

DISTRICT COURT, JEFFERSON COUNTY,
COLORADO

100 Jefferson County Parkway
Golden, Colorado 80419

Plaintiffs: LOOKOUT MOUNTAIN RESIDENTS
UNITED, a Colorado nonprofit corporation; CODY
PARK NEIGHBORHOOD ASSOCIATION, a Colorado
nonprofit corporation; MARK ANDERSON; DEAN
STAUFFER; SHELAGH STAUFFER; MICHAEL
GLEASON; DOROTHY GLEASON; JOHN LANGE;
DIANE LANGE; HAMILTON H. McDOWELL;
BERNADETTE B. McDOWELL; RONALD STEPHEN
JONES, Trustee of the Ronald Stephen Jones Trust;
PATRICIA MARIE MICHEL; PAUL KALKWARF;
BONNIE SAXTON; PETER N. LYNCH, III; NANCY
L. LYNCH; MICHAEL PRATT; TERRIE PRATT;
ANDREW MARTINEZ; EMILY MARTINEZ; TODD
STORY; BRUCE KEITH; HERBERT YOUNG;
SHARON YOUNG; CAROLE JEFFREY; KEVIN
JEFFREY; ROBERT M. HEINE; ANNE R. HEINE;
DENNIS LOCKE; and ANNE LOCKE

Defendants: BOARD OF COUNTY
COMMISSIONERS OF THE COUNTY OF
JEFFERSON; DONALD ROSIER, in his capacity as a
Member of the Board of County Commissioners of
Jefferson County; JOHN ODOM, in his capacity as a
Member of the Board of County Commissioners of
Jefferson County; and ACTIVATION MINISTRIES
INTERNATIONAL

ATTORNEYS FOR PLAINTIFFS:

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COURT USE ONLY

Case Number: 2012CV1353

Div.: Ctrm.:

***PLAINTIFFS' RESPONSE IN OPPOSITION TO MOTION TO DISMISS CERTAIN
CLAIMS IN THE COMPLAINT***

COME NOW the Plaintiffs, by and through their attorneys, HOLLEY, ALBERTSON & POLK, P.C., and submit the following Response in Opposition to the Motion to Dismiss Certain Claims in the Complaint filed by the Defendants, Board of County Commissioners, Donald Rosier and John Odom.

BACKGROUND

This case arises out of the adoption by the Board of County Commissioners of Jefferson County (the "Board") of a Resolution approving the grant of a special use application to Activation Ministries International ("AMI") allowing AMI to expand the use of its facility in a residential area of Lookout Mountain from 9,000 square feet to 30,000 square feet. The Board and AMI, by the filing of their Answers in this action, do not contest the Plaintiffs' right to appeal and seek reversal of the adoption of the Resolution pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

However, the Board and Commissioners Rosier and Odom have filed a Motion seeking dismissal of the mandamus claim in the Complaint filed pursuant to Rule 106(a)(2) of the Colorado Rules of Civil Procedure and the declaratory judgment claim in the Complaint filed pursuant to Rule 57 of the Colorado Rules of Civil Procedure and the Declaratory Judgment Act. The Board and Defendants Rosier and Odom also seek dismissal of Defendants Rosier and Odom as parties to this case. Plaintiffs oppose the Motion to Dismiss Certain Claims for the reasons set forth herein.

As is acknowledged by the Board and its members, for purposes of ruling on the Motion to Dismiss, the factual allegations of the Complaint must be accepted as being true and the Court must view those allegations in the light most favorable to the Plaintiffs. In this case, the factual allegations pertinent to the mandamus claim, the declaratory judgment action, and the individual claims against Commissioners Rosier and Odom, only in their capacity as members of the Board of County Commissioners, are as follows:

1. On March 13, 2012, the Board voted to approve Resolution No. CC12-086, approving AMI's special use application by a two to one vote, with Commissioners Rosier and Odom voting in favor of the Resolution.

