



BOARD OF ADJUSTMENTS
February 24, 2022

SPECIAL MEETING
5:00 PM

LEEPER CENTER – 3800 Wilson Ave.

-
- 1. CALL TO ORDER**
 - 2. ROLL CALL**
 - 3. ADDITIONS TO OR DELETIONS FROM THE AGENDA**
 - 4. PUBLIC FORUM**
Public invited to be heard on non-agenda items (time limit of 3 minutes per person)
 - 5. CONSIDERATION OF MINUTES**
 - 5.A. Meeting Minutes**
 - Regular meeting minutes of June 24, 2021
 - 6. NEW BUSINESS**
 - 6.A. Elect Chair and Vice Chair**
 - 6.B. Presentation – Possible Updates to Board Membership**
 - 6.C. Discussion – Quasi-Judicial Proceedings**
 - 6.D. Discussion – Bob’s Rules**
 - 7. ANNOUNCEMENTS**
 - 8. ADJOURNMENT**



TOWN OF WELLINGTON
BOARD OF ADJUSTMENTS

Agenda Item #5A

REGULAR MEETING MINUTES
June 24, 2021

1. CALL TO ORDER

The Board of Adjustments for the Town of Wellington, Colorado, met on June 24, 2021, at the Wilson Leeper Center at 7:00 p.m.

2. ROLL CALL

Members Present: Christine Gaiter, Vice-Chair
Kathy Wydallis
Eric Stahl
Stephen Carman
John Jerome (arrived after Item #1)
Wyatt Knutson

Members Absent: None

Town Staff Present: Cody Bird, Planning Director
Liz Young Winne, Planner II

3. ADDITIONS TO OR DELETIONS FROM THE AGENDA - None

4. PUBLIC FORUM - None

5. CONSIDERATION OF MINUTES

A. Meeting minutes of April 22, 2021 and May 27, 2021 regular Board meetings

Moved by Member Wydallis to approve the regular meeting minutes of April 22, 2021 and May 27, 2021; Stahl seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Wydallis, Stahl, Carman

Nays – None

Abstentions – Knutson

Motion carried.

6. NEW BUSINESS

A. Variance Request – Reduce minimum required setback between buildings from 10 ft. to 3 ft. and 8 ft. for a shed on Lot 8, Block 2, Sage Meadows Subdivision (3395 Meadow Gate Drive)

No conflicts of interest reported. Wydallis disclosed that she had received an email from Cynthia Sullivan, resident, with information relating to building permits for sheds and separation from structures.

Young Winne presented the staff report for the request to reduce the setback distance between a shed and a home.

Public hearing opened. Young Winne read the Sullivan email into the record. No other public comments were received.

Public hearing closed.

Knutson suggested that the International Building Codes provide that “U” Occupancy buildings require 1/2 -inch drywall on the interior of structures that are placed at a lesser distance than required for fire separation.

Wydallis asked if the applicant could meet a 5-foot setback or if they could provide the 1/2-inch drywall on the interior of the structure. The applicant replied yes.

Stahl asked if the HOA had approved the shed. The applicant replied yes.

Moved by Member Wydallis to approve the variance request to reduce the minimum setback between buildings from 10 ft. to 3 ft. and 8 ft. for a shed on Lot 8, Block 2, Sage Meadows Subdivision provided the applicant installs 1/2-inch drywall on the interior wall of the shed closest to the home; Knutson seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Wydallis, Stahl, Carman, Knutson

Nays – None

Motion carried.

Member John Jerome arrived for the meeting.

B. Variance Request – Reduce front yard setback from 50 ft. to 30 ft. on Lot 52, Wellington West Subdivision (3494 Whitetail Circle)

No conflicts of interest reported. No ex parte communications reported.

Young Winne presented the staff report for the request to reduce the front yard setback from 50 ft. to 30 ft. for Lot 52, Wellington West Subdivision.

Public hearing opened. No public comments received. Public hearing closed.

Jerome asked if the HOA has approved the plans for the expansion. The applicant replied yes.

Knutson asked if the front setback for the subdivision has changed over time. Young Winne confirmed that the setback requirement had changed.

Gaiter asked when the zoning code changed. Bird replied that the code and setbacks had changed in 2007 when the Town first adopted it's current zoning regulations.

Knutson asked if the applicant had located the septic tank. The applicant replied yes. The applicant also confirmed that the proposed project would meet the required 5 feet of separation from a septic tank.

Knutson suggested that he supported the requested variance provided that the orientation and building designs obtain approval from the HOA's architectural review process.

Moved by Member Stahl to approve the variance request to reduce the front yard setback from 50 ft. to 30 ft. on Lot 52, Wellington West Subdivision; Wydallis seconded the motion. Roll call on the vote resulted as follows:

Yeas – Gaiter, Wydallis, Stahl, Carman, Knutson, Jerome

Nays – None

Motion carried.

7. ANNOUNCEMENTS

Bird announced there are no action items scheduled for public hearing for the July 2021 meeting.

8. ADJOURNMENT

Vice-chair Gaiter closed the meeting at 7:38pm.

Approved this ____ day of _____, 2022

Recording Secretary

Variance Request - Reduce minimum required setback between buildings from 10 ft.

csavs@bajabb.com <csavs@bajabb.com>

Mon 5/24/2021 10:40 AM

To: Elizabeth Young Winne <winnee@wellingtoncolorado.gov>

Cc: Cody Bird <birdca@wellingtoncolorado.gov>; kathywydallis@gmail.com <kathywydallis@gmail.com>

Ms. Young Winne

I was looking at the review for the variance and I could not tell the size of the shed. If it is over 120 square feet did they get a building permit. I believe there are building requirements for the inside walls of an accessory building that is within a certain distance from the primary building. These requirements are related to fire walls. My only concerns would be if the concrete was poured over a utility line and clutter accumulation in the 3 foot section between the shed and the house.

Cynthia Sullivan

4173 Hayes Cir. (P.O. Box 401)

Wellington, CO 80549

csavs@bajabb.com

Board of Adjustments Meeting

Agenda Item #6A

Meeting Date: February 24, 2022

Submitted By: Cody Bird, Planning Director

Agenda Category: New Business

Subject:

Election of Officers

Background:

- The Municipal Code requires the Board of Adjustments to elect a Chair and Vice-Chair during the first regular meeting of each calendar year.
- The Chair and Vice-Chair must be elected from the appointed members of the Board of Adjustments. Members serving as alternates are not eligible to hold office on the Board.
- The Chair presides at all meetings of the Board. The Vice-Chair will preside in the absence of the Chair.
- A member of Town staff is appointed to serve as the Secretary of the Board, and therefore, an election for that office is not required.

