Agenda
Town of Blue River
Work Session
Board of Trustees
March 11, 2021
5:00 p.m.
VIRTUAL Via Zoom Link

**The Trustees Meeting will be hosted live but will the public will NOT be permitted to attend the meeting in person due to COVID-19 concerns. If you are interested, please join the meeting via the Zoom below and on our website at https://townofblueriver.colorado.gov/town-info/meetings. Questions and comments may be submitted prior to the meeting to: michelle@townofblueriver.org or during the meeting using the Chat feature.

Register in advance for this meeting:
https://zoom.us/meeting/register/tJElduGvpjIvGNyJIkbq9rO8sAOrIMYs4Xu8

After registering, you will receive a confirmation email containing information about joining the meeting.

5:00 p.m. WORK SESSION

- Planning & Zoning Bylaws, Regulations & Process

Town of Blue River

Committee & Commission
Bylaws

Committee: Planning & Zoning Commission

I. Establishment & Purpose

a. There is hereby established a Planning and Zoning Commission for the Town.

b. (b) The purposes of the Planning and Zoning Commission are as follows:

c. (1) To guide and accomplish a coordinated, adjusted and harmonious development of the municipality and its environs, which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, the promotion of safety from fire, floodwaters and other dangers and adequate provision for light and air.

d. (2) To preserve the natural beauty of the Town's site and setting, to prevent indiscriminate clearing of property, removal of trees and earthmoving, and to attain the objectives set out in this Chapter through architectural review of the exterior design of all new structures and property development and additions to all existing structures and property development.

e. (c) The objectives of the architectural review function of the Planning and Zoning Commission shall be as follows:

f. (1) To prevent excessive or unsightly grading of property which could cause disruption of natural watercourses or scar natural landforms;

g. (2) To ensure that the location and configuration of structures, including signs and signage, are visually harmonious with their sites and with surrounding sites and structures and that there shall be conformance to the Upper Blue Joint Master Plan.

h. (3) To ensure that the architectural design of structures and their materials and colors are visually harmonious with the Town's overall appearance, with surrounding development and with natural and existing landforms.

i. (4) To ensure that plans for the landscaping of property and open spaces conform with the rules and regulations as prescribed by the Town and by this Chapter and to provide visually pleasing settings for structures on the same site and on adjoining and nearby sites.

II. Created; Membership; Terms

a. Effective the first day of March, 2005 there is created a Planning and Zoning Commission of the Town, composed of seven (7) members, to which is delegated the powers and duties to administer this Chapter.

b. (b) Members of the Planning and Zoning Commission shall be bona fide residents of the Town at the time of their appointment to the Commission.

c. (c) Of the members initially appointed, one (1) member shall be the Mayor or a member of the Board of Trustees appointed by the Board, and the remaining members shall be citizens appointed by the Board. Initially, three (3) members shall serve for terms of four (4) years, and three (3) members shall serve for terms of two (2) years. After the expiration of the initial terms, each member shall serve a term of four (4) years, except the Mayor or member of the Board of Trustees, whose term shall coincide with that member's elected term.

III. Vacancies

a. A vacancy on the Planning and Zoning Commission shall occur whenever a member of the Commission is removed by the Board of Trustees, dies, becomes incapacitated and unable to perform his or her duties for a period of ninety (90) days, resigns, ceases to reside within the Town or is convicted of a felony. A member of the Commission may be removed by the Board of Trustees for misconduct, including but not limited to repeated absence from meetings or violation of the state code of ethics. In the event a vacancy occurs, the Board of Trustees shall appoint a successor to fill the vacancy and serve the remainder of the term of the former member.

IV. Organization

a. The Commission shall select its own Chair, a Vice Chair and a secretary from among its members. The Chair or, in his or her absence, the Vice Chair shall be the presiding officer of its meetings. In the absence of both the Chair and the Vice Chair from a meeting, the members present shall appoint a member to serve as acting Chair at the meeting. All meetings shall be held at the Blue River Town Hall unless otherwise specified. Four (4) members shall constitute a quorum for the transaction of business, but in the absence of a quorum, a lesser number may adjourn any meeting.