2. On March 12, 2012, prior to the vote on the Resolution, a Motion for Disqualification of Commissioners Rosier and Odom from voting on the Resolution was submitted to Jefferson County by the Cody Park Neighborhood Association, one of the Plaintiffs in this litigation. The County admits receipt of the letter constituting the Motion for Disqualification on March 12, 2012, in paragraph 17 of its Answer.

3. No action was taken on the Motion for Disqualification in advance of the vote on the Resolution and neither Commissioner Rosier nor Commissioner Odom disqualified themselves from the vote (these facts are admitted by the County in paragraph 17 of its Answer).

4. Commissioner Rosier investigated the facts in this special use case independently by visiting the AMI facility, driving through the Lookout Mountain community surrounding the facility, observing the roads and traffic patterns in the neighborhood and observing traffic in the neighborhood outside of the scope of and in advance of the public hearing on the special use application. In addition, Commissioner Rosier indicated during the course of the hearing that one of the individuals who testified in support of the AMI application was a former teacher and that he may need to recuse himself. These facts are admitted in paragraph 15 of the County's Answer.

5. Immediately following the conclusion of the public hearing before the Board on February 28, 2012, Commissioner Odom approached and got into a friendly, familiar and lengthy conversation with a witness who had testified at the hearing on behalf of AMI. It appeared that this witness was a friend of Commissioner Odom and that Commissioner Odom had a very familiar relationship with this witness. During the course of the conversation, one of the pastors for AMI interjected herself into the conversation and participated in the conversation. The County has not denied these facts, but has stated it does not have sufficient information to form a belief as to their truth.

6. Contrary to the statement by the Board in the Motion to Dismiss, Plaintiffs do challenge the overall validity of the special use regulations within the Jefferson County Zoning Resolution.

ARGUMENT

A. PLAINTIFFS' MANDAMUS CLAIM PURSUANT TO RULE 106(a)(2) OF THE COLORADO RULES OF CIVIL PROCEDURE IS A PROPER CLAIM AND IS NOT SUBJECT TO DISMISSAL.

Plaintiffs have alleged and it cannot be disputed that members of the Board of County Commissioners when acting in a quasi-judicial capacity, such as in a rezoning case or a special use application case are to be treated as the equivalent of judges. In Wells v. Del Norte School District C-7, 753 P.2d 770 (Colo. App. 1987), a teacher sought review of a school board decision to dismiss her from her position as a tenured elementary school teacher. During a lunch recess in the hearing conducted by a hearing officer appointed by the school board, the hearing officer sat down to eat lunch at a restaurant table where counsel for the school board and a school board witness were eating. Although there was not evidence of any inappropriate discussion, conversations between the hearing officer and the witness were observed by the teacher and what was observed was not disputed. The Court of Appeals agreed that this "blatant appearance of impropriety cast such a doubt on the impartiality of the decision as to vitiate the proceedings." In doing so, the Court specifically determined:

When administrative proceedings are quasi-judicial in character, agency officials should be treated as the equivalent of judges [citing cases]. Under the Code of Judicial Conduct Canon 2, a judge should avoid ‘impropriety and *the appearance of impropriety* in all his activities.’ [emphasis added by the Court].

This determination was reiterated in Venard v. Department of Corrections, 72 P.3d 446 (Colo. App. 2003). In that case, a state correctional officer’s employment was terminated on an appeal from an administrative law judge decision to the State Personnel Board. A motion to disqualify one of the members of the Personnel Board was denied and the Court of Appeals reversed. The Court stated:

When, as here, an administrative proceeding is quasi-judicial in character, board members should be treated as the equivalent of judges [citing Wells]. C.R.C.P. 97 provides that a judge shall be disqualified in a case in which she is interested or prejudiced or ‘is so related or connected with any party or his attorney as to render an improper for [her] to sit on the . . . proceeding.’ Additionally, a judge should avoid ‘impropriety and the appearance of impropriety in all [her] activities,’ CJC Canon 2, and should ‘disqualify [herself] in a proceeding in which [her] impartiality might reasonably be questioned,’ CJC Canon 3 (C)(1).