Staff Comments:

- The process for election of Chair and Vice-Chair should be as follows:
 - The floor is opened for nominations. Nominations (with seconds) are received. The floor is closed, and nominees are then voted on publicly.
 - A majority vote of the Board members present and voting is required to elect the officers.
 - The term for each office is one year.
 - Officers shall take office at the next regular meeting.

Recommendation:

- Conduct an election for Chair and Vice-Chair of the Wellington Board of Adjustments.
-

TOWN OF WELLINGTON

ORDINANCE NO. XX-2021

AN ORDINANCE CONCERNING THE TOWN OF WELLINGTON BOARD OF ADJUSTMENT

WHEREAS, the Town of Wellington Board of Adjustment is the duly authorized body to hear and decide appeals from and review any order, requirement, decision or determination made by any administrative officer charged with the enforcement of the Land Use Code or other matters authorized by statute and shall hear and decide all matters referred to it by statute or as otherwise provided by ordinance, all pursuant to C.R.S. § 31-23-307; and

WHEREAS, currently the two alternate members of the Board of Adjustment are members of the Board of Trustees; and

WHEREAS, the Board of Adjustment has an important role for the Town of Wellington, and it is desirable for membership on the Board of Adjustment to represent a broad range of interests and constituencies; and

WHEREAS, allowing all seven members and alternate members of the Board of Adjustment to be appointed from among interested non-Trustee residents of the Town of Wellington would allow and encourage increased civic participation in Town operations; and

WHEREAS, it may be deemed beneficial for some or all members of the Board of Adjustment to have co-existing membership on the Town of Wellington Planning Commission; and

WHEREAS, the Board of Trustees desires to standardize code language for the various boards and commissions of the Town of Wellington.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WELLINGTON, COLORADO, AS FOLLOWS:

1. Article 11 of Chapter 2 of the Wellington Municipal Code is hereby repealed and replaced as follows:

ARTICLE 11 – Board of Adjustment

Sec. 2-11-10. - Creation.

Pursuant to state law, there is hereby created a Board of Adjustment for the Town.

Sec. 2-11-20. - Purpose.

Hear and decide appeals from and review any order, requirement, decision or determination made by any administrative officer charged with the enforcement of the Land Use Code or other matters authorized by statute and shall hear and decide all matters referred to it by statute or as otherwise provided by ordinance, all pursuant to C.R.S. § 31-23-307

Sec. 2-11-30. – Membership; terms; qualifications; vacancies

- (a) The Board of Adjustment shall consist of five (5) members and two (2) alternate members who shall be residents of the Town and who shall serve without pay.
- (b) The members and alternate members of the Board of Adjustment shall be appointed as members at large by the Mayor and confirmed by a majority vote of the Board of Trustees. Members and alternate members shall be appointed to serve staggered terms of four (4) years.
- (c) Members and alternate members of the Board of Adjustment may be removed from office for inefficiency, neglect of duty or malfeasance, upon written notice and after public hearing held during a regular or special Board of Trustees meeting. The removal of any Board of Adjustment member or alternate member shall require the affirmative vote of a majority of the Board of Trustees members participating in the public hearing.
- (d) No member or alternate member of the Board of Adjustment shall be eligible to serve on any other board or commission of the Town during that member's tenure on the Board of Adjustment, except members of the Board of Adjustment may serve on the Planning Commission.
- (e) The Mayor, with confirmation by majority vote of the Board of Trustees, shall make such appointments as necessary to fill the unexpired terms of vacancies which may occur on the Board of Adjustment.
- (f) The Town Board shall designate which of the alternate members shall have priority to vote by designating the alternates as a first and a second alternate member; such that if one member is not in attendance, the first alternate will vote and participate, and; if the first alternate and a member of the Board of Adjustment is not in attendance or if two (2) members of the Board of Adjustment are not in attendance then the second alternate will vote and participate.

Sec. 2-11-40. - Duties and powers.

The Board of Adjustment shall:

- 1) Hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of the Land Use Code or other matters authorized by statute
- 2) Hear and decide all matters referred to it or upon which it is required to pass under Town Zoning Ordinances. It shall also hear and decide other matters as provided by state statute or as otherwise provided by ordinance.

Sec. 2-11-70. - Officers.

At the first regular meeting of the Board of Adjustment each calendar year, the Board of Adjustment shall select a Chair and a Vice Chair, who shall not be alternate members, for the year. The Chair shall preside at all meetings. The Vice-Chair shall preside in the absence of the Chair.

Sec. 2-11-80. - Meetings.

- (a) The Board of Adjustment shall hold a minimum of one (1) regular meeting each month, unless cancelled by the Planning Director.

- (b) Special meetings of the Board of Adjustment may be called by the mayor, or the chairperson of the Board of Adjustment with proper notice posted and given to all Board of Adjustment members and alternate members.
 - (c) The Board of Adjustment shall adopt bylaws and rules for transaction of business, and the Town Clerk shall keep a public record of its resolutions, transactions, findings and determinations.
2. The Board of Trustees declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.
3. All the provisions of the Wellington Municipal Code as heretofore adopted that conflict with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

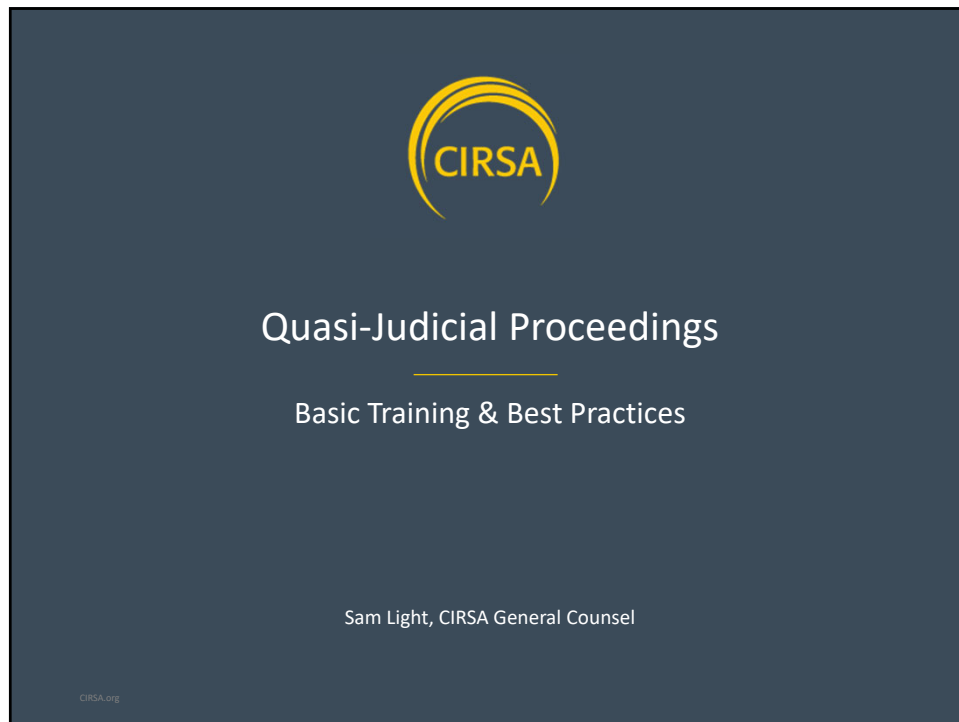
PASSED AND ADOPTED by the Board of Trustees of the Town of Wellington, Colorado and ordered published this ____ day of _____, ____ and ordered to become effective _____, _____.