V. Meetings

a. The Planning and Zoning Commission shall meet on the first Tuesday of each month and otherwise upon the call of the Chair or, in the absence of the Chair, of the Vice Chair.

b. In accordance with the requirements of Section 24-6-402(2)(c), C.R.S. the Board of Trustees hereby designates the Blue River Town Hall and the Town website at www.colorado.gov/townofblueriver as the locations where notices of meetings may be posted.

VI. Staff

a. The Building Official shall serve as the staff of the Commission and shall act in the capacity of executive secretary to the Commission for the purpose of receiving applications and other material for consideration for the Commission. The Town Clerk shall ex-officio serve as recording secretary of the Commission.

VII. Duties of the Planning and Zoning Commission

a. The Planning and Zoning Commission shall have the following functions and duties:

b. (1) To make and recommend to the Board of Trustees plans for the physical development of the Town, including any areas outside its boundaries, subject to the

approval of the legislative or governing body having jurisdiction thereof, which in the Commission's judgment relate to the planning of the Town. The plan, with the accompanying maps, plats, charts and descriptive matter, shall show the Commission's recommendations for the development of the subject territory.

c. (2) To review and recommend to the Board of Trustees desirable or necessary modifications to Chapter 16 of this Code, with appropriate regulations, which may be specifically provided or required by ordinance of the Town.

d. (3) To hear and decide appeals from and review any order of any administrative official charged with the enforcement of the Town's zoning regulations.

e. (4) To hear and decide appeals from decisions of the Building Official pursuant to Chapter 18, Article I of this Code.

f. (5) To act as the Architectural Review Board of the Town and to perform all duties and exercise all powers assigned to the Architectural Review Board.

g. (6) To act as the Board of Zoning Adjustment and to perform all duties and exercise all powers assigned to the Board of Zoning Adjustment.

h. (7) To review and approve, disapprove or conditionally approve design of all proposed structures in the Town, based upon criteria and procedures determined necessary for the health, safety and welfare of the residents of the Town and approved by the Board of Trustees. No site preparation, excavation, building construction, sign erection or application, exterior alteration or enlargement of an existing structure, fencing or other improvements shall be permitted unless architectural review approval has been granted as prescribed in this Chapter.

i. (8) To review and approve, disapprove or conditionally approve for recommendation to the Board of Trustees applications for the approval of subdivision plats, replats and amended plats.

j. (9) To consider any other matters pertaining to the Commission as provided by law, resolution or ordinance, to act in an advisory capacity to the Board of Trustees when so requested, and to perform all other powers and duties authorized and required by ordinance or state law.

VIII. Attendance

a. Members have made a commitment to attend meetings and partake in discussions. Therefore, it is important that Members be punctual and that meetings start on time. Be respectful of other people's time. Prepare in advance of meetings and be familiar with issues on the agenda. Stay focused and act efficiently during public meetings. It is equally important that discussions on issues be relative to the topic at hand to allow adequate time to fully discuss scheduled issues.

b. Attendance of members is required.

c. Absence for three or more consecutive unexcused absences or fifty percent (50%) of the total scheduled meetings may result in removal from the Planning and Zoning Commission.

IX. Emails

a. All Planning and Zoning Commission members will receive a Town of Blue River assigned email for the purposes of communication on Planning and Zoning Commission items.

b. Emails will be discontinued upon expiration or termination of a member's term.

c. All members must follow the Code of Conduct and all laws regulating communication by the State of Colorado through the Open Records Act and Open Meetings Laws.

d. All email communication by the Planning and Zoning Commission Members concerning Planning and Zoning Commission business is considered an open record and subject to public review.

Notes Concerning P&Z Bylaws

Blue River appointed a planning and zoning commission (P&Z) to assist the governing body in the processing of land use applications. A P&Z is exceedingly common in Colorado municipalities although state law does not mandate that a citizen planning and zoning commission be created.