It has been the long-standing law in Colorado that rezoning and special use determinations are quasi-judicial in character, see Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975). Thus, the members of the Board of County Commissioners are to be treated as judges in this action.

Venard v. Department of Corrections, *supra*, specifically adopts CRCP 97 as one of the criteria applicable to the disqualification of administrative officials acting in a quasi-judicial capacity. CRCP 97 provides:

A judge shall be disqualified in an action in which he is interested or prejudiced . . . or is so related or connected with any party or his attorney as to render it improper for him to sit on the trial, appeal, or other proceeding therein. . . . Any party may move for such disqualification and a motion by a party for disqualification shall be supported by affidavit. Upon the filing by a party of such a motion all other proceedings in the case shall be suspended until a ruling is made thereon. (emphasis added).

Thus, in this matter, upon the filing of the Motion for Disqualification of Commissioners Rosier and Odom, with supporting Affidavits, the Board was required to suspend all actions in this proceeding until a determination was made on the Motion for Disqualification. As the County has admitted, no action was taken on the Motion for Disqualification and the Board proceeded to

adopt the Resolution without consideration of and without acting upon the Motion for Disqualification.

Under these circumstances, relief in the nature of mandamus pursuant to Rule 106(a)(2) of the Colorado Rules of Civil Procedure is appropriate. In City of Trinidad v. District Court, 581 P.2d 304 (Colo. 1978), a suit was filed against the City of Trinidad. The City filed a motion to disqualify the judge and did not file an answer. The plaintiffs filed a motion for default and a clerk's default was entered against the City. Counsel for the City filed a writ of mandamus in Supreme Court, seeking an order directing the trial court to rule on the motion for disqualification. The Supreme Court entered such an order and stated: "The respondent judge must initially rule on the disqualification motion. If he fails to rule, a writ in the nature of mandamus is a proper remedy." (emphasis added).

The facts in this case are substantially identical to those in the Trinidad case. The Board and Commissioners Rosier and Odom have failed to take any action on the Motion for Disqualification, they are required to act upon that Motion one way or another and their failure to rule on the Motion for Disqualification is not discretionary. While the decision they make on the Motion for Disqualification may be discretionary, assuming that they accept as true the allegations of the Affidavits supporting disqualification, making a ruling one way or another is a ministerial function and a function which must be performed by the Board and the two individual Commissioners. Given the failure to rule, a mandamus action is a proper remedy.

Based upon the foregoing, dismissal of the CRCP 106(a)(2) claim in the nature of mandamus is inappropriate and the Motion to Dismiss that claim should be denied.

B. THE DECLARATORY JUDGMENT CLAIM IS A PROPER CLAIM AND IS NOT SUBJECT TO DISMISSAL.

The Declaratory Judgment claim in the Complaint seeks a declaratory judgment in favor of the Plaintiffs and against the Defendants on two separate grounds. First, Plaintiffs allege that the special use criteria set forth in the Zoning Resolution which purportedly governed the decision of the Board are invalid in that they fail to comply with the general requirements, purpose and intent of the Zoning Resolution, fail to adhere to the requirements of the Jefferson County Comprehensive Plan and the Central Mountains Community Plan, and fail to comport to Colorado Revised Statutes 30-28-106. Second, declaratory relief provides an alternative cause of action and claim for relief against the Board of County Commissioners and Commissioners Rosier and Odom for securing a judgment requiring disqualification of one or both of these Commissioners from acting on AMI's application.

1. Plaintiffs challenge the overall validity of the criteria for determining special use cases set forth in the Jefferson County Zoning Resolution and, therefore, a declaratory judgment claim is appropriate.

