POLICIES, PROCEDURES AND PRACTICES OF THE BOARD OF ADJUSTMENT AND PLANNING COMMISSION

After regularly attending the meetings of the Board of Adjustment (“BOA”) and Planning Commission (“PC”) since August, 2010, it is COLA’s opinion that the current policies, procedures and practices of the BOA and PC need to be updated as recommended below in order to ensure that the actions of the BOA and PC are consistent with the County’s mission and vision of protecting the county’s assets by providing high quality and cost effective services to best serve its customers through various strategies, including increasing transparency and communications to all customers. Also, these updates should encourage public attendance and participation at the public meetings (the “Meeting”):

As to both the BOA and PC, we recommend the following:

1. The members must attend regular annual training in order to understand the applicable provisions of the County’s ordinances (the “Ordinances”) and state law and how they should be applied to the requests. In addition the Environmental Service Office (the “ESO”) Staff should have a formal training session with new members and alternates. The training programs should be documented and include the legal aspects of the work of the BOA and PC, the Ordinances, State law and rules, good shoreland management practices related to the Shoreland Management Ordinance (the “SMO”) and all policies, procedures and practices of the ESO.

REASON: It is clear that some of the members are not well-trained. Well-trained members are the only way the County Board can provide high quality and cost effective services to protect the County’s assets. The members are the gate keepers that need to make sure that the applicable Ordinances and state law are properly applied to the requests.

2. All written communications submitted prior to the consideration of a request at a Meeting will be read by the Environmental Service Officer or a member of the audience that wants to read a particular communication and all such communications will be made part of the record. The time to read a communication will not count as part of the limited time an individual has to comment on an application at the Meeting.

REASON: Written comments submitted after the current deadline should not be treated differently than oral comments at the Meeting. Many times it is not appropriate to comment on an application until after reading the ESO Staff Report and/or viewing the property that is the subject of the application, both of which do not occur until after the current deadline for submitting written comments. Also, a number of requests are complicated and additional time is needed to prepare written comments.

3. A speaker should be given a reasonable amount of additional time beyond the time limit as necessary for the speaker to be able to fully address all of the issues relating to an application, including factual errors, the need for additional information to confirm the facts, appropriate mitigation and the applicable Ordinances and state law and how they should be applied to the request.

REASON: The “formal” time limits of 3 or 5 minutes many times have and will continue to prevent all of the necessary information from being presented by speakers to the members so that their decisions are based on all of the available information. Many requests are very complicated and require additional time. Members have the discretion to impose the 3 or 5 minute time limit if the discussion continues for an extended period and no new information is being provided.

4. The answers by a speaker from the floor to questions from the members, the applicant or the public will not be part of the time limit for that speaker.

REASON: Including this time prevents a speaker from providing all of the necessary information to respond to a question, especially when the answer clarifies a mischaracterization of a speaker’s comments.

5. No motions will be made regarding an application until after all presentations, comments and discussions regarding the application by the applicant, ESO Staff, the members and the public are completed.

REASON: This will help ensure that the members do not make up their minds before all information has been presented to them. Currently, motions are made before the public’s written or oral comments have been presented to or considered by the members.

6. ESO Staff representative will explain the ESO Staff Report and the recommendations to the members, applicant and public after the applicant’s presentation and before the members’ discussion and public comments.

REASON: Since the Staff Report frequently does not include ESO Staff recommendations before the Meeting because the property must be viewed first, this is the only time the members and the public will get these ESO Staff recommendations. Also, this process will remind the members and the public of the facts and ESO Staff recommendations. It has been clear many times that the members do not know or remember the facts and/or the ESO Staff’s recommendations. The ESO Staff recommendations and proposed Findings of Fact present a summary of what the members need to consider in reaching their decision.

7. ESO Staff representative must speak up immediately at a meeting to correct any errors or misstatements by the applicant, representatives of the applicant, or the members or the public of the facts regarding applicable ESO policies, procedures

and practices and the applicable Ordinances and state law and how they should be applied to the application.

REASON: Must insure that the members are making a decision based on correct information.

