



**Planning and Zoning Commission
February 7, 2024 - Regular Meeting**

To: Dillon Planning and Zoning Commission
From: Ned West, AICP, Sr. Town Planner
Subject: Application Review Process
Agenda Item: 6

Discussion Item:

Reviewing the Planning Commission's development application review process.

Background/Time Frame:

- February 7, 2024: Planning Commission review of the application review process

Supporting Information:

The Planning and Zoning Commission reviews Level III and Level IV Development Applications. In addition, the Planning Commission reviews Dillon Municipal Code ("Code" or "DMC") text amendments related to Chapter 16 – Zoning and Chapter 17 – Subdivisions, reviews master plan documents, are the stewards of the Dillon Comprehensive Plan, and review map changes. The Town Council receives a recommendation for approval from the Planning Commission on Level IV applications and Code amendments, and then holds their own public hearing.

Level III. The following development activities shall be considered Level III developments:

- (1) New multi-family residential building or condominium.
- (2) New hotel or motel building.
- (3) New commercial, office, and/or industrial building.
- (4) New mixed-use building.
- (5) New bed and breakfast or boarding houses.
- (6) Minor PUD amendment.
- (7) Outside patio or deck associated with any commercial, office, industrial, or multi-family residential building.
- (8) Accessory structure greater than two hundred (200) square feet in a non-residential zoned area.
- (9) Addition to a commercial, office, and/or industrial building.
- (10) New hot tub or swimming pool associated with any commercial, office, industrial, or multi-family residential building.
- (11) Freestanding solar panel.
- (12) Major change to a Level III development permit.
- (13) Minor change to an approved Level IV development permit.

Level IV. The following development activities shall be considered Level IV developments:

- (1) PUD.
- (2) Major PUD amendment.
- (3) Major change to a Level IV development permit.
- (4) Multi-family residential uses in the Mixed Use (MU) Zone.
- (5) Telecommunication tower.

When the Planning Commission reviews a Level III or IV Development Application they do so through a Public Hearing. Public hearing notices are provided by posting a notices in the legal section of the paper, mailing hearing notices to property owners within three-hundred feet (300') of the boundary of a land use application, and posting the site with a clearly visible hearing notice.

Upon submittal of a land use application, the applicant is afforded due process. Applications are not to be discussed outside of the hearing, sunshine laws apply, and public input should only be received in the public hearing in present or in written submittal to the Town Clerk. The Planning Commission acts as judges of an application and weighs the merits of the application against the criteria set forth in the Code. As such, there are quasi-judicial proceedings conducted similar to court proceedings. The Town of Mead, Colorado website presents the quasi-judicial proceedings rather succinctly,

“In a quasi-judicial proceeding, the Town Board or Commission is not setting new policy, but applying the standards in an existing ordinance, statute or regulation to facts presented at a hearing, similar as to how a judge would act. In other words, they are applying the law to the facts gathered at a public hearing to arrive at its decision.”

<https://www.townofmead.org/boardoftrustees/page/quasi-judicial-proceedings>

During the public hearing, the Chairperson introduces the resolution and opens the public hearing. Typically, the applicant will present the application and provide a detailed presentation of the elements of it. Town staff will then provide a presentation detailing the relevant zoning and subdivision code analysis. Town staff may or may not make a recommendation. The Commissioners may ask questions of each presenter. Then the public hearing is opened to the public and members of the public are invited to provide comments by addressing them directly to the Commissioners and not staff or the applicant. The Commission will not respond directly to public comments but may ask questions of anyone who testifies. The Commission will continue or close the public hearing. Upon closing the public hearing, the Commission will deliberate on the evidence presented.

Prior to making a decision or a recommendation on a Level III or IV development application, the Planning and Zoning Commission and Town Council, respectively, shall require a finding that the applicant and evidence presented to the reviewing body established the following by competent and sufficient evidence:

- (1) All required approvals for the development application were issued and remain valid and effective.
- (2) The proposed development substantially complies with all other applicable requirements of this Code and other applicable Town regulations, standards, and ordinances.
- (3) No Level IV application shall be approved without a finding by the Town Council considering the effect of such approval on the Comprehensive Plan (DMC § 16-2-230, 16-2-270 & 16-2-280).

Following any public hearing, the Planning Commission shall render a decision to approve, approve with conditions, deny, or continue a Level III Development Permit based on the approval criteria set forth below; except that, the Planning Commission shall not be required to render a decision where the approval or denial of a separate application at the same public meeting has rendered a decision on the subject application moot. Any conditions must be reasonably related to impacts created by the proposal. Any continuance shall be for no longer than thirty-five (35) days (DMC § 16-2-220). Following the Planning Commission's review of the Level IV development application in a public hearing, the Planning Commission shall either continue the application, or provide a recommendation to the Town Council to approve, approve with conditions, or deny the application based on the approval criteria set forth in Division 8 of this Article. Any conditions must be reasonably related to impacts created by the proposal (DMC § 16-2-260).

Should the Commission's review of a land use application yield unanswered questions or a realization that there is insufficient evidence, it is incumbent upon the members of the Commission to continue the hearing to a future date such that they receive additional evidence and are satisfied that the application meets all of the pertinent Code requirements and review criteria.

The Codified Process and PUD criteria are attached as ***Exhibit 'A'***.

Exhibit 'A'
Dillon Municipal Code Excerpt s
Zoning Application Review Process
&
Planned Unit Developments

ARTICLE II Zoning Application Review Procedures

Division 1 Permit Application

Sec. 16-2-10. Permits required.

It is unlawful for any person to undertake, conduct or use, or cause to be undertaken, conducted or used, any development without having first complied with the provisions of this Chapter and having obtained approval and a development permit from the Town.

Sec. 16-2-20. Preapplication conference.

- (a) Unless waived in writing by the Town Manager, the applicant shall meet with the Town Planner prior to submission of a development application. The Town Planner may invite pertinent staff and outside reviewing agencies to attend the preapplication conference.
- (b) The purpose of this conference is to acquaint the Town with the applicant's intentions and to acquaint the applicant with the substantive and procedural requirements of this Chapter and other applicable standards and requirements.
- (c) The applicant shall be prepared to discuss the proposed application at the preapplication conference. The applicant shall be encouraged to provide a concept plan and/or a drawing of the proposed development, building, topographical maps and other information pertinent to the proposed development. Such drawings and materials should be provided to the Town Planner a minimum of seven (7) days prior to the preapplication conference.
- (d) Following the preapplication conference, the Town Planner shall classify the request as either a Level I, II, III or IV Development application. Any request not clearly included in one of the classifications set forth in Section 16-2-30 shall be classified by the Town Manager.

(Ord. 04-20 §2)

Sec. 16-2-30. Development level classifications.

- (a) *Level I.* The following development types shall be considered Level I developments:
 - (1) Remodel of a residential building containing a single dwelling unit.
 - (2) Home occupations.
 - (3) Tenant finish or remodel of one (1) unit in a commercial, office, and/or industrial structure.
 - (4) Deck for a single family home or duplex.
 - (5) Roof or siding replacement without structural modifications.
 - (6) Hot tub or swimming pool at a single family home or duplex.
 - (7) Fence.

-
- (8) Shed or accessory structure with a footprint less than or equal to two hundred (200) square feet.
 - (9) Window or door replacement without structural modifications.
 - (10) Solar panel mounted on roof.
- (b) *Level II.* The following development activities shall be considered Level II developments:
- (1) Shed or accessory structure greater than two hundred (200) square feet in an area zoned residential.
 - (2) Roof or siding replacement with structural modifications.
 - (3) Antennae replacement on an approved telecommunication tower.
 - (4) Addition of one (1) or more antennae(s) to an approved telecommunication tower.
 - (5) Remodels of residential buildings containing greater than one (1) dwelling unit (e.g. remodel of a condominium building).
 - (6) Addition to a residential building.
 - (7) New single-family structure.
 - (8) New duplex.
 - (9) Window or door replacement with structural modifications.
 - (10) Replacement of existing hot tub and/or swimming pool associated with any commercial, office, industrial, or multi-family residential building.
 - (11) Replacement of outdoor patio or deck on commercial, office, industrial, or multi-family residential building.
 - (12) Accessory dwelling unit.
- (c) *Level III.* The following development activities shall be considered Level III developments:
- (1) New multi-family residential building or condominium.
 - (2) New hotel or motel building.
 - (3) New commercial, office, and/or industrial building.
 - (4) New mixed-use building.
 - (5) New bed and breakfast or boarding houses.
 - (6) Minor PUD amendment.
 - (7) Outside patio or deck associated with any commercial, office, industrial, or multi-family residential building.
 - (8) Accessory structure greater than two hundred (200) square feet in a non-residential zoned area.
 - (9) Addition to a commercial, office, and/or industrial building.
 - (10) New hot tub or swimming pool associated with any commercial, office, industrial, or multi-family residential building.
 - (11) Freestanding solar panel.
 - (12) Major change to a Level III development permit.
 - (13) Minor change to an approved Level IV development permit.
- (d) *Level IV.* The following development activities shall be considered Level IV developments:

-
- (1) PUD.
 - (2) Major PUD amendment.
 - (3) Major change to a Level IV development permit.
 - (4) Multi-family residential uses in the Mixed Use (MU) Zone.
 - (5) Telecommunication tower.

