



**PLANNING COMMISSION
WORK SESSION
JANUARY 06, 2021
6:00 PM**

❖ **Training/Policy discussion**

REMOTE MEETING PUBLIC ATTENDANCE INSTRUCTIONS

The Public will be able to view and hear this meeting remotely at the following address:

<https://www.colorado.gov/pacific/idahosprings/city-council-live>



CITY OF IDAHO SPRINGS
1711 Miner Street
P.O. Box 907
Idaho Springs, CO 80452-0907
Telephone (303) 567-4421
FAX (303) 567-4955

Planner Communication

Date: December 29, 2020

To: Planning Commission Members

CC: Andrew Marsh, City Administrator

From: Barb Cole, Community Development Planner c/o Community Matters Institute

RE: December Activities of the Community Development Department

The Community Development (CD) planners are working on the following recent, current, and upcoming projects. Community Matters Institute (CMI) serves as the Community Development Planner for the City of Idaho Springs. While Community Development activities still seem to be increasing, and many projects are complex, this remains a position that only requires about 20 hours a week. Projects initially reviewed by Alan remain in progress.

Development applications and pre-applications:

- **Development Review Committee.** As needed Staff has "Development Review Committee" meetings to ensure consistent and clear communication with applicants on complex projects. These virtual meetings include: The City Administrator, City Engineer, Planner, Public Works Director, and sometimes the Building Official and City Attorney. Applicants appreciate one set of complete comments from staff.
- **Mighty Argo.** Planners are working with the Applicant on the documents needed to record. This includes the approved minor subdivision, multiple easements, and the required open space dedication with the Clear Creek County Clerk. Barb continues to monitor the 12 FDP conditions imposed by City Council. The applicant is near completion in addressing these issues with building permits in line for January. In addition, staff will be reviewing the new Lumina installation and one caretaker unit that will be located at the Upper Landing.
- **Proposed Apartment Complex at 2800 Miner Street.** At its regular meeting on December 2nd, Planning Commission recommended denial of the proposed 69 multifamily housing unit project at 2800 Miner Street. Because the Final Development Plan (FDP) and sustainability requests depended on the rezoning action, Planning Commission did not take action on the FDP.
- **1800 Colorado Blvd.** The planners reviewed the building permit application for improvements to the existing building. The applicant expects to submit the FDP for the addition soon. This addition will be reviewed at staff level since the addition is less than 50 % of the existing structure.
- **Annexation of City-owned Cemetery.** Work on the proposed annexation and rezoning is ongoing.
- **Minor Subdivision for the CRC park/Colorado Boulevard.** The City initiated minor subdivision plat was approved by both Planning Commission and City Council. This completes all necessary platting related to the realignment of Colorado Boulevard through the City of Idaho Springs results in the

creation of a larger CRC Park tract, creation a new tract for the Visitors Center, and creation of a new tract for the community garden.

- **Carlson Elementary School.** A proposed administrative plat amendment involves the vacation of a portion of the alley and the creation of a legal lot. The vacation of the alley way and plat have not yet been submitted. CCSD is waiting on their surveyor.
- **2060 Miner Street (Heritage Building).** Staff reviewed a zoning permit application for an acupuncture and herbal medicine business.
- **2237 E. Idaho Springs Road.** Staff approved a parking lot plan within the city limits for an adjacent marijuana business located in unincorporated Clear Creek County.
- **Soda Creek Highlands.** This applicant withdrew the application. The applicant has also requested information as well as requirements that must be met for a few alternative developments.

Other activities:

- **Minor Code Updates:** We are working with the City Attorney on a number of minor code updates- primarily the definition of accessory use and the allowance of parking on an adjacent lot under the same ownership. Currently parking is only allowed by Code on the same lot. Obviously, most parking for larger uses (Kum and Go, Safeway; the Elks Club and St. Paul's church) have parking on the adjacent lot.
- **Variance Board.** The Board approved the following applications at its regular meeting on December 16th.
 - **1628 Virginia Street.** The Board approved the substitution of 8 compact parking spaces for 5 of the required standard spaces. The Land Development Regulations (LDR) do not include a provision for compact parking spaces.
 - **1614 Wall Street.** The Board approved the following variances for Lot 2 in the Urso Subdivision in the R-3 (multifamily) zone district.
 - Reduce the required front setback from 20 feet to 12 feet, consistent with the other lots in the subdivision.
 - Reduce the minimum lot width from the 50 feet to the existing 46-foot lot width.
 - Reduce the minimum lot size from 5,000 square feet to the existing lot size of 3,920 square feet.The minimum lot width and lot size allow the construction of more than one dwelling.
- **Historic Preservation.**
 - **USFS.** The United States Forest Service (USFS) has drafted an agreement with the State, local governments, and Native American regarding procedures related to historic and archaeological resources following the occurrence of a disaster. Tentatively the agreement may go to City Council in January 2021.
- **Inquiries.** Staff responded to several inquiries by developers and real estate appraisers.
- **Email.** Staff continues to monitor and respond to emails on a daily basis.

/bc

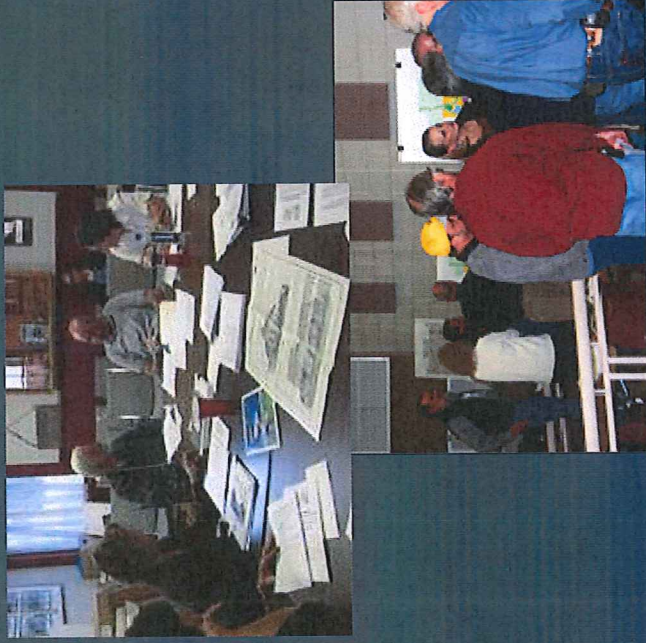
Filename: C:\...\ Current Activities Memo to PC 29 December 2020

Pre-Application Work Sessions and Community Meetings

City of Idaho Springs
Planning Commission
Meeting
6 January 2021



Potential Goals of Pre-Application Work Sessions



- **Applicant:** Receive early feedback
- **Commission:** Facilitate and encourage public involvement
- **Community:** Increase awareness and involvement
- **Staff:** Code already requires pre-application meeting with staff for most application types

Are there other goals?

Potential Pitfalls of Pre-Application Work Sessions

- Commissioner comments must avoid expressions of pre-decision or pre-judgment
 - Expressions of pre-judgment disqualify a Commissioner from participating at the formal hearing; exposes the final decision to legal challenge
- May confuse public if purpose is unclear (“I have to come back and testify *again*, if I like / don’t like this?”)
- May mislead applicant if feedback is overwhelmingly positive OR negative
 - Could deter potentially beneficial projects, when controversial
 - May create expectation of eventual City approval, when public opinion is positive

Due to these risks, the City Attorney’s Office recommends against pre-application work sessions with the Planning Commission or City Council

Should work sessions ever be required, given the relative risks & benefits?

Types of Applications

- Annexation
- Certificate of Appropriateness (by HPRC)
- Code Amendments
- Conditional Use
- Final Development Plan
 - Only type of application that now requires a Community meeting
 - For additions < 50%, review is by staff only
- Planned Development
- Rezoning
- Subdivision
- Vacation (streets, easements, etc.)
- Variances and Appeals (by Variance Board)
- 1041 Matters and Areas of State Interest

What type of application warrants a pre-application work session with Planning Commission?

Pre-Application Process



What Goals can a PC Work Session serve, distinct from Steps 1 & 2?

Submittal: Minimum Requirements

- Pre-application form and fee(s)
- Project narrative
- Existing conditions
- Proposed development
- Verification of Applicant as owner or representative

 **Idaho Springs Land Use Application**

1. This is the master land use form for the City of Idaho Springs. Please use to apply for:
(Please select one of the following as appropriate, and attach any other applicable documents.)