Blue River differs from the common municipality in that the P&Z also exercises final decision-making authority over site planning and also performs the duties of a Board of Adjustment (BOA; zoning variances) and a Board of Review/Appeals (BOR; Building Code appeals). Typically, a BOA and BOR are separate citizen commissions for a municipality apart from the P&Z. There is no recommendation suggested to divide these duties and create new boards or commissions for Blue River because a municipal P&Z can serve these roles with adequate training - especially given the scarcity of variances and appeals usually experienced by a small town. Even in some larger municipalities, the BOA or BOR will rarely meet to hear and decide reviews and appeals.

Because the Blue River P&Z exercises duties that are somewhat atypical for the standard or state recognized planning and zoning commission, it is strongly recommended that the Blue River P&Z be governed by "Bylaws" and that the P&Z be adequately trained to ensure that the P&Z members comply with the applicable regulations.

Bylaws are common for P&Z's and for many municipal board and commissions. Bylaws ensure that applications are treated uniformly and consistently thereby providing fairness to applicants and the public which may support or oppose the applications. Bylaws also ensure that members conduct the business of the P&Z in accordance with state law thereby reducing the liability associated with due process violations and the processing of later appeals to the governing body or to the courts.

The common or standard set of bylaws govern the following:

1. Method for appointing leadership (i.e., chair, vice chair).
2. Quorum and voting requirements.
3. Attendance obligation and potential for removal from appointment.
4. Parliamentary procedures (how to propose and process motions).

The Blue River P&Z is currently governed by a set of procedural standards noted as "Bylaws" which are attached. Although these Bylaws address items 1-3 above to some extent, the Bylaws do not fully cover the common or recommended processes handled by a P&Z or include sufficient detail to govern the P&Z.[1] The Bylaws also conflict to some degree with the recent Board ordinance reformulating the P&Z and its duties.

[1] For example, a P&Z member is obligated to attend "50% of the total scheduled meetings" but the provision does not specify if the 50% refers to meetings annually, semi-annually, for a one-year period, for a calendar year, or for the member's term of office, or for other period of time. Therefore, the obligation is largely unenforceable. Moreover, the member may be removed for failing to satisfy this

In addition, it is recommended that the P&Z Bylaws address these additional issues:

A. Conflicts of interest.
    a. As recognized by state law.
    b. Expansion of conflict-of-interest rules to add circumstances when the member lives within a specified distance of the subject property or has a personal relationship with the applicant or persons interested in the application before the P&Z.
    c. Mandatory recusal/nonparticipation for conflict of interests.
B. Appearances of impropriety (situations where the member may appear biased although not legally possessing a conflict of interest).
C. Ex parte communications and penalties for engaging in such communications.
D. Ability to participate in a discussion but then to abstain from voting for convenience or personal preference.
E. P&Z member appearances before the Board of Trustees to support or oppose an application that the P&Z member considered as a member of the P&Z.
F. Processes and procedures for hearing for: (1) zoning applications; (2) subdivision applications; (3) variances; and (4) building appeals. Some of these processes and procedures will be uniform or standardized; however, some require specialized steps to address potential appeal.

Should you have any questions, please contact me at any time.

Robert (Bob) Widner
Town Attorney
Widner Juran LLP

obligation, but the means or the process to remove the member is not identified.

Notes Concerning Preliminary Review Processes in Land Use Applications

As used in many other communities, a "preliminary review[1] process" generally or commonly works as follows:

- A *prospective* applicant who will be submitting an application for a formal land use approval MUST either schedule a preliminary meeting and/or submit certain basic materials for a preliminary review (PR).

- The PR is a mandatory requirement prior to the submission of a formal application. If there is no PR, then no application will be accepted. A waiver of the PM requirement is sometimes granted for applicants who have recently processed a similar project or who processed an earlier phase in a multi-phase project.

