

City Council Work Session Agenda Summary

June 14, 2022

Agenda Item Number

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Title

Review of the land use quasi-judicial hearing process

Background

The City Council has recently been presented with several significant land use proposals and, during that process, a number of questions arose concerning procedure, land use distinctions, as well as a request to better understand options at Council's disposal in its deliberations and decision-making role. The following summary is offered to help clarify some of those points.

Planning Context:

Like most American cities, Greeley has embodied the value and role of a planned community in its charter. Article XIX, Section 19-1 describes the Planning function as follows:

Consistent with all federal and state law with respect to land use and development and in conformance with all applicable articles in its Charter, the City Council shall:

- a. Designate a City department or other agency to carry out the planning, zoning and housing functions as set forth in ordinances.*
- b. Maintain a planning commission of seven (7) members appointed to terms of three (3) years to advise the City Council on land use planning and to make decisions on land use matters as they may be set forth by ordinance.*
- c. Adopt a comprehensive plan as a guide to land use and development.*
- d. Adopt all development codes.*
- e. Establish a process for handling variance applications and appeals of land use decisions or actions.*

The current Comprehensive Plan, dubbed "Imagine Greeley" was adopted in January 2018 and represents the 5th such master plan since the community's inception in 1869. It contains the community's growth and development aspirations, categorized as its Vision and Core Values and executed in a set of goals, objectives and action steps. It provides the policy direction that informs other documents, plans, and guidance tools

for the physical development of the City. Multiple departmental plans are contained and incorporated by reference in the Comprehensive Plan, intended to provide alignment with the overall vision and offer policy direction for elected and appointed leaders who carry out various aspects of the Plan.

Ten core topical elements of the Plan provide a further set of goals and objectives:

- Growth and City form
- Economic Health & Diversification
- Education, Health & Human Services
- Housing
- Historic & Cultural Resources
- Natural Resources & Open Lands
- Parks and Recreation
- Public Safety
- Transportation
- Infrastructure

The Comprehensive Plan defines the City's Long Range Expected Growth Area in map form, which provides annexation and planning areas for infrastructure and municipal services. This map also illustrates general corridors for certain types of development, where natural resources and development limitations may be present, and provides policy guidance for land use decisions.

The City's Development Code translates the goals of the Comprehensive Plan into regulatory tools which are used to allow the development of land through annexation, zoning, subdivision and construction of improvements.

ZONING

Zoning is the term applied to the land use designation for a property. The City's development code is divided into several categories ranging from least intense (agricultural, conservation district and low density residential) to most intense (heavy industrial uses). Each zoning category lists the allowed land uses within that zoning designation.

In general, there are 3 major categories of uses in which development occurs: Residential, Commercial and Industrial and within each of those areas are varying intensities of land uses. For example, in a residential zone the least intense land use is R-E: Residential Estate (large lot single family use) to R-H Multi-family. Generally, each land use is progressively inclusive of all the less intense uses from the lower-level zoning categories within that zoning category. In other words, R-L or single-family zoning only allows single family uses; however, R-M or Medium Density Residential allows up to four-plex units but also single-family homes, R-H allows multi-family, medium density and single-family structures. The Development Code also has Mixed Use zoning categories

which promoted a blend of uses among normally separated types of development and Planned Unit Developments which usually have a more defined range of land use types coupled with specific site design components.

In addition to the primary uses within a zone, other uses may be possible with special permission as reasonably compatible uses. For example, childcare facilities and churches may be allowed in residential zones as a "Use by Special Review", which is an additional land use that can be allowed with the underlying zoning. "Overlay" zones are another tool to add zoning conditions based on a common characteristic of an area (e.g. floodplain, Mercado District, Historic District, etc.)

The Development Code requires the zoning of a property to be determined by City Council; some types of land uses can be determined at the Planning Commission level. Decisions at the staff and Planning Commission level are appealable to the next level of authority.

All property annexed into the City must be zoned within 90 days of its inclusion. Often, a landowner may annex in anticipation of eventual development but does not have a specific development plan to propose. In those cases, the property is categorized as "Holding Agriculture" denoting its transitional status and a 'place marker' to allow the continuation of farming activity until a permanent zoning designation is set by Council when development is timelier and a projected use more certain.

Zoning applications originate from the applicant who must have a legal interest in the subject property. It is Council's duty to consider the request based upon specific criteria. Council or the Planning Commission can initiate a zoning action when there is a public interest in doing so, such as with an area rezone for changed conditions (such as new floodplain regulations) or with newly annexed land for which the owner does not yet have a specific development intent (e.g. Holding Agriculture). The City Council cannot negotiate a different zoning during its hearing process other than the one requested since notice to the public and due process is a requirement of such actions. Zoning is approved by ordinance, which requires two Council actions, including a public hearing.