(Ord. 04-20 §2; Ord. 07-21 §9)

Sec. 16-2-40. Development application submittal.

No development permit may be issued by the Town until an application has been submitted utilizing the processes set forth in this Article.

Sec. 16-2-50. Authority to file applications.

- (a) Unless otherwise specified in this Chapter, applications for review and approval may be initiated by:
 - (1) Any person or entity meeting the definition of applicant as defined in this Chapter;
 - (2) The Town Council;
 - (3) DURA; or
 - (4) Other entities that have rights provided by law.
- (b) When an authorized agent files an application under this Chapter on behalf of a property owner, the agent shall provide the Town with written documentation that the owner has duly authorized the filing of the application.
- (c) Where a development application directly affects the property interests of the occupants of an existing development, the applicant shall provide the Town with written documentation that such affected occupants have duly authorized the filing of the application.
- (d) When the Town Council or DURA initiates action under this Chapter, it does so without influencing the approval or denial of the application. Notwithstanding any provisions in this Chapter to the contrary, unless exempted from the application of the provisions of this Chapter by utilizing the procedures set forth in state statute, all applications of the Town Council or DURA shall be reviewed by the Planning Commission in accordance with procedures and approval criteria established herein for Level III development applications. Town Council and DURA applications for Planned Unit Developments may be approved by resolution of the Planning Commission and shall not require ordinance approval.

(Ord. 04-20 §2)

Sec. 16-2-60. Proof of ownership.

Prior to a determination of completeness in accordance with Division 2 of this Article, or at any time thereafter, the Town Manager may require documentation establishing proof of ownership of the property proposed for development, and showing any encumbrances to title thereto.

Sec. 16-2-70. Form of application.

Applications and submission materials required under this Chapter shall be submitted in a form and in such a number as required by the Town Manager.

Sec. 16-2-80. Consolidated development applications and review.

Multiple development activities or requests for the same site to be developed may be consolidated into one application for submittal and review depending upon the complexity of the proposal, as may be permitted or required by the Town Manager at the discretion of Town Manager. Consolidated applications shall be reviewed in accordance with the level of review (Level I, II, III, or IV) applicable to the activity or request requiring the highest level of review pursuant to this Chapter.

Sec. 16-2-90. Level I specific application requirements.

Applicants for Level I development permits shall file a short description of the proposal and application materials needed to adequately describe the proposal, including but not limited to floor plans, building elevations, site plans and other similar plans.

Sec. 16-2-100. Level II, III and IV specific application requirements.

Unless waived in writing by the Town Engineer, applications for Level II, III, and IV development permits shall supply the following drawings and materials to the Town. For Level III and IV applications, such drawings and materials shall be provided no later than forty-two (42) calendar days preceding the scheduled Planning Commission hearing. All of the following documents and materials shall be submitted electronically as PDFs or in other electronic formats as approved by the Town Engineer. The Town Manager may also require any required plans and maps to be submitted as hard copies.

- (1) Site plan map indicating the general site design of the project, including all existing and proposed improvements. The site plan map shall provide adequate detail to evaluate the preliminary landscaping; circulation; parking; snow stacking; location of all buildings and their entrances, uses and heights; walls; fences; loading points; refuse, recycling, and grease containers; location of all public rights-of-way; accessible routes as required under the ADA; all existing and proposed easements; drainage facilities; finished grade elevations; dimension lines where appropriate; direction of storm water runoff flows; and any other items related to the project as directed by the Town Manager. The site plan map shall include dimensions at an identified scale, and shall depict the property corners and all permanent survey monuments.
- (2) Existing features map depicting the existing topography of the site at one (1) foot intervals, significant natural features and vegetation, names of adjacent subdivisions and the footprint of any existing structures or improvements located on the site.
- (3) Floor plans.
- (4) Building elevations at an identified scale indicating the general architectural character of the building with heights referenced to USGS datum.
- (5) A general description or sampling of the building materials proposed for the development.
- (6) A vicinity map, which may be included on the overall site plan.
- (7) An application on a form provided by the Town, signed by the property owner or agent having power of attorney.

-
- (8) Proof of ownership in the form of a copy of the property deed and copy of title commitment dated within 30 days of submitting the application to the Town; provided, however, that, such form of proof of ownership is not required for Level II applications.
 - (9) A list of property owners whose property lies within three hundred (300) feet of the subject property and their last known address as shown on the most current County Assessor's records and addressed and stamped (with first-class mail) envelopes for each property owner on the list; provided, however, that, such list is not required for Level II applications, except on appeal of a decision of the Development Review Committee to the Planning Commission.
 - (10) Completed Certification of Notice to Mineral Estate Holders in accordance with Section 24-65.5-103, C.R.S., on forms provided by the Town; provided, however, that, such certification is not required for Level II applications.

Sec. 16-2-110. Additional information.

Additional application-specific information may be required by the Town Manager, Public Works Director, Planning Commission and/or Town Council, as necessary and appropriate to evaluate fully whether an application complies with the requirements of this Chapter.

Sec. 16-2-120. Application fee.

Application fees are hereby established for the purpose of recovering the costs incurred by the Town for internal staff time in processing and reviewing development applications and related documents and materials, in noticing required public hearings, and in recording approved applications and other documents. Such fees shall be set by resolution or ordinance of the Town Council. The application fee shall be paid by the applicant prior to or simultaneously with the filing of the application with the Town.

Sec. 16-2-130. Cost and funds deposit agreement.

- (a) At the time of submittal of any development application, or at such earlier time as the Town begins to incur consultant review fees related to the proposed project, an applicant for a Level II, III, or IV development permit shall enter into a cost and funds deposit agreement with the Town to pay all costs actually incurred by the Town in review of the development proposal prior to application, the application, application documents and materials, and required agreements, unless such requirement has been waived in writing by the Town Manager. Such costs shall include, but not be limited to, attorneys' fees, review fees from consultants acting as staff, recording fees, and other fees from review, but shall not include costs incurred by the Town for internal staff review. Such cost and funds deposit agreement shall be accompanied by a deposit paid by the applicant, which shall be based on the estimated costs of review fees applicable to the project. Such estimated costs shall be set forth in an exhibit to the cost and funds deposit agreement. The estimated cost exhibit shall be reviewed annually and estimated costs shall be adjusted, if necessary, by the Town Manager on the basis of actual expenses incurred by the Town to reflect the effects of inflation and other changes in costs.
- (b) Depleted funds. If deposited funds are depleted prior to completion of review of the application, application documents and materials, and any required agreements, the applicant shall promptly deposit additional monies with the Town in a mutually agreeable amount. If such additional monies are not deposited when necessary, application review, including but not limited to the scheduling of public hearings, will be suspended until such time as the additional monies are deposited. Additionally, if a negative balance exists at any time and additional funds are not deposited within fifteen (15) days after written notice from the Town, then a five percent (5%) penalty shall be added to such balance and such balance shall bear interest at the rate of one and one-half percent (1.5%) per month.

-
- (c) Refund. The Town shall refund any monies deposited by the applicant pursuant to a cost and funds deposit agreement and remaining after payment of the actual costs incurred by the Town.
 - (d) Outstanding fees and costs. No applications shall be accepted by the Town from an applicant until all previous fees and costs associated with that applicant are paid in full.

(Ord. 04-20 §2)

Sec. 16-2-140. Inactive files.

