

# Laramie County Board of Commissioners

Jurisdiction to Decide ASCI's Site Plan Application



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# General Overview of Today's Hearing



The purpose of today's hearing is to determine whether the Board has the authority pursuant to the Laramie County Land Use Regulations ("Regulations") and Wyoming Statutes to decide the merits of ASCI's site plan application.

To effectively answer this question, the Board must interpret controlling provisions of the **Regulations and Statutes** pursuant to longstanding rules of legal interpretation.



# A Bit of Background on ASCI's Site Plan



DATE	ACTION
May 22, 2018	ASCI submitted Site Plan Application  *At some point soon thereafter, the Planning & Development Director (“Director”) transferred the matter to the Planning Commission.
July 2, 2018	ASCI submitted Supplemental Information to Site Plan Application
July 12, 2018	Public Hearing  *During the latter half of the hearing on July 12, 2018, many in opposition to the site plan were given an opportunity to speak and provide information regarding their position. ASCI, however, was not provided an opportunity to respond to those comments at the end of the hearing, despite requesting the opportunity for such rebuttal when the hearing began.
July 17, 2018	Letter from Planning Department (stating may submit additional information up to August 10, 2018 and setting hearing for August 23, 2018)
July 27, 2018	Letter from Planning Department (changing process that no additional information will be accepted, except as requested by the Planning Commission)
August 23, 2018	Meeting held to set Hearing for October 3, 2018
October 1, 2018	Offer of Proof Submitted by ASCI, which included a substantial amount of evidence that effectively rebutted all points that were raised in the latter part of the July 12 public hearing.
October 3, 2018	Public Hearing on Final Decision
October 9, 2018	The Planning Commission then entered its Findings of Fact, Conclusions of Law and Order Denying Request for Approval of a Site Plan for Lone Tree Cree Quarry.
October 16, 2018	ASCI filed its Administrative Appeal
November 2, 2018	ASCI filed its Petition for Judicial Review with the First Judicial District Court in Laramie County



# The Fundamental Question that the Board Must Decide



Can the Laramie County Land Use Regulations (Regulations) and Wyoming Statutes be interpreted in such a way as to provide that the Planning Commission's decision on a Site Plan constitutes a final agency action subject to judicial review, thereby bypassing a Board decision or precluding its review? The Planning Commission concluded it could with no analysis or legal support in doing so. *See Planning Commission's Order* at 30.

Or

**Is a reasonable interpretation of the Regulations and Wyoming Statutes such that the Board must make the decision to approve or deny the Site Plan?**

The controlling provision of the Regulations is the starting point in considering what action is required in reviewing and deciding upon a site plan. Section 2-2-133(d)(iv) states:

**Site plans will be reviewed by the Director. Site plans in the regulatory area of the County may require public hearing before the Planning Commission if the Planning and Development Director determines that the impacts of the proposed use will significantly impact surrounding properties.**

No further procedure is set forth in the Site Plan Section regarding proper procedure as to who **actually ultimately decides** whether to approve or deny a site plan. As a result, the Board must interpret this provision by reading all portions of the Regulations together and considering every word, clause and sentence so that no part will be inoperative or superfluous. The Board is guided by the full text of the Regulations, paying attention to its internal structure and the functional relation between the parts and the whole. Further, the Board must look to the underlying Wyoming Statutes providing for the authority and duties of the Planning Commission.

**THE CORRECT ANSWER: Applying the rules governing the interpretation of Regulations and Wyoming Statutes, the Regulations and Wyoming Statutes in this matter require the Board to make a decision on the Site Plan before judicial review is allowed.**



# Basic Tenants of Law for Interpreting the Regulations



Swift v. Sublette Cty. Bd. of Cty. Comm'rs, 2002 WY 32, ¶ 7, 40 P.3d 1235, 1237 (Wyo. 2002) (“After a public hearing . . . , the Planning and Zoning Commission recommended that the Board approve the conditional use permit. The Board subsequently approved the permit on a two-one vote. Appellants petitioned for review of the Board's decision with the district court, which certified the dispute to us pursuant to W.R.A.P. 12.09.”); Wilson Advisory Comm. v. Bd. of Cty. Comm'rs, 2012 WY 163, ¶ 31, 292 P.3d 855, 863 (Wyo. 2012) (petition of a board decision to district court after planning commission conducted public hearing and made recommendations).

