

30-28-105. Regional planning commission.

(1) The governing body or, in charter cities, the officials having charge of public improvements of any municipality or group of municipalities, together with the boards of county commissioners of any counties in which such municipality or group of municipalities is located or of any adjoining counties; or the governing bodies or, in charter cities, the officials having charge of public improvements of any municipality or group of municipalities, acting independently of the boards of county commissioners in which such municipality or group of municipalities is located; or the boards of county commissioners of any two or more counties may cooperate in the creation of a regional planning commission for any region defined as may be agreed upon by said cooperating governing bodies or officials or boards limited to a region within the jurisdiction of said cooperating governing bodies.

(2) The number and qualifications of members of any such regional planning commission, their terms, and the method of their appointment or removal shall be such as may be determined and agreed upon by said cooperating governing bodies or officials and boards; but each participating county or municipality shall be entitled to at least one voting representative. The regional planning commission shall elect its chairman, whose term shall be one year, with eligibility for reelection. The commission may create and fill such other offices as it may determine.

(3) Any board of county commissioners or other county officials or the chief executive officer of any municipality, from time to time, upon the request of the commission and for the purpose of special surveys, may assign or detail to the commission any members of staffs of county or municipal administrative departments or may direct any such department to make for the commission special surveys or studies requested by the commission.

(4) The proportion of the expenses of the regional planning commission to be borne respectively by any governing body cooperating in the establishment and maintenance of the commission shall be such as may be determined and agreed upon by the cooperating bodies or officials or boards, and they are authorized to appropriate or cause to be appropriated their respective shares of such expense.

(5) Within the amounts duly appropriated or otherwise received, the regional planning commission has the power to appoint such clerical and stenographic employees and such technically qualified staff as are necessary to do the work of the commission. The regional planning commission has the further power to contract for such other services, facilities, and personnel as it may require within its means, including the services of professional planners and other consultants.

(6) The regional planning commission is specifically empowered to receive and expend all grants, gifts, and bequests, specifically including state and federal funds and other funds available for the purposes for which the commission exists, and to contract with the state of Colorado, the United States, and all other legal entities with respect thereto. The regional planning commission may provide, within the limitations of its budget, matching funds wherever grants, gifts, bequests, and contractual assistance are available on such basis.

(7) A regional planning commission shall be a body politic and corporate, with power to sue and be sued. It shall be liable on its undertakings, contractual or otherwise. The individual members thereof and the cooperating governing bodies or officials and boards shall not be liable on the undertakings of the commission, contractual or otherwise, regardless of the procedure by which such undertakings, or any of them, may be entered into.

(8) The regional planning commission has the power to adopt articles to regulate and govern its affairs, whether as an incorporated association or otherwise, in the performance of the regional planning functions as defined by statute; such articles shall contain rules pertaining to the transaction of the commission's business. The regional planning commission shall keep records of its resolutions, transactions, contractual undertakings, findings, and determinations, which records shall be public records. The regional planning commission has and shall exercise all powers necessary or incidental to exercise fully the powers and authority conferred in this section.

(9) A regional planning commission may, to the extent provided for in a resolution adopted by a board of county commissioners, perform the functions of a county planning commission as provided for in this part 1.

(10) Nothing in this part 1 shall preclude participation by any county or municipality in more than one regional planning commission.

Source: L. 39: p. 295, § 4. **CSA:** C. 45A, § 4. **CRS 53:** § 106-2-4. **L. 56:** p. 181, § 1. **L. 59:** p. 617, § 2. **C.R.S. 1963:** § 106-2-4. **L. 72:** p. 498, § 1.

ANNOTATION

Law reviews. For article, "Land Controls in an Urban Society", see 28 Rocky Mt. L. Rev. 502 (1956). For article, "An Engineering -- Legal Solution to Urban Drainage Problems", see 45 Den. L.J. 381 (1968). For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977).

Applied in Bd. of County Comm'rs v. City of Thornton, 629 P.2d 605 (Colo. 1981); Theobald v. Bd. of County Comm'rs, 644 P.2d 942 (Colo. 1982).

30-28-106. Adoption of master plan - contents.

(1) 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. When a county planning commission decides to adopt a master plan, the commission shall conduct public hearings, after notice of such public hearings has been published in a newspaper of general circulation in the county in a manner sufficient to notify the public of the time, place, and nature of the public hearing, prior to final adoption of a master plan in order to encourage public participation in and awareness of the development of such plan and shall accept and consider oral and written public comments throughout the process of developing the plan.

(2) (a) It is the duty of a regional planning commission to make and adopt a regional plan for the physical development of the territory within the boundaries of the region, but no such plan shall be effective within the boundaries of any incorporated municipality within the region unless such plan is adopted by the governing body of the municipality for the development of its territorial limits and under the terms of paragraph (b) of this subsection (2). When a regional planning commission decides to adopt a master plan, the commission shall conduct public hearings, after notice of such public hearings has been published in a newspaper of general circulation in the region in a manner sufficient to notify the public of the time, place, and nature of the public hearing, prior to final adoption of a master plan in order to encourage public participation in and awareness of the development of such plan and shall accept and consider oral and written public comments throughout the process of developing the plan.

