

2018 HEARING RULES FOR THE GALLATIN COUNTY PLANNING AND ZONING COMMISSION

I. AUTHORITY

The Gallatin County Planning and Zoning Commission (“Planning and Zoning Commission”) is authorized to adopt the following Rules governing the transaction of its hearings pursuant to §762-102, Montana Code Annotated (MCA). These Rules are supplementary to the provisions of Title 2, Chapter 3, Parts 1 and 2, MCA as those provisions relate to the procedures for conducting hearings before the Planning and Zoning Commission.

II. PURPOSE

The purpose of these Rules is to provide consistency in the hearing process of the Planning & Zoning Commission among the various zoning districts in Gallatin County. These Rules govern proceedings and hearings for variances, conditional use permits, appeals, and any other quasi-judicial matter as set forth below for all zoning districts over which the Planning and Zoning Commission has jurisdiction. These Rules do not apply to Legislative Matters, which are governed by Regulation and/or statute.

These Rules apply to the Planning and Zoning Commission, notwithstanding the name ascribed to it in any Regulation that authorizes the Planning and Zoning Commission to govern the affairs of that zoning district. Should these Rules conflict with any procedural requirement set forth in any law or Regulation, such conflict shall be resolved in favor of the law or Regulation.

III. HEARING RULES

A. Definitions: The following definitions shall apply to these Rules:

- 1. Hearing.** A proceeding or public hearing during which the Planning and Zoning Commission considers a conditional use permit, variance, appeal of a decision of the Planning Director or Zoning Enforcement Agent, or other quasi-judicial matter. A Hearing does not include Legislative Matters or discussions between the Planning & Zoning Commission and its legal counsel regarding anticipated or ongoing litigation.
- 2. Legislative Matters.** A proceeding or public hearing during which the Planning & Zoning Commission considers a zone text amendment, zone map amendment, or other legislative matter.
- 3. Planning Director.** The Director of the Department of Planning and Community Development, or his/her designees, who is authorized by the Gallatin County Board of County Commissioners (“County Commission”) and the Planning and Zoning Commission to carry out the administrative duties specified in any Regulation.

4. **Regulation.** Any regulation or ordinance adopted for any development district in Gallatin County, Montana that was created pursuant to Title 76, Chapter 2, Part 1, MCA.
5. **Zoning Enforcement Agent.** The individual authorized by the County Commission and the Planning and Zoning Commission to carry out the enforcement duties specified in any Regulation. If the Zoning Enforcement Agent is unable to act for any reason, the Planning Director is authorized to act as the Zoning Enforcement Agent.
6. **Zoning Hearings Coordinator.** The Planning Director acts as the Zoning Hearings Coordinator for all variances, conditional use permits, appeals from Planning Director decisions, and any other Hearings not reserved to the Zoning Enforcement Agent. The Zoning Enforcement Agent acts as the Zoning Hearings Coordinator for appeals from Zoning Enforcement Agent decisions.

B. **Open Meetings:** All Hearings shall be open to the public in accordance with Montana law.

C. **Closed Meetings:** A meeting may be closed in accordance with § 2-3-203, MCA or as otherwise allowed by law upon the request of a Planning & Zoning Commission member or its legal counsel. After such request, a Planning & Zoning Commission member shall move to close the meeting pursuant to § 2-3-203, MCA or the applicable law. The Planning & Zoning Commission shall then vote on the motion and make appropriate findings.

D. **Hearing Procedure:**

1. **Agenda.** The Zoning Hearings Coordinator shall schedule any Hearing before the Planning and Zoning Commission. The presiding officer of the Planning and Zoning Commission must approve the agenda for any meeting in which a Hearing is scheduled before the agenda is published. The Zoning Hearings Coordinator shall post the agenda online at least two business days in advance of such meeting and, when possible, also may post the staff report and application materials online.
2. **Notice.** Unless otherwise provided by statute or applicable Regulation, the Zoning Hearings Coordinator shall give notice of a Hearing pursuant to §7-1-2121, MCA. The notice also may be mailed by certified mail to all owners of real property that are adjacent to the real property in question, which owners shall be determined based on the latest ownership records maintained by the Montana Department of Revenue.
3. **Postponement of Hearing.** A party to a Hearing may request, upon good cause, postponement of the Hearing date. The request shall be in writing to the Zoning Hearings Coordinator and state the reasons why the postponement is necessary. The Zoning Hearings Coordinator shall consult with the presiding officer, who shall grant or deny the request. Requests for postponement made at the Hearing shall be decided by the Planning and Zoning Commission. The party making the request for postponement shall be responsible for any costs associated with re-noticing the matter. If any party to a Hearing fails to appear at the Hearing, and good cause justifying postponement is not shown, the

Planning and Zoning Commission may hear and decide the matter and make a determination on the evidence then available.

4. Hearing Format.

a. **Appeals.** Unless established otherwise by the presiding officer, the order of presentation at an appeal shall be as follows: staff presentation; appellant presentation; respondent presentation; public comment; staff rebuttal; respondent rebuttal; appellant rebuttal; Planning and Zoning Commission discussion; and Planning and Zoning Commission decision. The presiding officer may determine, given the complexity of the issues, time limitations for each presentation made to the Planning and Zoning Commission.

b. **Other Matters.** Unless established otherwise by the presiding officer, the order of presentation at a Hearing shall be as follows: staff presentation; applicant presentation; public comment; staff rebuttal; applicant rebuttal; Planning and Zoning Commission discussion; and Planning and Zoning Commission decision. The presiding officer may determine, given the complexity of the issues, time limitations for each presentation made to the Planning and Zoning Commission.