- A court applies its rules for interpreting statutory language to the interpretation of the rules and regulations of an administrative agency.
- Administrative rules and regulations have the force and effect of law, and an administrative agency must follow its own rules and regulations or face reversal of its action.

Seherr-Thoss v. Teton Cty. Bd. of Cty. Comm'rs, 2014 WY 82, ¶ 19, 329 P.3d 936, 945 (Wyo. 2014)

- When interpreting a statute, a court seeks the drafter's intent as reflected in the plain and ordinary meaning of the words used in the statute.
- Where legislative intent is discernible a court should give effect to the most likely, most reasonable, interpretation of the statute, given its design and purpose.
- A court therefore construes each statutory provision *in pari materia*, giving effect to every word, clause, and sentence according to their arrangement and connection. To ascertain the meaning of a given law, a court also considers all statutes relating to the same subject or having the same general purpose and strives to interpret them harmoniously.
- A court is guided by the full text of regulation, paying attention to its internal structure and the functional relation between the parts and the whole.
- Finally, a court must avoid an interpretation that produces an absurd result.

\**In pari Materia* is a Latin phrase that essentially means that similar provisions of statutes, rules and regulations may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject. *See Black's Law Dictionary* (10th ed. 2014).



# Applying the Rules of Interpretation

## Section 2-2-133



### 2-2-133 SITE PLANS

- a. **Purpose** - The purpose of this regulation is to protect the health, safety and well-being of Laramie County residents through appropriate design of commercial, public and multi-family residential developments. Laramie County recognizes that flexibility and the use of best practices in site design will support the community vision described in the Laramie County Comprehensive Plan by preserving environmental quality and promoting economic vitality.
- b. **Exemptions** - This regulation applies to commercial, industrial, public, open space and multi-family residential developments. Property with the following land uses are exempt from site plan requirements:
  - i. Single-family residential
  - ii. Duplex residences where no more than one (1) structure is proposed per development
  - iii. Agricultural property as defined in this regulation.
- c. **Site Plans for Governmental Entities** - Public land uses, including parks, public facilities and government buildings, shall conform to the standards in this regulation.
- d. **General Site Plan Requirements**
  - i. A site plan is required for all new commercial, industrial, public, and multi-family residential land uses. A landscaping, grading and storm water management plan shall be submitted with all site plan applications. A traffic study may be required. The Planning and Development Director may waive any requirements for a site plan if

## Applying the Rules of Interpretation

### Section 2-2-133(d)(iv)



iv. Site plans will be reviewed by the Director. Site plans in the regulatory area of the County may require public hearing before the Planning Commission if the Planning and Development Director determines that the impacts of the proposed use will significantly impact surrounding properties.

What does Section 2-2-133(d)(iv) set forth?

- Nothing about the Director making a final decision or the reviewability of the Director's action.
- Nothing about what transpires after the Planning Commission holds a public hearing.
- Nothing about the Planning Commission making a final agency decision or even having authority to do so.
- Nothing about the review of a Planning Commission decision.

As a result, assessment of additional sections of the Regulations is required to interpret Section 2-2-133(d)(iv).



## Applying Rules of Interpretation

### Looking to other sections of the Regulations



Interpreting Section 2-2-133(d)(iv) requires the Board to review the Regulations as a whole. A few sections in the Regulations requiring BOCC action that ought to be considered include the following:

- Section 1-2-100 Board Approval Process
- Section 2-1-100 *et seq.* Subdividing Land
- Section 2-2-100 *et seq.* Overlay Districts
- Section 2-2-125 *et seq.* Large Wind Energy Systems



# Section 1-2-100 Board Approval Process



## CHAPTER 2 APPROVAL AND PUBLIC HEARING PROCESS

### 1-2-100 BOARD APPROVAL PROCESS

In each of the districts in this regulation, there are uses which may be approved by the Board, according to specific procedures. The Board shall consider applications for such uses at its next regularly scheduled meeting no less than (30) days after the application has been submitted. The Board shall approve, approve with conditions, disapprove, or continue action on the application. Conditions may be attached to the approval to assure that there is no departure from the intent of this regulation. Public notification of the hearing shall conform to the notice requirements of this regulation.