(b) Any plan adopted by a regional planning commission shall not be deemed an official advisory plan of any municipality or county unless adopted by the planning commission of such municipality or county.

(3) (a) The master plan of a county or region, with the accompanying maps, plats, charts, and descriptive and explanatory matter, shall show the county or regional planning commission's recommendations for the development of the territory covered by the plan. 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 or region's adopted subdivision, zoning, platting, planned unit development, or other similar land development regulations after satisfying notice, due process, and hearing requirements for legislative or quasi-judicial processes as appropriate. After consideration of each of the following, where applicable or appropriate, the master plan may include, but shall not be limited to:

(I) The general location, character, and extent of existing, proposed, or projected streets or roads, rights-of-way, viaducts, bridges, waterways, waterfronts, parkways, highways, mass transit routes and corridors, and any transportation plan prepared by any metropolitan planning organization that covers all or a portion of the county or region and that the county or region has received notification of or, if the county or region is not located in an area covered by a metropolitan planning organization, any transportation plan prepared by the department of transportation that the county or region has received notification of and that applies to the county or region;

(II) The general location of public places or facilities, including public schools, culturally, historically, or archaeologically significant buildings, sites, and objects, playgrounds, forests, reservations, squares, parks, airports, aviation fields, and other public ways, grounds, open spaces, trails, and designated federal, state, and local wildlife areas;

(III) The general location and extent of public utilities, terminals, capital facilities, and transfer facilities, whether publicly or privately owned, for water, light, power, sanitation, transportation, communication, heat, and other purposes, and any proposed or projected needs for capital facilities and utilities, including the priorities, anticipated costs, and funding proposals for such facilities and utilities;

(IV) The general location and extent of an adequate and suitable supply of water. If the master plan includes a water supply element, the planning commission shall consult with the entities that supply water for use within the county or region to ensure coordination on water supply and facility planning, and the water supply element shall identify water supplies and facilities sufficient to meet the needs of the public and private infrastructure reasonably anticipated or identified in the planning process. Nothing in this subparagraph (IV) shall be construed to supersede, abrogate, or otherwise impair the allocation of water pursuant to the state constitution or laws, the right to beneficially use water pursuant to decrees, contracts, or other water use agreements, or the operation, maintenance, repair, replacement, or use of any water facility.

(V) The acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, modification, or change of use of any of the public ways, rights-of-way, including the coordination of such rights-of-way with the rights-of-way of other counties, regions, or municipalities, grounds, open spaces, buildings, properties, utilities, or terminals, referred to in subparagraphs (I) to (IV) of this paragraph (a);

(VI) Methods for assuring access to appropriate conditions for solar, wind, or other alternative energy sources;

(VII) The general character, location, and extent of community centers, townsites, housing developments, whether public or private, the existing, proposed, or projected location of residential neighborhoods and sufficient land for future housing development for the existing and projected economic and other needs of all current and anticipated residents of the county or region, and urban conservation or redevelopment areas. If a county or region has entered into a regional planning agreement, such agreement may be incorporated by reference into the master plan.

(VIII) The general location and extent of forests, agricultural areas, flood control areas, and open development areas for purposes of conservation, food and water supply, sanitary and drainage facilities, flood control, or the protection of urban development;

(IX) A land classification and utilization program;

(X) Projections of population growth and housing needs to accommodate the projected population for specified increments of time. The county or region may base these projections upon data from the department of local affairs and upon the county's or region's local objectives.

(XI) The location of areas containing steep slopes, geological hazards, endangered or threatened species, wetlands, floodplains, floodways, and flood risk zones, highly erodible land or unstable soils, and wildfire hazards. For purposes of determining the location of such areas, the planning commission should consider the following sources for guidance:

(A) The Colorado geological survey for defining and mapping geological hazards;

(B) The United States fish and wildlife service of the United States department of the interior and the Colorado wildlife commission for locating areas inhabited by endangered or threatened species;

(C) The United States Army corps of engineers and the United States fish and wildlife service national

wetlands inventory for defining and mapping wetlands;

(D) The federal emergency management agency for defining and mapping floodplains, floodways, and flood risk zones;

(E) The natural resources conservation service of the United States department of agriculture for defining and mapping unstable soils and highly erodible land; and

(F) The Colorado state forest service for locating wildfire hazard areas.

(b) Any master plan of a county or region which includes mass transportation shall be coordinated with that of any adjacent county, region, or other political subdivision, as the case may be, to eliminate conflicts or inconsistencies and to assure the compatibility of such plans and their implementation pursuant to this section and sections [30-11-101](#), [30-25-202](#), and 30-26-301.

(c) The master plan of a county or region shall also include a master plan for the extraction of commercial mineral deposits pursuant to section [34-1-304](#), C.R.S.

(d) The master plan of a county or region may also include plans for the development of drainage basins in all or portions of the county or region. When county subdivision regulations require the payment of drainage fees, as provided in section [30-28-133](#) (11), the master plan shall include the plan for the development of drainage basins.

(e) In creating the master plan of a county or region, the county or regional planning commission may take into consideration the availability of affordable housing within the county or region. Counties are encouraged to examine any regulatory impediments to the development of affordable housing.

