

GUNNISON COUNTY BOARD OF COMMISSIONERS
MEETING AGENDA

DATE: Tuesday, January 14, 2025

Page 1 of 2

PLACE: Board of County Commissioners' Meeting Room at the Gunnison County Courthouse
(REMOTE OPTION BELOW)

GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS SPECIAL MEETING:

8:30 am

- Call to Order
- Appointment; County Assessor; Alexandra Cohen
 1. A Resolution and Notice Appointing Alexandra Cohen to fill the Vacancy Created by the Resignation of the Gunnison County Assessor
- Break

OATH OF OFFICE CEREMONIES AND RECEPTION:

8:35 am

- Elizabeth (Liz) Smith, County Commissioner, District 1
- Jonathan Houck, County Commissioner, District 2
- Alexandra Cohen, County Assessor

GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS SPECIAL MEETING (CONT'D):

9:15 am

- Gunnison County Board of County Commissioners (BOCC) Board Reorganization and Commissioner Appointments:
 1. Designate BOCC Chairperson and Vice Chairperson for 2025
 2. Gunnison Basin Sage-grouse Strategic Committee (one voting member, one alternate, two year terms)
 3. Gunnison Valley Rural Transportation Authority Board (two voting members, one-year terms)
 4. Region 10 Board (one voting member, one-year term)
 5. Early Childhood Council (one voting member, one-year term)
 6. Gunnison Valley Regional Housing Authority (one voting member, four-year term)
 7. Gunnison County Sick Leave Bank Board (one voting member, one-year term)
 8. Gunnison Chamber of Commerce (one ex-officio member, one-year term)
 9. Rural Welcoming Initiative Committee (one non-voting advisory member, one-year term)
- Scheduling:
 1. 2025 Board of County Commissioners Meeting Agenda Posting Locations
- Adjourn

GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS WORK SESSION:

9:30 am

- Environmental Health Board Interview (4 Regular vacancies for three-year terms, 2 Alternate vacancies for one-year terms)
 1. Kari Roberts

9:45 am

GUNNISON COUNTY BOARD OF COMMISSIONERS
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Page 2 of 2

PLACE: Board of County Commissioners' Meeting Room at the Gunnison County Courthouse
(REMOTE OPTION BELOW)

- Region 10 Interview (2 Private Representative vacancies for two-year terms, 2 Business Loan Fund vacancies for two-year terms, and 1 Transportation Regular and Alternate for one-year terms)
 1. Erika Vohman

10:00 am

- Planning Commission Interview (3 Regular vacancies for three-year terms, 2 Alternate vacancies for one-year terms)
 1. Sean Patrick

10:15 am

- Planning Commission Interview (3 Regular vacancies for three-year terms, 2 Alternate vacancies for one-year terms) & Historic Preservation Committee Interview (2 Regular vacancies for three-year terms)
 1. Krister Kooiman

10:35 am

- Board of County Commissioners Training; County Attorney Presentation
- Adjourn

Please Note: Packet materials for the above discussions will be available on the Gunnison County website at <http://www.gunnisoncounty.org/meetings> prior to the meeting.

ZOOM MEETING DETAILS:

Join Zoom Meeting: <https://gunnisoncounty-org.zoom.us/j/89798905619>

One tap mobile

+12532158782,,82753657556#,,,,*471302# US (Tacoma)

+13462487799,,82753657556#,,,,*471302# US (Houston)

AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Appointment; County Assessor; Alexandra Cohen

Action Requested:

Parties to the Agreement:

Term Begins:

Term Ends:

Grant Contract #:

Summary:

Alexandra Cohen Letter of Interest, Acceptance of Nomination, and Resolution and Notice Appointing County Assessor

Fiscal Impact:

Submitted by: Holly Perry

Submitter's Email Address: hperry@gunnisoncounty.org

Finance Review:

Required

Not Required

Comments:

Reviewed by:

Discharge Date:

County Attorney Review:

Required

Not Required

Comments:

Legally sufficient. SO 1/9/25

Reviewed by: GUNCOUNTY1\sobaid

Discharge Date: 1/9/2025

Certificate of Insurance Required

Yes No

County Manager Review:

Comments:

Reviewed by: GUNCOUNTY1\mbimic

Discharge Date: 1/9/2025

Consent Agenda

Regular Agenda

Worksession

Time Allotted: 5

Agenda Date: 1/14/2025

From: [Alexandra Cohen](#)
To: [BOCC](#)
Subject: Assessor Letter of Interest
Date: Wednesday, January 1, 2025 5:05:37 PM

Dear Gunnison County Commissioners,

I am excited to express my interest in continuing my tenure with Gunnison County as the next Assessor. I've worked in the Assessor's Office under the leadership of Kristy McFarland since February 2011 and have gained extensive experience as well as a deep understanding of the exceptional and important service our office provides to county residents and property owners. My skills, dedication, and firsthand knowledge of the intricacies of the office provide me with the ability to ensure the Assessor's Office continues to excel in fulfilling its responsibilities.

I moved to Gunnison in 2005 to pursue my education at Western Colorado University and compete in NCAA cross country and track. Graduating in 2009 with Bachelor's degrees in Mathematics, Economics, and Computer Information Science and earning summa cum laude honors with a 4.0 GPA required dedication and a strong work ethic. This academic and athletic background provided me with a strong foundation in analytical thinking, problem-solving, and perseverance, which has been instrumental throughout my career in the Assessor's Office.