- The government's "reviewer" in the PR is often a planner with experience in the planning application process or a review team (sometimes the manager, planner, or attorney). Sometimes a single designated review person is authorized by the local regulations to bring into the PR other government personnel that may provide special feedback on the particular proposal (such as the traffic engineer on a project involving special access or street issues).

- At/during the PR meeting, the reviewer listen to/reviews the prospective applicant's proposal and preliminary drawings and ideas.

- Based on the meeting or a review of the materials, the reviewer provides non-binding feedback to the prospective applicant about the general proposal. This feedback can include:

    - Instructions about what submission materials are required for the formal submittal (sometimes a submission checklist is created at the PR meeting).

    - Information on the formal process to be applied to the application and suggestions on how the applicant should prepare for and approach the formal processing given recent issues with the planning commission or governing body.

    - Information on special issues that the reviewer observes from the proposal such as potential conflicts with the zoning, subdivision, or other local

[1] This should not be confused with a "sketch plan" or "preliminary plan" process found in some governments which plans are often formal steps in a more complex development application process leading to ultimate or final approval of an application (e.g., the formal steps would be sketch plan approval, preliminary plan approval, and final plan approval). A preliminary **review** is an informal meeting or review that does not result in any level of approval and is intended to assist the applicant to understand the local regulations prior to expending significant time and cost in preparing a formal application to the government.

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development regulations or critical issues that have caused problems for other applicants. This is the most important part of the PR as the review is intended to avoid the issues of "blindsiding" that applicants often complain about and to flush out issues concerning the government's regulations that the applicant may not understand or may not properly interpret.

- Suggestions on how the applicant may wish to modify the proposal to address special issues noted from the PR meeting such as coordinating with future or proposed government street modifications or the upcoming extension of utilities proposed for the area.

There is a need to avoid later arguments from the applicant that "I was told to do it the way I presented at the PR and spent a lot of money to change my plans." One approach is to require the applicant to sign a written disclosure that states the PM and the government's comments are non-binding and that the review provides suggestions on how to proceed on the proposed application but that the final decision will be made by the planning commission and/or the governing body. It is always a concern that the applicant tries to argue about what was said during the PR, so seeking to avoid these conflicts is a wise move. In addition, some communities make a recording of the PM meeting in an effort to protect against potential conflict.

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Widner Juran LLP
Attorneys at Law

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TOWN OF BLUE RIVER, COLORADO

MEMORANDUM

TO: Mayor Babich & Members of the Board of Trustees
THROUGH: Michelle Eddy, Town Manager
FROM: Bob Widner, Town Attorney
DATE: March 3, 2021
SUBJECT: DRAFT – New Chapter 15 Concerning Annexations

The attached draft ordinance is proposed in order to repeal and reenact Chapter 15 of the Blue River Municipal Code. The ordinance would bring the Chapter into full compliance with state law and would implement the common annexation practices of other communities.

This particular draft was derived from an ordinance my law firm prepared for the City of Central. Because we were able to use a working ordinance that we drafted from another community which is suitable for use in a smaller municipality, there is very little cost incurred by the Town in the preparation of this draft for Blue River.

Not much of this ordinance should be controversial. The provisions track state law and the common practices of other municipalities. However, the following additional Issues are raised for consideration by the Town Board.

A. P&Z Role. State law (and the local regulations of many municipalities) do not allocate a role or responsibility to the local planning commission in the consideration of an annexation. Annexations are deemed legislative and fully discretionary decisions by the municipal governing body only. Annexations exclude the local planning commission from the process because the concept of annexation is a legislative and political question centered on whether the municipality should grow its borders and extend its general influence and services. Subsequent to annexation, however, the local planning commission does under state law have a defined and direct role in the zoning of the property.

   Question: The draft ordinance does not allocate a mandatory role to the P&Z on all annexations. Instead, the draft ordinance authorizes the Board of Trustees to refer any annexation petition to the P&Z for comment and recommendation. Is this referral approach acceptable to the Board?