☐ Administrative (Subdivision)
☐ Conditional Use Waiver
☐ Planned Development Overlay
☐ Final Plat
☐ HPSC
☐ Temporary Use
☐ Other: _____

2. Project Name: _____
Please print type legibly

3. Contact Information: (a list of additional contacts may be attached)
Owner Name: _____
Address: _____
Telephone: _____ Fax: _____
E-mail: _____
Proposed User: _____
Proposed Zoning: _____
Proposed Use: _____

4. Property Description:
Address or Location: _____
Existing Zoning: _____
Proposed Zoning: _____
Proposed Use: _____
Proposed User: _____

5. Purpose: (describe intent of this application in 1-2 sentences)

6. Certification: (must be signed in blue ink)
I certify that I am the lawful owner of the parcel(s) of land affected by this application and hereby consent to this action.
Owner: _____ Date: _____ AND _____
I certify that the information and attachments I have submitted are true and correct to the best of my knowledge.
In filing this application, I am acting with the knowledge and consent of the property owner(s). I understand that all
materials and fees required by the City of Idaho Springs must be submitted prior to processing this application.
Applicant: _____ Date: _____

Lead Use Application Form

Should a pre-application fee and deposit be required?

Submittal: Project Narrative

- Surrounding Area Description
- Site Description
- Project Description
- Compliance with Criteria for Approval
- Project statistics – floor area, parking, mix of uses

What information should the narrative include?

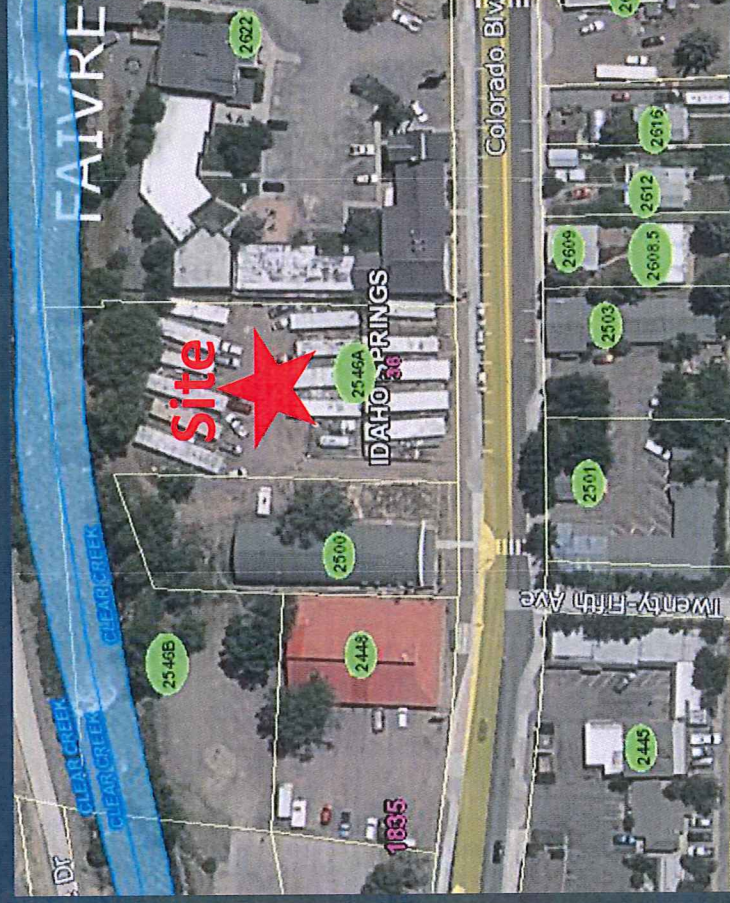
BUILDING A UNIT MIX			
UNITS	TYPE	SIZE (SF)	TOTAL SF
27	1 BED/1 BATH	662	17,874
6	2 BED/2 BATH	1,040	6,240
3	2 BED/2 BATH	1,040	3,120
3	2 BED/2 BATH	998	2,994
			30,228
BUILDING B UNIT MIX			
UNITS	TYPE	SIZE (SF)	TOTAL SF
8	2 BED/2 BATH	977	7,816
			38,044
TOTAL UNIT SF FOR BUILDING A & B:			
			38,044
UNIT SIZE WEIGHTED AVERAGE			
UNITS	TYPE	SIZE (SF)	
27	1 BED/1 BATH	662	
20	2 BED/2 BATH	1,009	
PARKING CALCULATIONS			
BUILDING A			
			33 COVERED GARAGE PARKING SPACES
			12 UNCOVERED SURFACE PARKING SPACES
			45 TOTAL PARKING SPACES AT BUILDING A
BUILDING B			
			8 UNCOVERED SURFACE PARKING SPACES
			53 TOTAL PARKING SPACES
NET RENTABLE AREA (SF)			
BLD A		30,228	
BLD B		7,816	
TOTAL		38,044	
GROSS BUILDING AREA (SF)			
BLD A		39,305	
BLD B		8,345	
TOTAL		47,650	
PODIUM PARKING AREA (SF)			
			14,091
			14,091