I've worked in the Gunnison County Assessor's Office for more than thirteen years, beginning as an Appraiser I and being promoted to Deputy Assessor of Appraisal in 2023. During this time, I earned my appraisal license and served as Appraiser II, Appraiser Analyst, and Senior Appraiser Analyst. I've been involved in seven reappraisals and have contributed to all aspects of the office's appraisal work, including field inspections, sales verification, permit tracking, boundary line adjustments, abatements, property valuation, appeals, value certifications, and preparing appraisal reports.

In addition to those responsibilities, I currently supervise our team of appraisers and data analysts, develop the mathematical models that value the more than 10,000 residential properties in the county, and ensure final values are within the strict statistical guidelines of the annual audit. These experiences have refined my leadership and analytical skills, equipping me with the ability to navigate the role of Assessor with confidence and integrity.

Our office is committed to providing excellent service to residents and property owners in Gunnison County. I understand the importance of upholding this tradition while also fostering innovation and welcoming new ideas. I am eager to continue serving the individuals in Gunnison County as the next Gunnison County Assessor.

Thank you for considering me for the Assessor appointment.

Best Regards,

Alexandra Cohen



NOMINATION BY BOARD OF COUNTY COMMISSIONERS
CANDIDATE ACCEPTANCE OF NOMINATION TO FILL OFFICE

Office Use Only:

Complete, sign, and return this form. Please type or print legibly.

Office Information

This is an Acceptance of Nomination for:

Title of Office Office of Assessor

District Gunnison County, Colorado

Qualifications for Office (You must list the specific qualifications for this office)

Citizen of the United States; citizen of the State of Colorado; qualified elector of Gunnison County

Candidate Information

Name _____

Residence & Mailing Address

Residence Street Address _____

City _____ State CO Zip Code _____

Mailing Address _____

City _____ State CO Zip Code _____

Telephone & E-mail Address

Business Phone # _____ Extension 7971

Residence Phone # _____ E-mail Address _____

Registration Information

Year of Birth _____ County of Registration Gunnison

Party Affiliation _____ Date of Affiliation _____

Signature

Applicant's Affirmation: *I hereby accept the nomination and solemnly affirm that I meet all qualifications for the office prescribed by law. Furthermore, the information provided on this form is, to the best of my knowledge, true and correct.*

[seal]

Signature of Candidate

Date of Signing

**BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO**

RESOLUTION NO. 2025-_____

**A RESOLUTION AND NOTICE APPOINTING _____ TO FILL THE
VACANCY CREATED BY THE RESIGNATION OF THE GUNNISON COUNTY
ASSESSOR**

WHEREAS, by letter dated November 14, 2024 Gunnison County Assessor Kristy McFarland notified the Board of her resignation as Gunnison County Assessor, effective on January 14, 2025, and of her decision not to complete the term for which she was elected to office by the people of Gunnison County; and

WHEREAS, pursuant to the Colorado Constitution, Article 14, Section 9, and Colorado Revised Statutes Sections 1-12-205, 30-10-801, 30-11-117 vacancy in the office of County Assessor shall be filled by appointment by the Board of County Commissioners; and

WHEREAS, pursuant to Colorado Revised Statutes Section 1-12-210, the Board shall make such appointment at a properly noticed public meeting, enter the appointment in the minutes of such meeting, and cause a notice of appointment and oath of office to be delivered to the person appointed; and

WHEREAS, pursuant to Colorado Revised Statutes Section 1-12-205, “[a]ll vacancies in any county office, except that of county commissioner, shall be filled by appointment by the board of county commissioners of the county in which the vacancy occurs, until the next general election, at which time the vacancy shall be filled by election”; and

WHEREAS, the Board desires to appoint [name] as Gunnison County Assessor, effective January 14, 2025, and continuing until the vacancy is filled by the 2026 general election;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Gunnison County as follows:

1. The Board hereby appoints _____ to serve as Gunnison County Assessor, effective January 14, 2025, and continuing until the vacancy in such office is filled by the 2026 general election.
2. Staff of the Board is directed to arrange for the oath of office to be completed by Judge Kellie Starritt on January 14, 2025 or as soon thereafter as is possible.

3. The Board hereby causes the attached Notice of Appointment to be delivered to _____, and upon her acceptance the Notice of Appointment shall be recorded and kept as a permanent record of the Board.

INTRODUCED by Commissioner _____, seconded by Commissioner _____, and adopted this ____ day of _____, 2025.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By _____
Jonathan Houck, Chairperson

By _____
Elizabeth Smith, Vice Chairperson

By _____
Laura Puckett Daniels, Commissioner

ATTEST:

Deputy County Clerk

NOTICE OF APPOINTMENT
Gunnison County Assessor

At a properly noticed public meeting, and pursuant to Colorado law, the Gunnison County Board of Commissioners appointed the following person to fill the vacancy in the office of Gunnison County Assessor, effective January 14, 2025:

Name: _____

Mailing Address: _____

ACCEPTANCE OF APPOINTMENT:

I, _____, hereby accept the appointment as Gunnison County Assessor effective January 14, 2025.

