

30-28-136. Referral and review requirements.

Statute text

(1) Upon receipt of a complete preliminary plan submission, the board of county commissioners or its authorized representative shall distribute copies of prints of the plan as follows:

(a) To the appropriate school districts;

(b) To each county or municipality within a two-mile radius of any portion of the proposed subdivision;

(c) To any utility, local improvement and service district, or ditch company, when applicable;

(d) To the Colorado state forest service, when applicable;

(e) To the appropriate planning commission;

(f) To the local conservation district board within the county for explicit review and recommendations regarding soil suitability, floodwater problems, and watershed protection. Such referral shall be made even though all or part of a proposed subdivision is not located within the boundaries of a conservation district.

(g) When applicable, to the county, district, or regional health department or the state department of public health and environment for its review of the on-lot sewage disposal reports, for review of the adequacy of existing or proposed sewage treatment works to handle the estimated effluent, and for a report on the water quality of the proposed water supply to serve the subdivision. The department of public health and environment or county, district, or regional health department to which the plan is referred may require the subdivider to submit additional engineering or geological reports or data and to conduct a study of the economic feasibility of a sewage treatment works prior to making its recommendations. No plan shall receive the approval of the board of county commissioners unless the department of public health and environment or county, district, or regional health department to which the plan is referred has made a favorable recommendation regarding the proposed method of sewage disposal.

(h) (I) To the state engineer for an opinion regarding material injury likely to occur to decreed water rights by virtue of diversion of water necessary or proposed to be used to supply the proposed subdivision and adequacy of proposed water supply to meet requirements of the proposed subdivision. If the state engineer finds such injury or finds inadequacy, he shall express such finding in an opinion in writing to the board of county commissioners, stating the reason for his finding, including, but not limited to, the amount of additional or exchange water that may be required to prevent such injury. In

the event the subdivision is approved notwithstanding the state engineer's opinion, the subdivider shall furnish to all potential purchasers a copy of the state engineer's opinion prior to the sale or a synopsis of the opinion; except that the subdivider need not supply the potential purchaser with a copy of such opinion or synopsis if, in the opinion of the board of county commissioners, the subdivider has corrected the injury or inadequacy set forth in the state engineer's finding.

(II) A municipality or quasi-municipality, upon receiving the preliminary plan designating said municipality or quasi-municipality as the source of water for a proposed subdivision, shall file, with the board of county commissioners and the state engineer, a statement documenting the amount of water which can be supplied by said municipality or quasi-municipality to proposed subdivisions without causing injury to existing water rights. The state engineer shall file, with said board of county commissioners, written comments on the report. If, in the judgment of the state engineer, the report is insufficient to issue an opinion, the state engineer shall notify the board of county commissioners to this effect, indicating the deficiencies.

(i) To the Colorado geological survey for an evaluation of those geologic factors which would have a significant impact on the proposed use of the land.

(2) The agencies named in this section shall make recommendations within twenty-one days after the mailing by the county or its authorized representative of such plans unless a necessary extension of not more than thirty days has been consented to by the subdivider and the board of county commissioners of the county in which the subdivision area is located. The failure of any agency to respond within twenty-one days or within the period of an extension shall, for the purpose of the hearing on the plan, be deemed an approval of such plan; except that, where such plan involves twenty or more dwelling units, a school district shall be required to submit within said time limit specific recommendations with respect to the adequacy of school sites and the adequacy of school structures.

(3) The provisions of this part 1 shall not modify the duties or enlarge the authority of the state engineer or the division engineers nor divest the water courts of jurisdiction over actions concerning water right determinations and administration; neither shall any opinion of the state engineer submitted under subsection (1) (h) of this section nor any finding by a board of county commissioners concerning subdivision water supply matters create any presumption concerning injury or noninjury to water rights; and neither the state engineer's opinion nor the finding of the board of county commissioners may be used as evidence in any administrative proceeding or in any judicial proceeding concerning water right determinations or administration.

(4) Each month the board of county commissioners or its appointed representative shall transmit to the Colorado land use commission copies of the notice of filing and a summary of information of each subdivision preliminary plan and plat submitted to them, together with a report of each exemption granted by the board of county commissioners pursuant to section 30-28-101 (10) (d), on such form as may be prescribed by the

Colorado land use commission.

History

Source: **L. 72:** p. 504, § 8. **C.R.S. 1963:** § 106-2-37. **L. 73:** pp. 781, 1087, 1088, § § 2, 1, 1. **L. 75:** (1)(h) R&RE, p. 1002, § 1, effective July 18. **L. 77:** (2) amended, p. 1453, § 3, effective May 24. **L. 92:** (2) amended, p. 966, § 7, effective June 1. **L. 94:** (1)(g) amended, p. 2801, § 561, effective July 1. **L. 2002:** (1)(f) amended, p. 518, § 14, effective July 1.

Annotations

Cross references: For duties of the state geologist upon receipt of copies of prints of the plans, see § 34-1-103(4).

Annotations

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974). For article, "Property Tax Incentives for Implementing Soil Conservation Programs Under Constitutional Taxing Limitations", see 59 Den. L.J. 485 (1982).

Zoning and subdivision regulations are separate and distinct legislation and serve different purposes. *Shoptaugh v. Board of County Comm'rs*, 37 Colo. App. 39, 543 P.2d 524 (1975).

A subdivider must first meet zoning regulations and then additionally must comply with state and county subdivision regulations. *Shoptaugh v. Board of County Comm'rs*, 37 Colo. App. 39, 543 P.2d 524 (1975).

This section is designed to allow a planning commission to make a decision on a preliminary plat without waiting indefinitely for agencies' reports. *Shoptaugh v. Board of County Comm'rs*, 37 Colo. App. 39, 543 P.2d 524 (1975).

Authority to act on reports implicit. If a planning department or a board of county commissioners has no authority to consider and act on reports required by this section, particularly where they indicate a hazard to the public, then the general purpose to be served by enacting the regulations would be vitiated. *Shoptaugh v. Board of County Comm'rs*, 37 Colo. App. 39, 543 P.2d 524 (1975).

There was no error or violation of petitioner's due process right in a board's consideration of late agency reports. Shoptaugh v. Board of County Comm'rs, 37 Colo. App. 39, 543 P.2d 524 (1975).

A subdivision proposal may be denied based upon a finding of a lack of available schools to serve the residents of the proposed new development. County Comm'rs of Douglas County v. Bainbridge, 929 P.2d 691 (Colo. 1996).

Board of county commissioners did not abuse its discretion when it did not resubmit plans for a subdivision to certain agencies for additional comment and review before granting final approval. Once the board has satisfied the requirements of the statute by submitting the proposed plans for comment, a decision whether or not to require additional comments is within the sound discretion of that board. Save Park County v. Board of County Comm'rs, 990 P.2d 35 (Colo. 1999).

Board of county commissioners acted within its discretion when, 11 years after a subdivision plan was proposed, it did not seek supplemental information from all agencies, but instead sought any supplemental information it found necessary to reach an informed decision. Save Park County v. Board of County Comm'rs, 990 P.2d 35 (Colo. 1999).