If an applicant fails to submit required information for a period of more than six (6) months from the initial request, the application shall become void and the resubmittal of a new application and deposit shall be required. The Town Manager may grant no more than two (2) extensions of time to this provision, of no more than six (6) months each, upon a written request by the applicant.

Division 2 Completeness Review

Sec. 16-2-150. Determination of application completeness.

Within fourteen (14) calendar days after receipt of the application and application fee, the Town Manager shall determine whether the application is complete and ready for substantive review.

- (1) If the application is determined to be complete, the application shall then be processed according to the procedures set forth in this Chapter. An application will be considered complete if it is submitted in the required form, includes all mandatory information and supporting materials specified in the Chapter, including the fully-executed cost and funds deposit agreement and applicable deposit, unless not required or waived in writing by the Town Manager in accordance with subsection 16-2-130(a). The determination of completeness shall not be based upon the perceived merits of the development proposal. The determination shall be made by the Town Manager.
- (2) If an application is determined to be incomplete, the Town Manager shall provide written notice to the applicant along with an explanation of the application's deficiencies. No further processing of an incomplete application shall occur until the deficiencies are corrected in a future resubmittal.
- (3) If any false or misleading information is submitted or supplied by an applicant on an application, that application will be deemed incomplete.
- (4) No substantive review shall occur and no public hearings shall be scheduled on an application until the application has been deemed complete in accordance with this Section.

Sec. 16-2-160. Referral and review.

- (a) The Town Planner shall refer the application to referral agencies to review the project for compliance with applicable agency requirements and with applicable requirements of this Chapter and other applicable Town regulations, standards, and ordinances.
 - (1) The Town Planner will determine the appropriate referral agencies to which to refer the application based on the impacts of the proposed use, the scale and complexity of the proposed development, the service providers for the project, and the location of the project. Such referral agencies include but are not limited to architectural consultants, utility providers, the Colorado Department of Transportation, applicable fire districts and other special districts.

-
- (2) The referral agencies shall have twenty (20) calendar days to return their comments to the Town Planner. During the twenty (20) day period, Town staff shall provide timely feedback to the applicant concerning comments received from the referral agencies and shall inform the agencies of any changes the applicant has made to the project that pertain to them.
 - (3) The Town Planner may request a meeting with the applicant and referral agencies that may be affected by the application or request.
- (b) Any comments from the referral agencies may be made part of the hearing record of the Planning Commission or Town Council on request of the applicant or at the discretion of the Town Manager.
- (Ord. 04-20 §2)

Division 3 Substantive Review of Level I Applications

Sec. 16-2-170. Procedure.

- (a) Once a completed Level I application and all accompanying materials have been submitted, the Town Manager shall review the proposal and, within seven (7) calendar days, approve it with or without conditions or deny it. In addition, the Town Manager shall have the right within the same seven-day period to reclassify any Level I application as a Level II application and process it accordingly.
- (b) The Town Manager shall then indicate the decision on the application and return it to the applicant.
- (c) If the decision was for approval, with or without conditions, a development permit will be issued and shall be signed by the applicant. The applicant may proceed with the project after obtaining any and all necessary construction or building permits.

(Ord. 04-20 §2)

Sec. 16-2-180. Approval criteria.

Prior to approving an application for a Level I Development Permit, the Town Manager shall find that the application substantially complies with all applicable requirements of this Chapter, and applicable Town regulations, standards, and ordinances.

Sec. 16-2-190. Appeal.

A decision of the Town Manager regarding a Level I application may be appealed in accordance with Division 9 of this Article.

Division 4 Substantive Review of Level II Applications

Sec. 16-2-200. Procedure and review criteria.

Once a completed Level II application and all accompanying materials have been submitted, The Development Review Committee shall have twenty (20) calendar days to return its comments and decision to the applicant. The decision shall be based on the following considerations:

- (1) If the proposed development is in substantial compliance with all applicable requirements of this Chapter, and applicable Town regulations, standards, and ordinances, and if all other required

approvals for the development application were issued and remain valid and effective, the Development Review Committee may approve the application. In addition, the Development Review Committee may attach conditions which are reasonable and necessary and relate to impacts created by the proposal.

- (2) If the proposed development is not in substantial compliance with all applicable requirements of this Chapter, and applicable Town regulations, standards, and ordinances, the Development Review Committee may deny the application.
- (3) The Development Review Committee may also continue the project review for up to fourteen (14) calendar days for good cause, or to allow additional information and materials to be submitted that will allow for a comprehensive review. In the event a project is continued, the applicant shall submit any additional materials he or she wishes the Town to consider at least five (5) calendar days prior to the continued review, unless otherwise specified by the Town.

Sec. 16-2-210. Appeal.

A decision of the Development Review Committee regarding a Level II application may be appealed by the applicant pursuant to Division 9 of this Article.

Division 5 Substantive Review of Level III Applications

Sec. 16-2-220. Substantive review process.

- (a) All Level III applications shall be required to be submitted to the Planning Commission for review at a minimum of one (1) public hearing.
- (b) All public hearings shall be noticed in accordance with Division 7 of this Article, and conducted in accordance with Division 8 of this Article.
- (c) The first public hearing shall be held not more than forty-five (45) calendar days from the date an application is deemed complete.
- (d) Prior to the first public hearing of the Planning Commission, Town staff shall deliver to the applicant and Commission, its written report on the application, including their conclusion on whether the proposed development substantially complies with all other applicable requirements of this Chapter and other applicable Town regulations, standards, and ordinances, which shall be made a part of the hearing record.
- (e) Following any public hearing, the Planning Commission shall render a decision to approve, approve with conditions, deny, or continue a Level III Development Permit based on the approval criteria set forth in Section 16-2-230; except that, the Planning Commission shall not be required to render a decision where the approval or denial of a separate application at the same public meeting has rendered a decision on the subject application moot. Any conditions must be reasonably related to impacts created by the proposal. Any continuance shall be for no longer than thirty-five (35) days.

(Ord. 04-20 §2)

Sec. 16-2-230. Approval criteria.

- (a) Prior to making a decision on a Level III Development Permit, the Planning and Zoning Commission shall require a finding that the applicant and evidence presented to the reviewing body established the following by competent and sufficient evidence:

-
- (1) All other required approvals for the development application were issued and remain valid and effective.
 - (2) The proposed development substantially complies with all applicable requirements of this Code, and applicable Town regulations, standards, and ordinances.

(Ord. 04-20 §2)

Sec. 16-2-240. Appeal.

A decision of the Planning Commission regarding a Level III application may be appealed by the applicant pursuant to Division 9 of this Article.

Division 6 Substantive Review of Level IV Applications

Sec. 16-2-250. Substantive review process.

- (a) All Level IV applications shall be required to be reviewed by the Planning Commission and Town Council at a minimum of one (1) public hearing each for compliance with the standards, regulations, and provisions set forth in this Chapter.
- (b) The first public hearing of the Planning Commission shall be held not more than forty-five (45) calendar days from the date an application is deemed complete.
- (c) Prior to the first public hearing of the Planning Commission, Town staff shall deliver to the applicant and Commission, its written report on the application, including their conclusion on whether the proposed development substantially complies with all other applicable requirements of this Chapter and other applicable Town regulations, standards, and ordinances, which shall be made part of both the Planning Commission and Town Council hearing records.
- (d) The Town Council shall hold a public hearing on the application at which it shall review the Planning Commission's recommendations within forty-five (45) calendar days of receipt of the recommendation.
- (e) All public hearings shall be noticed in accordance with Division 7 of this Article, and conducted in accordance with Division 8 of this Article.

(Ord. 04-20 §2)

Sec. 16-2-260. Review and recommendation by Planning Commission.

Following the Planning Commission's review of the Level IV development application in a public hearing, the Planning Commission shall either continue the application, or provide a recommendation to the Town Council to approve, approve with conditions, or deny the application based on the approval criteria set forth in Division 8 of this Article. Any conditions must be reasonably related to impacts created by the proposal. Any continuance shall be for no longer than thirty-five (35) days.

Sec. 16-2-270. Review and action by Town Council.

- (a) Following the Town Council's review of the Level IV development application in a public hearing, the Town Council shall continue the application or render a final decision to approve, approve with conditions, or deny the application based on the approval criteria set forth in Section 16-2-280 of this Article. Any conditions

must be reasonably related to impacts created by the proposal. Any continuance shall be for no longer than thirty-five (35) days.