B. Fees and Charges- *Imposition*. State law is silent as to the imposition of fees for the processing of an annexation petition. The issue of fees is left to the municipality to decide how they would structure the fee payment amount. Most municipalities charge some fee amount for the processing of a petition. The draft ordinance authorizes a fee of $2,000 for each legally described lot or parcel within the area to be annexed. The Town Manager may adjust this fee based on the scope of the annexation and the amount of anticipated legal and consultant work to be performed.

   Question: Is this fee *imposition* provision acceptable to the Town Board?

C. Fees and Charges – *Waiver*. The draft ordinance authorizes the Town Board to waive all or a portion of the annexation fees for an annexation. This is a common provision used as a means of encouraging landowners to petition for annexation when the Town may request.

Question: Is this fee *waiver* provision acceptable to the Town Board?

D. Fees and Charges – *Refunding*. The draft ordinance authorizes the Town Board to refund fees paid for an annexation petition if the petition is denied by the Town or the petition is withdrawn by the landowner. The Board retains the full discretion to grant a request for a refund. The refund by the Town is only allowed if there are *unexpended* portions of the original fee payment remaining with the Town and the Town has not incurred any unpaid or unaccounted for expenses. Refunding is largely a question of fairness and it will likely be a rare circumstance where a refund will be justified. Refunding will likely be justified when an annexation petition is quickly denied by the Town or is withdrawn by the petitioner before the Town begins any significant processing of the petition. A refunding provision is not common to many municipalities in my experience, *but* the question of refunding does arise and is sometimes granted in some municipalities even without a specific ordinance authorizing the refund (which is not a legally recommended practice).

Question: Is this fee *refunding* provision acceptable to the Town Board?

Please contact me if you have any questions regarding this proposed ordinance.

DRAFT FOR BOARD DISCUSSION ONLY

TOWN OF BLUE RIVER, COLORADO

ORDINANCE NO. 2021-___

AN ORDINANCE REPEALING AND REPLACING CHAPTER 15 OF THE BLUE RIVER MUNICIPAL CODE ENTITLED ANNEXATION

WHEREAS, pursuant to the Colorado Constitution and Part 1, Article 12, Title 31 of the Colorado Revised Statutes, the Town of Blue River ("Town") has authority to annex property into the corporate limits of the Town; and

WHEREAS, annexation is recognized by the Colorado courts as a legislative and discretionary act by the municipality and that a municipality may deny or reject an annexation for no reason. *City of Colorado Springs v. Kitty Hawk Development Co.*, 392 P.2d 467 (Colo. 1964); and

WHEREAS, the Town of Blue River ("Town") is authorized under Title 31 of the Colorado Revised Statutes to adopt and amend ordinances in furtherance of governmental administration and the City's police powers and to reasonably implement the powers provided by state law; and

WHEREAS, the Town Board of Trustees desires to adopt policies and procedures related to annexation petitions submitted pursuant to the Colorado Municipal Annexation Act of 1965; and

WHEREAS, it is the intent of the Board of Trustees in the enactment and adoption of this Ordinance to exercise the Town's legislative authority to the greatest degree possible to best advance the health, safety, and welfare of the Town.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BLUE RIVER, COLORADO:

Section 1. Chapter 15 of the Blue River Municipal Code is hereby repealed in its entirety and replaced with the following:

CHAPTER 15 Annexation

Article 1 – Annexation Policies and Procedures

Sec. 15-1-10. Title.
Sec. 15-1-20. Authority.
Sec. 15-1-30. Annexation a legislative decision.
Sec. 15-1-40. Acknowledgment, purpose and interpretation.
Sec. 15-1-50. Definitions.
Sec. 15-1-60. Three-Mile Limitation and Three-Mile Plan.

Sec. 15-1-70. Petition fee and charges for processing annexation petitions.
Sec. 15-1-80. Annexation process; ordinance.
Sec. 15-1-90. Optional referral to Planning and Zoning Commission.
Sec. 15-1-100. Annexed property subject to all laws.
Sec. 15-1-110. Annexation agreements.