TOWN OF WELLINGTON, COLORADO

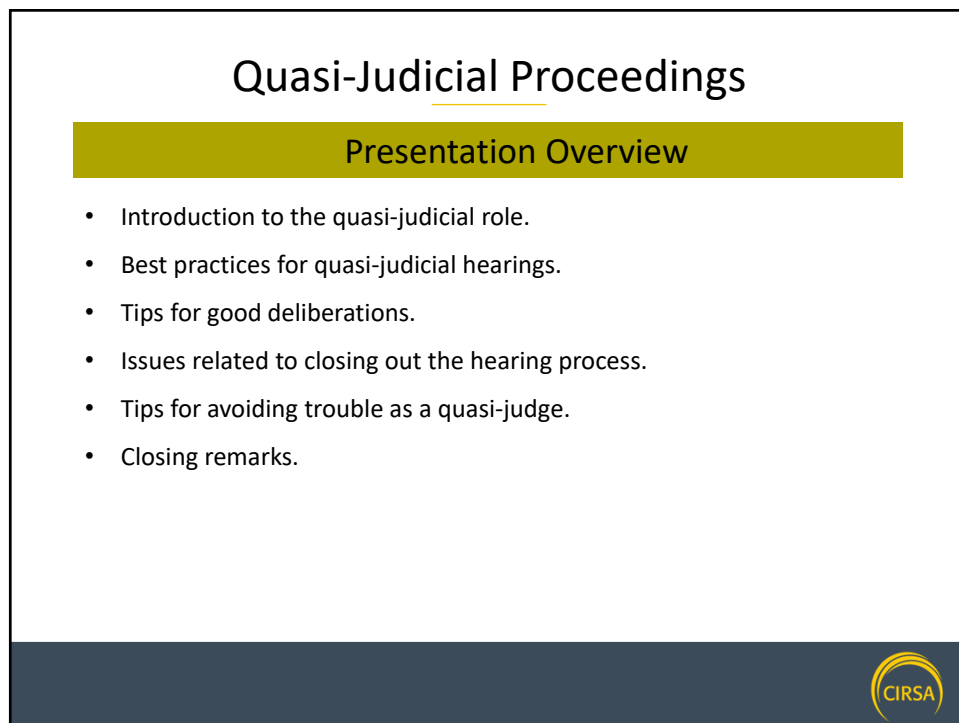
By: _____
Troy Hamman, Mayor

ATTEST:

Krystal Eucker, Town Clerk



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Quasi-Judicial Proceedings

The Quasi-Judicial Role

- As a local government official, your board, council or commission is sometimes required to make decisions affecting the protected property rights of a specific person or entity.
- For these proceedings, you are essentially called upon to act like a judge, and these are “quasi-judicial” matters. Why?
 - The Constitution! Due Process Clause: No person shall be deprived “of life, liberty or property, without due process of law.”
 - For quasi-judicial matters at the local government level, it is your duty to provide due process.
 - And, for quasi-judicial matters, the key is fundamental fairness.



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Quasi-Judicial Proceedings

The Quasi-Judicial Role

- The decision-makers for quasi-judicial matters—e.g., the City Council, Town Board, Planning Commission, Licensing Authority, etc.—are essentially acting as judges and therefore must behave like judges.
 - And, must act as judges throughout the process—before, during and after the hearing on the matter.
 - Recognize also that the quasi-judicial rules apply to any decision-makers in that process, even if they are not the final decision-makers.
 - For example, the rules apply to Planning Commissioners who are making a recommendation to the City Council or Town Board.



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Quasi-Judicial Proceedings

Contrasting Legislative and Quasi-Judicial Acts

- A Legislative Act:
 - Reflects public policy relating to matters of a permanent or general character.
 - Not normally restricted to particular individual or entity.
 - Affects the legal rights of specific individuals only in the abstract.
 - Prospective in nature.
- You're acting as "legislators" when you review and make general rules...
- But when you apply those general rules to specific persons and property, you are acting as quasi-judges.



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Quasi-Judicial Proceedings

Contrasting Legislative and Quasi-Judicial Acts

- A Quasi-Judicial Act:
 - Determines the rights of a specific person/entity in relation to a specific property interest (most often an interest relating to land or a license).
 - Is based on facts developed at a hearing to resolve the particular interest in question.
 - In this process, you as the quasi-judge hear the evidence and then apply the existing legal standards to the specific case.
- Similar to a judicial process, the keys to the quasi-judicial process are notice, a hearing, and a record-based decision made by a fair and impartial decision-maker--that's you!



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Quasi-Judicial Proceedings

Contrasting Legislative and Quasi-Judicial Acts

Legislative Acts

- Adoption of general health and safety ordinances
- Adoption of a master plan
- Adoption of general amendments to the subdivision, zoning or licensing ordinances
- Adoption of an annexation ordinance

Quasi-Judicial Acts

- Action on a proposed rezoning application
- Hearing on a proposed liquor license
- Disciplinary hearing to suspend or revoke a liquor license, business license or other protected license
- Subdivision or development hearing
- Others per state law or local code



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Quasi-Judicial Proceedings

Best Practices For Quasi-Judicial Hearings - Context

- In quasi-judicial proceedings, a fair hearing is critical to reaching a good decision and ultimately defending it.
- Generally, if your decision is legally challenged, your hearing is “the hearing” and reviewing judges don’t “retry” the case—rather, they base their decision upon a review of the record of what you did, including:
 - The procedures you used;
 - The evidence you considered; and
 - The reasons for your decision
- A reviewing judge will judge your conduct against the way he/she would behave as a judge – so keep the “judge” frame of mind in your approach to your handling of quasi-judicial matters.