(f) (Deleted by amendment, L. 2007, p. 612, § 1, effective August 3, 2007.)

(g) The master plan of a county or region may include designated utility corridors to facilitate the provision of utilities to all developments in the county or region.

(4) (a) Each county that has not already adopted a master plan and that meets one of the following descriptions shall adopt a master plan within two years after January 8, 2002:

(I) Each county or city and county that has a population equal to or greater than ten thousand and the population of which has demonstrated an increase of either:

(A) Ten percent or more during the calendar years 1994 to 1999; or

(B) Ten percent or more during any five-year period ending in 2000 or any subsequent year;

(II) Each county or city and county that has a population of one hundred thousand or more.

(b) To the extent the county does not meet a description specified in subparagraph (I) or (II) of paragraph (a) of this subsection (4), the counties of Clear Creek, Gilpin, Morgan, and Pitkin shall adopt a master plan within two years after January 8, 2002.

(c) The department of local affairs shall annually determine, based on the population statistics maintained by said department, whether a county is subject to the requirements of this subsection (4), and shall notify any county that is newly identified as being subject to said requirements. Any such county shall have two years following receipt of notification from the department to adopt a master plan.

(d) Once a county is identified as being subject to the requirements of this subsection (4), the county

shall at all times thereafter remain subject to the requirements of this subsection (4), regardless of whether it continues to meet any of the descriptions in paragraph (a) of this subsection (4).

(5) A master plan adopted in accordance with the requirements of subsection (4) of this section shall contain a recreational and tourism uses element pursuant to which the county shall indicate how it intends to provide for the recreational and tourism needs of residents of the county and visitors to the county through delineated areas dedicated to, without limitation, hiking, mountain biking, rock climbing, skiing, cross country skiing, rafting, fishing, boating, hunting, shooting, or any other form of sports or other recreational activity, as applicable, and commercial facilities supporting such uses.

(6) The master plan of any county adopted or amended in accordance with the requirements of this section on and after August 8, 2005, shall satisfy the requirements of section [29-1-207](#), C.R.S., as applicable.

(7) Notwithstanding any other provision of this section, no master plan originally adopted or amended in accordance with the requirements of this section shall conflict with a master plan for the extraction of commercial mineral deposits adopted by the county pursuant to section [34-1-304](#), C.R.S.

Source: L. 39: p. 296, § 5. **CSA:** C. 45A, § 5. **CRS 53:** § 106-2-5. **L. 59:** p. 618, § 3. **C.R.S. 1963:** § 106-2-5. **L. 66:** p. 41, § 4. **L. 73:** pp. 467, 1054, §§ 4, 17. **L. 79:** (3)(a) amended, p. 1159, § 1, effective May 25. **L. 83:** (3)(d) added, p. 1236, § 4, effective April 23. **L. 97:** (3)(e) to (3)(g) added, p. 414, § 1, effective April 24. **L. 2000:** (1), (2)(a), and (3)(a) amended, p. 869, § 1, effective August 2. **L. 2001, 2nd Ex. Sess.:** (4) and (5) added, p. 21, § 1, effective January 8, 2002. **L. 2002:** (5) amended, p. 1036, § 83, effective June 1. **L. 2005:** (6) added, p. 223, § 2, effective August 8. **L. 2007:** IP(3)(a) and (3)(f) amended and (7) added, p. 612, § 1, effective August 3.

Editor's note: The introductory portion to subsection (3)(a) and subsections (3)(f) and (7) were contained in a 2007 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977). For article, "Synthetic Fuels -- Policy and Regulation", see 51 U. Colo. L. Rev. 465 (1980). For article, "Local Government Exactions from Developers after Beaver Meadows", see 16 Colo. Law. 42 (1987). For article, "Growth Management: Recent Developments in Municipal Annexation and Master Plans", see 31 Colo. Law. 61 (March 2002).

Function and duty of planning commission initially is to make and adopt a master plan for the physical development of the unincorporated territory of a county. To that end, the commission is empowered to employ experts and to make detailed surveys and studies to accomplish the harmonious development of the county in terms of the general welfare of the inhabitants and the efficient and economic use of its land. *Johnson v. Bd. of County Comm'rs*, 34 Colo. App. 14, 523 P.2d 159 (1974), *aff'd sub nom. Colo. Leisure Prods., Inc. v. Johnson*, 187 Colo. 443, 532 P.2d 742 (1975).

It is the duty of zoning officials to have proper information available in a public office so that those affected can determine their rights and privileges, as well as the duties and restrictions applicable to them. *Holly Dev., Inc. v. Bd. of County Comm'rs*, 140 Colo. 95, 342 P.2d 1032 (1959).

Master plan is advisory only. The master plan is only one source of comprehensive planning, and is generally held to be advisory only, and not the equivalent of zoning, nor binding upon the zoning discretion of the legislative body. *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

Conceptually, a master plan is a guide to development rather than an instrument to control land use. *Theobald v.*

Bd. of County Comm'rs, 644 P.2d 942 (Colo. 1982).

Planning commission's decisions regarding an amendment to the land use plan are advisory only and legislative in nature. *Stuart v. Bd. of County Comm'rs*, 699 P.2d 978 (Colo. App. 1985).