In its Motion to Dismiss, the County admits and acknowledges, "C.R.C.P. 57 does provide for review in the limited circumstance when, in addition to challenging the quasi-judicial determination of a governmental body, the plaintiff challenges the overall validity of a statute or

regulation [citing cases].” That is precisely the situation in this case. Plaintiffs allege that the County’s action was ultra vires and void based upon the failure of the special use criteria to comply with Colorado statutes, the Jefferson County Comprehensive Master Plan, the Central Mountains Community Plan and the Jefferson County Zoning Resolution. Since Plaintiffs are challenging the overall validity of the special use criteria set forth in the Zoning Resolution, by the County’s own admission, a declaratory judgment action is proper.

Although the Jefferson County Zoning Resolution is not before the Court at this time as part of the record, Section 1 N. 4. of the Zoning Resolution contains the “Criteria for Decisions and Special Use Cases” (the “Special Use Criteria”). The validity of the Special Use Criteria is challenged by the Plaintiffs because the Special Use Criteria do not include consideration of the provisions of the Comprehensive Plan applicable to the property and area in question, in this case the Central Mountains Community Plan.

Colorado Revised Statutes 30-28-106 provides:

It is the duty of a county planning commission to make and adopt a master plan for the physical development of the unincorporated territory of the county.

The Jefferson County Planning Commission has adopted the Central Mountains Community Plan as a Master Plan for the Central Mountain area of Jefferson County, including Lookout Mountain (the “CMCP”). The statute goes on to provide:

The master plan of a county or region shall be an advisory document to guide land development decisions; however, the plan or any part thereof may be made binding by inclusion in the county’s . . . adopted subdivision, zoning, platting, planned unit development, or other similar land development regulations. . .

At a minimum, the CMCP was required to be considered as an advisory document in the land development decision made on AMI’s application. At a maximum, the provisions of the CCMCP were binding requirements in the review of AMI’s application.

Section 1 A. of the Zoning Resolution states:

. . . This Zoning Resolution is enacted for the purpose of promoting the health, safety and welfare of the present and future inhabitants of Jefferson County by lessening the congestion on streets or roads, securing safety from fire and other dangers, providing light and air, avoiding undue congestion of population, facilitating the adequate provision of transportation, water, sewage, schools and other public requirements, securing protection of the tax base, and by other means in accordance with a Comprehensive Plan.

Thus, the Zoning Resolution provides that its purpose is to promote and protect the health, safety and welfare of Jefferson County residents by, among other things, acting “in accordance with a Comprehensive Plan.”

The Special Use Criteria are invalid to the extent that they do not reference the Comprehensive Plan as either an advisory document or a binding document in the review of special use cases. Indeed, the County ignores the Comprehensive Plan in reviewing special use cases, based upon the apparent position that the Special Use Criteria do not require an analysis or application of the provisions of the Comprehensive Plan. The failure to adhere to the provisions of the Comprehensive Plan in special use cases is memorialized in the County’s Special Use Process Guide, a copy of which is attached hereto as Exhibit A. It states, “The Special Use application is not reviewed against the recommendation of the Comprehensive Master Plan.” The failure to include consideration of the Comprehensive Plan within the Special Use Criteria violates Colorado Revised Statutes 30-28-106.

It is not timely at this juncture of the proceedings to fully brief the issue of the validity of the Special Use Criteria and present the issue of the validity of the Special Use Criteria to the Court for decision. It suffices to say that the Plaintiffs do challenge the overall validity of the Special Use Criteria and, given that challenge, relief in the nature of a declaratory judgment is appropriate and the declaratory judgment claim should not be dismissed.

2. A declaratory judgment action is a proper claim for relief to determine whether the Board of County Commissioners and Commissioners Rosier and Odom should have disqualified Commissioners Rosier and Odom from acting upon the AMI application.