#### a. Findings Necessary

Before any application for a Board Approval can be granted, the Board shall find:

- i. The proposed use is permitted by Board approval in the proposed location and in conformance with all applicable development standards.
- ii. The proposed use is in general conformance with all other applicable policies adopted by Laramie County.
- iii. There is no defined negative impact to the community.

These findings shall be documented in the minutes of the Board meeting. Any conditions placed on approval shall refer to the appropriate code or policies upon which the conditions are based. All disapprovals shall reference the code section on which disapproval is based. All findings shall be recorded with the Laramie County Clerk's Office in the form of a resolution by the Board.



# Section 2-1-100 et Seq. - Subdividing Land



## TITLE 2: COUNTY-WIDE LAND USE REGULATIONS

### CHAPTER 1 SUBDIVIDING LAND

#### 2-1-100 PRELIMINARY DEVELOPMENT PLAN REVIEW

The purpose of the preliminary development plan is to afford the owner the opportunity for review and comment by the Planning and Development Office and Laramie County Planning Commission prior to the submission of an application for a subdivision permit.

The preliminary development plan is the basis for a development agreement. A development agreement may be required to resolve any land use issues raised during review of the preliminary development plan. The development agreement, if required, shall be submitted with the subdivision permit application.

##### a. Requirement

A preliminary development plan is required prior to all applications for a subdivision permit. A preliminary development plan is not required for land divisions for which no subdivision permit is required per State statute.

A pre-application meeting with the Planning and Development Office is required prior to submission of a preliminary development plan.



# Section 2-1-100 et Seq. - Subdividing Land



## c. Application Requirements

The owner shall submit the necessary documents as outlined in this section. The Planning and Development Office may require additional information as necessary to support the application. At submittal, the owner or agent shall remit to the Development Office a nonrefundable application fee for services in connection with the review and processing of the preliminary development plan.

## d. Scheduling

The preliminary development plan application and all supplemental information shall be placed on the first regularly scheduled Planning Commission meeting not less than twenty (20) days and no more than thirty (30) days after the application has been filed and accepted with the Planning and Development Office.

## e. Notification Requirements

Notification of the Planning Commission meeting shall be sent by certified mail to all adjacent property owners. A sign provided by the County detailing the time and date of the Planning Commission meeting shall be posted in accordance with these regulations.

## f. Evaluation

The Planning and Development Office shall review the Preliminary Development Plan in terms of the requirements set forth in these regulations; all applicable county policies; comprehensive and land use plans; regulations and standards or additions and amendments thereto; the reviewing agency comments; and any other adopted plans and resolutions. The resulting review shall be forwarded to the owner, agent and Planning Commission no less than four (4) calendar days prior to the scheduled meeting date for consideration during the Planning Commission's meeting.



# Section 2-1-100 et Seq. - Subdividing Land



## **g. Responsibility of Presentation**

It is a requirement of the Planning Commission that the owner or agent be present at all scheduled meetings to present the preliminary development plan. Absence of a representative shall result in the withdrawal of the action. The owner or agent may request, in writing, a postponement of the public hearing.

## **h. Planning Commission Process**

The Planning Commission shall hold a public hearing to review the preliminary development plan. The Planning Commission shall make recommendations to the owner for any additions or changes to be made to the plan prior to the submission of the subdivision permit and plat applications. The hearing is intended to help the owner resolve any potential problems with the development prior to submission of the subdivision permit application. The Planning and Development Office shall provide a list of comments to the owner within seven (7) working days of the final Planning Commission Review.

When a preliminary development plan is required and the owner intends to apply for an exemption for the requirement to submit a plat, the Planning Commission must make findings to support said exemption.

## **i. Stipulation of Review**

Review of the preliminary development plan shall not constitute approval to subdivide or develop the land in question and creates no vesting of the property. A subdivision permit and site plan approved in accordance with these regulations is required prior to further action.



# Section 2-1-101 - Subdividing Land



## 2-1-101 SUBDIVISION PERMITS

### a. Jurisdiction

The Board will review and take action on all subdivision permits and plats within Laramie County, with the exclusion of the incorporated limits of the City of Cheyenne and the towns of Pine Bluffs, Burns and Albin, Wyoming.