Sec. 15-1-10. Title.

The provisions of this Article shall be known and cited as the "Blue River Annexation Policies and Procedures."

Sec. 15-1-20. Authority.

This Chapter is authorized pursuant to the powers conferred by the Colorado Municipal Annexation Act of 1965.

Sec. 15-1-30. Annexation a legislative decision.

No landowner shall be entitled to a right to the annexation of land and such decision to annex property shall be a legislative and discretionary decision of the Town.

Sec. 15-1-40. Acknowledgement, purpose and interpretation.

The Town acknowledges the applicability of the Colorado Municipal Annexation Act of 1965, Sections 31-12-101, et seq., C.R.S. for annexations to the Town of Blue River. This Article is intended to implement and supplement the Colorado Municipal Annexation Act of 1965 and shall be liberally construed for the following purposes:

(1) To encourage a natural and well-ordered development of the Town;

(2) To distribute fairly and equitably the costs of municipal services among those persons who benefit from such services;

(3) To extend municipality, services, and facilities to eligible areas which form a part of the whole community;

(4) To simplify governmental structure;

(5) To provide an orderly system for extending municipal regulations to newly annexed areas;

(6) To reduce potential friction among contiguous or neighboring municipalities;

(7) To increase the ability of the Town to provide their citizens with the services they require; and

(8) To exercise to the greatest extent possible the Town's authority and powers conferred by state law and applicable judicial precedent.

Sec. 15-1-50. Definitions.

The meaning of words and phrases contained in this Chapter 15 shall have the meanings ascribed to them by Section 31-12-103, C.R.S. unless the context clearly indicates a different meaning.

Sec. 15-1-60. Three-Mile Limitation and Three-Mile Plan.

(a) Except as otherwise provided in this section, no annexation may take place that would have the effect of extending the Town's municipal boundary more than three miles in any direction from any point of such municipal boundary in any one year. Within the three-mile area, the contiguity required by Section 31-12-104(1)(a), C.R.S., may be achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway. Such three-mile limit may be exceeded if such limit would have the effect of dividing a parcel of property held in identical ownership provided that at least fifty percent of the property is within the three-mile limit. In such event, the entire property held in identical ownership may be annexed in any one (1) year without regard to such mileage limitation.

(b) The Town's Three Mile Plan and its Comprehensive Plan, as amended, shall serve as and shall constitute the "plan in place" referenced in Section 31-12-105(1)(e), C.R.S., unless a different plan, supplement, or revision is expressly adopted to serve as a plan in place. The plan in place may also be commonly referred to as the "Three-Mile Plan" and such plan shall be deemed automatically updated annually on January 1 of each year without further action by the Town unless a change or modification is necessary and is adopted by resolution or ordinance by the Town Board of Trustees. The absence of a specific reference in such plan to a particular parcel of land proposed for annexation shall not be interpreted as a statement of intent to not annex such parcel of land; it is the plan and intent of the Town Board to evaluate and to consider for potential annexation all property within three miles of the Town's then existing municipal boundaries upon submission of a petition or as otherwise permitted by this Article and the Colorado Municipal Annexation Act of 1965. The absence in the plan of a specific reference to any character or extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities, and terminals for water, light, sanitation, transportation, and power to be provided by the Town and the proposed land uses for the area shall not be interpreted as a failure to comply with Section 31-12-105(1)(e), C.R.S., but shall be interpreted as a plan by the Town to determine the appropriate character or extent of land uses and services through the Town's applicable processes of annexation, planning, and development approvals on a case by case basis. The plan in place may also be amended or modified to more specifically identify the character or extent of land uses and services at any time or contemporaneously with any annexation.

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Sec. 15-1-70. Petition fee and charges for processing annexation petitions.