- (b) Pursuant to Charter Section 14-9 and Section 16-1-80 of this Chapter, no Level IV application shall be approved without a finding by the Town Council considering the effect of such approval on the Comprehensive Plan.

(Ord. 04-20 §2)

Sec. 16-2-280. Approval criteria.

- (a) Prior to making a recommendation or a decision on a Level IV development application, the Planning and Zoning Commission and Town Council, respectively, shall require a finding that the applicant and evidence presented to the reviewing body established the following by competent and sufficient evidence:
 - (1) All required approvals for the development application were issued and remain valid and effective.
 - (2) The proposed development substantially complies with all other applicable requirements of this Code and other applicable Town regulations, standards, and ordinances.

(Ord. 04-20 §2)

Sec. 16-2-290. Appeal.

A decision of the Town Council regarding a Level IV application may be appealed by the applicant pursuant to Division 9 of this Article.

Division 7 Public Hearing Noticing Requirements

Sec. 16-2-300. Required notice.

- (a) Except as provided in Article I, Division 3, at least seven (7) but not more than fourteen (14) calendar days prior to any public hearing pursuant to this Chapter, the Town shall:
 - (1) Mail notice to the property owners within three hundred (300) feet of the outside boundaries of the property;
 - (2) Place a notice in a newspaper of general circulation in the community; and
 - (3) Post a notice of the hearing in the Town Hall and on the property subject to the application.
- (b) Notice by mail shall also be given to County Assessor registered homeowners' associations within the three hundred (300) feet of the outside boundaries of the property and such additional persons as the Town Manager may designate.
- (c) Posted notice on the subject property shall be posted by the applicant along the public street rights-of-way bordering the property or as otherwise directed by the Town Manager. Before the public hearing, the applicant shall submit to the Town Manager a notarized affidavit, signed by the person who did the posting or the person who caused the posting to be done, that notice was posted and maintained as required herein. The applicant is responsible for ensuring that the posted notice remains in place, in legible condition until the public hearing is concluded, and for removal of said posted notice within two (2) days after the public hearing is concluded.

-
- (d) Subsection (a) notwithstanding, it is the applicant's responsibility to ensure the hearing record reflects that notice was posted, published, and mailed as required pursuant to this section.

(Ord. 04-20 §2)

Sec. 16-2-310. Contents of notices.

- (a) Unless otherwise required by this Chapter, notice of all public hearings as required herein shall:
- (1) Identify the date, time and place of the public hearing;
 - (2) If applicable, describe the property involved by street address or by legal description and nearest cross streets;
 - (3) Describe the nature, scope and purpose of the proposed action;
 - (4) Indicate that interested parties may appear at the hearing and speak on the matter; and
 - (5) Indicate where additional information on the matter may be obtained.
- (b) Mailed notices shall include mention of an upcoming Town Council public hearing (when applicable) and the opportunity to be informed of the date of upcoming public hearings on the project.

(Ord. 04-20 §2)

Sec. 16-2-320. Defects.

Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Minor defects in a notice shall be limited to errors in legal description or typographical or grammatical errors that do not impede communication of the notice to affected parties. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date and place of a hearing shall be strictly construed. If questions arise at the hearing regarding the adequacy of notice, the decision-making body shall make a formal finding as to whether there was substantial compliance with the notice requirements of this Chapter. When the records of the Town document the publications, mailing and posting of notices as required herein, it shall be conclusively presumed that the notice of a public hearing was given as required herein.

Division 8 Public Hearing Process

Sec. 16-2-330. Applicability.

The provisions of this Division 8 shall apply whenever a public hearing is required pursuant to the provisions of this Chapter.

Sec. 16-2-340. Burden of proof.

The burden at public hearing shall be on the applicant to prove that the application complies with the provisions of this Chapter.

Sec. 16-2-350. Hearing record.

- (a) The hearing record shall include, without limitation, all materials and testimony provided by the applicant, all testimony from the public concerning the application, and the recommendations contained in the staff report and presentation.
- (b) All recommendations or decisions following public hearings shall be made solely on the information entered into the public hearing record.

(Ord. 04-20 §2)

Division 9 Appeals

Sec. 16-2-360. Appeals.

- (a) Except as provided in subsection (b), all decisions pursuant to this Chapter are reviewable on appeal in accordance with this Division.
- (b) The following are not reviewable on appeal under this Division:
 - (1) Administrative interpretations pursuant to Section 16-1-120;
 - (2) Recommendations by the Planning Commission;
 - (3) Decisions regarding variance requests pursuant to Article X of this Chapter; and
 - (4) Decisions regarding text or map amendments pursuant to Article I, Division 3.

(Ord. 04-20 §2)

Sec. 16-2-370. Applications for appeal; fee.

Applications for appeal shall meet the following requirements, or the applicant's right of appeal shall be deemed waived and the decision deemed final:

- (1) The application for appeal shall be made in writing to the Town Clerk within five (5) days after a decision pursuant to this Chapter.
- (2) The application for appeal shall be accompanied by a fee set by resolution or ordinance of the Town Council to reimburse the Town for review of the application.
- (3) The application shall specify the grounds for appeal.
- (4) If not already provided by the applicant, the application for appeal shall be accompanied with a list of property owners whose property lies within three hundred (300) feet of the subject property and their last known address as shown on the most current County Assessor's records and addressed and stamped (with first-class mail) envelopes for each property owner on the list.

Sec. 16-2-380. Reviewer on appeal.

If an application for appeal is filed with the Town Clerk in accordance with Section 16-2-370, the appeal shall be reviewed as follows:

-
- (1) If the application is to appeal a decision by the Town Manager or Development Review Committee, the application shall be reviewed by the Planning Commission in a public hearing which shall be noticed in accordance with Division 7 of this Article, and conducted in accordance with Division 8 of this Article.
 - (2) If the application is to appeal a decision by the Planning Commission, the application shall be reviewed by the Town Council in a public hearing, which shall be noticed in accordance with Division 7 of this Article, and conducted in accordance with Division 8 of this Article.
 - (3) Applications to appeal decisions by the Town Council are reviewable pursuant to Rule 106 of the Colorado Rules of Civil Procedure, or as otherwise provided by state or federal law.

Sec. 16-2-390. Decisions on appeal made to applicant in writing; final.

The reviewer on appeal shall affirm, reverse, reverse wholly or partly, or modify the decision appealed. All decisions on appeal shall be made to the applicant in writing, which written decision shall be added to and become part of the record of the proceeding. All decisions on appeal shall be final, and the applicant shall have no further right of appeal under this Chapter.

Division 10 Conditions of approval

Sec. 16-2-400. Conditions.

- (a) When authorized by this Article, the Town may place conditions upon the approval of an application, which are reasonably related to impacts created by the proposal, or which the Town deems necessary and proper to ensure that the project will be developed in the manner indicated in the application and in accordance with the standards and criteria established within this Chapter and other applicable Town regulations and adopted codes. Said conditions shall be listed within a development permit or development agreement which shall be signed by the applicant and the Town prior to the issuance of a building permit.
- (b) Without limiting the generality of subsection (a), the conditions may consist of one (1) or more of, but are not limited to, the following:
 - (1) *Development schedule.* The conditions may place a reasonable time limit on any activities associated with the proposed development, or any portion thereof, to prevent speculation in permits, to enable new application or revisions to come forward for unfeasible developments, or to implement other land use policies of the Town.
 - (2) *Use.* The conditions may restrict the future use of the proposed development to that indicated in the application and other similar uses.
 - (3) *Dedications.* The conditions may require conveyances of title or easements to the Town, public utilities or the homeowner's association for purposes related to the public health, safety and welfare, which may include, but not be limited to, land and/or easements for parks, utilities, pedestrian paths, bikeways, schools, roads, transportation and other similar uses. The Town may also require construction of all facilities to public standards and the dedication of public facilities necessary to serve the development.
 - (4) *Homeowner's association.* The conditions may require that if a homeowner's association or merchant's association is necessary or desirable to hold and maintain common property, it be created prior to issuance of a building permit.
 - (5) *Construction guarantees.* The conditions may require the depositing of certified funds, in an amount to be determined by the Town, with the Town Clerk, the establishment of an escrow fund, the depositing

of an irrevocable letter of credit, the posting of a bond or other surety, or collateral (which may provide for partial release) to ensure that all construction features required by this Chapter or the Code and conditions of approval are in fact constructed as represented and approved.

