



Minturn Forward Memo

TO: Minturn Planning Commission

FROM: Matt Farrar, Western Slope Consulting

DATE: November 19, 2024

ATTACHMENTS: Revised Draft (v5) Article 5: Land Use Application Requirements & Procedures

To assist the Planning Commission with their review of the revised draft of Article 5: Land Use Application Requirements & Procedures, this memo lists the key changes that have been made since the review of the initial draft of this Article.

General Changes

The following changes have been made throughout the revised draft of Article 5:

- The time frame for the Planning Director to prepare a Pre-Application Conference Summary has been increased from seven (7) calendar days to ten (10) business days.
- The maximum amount that a Planning Director can extend the time frame for a determination of completeness has been changed from fourteen (14) calendar days to ten (10) business days.
- Under *Waiver of Application Submittal Requirements*, the following changes have been made:
 - The following has been removed from the list of criteria for authorizing a waiver. It is staff's opinion that this criterion is not very relevant to determining whether certain submittal requirements should be waived.

"The size, complexity, anticipated impacts, or other factors associated with the proposal support a waiver."
 - Language has been added to clarify that the Planning Director will provide an applicant with written notice if they authorize a waiver of submittal requirements.
- Under *Application Review and Referral*, the following changes have been made:
 - Language has been added to clarify that the Planning Director is responsible for determining which town departments, town consultants, and referral agencies to send an application to for review and comment.
 - The provision regarding the referral period has been modified to clarify that only referral agencies are subject to the time frame (i.e., twenty (20) business day) for submitting comments.

Language has also been added that enables the Planning Director to extend this period, by up to ten (10) business days, if requested by a referral agency.

- Language has been added to clarify that town departments and town consultants can provide comment on an application at any point during the review process.
- Under *Schedule Public Hearings*, the following changes have been made:
 - The time frame for scheduling the first public hearing with the Planning Commission has been changed from sixty (60) calendar days from the date of determination of completeness to forty (40) business days from the conclusion of the application referral process.
 - The time frame for scheduling the first public hearing with the Town Council has been changed from sixty (60) calendar days from the conclusion of the Planning Commission’s review to forty (40) business days from the conclusion of the Planning Commission’s review.

Section 16-5-10: General Provisions

- The *Effect of Inaction on an Application* provision has been modified to clarify when it applies.
- Under the *Administrative Withdrawal* provision, the time frame for an applicant to address deficiencies in their application has been changed from one-hundred eighty (180) calendar days to ninety (90) business days. This change has been made to ensure consistency with other provisions in Article 5.

Section 16-5-20: Land Use Application Types & Review Procedures

- Staff has added a new “Location and Extent” application to the table of land use application types and review procedures. Staff is still working on detailing the submittal requirements and review procedure for this application.

The purpose of Location and Extent application is to:

1. Provide the Town with an opportunity to review projects proposed by a public or quasi-public entity (e.g., School District, Fire District, publicly or privately owned utility, etc.) in relation to the Community Plan.
2. Inform a public or quasi-public entity of the Town's reasonable expectations for land use and development.

Location and extent review is mandated by the Colorado Revised Statutes.

- Under *Minimum Contents of Application*, the following changes have been made:
 - An *Owner Consent* provision has been added to clarify that an applicant must submit evidence that the owner of the subject property consents to the application being submitted.
 - The requirements for *Disclosure of Ownership* have been modified based on input from the Town Attorney.

- The requirement to submit a list of mineral estate owners and lessees has been removed based on input from the Town Attorney. Other provisions have been added to Article 5 to clarify that an applicant must submit evidence that they have researched and notified mineral estate owners in accordance with the requirements of the Colorado Revised Statutes.

Section 16-5-30: Public Notice Requirements

- Staff worked with the Town Attorney to clarify the notice requirements for a Major PUD Amendment. Those requirements have been included under *Mailed Notice*.
- Based on input from the Town Attorney, language has been added under *Mineral Estate Notice and Applicant Responsibilities* that requires an applicant to certify, to the Town, that they have noticed the applicable mineral estate owners in accordance with the Colorado Revised Statutes. Further, this language requires an applicant to submit certification to the Town a minimum of ten (10) business days prior to the first public hearing for their application.