Submittal: Exhibits

- **Vicinity map** including surrounding properties and buildings
- **Existing site conditions:** survey or plan and photo(s)
- **Site plan**
- **Streetscape:** sizes of buildings along the street
- **Streetscape:** Elevation along street showing the project and buildings on other properties
- **Building elevations**

What exhibits should be provided?

Submittal: Vicinity Map



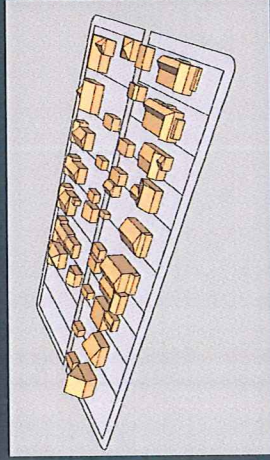
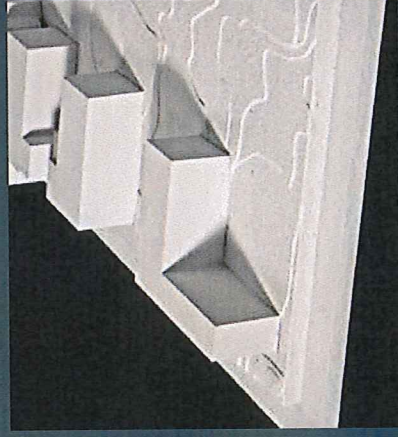
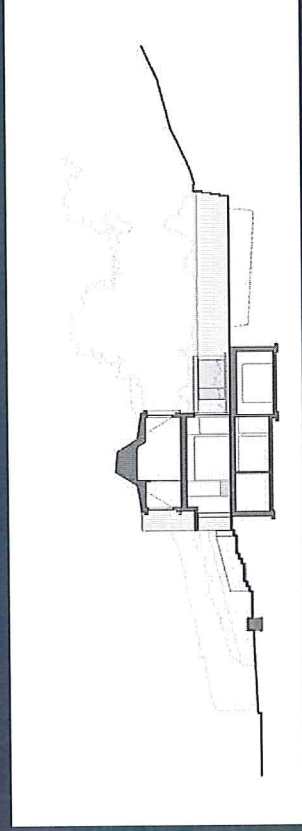
Clear Creek County's "Clear Map" can be used on the internet to make an inexpensive vicinity map. Clear Map includes:

- Property lines
- Streets and street names
- Buildings and parking areas
- Addresses
- Trees and streams

Note: public notice by mail is to owners of property within 300 feet

How far out should the surrounding area extend?

Submittal: Mass Model or Drawing



Size or mass of a project can be shown in several ways:

- 3D model
- 3D drawing
- Streetscape drawing or section(s) cut through a site

What is needed to show the mass of a project?