- (6) *Indemnification; covenants.* The conditions may require the recording of covenants and/or deed restrictions on the subject property or the indemnification of the Town in certain instances.
- (7) *Public improvements.* The conditions may require the installation of public improvements or participation in assessment districts for the installation of public improvements within, adjacent or contributing to the project.
- (8) *Additional plans.* The conditions may require that additional plans or engineered revisions to site, drainage or utility plans be submitted to the Town and approved prior to issuance of building permits or issuance of a certificate of occupancy, whichever is applicable.

(Ord. 04-20 §2)

Division 11 Permit Issuance, Duration and Revocation

Sec. 16-2-410. Permit issuance.

Once the decision of the Town has been finalized, the Town shall transmit by regular mail the final decision to the applicant and, if the application is approved, shall issue a development permit with or without conditions. The development permit shall not be valid until the applicant has signed it, indicating agreement with any and all conditions, and returns the permit to the Town.

Sec. 16-2-420. Relation to other Code provisions.

A permit issued pursuant to this Chapter does not release the applicant from compliance with the provisions of this Chapter, the Code, the building, fire, electrical, solar, mechanical, plumbing and energy codes, or any other codes as adopted by the Town and amended from time to time.

Sec. 16-2-430. Other permits.

After approval and issuance of a development permit, and prior to construction, the applicant shall be responsible for obtaining all permits required pursuant to local, state, and federal law.

Sec. 16-2-440. Duration of development permits.

- (a) Development approvals and permits issued by the Town pursuant to this Chapter are valid for the following time periods:

Level of development	Duration of permit
I	6 months
II	1 year
III	2 years
IV	2 years

- (b) The term of any development permit shall commence on its effective date pursuant to Section 16-2-410.

-
- (c) Level III and IV permits may be extended by the Planning Commission for a period not to exceed one (1) year upon review of a written request for extension by the permit holder prior to the expiration date of the permit. Requests for extension shall be processed utilizing the Level III process.

(Ord. 04-20 §2)

Sec. 16-2-460. Revocation of permits.

A permit may be revoked at any time for violation of the permit or any condition thereof by a motion of the Planning Commission at a hearing, and after written notice to the applicant at least seven (7) days in advance of the hearing.

Division 12 Development Agreement

Sec. 16-2-470. Development agreement.

- (a) Except as provided in subsection (b), subsequent to application approval, but prior to issuance of a building permit for the development, the developer shall either install all required improvements or enter into an agreement with the Town which shall obligate the developer to install and construct all public improvements within and adjacent to the proposed development as are reasonably related to or necessitated by the impacts of the development. In those instances where the developer is not the property owner, the property owner or owners shall either be co-signors to the agreement or shall provide alternative agreements allowing the Town to enter onto the property for the purposes of inspection of or completion of public improvements in the case the developer fails to complete all required improvements. If the developer chooses to enter into an agreement, the agreement shall specify the following at a minimum:
- (1) A description of all public improvements required.
 - (2) An estimate of the cost of installing all public improvements.
 - (3) The timing of public improvements in relation to the development of the project.
 - (4) A description of all private improvements required by this Chapter, conditions of approval or other pertinent Town regulations.
 - (5) A performance guarantee that the improvements will be installed in accordance with the approved plans.
- (b) A development agreement shall not be required under the following circumstances:
- (1) For Level I developments;
 - (2) For Level II or III applications when waived in writing by the Town Manager; or
 - (3) When the applicant has entered into a subdivision improvements agreement with the Town pursuant to subsection 17-2-250(b).

(Ord. 04-20 §2)

Division 13 Changes to Approved Development Permits

Sec. 16-2-480. Form of proposals.

Proposals for changes to approved development permits shall be made in writing to the Town Manager on forms provided by the Town.

Sec. 16-2-490. Review of corrections or adjustments.

Proposed corrections or adjustments to approved development permits shall be processed as a Level I application, unless the Town Manager determines the proposed correction or adjustment is of such nature to merit Development Review Committee review, in which case the application shall be processed as a Level II application.

Sec. 16-2-500. Proposed changes to approved Level I or Level II development permits.

At the discretion of the Town Manager, a proposed change to an approved Level I or Level II development permit, whether minor or major, may be processed as either a Level I or Level II development application.

Sec. 16-2-510. Proposed changes to Level III development permits.

- (a) The Town Manager may authorize a proposal for one (1) or more minor change to an approved Level III development permit to be processed as a Level II application if the Town Manager determines that the change is of such nature not to merit Planning Commission review. If the Town Manager determines that the proposed change is of such nature to merit Planning Commission review, the application shall be processed as a Level III application.
- (b) A proposal for one (1) or more major change to an approved Level III development permit shall be reviewed as a Level III development application.

(Ord. 04-20 §2)

Sec. 16-2-520. Proposed changes to Level IV development permits.

- (a) A proposal for one (1) or more minor change to an approved Level IV development permit shall be reviewed as a Level III application.
- (b) A proposal for one (1) or more major change to an approved Level IV development permit shall be reviewed as a Level IV development application.

(Ord. 04-20 §2)

ARTICLE V Planned Unit Development

Division 1 General

Sec. 16-5-10. Purpose.

- (a) The purpose of a Planned Unit Development (PUD) is to encourage flexibility in the development of land in order to promote appropriate and high quality use; to improve the design, character and quality of new development; to facilitate the adequate and economical provision of streets and utilities; to protect the

natural environment and avoid development in hazardous areas; and to provide the appropriate natural and scenic features of open space.

- (b) A PUD is a commitment on the part of the developer to construct a project based on a plan approved by the Town Council following review and recommendation by the Planning and Zoning Commission. The developer shall adhere to applicable Town ordinances and other requirements that may be specified in an approved PUD development plan.
- (c) All provisions of the underlying zoning district over which the PUD is located shall continue to apply unless varied or waived by the Town Council as part of the approved PUD development plan. Approval of a Planned Unit Development shall result in the creation of an overlay to the base zoning district, with specific requirements and standards that are unique to the planned development.

(Ord. 09-10 §2)

Sec. 16-5-20. Scope.

Applications for PUDs may be made for land located in any zoning district. The bulk and density requirements included in Article III of this Chapter do not always apply to PUDs, and when no requirements are established in Article III, the development shall be controlled by criteria and standards of this Article which shall be agreed to in the approved PUD development plan. The PUD is a type of customized zoning district or zoning overlay. If a PUD is to consist of newly created lots or parcels, a subdivision plat or exemption plat approval will also be required. The PUD development plan and subdivision application may be processed concurrently.

Sec. 16-5-30. Authority.

This Planned Unit Development (PUD) Overlay District is enacted pursuant to the State of Colorado Planned Unit Development Act of 1972, as amended (Section 24-67-101, et seq., C.R.S.).

Division 2 Standards and Criteria

Sec. 16-5-100. Allowed uses.

The uses permitted in a PUD shall be those permitted in the underlying zone by right or as a conditional use and other uses as determined upon submission and approval of the PUD development plan. Mixed use developments are encouraged.

Sec. 16-5-110. PUD requirements.

- (a) The PUD development plan may establish density, height, setback, lot size, wetlands buffer areas, parking lot design standards, architectural, signage and landscaping standards that differ from those in the underlying zone or in this Code, provided that the standards further the objectives of the PUD regulations, the Comprehensive Plan, and the specific PUD development plan.
- (b) All requirements of the underlying zone and those set forth in this Code otherwise applicable to the area of land proposed for a PUD shall govern, except to the extent that the approved PUD development plan provides exceptions as allowed herein.
- (c) A PUD with one-hundred percent (100%) residential use in the Mixed-Use (MU) Zone may be considered provided that the development standards further the objectives of the Town, are supported by the

Comprehensive Plan, and are designed to complement the surrounding areas, to blend into the architectural character of the community and to meet the criteria set forth in Section 16-3-170, "Mixed Use" of this Code.

- (d) A PUD sign plan may be used to establish signage standards that differ from those applicable to the development, provided that the standards further the objectives of the PUD regulations, the Comprehensive Plan, and the development.
- (e) A PUD landscape plan may be used to establish landscaping standards that differ from those applicable to the development, provided that the standards further the objectives of the PUD regulations, the Comprehensive Plan, and the development.