Section 16-5-40: Public Hearing Requirements

- Based on direction from the Town Attorney, the *Order of Proceedings* Subsection has been removed.
- Staff worked with the Town Attorney to modify the *Continuance of a Public Hearing* Subsection. This Subsection was modified to give the person (e.g., Planning Director) or body (e.g., Planning Commission or Town Council) conducting a public hearing sole discretion as to whether a public hearing will be continued.
- Staff worked with the Town Attorney to modify the *Record of Public Hearing* Subsection.

NOTE

It is recommended that the provisions under Sections 16-5-10 - 16-5-40 that apply to both Land Use and Subdivision applications be consolidated under one Article of the updated Code. This will prevent Article 5: Land Use Application Requirements & Procedures and Article 8: Subdivision Application Requirements & Procedures from having redundant language. However, this will require cross-reference in the updated Code.

If this is of interest to the Planning Commission, staff will explore how to best consolidate these provisions in the updated Code.

Section 16-5-50: Code Amendment

- Under the *Application Review Procedures* for a Code Amendment, language has been added to clarify that a Town-initiated Code Amendment is exempt from the following steps in the review process:

Step 1: Pre-Application Conference

Step 2: Application Submittal

Step 3: Determination of Completeness

Step 4: Application Review & Referral

- Based on input from the Town Attorney, *Step 10: Reconsideration by Planning Commission and Town Council* has been removed.

Section 16-5-60: Conditional Use

- Based on direction from the Town Attorney, the duration of an approval for a Conditional Use has been reduced from three (3) years to one (1) year. Once a Conditional Use is established, it is valid for five (5) years, unless a different duration is specifically approved by Town Council.
- A new Subsection has been added that addresses the abandonment of a Conditional Use. The language in this Subsection has been based on the Town's existing Code language for legal nonconforming uses.

Section 16-5-70: Design Review

- The provisions under *Applicability* have been modified to clarify that all "major development and redevelopment" in Minturn must comply with the Design Review application requirements and review procedures. The existing Code language states that all "major construction" must comply with these requirements and review procedures.
- Staff has noted that a definition for "Major Development" and "Major Redevelopment" will need to be provided in the updated Code. Staff's initial thoughts for a definition are as follows:

Major Development or Redevelopment: Any new structure or increase in lot coverage over 200 square feet. Any increase in height of an existing structure.

- The provisions under *Applicability* have also been modified to clarify that all "minor development and redevelopment" in Minturn must comply with the Minor Design Review application requirements and review procedures.
- *Step 9: Town Council Review* has been added to the review process for a Design Review application. This language has been added to clarify and codify Town Council's involvement in the review process.
- New language has been added under the *Modification of Approval* Subsection to clarify the difference between a "Minor Modification" and a "Major Modification" to a Design Review approval. This Subsection has also been modified to clarify the review process for Minor and Major Modifications.
- New language has been added under the *Extension of Approval* Subsection that allows the Planning Director to refer an extension request to the Design Review Board.

Section 16-5-80: Minor Design Review

- Step 4 of the Minor Design Review process has been modified to clarify that there is no referral process for Minor Design Review applications.
- New language has been added under Step 5 that requires an administrative decision on a Minor Design Review application to be included on next available Design Review Board consent agenda and provides the Design Review Board with an opportunity to "call-up" the administrative decision.

Section 16-5-90: Location and Extent

- As previously noted, a new "Location and Extent" application has been added to Article 5. Staff is still working on detailing the submittal requirements and review procedure for this application.

Section 16-5-110: Rezoning (Amendment to Zoning Map)

- Under *Applicability*, the language that describes what constitutes a rezoning has been modified. Upon further review of this language, staff felt the language regarding a “comprehensive rezoning” was unnecessary.
- Based on direction from the Town Attorney, new language has been added under *Applicability* that clarifies when a rezoning is and is not appropriate.
- Under Application *Submittal* Requirements, the following changes have been made:
 - A “Rezoning Petition” has been removed from the list of submittal requirements based on direction from the Town Attorney.
 - The requirements for a survey have been modified to clarify that only a scaled survey is acceptable. The existing Code allowed an Improvement Location Certificate (ILC) or other document to be submitted in place of a survey.

Section 16-5-120: Temporary Use

- Under *Applicability*, language has been added to clarify that “Special Events,” approved via the Town’s Special Event Permit process, are exempt from the Temporary Use Section.
- Language has been added to the *Narrative* submittal requirement to clarify that an applicant must describe how they are addressing both security and crowd control.

