



WESTERN PLACES / WESTERN SPACES

DESIGNING FOR *the* FUTURE:

BUILDING ENDURING VALUE

RMLUI 2019 HOME STUDY COURSES
LEGAL DEVELOPMENTS



MARCH 7-8, 2019

BONUS WORKSHOP / MARCH 6 / AFFORDABLE HOUSING 101

RMLUI
ROCKY MOUNTAIN
LAND USE INSTITUTE



2019 Western Places/Western Spaces: Designing for the Future: Building Enduring Value

Imagine your ideal community. What makes a place of enduring value? Does it preserve and appreciate its local history or is it a high-tech, future-oriented, master-planned development? Is it dense, urban, walkable, and transit-oriented or is it rural in nature, producing food, providing habitat, or protecting our natural heritage? Is it welcoming to all, regardless of income, ethnicity, ability, or age? Is it accessible, easy to navigate, and comfortable? Is it resilient and sustainable, able to cushion the impacts of climate change and reduce our impacts on the environment? And what is the role of art and beauty in creating places of enduring value? How important is it to create spaces that inspire awe, that promote civic engagement, that provide a respite, or that encourage recreation?

As economic recovery has spread across the West, the demands of rapid growth threaten to undermine our ability to plan for and design places of lasting value. And yet, good design ensures that what we build works for the communities now and into the future. High quality design can transform a mundane block of apartments into a vibrant community; it can help revitalize a struggling Main Street; and it can promote sustainability by ensuring that our investments are durable.

For RMLUI's 28th Western Places/Western Spaces conference, we looked at the ways in which the quality of design informs and shapes our communities. What works and what doesn't? How are small towns using design to encourage growth and economic opportunities? How are cities ensuring that their focus on affordability doesn't come at the expense of quality infrastructure? How are suburban areas re-designing spaces to meet changing market demands amid a retail revolution? How are regions using design to ensure that communities build on their diversity, leverage their collective resources, improve their connectivity, and preserve their natural assets? What design disasters should we learn from and avoid in the future? And what tools can we use to promote more thoughtful, more effective, and more beautiful design?

Sessions from the conference are recorded for use in RMLUI's Home Study Program. This course, *Legal Developments*, is intended to highlight some recent legal decisions pertinent to land use law, including First Amendment rights, conservation easements, and legislative updates.

JURISDICTIONAL COLLABORATION IN URBAN RENEWAL: LEGAL UPDATES & CASE STUDIES

Come and learn the basics of urban renewal and tax increment financing and how jurisdictions can build collaborative networks to facilitate major developments in their communities. Topics will include the role of staff versus boards, as well as legal requirements, such as sunshine laws, transparency, and conflicts of interest. Dive into the history of urban renewal legislation, including recent changes regarding the makeup of boards and negotiation requirements. Hear from Commerce City Urban Renewal Authority's redevelopment of the Mile High Greyhound Park.

SPEAKER INFORMATION

MODERATOR:

Caitlin Quander

Attorney, Brownstein Hyatt Farber Schreck
Denver, CO

With an emphasis on land use and entitlements, Caitlin Quander's practice spans all areas of real estate development including acquisitions and dispositions, zoning and development disputes, as well as serving as special and general counsel to various governmental and quasi-governmental entities, including urban renewal authorities. Caitlin understands the interplay between the public sector and private real estate developers. She represents urban renewal authorities and private developers throughout Colorado in negotiations on tax increment and other public financing. Additionally, Caitlin has extensive experience structuring and negotiating Public Improvement Fee (PIF) and Payment in Lieu of Taxes (PILOT) Covenants, allowing her clients to successfully bridge the gap between available public and private financing sources. Caitlin advises clients on development and entitlement matters related to land use issues, including performing zoning diligence and drafting and negotiating development agreements, memorandums of understanding and intergovernmental agreements. She guides clients through board of adjustment, annexation, landmark designation, and planning and zoning processes.

SPEAKERS:

Robert Sheesley

City Attorney, Commerce City
Commerce City, CO

Robert Sheesley has served as the City Attorney for Commerce City, Colorado, since April 2016. Robert previously served in the New Orleans City Attorney's Office, representing the city's public works department, and worked in private commercial litigation and employment law practices in New Orleans and Jacksonville, Florida. A graduate of Loyola University New Orleans, Robert received his J.D. from the University of Florida College of Law and his Masters in Public Administration from the University of Colorado Denver.

Chris Cramer

Director of Community Development, Commerce City
Commerce City, CO

Chris is the Director of Community Development for the City of Commerce City, CO. He leads and supervises commercial, residential, and project permitting and setting and implementing the City's planning vision and goals. Chris will discuss the history of the Mile High Greyhound Park, the planning and redevelopment of the property and provide his perspective as the staff member leading the process for the Commerce City URA.

