

- C. **Rezoning.** Initiate, hear, review, consider and give final approval or disapproval on rezoning applications. Recommendations of the Planning Commission are reviewed *de novo* by the Board of County Commissioners and not by appeal.
- D. **Major Development Review.** Hear, review, consider and approve, approve with conditions, or disapprove major development and/or master plan applications. Recommendations of the Planning Commission are reviewed *de novo* by the Board of County Commissioners and not by appeal.
- E. **Appeals to the Board.** Hear, review, consider, and affirm, modify, or reverse decisions by the Board of Adjustment or the Planning Commission.
- F. **Other Actions.** Take such other action not delegated to the Planning Commission, the Board of Adjustment, or Planning Director, as the Board of County Commissioners may deem necessary to implement the provisions of the County Comprehensive Plan and these regulations.
- G. **Decisions.** Board of County Commission decisions on non-procedural matters shall be recorded and conducted by roll call vote. The Board of County Commissioners shall make decisions based on an application's compliance with the regulations and applicable county, state and federal laws and regulations. Decisions of the Board of County Commissioners shall be filed for record in the office of the County Clerk no later than thirty (30) days from the date that the decision is made.
- H. **Appeals from Board Decisions.** Decisions by the Board of County Commissioners may be appealed by a party to District Court.

SECTION 1.4
Communication Between Applicants and Decision-makers Limited in Quasi-Judicial Matters.

- Section 1.4.1 Quasi-Judicial Proceedings:** Members of the Planning Commission, Board of Adjustment, and Board of County Commissioners may act in quasi-judicial capacities when participating in public hearings under these regulations. As such, only the highest degree of integrity in the process by a member ensures the public's trust in an impartial decision.
- Section 1.4.2 Conflict of Interest:** A member of a decision-making body shall not participate in or vote on any quasi-judicial matter in a manner that would violate an applicant's or party's right to a fair and impartial decision. Impermissible conflicts include, but are not limited to, a member having prejudged or fixed his or her opinion on a matter prior to hearing the evidence and argument of all parties at the public hearing, bias of a member due to disclosed or undisclosed ex-parte communications, family, business, or other associations or relationships of a member with an interested person, when a member is a party, or when a member has a present or potential financial interest in the outcome of the matter. In instances of conflicts of interest, the member shall disclose the conflict of interest on the record and recuse himself or herself from the particular hearing and leave the hearing room for purposes of that hearing. If an objection is raised to a member's participation, and the member has not voluntarily recused himself or herself or refuses to recuse himself or herself, the Chairman and remaining voting members present shall rule on the conflict of interest by majority vote, which vote is final. If the majority determines the member has a conflict of interest, that member shall leave the hearing room for purposes of that hearing.
- Section 1.4.3 Ex Parte Communications:** "Ex parte" communications are communications in which only one party is heard, i.e. without the other party present and without an opportunity for the other party to be heard. Participation in such communications by a member of a commission or board

hereunder is prohibited. Members of decision-making bodies shall not engage in communications about applications or appeals or other matters under review or reasonably anticipated to come under review with the parties to quasi-judicial proceedings. An applicant or party shall not engage in like communications with members of the decision-making commission or board, and such communications are also prohibited. All ex parte communications in quasi-judicial matters are prohibited.

Section 1.4.4 **Period of Prohibition:** The prohibition against ex-parte communications shall apply to all applicants and parties and commission and board members hereunder beginning at the moment such applicant, party, commission or board member, has actual notice of the pending matter and never later than such time as notice of the first hearing on the pending matter is published. The prohibition shall remain in effect until the final decision on the matter by any commission or board is rendered in writing and filed and any appeal period has expired or the appeal process is exhausted to completion.

Section 1.4.5 **Sanctions:** Upon written complaint to the County Attorney that an applicant or party knowingly and willfully engaged in or solicited ex parte or prohibited communications hereunder, further action or hearing on the application or appeal shall be immediately suspended, and a hearing officer shall be appointed by the County Attorney to hold a public hearing on the complaint, the audio of which hearing shall be recorded. An applicant or party who is found by a preponderance of the evidence to have knowingly and willfully violated Section 1.4 of this ordinance during the period of prohibition, may, in the hearing examiner's discretion, be:

- A. Censured by the hearing examiner;
- B. Disallowed from presenting evidence or testimony on the application or appeal;
- C. Subjected to delay of up to one (1) year of the merits hearing; or
- D. Subjected to denial of the application or appeal without a hearing on its merits.

Appeal of the hearing officer's finding and/or sanction is solely to the Eighth Judicial District Court by filing a Notice of Appeal in the district court within thirty (30) days of the filing of the decision of the hearing officer, and shall be pursuant to NMSA 1978, § 39-3-1.1 and Rule 74 of the Rules of Civil Procedure.

Appointees of the Board of County Commissioners serve at the will and pleasure of the Board. Upon written complaint alleging violation of Section 1.4. of this ordinance during the period of prohibition made against an appointee of a member of the Board of County Commissioners, the Board may, in its discretion, hold a public hearing on the complaint. If the Board finds, by a preponderance of the evidence, that an appointed commission or board member violated Section 1.4 of this ordinance during the period of prohibition, the Board may fashion an appropriate sanction, including but not limited to immediate withdrawal of the member's appointment. The decision of the Board of County Commissioners as to an appointee of the Board is final.

SECTION 1.5

Severability

Section 1.5.1 The provisions of these regulations are severable, and if any provision, sentence, clause, section, or any part thereof, or its application to a person or in a particular circumstance, is held illegal, invalid, unconstitutional, the illegal, invalid, unconstitutional, or inapplicable provision or provisions shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of these regulations and the application of them.

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