Work Session Parameters

- **Applicant** presentation of concept plan
- **Staff** input
- **Public** input
- **Question & Answer:** general feedback
- **No vote** by Commission
- **No expression of pre-judgment** (approval/disapproval) by Commission(ers)

MEMORANDUM

TO: **Idaho Springs Planning Commission**
FROM: Nina P. Williams, City Attorney's Office
CC: Carmen Beery, City Attorney
Andrew Marsh, City Administrator
DATE: January 6, 2021
RE: **Planning Commission Training & Refresher**

Quasi-Judicial Proceedings (generally)

► Quasi-Judicial versus Legislative

- ◆ **Quasi-judicial:** Narrow application, does not make policy; applies policy
 - Applies existing law to a specific set of facts
 - Specific land use approvals, licensing hearings, nuisance abatement
- ◆ **Legislative:** Broad application, announcing policy making law
 - Amending municipal code, resolutions and proclamations
 - Short term rental ordinance; nuisance, building, zoning and land use codes

► Impartiality is the standard, and may be affected by:

- (1) **Ex parte Communications:** defined as communications between the commission/board and one party, outside the presence of the other parties to the case, or affected individuals.
 - Eg) a neighbor came up to you at Smokin' Yards to express their concern with a development application
- (2) **Pre-judgment or bias:** You gave a speech or signed a petition opposing a housing or other land use approval.
- (3) **Conflict of Interest:** Eg) Financial benefit. Your spouse is a manager at Safeway

- What communication can occur between a planning commissioner and staff before a hearing?
- When can a planning commissioner direct the public to ask questions to staff?

► How do you cure?

- Either:
 - Disclosure (on the record)
 - Recusal

- Ask:
 - Was your ability to decide the case fairly, impartially and based solely on the evidence presented at the hearing affected?
 - Does an actual legal conflict exist?
 - Does a perceived conflict exist?
 - Did you express a pre-judgment bias?

♦ **Pro Tip:** When in doubt, ask the attorney!

Importance of Due Process relating to Quasi-Judicial Proceedings

- Following the process set out in Code
- Analyzing, reviewing and applying the factors or standards in an objective manner
- Importance of record the above vs. personal biases, opinions, or feelings
- “No state shall deprive any person of life, liberty or property without due process of law”
 - (14th Amendment of the United States Constitution)
- Everyone with interest in the case and all members of the decision-making body, hear the same evidence at the same time, from the same sources
- Ensures opportunity for fair hearing before unbiased decision makers and that each of the commissioners have the benefit of the same input
- Final decisions can be appealed by anyone adversely affected by decision (with legal standing)

Open Meetings Law

(Colorado Revised Statutes 24-6-401, et seq.)

- **Meeting** means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.
- **Local public body** means any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body.
 - Note the exclusion in the foregoing definition for “administrative staff.”
- **What meetings are required to be “open to the public” at all times?**
 - All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken.
- **Notice:** Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice,

a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting. The public place or places for posting such notice shall be designated annually at the local public body's first regular meeting of each calendar year. The posting shall include specific agenda information where possible.

- OML does not define “full and timely notice,” but provides an example of notice by posting. The General Assembly recently authorized this posting to be on the public entity’s website.
- Chance meetings and social gatherings: The requirements of the OML do “not apply to any chance meeting or social gathering at which discussion of public business is not the central purpose.”
- Not only “in-person” discussions apply to the Open Meetings Law
 - Emails
 - Zoom chat box
 - Text messages
 - Messaging during a meeting: commissioner to commissioner could violation OML; or commissioner to an applicant or the public may violate other quasi-judicial provisions
- Executive Sessions
 - E-sessions are contrary to general philosophy of openness in the OML. The policy basis for e-sessions is the recognition that the *public* interest can best be served if certain specified matters are discussed in private.
 - OML specifies permitted basis for e-sessions. Items include advice from the attorney, discussion of real estate transactions, personnel matters and instructing negotiators, among other basis.
 - The purpose of an e-session is to deliberate, *not* to make final decisions. OML is clear on this.
 - Process: Following announcements about the lawful purpose and basis of the e-session, a vote of 2/3 of the quorum present is required to go into executive session.

Conducting Public Hearings

Goal: That Commission members and public attendees leave the public hearing feeling it was fair and their views were heard and appreciated.

Some Suggestions:

- Announce the rules, order of hearing, and applicant’s rights at the beginning, then stick to them.
- If a large number have signed up, divide the available time and assign it at the beginning.
- Suggest speakers do not repeat prior testimony if they can state they agree with an earlier speaker.