8

Quasi-Judicial Proceedings

Best Practices - Hearing Preparation

- Know what's quasi-judicial, and what quasi-judicial matters are upcoming.
- Get in the "judge" frame of mind early:
 - Stay neutral
 - Don't make prejudicial comments
 - Don't get involved outside the hearing; the matter will eventually be "ripe" for you to hear and decide
 - Avoid "ex-parte" discussions (more later)



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Quasi-Judicial Proceedings

Best Practices - Hearing Preparation

- Look to your packet:
 - It will likely include an overview of the application, a summary of the decision-making criteria you must use, and other materials
 - When reviewing the packet and getting ready for the hearing:
 - Think about the key issues and your questions for the hearing
 - Focus on the scope of the hearing—knowing what the hearing is "not about" is as important
 - Confirm you don't need to "sit this one out" because of a conflict of interest or other disqualifying circumstance



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Quasi-Judicial Proceedings

Best Practices – Start of the Hearing

- Have and use an opening statement/script:
 - This is an opportunity to explain what the hearing is about and how the hearing will proceed.
- Confirm there is proper notice.
- Call for disclosures: conflicts of interest, site visits, ex parte contacts.
- Deal with any other preliminary matters that may arise; e.g., recording or other tech issues; overflow crowd; whether parties are present, etc.



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Quasi-Judicial Proceedings

Best Practices – During the Hearing

- Follow uniform steps/rules of procedure for conducting the hearing – helpful to you and public.
 - Have a consistent flow and announce up front what it will be; e.g.:
 - Staff report
 - Applicant presentation
 - Public comment
 - Questions by the council / board
 - Closing remarks by applicant and staff
 - Deliberations
 - Action
- Let speakers know there will be time limits and enforce them. Use a sign-up sheet or sign-up cards for the hearing.



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Quasi-Judicial Proceedings

Best Practices – During the Hearing

- Use and expect civility.
- Avoid reactive, off-the-cuff and off-topics comments (applies to all settings/participants but particularly true for quasi-judicial hearings—can look (and be) bad on a transcript!)
- Be consistent in requiring recognition by the chair, and in use of question and comment opportunities.
- Have speakers speak from the podium & direct their comments to you.
- Have them give name and address for record. Have a consistent policy on whether you swear in speakers (and follow any local rule on this).



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Quasi-Judicial Proceedings

Best Practices – During the Hearing

- Chair: Recognize and exercise your prerogative to maintain order.
- Do not allow free-wheeling comments from the gallery and if grumbling in the audience gets too loud, restore order politely.
- If necessary, someone can call for a recess.
- Consider steps to manage the flow: e.g., don't engage or allow others to engage in free-wheeling "back-and-forth" during staff, applicant, or public comments; better to hold questions until a defined question period.
- Manage the record: Identify documents, don't let two people speak at once; etc.



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Quasi-Judicial Proceedings

Best Practices – During the Hearing

- Use opportunities to “recalibrate” if discussion is straying off topic/off task.
- Have plans for dealing with other testimony issues; e.g.,
 - Can a person during public comment directly “cross examine” the applicant?
 - Can other audience members question each other?
 - “Show of hands,” “I have a petition,” “I’d like to call in.”
 - Comments received after the hearing “is closed.”



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Quasi-Judicial Proceedings

Best Practices – During the Hearing

- Consider a reminder: “Please keep your comments brief so everyone will have a chance to speak. If your comments are the same as those of a prior speaker, please feel free to simply state you agree with the prior speaker.”
- Stay focused on the matter at hand and directly manage the crux issues to help get to the necessary and relevant information.
- Don’t stray the course for insistent questioners; instead, let them know they’ve been heard and move on. For example: “That is a good question, but this is your opportunity to make **comments** and provide **information**. I’ve noted your question and I think one of us may ask the [staff/applicant] to address your question during our question and answer period.”



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Quasi-Judicial Proceedings

Best Practices – Deliberations Matter!

- Once you've heard the staff and applicant presentations, heard public comment and asked your questions, it's time to deliberate.
- Discussion of the evidence is critical; this is where:
 - You as quasi-judges formulate the bases of your impending decision.
 - The applicant and others obtain an understanding of your position.
 - The reviewing judge looks to understand why you decided the matter as you did (and whether it comports with your criteria and the law).
- So Deliberate – Talk Amongst Yourselves! And chair, make sure every member has a chance to weigh in.



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Quasi-Judicial Proceedings

Best Practices – Deliberations Matter!

- Tips for good deliberations – back to the future (see slide 10):
 - Focus on the key issues.
 - Focus on the relevant decision-making criteria. Have the criteria at the ready and ask questions as needed (e.g. "Staff/Attorney, remind me, what is the rule that applies to this issue?")
 - Discuss the relevant evidence that has been presented to you.
 - Remember - when you are prepared to discuss the criteria, you will arrive at a discussion of the defensible reasons for your decision.
- Use the "Rule of Why".



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Quasi-Judicial Proceedings

Best Practices – Deliberations Matter!

The Rule of Why In Action:

Chair: “Thank you everyone for your comments on this rezoning request. Now’s the time for the Board to deliberate. Who would like to start the discussion?”

Member Sam: “I would, thank you Mr. Chair. I want to say we’ve heard a lot of persuasive testimony and I’m going to vote no.”

Member Tami: “Sam, may I ask: Why do you intend to vote no?”

Member Sam: “I’m voting no because it doesn’t meet our standards.”

Member Nile: “Sam, why doesn’t it meet our standards? I have concerns too that I’ll mention in my comments but if you’d tell me what standards concern you and why you think they aren’t met, that will help frame our discussions.”

Member Sam: Yes, I’d be happy too. I think the height limit is an issue because...”.



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Quasi-Judicial Proceedings

Taking Action & Closing the Proceedings

- While deliberating & getting ready to act, maintain focus on what is pending before you.
- Understand your options and work towards an option, which in hearings will commonly include:
 - Approve [or recommend approval], with or without conditions;
 - Deny [or recommend denial];
 - Continue for further consideration and/or action at a future date;
 - Other options under your local ordinances?



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Quasi-Judicial Proceedings

Taking Action & Closing the Proceedings

- Use a “decision document”—such as an ordinance, resolution or written motion—to make your decision. Your code or state law may dictate the type of document required (e.g., rezoning usually is by ordinance).
- If you’re making findings and/or revising the decision document, then:
 - Be clear but not overly specific.
 - Deal with findings and conditions one step at a time.
 - Consider directing staff to prepare a revised decision document for the next meeting; it can be confusing and difficult to “draft on the fly.”



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Quasi-Judicial Proceedings

Taking Action & Closing the Proceedings

- Be careful in your use of “conditions of approval.” Contentious hearings lend themselves to quasi-judges seeking to resolve difficult issues through conditions of approval. This is problematic where:
 - The condition is not based upon any established legislation;
 - Or is an attempt to regulate a matter over which you have no authority; or
 - The condition itself is vague or difficult to enforce.
- In difficult cases, avoid drafting conditions on the fly; have them drafted and/or reviewed by staff & counsel.