CRCP 57(a) provides:

District and Superior courts within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

CRCP 57(b) provides:

Any person. . . whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arise under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

In this case, the Plaintiffs have all been adversely impacted and damaged by the adoption of the Resolution approving the AMI’s special use application. Their rights have been affected by the adoption of the Resolution and by the failure of the Board of County Commissioners and Commissioners Rosier and Odom to comply with the requirements of CRCP 97, governing the disqualification of administrative officials in quasi-judicial proceedings and by the failure of the Board of County Commissioners and Commissioners Rosier and Odom to comply with the

requirements of Canon 1 and Canon 2 of the Code of Judicial Conduct, Canons governing the actions and behavior of administrative officials, including members of the Board of County Commissioners, when acting in a quasi-judicial capacity.

More specifically, the actions and conduct of Commissioner Rosier violated the provisions of Rule 2.9 of the Code of Judicial Conduct, which states:

A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

In this case, Commissioner Rosier expressly admitted that he had conducted an independent investigation of the facts relevant to this land use case prior to the commencement of the public hearing by visiting the AMI property, driving all of the roads in the vicinity of the AMI property, observing traffic patterns in the vicinity of the AMI property, and observing other matters which may have had a bearing upon his decision. This “independent investigation” clearly violates the provisions of Rule 2.9, quoted above. Under Rule 2.11 of the Code of Judicial Conduct, Commissioner Rosier was required to disqualify himself based on his “personal knowledge of facts that are in dispute in the proceeding.” The Plaintiffs are entitled to a declaration of their rights under Rules 2.9 and 2.11.

Prior to the adoption of the Resolution, on February 28, 2012, Commissioner Odom approached and got into a friendly, familiar and lengthy conversation with a witness who had testified on behalf of AMI at the public hearing. It appeared that this witness was a friend of Commissioner Odom and that Commissioner Odom had a very familiar relationship with this witness. During the course of the conversation, one of the pastors for AMI interjected herself into the conversation and participated in the conversation. Plaintiffs filed a Motion to Disqualify Commission Odom based upon this appearance of impropriety and violation of Rule 1.2 of the Code of Judicial Conduct. Commission Odom’s actions and conduct were virtually identical to those of the hearing officer in Wells v. Del Norte School District C-7, *supra*, a case in which the Court of Appeals characterized similar conduct as a “blatant appearance of impropriety cast[ing] such a doubt on the impartiality of the decision as to vitiate the proceedings.”

Under these circumstances, Plaintiffs are entitled to a declaration of their rights under Rule 97 and the applicable provisions of the Code of Judicial Conduct.

C. COMMISSIONERS ROSIER AND ODOM, IN THEIR CAPACITY AS MEMBERS OF THE BOARD OF COUNTY COMMISSIONERS, ARE PROPER PARTIES TO THIS ACTION.

With all due respect, the County’s Motion to Dismiss totally ignores the reason for the joinder of Commissioners Rosier and Odom as parties to this action. The County’s Motion is premised on the supposition that the claims in this case are limited to a standard CRCP 106(a)(4) review of the decision of a lower tribunal. That is not the case.

Commissioners Rosier and Odom have been joined in this case, solely in their capacity as members of the Board of County Commissioners, based on the Motion for Disqualification requesting and seeking their disqualification from acting on the AMI special use application. As stated in more detail above, upon the filing of the Motion for Disqualification, any further action on the AMI application should have been discontinued until a decision was made on the Motion for Disqualification, as set forth in CRCP 97 and applicable case law. The Motion for Disqualification was not acted upon and, nevertheless, the Resolution was adopted.

As the cases discussed above indicate, administrative officials acting in a quasi-judicial capacity are to be treated as judges and, as such, CRCP 97 and the Code of Judicial Conduct apply to their actions. The Code of Judicial Conduct "state[s] overarching principles of judicial ethics that all judges must observe." It was the individual duty of Commissioner Rosier and Commissioner Odom as "judges," to act upon the Motion for Disqualification and to disqualify themselves from voting on the AMI application. Rule 2.11 of the Code of Judicial Conduct places the obligation on the judge to disqualify himself or herself. In this case, that obligation rests with Commissioners Rosier and Odom, each individually, in their capacity as members of the Board of County Commissioners.