Date: _____

Signature

AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Boards & Commissions Interviews

Action Requested:

Parties to the Agreement:

Term Begins:

Term Ends:

Grant Contract #:

Summary:

Interviews for EHB Kari Roberts, R10 Erika Vohman, PC Sean Patrick and PC&HPC Krister Kooiman

Fiscal Impact:

Submitted by: Holly Perry

Submitter's Email Address: hperry@gunnisoncounty.org

Finance Review:

Required

Not Required

Comments:

Reviewed by:

Discharge Date:

County Attorney Review:

Required

Not Required

Comments:

Reviewed by:

Discharge Date:

Certificate of Insurance Required

Yes No

County Manager Review:

Comments:

Reviewed by: GUNCOUNTY1\mbimic

Discharge Date: 1/9/2025

Consent Agenda

Regular Agenda

Worksession

Time Allotted: 60

Agenda Date: 1/14/2025

From: noreply@civicplus.com
To: [BOCC](#)
Subject: Online Form Submittal: Boards and Commissions Application
Date: Monday, November 18, 2024 1:27:22 PM

[EXTERNAL SENDER - USE CAUTION]

Boards and Commissions Application

Board/Commission or position applying for: Environmental Health Board

First and Last Name Kari Roberts

Address

City

Phone

Email Address

Why would you like to serve on this Board or Commission?

I love Gunnison County and I have lived here since 1993 (most of the time). I have interest in protecting our natural environment. I have been a designer of OWTS's in Gunnison County for the past 17 years. I'm interested in using my skills to serve our County.

Additional Comments

I'm a Professional Engineer and I live in Crested Butte. I own and operate Mountain Geotech since 2016. I am married to Graeme Roberts, who owns and operates CB Hot Tub. We have two daughters, ages 15 and 18.

Email not displaying correctly? [View it in your browser.](#)

From: noreply@civicplus.com
To: BOCC
Subject: Online Form Submittal: Boards and Commissions Application
Date: Friday, November 15, 2024 8:26:57 AM

[EXTERNAL SENDER - USE CAUTION]

Boards and Commissions Application

Board/Commission or position applying for:	Region 10
First and Last Name	Erika Vohman
Address	[REDACTED]
City	[REDACTED]
Phone	[REDACTED]
Email Address	[REDACTED]
Why would you like to serve on this Board or Commission?	i am interested in the Transportation Board as a regular board member.
Additional Comments	Thank you for your consideration of my application. I am a bus rider, I was on the Town Council for Crested Butte, and I have served on the Weed Commission and the Cemetery Board in the past.

Email not displaying correctly? [View it in your browser.](#)

From: noreply@civicplus.com
To: [BOCC](#)
Subject: Online Form Submittal: Boards and Commissions Application
Date: Thursday, November 14, 2024 12:44:15 PM

[EXTERNAL SENDER - USE CAUTION]

Boards and Commissions Application

Board/Commission or position applying for: Planning Commission

First and Last Name Sean Patrick

Address 

City 

Phone 

Email Address 

Why would you like to serve on this Board or Commission? I would like to get more involved in my local community. I have successfully served in a leadership role and my neighborhood I would like to have an opportunity to make a larger impact

Additional Comments My main concerns in Gunnison County are recreation and new development. I have served almost 10 years on a design review committee, Currently Buckhorn Ranch HOA president, and own a small Development business in the Denver area.

Email not displaying correctly? [View it in your browser.](#)

Sean Patrick



Gunnison County Commissioners
200 E. Virginia
Gunnison, CO 81230

To the Gunnison County Commissioners:

I am writing to apply for a position on the Planning Commission. I am an entrepreneur who has lived in Crested Butte for ten years. During that time I've become closely involved in my community at Buckhorn Ranch, one of the largest developments in the upper valley, where I have served on the Design Review Committee (DRC) for eight years, as an HOA board member for three years and as HOA Board President for two. With the help of community members and volunteers, I have overseen the completion of many community improvement projects, including Buckaroo Park and Pickleball and Tennis Courts. I am also responsible for managing water resources for our quickly developing community through Buckhorn Ranch's privately-owned water company, and securing water sovereignty for the future. My leadership style is direct, personal and encourages community participation.

I am currently seeking opportunities to make a meaningful impact in Gunnison County and my experience as a strategist, community organizer and effective problem-solver would make me an asset to the Planning Commission. I am interested in issues of land use, housing and resource use in Gunnison County; and as a local business owner and a father of two young children, I am deeply invested in the future of the area. My experience on the Design Review Committee is particularly relevant to the work of the Planning Commission, as we make similarly critical decisions for our neighborhood.

My experience owning and operating three Apple computer service and retail stores—in Crested Butte, Boulder and Denver—for over 20 years has equipped me with the leadership skills necessary for a role on the Planning Commission. Additionally, I own and manage a development company in Denver and have extensive experience navigating complex projects including re-zoning, construction and community engagement.

Thank you for considering me for the role, and I look forward to speaking with you further about how I can contribute to the future of Gunnison County.