## Section 2-1-101(f) - Subdividing Land



### f. Agency Review

The Planning and Development Office shall forward the subdivision permit application to appropriate agencies for review and comment. After review of the permit application and plat for adequacy and completeness, the Planning and Development Office shall submit the application, in the form of a staff report to the Planning Commission. The Planning Commission shall make findings and recommendations for approval or disapproval to the Board of County Commissioners. The owner and agent will be sent a copy of the staff report at least five (5) working days prior to the Planning Commission meeting.



## Section 2-1-101(g) - Subdividing Land



### g. Planning Commission

The Planning Commission shall make findings and recommendations for

the approval or disapproval of the subdivision permit application to the Board in conformance with State Statutes.



## Section 2-1-101(h) - Subdividing Land



### h. Approval

Upon receiving the evaluation, findings, and recommendations from the Planning Commission, the Board shall approve, approve with conditions or disapprove the subdivision permit application. Actions on the subdivision permit application shall occur within forty-five (45) days from receipt of the report of the Planning Commission pursuant to W.S. 18-5-308. Those plats within one mile of any incorporated city or town limits shall be reviewed and acted on by the city or town with jurisdiction. Applications requiring town or city approval should be processed concurrently with County applications.

# Section 2-2-100 - Overlay Districts



## CHAPTER 2 STANDARDS PERTAINING TO ALL LARAMIE COUNTY

### 2-2-100 OVERLAY DISTRICTS

Within the County, there are areas that may require alternative standards to meet the community's goals for development, redevelopment, or natural resource protection. The designation of overlay districts is intended to preserve existing established uses until new development or redevelopment is to occur. The County may designate overlay districts in specific areas if the following requirements are met:

- a. The overlay district is located within the boundaries of an adopted sub-area plan.
- b. The overlay district is reviewed at a public hearing held by the Planning Commission prior to Board Approval. Notice for the hearing shall be published in accordance with notice requirements for a zone change listed in this regulation.
- c. The overlay district shall be approved by Board at a public hearing. Legal notice for the Board hearing shall be published in accordance with these regulations.



## Section 2-2-125(d). - Large Wind Energy Systems



- iii. Siting Process - Each large wind energy system and/or wind farm shall require both a site plan and a wind energy permit. Site plans will be reviewed by both the Planning Commission and the Board. All site plans, after action by the Planning Commission, shall be heard by the Board at its next available regular meeting. The Board shall approve site plans according to the Board approval process. The Administrator shall approve wind energy permits accordance with this article. The installation of a large wind energy system and/or wind farm is contingent upon compliance with any and all conditions established by the Board. The applicant shall meet with a Planning and Development Office representative prior to submittal of any site plan. This pre-application meeting will allow the applicant to

define the project and provide information. During this pre-application meeting a list of items needed for the submittal of the site plan will be addressed. Applicants shall provide copies of all FAA Form 7460 submissions to any airport authority that could be affected by the application when such forms are tendered to the FAA for approval.

## Section 2-2-125(e). - Large Wind Energy Systems



**e. Site Plan** - A site plan illustrating preliminary layout, design and access shall be submitted for Planning Commission review and Board review and approval. The site plan must meet the requirements of the Site Plan Review Application, available through the Laramie County Planning and Development Office. No wind energy permit shall be issued by the Administrator without a Board-approved site plan. The applicant shall provide a complete application in accordance with the requirements of the pre-application meeting. Failure to do so shall result in a denial of the application. Upon submittal of the site plan, Laramie County Development Office staff shall have 5 (five) business days to determine if the site plan is complete. At the end of that period, if no letter has been issued to the applicant, the application will be automatically determined to be complete.



## Applying the Rules of Interpretation

### Section 2-2-133(d)(iv), Site Plans Require Board Approval



iv. Site plans will be reviewed by the Director. Site plans in the regulatory area of the County may require public hearing before the Planning Commission if the Planning and Development Director determines that the impacts of the proposed use will significantly impact surrounding properties.



## Wyoming Statutory Law

Critical law confirming that the Board must decide a site plan



### CREATION AND ESTABLISHMENT OF PLANNING AND ZONING COMMISSION

The Planning and Zoning Commission is statutorily created and only has the authority granted to it under Wyoming Statutes.