CRCP 57 provides:

When declaratory relief is sought, all persons shall be made parties who may have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding."

In this case, Commissioners Rosier and Odom, in their capacity as members of the Board of County Commissioners, have an interest (i.e., their ability to act as "judges" in the AMI application) which would be affected by a declaration of their disqualification to do so. As such, they are proper parties and they should not be dismissed from this action.

CONCLUSION

For all of the reasons set forth herein, the County's Motion to dismiss Certain Claims in the case should be dismissed.

HOLLEY, ALBERTSON & POLK, P.C.

By:  /s/ Scott D. Albertson

Scott D. Albertson #8022

Attorneys for Plaintiffs

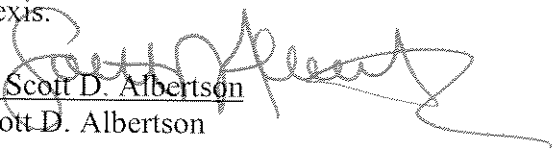
1667 Cole Boulevard, Suite 100

Lakewood, Colorado 80401

Telephone: (303) 233-7838

CERTIFICATE OF SERVICE

On this 21st day of Mar, 2012, the undersigned hereby certifies that the within Plaintiffs' Response in Opposition to Motion to Dismiss Certain Claims in the Complaint was served upon the Court and counsel via LexisNexis.


/s/ Scott D. Albertson
Scott D. Albertson

In accordance with C.R.C.P. 121, § 1-26(9), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

Jefferson County
Planning & Zoning



Application Process
GUIDES

100 Jefferson County Parkway, Suite 3550
Golden, Colorado 80419-3550
Phone(303)271-8700 • Fax(303)271-8744
<http://planning.jeffco.us>

This guide describes the highlighted process in the graphic below. Additional process guides are available for the other application types listed.

Special Use Process

This guide describes the Special Use Process (SUP). This guide should be used in conjunction with the Zoning Resolution.

All properties within Jefferson County have a zoning designation. This zoning designation establishes the type and intensity of the uses allowed on the property. The standard zoning designations in the Zoning Resolution also identify additional uses that may be considered for properties called Special Uses. Special Uses are uses that could potentially occur depending on the impacts to and compatibly with the surrounding area. Consideration of how impacts to the surrounding area can be mitigated is also a part of the special use review. The parcel subject to the special use must conform to the minimum lot and building standards of the underlying zone district. The regulatory requirements for a Special Use application are located in the Zoning Resolution. Special Use applications are presented to both the Planning Commission and the Board of County Commissioners in public hearings.

Exemption

Residential Structure Exclusion
Exemption from Platting
Minor Adjustment

Entitlement

Rezoning
Site Approvals
Special Use
Telecommunication Special Use
Certificate of Designation

A Special Use process is required when a land use desired by a property owner is listed as a Special Use within a standard zone district requirements within the Zoning Resolution.

Miscellaneous

Vacation
Special District Service Plan
Deeds

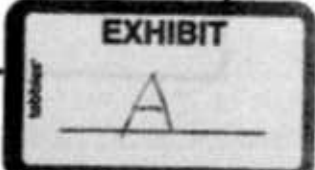
Subdivision

Preliminary and Final Plat
Preliminary Plat
Final Plat
Rural Cluster

Development

Site Development Plan
Land Disturbance
Floodplain
Telecommunications Permit
Building Permit

EXHIBIT



Optional Pre-Application

The Pre-Application process was created to provide applicants with a quick review of development proposals based on limited information. The review is intended to provide information about the regulations and process that will assist an applicant in making key decisions about the development proposal prior to making a formal application. Refer to the Zoning Resolution and the Pre-Application Guide for additional details.