SUBDIVISION

The division of property generally occurs once zoning is established and when development is anticipated. The City's Development Code defines the way in which a property may be subdivided that will allow it to become a buildable lot. At this stage access to the property, utility easements, lot size, streets, and other infrastructure obligations are identified. The subdivision of a lot is also subject to the underlying zoning of the property, which may denote minimum lot sizes and carry other requirements. This step is generally undertaken when the site is within the City's Adequate Public Facilities Area and can be reasonably served from existing systems, which is a condition

precedent to development. If the site is not adjacent to the City's infrastructure, the development is obligated to extend those streets, utility lines, etc. at the project's expense.

DEVELOPMENT

Once the property has been zoned and subdivided, infrastructure may be installed to integrate the property into the City's existing grid of streets, dry and wet utilities, storm drainage, and so forth. This provides a buildable lot for the ultimate user, or "entitles" the property, which refers to preparing the property by completing the annexation, zoning, and subdivision of the property so it is ready for construction. The developer may accomplish this phase of the development through private or conventional financing or via a metropolitan district financing tool. The developer may also be the builder or could sell part or all of the site to other builders who construct final improvements. With the essential infrastructure in place the next step is the "walls in" or building permit phase of development.

BUILDING CONSTRUCTION

In this final phase of development, a builder submits plans for construction of improvements on a property. Once more, the Development Code provides the design element of a structure (setbacks from property lines, building height, size, configuration, building materials, lighting, signage, site landscaping and other "walls out" design elements to the property). The City's Building Codes dictate the "walls in" construction requirements.

LAND USE/ZONING APPROVAL PROCESS

Zoning and land use approvals that require zoning approval by City Council are considered "quasi-judicial". This means, essentially, that the City Council acts as a judge in weighing specific land use criteria as set out in the Development Code in making a determination of compliance, and therefore approval (or denial) of a land use application. In this role the Council follows a set of steps:

1. Presentation by Planning staff of the application and Planning Commission action
2. Questions about the application of the Planning/Development staff
3. Presentation by the applicant
4. Questions about the zoning action of the applicant
5. Open the public hearing to allow testimony from the general public
6. Close the public hearing
7. Final questions of the applicant and their option to respond to any points raised during the public hearing
8. Pose any additional questions of the staff
9. Deliberation and discussion among Council

10. Motion to approve or deny the application.

The Council is establishing a public record so the motion should include the specific criteria from the Development Code in support of or denial of the application. This is the same criteria that the Planning Staff use to guide the applicant through the review process and includes in its report to the Planning Commission. In turn, the Commission must use this same criterion in making its findings and recommendation to Council and are summarized in the Council summary.

As a quasi-judicial hearing there are also other important procedural considerations:

- A. Just as in a trial, the Council should not discuss or consider comments from the applicant or the public outside the public hearing process. It is perfectly acceptable to ask staff to clarify the reports or material contained in the application or report but discussions among Council or with outside interests could compromise a hearing or outcome or give the appearance of deliberations outside the public hearing process.
- B. Any potential conflicts of interest should be noted on the record. Unless inconsequential, the Council member should exclude themselves from the hearing.
- C. It is ideal to resist offering personal opinions until all testimony is given or introducing new or "outside evidence" (such as anecdotal accounts, hearsay, petitions, unverified data).
- D. Questions of the applicant should be limited to the relevant review criteria. For example, asking about how many new jobs might be created with a project or if a certain product would be available at proposed tenant of the property could be interesting but not relate to any of the criteria and may infer a bias in a decision irrelevant to the decision.
- E. All communication received from the public should be forwarded to the City Clerk in advance of the meeting so that all members of Council, as well as staff and the applicant are privy to the same information.
- F. If testimony from the applicant or public becomes redundant it is acceptable to limit such comments from additional speakers.

Not all councilmembers may have exposure to or experience with Greeley's codes or their role and responsibilities in a quasi-judicial hearing, whether for a land use or other process. If of interest, the Colorado Municipal League offers a land use training for city officials, which could be helpful for those new to the process or as review. Here is a link to that training: [2014-10-24 Land Use Basics for Elected Officials | CML](#) . Staff is also able to provide a more extensive review of any codes or process the Council may find of interest.

Strategic Work Program Item or Applicable Council Priority or Goal:

Image Greeley Comprehensive Plan "Develop and maintain a safe, aesthetically pleasing, and livable community."

Good Governance

Decision Options:

Information only

Attachments

A - Power Point Presentation