Section 16-5-130: Zoning Variance

- The review criteria for a Zoning Variance have been slightly modified to clarify that:
 - Shape, size, or topography of a property have been included as examples of “exceptional or extraordinary conditions.”
 - Inconvenience or financial hardship do not constitute practical difficulty or undue hardship upon an applicant.
- The Zoning Variance review process has been modified to a two-step public hearing process:
 1. Review and recommendation by the Planning Commission at a public hearing.
 2. Review and decision by the Zoning Board of Appeals (Town Council) at a public hearing.

Section 16-5-140: Planned Unit Development (PUD)

- The existing Code refers to PUDs as a “Planned Unit Development Overlay Zone District.” It has been determined that it is not necessary for a PUD to be an Overlay Zone District. Therefore, the approval of a PUD will now result in the creation of a unique, standalone zone district. Any reference to PUDs as an Overlay Zone District has been removed.
- The *Purpose* statement for PUDs has been expanded to better clarify what is supposed to be achieved through the creation of a PUD.

- The following changes have been made to Subsection 16-5-140(D)(5): Common Open Space, Park, and Recreation Standards:
 - At the Town Council’s discretion, the following may be allowed as an alternative to providing common open space, parks, and/or recreation areas in a PUD:
 - A cash-in-lieu fee.
 - A dedication of land not within a PUD.
 - A combination of a cash-in-lieu fee and a dedication of land not within a PUD.
 - Amenities within the PUD that achieve a similar purpose to open space, park, and recreation areas.

These options are recommended to provide an applicant with greater flexibility to address the common open space, park, and recreation requirement. Staff is concerned that not allowing flexibility in the common open space, park, and recreation standard may result in less desirable PUDs.

- The list of example areas and amenities that do, and do not, count towards the common open space, park, and recreation requirement has been modified to further clarify what does and does not count.
- Provisions have been added for the cash-in-lieu fee option.
- The *PUD Application Standards* Subsection has been removed. These standards have been incorporated with the evaluation criteria for Concept Development Plan and the review criteria for Preliminary Development Plan. Staff felt that having a separate Subsection with application standards was confusing.
- The provision regarding the concurrent submittal of PUD and Subdivision applications has been modified to require PUD and Subdivision applications to be submitted together. Previously, an applicant had the option to submit PUD and Subdivision applications concurrently.
- Provisions have been added to clarify the processes for the abandonment of a PUD and the expiration/extinguishment of a PUD.

Section 16-5-150: Concept Development Plan

- The review process for a Concept Development Plan has been modified in the following ways:
 - It has been clarified that this is an informal process that allows an applicant to discuss their concept for a PUD with town staff, the Planning Commission, and the Town Council. There is no public hearing required for a Concept Development Plan. Further, the Planning Commission or the Town Council will not take any formal action (i.e., approval or denial) on a Concept Development Plan.
 - A Concept Development Plan is required to be reviewed by the Planning Commission and the Town Council. Previously, the review by the Town Council was optional.

- The Planning Commission no longer makes a recommendation to the Planning Director that allows an applicant to proceed to the Preliminary Development Plan. Now, upon the conclusion of the Concept Development Plan step, an applicant can proceed to the Preliminary Development Plan.
- The criteria for a Concept Development Plan have been modified to clarify that the Planning Commission and the Town Council should consider these criteria in their evaluation of a Concept Development Plan. There is no requirement to make a finding for these criteria. The applicable standards, previously listed under *PUD Application Standards*, have also been incorporated with these evaluation criteria.
- The language regarding the duration and extension of an approval for a Concept Development Plan has been removed. It was determined that this language was unnecessary for a Concept Development Plan.

Section 16-5-160: Preliminary Development Plan

- The engineering related submittal requirements for a Preliminary Development Plan are still being worked on. Input from the Town Engineer is needed to finalize these submittal requirements.
- Submittal of an application for a Preliminary Plat has been added to the submittal requirements for a Preliminary Development Plan. This is only required if a subdivision is being proposed as part of a PUD.
- The review criteria have been modified to ensure that they are applicable to a Preliminary Development Plan. The applicable standards, previously listed under *PUD Application Standards*, have also been incorporated with the review criteria.
- The existing Code sets forth a “Post-Referral Process” that is required following the review of an application by town departments, town consultants, and referral agencies. This process works to ensure that review comments are satisfactorily addressed before an application is brought in front of the Planning Commission and the Town Council.

