

## MEMO

TO: Three Forks Planning Board

FROM: Lee Nellis, FAICP

DATE: October 21, 2024

### RE: Third Procedural Chapter

First, thanks to all for good meetings and good questions. This chapter of the draft regulations describes the roles of the actors in the land use regulatory process. It also addresses ethical issues and conduct at public meetings.

**Zoning Homework Reminder.** Thanks also for the landscaping photos you sent. We'll talk about landscaping in November. Your next homework assignment is about home businesses. Please read what the current city code says and think about the home businesses in your neighborhood. It may be that the current requirements are sufficient, but now is the time to address any concerns. We'll get to this topic in December or January.

## Chapter 3 – Actors in the Administration of these Regulations

### 11-3-1 What is the purpose of this chapter?

This chapter replaces the previous ordinance establishing the City Zoning and Planning Board; establishes a Planning Board and Zoning Commission and a Board of Adjustment; and describes the roles of the actors who make these regulations work in the City of Three Forks.

*Nomenclature? The Planning Board is officially the City Zoning and Planning Board (see 2-1-1 of the city code). But the statutes provide for planning boards or zoning commissions. For consistency with the statutes, we suggest that the entity be called the Planning Board and Zoning Commission.*

### 11-3-2 What is the role of an Applicant seeking a permit?

11-3-2.1 The Applicant for a permit required by these regulations must be the owner-of-record of the property on which development is proposed or a representative authorized by the owner-of-record's written and signed statement. That statement must accompany the application for a permit.

*The definitions chapter will also make it clear that the term 'applicant, which is used throughout the regulations, includes an authorized representative.*

11-3.2.3 Applicants must acknowledge the general principles of compliance adopted at 11-1-4 with their signature.

### **11-3-3 What is the role of the Staff in administering these regulations?**

11-3-3.1 “Staff” refers to the city employees and/or contractors assigned by the Mayor and Council to administer these regulations.

11-3-3.2 The Staff accepts applications for permits and determines whether they are complete; reviews and acts on or refers complete applications for review by the Planning Board and Zoning Commission as provided by 11.4 – Permits; reviews and refers appeals to the Board of Adjustment as provided by 11-? – Appeals including Variances; issues permits or denials; and ensures that development complies with these regulations and any conditions imposed upon permit approval.

11-3-3.2 The Staff also answers questions from the public; prepares and distributes meeting agendas, notices, and minutes; conducts pre-application conferences, assists the Planning Board and Zoning Commission, the Board of Adjustment, the Mayor and Council, and other city committees and officials in conducting meetings; maintains meeting transcripts; and otherwise implements the requirements of these regulations and state law.

11-3-3.3 The Staff is empowered to prepare application forms and checklists, and any other forms needed for the administration of these regulations. Use of the forms prepared by the Staff is required.

### **11-3-4 What is the role of the Planning Board and Zoning Commission in administering these regulations?**

11-3-4.1 A Planning Board and Zoning Commission (PBZC) that consists of NUMBER citizens who are appointed as provided by MCA 76-1-101, et seq and MCA 76-2-307 is hereby established.

11-3-4.2 The PBZC shall review these regulations and their administration during the previous year at each year’s January meeting.

*The annual review should be informal (not a hearing), but the public should be invited. I do not include it here because the staff is so busy, but in an ideal world, the annual review would result in an annual report.*

11-3-4.3 The PBZC may propose and conduct hearings on amendments to these regulations; will review and conduct hearings on amendments proposed by others, and may, by majority vote, forward proposed amendments to the Mayor and Council with a recommendation for action.

11-3-4.4 The Staff may seek the advice of the PBZC on applications for zoning permits, as provided by 11.4 – Permits.

11-3-4.5 The PBZC reviews, conducts hearings, and acts on applications for conditional use permits.

11-3-4.6 The PBZC reviews proposed subdivisions and makes recommendations to the Mayor and Council as provided by MCA 76-1-107 and 11-? – Subdivisions.

11-3-4.7 The PBZC is also responsible for the maintenance of Three Forks's Growth Policy, as provided by MCA-76-1-601-607.

**11-3-4 What is the role of the Board of Adjustment in administering these regulations?**

11-3-4.1 A Board of Adjustment (BOA) that consists of NUMBER citizens who are appointed as provided by MCA 76-1-321-322 is hereby established.

11-3-4.2 The BOA hears appeals from decisions of the Staff and PBZC, specifically including appeals for a variance, as provided 11-? - Appeals.

**11-3-5 What is the role of the Mayor and Council in administering these regulations?**

11-3-5.1 The Mayor and Council are Three Forks' elected governing body. They adopted these regulations and may, after receiving a recommendation from the PBZC, act on proposed amendments, as provided in 11.? – .

11-3-5.2 The Mayor and Council review and act on proposed annexations. See 11-? – Annexation.

11-3-5.3 The Mayor and Council, based on recommendations from the PBZC, review and act on proposed subdivisions as provided by 11.? - Subdivisions

**11-3-6 What are the rules of conduct for applicants, the public, and those involved in administering these regulations?**

11-3-6.1 It is expected that all who participate in the procedures established by these regulations will conduct themselves with respect for the process and the rights and dignity of others. Whoever is presiding over any meeting conducted pursuant to these regulations is empowered to ask anyone who cannot meet this expectation of civility to leave. Disrupting a public meeting may be a violation of MCA 45-8-101.

11-3-6.2 It is expected that anyone who wishes to speak during any of the procedures established by these regulations will be well prepared and confine their statements to the matter being considered. It is further expected that everyone involved will be courteous and refrain from personal attributions or attacks. Whoever is presiding over any meeting conducted pursuant to these regulations is empowered to ask anyone who cannot meet this expectation of civility to leave. Disrupting a public meeting may be a violation of MCA 45-8-101.

11-3-6.3 Staff, PBZC, and BOA members are subject to the Code of Ethics established by MCA 2-2-101, et seq. These regulations restate the provisions of that Code that are most likely to apply: conflicts of interest and ex parte contacts.

11-3-6.3.1 A conflict of interest occurs when a member of the Staff, the PBZC, or the BOA are applying for a permit; when their board is going to act on an application from a business in which they have a financial interest; or when their board is going to act on an application from a relative, by blood or marriage, or a business partner.

11-3-6.3.2 Any actor in the administration of these regulations who has a conflict of interest shall declare that conflict and refrain from participation in the review of the application.

11-3-6.3.3 An ex parte contact occurs when a member of the PBZC or BOA discusses a pending application for a permit required by these regulations with the applicant or anyone who is potentially affected by the proposed development outside a public meeting.

*The ability to interact with decision makers is seen by many as a benefit of small-town life. That is how it should and can be when policy or rules are being discussed and no specific decision affecting an individual's rights is being made. The case-by-case administration of these regulations must, however, be as even-handed as possible. No individual should have more or better access to the decision makers than any other.*

11-3-6.3.4 Members should avoid ex parte contacts, but since that may be impossible, the required standard of conduct is to disclose any such contacts for the record. Following such a disclosure, the PBZC or BOA may discuss the extent and nature of the disclosed contact and ask the member who made the disclosure to refrain from participation in the review of the application.

*The hearing procedures that appear later in this draft provide an opportunity for declarations or disclosures at the beginning of each hearing. Anyone making a declaration or disclosure should leave the room while the application is being reviewed and action taken. It is important that declarations and disclosures appear in the minutes in case there are questions.*

11-3-6.4 Failure to meet the expectations of civility adopted here or to declare a conflict of interest or to disclose an ex parte communication may be grounds for removal from the PBZC or BOA.

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