And does not confer standing to challenge the plan. Considered alone, a master plan is merely advisory and does not affect legally protected interests of property owners so as to confer standing to challenge the plan. *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

And is implemented through zoning ordinances. In order to have a direct effect on property rights, the master plan must be further implemented through zoning, with proper notice and hearing. *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

The master plan embodies policy determination and guiding principles; the zoning ordinances provide the detailed means of giving effect to those principles. *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

Master plan was not used as a guide to future zoning but was used, in effect, to rezone property into a classification in which residences are not permitted. *Vick v. Bd. of County Comm'rs*, 689 P.2d 699 (Colo. App. 1984).

Although master plans are generally advisory only, a county has the authority to require compliance with a master plan when the county includes compliance with the master plan in its legislatively adopted subdivision regulations so long as the master plan is drafted with sufficient exactitude that proponents of a subdivision are afforded due process, the county does not retain unfettered discretion, and the basis for a county's decision is clear for purposes of a reasoned judicial review. *Bd. of County Comm'rs v. Conder*, 927 P.2d 1339 (Colo. 1996).

Adoption authorized but not mandated. That statutory scheme in Colorado does not mandate the adoption of a master plan by a county, but rather it authorizes the board of county commissioners to appoint a planning commission whose duty it is to make and adopt a master plan. *Concerned Citizens v. Bd. of County Comm'rs*, 636 P.2d 1338 (Colo. App. 1981).

Adoption not prerequisite to zoning resolution. Absent a statutory requirement that a county adopt a master plan, a zoning resolution need not be preceded by the adoption of a formal written plan. *Concerned Citizens v. Bd. of County Comm'rs*, 636 P.2d 1338 (Colo. App. 1981).

County had authority under the Local Government Land Use Control Enabling Act, article 20 of title 29 (enabling act), to impose temporary moratorium on developmental approvals concerning certain land within county. The enabling act is designed to give local governments additional or supplemental powers for the purposes set forth in the act, including development in hazardous areas, protecting wildlife habitats, protecting areas of historical or archeological significance, controlling population density, and providing for the phasing in of infrastructure. These special considerations, in many instances, supplement those normally involved in creating a zoning master plan or administering a zoning regimen. Accordingly, the enabling act and this article (county planning statute) have different, though complementary, purposes, and the limitation on temporary zoning in § [30-28-121](#) does not prohibit or limit a moratorium on development for the purpose of studies under the enabling act. *Droste v. Bd. of County Comm'rs of Pitkin*, 141 P.3d 852 (Colo. App. 2005).

Applied in *City & County of Denver v. Bergland*, 517 F. Supp. 155 (D. Colo. 1981); *Bd. of County Comm'rs v. City of Thornton*, 629 P.2d 605 (Colo. 1981); *Beaver Meadows v. Bd. of County Comm'rs*, 709 P.2d 928 (Colo. 1985).

30-28-107. Surveys and studies.

In the preparation of a county or regional master plan, a county or regional planning commission shall make careful and comprehensive surveys and studies of the existing conditions and probable future growth of the territory within its jurisdiction. The county or regional master plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the county or region which, in accordance with present and future needs and resources, will best promote the health, safety, morals, order, convenience, prosperity, or general welfare of the inhabitants, as well as efficiency and economy in the process of development, including such distribution of population and of the uses of land for urbanization, trade, industry, habitation, recreation, agriculture, forestry, and other purposes as will tend to create conditions favorable to health, safety, energy conservation, transportation, prosperity, civic activities, and recreational, educational, and cultural opportunities; will tend to reduce the wastes of physical, financial, or human resources which result from either excessive congestion or excessive scattering of population; and will tend toward an efficient and economic utilization, conservation, and production of the supply of food and water and of drainage, sanitary, and other facilities and resources.

Source: L. 39: p. 297, § 6. **CSA:** C. 45A, § 6. **CRS 53:** § 106-2-6. **C.R.S. 1963:** § 106-2-6. **L. 79:** Entire section amended, p. 1159, § 2, effective May 25.

ANNOTATION

Statute does not support conclusion that consideration of demand-side alternatives is a prerequisite to a finding of reasonableness under statutory section requiring conformity to a county land use plan unless a variance is found reasonable. *Douglas County Bd. of Comm'rs v. Pub. Utils. Comm'n*, 866 P.2d 919 (Colo. 1994).

Assuming energy conservation is a prerequisite to a finding of reasonableness, this assumption does not lead invariably to the conclusion that demand-side alternatives must be taken into account. To the contrary, demand-side alternatives are only one of many possible conservation measures that could be considered. *Douglas County Bd. of Comm'rs v. Pub. Utils. Comm'n*, 866 P.2d 919 (Colo. 1994).

Applied in *Bd. of County Comm'rs v. City of Thornton*, 629 P.2d 605 (Colo. 1981); *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

30-28-108. Adoption of plan by resolution.