Best,
Sean Patrick

From: [REDACTED]
To: [BOCC](#)
Subject: Boards and Commission
Date: Thursday, November 7, 2024 3:18:30 PM

[EXTERNAL SENDER - USE CAUTION]

Good afternoon to the Gunnison Board and Commission,

I am writing because I am highly interested in getting involved with the commission. I am originally from Crested Butte. Furthered my education in Connecticut and then Texas. I am 24 and think I could bring cool ideas and perspectives to the board. Please let me know if I can be of any use.

Take care and keep up the great work,

Krister Kooiman

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AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Board of County Commissioners Training; County Att

Action Requested: Discussion Presentation

Parties to the Agreement:

Term Begins:

Term Ends:

Grant Contract #:

Summary:

County Attorney Presentation on Ethics, Sunshine Laws, Ex Parte Communications and Conflicts of Interest.

Fiscal Impact: None

Submitted by: Donita Bishop

Submitter's Email Address: dbishop@gunnisoncounty.org

Finance Review:

Required

Not Required

Comments:

Reviewed by:

Discharge Date:

County Attorney Review:

Required

Not Required

Comments:

Legally sufficient. SO 1/7/25

Reviewed by: GUNCOUNTY1\sobaid

Discharge Date: 1/7/2025

Certificate of Insurance Required

Yes No

County Manager Review:

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 1/9/2025

Consent Agenda

Regular Agenda

Worksession

Time Allotted: 30

Agenda Date: 1/14/2025

Ethics

Gunnison County Attorney's Office January 2025

Authority for Ethics Rules

- ▶ Colorado Constitution Article XXIX, “Ethics in Government”
- ▶ C.R.S. 24-18-101, et. seq., “Colorado Code of Ethics”
- ▶ Gunnison County Ethics Principles
 - ▶ Gunnison County Employee Handbook Section 5-15
- ▶ Other ethics rules or regulations specific to professions (e.g., Attorney Code of Professional Conduct, licensing requirements for caseworkers)

Colorado Ethics Laws

The slide features a light green background with a dark green vertical bar on the left. On the right side, there are several decorative green lines: a thin vertical line, a thin diagonal line starting from the top right and extending towards the center, and two thick, curved lines that sweep across the bottom right corner.

Colorado Code of Ethics

- ▶ “The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.” C.R.S. § 24-18-103(1).

Colorado Code of Ethics

- ▶ Colorado statute provides parameters for all government employees, including county employees
- ▶ Statute makes it illegal for government employees to breach the fiduciary duty owed to the people
- ▶ State statute covers:
 - ▶ Prohibition against the disclosure or use of confidential information
 - ▶ Limitation on gifts
 - ▶ Conflicts of interest (having financial interest in County business)
 - ▶ Prohibition against future employment that takes advantage of matters with which employees were directly involved

Statutory Prohibitions Related to Contacts and Claims.

- ▶ Colorado statute prohibits county officials and employees from having an “interest” in contract with county. C.R.S. § 24-28-201.
- ▶ “A former [county] employee may not, within six months following the termination of his employment, contract or be employed by an employer who contracts with a state agency or any local government involving matters with which he was directly involved during his employment.” See C.R.S. § 24-18-201(1).
- ▶ County commissioners “shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.” C.R.S. § 24-18-202
- ▶ Knowing violation is a crime (misdemeanor). See C.R.S. § 24-18-206

Colorado - Gift Ban

- ▶ Gift ban is set forth in Colo. Const. Art. XXIX and C.R.S. § 24-18-104, as well as IEC Position Statement 23-01 (Feb. 22, 2023):
 - ▶ No acceptance of cash or loans of any amount
 - ▶ No acceptance of gifts worth more than \$75 that do not fall within an exception
 - ▶ No acceptance of gifts from lobbyists of any amount
- ▶ Prohibits gifts intended to persuade or reward government employees
- ▶ Includes gifts or things of value to spouse or dependent child
- ▶ Includes promises of future employment, favors or services, travel, entertainment, special discounts

Colorado - Gift Ban

- ▶ Gift ban does not include:
 - ▶ Campaign contributions
 - ▶ Unsolicited items of trivial value including pens, calendars, notepads, etc.
 - ▶ Gifts from relatives or personal friends on special occasions
 - ▶ Meal provided when you are asked to appear or speak
 - ▶ Expenses related to attendance at non-profit conference if you are presenting as part of the agenda
 - ▶ Normal compensation or incentive paid in course of employment

Colorado - Independent Ethics Commission

- ▶ Established by Colorado Constitution, Article XXIX, Section 5 and CRS § 24-18.5-101.
- ▶ Five-member Commission.
- ▶ Commission hears complaints, issues findings, assesses penalties, and issues advisory opinions for any ethics issue covered by state law.
- ▶ Anyone can submit complaints, and Commission decides whether to investigate.