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Quasi-Judicial Proceedings

Taking Action & Closing the Proceedings

- Be cautious once you've voted on a matter:
 - Let your record and decision speak for itself.
 - Don't undermine the group decision even if you disagree, have regrets or were in the minority.
 - Don't re-open the matter, even at the same meeting, after it's done. If you feel there is a need to re-visit or change a decision, use proper channels only and recognize some decisions cannot be undone without liability.



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Quasi-Judicial Proceedings

Avoiding Trouble as a Quasi-Judge

- Fundamental fairness requires a fair, unbiased and impartial quasi-judge, both in fact and appearance.
- Land use decisions are not overturned because the reviewing judge didn't "like your decision"—legal rules are deferential to the substance of what the you decide.
- Rather, they more likely overturned because the quasi-judges—as a group or because of individual behavior—deprived the applicant or other participant of fundamental fairness.
- Therefore, individually and as a group, do the things that judges would do, and don't do the things that judges wouldn't do!



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Quasi-Judicial Proceedings

Avoiding Trouble as a Quasi-Judge

- Don't make up your mind before the hearing.
- Don't make prejudicial pre-hearing statements.
- Don't speak with one side or the other before a hearing (ex parte contacts).
- Don't participate if you have a financial or other personal interest in the matter (code of ethics).
- Don't sign any "pro" or "con" petitions.



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Quasi-Judicial Proceedings

Avoiding Trouble as a Quasi-Judge

- Don't make your decision on the basis of personal preferences, or irrelevant or non-existent criteria.
- Also, don't make your decision based on things you "know" but did not "learn" at the hearing – For example:
 - Don't get on the internet and offer your own evidence.
 - Don't offer evidence of your own experiences as the basis for your decision – Aren't you in essence saying "I'm voting for/against the application based on my own testimony?"
- Do ask for advice on criteria or application of criteria to facts.



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Quasi-Judicial Proceedings

Avoiding Trouble as a Quasi-Judge

- Don't participate in decision if you weren't there for the entire hearing (or didn't at least listen to the rest on tape).
- Discuss and consider quasi-judicial matters only at the duly notice public hearing; that is:
 - Wait until the matter has arrived on your agenda and is "ripe" for you to hear, deliberate and decide.
 - Don't engage in pre-hearing "buzz"—you get to make the ultimate decision and with that goes the responsibility to fair and unbiased.



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Quasi-Judicial Proceedings

Ex-Parte Communications

- A critical duty of the quasi-judge is to avoid "ex-parte" contacts, meaning any "outside the hearing" discussion with an interested party about the subject matter of the hearing. Examples:
 - Meeting with the applicant outside the hearing to discuss the pro/cons of the request and how you might decide the case.
 - E-mailing your fellow decision-makers before the hearing to persuade them why they should vote yes or no.
 - Attending meetings where folks for or against the application are discussing the application, even if you're not participating.
- If it were your application, would these activities seem fair to you?



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Quasi-Judicial Proceedings

Ex-Parte Communications

- A proceeding loaded with “ex-parte” contacts is a clear path to having your decision overturned and, as important, having the integrity of your process eroded.
- When we advise against ex-parte contacts, we are protecting your ability to participate in the decision-making, and your ultimate decision.
- An ex-parte contact can be problematic whether with the applicant, citizens, or in some instances, staff.
- Or, even in the hearing itself (i.e., no texting or e-mailing about the subject matter of the hearing within the hearing itself).



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Quasi-Judicial Proceedings

Ex-Parte Communications

- Arm yourself (and staff, arm your quasi-judges) with knowledge you need when persons want to talk about a pending quasi-judicial matter outside the hearing. Keep some “talking points” ready; e.g.:
 - “Thanks for your interest [or e-mail, etc.] but I can’t talk with you about this application outside the upcoming hearing. I’d like to hear your views but because this is a specific [property rights][licensing] case, I need to hear and consider the evidence only through our public hearing process. Please plan to attend the hearing if you can. If you can’t attend, you can send written comments to our staff and they’ll include those comments in hearing materials.”
- Consider having a short explanation, or “FAQs,” on the quasi-judicial process on your website.



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Quasi-Judicial Proceedings

Ex-Parte Communications

- Contrast – For general legislative and policy making discussions and matters, it is okay: to lobby (and be lobbied) outside the meeting; to base your decision on your own personal policy perspectives, and to base your decision on information obtained from most any source.
- But, for a quasi-judicial matter, it is not. Rather, just like a judge presiding over a trial, because of constitutional due process requirements, you must make your decision based on the evidence presented to you at the hearing, and you must base your decision upon legal standards, and you may not engage with interested parties about the case outside the hearing.



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Quasi-Judicial Proceedings

The Best Practice? Give Great Process!

- The most important job for quasi-judges to is provide great process!
- Therefore, respect, follow, and be a champion of the fair and due process that you are set up to provide. Avoid process flaws and other acts that can cast doubt or create a sense of unfairness.
- Know that ***if*** you've carried out your hearing fairly and properly, and ***if*** you've issued a decision that is based on your hearing record and on the applicable criteria, then your decision will withstand legal challenge....
- And interested parties and citizens will have faith and trust in how you handle quasi-judicial matters concerning their property. That's a great place to be!



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Liability Risk Management **HOTLINE**

Do you have questions about liability risks related to:

- Employee Termination and Discipline Issues
- Personnel Policies or Personnel Management
- Public Works, Parks and Rec or Police Liability
- Conducting Quasi-Judicial Proceedings
- Zoning or Land Use Liability
- Drug Testing Policies
- Marijuana – Related Issues

Call CIRSA's Liability Risk Management Hotline and Sam Light, CIRSA General Counsel, can assist. The Hotline is a free service to CIRSA Property/Casualty members to help you identify, manage and avoid potential claims, and assist with your municipal liability questions.

CONTACT THE LIABILITY RISK MANAGEMENT HOTLINE IF:

- you're considering taking an employment action that could lead to liability;
- you'd like a policy or contract document reviewed from CIRSA's liability risk management perspective;
- you'd like help identifying options for handling a potential claim situation;
- you need to get up-to-speed on a current municipal liability issue; or
- you just need to bounce an idea or issue off a neutral source.

Please Note: At CIRSA's discretion, a courtesy contact may be made by CIRSA to the member's chief administrative officer and/or legal counsel to inform them of any Hotline inquiry. The Hotline is not a substitute for legal advice from the member's municipal attorney.

To make an inquiry, or if you have questions, please contact General Counsel Sam Light at 720-605-8002 or 1-800-228-7136, or saml@cirsa.org.



SAFER TOGETHER

Thank you for your time and your public service!