A county or regional planning commission may adopt the county or regional master plan as a whole by a single resolution or, as the work of making the whole master plan progresses, may adopt parts thereof, any such part to correspond generally with one or more of the functional subdivisions of the subject matter which may be included in the plan. The commission may amend, extend, or add to the plan or carry any part of it into greater detail from time to time. The adoption of the plan or any part, amendment, extension, or addition shall be by resolution carried by the affirmative votes of not less than a majority of the entire membership of the commission. The resolution shall refer expressly to the maps and descriptive matter intended by the commission to form the whole or part of the plan. The action taken shall be recorded on the map and descriptive matter by the identifying signature of the secretary of the commission.

Source: L. 39: p. 297, § 7. **CSA:** C. 45A, § 7. **CRS 53:** § 106-2-7. **C.R.S. 1963:** § 106-2-7.

ANNOTATION

This section deals with the powers and duties of the planning commission. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Commission may amend, add, or extend plan once adopted and approved. Once the master plan is adopted by the commission and approved by the board, the commission then may amend, extend, or add to the plan as time and circumstances dictate. *Johnson v. Bd. of County Comm'rs*, 34 Colo. App. 14, 523 P.2d 159 (1974), *aff'd sub nom. Colo. Leisure Prods., Inc. v. Johnson*, 187 Colo. 443, 532 P.2d 742 (1975).

Also, this section is applicable to the resolutions of county commissioners on the subject of zoning property. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Where a request for change in zoning originates before the planning commission this article contemplates that the question before the county commissioners shall be whether the recommendations of the planning commission shall be approved. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

A recommendation of the planning commission must be in the form of a resolution which itself identifies the property to be affected. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Therefore, in the absence of a resolution which identifies the property to be affected, there is nothing properly before the county commissioners to be approved or disapproved. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

In amending the zoning law, the official or body making the amendment is enacting law, binding on the public, and is not merely dealing with the rights of the owners of the particular property affected, and the act is legislative and based on present facts, rather than judicial and dependent on past facts. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Municipal ordinance precluded. Where a statute, such as this section, authorizes the adoption of zoning regulations by means of resolution, the municipality may not act by way of ordinance; but where the statute requires an ordinance for the attainment of the zoning restriction, a resolution is ineffective to accomplish the desired result. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

The pronouncements of the supreme court in cases dealing with zoning ordinances adopted by cities are applicable to the actions of county commissioners in connection with zoning "resolutions" which they are now authorized to adopt, unless some specific statutory provision authorizes a different procedure. *Gorden v. Bd. of County Comm'rs*, 152 Colo. 376, 382 P.2d 545 (1963).

Applied in Theobald v. Bd. of County Comm'rs, 644 P.2d 942 (Colo. 1982).

30-28-109. Certification of plan.

The county planning commission shall certify a copy of its master plan, or any adopted part or amendment thereof or addition thereto, to the board of county commissioners of the county. The regional planning commission shall certify such copies to the boards of county commissioners of the counties lying wholly or partly within the region. The county or regional planning commission shall certify such copies to the planning commission of all municipalities within the county or region. Any municipal planning commission which receives any such certification may adopt so much of the plan, part, amendment, or addition as falls within the territory of the municipality as a part or amendment of or addition to the master plan of the municipality, and, when so adopted, it shall have the same force and effect as though made and prepared, as well as adopted, by such municipal planning commission.

Source: L. 39: p. 298, § 8. CSA: C. 45A, § 8. CRS 53: § 106-2-8. C.R.S. 1963: § 106-2-8.

ANNOTATION

Law reviews. For comment, "Regionalism or Parochialism: The Land Use Planner's Dilemma", see 48 U. Colo. L. Rev. 575 (1977).

Applied in Bd. of County Comm'rs v. City of Thornton, 629 P.2d 605 (Colo. 1981); Theobald v. Bd. of County Comm'rs, 644 P.2d 942 (Colo. 1982).

30-28-110. Regional planning commission approval, required when - recording.

(1) (a) Whenever any county planning commission or, if there is none, any regional planning commission has adopted a master plan of the county or any part thereof, no road, park, or other public way, ground, or space, no public building or structure, or no public utility, whether publicly or privately owned, shall be constructed or authorized in the unincorporated territory of the county until and unless the proposed location and extent thereof has been submitted to and approved by such county or regional planning commission.

(b) In case of disapproval, the commission shall communicate its reasons to the board of county commissioners of the county in which the public way, ground, space, building, structure, or utility is proposed to be located. Such board has the power to overrule such disapproval by a vote of not less than a majority of its entire membership. Upon such overruling, said board or other official in charge of the proposed construction or authorization may proceed therewith.

(c) If the public way, ground, space, building, structure, or utility is one the authorization or financing of which does not, under the law governing the same, fall within the province of the board of county commissioners or other county officials or board, the submission to the commission shall be by the body or official having such jurisdiction, and the commission's disapproval may be overruled by said body by a vote of not less than a majority of its entire membership or by said official. In the case of a utility owned by an entity other than a political subdivision, the submission to the commission shall be by the utility and shall not be by the public utilities commission; however, the commission's disapproval may be overruled by the public utilities commission by a vote of not less than a majority of its entire membership.

(d) The acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, change of use, or sale or lease of or acquisition of land for any road, park, or other public way, ground, place, property, or structure shall be subject to similar submission and approval, and the failure to approve may be similarly overruled.