(a) It is the Town's intent that petitioners for annexation bear the costs of processing a petition subject to any waiver of costs as permitted by this section. The minimum petition fee for annexation shall be two thousand dollars ($2,000.00) for each legally described lot or parcel of land within the area proposed for annexation; provided, however, that the Town Manager may administratively establish and modify as needed a different petition fee together with additional consultant fees for the processing of an annexation petition. In setting such fees, the Town Manager shall consider the anticipated or estimated costs to be incurred by the Town in reviewing and processing the annexation and obtaining necessary data, studies, and reports. The Town Manager shall administratively advise the Town Board of the petition fee and consultant reimbursement fees for each petition. No petition shall be processed unless accompanied by the applicable petition and consultant reimbursement fees and such petition shall be deemed incomplete until such fees are paid in full.

(b) The Town Manager, in consultation with the Town Board, may require as a condition of annexation the payment of additional amounts by the petitioners or others deemed necessary, beneficial, or advantageous by the Town, including but not limited to payments to offset anticipated costs or expenses of providing services to the annexed property or residents of the annexed area, mitigate anticipated impacts to the annexed area or to surrounding lands, to upgrade infrastructure within the Town, and/or to defray any costs or expenses of the Town.

(c) The Town may waive all or any portion of a fee or charge for annexation where the Town Board administratively finds in its sole discretion that the proposed annexation may provide substantial benefits or advance important economic or other goals and objectives of the Town.

(d) The Town may refund all or any portion of fees paid by a petitioner that were not applied to the processing of the annexation petition. Such refund shall require that the Town Board administratively find in its sole discretion that the petitioner has demonstrated sufficient cause or reason for a refund following a denial of a petition by the Town or following the voluntary withdrawal of a petition by the petitioner. No refund shall be issued where the unexpended fees total less than three hundred dollars, the annexation was subject to an election, or the Town incurred unpaid costs and expenses in administrative staff time, attorney fees. or consultant fees that were not anticipated or estimated in the setting of the petition fee paid by the petitioner.

Sec. 15-1-80. Annexation process; ordinance.

All annexations shall be accomplished in general accordance with the procedures set forth in the Colorado Municipal Annexation Act, as amended, through an ordinance duly adopted by the Town Board. Any petitions for annexation or petitions for annexation election shall contain the information required by the Municipal Annexation Act of 1965, as the same may be amended from time to time. The Town may institute the procedure to zone land proposed for annexation on or

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after the submittal of an annexation petition, provided that the proposed zoning ordinance shall not be passed prior to the date when the annexation ordinance is adopted.

Sec. 15-1-90. Optional referral to Planning and Zoning Commission.

The Blue River Planning and Zoning Commission shall not be required to consider or recommend action on a petition for annexation. The Board of Trustees may, at its discretion, refer such petition to the Commission for a recommendation or for comment as to any aspect of a proposed annexation. Following a referral, the Town Board may revoke a request for recommendation or comment, disregard such recommendation or comment, or deem a recommendation or comment untimely if not submitted to the Town Board prior to the hearing required by Section 31-12-109, C.R.S.

Sec. 15-1-100. Annexed property subject to all laws.

(a) Unless otherwise provided by an agreement or by ordinance governing the annexation of property into the Town, the ordinances, resolutions, rules, and regulations of the Town shall remain fully valid and effective as to any property annexed into the Town.

(b) The Town Board may require the annexing owner to agree to bring the annexed property into conformance with Town ordinances, resolutions, rules, and regulations either at the time of annexation or within a time period stated in an agreement.

Sec. 15-1-110. Annexation agreements.

(a) The Town is authorized to enter into one or more agreements with property owner(s) memorializing understandings of the property owner(s) and the Town and/or imposing terms, conditions, obligations, and rights upon annexation mutually acceptable to the parties. An annexation agreement is not required as a condition of an annexation except upon demand by the Board of Trustees. An annexation agreement may suspend, supersede, or waive the applicability or application of a provision of the Town Code or any ordinance, resolution, rule, or regulation of the Town when deemed in the Town's best interests by the Board of Trustees; provided, however, that nothing contained in such agreement shall suspend, supersede, or waive any provision of any ordinance, resolution, rule, or regulation of the Town unless:

(1) such agreement explicitly identifies a provision of an ordinance, resolution, rule or regulation of the Town that is intended to be superseded by the agreement; or

(2) a provision of such agreement directly and irreconcilably conflicts with obligations and rights of the parties otherwise made applicable by a provision of an ordinance, resolution, rule, or regulation of the Town.