This process was omitted from the previous draft of Article 5. Based on discussions with town staff, it has been determined that this process is most appropriate for PUD applications. Therefore, language for the post-referral process has been added to the review process for a Preliminary Development Plan and Final Development Plan (refer to Step 5: Post-Referral Process).

- The *Effect of Approval* Subsection has been modified to remove the language that stated an approval of a Preliminary Development Plan was considered as satisfying the Town’s subdivision requirements for a Preliminary Plat. This language was incorrect.
- Language has been added to the *Modification of Approval* Subsection to clarify that any changes to an approved Preliminary Development Plan require the submittal of a new application, unless those changes are necessary to address conditions of approval.
- The *Duration of Approval* Subsection has been modified to:

- State that the approval of any Preliminary Development Plan, regardless of how many phases it has, is valid for one (1) year. Previously, the duration of approval varies based on how many phases a Preliminary Development Plan had.
- Clarify that the expiration of a Preliminary Development Plan is subject to PUD expiration/extinguishment process set forth in Section 16-5-140.

Section 16-5-170: Final Development Plan

- The engineering related submittal requirements for a Final Development Plan are still being worked on. Input from the Town Engineer is needed to finalize these submittal requirements.
- Submittal of an application for a Final Plat has been added to the submittal requirements for a Preliminary Development Plan. This is only required if a subdivision is being proposed as part of a PUD.
- The review criteria have been modified to ensure that they are applicable to a Final Development Plan.
- The “Post-Referral Process” from the existing Code has been added to the review process for a Final Development Plan (refer to Step 5: Post-Referral Process).
- The *Duration of Approval* Subsection has been modified to clarify that the expiration of a Final Development Plan is subject to PUD expiration/extinguishment process set forth in Section 16-5-140.

Section 16-5-180: Minor PUD Amendment

- Under *Applicability*, changes in the location, sighting, and/or bulk of structures and the height or character of buildings have been removed. These types of changes are now listed as types of Major PUD Amendments.

The only changes now allowed via the Minor PUD Amendment process are technical or engineering considerations.

- **NOTE:** Some communities allow the Planning Director to authorize limited changes to aspects of an approved PUD via a Minor PUD Amendment process. For example, the Town of Telluride allows their Planning Director to authorize the following types of changes to an approved PUD via their Minor PUD Amendment process:
 - Moving a building or street no more than two (2') feet.
 - Increasing the ground coverage for all proposed structures by no more than three percent (3%).
 - Reducing the amount of approved open space by no more than three percent (3%).
 - Increasing the floor area of all proposed structures by no more than two percent (2%).
 - Increasing the number of dwelling units or bedrooms by no more than one percent (1%).

If there is interest in allowing Minturn's Planning Director to authorize these types of limited changes via the Minor PUD Amendment process, staff can prepare some draft language for review.

- Staff has modified the review criteria for a Minor PUD Amendment to make it more relevant to minor changes to an approved PUD.

Section 16-5-190: Major PUD Amendment

- Under *Applicability*, changes in the location, sighting, and/or bulk of structures and the height or character of buildings have been added to the list of Major Amendment examples.
- A Major Amendment is intended to follow the same process as that for a Preliminary Development Plan. Therefore, staff is recommending that the review criteria for a Major Amendment be the same as that for a Preliminary Development Plan. Staff is still working on revising the review criteria for a Preliminary Development Plan and will make that available for review as soon as possible.

Section 16-5-200: Sign Permit

- The following have been added as submittal requirements for a Sign Permit application:
 - Sign area calculation.
 - Information about all existing signs on the subject property.

Section 16-5-220: Sign Variance

- The following have been added as submittal requirements for a Sign Variance application:
 - Frontage dimensions for existing buildings and/or structures shown on a site plan.
 - Sign area calculation.
- The review criteria for a Sign Variance have been slightly modified to clarify that:
 - Shape, size, or topography of a property have been included as examples of "exceptional or extraordinary conditions."
 - Inconvenience or financial hardship do not constitute practical difficulty or undue hardship upon an applicant.
- The Sign Variance review process has been modified to a two-step public hearing process:
 1. Review and recommendation by the Planning Commission at a public hearing.
 2. Review and decision by the Zoning Board of Appeals (Town Council) at a public hearing.