“Each board of county commissioners may by resolution create and establish a zoning commission.” Wyo. Stat. Ann. § 18-5-202(a); *see id.* (providing specific requirements for planning commission such as number of and terms of members); *see Seherr-Thoss v. Teton Cty. Bd. of Cty. Comm'rs*, 2014 WY 82, ¶ 24, 329 P.3d 936, 946 (Wyo. 2014) (providing the general grant of authority to counties to adopt zoning laws does not permit a county to override the state law and policies supporting it).



## Wyoming Statutory Law

Critical law confirming that the Board must decide a site plan



### **LIMITED STATUTORY AUTHORITY OF PLANNING AND ZONING COMMISSION**

In relation to the duties of a Planning and Zoning Commission, Wyo. Stat. Ann. § 18-5-202(c) provides:

**(c) The planning and zoning commission shall prepare recommendations to effectuate the planning and zoning purposes and certify its recommendations to the board of county commissioners.** Before adopting the recommendations the board shall hold at least one (1) public hearing. Notice of the time and place of hearing shall be given by one (1) publication in a newspaper of general circulation in the county at least fourteen (14) days before the date of the hearing. After public hearing has been held, the board shall vote upon the adoption of the planning or zoning recommendation. No planning or zoning recommendation shall be adopted unless a majority of the board votes in favor thereof.

Accordingly, the Wyoming Statutes *only* give authority to a planning and zoning commission to make **RECOMMENDATIONS** and **CERTIFY ITS RECOMMENDATIONS** to a board of county commissioners.

Therefore, the Planning and Zoning Commission ***does not*** have statutory authority to make a final agency decision on a site plan application.



## Wyoming Statutory Law

Critical law confirming that the Board must decide a site plan



There are two instances of specific planning and zoning purposes outlined for a planning and zoning commission in Wyoming Statutes.

- Wyo. Stat. Ann. § 18-5-202(b) (allowing a planning and zoning commission to prepare and amend a comprehensive plan to certify the plan to a board of county commissioners)
- Wyo. Stat. § 18-5-307 (permitting the board of county commissioners to allow the county planning and zoning commission to receive and evaluate applications for subdivision permits and make findings and recommendations to the board of county commissioners).



## Wyoming Statutory Law

Critical law confirming that the Board must decide a site plan



### LARAMIE COUNTY REGULATIONS VERSUS COMPREHENSIVE PLAN

The Laramie County Land Use Regulation is a zoning resolution compared to a local land use regulation.  
By Wyoming Statute:

(i) “Local land use plan” means any written statement of land use policies, goals and objectives adopted by local governments. Such plans shall relate to an explanation of the methods for implementation, however, these plans shall not require any provisions for zoning. Any local land use plan may contain maps, graphs, charts, illustrations or any other form of written or visual communication;

(ii) “Zoning” means a form of regulatory control granted to local governments which may be used to guide and to develop specific allowable land use.

Wyo. Stat. Ann. § 9-8-301(d).

Laramie County has also adopted its most recent Comprehensive Plan in 2016.



# SITE PLAN APPROVAL IS DE FACTO ZONING



Laramie County has taken the position that a site plan pursuant to LCLUR § 2-2-133 must be approved for new development. If a site plan is not approved, the development cannot occur.

**Wyo. Stat. § 18-5-203 governs the process required to locate buildings or use land within a zoning resolution:**

It is unlawful to locate, erect, construct, reconstruct, enlarge, change, maintain or use any building or use any land within any area included in a zoning resolution [LCLUR] without first obtaining a zoning certificate [site plan] from the board of county commissioners or its designee [Planning Director and Planning Commission] and no zoning certificate [site plan] shall be issued unless the plans for the proposed building, structure or use fully comply with the zoning regulations [LCLUR] then in effect. The board of county commissioners or its designee [Planning Director and Planning Commission] shall act promptly upon any application filed with it and shall grant certificates [site plan] when the proposed construction or use complies with the requirements of the zoning resolution [LCLUR]. If it denies the application [site plan], the board or its designee [Planning Director and Planning Commission] shall specify the reasons for the denial. Any applicant desiring to appeal shall appeal to the board of county commissioners. The decision of the board of county commissioners may be reviewed by the district court and by the supreme court upon appeal in the same manner as provided in W.S. 15-1-609, for review of decisions of boards of adjustment.