CIRSA Liability Hotline

1-800-228-7136

<https://www.cirsa.org/wp-content/uploads/2020/04/Liability-Hotline-2020.pdf>

Webinar Recorded 4.15.20



Bob's Rules of Order (Summary Version Prepared for Colorado Municipal League 2016 Annual Conference)

1.0 Introduction

Efficient and well run public meetings are a necessity for local government. An efficient and well-run meeting allows all scheduled business to be accomplished, voices to be equally heard, and differences of opinion to be aired amicably. Whether the meeting issues are deeply challenging and emotional or simply ministerial and non-confrontational, a well-run meeting leaves all participants feeling that the decisions made during the meeting are the product of fairness, equality, and respect. Poorly run meetings can undermine confidence in local government by allowing a perceived inequality among participants when engaged in debate and discussion, injecting conflict and argument between the participants, and adding confusion to the decision-making process and uncertainty in the eventual decision.

Unfortunately, efficient and well-run meetings for many Colorado local governments may be the exception and not the rule. *Bob's Rules of Order* seek to bring organization and equality to meetings of Colorado local governments.

The seminal handbook, *Roberts Rules of Order*, is perhaps the most widely known set of rules designed to facilitate and manage meetings. Beginning with the pocket handbook first drafted in 1878, and with significant rewriting and amendment since that time, *Roberts Rules of Order* has evolved into a complex set of rules intended to organize large meetings of every type. Due to the sheer volume and complexity of *Roberts Rules of Order*, it is unreasonable for all meeting participants to fully comprehend and gain a working knowledge of *Roberts Rules of Order*. As a result, *Roberts Rules of Order* is often ineffective for use in conducting the meetings of local government.

"*Bob's Rules of Order*" is intended as a simplified set of rules better suited to manage local government meetings and decision-making. Although *Bob's Rules of Order* calls upon the basic concepts offered by *Robert's Rules*, *Bob's Rules* pares down the available motions to those essential to advance the goal of running an efficient public meeting for Colorado local government.

2.0 Key Terminology

Amendment (or to Amend) - An amendment is a motion to change, to add words to, or to omit words from, a pending main motion. The change is usually to clarify or improve the wording of the original motion and must, of course, be germane to that motion.

Body - The formally constituted organization commissioned with the obligation and duty to act on behalf of the local government.

Chairperson - The person appointed or elected to preside over the meeting.

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Floor - The privilege or right to speak to the body.

Member - A person appointed to elected to hold office as a recognized participant of the body.

Motion - A formal proposal seeking specific action by the body typically preceded by the words "I move that ..." Motions are generally introduced by voice but may be presented in writing.

Moving Party - The Member presenting a motion or point for action by the body.

Out of Order - An act or action that fails to comport with these Rules of Order. Acts or actions that comport with these Rules of Order would be recognized as "in order."

Point - A declaration of a member addressed to the chairperson requesting to bring before the body a matter for immediate decision or resolution. There are three recognized points: (1) Point of Order; (2) Point of Information; and (3) Point of Appeal.

Second - An oral declaration by a Member to express that a motion offered to the body should receive debate or discussion.

3.0 General Rules Governing the Meeting

- Floor Required to Address Body. Except when raising a Point (Point of Order, Point of Information, or Point of Appeal), a Member must first be recognized by the Chairperson and be given the floor in order to address the Body.
- Time Limit for Floor. A Member's right to the floor should be limited to five (5) minutes. A Member may request that the Chairperson grant additional time. Such request should customarily be granted by the Chairperson unless the Chairperson determines that other Members are waiting to be recognized to obtain the floor or that meeting efficiency necessitates that the requested extension be denied. When one Member is denied a request for an extension of time to speak, no other Member shall be granted an extension of time for the same agenda item.
- Limitation on Obtaining Floor. A Member should only speak once to any motion under debate until such time that all others seeking the floor have been provided an opportunity to speak to the motion.
- No Interruptions or Side Discussions. In order to maintain a clear recorded meeting record, only one person shall speak at any one time. Interrupting a person who has the floor or engaging in side discussions while another person has the floor is out of order.
- Second Required for Debate. All motions must receive a second before debate or discussion may begin. A second does not connote approval of the motion but only that the Member offering the second supports fuller discussion of the motion.

- Chairperson Discretion. The Chairperson may independently decide to deviate from the Rules of Order in order to increase meeting efficiency and to best enable full and informed discussion of a matter before the Body. However, such independent action by the Chairperson remains subject to a Point of Order and Point of Appeal through which a Member can bring the meeting into full compliance with the Rules of Order.

- Voting:

Vote Requirement. A majority vote of the quorum present is required for any motion unless a different requirement is set by these Rules of Order or by applicable law. For example, a supermajority (2/3rds of quorum present) is required for a Motion to Call the Question pursuant to these Rules of Order and a supermajority (2/3rds of a quorum present) is required for a motion for executive session pursuant to the Colorado Open Meetings Law (C.R.S. § 24-6-402(4)).

Aye or Nay Vote Required. A vote of "aye" or "nay" (or another form of clearly affirmative or negative declaration) shall be taken upon every motion. Every Member, when present, must vote aye or nay unless:

- (1) The Member is excused by the Chairperson due to the Member's declaration of a conflict of interest at the introduction of the agenda item or immediately upon discovery of a legally recognized conflict of interest; or
- (2) The Member is excused by the Chairperson because the member is without sufficient information upon which to enable an informed vote due to an absence at a prior meeting, e.g., the member did not attend the meeting for which meeting minutes are moved for approval.

No Abstention. A vote to "abstain" or any other voting declaration other than aye or nay shall be recorded as a "nay" vote on the pending motion or matter.

No Explanation of Vote. Members shall not explain their vote except during discussion and deliberation prior to the calling of the vote on the question. Any attempt to explain a vote or to condition the vote immediately prior to casting the vote is out of order.

4.0 Chairperson's Privileges & Duties

- Chairperson to Direct Meeting. The Chairperson is privileged to act as the director of the meeting. The Chairperson shall seek to clarify the actions pending before the Body during the meeting and prior to a vote. For example, the Chairperson is encouraged to restate motions, announce expectations for the meeting agenda, and recommend to the Body the proper procedure or rules for a particular course of action. The Chairperson has a continuing right to the floor although, like any other member, shall be held to compliance with the Rules of Order.
- Chairperson as Parliamentarian. The Chairperson is the meeting parliamentarian and shall decide all questions of process and procedure. Such decisions are subject to appeal

by a Point of Appeal. The Chairperson may consult with the Body's legal counsel or administrative staff to assist in rendering decisions regarding the application of the Rules of Order.