(e) The failure of the commission to act within thirty days after the date of official submission to it shall be deemed approval, unless a longer period is granted by the submitting board, body, or official.

(2) (a) In any geographic area of common planning jurisdiction, which area consists of part or all of several counties for which a regional plan has been duly adopted, the district, county, or municipal planning commission shall refer to the regional planning commission for review any proposed new or changed land use plan, zoning amendments, subdivision proposals, housing codes, sign codes, urban renewal projects, proposed public facilities, or other planning functions which clearly affect another local governmental unit, or which affect the region as a whole, or which are the subject of primary responsibility of the regional planning commission.

(b) In any geographic area of common planning jurisdiction which involves part or all of only one county for which a regional plan has been duly adopted, the district, county, or municipal planning commission shall refer to the regional planning commission for review any proposed new or changed land use plan, zoning amendments, subdivision proposals, housing codes, sign codes, urban renewal projects, proposed public facilities, or other planning functions which clearly affect another local governmental unit, or which affect the region as a whole, or which are the subject of primary responsibility of the regional planning commission.

(c) The regional planning commission shall, within thirty days after the receipt of such referral, report to the district, county, or municipal planning commission on the effect of the referred matter on the regional plan. This time may be extended by mutual agreement. If, during the review time, a satisfactory adjustment in the referred matter cannot be worked out, the regional planning commission may report to the district, county, or municipal planning commission that this referred matter is inconsistent with the regional plan. In that case, if the district, county, or municipality has theretofore adopted the regional plan for the development of its area, the concurrent vote of two-thirds of the total membership of the district, county, or municipal planning commission shall be required to issue a different independent report on such matters. In all instances, the regional planning commission may also forward its report on the referred matter to the governing body of the governmental unit having authority to decide the matter.

(d) The failure of the regional planning commission to reply within thirty days after the receipt of the referral, or within the agreed extension of time, shall be deemed approval of the matter referred.

(e) A failure on the part of any district, county, or municipal planning commission to refer to the regional planning commission any plan or authorization provided for in paragraphs (a) and (b) of this subsection (2) shall be deemed a determination by such district, county, or municipal planning commission that the matter is local in nature.

(f) The regional planning commission, on its own initiative, may initiate a review of any matter involving its regional planning functions, whether such matter has been referred to it or not, if the subject of the review affects two or more local jurisdictions and may make a report of the result of such review to the governing bodies of the jurisdictions involved.

(g) The provisions of this subsection (2) shall not apply to any proposed business or industrial zoning change of less than twenty acres nor to any proposed residential zoning change or subdivision of less than forty acres.

(3) (a) All plans of streets or highways for public use, and all plans, plats, plots, and replots of land laid out in subdivision or building lots and the streets, highways, alleys, or other portions of the same intended to be dedicated to a public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall be submitted to the board of county commissioners for review and subsequent approval, conditional approval, or disapproval. It is not lawful to record any such plan or plat in any public office unless the same bears thereon, by endorsement or otherwise, the approval of the board of county commissioners and after review by the appropriate planning commission.

(b) The approval of said plan or plat by such commission shall not be deemed an acceptance of the proposed dedication by the public. Such acceptance, if any, shall be given by action of the governing body of the municipality or by the board of county commissioners. The owners and purchasers of such lots shall be presumed to have notice of public plans, maps, and reports of such commission affecting such property within its jurisdiction.

(4) (a) Any subdivider, or agent of a subdivider, who transfers legal or equitable title or sells any subdivided land before a final plat for such subdivided land has been approved by the board of county commissioners and recorded or filed in the office of the county clerk and recorder is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars nor less than five hundred dollars for each parcel of or interest in subdivided land which is sold. All fines collected under this paragraph (a) shall be credited to the general fund of the county. No person shall be prosecuted, tried, or punished under this paragraph (a) unless the indictment, information, complaint, or action for the same is instituted prior to the expiration of eighteen months after the recordation or filing in the office of the county clerk and recorder of the instrument transferring or

selling such subdivided land. The board of county commissioners may provide for the enforcement of subdivision regulations by means of withholding building permits. No plat for subdivided land shall be approved by the board of county commissioners unless at the time of the approval of platting the subdivider provides the certification of the county treasurer's office that all ad valorem taxes applicable to such subdivided land, for years prior to that year in which approval is granted, have been paid.

(b) The board of county commissioners of the county in which the subdivided land is located has the power to bring an action to enjoin any subdivider from selling subdivided land before a final plat for such subdivided land has been approved by the board of county commissioners.

(c) The board of county commissioners shall distribute, or cause to be distributed, the sets of plans or plats submitted to the agencies as referred to in section [30-28-136](#) (1).

(d) Any violation of paragraph (a) of this subsection (4) is prima facie evidence of a fraudulent land transaction and shall be grounds for the purchaser to void the transfer or sale.

(e) This subsection (4) applies only with respect to parcels of land less than thirty-five acres in area.