Gunnison
County
Principles of
Ethical
Conduct

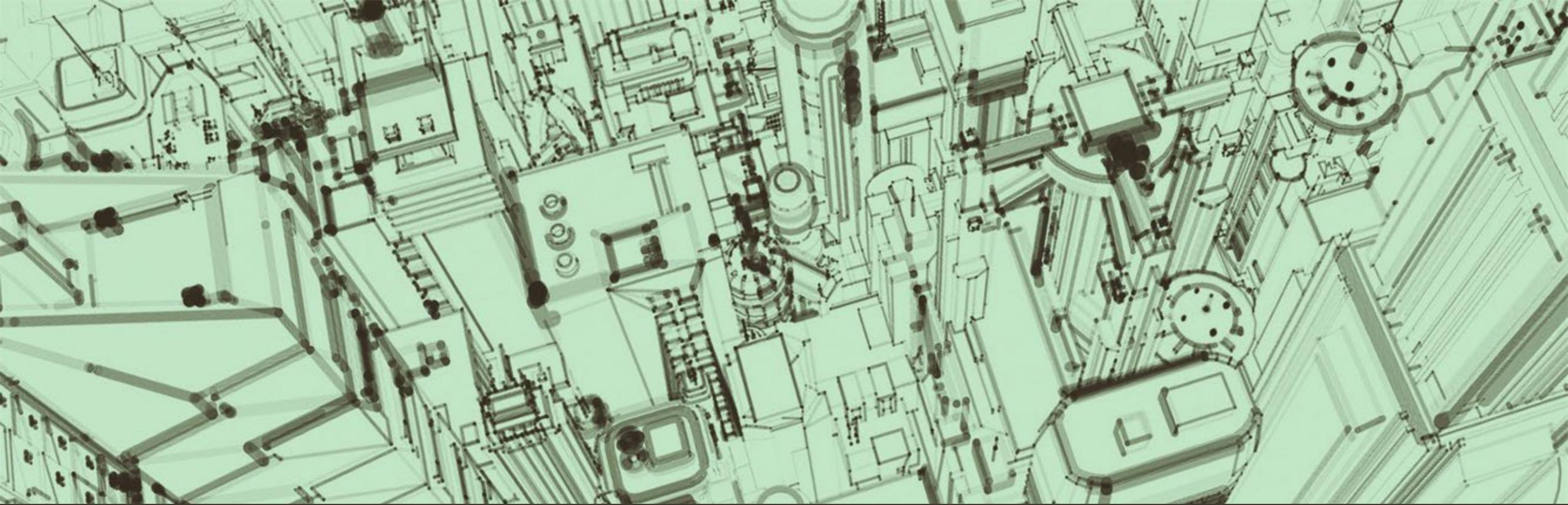
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Gunnison County Principals of Ethical Conduct

- ▶ Section 5-15 of Gunnison County Employee Handbook,
- ▶ *available at*
www.gunnisoncounty.org/DocumentCenter/View/6637/431-Gunnison-County-Employee-Handbook

Gunnison County Principals

- ▶ 1. Public service is a public trust, requiring employees to place loyalty to the Colorado Constitution, the laws, and ethical principles above private gain.
- ▶ 2. Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- ▶ 3. Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- ▶ 4. An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation (see Section 5-6(c) for more information), solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- ▶ 5. Employees shall put forth honest effort in the performance of their duties.
- ▶ 6. Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.
- ▶ 7. Employees shall not use public office for private gain.
- ▶ 8. Employees shall act impartially and not give preferential treatment to any private organization or individual.
- ▶ 9. Employees shall protect and conserve County property and shall not use it for other than authorized activities.
- ▶ 10. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official County duties and responsibilities.
- ▶ 11. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- ▶ 12. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law.
- ▶ 13. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
- ▶ 14. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order



GUNNISON COUNTY COMMISSIONERS

January 2025 Training – Colorado Sunshine Law, *Ex Parte* Communications and Conflicts of Interest