Submittal Requirements

The submittal documents required for an application will vary based on the specifics of each unique application. Prior to the Formal Application, the case manager will provide the applicant with information identifying the type and number of required documents for the application. A complete explanation of the submittal requirements can be found in the Submittal Requirement Section of the Zoning Resolution.

Special Use Process

The information provided below is intended to be a brief overview of the Special Use process. For a complete explanation of the Special Use requirements, please refer to the Zoning Resolution.

Step 1

Community Meeting

This meeting should be conducted in the general vicinity of the property involved in the rezoning application and is intended to be a forum for an information exchange between an applicant and community members. The Community Meeting must be held prior to making a Formal Application. (Refer to the Zoning Resolution and the Community Meeting Guide for additional details)

Step 2

Sufficiency Review

The applicant will submit one copy of each document required for the formal application. The assigned Case Manager will review the documents to determine if they are complete. The Case manager will then prepare a letter explaining any deficiencies in the submittal documents. The letter will include a referral matrix that identifies County divisions and other agencies that will receive submittal documents. The applicant shall revise the submittal information as may be required to comply with County standards.

Step 3

Formal Application Submittal

The applicant shall submit all documents identified in the Case Manager's response to the Sufficiency Review.

Step 4

Referral Process

The Zoning Resolution anticipates that an application will be sent out on two referrals before it is ready for the hearing process; however, at any time after the 1st Referral the Case Manager may decide that the application is in substantial conformance with all applicable regulations and is ready for hearing. Additional fees will be incurred for a third referral and any subsequent referral thereafter. The general referral steps are as follows:

The Case Manager will refer the application and supporting documents to County divisions and other agencies.

- 1. After the referral, the Case Manager will provide the applicant with a Staff response inclusive of referral agency responses, and will include a referral matrix for the next referral if applicable.*
- 2. The applicant will address, in writing, any issues identified by the Case Manager or any referral agency and resubmit revised documents for the next referral.*

Step 5

Hearing Documents

The hearing documents shall be identified by the Case Manager.

Step 6

Planning Commission

The application will be presented to the Planning Commission in a public hearing. The Planning Commission will make a recommendation on the application to the Board of County Commissioners.

Step 7

Board of County Commissioners Hearing

The application will be presented to the Board of County Commissioners in a public hearing. The Board of County Commissioners will make the final decision on the application.

Step 8

Post Hearing Review

When the applicant complies with any approval conditions, and submits the executed mylar and other final documents, Staff will obtain the required County approval signatures and have the documents recorded.

Evaluation/Decision

A Special Use application is presented to both the Planning Commission and the Board of County Commissioners at public hearings. The Planning Commission will review the request and Staff recommendation, receive testimony and evidence on the application, and will recommend approval, conditional approval, or denial of the request to the Board of County Commissioners. The Board of County Commissioners shall review the request, Staff recommendation and Planning Commission recommendation, receive testimony and evidence on the application, and will approve, conditionally approve, or deny the application.

Note: During the hearing process, the Planning Commission or the Board of County Commissioners may vote to continue the application to a subsequent public hearing. The most common reasons for a continuance are: 1) To provide for additional public testimony; 2) To allow for the applicant or Staff to address concerns related to an application; 3) At the request of the applicant.

A Special Use application is evaluated against the criteria listed below. The Special Use application is not reviewed against the recommendation of the Comprehensive Master Plan.

1. The impacts of the proposed use upon property in the surrounding area, including but not limited to:
 - Traffic impacts, volume of trips, safety and access
 - Fire Hazards
 - Visual and aesthetic impact, including bulk, scale of buildings as they relate to the surrounding uses
 - Solar Access
 - Noise
 - Geologic Hazards
 - Drainage, erosion and flood hazards
 - Radiation Hazards
 - Community Character
 - Adequate water quality and quantity and sewage disposal availability
 - Availability of public facilities to serve the proposed use
2. The availability of methods to mitigate any negative impacts of the proposed use upon the surrounding area, including, but not limited to, construction of necessary public facilities.
3. The compatibility of the proposed use with existing and allowable land uses in the surrounding area.
4. The effects upon the health, safety and welfare of the residents in the surrounding area.