- Chairperson as Facilitator of Discussion. As the meeting director, the Chairperson should generally encourage and enlist other Members to propose or to second motions and to lead initial debate. Nevertheless, the Chairperson is entitled to the same rights as Members regarding the presentation of motions, seconding motions, and debate and may exercise such privilege as deemed appropriate by the Chairperson.
- Temporary Informal Recesses. The Chairperson may declare a temporary recess without motion or consent of the Body. However, no recess shall be declared which would interrupt a member who has properly secured the floor to speak.

5.0 Moving Party's Privileges

- At any time *prior to* receiving a second on a motion, the Moving Party may unilaterally withdraw or unilaterally amend a motion provided that the Moving Party has the floor. A motion, *once seconded*, belongs to the decision-making Body and the Moving Party's privileges are limited.
- The Moving Party retains the following limited privileges after the motion receives a second if the Moving Party has properly secured the floor to speak:
 - A. The Moving Party may speak to the rationale, purpose, meaning, or need of the motion prior to the opening of full debate to other members of the Body.
 - B. The Moving Party may withdraw his/her seconded motion unless an objection is raised by Point of Order. An objection to the Moving Party's withdraw of the seconded motion will summarily defeat the Moving Party's request to withdraw.
 - C. The Moving Party may accept a proposed amendment (a "Friendly Amendment") unless an objection is raised by Point of Order. An objection to a Friendly Amendment will summarily defeat the Moving Party's privilege to accept a Friendly Amendment and, in such case, a formal Motion to Amend would be in order.
 - D. During debate, to further explain or clarify the meaning, intent, or purpose of the motion or to otherwise respond to a Point of Information.

6.0 Classes & Priority for Points and Motions

There are three classes for motions and points: (1) Privileged; (2) Main; and (3) Subordinate. The class determines the priority or importance of the motion or point and, therefore, determines whether the motion or point is "in order" when made, i.e., if the motion or point proposed is appropriate for the Body to consider at the time it is presented.

- **PRIVILEGED** motions, which include all three Points, do not require a pending main motion on the floor and do not relate directly to a pending question. Privileged motions or points may be raised at anytime. Privileged *points* do not require the floor; privileged *motions* require the floor. Privileged motions oftentimes involve an administrative or ministerial aspect of the meeting that needs to be resolved independently of the business then-pending before the Body. There following motions or points are recognized as privileged and are listed *in order of precedence*:
 - Point of Order
 - Point of Information
 - Point of Appeal
 - Motion to Recess
 - Motion for Executive Session
- A **MAIN** motion formally presents to the Body an item for action. A Main motion can be made only when no other motion is pending. If a Main motion is presented when another pending motion or point is before the Body, it is out of order.

Although there are as many Main motions as there are subject matters that a Body may consider, there are four (4) commonly recognized *specific* Main motions used in local government decision-making:

- Motion to Adjourn
 - Motion to Reconsider
 - Motion to Postpone an Agenda Item to a Date Certain
 - Motion to Postpone Indefinitely
- A **SUBORDINATE** motion is related to and supplements or builds upon the Main motion. A Subordinate motion must be dealt with before the Main motion can be voted on. A Subordinate motion is in order only when there is a pending main motion on the floor. Once a seconded Subordinate motion is pending on the floor, neither a MAIN motion nor another Subordinate motion is in order.

There are three (3) recognized Subordinate motions:

- Motion to Amend (a Main Motion)
 - Motion to Continue Matter Before the Body to Date Certain
 - Motion to Call the Question (Close Debate)

7.0 Points and Motions in Detail

A. Points

There are three "Points:" (1) Point of Order; (2) Point of Information; and (3) Point of Appeal. Points do not require a second. They are each "privileged" and may be raised at anytime.

- **Point of Order** (or to "raise a question of order" as it is sometimes expressed), is an opportunity for a Member to express an opinion that the rules or procedures of the Body are being violated. The appropriate means of asserting such opportunity is for the member to wait for a break in the discussion and state "Point of Order" and wait to be recognized by the Chairperson. Any existing debate or discussion should cease. Upon the Chairperson's recognition, the member must succinctly state the general rule or procedure believed to be in violation. A point of order should not interrupt another speaker, does not require a second, is not debatable, is not amendable, and cannot be reconsidered. For example:

Member Jones was granted the floor and proposed a motion to approve a site plan. Member Jones then proceeded to discuss the rationale for his motion.

Member Jones: [has the floor and is engaged in debate on a motion, he pauses in his debate]

Member Smith: "Point of Order."

Chairperson: "Excuse me a moment, Mr. Jones. The Chairperson recognizes Ms. Smith."

Member Smith: "I believe we are debating a motion that did not receive a second. I believe that this is out of order because a motion requires a second before debate."

Chairperson: "You are correct Ms. Smith, I do not recall a second was offered. Therefore, let us cease debate. Do I have a second on the motion? [A second is offered]. Thank you for your Point of Order, Ms. Smith. Mr. Jones, you have the floor and may commence debate."

- **Point of Information** is a *request to receive information* on a specific question, either about process, meeting conduct, clarification of a motion, or about a fact during of debate. A Point of Information is not an opportunity for a member to provide information to the Body and should never be used as a means of continuously interrupting the flow of debate. Using a Point of Information to provide information or to interrupt debate would be out of order. As an example of the proper use of a Point of Information:

Member Quinn has the floor and is engaged in debate on a seconded motion.

Member Frank: "Madam Chairperson, Point of Information"

Chairperson: "Excuse me a moment, Ms. Quinn. The Chairperson recognizes the Mr. Frank."

Member Frank: "Ms. Quinn said there were 5,000 vehicles per day recorded at the Main Street intersection, but our Traffic Engineer said it was 1,500. What is the correct number?"

- **Point of Appeal** is a request of a member to challenge a decision of the Chairperson concerning the application of the Rules of Order. A Point of Appeal shall customarily be in order immediately following the Chairperson's decision and may be declared out of order and unavailable where the Body has relied upon the Chairperson's decision and continued the proceeding in reliance upon, or in accordance with, the Chairperson's decision. The member making the Point of Appeal may briefly state his or her reason for the Point, and the Chairperson may briefly explain his or her ruling, but there shall be no further debate on the appeal. As an example of the use of a Point of Appeal:

Chairperson: "We have on the floor a Motion to Call the Question." The vote on a Motion to Call the Question will require a majority vote of the quorum present."

Member Thomas: "Point of Appeal"

Chairperson: Mr. Thomas has raised a Point of Appeal. Mr. Thomas has the floor. Mr. Thomas, what is your appeal?"

Member Thomas: I appeal the Chairperson's decision regarding the vote on the Motion to Call the Question. A Motion to Call the Question requires a 2/3rds vote pursuant to our Rules of Order at page 3.