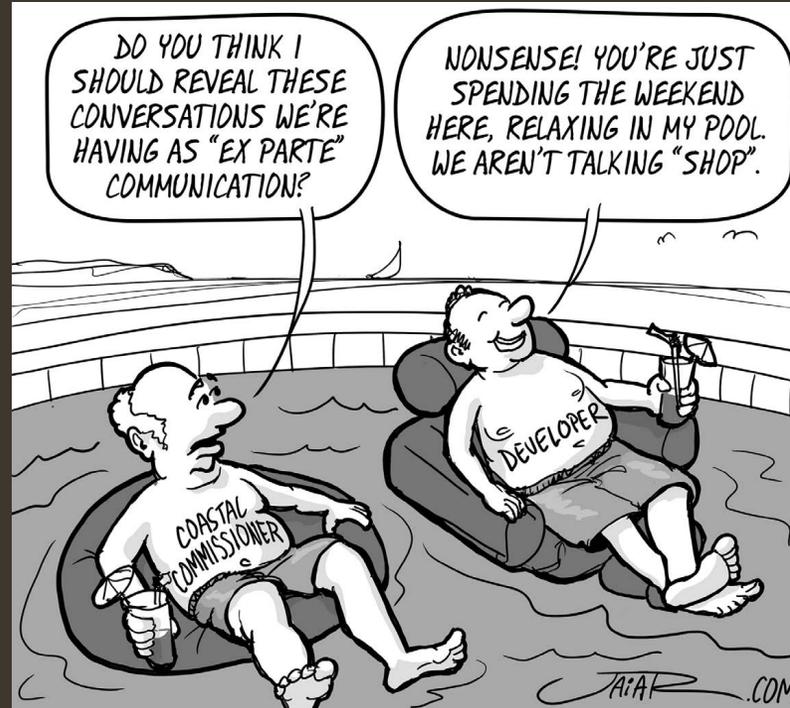
TOPICS

- Colorado Sunshine Law – the Open Meetings Law



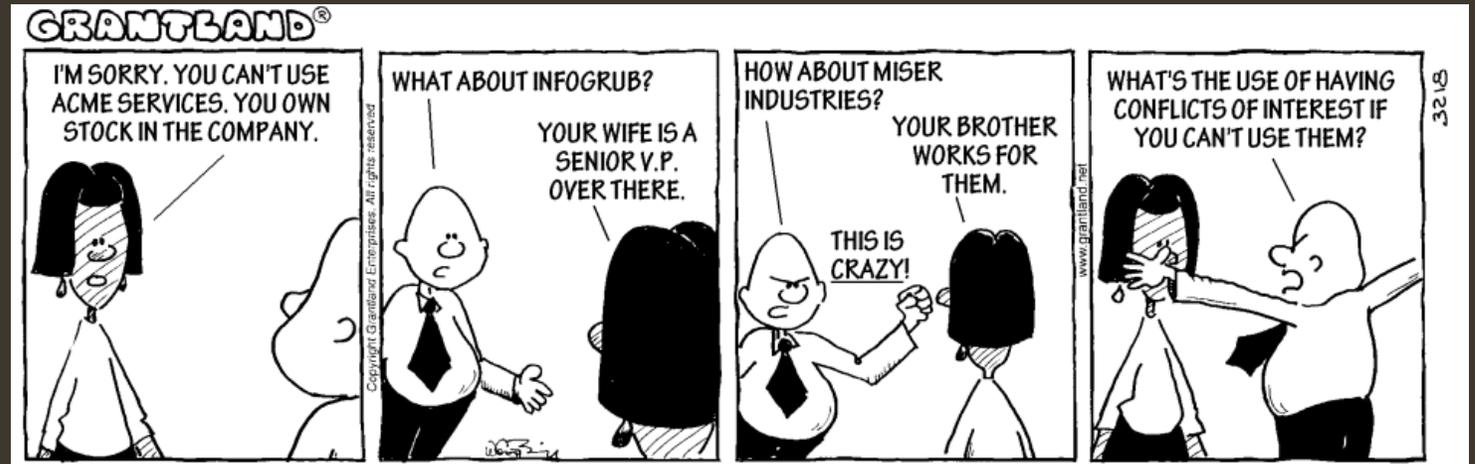
TOPICS

- *Ex Parte* Communications



TOPICS

- Conflicts of Interest





Colorado Open Meetings Law (OML)



Colorado Open Meetings Law

- C.R.S. §§ 24-6-401 to -402
- Law originated in citizen initiative known as the “Colorado Sunshine Act of 1972”

*“It is declared to be a matter of statewide concern and the policy of this state **that the formation of public policy is public business and may not be conducted in secret.**”¹*

¹ C.R.S. § 24-6-401 (emphasis added)

Colorado Sunshine Law – Open Meetings Law (OML)

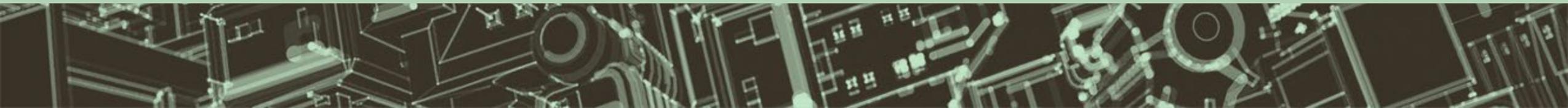
- Generally requires that all meetings of a quorum or three or more members (whichever is fewer) of any local public body, where public business is discussed or formal action taken, must be open to the public.
 - Meeting is broadly defined as gathering in person, by telephone, electronically or by other means of communication.
 - Meeting can only be held after full and timely notice to the public.
 - The Gunnison County Commission is a local public body.

Colorado Sunshine Law – Open Meetings Law (OML)

Local Body	Any board, commission, or other advisory decision-making body of a political subdivision of the state; or entity delegated governmental decision-making function
Subject to OML	If three or more members of the body (or two if two is a quorum) conduct business
Timely Notice	Notice must be publicly posted at least 24 hours prior to the meeting
Minutes	Must be taken and promptly recorded as well as open to public inspection
Executive Session	Must announce topic for discussion and cite to specific subpart of C.R.S. 24-6-402(4) Vote of 2/3 of quorum present required to enter executive session No formal action or adoption can take place in executive session Discussion electronically recorded UNLESS a privileged attorney-client communication
Attorney Client Privilege	Waived only by majority vote of the Commission, never by a single member All communication between CAO and Commission must remain confidential unless privilege waived



Ex Parte Communications



Ex Parte Communications

- Broadly defined as any written or verbal communication initiated outside of a regularly noticed public hearing between an official with decision-making authority and one or more of the parties, but not all of the parties, concerning a matter currently being considered or about to be considered by that official.
 - Seeks to influence or present information relating to the matter that the official will be deciding.
- Applicable in quasi-judicial actions involving a “determination of rights, duties, or obligations of specific individuals on the basis of the application of presently existing legal standards or policy considerations to past or present facts developed at a hearing conducted for the purpose of resolving the particular interest in question.”²
 - Gunnison County Commission determination on a Land Use Resolution (LUR) application is a quasi-judicial action – it bears many similarities to adjudicatory role performed by courts.