(b) Annexation agreements shall be deemed legislative decisions of the Town and approved by ordinance.

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Section 2. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 3. Repeal. Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

Section 4. Minor Revision or Correction Authorized. The Town Manager, in consultation with the Town Attorney, is authorized to make minor revisions or corrections to the codified version of the provisions of this Ordinance provided that such revisions or corrections are grammatical, typographical, or non-substantive and do not alter or change the meaning and intent of this Ordinance.

Section 5. Effective Date. The provisions of this Ordinance shall become effective thirty (30) days after publication following final passage.

AMENDED, PASSED, ADOPTED AND ORDERED PUBLISHED at a regular meeting of the Board of Trustees of the Town of Blue River, Colorado, held on the ____ day of _____, 2021.

DRAFT

_____
Mayor

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM:

_____
Town Attorney

Published in the Summit County Journal _____, 2021.

Notes Concerning New Chapter 16A – Site Planning

Blue River (as with many small communities) employs a typical three step land use and development control scheme: (1) Zoning; (2) Subdivision; (3) Building Permit. These steps are described in Chapters 16, 17, and through adoption of the Building Codes.

In practice, however, Blue River has also used a design guideline review step for development approval. The underlying regulations that impose this additional review is arguably incomplete in that the Architectural Design Guidelines (DG) upon which this extra review is based do not include many of the common governmental regulatory processes and controls (and language) that would enable the DG to be used in a relatively objective manner equal to Zoning and Subdivision laws. The current DG are more akin to a homeowner association set of private covenants and controls imposed by contract and not as laws.

It is proposed to re-write the DG into a new Chapter 16A that would be titled "Site Planning." The basic structure of this new Chapter 16A would be as follows:

1. Any landowner seeking to construct a new residential dwelling unit or substantially modify an existing dwelling unit would be required to first receive site plan approval from the Planning & Zoning Commission (P&Z). Working with the Town Manager and the P&Z, the new Chapter would be specific as to what types of development require SP approval and would seek to implement the current division between what projects must be processed through the DG and what projects can proceed straight to building permit.

2. Chapter 16A would be divided into two principal parts (much like the current DG with a reversal of the two parts to set process before regulation):

    - **Process** regulations to dictate when design approval is required, what needs to be submitted for review, and how the application for site plan approval will be processed; and

    - Substantive design **regulations** will dictate the appropriate design of the structures and the lot (the shapes, mass, roof, color, materials, walls, driveway, access, lighting, etc.).

    A fair amount of the new Chapter 16A will follow the provisions of the current DG, however, significant "tightening" needs to be undertaken in the regulations to reduce the amount of discretion that can be and is exercised by the P&Z. It is anticipated that the new Chapter 16A will be a shorter and less complex set of site regulations than found in the current DG. The P&Z members will need do much of the final drafting of this new Chapter16A after an initial revision is completed by the Town Attorney. There may be substantive policy questions that need to be addressed by the P&Z and possibility the Board of Trustees during the finalization of Chapter 16A.

3. The P&Z will still be the ultimate or final decision-making body for a site plan application – subject to appeal to the Board of Trustees. This appeal process was recently enacted and approved by the Board.

4. The P&Z members will be prohibited from engaging in the application or administration of the Building Codes and the administration of the building code will remain within the authority of the Building Official. This prohibition is necessary because the P&Z is required to serve as the appellate body (judge) over decisions made by the Building Official and the P&Z cannot serve as both the "prosecutor and judge." P&Z should not interject their authority into the administration of the Building Code.

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