Here, Laramie County has interpreted LCLUR § 2-2-133 Site Plans to require approval or disapproval of a site plan application by the Planning and Development Director or the Planning Commission prior to any new development.

Pursuant to Wyo. Stat. Ann. § 18-5-203, an appeal from a denial of a site plan application must come before the Board of County Commissioners prior to review by a district court.



The Board has jurisdiction and must to make a decision on ASCI's Site Plan before judicial review can be conducted.



#### **1-2-102 PROCEDURE FOR APPEALS**

##### **a. Administrative Appeals**

Appeals of Administrative decisions shall be made in accordance with the following requirements.

- i. An appeal shall be requested in writing on a County-approved form by any party aggrieved by a decision or action of the Planning and Development Director in enforcing any of the provisions of this regulation. The appeal shall be filed at the Office of the Laramie County Clerk within seven (7) calendar days from the date of the decision or action.
- ii. The appeal shall specify the actions or decisions being appealed. The appeal shall describe the type of application presented, the date of the decision or action, and a statement of issues on appeal. The appeal shall also reference the section of this regulation or other regulations which are the subject of the appeal.
- iii. The appeal will be placed on the first regularly scheduled Board meeting that occurs at least seven (7) calendar days after the Office of the County Clerk receives the appeal. The Board's decision will be rendered within forty-five (45) days from the date the appeal is filed with the County Clerk.

##### **b. Appeals of Planning Commission and Board Decisions**

Appeals from any decision of the Planning Commission and Board shall be made in accordance with the provisions of Wyoming state statutes.



The Board has jurisdiction and must make a decision on ASCI's Site Plan before judicial review can be conducted.



- **Section 1-2-102(b)'s use of the conjunction "and" requires a decision be made by both the Planning Commission and the Board regarding a site plan prior to an appeal to the District Court.**
- The Wyoming Supreme Court has made clear that the word "and" with regards to statutory interpretation, which applies to interpretation of regulations means "and." *Wilson Advisory Comm. v. Bd. of Cty. Comm'rs*, 2012 WY 163, ¶ 43, 292 P.3d 855, 867 (Wyo. 2012).
- When interpreting statutes and regulations, the word "and" is conjunctive.
- Per the Wyoming Supreme Court, Webster's dictionary recognizes that the word "and" is "used in logic as a sentential connective that forms a complex sentence which is true only if both constituent sentences are true." Webster's New Collegiate Dictionary 43 (1977) (emphasis added).
- Any other interpretation would improperly involve replacing the word "and" with "or." *See In Interest of JB*, 2017 WY 26, ¶ 13, 390 P.3d 357, 360 (Wyo. 2017) (interpreting the use of "or" in controlling statute).
- Attempting to read the word "or" into the rule would be clear error. *See Town of Pine Bluffs v. Eisele*, 2017 WY 117, ¶ 20, 403 P.3d 126, 130 (Wyo. 2017) (reiterating that reading words into a statute is improper).



The Board has jurisdiction and must make a decision on ASCI's Site Plan before judicial review can be conducted.



Other Counties have interpreted the statutes accordingly.

For instance the *Park County Development Standards and Regulations (2015)* provide:

(4) Site Plan Standards:

A. Site Plan Standards Generally: The Board and Commission shall approve site plans meeting the basic site plan standards and the special site plan standards, if applicable. The Board and Commission shall deny approval to any site plan not meeting the standards.

(5) Conditions: The Board and Commission, in approving site plans, may impose such conditions, safeguards and restrictions upon the physical development of the site as deemed necessary to secure compliance with the approval standards of this section. Such conditions shall be limited to matters directly related to impacts of the proposed use and shall be proportional to the impacts.

(6) Effect of Approval: No structure or land use requiring site plan approval shall be commenced until the Planning & Zoning Commission and Board of County Commissioners has approved the site plan in accordance with this section.

# Conclusion



- Pursuant to the Laramie County Land Use Regulations and Wyoming Statutes on planning and zoning:
  - The Planning and Zoning Commission cannot make a final agency decision and may only make recommendations for the Board's consideration.
  - As such, the Board of Laramie County Commissioners must make a decision on ASCI's Site Plan Application prior to judicial review.
  - Amending the Regulations regarding sites plans, specifically Section 2-2-133, is not necessary if the Board correctly interprets that section.