Community Involvement

Keeping the public informed of development applications is a high priority in Jefferson County. Notification requirements for a Special Use application include community mailing, sign posting and newspaper publication. The following summarizes the notification required at different stages of the application, and the method by which the public may provide input:

- **Community Meeting** – The notification for a Community Meeting will be through community mailing and sign posting. The purpose of the Community Meeting is for the applicant to present their proposal to the community. The community will have an opportunity to ask questions and make suggestions on the proposal. The applicant may choose to amend the application request based on the comments received.
- **Formal Application** – The notification at the time of Formal Application is by community mailing. This mailing notifies

the public that an application has been submitted and that documents related to the application are available for review. Any comments submitted by the public will be provided to the applicant and will also be included as a part of the staff report prepared for the public hearing. Again, the applicant may choose to amend the application request based on the comments received.

- **Public Hearings** – Notification for Public Hearings will be through community mailing, sign posting and newspaper publication. Any member of the public may testify on an application in a Public Hearing. The public may also send in letters or comments to the case manager. All comments received throughout the application process will be included as a part of the staff report prepared for the Public Hearings.

Note: The notification requirements are explained in detail in the Zoning Resolution and the Notification Guide.

What role do public comments play in the process?

Applicant: The applicant may choose to amend the application request based on the comments received by the public.

Staff: Staff will review the comments and may provide suggestions to the applicant in order to address the public comments; however, the basis for a recommendation by Staff on the application is limited to the criteria identified above in the Evaluation/Decision section.

Planning Commission and Board of County Commissioners: The Planning Commission and the Board of County Commissioners will consider public comments, and may use those comments as a factor in their decision on an application.

Special Use Format

The main component of a Special Use Document is the written restrictions that identify the uses and standards for the subject property. A graphic may also be required by Planning and Zoning to show the configuration of use areas and other features. The typical format for the Special Use Document (with a graphic) is a 24" X 36" size document; however, a smaller format may be allowed at the discretion of Planning and Zoning.

Written Restrictions: The written restrictions serve to establish the specific regulations and requirements for the lot or parcel. The written restrictions shall list permitted and accessory uses, and may include specific standards for signs, fences, lighting, parking, buildings, lots, architecture, open space and landscaping. The written restrictions may also address general provisions dealing with animals, pollution control, hours of operation, etc.

Graphic: When required, the graphic shall depict the layout of the parcel and proposed use areas, and may show other features such as the location of existing buildings, buildable and non-buildable areas, hazard areas; etc.

The graphic shown below indicates the preferred layout of a Special Use. This example is provided for general reference only and should not be duplicated. Refer to the Zoning Resolution for additional format requirements.

SUP Graphic	Title of Special Use	Full legal description of property	Case number
<p>The graphic includes a main site plan showing a parcel bounded by South County Road to the east and West 3rd Avenue to the south. A vicinity map below shows the site's location relative to West 1st Avenue, South County Road, and Highway C-210. It also includes a graphic scale (1 inch = 100 feet) and a north arrow.</p>	<p align="center">Jefferson Office Center Special Use Sheet 1 of 1</p>	<p>Case Number _____</p>	
	<p>Written Restrictions:</p>	<p>Legal Description:</p>	
		<p>Signature Block:</p>	
		<p>Prepared by:</p>	
		<p>Jefferson Surveying 1234 S. County Rd. Golden, CO 80403 (303)555-1212</p>	

- Minimum margins:**
left=2"
Right/bottom=1/2"
Top=1"
- Vicinity Map**
- Scale & north arrow**
- * Written Restrictions**
- Leave room for revision block**
- Name, complete mailing address, telephone number of individual/firm preparing document**
- Certificates**

Fees Fees are on-line at our web site or call 303-271-8700. Make checks payable to Jefferson County Treasurer.