(5) (a) Notice of the filing of preliminary plans of any type required by this section to be submitted to a district, regional, or county planning commission or to the board of county commissioners, if the situs of these plans lies wholly or partially within two miles of the corporate limits of a municipality but not within the corporate limits of another municipality, shall be referred to the town or city clerk of such municipality by the county planning commission or, if there be none, by the board of county commissioners. Within fourteen days of the receipt of such plans, the municipality, by action of its city council or town board, or, if one exists, by action of its planning commission, may make its recommendations to the board of county commissioners, which shall forward the same to the district, regional, or county planning commission, if any. Failure of the town board, city council, or agents designated by them to make any recommendation within fourteen days of the receipt of such plans shall constitute waiver of its right to make such recommendation.

(b) If such recommendation is made by the municipality, it shall be taken into consideration by the board of county commissioners and district, regional, or county planning commission, if any, before action is taken upon the plans. The board of county commissioners and district, regional, or county planning commission, if any, shall take no action on such plans until the recommendation of the municipality is received or until fifteen days after receipt of the preliminary plans, whichever is sooner.

Source: **L. 39:** p. 298, § 9. **CSA:** C. 45A, § 9. **CRS 53:** § 106-2-9. **L. 59:** p. 619, § 4. **L. 61:** p. 592, § 3. **C.R.S. 1963:** § 106-2-9. **L. 72:** pp. 498, 499, §§ 2, 3. **L. 79:** (4)(a) amended, p. 1166, § 1, effective June 15. **L. 83:** (1)(c) amended, p. 1252, § 1, effective June 3; (4)(a) and (4)(b) amended and (4)(d) and (4)(e) added, p. 1250, § 2, effective July 1.

Cross references: For required monumentation within a subdivision before sales contract is executed, see § [38-51-105](#) (3) and (4).

ANNOTATION

Law reviews. For article, "Recent Developments in Zoning Law in Colorado", see 39 Dicta 211 (1962). For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For article, "Inverse Condemnation -- A Viable Alternative", see 51 Den. L.J. 529 (1974).

The powers of the board of county commissioners must be construed strictly. Bd. of County Comm'rs v. Pfeifer, 190 Colo. 275, 546 P.2d 946 (1976).

Express and implied county powers. As a political subdivision of the state, a county possesses only those powers which are expressly granted to it and those implied powers which are reasonably necessary to execute the express powers. *Bd. of County Comm'rs v. Pfeifer*, 190 Colo. 275, 546 P.2d 946 (1976).

One of the purposes of this section is to provide a method by which the county through its planning commission can inform and advise other governmental units of the effects of their proposed actions upon the county and its residents. *Blue River Defense Comm. v. Town of Silverthorne*, 33 Colo. App. 10, 516 P.2d 452 (1973).

This section does not provide that county approval of a plat is sufficient in itself to permit construction of any improvement. The effect of the approval and recording of a plat is to permit the owner to transfer or sell land by reference to the plat without penalty. Beyond that, the approval has no specific effect by statute. *SK Fin. SA v. La Plata County, Bd. of Comm'rs*, 126 F.3d 1272 (10th Cir. 1997).

It is incumbent upon entity having jurisdiction over project to submit proposal to county planning commission, even though such entity has authority to later override the planning commission's disapproval. *Blue River Defense Comm. v. Town of Silverthorne*, 33 Colo. App. 10, 516 P.2d 452 (1973).

In order that county residents may present objections and views. Even though a town may affirmatively overrule a county's decision regarding the town's proposed construction of a sewage plant, the residents of the county are entitled to an opportunity to present their objections and views and to have these considered as part of the planning commission's approval or disapproval and to require that if construction is to proceed, the town must determine to proceed in the face of county's objection. *Blue River Defense Comm. v. Town of Silverthorne*, 33 Colo. App. 10, 516 P.2d 452 (1973).

Subsection (1)(a) of this section is limited by the public utilities commission's exercise of its police power to regulate transmission lines in the interest of public safety pursuant to § [40-4-106](#). *Mountain View Electric Association v. Pub. Utils. Comm'n.*, 686 P.2d 1336 (Colo. 1984).

Subsection (4) is in derogation of the common law and must be construed strictly. *Bd. of County Comm'rs v. Pfeifer*, 190 Colo. 275, 546 P.2d 946 (1976).

Although subsection (4) does not address who bears the burden of obtaining a survey and exemption, the trial court possesses broad discretion in fashioning equitable remedies and did not abuse its discretion in ordering that the defendants shall bear the cost of the survey and the responsibility for obtaining the exemption required prior to the sale of a subdivided parcel of land. *Schreck v. T&C Sanderson Farms, Inc.*, 37 P.3d 510 (Colo. App. 2001).

Subsection (4)(a) of this section is constitutional. *Hopkins v. Bd. of County Comm'rs*, 193 Colo. 230, 564 P.2d 415 (1977).

General assembly intended the permitting process under § [24-65.1-501](#) to apply to utility projects that involve designated activities of state interest and this section to apply to any other utility project. *Colo. Springs v. Eagle Cty. Bd. of County Comm'rs*, 895 P.2d 1105 (Colo. App. 1994).

Restriction on free alienation of property. The statutory provision requiring approval of the plat by a board prior to the conveyance places a restriction on the free alienation of property, which is one of the essential attributes of common-law property ownership. *Bd. of County Comm'rs v. Pfeifer*, 190 Colo. 275, 546 P.2d 946 (1976).