City of Idaho Springs
Planning Commission Training

- Public testimony is to be directed to the Commission – speakers may not ask questions to staff or the applicant or the Commission (both staff and applicant will have an opportunity at the end of the testimony to answer questions from the Commission)
- Make sure that all attendees at the public hearing know they have the right to speak.
- Give witnesses your full attention.
- Thank all the speakers for appearing.
- Don't discuss other applications that are in process

Applicant Rights:

- To make a full presentation
- To present multiple witnesses
- To respond after public comment closes

Taking Action

Importance of findings and reasons for approval or denial

- “[A] record of proceedings before the Board must contain details of the evidence presented and proper grounds and reasons to support its decision.” *Murray v. Board of Adjustment of Larimer County*.
- Draw your conclusions from the evidence **in the record made during the hearing.**
- Your decision must be based on whether or not the application complies with the Municipal Code, not whether you as a Commissioner like or do not like the project, or feel a different project would be a better fit for the property.
- The applicant is in charge of what their application contains, not the Commission. Commissioners may not conduct separate research and attempt to enter it into the hearing record.
- Relate the evidence against the criteria in the Municipal Code.
- The staff-proposed motions are available and can include additional statements by the maker of the motion. If taking the opposite motion, provide Code-based, objective reasons.

Amendments to Motions

- Must be germane to the main motion
- Good way to add one or a series of conditions

Stick to the request before you

- Apply the same standards of relevance to your comments and decision that you would want to see in public comment.
- The Applicant is in charge of the application. If the request is for rezoning to C-1, for example, that is what you vote on.

Grounds for Denial

- *Appropriate* grounds for denial: anything in the applicable portions of the City's Land Development Regulations.
- *Inappropriate* grounds for denial: failure of developer not to volunteer a condition which could not independently be imposed by the City; Commissioner's personal belief/opinion that the project is the wrong use or density, when the zoning in place allows for it.

Failed Motions

- Failed motion means no recommendation to City Council
- If motion fails, someone on the prevailing side should immediately move to recommend the opposite position.

Conditions of Approval

- What can the City require as conditions of approval of a land use case? Are there different "rules" depending upon the type of land use case? Is the condition tied to an applicable provision of the Code?
- Commonly imposed conditions relate to site design or timing.
- Acceptable conditions to recommend be imposed (Examples):
 - Conditions which support enforcement of the technical requirements of City Code (eg: drainage easements)
 - Corrections to the plat
 - Requirements for maintenance of common elements (eg: to establish HOA)
 - Preservation of trees and vegetation
 - Redirecting traffic patterns
 - Conditions offered by the applicant
- Conditions which are not permitted:
 - Density restrictions (where inappropriate)
 - Matters outside scope of the applicable portions of Land Development Regulations
 - Conditions which have no Code basis
 - Conditions which actually redesign the application
- Technical Requirements
 - City has professional staff to review drainage plans and development design.
 - Trust your staff!
 - Good time to ask staff questions: before the hearing
- Examples of what conditions are often placed on different applications
 - Annexation (Code section 21-103)
 - Conditional use permit (21-105)
 - Final Development Plan – FDP (21-106)
 - Planned Development (21-107)
 - Rezoning (21-108)

Typical Outline/Order of Public Hearing

1. Chairperson/presiding officer opens the public hearing.
2. City Staff summarizes their report; explains what is being requested; applies relevant Code provisions; makes recommendations; confirms proper notice of the public hearing.
3. Applicant presents its request and basis for same; possibly brings forward persons speaking in support of the application.
4. Public Comment. Interested persons from the general public may speak, testify, address Commission. (3 minute limit)
5. Applicant may offer rebuttal, closing statement and may cross-examine any person who presented or testified.
6. City Staff may offer rebuttal, closing statement and may cross-examine any person who presented or testified.
7. Commission may ask questions of any party or any person who as offered comment at the hearing.
8. Chairperson closes public hearing.
9. Deliberation. Commission reviews all testimony and evidence presented, applies appropriate Code provisions, and then objectively deliberates the requested application(s). The Commission may ask additional questions of (or seek clarification or assistance from) the applicant, City Staff, Attorney, and anyone else present.
10. Call for Motion. Final decision on the application is made in the form of a motion by any member of the Planning Commission, and roll call vote.