(Ord. 09-10 §2; Ord. 18-15 §1; Ord. 03-17 §5; Ord. 13-21 §3)

Sec. 16-5-120. PUD development standards.

- (a) Minimum site size. There shall be no minimum number of units or acres which may constitute a PUD. A PUD may be established on any sized parcel, provided that it has an adequate building site and can meet the objectives of this Article.
- (b) Compatibility with neighborhood. The Town shall evaluate the relationship of the PUD to its surroundings in order to consider adverse effects concerning traffic circulation, building height or bulk, visual impact or intrusion into privacy of neighboring properties. The evaluation criteria will include, but not be limited to, the following:
 - (1) Size and location of site.
 - (2) Street capacities in the area, and ingress and egress to adjoining streets.
 - (3) Location and amount of off-street parking.
 - (4) Internal traffic circulation.
 - (5) Fencing, screening and landscaping.
 - (6) Building bulk and location on site.
 - (7) Usable open space.
 - (8) Signs and lighting.
 - (9) Environmental impacts.
 - (10) Impacts to facilities and utility systems.
 - (11) Hours of operation.
 - (12) Size of operation.
- (c) Side setback. A periphery yard adjacent to the exterior boundaries of the PUD shall be at least as deep as those required by the yard regulations of the underlying zoning district unless the Planning and Zoning Commission and the Town Council find that equal protection will be accorded to adjacent parcels through specific features of the approved plan.
- (d) Open space. Open space shall be adequate in terms of location, area and type for the recreational and leisure use of the visitors and the population occupying the PUD and shall be designed to enhance the present and future value of the development. PUDs that overlay the residential zones (RH, RM, RL and RE) may cluster the required percentage of open lot area or required open space in common public or private open space.

-
- (1) Open space. Open space in a PUD means the land area to be used for scenic or open recreational purposes within the development.
 - (2) Open space does not include street rights-of-way, driveways, parking areas, required setbacks or public service easements unless these areas have some special recreational design or purpose.
 - (3) To the maximum extent possible, the PUD plan and program shall ensure that natural features of the land are preserved and landscaping is provided.
 - (4) In order to ensure that open space will be permanent, dedication of development rights to the Town for open space use may be required.
 - (5) In the event the common open space is owned and maintained by the property owners within the PUD, or by an organization chosen for maintenance, and the owners or organization fail to maintain the common open space in reasonable order and condition in accordance with the PUD development plan, the Town may serve written notice setting forth the manner in which the common open space has been improperly maintained and demanding that such deficiencies be cured within thirty days thereof. If the maintenance has not been corrected within the prescribed timeframe, the Town may, in accordance with Section 24-67-105(c), C.R.S., proceed with remedying the situation.
- (e) Density. Density allowed within a PUD shall generally be consistent with the underlying zone, but may be increased by the Town based on a finding that the project implements the goals of the Comprehensive Plan and does not create undue hardships, safety issues or nuisances within the community. Buildings utilizing vertical mixed uses are encouraged in the Core Area Retail (CA) zone.
 - (f) Building height. The maximum height of buildings may be increased above the maximum permitted in the underlying zone district in consideration of the following characteristics of the proposed building:
 - (1) Its geographic location;
 - (2) Visual effect on adjacent sites or other areas in the vicinity;
 - (3) Potential problems for adjacent sites caused by shadows, loss of air circulation or loss of view;
 - (4) Influence on the general vicinity with regard to extreme contrast, vistas and open space;
 - (5) Uses within the proposed building; and
 - (6) Fire protection capacities.
 - (g) Subdivision lot sizes. Minimum area, width, depth and frontage requirements for subdivision lots in a PUD may be less than the minimum specified in the underlying zone if in accordance with the approved PUD development plan and the Town's adopted Comprehensive Plan. Each private lot shall contain an acceptable building site. The clustering of development with useable common open areas shall be permitted to encourage provision of and access to common open space, save street and utility construction and maintenance costs and accommodate building types which share common side walls.
 - (h) Street circulation system. The PUD shall provide an adequate internal street circulation system designed for the type of traffic generated, safety, convenience and access. Private internal streets or circulation may be permitted, provided that adequate access for police, fire and emergency vehicles is maintained; streets are named in a logical fashion to avoid confusion; and provisions for using and maintaining such streets are imposed upon the private users and approved by the Town. Bicycle pathways and bicycle storage shall be provided for if appropriate.
 - (i) Off-street parking. The number of off-street parking spaces for each use in a PUD may vary from Article VI of this Chapter based on consideration of the following factors:
 - (1) Estimated number of vehicles to be used by occupants of dwellings in the PUD;

-
- (2) Temporary and permanent parking needs of non-dwelling uses;
 - (3) Varying time periods of use whenever joint use of common parking areas is proposed; and
 - (4) Parking and storage needs for recreational vehicles, including but not necessarily limited to campers, camper shells, boats, travel trailers and snowmobiles.
- (j) Pedestrian circulation. The PUD shall provide pedestrian ways throughout the PUD that allow residents and visitors to walk safely and conveniently among areas of the PUD and provide for connections to the PUD from the adjacent neighborhoods and in conformance with adopted Town recreational and pathway plans.
- (k) Landscaping. The PUD shall provide for landscaping that is appropriate for the uses in the approved PUD development plan and compatible with area landscaping and streetscape plans.
- (l) Phasing. Phasing of construction within a PUD may be permitted, provided that each individual phase is designed and developed to exist as an independent unit, and that the construction and improvement of common open space and site amenities shown on the development plan proceed at the same rate as the construction of dwellings and other permitted land uses. Each phase of development within a PUD shall be so planned and so related to existing surroundings and available facilities and services that failure to proceed to a subsequent stage will not have a substantial adverse impact on the PUD or its surroundings. Any phasing shall be approved by the Town Council.
- (m) Wetlands Buffer Areas. The PUD shall provide adequate wetlands buffer areas to protect the wetlands from damage during and after construction activities. The Required Wetlands Buffer Areas set forth in Section 5 of Appendix 17-C "Wetland Regulations," of the Dillon Municipal Code of the Town of Dillon, Colorado may be reduced to a minimum of five (5) feet from edges of any type of wetlands area except those specifically identified as fen wetlands. The required wetlands buffer area for fen wetlands may not be any less than one hundred fifty (150) feet. In order to reduce the wetlands buffer area, the applicant must submit a written report for approval containing the following information:
- (1) A topographic survey drawing showing the delineated wetlands boundary in relation to the property boundaries and other existing surface features on the property.
 - (2) The applicant must submit a copy of the accompanying wetlands delineation report.
 - (3) A narrative and description on how the wetlands will be protected during and after construction, and how the proposed development will not adversely affect the health of the wetlands.
 - (4) A narrative on how the wetlands buffer area and the wetlands will not be utilized for the storage of snow removed from buildings, streets, sidewalks and parking areas and what steps they will take to ensure compliance with their tenants and snow removal personnel. This narrative should also include a discussion on how snow melt and storm runoff from these areas will be handled to protect the wetlands area.
 - (5) A narrative on how the proposed development conforms with any current restrictions or conditions of approval put on a particular wetlands by the Town or any state or federal governmental agency. In some cases final approval from a federal government agency may be required.
- (n) Parking Lot Design Standards.
- (1) Parking Lot Grades: The PUD shall provide parking lot grades that are suitable for use in Dillon's severe snow and ice climate. Parking lot grades may be increased beyond the maximum requirements outlined in Section 16-6-60 of the Dillon Municipal Code of the Town of Dillon, Colorado, if the owner provides a written statement justifying the reasonableness of the grades proposed in the PUD proposal and includes language holding the Town of Dillon, its officers and employees, harmless from any adverse effects and claims arising from the steeper grades.