² *Cherry Hills Resort Development Company v. City of Cherry Hills Village*, 757 P.2d 622 (Colo. 1988).

Ex Parte Communications

- Improper because all applicants requesting a decision by a local body acting within the scope of its powers are entitled to Due Process:
 - 5th Amendment of the US Constitution – no person shall be deprived of “life, liberty or property without due process of law.”
 - 14th Amendment of the US Constitution – “nor shall any state deprive any person of life, liberty or property without due process of law.”
 - Colorado Constitution, Article II, Section 25 – “no person shall be deprived of life, liberty or property without due process of law.”
- Property rights are at question in land use applications so all three provisions above are applicable

Ex Parte Communications

PROCEDURAL DUE PROCESS

Minimum standards of fairness in process regarding land use regulations and actions

- (1) Right to notice and to be heard
- (2) County Commission obligation to adhere to statutory time requirements or deadlines
- (3) Regulations can't be uncertain or vague

SUBSTANTIVE DUE PROCESS

Advancement of legitimate government interests – related to public health, safety and welfare

- (1) Valid purpose for the regulation
 - (2) Means adopted to achieve the purpose must be substantially related to it
 - (3) Impact on individual property owner cannot arbitrarily or capriciously deprive them of legitimate use of property
-

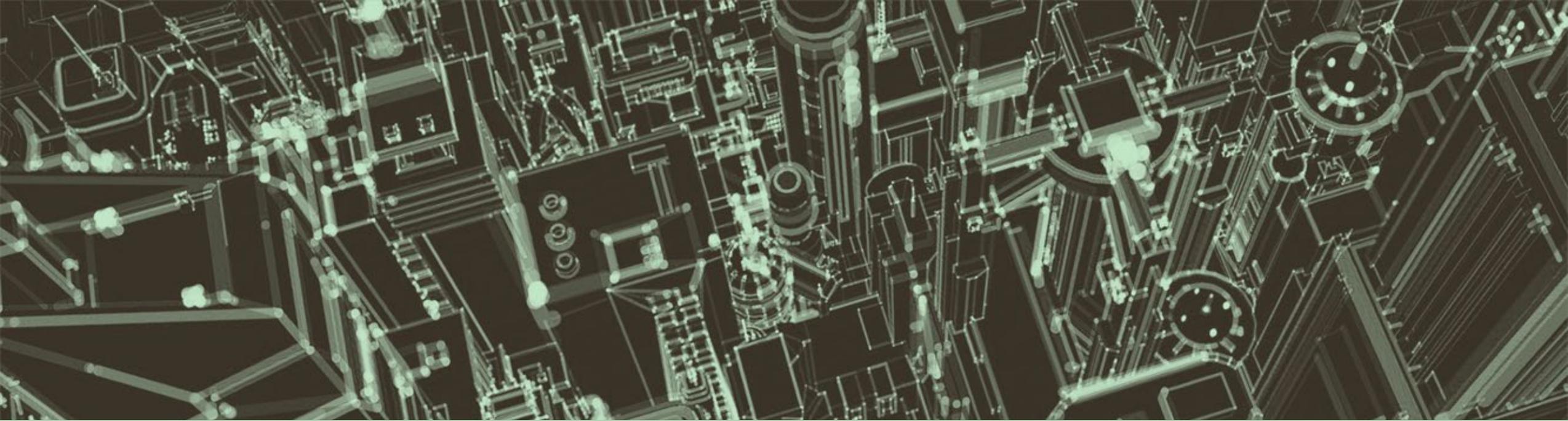
Ex Parte Communications

- Commission can be a quasi-judicial decision-making body and any *ex parte* communications related to applications pending or coming before you are improper because:
 - (1) Applications where property rights are determined require due process or that the matter be heard by an impartial body;
 - (2) Quasi-judicial decisions must be supported by facts and based upon evidence in the record which is only matters presented at the hearing, nothing outside of it;
 - (3) If parties are allowed to cross-examine the other side, they cannot cross-examine or question *ex parte* communications they were not a party to;
 - (4) If your decision is challenged, any *ex parte* communications could be grounds for reversing the decision.

Ex Parte Communications

Tips for Avoiding *ex parte* contacts (in-person, verbal, phone etc.)

- Stop the person and advise them you are sitting as a judge/adjudicator in the matter and cannot hear things outside of the hearing.
- Encourage participation in the public hearing by testimony or written submission.
- General policy discussions are unlikely to disqualify a commissioner, endanger due process or deprive applicant of a fair decision, but discussions about facts of a particular matter or a commissioner's decision on a specific question might fall into the realm of an *ex parte* communication.
- Disclose at the hearing and on the record about the contact, your response and whether you can make an impartial decision despite the contact.
- Consider if you should abstain or recuse yourself from voting on the matter.
 - Does the communication affect your impartiality, create an appearance of impropriety or create a conflict?



Conflicts of Interest



Conflicts of Interest

It is not a conflict of interest to have an opinion.

A conflict arises when you act on that opinion and personally benefit from it rather than putting the public interest first.