Board remedies limited. The general assembly has clearly and expressly established the remedies available to the board in order to enforce its subdivision requirements, and they are so limited. *Bd. of County Comm'rs v. Pfeifer*, 190 Colo. 275, 546 P.2d 946 (1976).

Subsection (4) specifies the relief a county would be entitled to where land is transferred in violation of the terms of this section; namely, injunction prior to sale or initiation of prosecution for a misdemeanor following sale. *Bd. of County Comm'rs v. Pfeifer*, 35 Colo. App. 89, 532 P.2d 51 (1974), modified, 190 Colo. 275, 546 P.2d 946 (1976).

Subsection (4)(a) confers no power on court to set aside conveyance at request of board. *Hinton v. Lake Fork Dev. Co.*, 35 Colo. App. 94, 531 P.2d 974 (1974), aff'd, 190 Colo. 394, 548 P.2d 122 (1976).

Word "enjoin" as used in subsection (4)(b) does not authorize the setting aside of a conveyance which occurred without the filing of a plat. *Bd. of County Comm'rs v. Pfeifer*, 35 Colo. App. 89, 532 P.2d 51 (1974), modified, 190 Colo. 275, 546 P.2d 946 (1976).

Although C.R.C.P. 65(f), provides for the issuance of a mandatory injunction, the strict construction of subsection (4) precludes the availability of such relief to a county. *Bd. of County Comm'rs v. Pfeifer*, 190 Colo. 275, 546 P.2d 946 (1976).

Misdemeanor and fine adequate. A person who violates subsection (4)(a) may be fined and found guilty of a misdemeanor, but a county has no authority under subsection (4)(b) to seek the setting aside of a conveyance. *Bd. of County Comm'rs v. Pfeifer*, 190 Colo. 275, 546 P.2d 946 (1976).

This section creates a problem for the counties in preventing the sales of land where the sale is completed and the deed recorded before the county has had the opportunity to secure an injunction. However, the general assembly has sought to deter violations by making such conduct a misdemeanor. The general assembly apparently determined that this would be an adequate remedy. *Bd. of County Comm'rs v. Pfeifer*, 190 Colo. 275, 546 P.2d 946 (1976).

Continuing violation. Ordinarily, actual or proposed use itself would constitute "violation" under this section. However, where alleged violation is the failure to secure the approval of the plat by the board, this violation will continue until the board actually approves the plat and, therefore, the board's claim for relief adequately pleaded the necessary facts upon which relief may be granted. *Bd. of County Comm'rs v. Pfeifer*, 190 Colo. 275, 546 P.2d 946 (1976).

Town exercising eminent domain beyond corporate limits must comply with section. A town must comply with county zoning procedures enunciated in this section when the town exercises its power of eminent domain for construction of sewage facilities beyond its corporate limits pursuant to § [38-6-122](#). *Blue River Defense Comm. v. Town of Silverthorne*, 33 Colo. App. 10, 516 P.2d 452 (1973).

Disregard of zoning regulations. Even without definite statutory direction, as found in this section, courts of last resort have recognized that districts, authorities, and other state authorized governmental subdivisions have the power to overrule or disregard the restrictions of county or municipal zoning regulations. *Reber v. South Lakewood San. Dist.*, 147 Colo. 70, 362 P.2d 877 (1961).

The extent and exact location as referred to in this section could not be determined in eminent domain proceedings until the question of necessity had been decided. *Miller v. Pub. Serv. Co.*, 129 Colo. 513, 272 P.2d 283 (1954), appeal dismissed, 348 U.S. 923, 75 S. Ct. 338, 99 L. Ed. 724 (1955).

Application by town to the state water pollution control commission for approval of location for sewage treatment facilities did not constitute submission to the county planning commission as contemplated by this section where one page of the application contained a signature of approval on behalf of the planning commission. *Blue River Defense Comm. v. Town of Silverthorne*, 33 Colo. App. 10, 516 P.2d 452 (1973).

Denver did not need to first obtain the consent of Arapahoe county to the acquisition, for an airport, of lands already zoned for airport purposes by the Arapahoe county officials. *City and County of Denver v. Bd. of Comm'rs*, 113 Colo. 150, 156 P.2d 101 (1945).

The master plan is only one source of comprehensive planning, and is generally held to be advisory only, and not the equivalent of zoning, nor binding upon the zoning discretion of the legislative body. *Theobald v. Bd. of County Comm'rs*, 644 P.2d 942 (Colo. 1982).

The requirement of a metes and bounds description of a tract for purposes of qualifying the tract for exemption from the limitations of subsection (4)(a) was not unreasonable or arbitrary, and the denial of the exemption was not an abuse of discretion. *Hopkins v. Bd. of County Comm'rs*, 193 Colo. 230, 564 P.2d 415 (1977).

Statute as basis for jurisdiction. See *Bd. of County Comm'rs v. Hinton*, 190 Colo. 394, 548 P.2d 122 (1976).

Applied in *McArthur v. Zabka*, 177 Colo. 337, 494 P.2d 89 (1972); *Bd. of County Comm'rs v. City of Thornton*, 629 P.2d 605 (Colo. 1981).