-
- (2) Parking Garage Ramp Grades: As part of a PUD, parking lot ramp grades with a maximum longitudinal slope of twenty percent (20%) may be considered. A snowmelt system is required for grades in excess of ten percent (10%).
 - (3) Parking Garage Ramp Widths: As part of a PUD, a parking garage access ramp may be reduced to a minimum of twenty (20) feet wide.
 - (4) Compact Parking Spaces: When a project requires more than forty (40) off street parking spaces, the applicant can designate up to twenty percent (20%) of the commercial or residential parking required for a PUD project as compact parking.
 - (5) Backing onto Public Right-of-Way: As part of a PUD and after considering traffic impacts and Town snow storage needs, the Public Works Director may approve off-street parking spaces that back into the Town Right-of-way when all of the following conditions are met:
 - a. The property must be located within the Core Area (CA) zoning district.
 - b. The Right-of-Way must be a dead end right of way and may only be connected to another Town Right-of-Way at one (1) end.
 - c. The applicant shall provide snow storage on the PUD parcel for the Town's use or install a snow melt system for that Portion of Right-of-Way between the Right-of-Way line and the edge of the asphalt road adjacent to the parking spaces.

(Ord. 09-10 §2; Ord. 18-15 §2)

Sec. 16-5-130. PUD review and approval process.

- (a) Preapplication conference. A conference between the Town Manager and other staff (including any referral agencies deemed appropriate) and the applicant shall take place prior to the submission of any PUD application. The purpose of the conference is to acquaint the applicant with the procedural and submittal requirements of this Article and to acquaint the Town with the developer's intentions.
- (b) PUD Concept Plan. A PUD Concept Plan may be processed as a Level II development application. This step in the PUD approval process is recommended but not required should the developer choose to proceed with the more extensive application for a PUD development plan. The intent of the PUD Concept Plan is to evaluate the general feasibility of a project, including review of the design, the compatibility with the surrounding neighborhoods and conformance with the Comprehensive Plan. In addition to the submittal requirements established in Article II, the applicant shall submit the following materials for Town review:
 - (1) PUD Concept Plan narrative describing the general concept of the development, the proposed land uses and density, the proposed development standards that deviate from the underlying zoning regulations and other sections of this Code and the general architectural concept.
 - (2) PUD Concept Plan illustrations to include twenty (20) 11" x 17" copies and one electronic copy or disk of the following:
 - a. A vicinity map illustrating the general location of the proposed PUD.
 - b. Illustration of the type and location of all proposed land uses and building sites.
 - c. General plan for circulation, including street, alley and sidewalk or pathway widths and type of surfacing.
 - d. Location and size of all public and private open space and recreational sites.

-
- e. Identification of existing conditions including existing buildings, easements, vegetation, land use and zoning of the development property and land use and zoning of properties within three hundred (300) feet,
- (c) PUD development plan and preliminary plan (with subdivision) application: PUDs shall be evaluated under the Level IV process established in Article II of this Chapter. In addition to, or in combination with, the submittal requirements established in Article II, the applicant shall submit the following materials for Town review: five (5) full-sized 24" x 36" copies, twenty (20) 11" x 17" copies, and one (1) electronic copy or disk of the PUD development plan and preliminary subdivision plan (when appropriate) and accompanying text and documents which shall contain the following:
- (1) PUD development plan maps and other illustrative attachments.
 - a. A vicinity map illustrating the general location of the proposed PUD.
 - b. Existing and proposed contour map, using two-foot contour intervals for properties with slopes less than twenty percent (20%), or five-foot contour intervals for property with slopes greater than twenty percent (20%).
 - c. Location, widths (or dimensions) and names of all existing or platted streets or other public ways, railroad and utility rights-of-way, utility easements, parks or other public open spaces, and land uses within three hundred (300) feet of the development.
 - d. Existing sewers, water mains and other underground facilities within and adjacent to the development.
 - e. Proposed location and capacity of sewers or other disposal facilities, water mains and other underground utilities.
 - f. Erosion control and drainage plan.
 - g. Proposed system for handling storm water drainage.
 - h. A preliminary subdivision plan in conformance with Section 17-2-40 of this Code, if the property is proposed to be subdivided.
 - i. A land use plan indicating the location and type of proposed land use, and, when relevant, building envelopes planned for the development and the property boundaries. Attached to this plan shall be a table summarizing all the proposed land uses and their total acreages for the entire property.
 - j. Location and dimensions of areas proposed to be dedicated or reserved for interior circulation, parking, public parks, playgrounds, school sites, public buildings or other uses dedicated or reserved to the public, if any.
 - k. Location and dimensions of open space that is to be maintained and controlled by the owners of the property and the proposed uses thereof and the open space that is to be dedicated to the Town.
 - l. A traffic flow map and traffic study indicating the proposed circulation patterns within and adjacent to the development, including access to any collectors or arterials.
 - m. Location and dimensions of all proposed streets, private roadways and alleys.
 - n. Location and dimensions of bikeways, pedestrian walkways, malls, trails and/or easements.
 - o. Location, arrangement, number and dimensions of automobile garages and parking spaces, width of aisles, bays and angle of parking.

-
- p. Preliminary architectural plans and elevations of typical buildings and structures, indicating locations, general height, bulk, appearance and number of dwelling units.
 - q. A preliminary tree planting and landscaping plan. Live existing trees and groves of trees shall be shown. Trees to be removed by development shall be so marked on the plans and may be required to be flagged in the field.
 - r. The approximate location, height and materials of all walls, fences and plantings. Elevation drawings of typical walls and fences shall be included.
 - s. The phases, if any, of development construction. Each phase shall be clearly marked on the general development plan map.
 - t. A shadow projection, if required by the Town.
 - u. A snow removal plan and areas proposed to be dedicated or reserved for snow storage.
 - v. Location, arrangement and dimensions of snow shed areas generated by the development.
 - w. Any other documents as required by the Town.
- (2) PUD development plan narrative and attachments.
- a. Statement of the basic concept and purpose of the planned development.
 - b. Narrative explaining environmental issues, including floodplains, severe slopes and other natural hazards, and the mitigation plan for these issues.
 - c. Tables showing the total number of acres and square footage of floor areas and the percentage of the total area which is designated for each type of land use, including each dwelling type, off-street parking, streets, parking lots, parks, playgrounds, schools and open space, as shown on the proposed development plan.
 - d. Tables showing the overall density of the proposed residential development and showing density by dwelling type. All density calculations shall be net dwelling units, excluding all land earmarked for public or private rights-of-way and all other lands to be dedicated to the Town.
 - e. Drafts of appropriate restrictive covenants, including those regarding the maintenance of any common open space, or required dedications or reservations of public open space and of any dedications of development rights.
 - f. A time table indicating when utility and drainage facilities intended to serve the development are to be installed. If the development is to be constructed in stages, the time table should reflect this.
 - g. A narrative explaining the snow removal plan.
 - h. Narrative of the PUD zoning plan establishing the permitted land uses, parcel sizes (if the PUD includes subdivision of land) and dimensions, setbacks, heights and maximum and/or minimum percent coverage.
 - i. Design standards for landscaping, architecture, signage, outdoor lighting and fences.
 - j. Development phasing plan.
 - k. The applicant's proof of ownership of the property and written consent for development as a PUD.
 - l. Any other documents as required by the Town.
- (d) Review and findings by Planning and Zoning Commission.

-
- (1) Commission action. The Planning and Zoning Commission, after review of the PUD development plan and program under the Level IV development review process and any accompanying subdivision application, shall either recommend approval of the application, with or without modifications and conditions or recommend denial. A recommendation for approval of a PUD shall be based on the following findings:
 - a. The proposed development and PUD plan are in substantial conformance with the Comprehensive Plan.
 - b. The PUD as set forth in the PUD development plan will not have an adverse impact on the surrounding area. The PUD is compatible with the scale, intensity, and type of land uses located on adjacent property.
 - c. The proposed benefits offset the proposed exceptions to the underlying zoning district and the subdivision regulations and such exceptions are in the best interest of the public health, safety and welfare.
 - d. Streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.
 - e. The proposed utility and drainage facilities are adequate for the population densities and type of development proposed and will not create a drainage or pollution problem. The timing of installation of utility and drainage facilities will be closely coordinated with development construction and will not create a hardship on residents either within or outside the planned area.
 - f. The density in the proposed development will not result in the inability on the part of the Town or utility providers to provide public utilities or services to the project. The applicant must furnish to the Town such additional water rights, storage right and treatment capacity in the Joint Sewer Authority wastewater treatment plant as found necessary by the Town to serve the development following build out. The Town shall determine the quantity and quality of water rights required.
 - (2) Conditions of approval. The Planning and Zoning Commission may recommend conditions of approval that relate to the impacts created by the proposed PUD which may include, but are not limited to, the following:
 - a. Increasing the required setbacks.
 - b. Limiting the height of the buildings.
 - c. Controlling the location and number of vehicular access points.
 - d. Establishing new streets, increasing the rights-of-way or roadway width of existing streets, requiring curbs and sidewalks and, in general, improving the traffic circulation system.
 - e. Requiring additional improvements for utilities or storm drainage facilities.
 - f. Increasing the number of parking spaces and improving design standards for parking areas.
 - g. Limiting the number, size, location and lighting of signs.
 - h. Designating sites for open space and recreation.
 - i. Requiring additional view-obscuring screening or fencing.
 - j. Establishing any special time limits for completion of all or any portion of the project, including but not limited to utilities, drainage facilities, streets, curbs, gutters, sidewalks, parking areas, landscaping, fencing, screening, recreation areas or community buildings.