5. Conduct of Hearing. The Hearing shall be conducted at the discretion of the presiding officer. All issues shall be heard as determined relevant by the presiding officer. The presiding officer may require witnesses to make an oath or affirmation in order to present evidence.

The presiding officer shall have the discretion to reorder any agenda so the hearing and decision of a variance from the Regulations is heard before any conditional use permit for the same applicant.

The Zoning Hearings Coordinator shall present the relevant issues to the Planning and Zoning Commission. The Zoning Hearings Coordinator's presentation should be documented by written materials, including, as applicable, the complete application or appeal and accompanying materials, the complaint, and the decision appealed from. The Zoning Hearings Coordinator shall compile and present all written public comment received up to the time of the Hearing. The members of the Planning and Zoning Commission shall disclose any public comment not presented by the Zoning Hearings Coordinator.

The presiding officer has the discretion to appoint a hearings examiner to assist with or conduct all pre-Hearing matters and the Hearing.

6. Decision.

a. **Appeals.** For any appeal, the Planning and Zoning Commission may, based on the facts in the hearing record, reverse, affirm, or modify, wholly or partly, the order,

decision, or determination of the Planning Director or the Zoning Enforcement Agent, or may continue the matter to a later date.

- b. **Other Matters.** For other matters, the Planning & Zoning Commission may approve, deny, or continue the matter to a later date.
- c. **Continuances.** In continuing an appeal or other matter, the Planning & Zoning Commission may: (i) continue the entire matter to a subsequent meeting; (ii) hear all testimony and evidence, vote on the matter, and then continue the Hearing to a subsequent meeting, at which time the Planning & Zoning Commission will issue its oral findings; or (iii) hear all testimony and then continue the Hearing to a subsequent meeting, at which time the Planning & Zoning Commission will vote on the matter and issues its oral findings.
- d. **Decision and Findings.** Decisions of the Planning and Zoning Commission shall be made in accordance with the applicable requirements and review criteria from the Regulation, and supported by findings of fact related to information in the hearing record.

7. **Document Submittals.** Any documents and materials that a party to a Hearing or a member of the public would like considered by the Planning & Zoning Commission should be submitted to the Planning Department, the County Attorney's Office, and all other known parties to the Hearing at least 5 business days in advance of the Hearing.

E. Post-Hearing Procedure:

The Planning and Zoning Commission shall prepare a written decision, signed by the presiding officer, setting forth its decision, including the relevant facts, laws, and regulations. The written statement may incorporate by reference the reasons for the decision that are pronounced verbally by the Planning and Zoning Commission at the Hearing.

Within three business days of the date of signature by the presiding officer, the Zoning Hearings Coordinator shall mail and make available the written decision to the applicant, appellant, the public or any other person who requests the written decision. The written decision shall advise and set forth the right to appeal. The date the Zoning Hearings Coordinator makes the written decision available shall establish the time to commence the right to appeal the decision of the Planning and Zoning Commission to the District Court in accordance with § 76-2-110, MCA.

Hearing minutes shall be approved by the Planning and Zoning Commission at a subsequent meeting of the Commission. If any portion of a Hearing is closed, the minutes of that portion of the hearing must be kept confidential and should be signed by each individual member of the Planning and Zoning Commission in private. The closed meeting minutes may then be approved by the Planning and Zoning Commission at a subsequent meeting by reference to the closed meeting minutes.

F. Hearing Record:

The official record of a Hearing consists of the written minutes, all written materials and comments entered into the record during the proceeding, all comments and statements made orally during the proceeding, and, if available, the audio recording of the Hearing.

G. Notice of Decision:

Within 45 days after issuance of the Planning & Zoning Commission's written decision, the applicant or appellant to the Hearing, as applicable, shall obtain a Notice of Decision from the Planning Department and record it in the office of the Gallatin County Clerk & Recorder. If the applicant or appellant, as applicable, fails to record the Notice of Decision as required by this Rule, the Zoning Hearings Coordinator shall record the Notice of Decision and bill the applicant or appellant, as applicable, for the cost of recording.

H. Conflicts of Interest & Ex Parte Communications:

Any Planning and Zoning Commission member who has an interest, as defined at Title 2, Chapter 2, MCA or as advised by the County Attorney, in any matter to be considered at a Hearing shall not participate in the Hearing, sit with the Planning and Zoning Commission, discuss the matter with the Planning and Zoning Commission or its members, vote on the matter, or seek to influence the vote of other Planning and Zoning Commission members.

Planning & Zoning Commission members must avoid ex parte discussions, whether with interested parties or members of the public. Ex parte discussions are those discussions held informally or privately out of the public forum and regarding a matter to be discussed at a Hearing. Planning and Zoning Commission members should urge interested parties and members of the public to make the communications during the Hearing, rather than in an ex parte setting.

In the event of an ex parte communication, the Planning & Zoning Commission member should disclose the discussion at the start of the Hearing prior to the presentation of any testimony or evidence. The Commission member should make the disclosure by stating the circumstances of the communication, when the communication occurred, with whom the communication was made, the contents of the communication, and whether or not the Commission member can still participate in the Hearing without bias. Upon motion of another Planning & Zoning Commission member, the Commission may decide to vote as to whether or not the subject Commission member may still participate in the Hearing.

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