8. The applicant, members, ESO Staff and anyone else that speaks at a Meeting will use the sound system so that everyone at the Meeting can hear what is being said. If necessary, the sound system will be improved.

REASON: The integrity of the Meeting process requires that everyone be able to hear what is being said by anyone during the meeting. There are constant complaints during the Meetings, especially the BOA Meetings, by the public that it cannot hear what is being said and nothing changes. One of the constant offenders is the Environmental Service Officer and he refuses to address the problem.

SUGGESTION: Consider reconfiguring the seating arrangement for the members and Environmental Service Officer so they face the applicant and the public, rather than each other.

9. The ESO Staff Report will be posted on the ESO website when it is available to the members. When the ESO notifies the applicant of the acceptance of their application and the dates for viewing the property and the meeting, they will also be notified of the availability of the ESO Staff Report on the website and other relevant information at the ESO.

REASON: The ESO Staff Report is a public document that provides very valuable information that the applicant and public should have before the Meeting to help them prepare their comments for the Meeting. Neither the applicant nor the public should be required to go to the ESO to get a copy of the document. This will save time for ESO Staff in providing copies and save time at the Meeting.

10. The approval of all requests will be conditional on any existing violations by the applicant of the Ordinances or state law being corrected within a specific time period, and no permits will be issued until such violations have been corrected.

REASON: An applicant should not be allowed to be in violation of the Ordinances or state law and be granted his/her request that requires special approval of the County. Imposing such a condition is probably the best, most effective and least costly way to get any violations corrected. This requirement should save the ESO and County Attorney a substantial amount of time and expense.

11. A review should be conducted regarding the assistance provided by ESO to an applicant regarding their application, the findings of fact that must be addressed,

the applicant's burden of proof and alternative plans for the applicant's consideration before submitting their application.

REASON: There have been a number of situations where it was clear from a historical perspective that an application would be denied, the application was denied, and the applicant clearly was not told by the ESO of the problems with their applications.

12. The members will allow time at the beginning of each meeting for public comment the same as is done by the County Board.

REASON: It is important to allow an opportunity for the public to provide comments to the members, to feel a part of the process and have an opportunity to offer suggestions on how to improve the process of considering the applications.

13. The name, home address, phone number, email address, district and term of each member will be listed on the ESO website.

REASON: The public needs to know how to contact the members so they are able to discuss with them and/or provide written comments to them regarding applications coming before the members.

As for the BOA, we recommend the following:

14. If the chairperson is absent or not able to conduct the Meeting, a regular member, not an alternate, will be the acting chairperson for the Meeting. The order of the potential acting chairpersons will be established by a majority vote of the regular members, not including any alternates.

REASON: A regular member is much more familiar with how the BOA Meetings are conducted, has more knowledge and experience in responding to applications and will help ensure consistency in how the BOA Meetings are conducted.

SUGGESTION: In light of the complexity of the Ordinances and state law in dealing with variances, if it is felt that alternates are needed, then we recommend the appointment of only a couple of alternates that can be used for any of the members, rather than one alternate for each member. Fewer alternates will reduce training costs and help ensure that the alternates have the knowledge and experience to properly deal with variance applications. As part of the training for alternates, they should be required annually to attend and observe at least 3 BOA viewings and the corresponding Meetings when they are not in the role of an alternate.

As for the PC, we recommend the following:

15. The viewing of the property will be done by all of the members, an ESO Staff representative, and the applicant. The public may attend the viewing.

REASON: The proposed process is the same process as for the BOA. One of the critical aspects of evaluating an application, such as for a Conditional Use Permit for a PUD or a Controlled Access Lot, is to have first-hand knowledge of the nature of the property and the improvements. Currently a subcommittee of less than a majority of the members view the property and they are supposed to report their findings to the other members. Since the subcommittee does not include a majority of the members, it is not a public meeting and the public does not have the right to attend or to view the property unless they get special permission from the applicant.

We will first review these recommendations with a couple of Commissioners and Eric before we bring the matter to the County Board. We hope that our recommendations will have the support of those Commissioners and Eric.

Thank you for considering our recommendations.

Hubbard County COLA

By: /s/ Dan Kittilson
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President