Colorado Code of Ethics §§ 24-18-101 – 24-18-113

C.R.S. § 24-18-101	Citizens in public office may face conflicts between their public duty and private interests
C.R.S. § 24-18-102(6)	Local government officials are elected or appointed officials of a local government
C.R.S. § 24-18-103(1)	Holding public office or employment is a public trust, created by the public's confidence in the integrity of officials or employees performing duties for the benefit of the people of the state
C.R.S. §§ 24-18-108.5(2), 24-18-109	A member of a local board, commission, council or committee shall not take official action that may have a direct economic benefit on a business or undertaking in which the member has a direct or substantial financial interest

Conflicts of Interest

- If a commissioner has a direct financial interest in a decision being made or an issue being resolved a certain way = **CONFLICT OF INTEREST**
- Steps to take if a **CONFLICT OF INTEREST** arises
 - (1) **DISCLOSE** the conflict
 - (2) **ABSTAIN** from voting
 - (3) **DO NOT PARTICIPATE** either by lobbying your fellow commissioners or speaking for/against as a public citizen

Conflicts of Interest*

IMPARTIALITY

Two council members help with petition opposing issuance of a permit for a massage parlor license

- Member A actively involved, wrote opinion piece in newspaper urging public to oppose
- Member B limited involvement with organizing the petition

- Member A's conduct is a conflict of interest and should disqualify self
- Member B's conduct does not amount to a conflict of interest and can participate and vote on the permit

FINANCIAL OR PROPERTY INTEREST

- Member of church on planning board that received an application for rezoning church land so it could be sold
- Member of planning board owned land abutting proposed subdivision application
- Councilman owned land on edge of reclassified property as cemetery/golf course

- Church member's indirect personal interest enough to disqualify
- Member must disqualify and can't vote
- Councilman's interest too remote and speculative and no need to disqualify

BUSINESS ASSOCIATIONS

- Applicant is personal accountant for zoning board member
- Member of zoning board owned land which was sold to applicant requesting variance from another body
- Planning board member also architect that could benefit from urban renewal project
- Applicant and planning commissioner both members at same golf club but no personal relationship

- Zoning board member must disqualify self
- Shouldn't participate even with no direct role
- Must disqualify as personal interest/gain
- No direct or indirect interest so no need to disqualify

APPEARANCE OF FAIRNESS

- Councilman votes against and then later for upzoning application, and 48 hours after upzoned acts as lawyer for developer
- Zoning board member testify against variance at planning commission, variance needed before zoning board can give subdivision approval

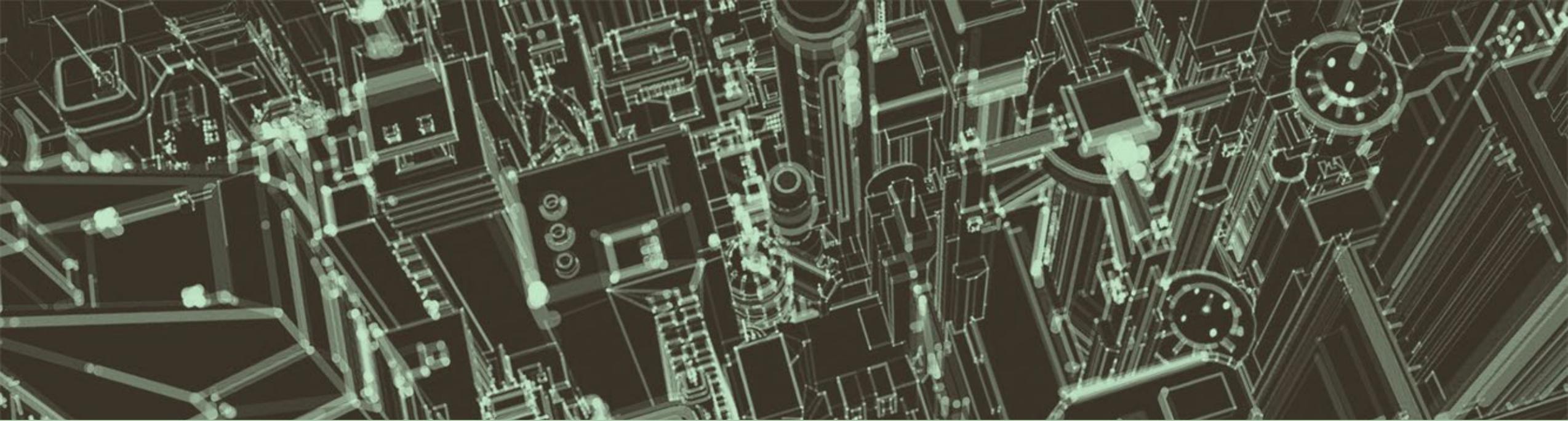
- Timing between vote and working as lawyer gave appearance of impropriety and was improper
- Zoning board member must disqualify even though no pecuniary gain

PERSONAL INTEREST OR ANIMOSITY

Not every interest will disqualify, instead the commission member must have an interest in the matter or a particularly personal relationship with a party

In order to disqualify, personal interest must lead to favoring or hostility towards one party or bias must imperil open-mindedness and fairness, evaluated by specific facts and on a case-by-case basis

* Case cites for examples found at *Memo RE: Conflicts of Interest* (April 16, 2021).



Questions?