Chairperson: "My decision regarding the required vote is being appealed. I believe that closing debate is a rather simple matter only requiring a majority vote like a majority of all of our motions."

Chairperson: "We shall have a vote on the appeal. Mr. Thomas appeals my decision regarding a vote on a Motion to Call the Question requires a simple majority of this quorum. Mr. Thomas asserts it should be a 2/3rds vote. The question

we are now voting on is 'Shall the decision of the Chairperson be sustained?'"

The Members vote to not sustain (overturn) the Chairperson's decision.

Chairperson: "My decision is overturned on appeal. I stand corrected and will now declare that the Motion to Call the Question on the floor requires a vote of 2/3rds of the members of the Body. Let us proceed to the consideration of the Motion to Call the Question."

B. Motions

- **Motion to Recess** **(Privileged)**
A Motion to Recess is intended to offer a temporary cessation in the meeting to accommodate matters such as restroom breaks or to consult with legal counsel or administrative staff. The motion should state approximate amount of time for the requested recess as a convenience to other members and the public in attendance. Not debatable and requires an immediate vote. Majority vote of quorum present required for approval.
- **Motion for Executive Session** **(Privileged)**
A Motion for Executive Session must include the citation to Colorado Revised Statute subsection authorizing session and a brief description of subject matter (e.g., "I move to hold an executive session pursuant to C.R.S. § 24-6-402(4)(b) to receive legal advice on the right to impose a condition on the proposed development"). Not debatable and goes to immediate vote. Supermajority of 2/3rds of quorum present required for approval pursuant to the Colorado Open Meetings Law.
- **Motion to Adjourn** **(Main)**
Motion to Adjourn is available to cease further action of the Body and immediately terminate the meeting. A Motion to Adjourn is debatable and requires a majority vote of quorum present required. Caution should be exercised when
- **Motion to Reconsider** **(Main)**
A Motion to Reconsider is available to suspend the prior vote on a motion and cause the matter to be reopened for another consideration. A Motion to Reconsider is only in order at the same meeting at which the decision to be reconsidered was made or at the *next* regular meeting of the Body. The

motion must be made by a member on the prevailing side of the original motion to be reconsidered. The required second on the motion need not be a member from prevailing side. The motion is debatable but only for the reasons to explain or justify reconsideration and not for the purpose of debating the merits of the original motion.

A supermajority vote of 2/3rds of the quorum present is required for approval. If the motion to reconsider is approved, the final vote and decision on the prior motion is effectively voided and the matter is reopened. All proceedings, testimony, evidence, and debate on the matter remain part of the official record. The Body should debate and decide the appropriate method to reconsider the matter (e.g., setting a new date for continued debate or discussion, posting or publication of new notice of the reopened matter, etc.). Reconsideration of quasi-judicial matters will always require the setting of a new hearing date and new notice for the reopened public hearing in accordance with the applicable law governing the original matter.

- **Motion to Postpone an Agenda Item to Date Certain (Main)**
A Motion to Postpone an Agenda to a Date Certain pertains to a matter that is not presently on the floor but is scheduled for later consideration on the Body's agenda. The motion must identify a date and time certain for the agenda item to be reset for Body consideration. If the Moving Party desires to *indefinitely* postpone an item, a Motion to Postpone indefinitely is the appropriate motion (see below). The Motion to Postpone an Agenda Item to a Date Certain is debatable. A majority vote of quorum present required for approval.
- **Motion to Postpone Indefinitely (Main)**
A Motion to Postpone Indefinitely will effectively kill a motion and removes the matter from consideration without directly voting it down. The motion is debatable. A majority vote of quorum present required for approval. If approved, the matter will not be brought back to the Body unless the Body instructs that the item return for a future agenda.
- **Motion to Amend (a Main Motion) (Subordinate)**
A Motion to Amend (a Main Motion) is applicable only to a Main motion on the floor. The motion must provide specificity as to the intended amendment. The motion is debatable. A majority vote of a quorum present required for approval. A motion to amend is not in order when another motion to amend is already pending (made and seconded) before the Body;

e.g., the Body will deal with only one Motion to Amend at a time to avoid confusion.

- **Motion to Continue Matter to Date Certain (Subordinate)**
A Motion to Continue a Matter (before the Body) to a Date Certain postpones to holdover the current motion to a date, time, and place stated in the motion. The motion is debatable. A majority vote of a quorum present required for approval.
- **Motion to Call the Question (Subordinate)**
A Motion to Call the Question (also phrased as to "Close Debate") will close further debate and require vote on the motion pending before the Body. The motion applies only to the motion on the floor. The motion is not debatable. Due to the fact that such a motion will forestall the Body's ability to discuss the merits of the pending matter, a supermajority vote of 2/3^{ds} of the quorum present is required for approval in order that the Body evidences a strong intent that continuing debate is not necessary to decide the matter.

8.0 Suspension of Rules

A. Chairperson May Suspend

Subject to challenge by Point of Appeal, the Chairperson may elect to suspend operation of any rule provided by these Rules of Order; provided, however, that the Chairperson shall not be authorized to suspend or alter the vote required on any motion or matter.

B. Motion to Suspend

Any member may move to suspend the applicability of a rule of order by proposing a main motion; provided, however, that no motion may suspend or alter the vote required on any motion or matter. Such motion shall be presented only as a Main motion which motion shall require a second, be subject to debate, and shall require a majority vote of the quorum present for adoption.

Summary of Requirements for Motions and Points

MOTION	Type	Second Required?	Debatable?	Vote Required
Point of Order	Privileged	No	No	No Vote Required
Point of Information	Privileged	No	No	No Vote Required
Point of Appeal (to challenge the Chairperson's decision)	Privileged	No	Only as needed to explain the Decision and the applicable Rule subject to challenge	Majority of quorum present
Motion to Recess	Privileged	Yes	No	Majority of quorum present
Motion for Executive Session	Privileged	Yes	No	2/3rds of quorum present
Any Main Motion	Main	Yes	Yes	Majority of quorum present unless otherwise required by law, rule, or regulation
Motion to Adjourn	Main	Yes	Yes	Majority of quorum present
Motion to Reconsider	Main	Yes	Yes	2/3rds of quorum present
Motion to Postpone an Agenda Item	Main	Yes	Yes	Majority of quorum present
Motion to Postpone Indefinitely	Main	Yes	Yes	Majority of quorum present
Motion to Amend (a Main Motion)	Subordinate (to a Main Motion)	Yes	Yes	Majority of quorum present
	Subordinate	Yes	Yes	Majority of quorum present

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Motion to Continue Matter Before the Body to Date Certain	(to a Main Motion)			
Motion to Call the Question (Close Debate)	Subordinate (to a Main Motion)	Yes	No	2/3rds of quorum present