-
- k. Requiring a special contractual agreement with the Town to ensure development of streets, sidewalks, drainage facilities, utilities and other improvements to standards which are acceptable to the Town.
 - l. Requiring the placement of building and roadways in such a manner that: i) would provide for utilization of the solar potential of the site and protect the solar access of adjacent sites, and ii) would buffer and minimize any adverse noise impacts.
- (e) Action by Town Council. Once the recommendation has been received from the Planning and Zoning Commission, the Town Council shall hold a public hearing and may either approve, approve with conditions or deny the PUD development plan. If the proposed PUD is accompanied by a subdivision application, a subdivision preliminary plan, in accordance with the procedures established under Article II of this Chapter for Level IV applications and the requirements in the subdivision regulations, may be reviewed concurrently.
- (1) Upon approval of a PUD development plan, the Town Council shall find that the PUD is in general conformity with the adopted Comprehensive Plan.
 - (2) The PUD development plan shall be adopted by ordinance and duly recorded at the County Clerk and Recorder's office. Any associated subdivision plan will be adopted by resolution and duly recorded. Final subdivision plats may be processed in stages if so approved in the PUD development plan.
 - (3) The Town Council may require development improvement agreements, maintenance agreements, encroachment agreements and any other agreements the Town may deem applicable or necessary for implementation of the PUD development plan and program, protection of the Town or fulfillment of the conditions of approval of the PUD. The applicant shall pay the fee established by resolution or ordinance of the Town Council applicable to any such agreement required by the Town Council.
 - (4) Revisions to the Zoning District Map. An approved PUD development plan shall be recorded on the Official Town Zoning Map filed in the Planning Department as soon as practicable after the PUD becomes effective.
- (f) Proposed changes in approved PUD development plans.
- (1) Major changes. Major changes in the PUD development plan and program after the PUD has been adopted shall be considered a Level IV development application and shall be reviewed in accordance with the procedures specified herein for a new application.
 - (2) Minor changes. Minor changes in an approved PUD development plan and program may be reviewed by the Planning and Zoning Commission under a Level III application, provided that such changes:
 - a. Do not change the character of the development or the proposed density.
 - b. Do not change the boundaries of the PUD.
 - c. Do not change any use, such as residential to commercial.
 - d. Do not significantly change the location or amount of land devoted to a specific land use.
 - e. Do not relax dimensional standards or other specific requirements established by the Planning and Zoning Commission or Town Council as a condition of approval.
 - (3) Corrections, adjustments. If, under the discretion of the Town Manager, a proposed correction or adjustment to an approved PUD development plan is of such nature to not merit Planning and Zoning Commission review, the Town Manager shall authorize the application to be processed as a Level II project. If the proposed change is denied, the applicant may process the application as a Level III project reviewed by the Planning and Zoning Commission.
- (g) Assurance of completion and maintenance of improvements.

-
- (1) Completion of improvements. All developers shall be required to complete all of the street and other improvements as specified in the PUD development plan and subdivision plan or as required in this Chapter and to dedicate public improvements to the Town or other applicable public agencies, free and clear of all liens and encumbrances. The developer shall submit a certificate of title prior to conveying any land to the Town indicating all title restrictions.
 - (2) Development improvements agreement. Prior to applying for a building permit and prior to recording a subdivision plat, the developer shall either install all required improvements or enter into an agreement with the Town which shall obligate the developer to install and construct all public improvements within and adjacent to the project as may be required under the provisions of this Chapter and the approved PUD development plan. In those instances where the developer is not the property owner, the property owner or owners shall either be co-signors to the agreement or shall provide alternative agreements allowing the Town to enter onto the property for the purposes of inspection of or completion of public improvements in the case the developer fails to complete all required improvements. The agreement shall specify the following at a minimum:
 - a. A description of all public improvements required.
 - b. An estimate of the cost of installing all public improvements.
 - c. The timing of public improvements in relation to the development of individual sites.
 - d. A description of all private improvements required by this Chapter, conditions of approval or other pertinent Town regulations.
 - e. A performance guarantee that the improvements will be installed in accordance with the approved plans.
 - (3) Performance guarantees.
 - a. If the improvements are not installed in accordance with the PUD agreement prior to applying for a building permit and filing of the plat, the developer shall post an acceptable form of surety or collateral with the Town, prior to the time of building permit application and (when relevant) recording the plat, in an amount equal to one hundred twenty percent (120%) of the estimated costs of all remaining public improvements not already installed.
 - b. Such performance guarantee shall be a letter of credit in an amount fixed by the Town Manager issued by a bank authorized to transact business in the State, in a form generally as prescribed by the Town and acceptable to the Town Attorney, or cash money in an amount fixed by the Town Manager or the development improvement agreement. If the developer fails to install the improvements as approved and/or the Town has unreimbursed costs or expenses resulting from such failure, the Town shall cash the letter of credit or call on the cash deposit for reimbursements or to complete the improvements. The period within which required improvements must be completed shall be incorporated in the development improvement agreement or guarantee. Said guarantee shall remain in full force and effect until released by the Town. If the amount of the letter of credit or cash deposit is less than the cost and expense incurred by the Town, the developer shall be liable to the Town for the difference, plus applicable interest.
 - (4) Failure to complete project. Where a performance guarantee has been posted and a development improvements agreement entered into and all improvements required by the Town have not been installed in compliance with such agreement, the Town may thereupon declare the agreement to be in default and may utilize the funds available from the performance guarantee to complete the improvements within the subdivision.
 - (5) Release or reduction of performance guarantees.

-
- a. The Town will not accept the required improvements, nor release a performance guarantee, until the Town Engineer has indicated that all required improvements have been satisfactorily completed and until the developer's engineer has certified to the Town Engineer, through submission of detailed as-built plans of the development improvements, that all improvements have been installed in accordance with the approved construction plans for the project and are ready for dedication to the Town or other appropriate agencies. No funds will be released prior to the warranty period established in the performance guarantee.
 - b. A performance guarantee may be reduced by the Town upon actual completion of public improvements and then only in the ratio that the public improvements completed bear to the total public improvements of the plan. In no event shall a performance guarantee be reduced below twenty percent (20%) of the principal amount until all improvements have been completed, the warranty period has been met and the improvements have been accepted by the Town.
- (6) Maintenance of improvements and performance guarantee.
- a. The developer shall be required to maintain the public improvements in the development and to provide for snow removal, street cleaning, drainage and general maintenance of the streets and sidewalks prior to acceptance by the Town. In the event the developer fails to comply, the Town is authorized, through the Town Manager, to perform the necessary work without incurring any liability and charge such work to the developer. If not paid, any such charges shall become a first and prior lien on the development.
 - b. The developer shall be required to execute a performance guarantee with the Town in a form acceptable to the Town Attorney, prior to acceptance of any public improvements, in an amount equal to twenty percent (20%) of the original cost of the public improvements, in order to assure the satisfactory maintenance of the required improvements for a period of one (1) year after the date of their acceptance by the Town. Such bond shall guarantee all public improvements constructed by the subdivider shall remain free from defect for the required one-year period.
- (h) In the event the developer has failed to develop the PUD within the timeframe approved in the PUD Development Plan, or that timeframe identified in Section 16-2-440 , the approval shall become null and void and the property shall revert to the original underlying zone.

(Ord. 09-10 §2; Ord. 04-20 §§7—9; Ord. 09-21 §7; Ord. 13-21 §6)