SESSION INFORMATION

OUTLINE:

1. Basics on urban renewal and tax increment financing
2. Role of Urban Renewal Staff versus Urban Renewal Board
3. Legal Requirements: Sunshine Laws, Transparency, Conflict of Interest
4. History of URA Legislation
5. Overview of House Bill 15-1348
6. Case Study of Commerce City URA – One of the first URAs to complete compliance with HB 1348 by reconfiguring its board, negotiating intergovernmental agreements with other taxing bodies, approving an urban renewal plan and negotiation a redevelopment agreement with a private developer.
7. Recommended best practices and lessons learned about collaborating and negotiating with other jurisdictions.
8. Q&A

LEARNING OBJECTIVES:

- Basic understanding of Colorado urban renewal law and tax increment financing
- Understanding of HB 15-1348 and its requirements
- Best practices and lessons learned from Commerce City URA's HB 15-1348 compliance process for implementation in their CO community

PUBLIC PLACES, PRIVATE MESSAGES: HOW THE FIRST AMENDMENT SHAPES STREET ART AND ADVERTISING

As cities increasingly seek to build or revive walkable, pedestrian oriented streetscapes, advertisers and art projects have followed, raising complicated questions about how to manage all that content while staying on the right side of the Constitution. This session answers those questions, explaining how the First Amendment shapes the rules governments can make to regulate displays on public property, like streets and sidewalks. Among the questions we'll tackle: if my city creates a public art program, do we have to accept art from a hate group? And, if my city offers advertising opportunities in public places, is there any way to regulate the content? We'll explore these topics and others, and will offer some sample schemes for creating lively, legal streetscapes.

SPEAKER INFORMATION

MODERATOR:

Brian Connolly

Shareholder, Otten Johnson Robinson Neff + Ragonetti
Denver, CO

Brian Connolly represents public- and private-sector clients in matters relating to zoning, planning, development entitlements and other complex regulatory issues. Brian's practice encompasses a broad range of land use matters including zoning compliance, rezonings and other regulatory amendments, planned-unit developments, development agreements, private covenants and restrictions, land use and zoning litigation, initiatives and referenda associated with land use approvals, and real estate transactions. Brian additionally specializes in the First Amendment and land use issues associated with outdoor sign and advertising regulation, and fair housing matters in local planning and zoning. Brian will lead the discussion and will cover the First Amendment's application to a range of tricky scenarios.

SPEAKERS:

Andy Peters

Attorney, Otten Johnson Robinson Neff + Ragonetti
Denver, CO

Andy Peters represents clients in a wide range of land use and litigation matters, including title and survey, development approvals, construction and real estate disputes, and related appeals. His practice spans clients of all sizes, from homeowners and small businesspeople to commercial entities and governments and includes a special emphasis in First Amendment matters. While in law school he earned recognition for excellence in First Amendment studies. Before joining Otten Johnson, Andy served as an appellate law clerk to Justice William W. Hood, III of the Colorado Supreme Court, and as an intern for Justice Monica Marquez, also of the Colorado Supreme Court. Andy will discuss both the historic developments leading to an increased focus on streetscape regulations and the legal framework governing those regulations.

Stephen Wilson

Senior Planner, City of Lakewood
Lakewood, CO

Stephen Wilson is a senior planner for one of Colorado's five largest cities, where he was extensively involved in a successful effort to overhaul the city's sign code, as well as its ongoing campaign to develop an aging retail corridor into a vibrant arts district. Stephen will provide a planner's perspective on both the strategic and practical considerations cities face in regulating expressive activity in the public sphere and will speak more particularly about using the arts to influence the design of public places.

Tracy Weil

Co-Founder, River North Arts District
Denver, CO

Tracy Weil is a public artist and co-founder of the River North Art District otherwise known as RiNo. From colorful murals to transforming his 2D iconography into 3D, Weil likes to work big! Along with using more traditional methods like painting and bronze, Weil is working in eco friendly materials such as nontoxic paints, eco-Resin and recycled concrete. Weil's giant works are also available in fiberglass, steel or aluminum. Weil works with civic agencies, corporations or developers looking to add monumental works to their projects. Weil is also an Art District Consultant. He's helped the City of Lakewood and the neighborhood communities on the creation of their new 40 West Arts District. Weil has also served as a district consultant for the Aurora Cultural Arts District helping activate this vibrantly diverse district on East Colfax. Employing his background as the co-founder of the West's best-known arts districts, an artist, and an arts-district consultant, Weil will complement the legal and policy discussion with the perspective of someone who creates art for public spaces—and who creates public spaces for art.

SESSION INFORMATION

OUTLINE:

1. Introduction
2. Where are we now? A return to walkable streetscapes
 - a. 20th Century Story: Car travel emphasizes enormous billboard advertising; lost focus on pedestrian experience
 - b. 2000 and Beyond: Increasing emphasis on pedestrian and multimodal transportation experience creates renewed focus on street displays
 - c. More interest in street displays = more questions in more places about how to regulate them
3. Legal Backdrop
 - a. First Amendment: what does it protect?
 - i. Not just about free speech and free press
 - ii. Activities in certain public places receive special protections (e.g., picketing)
 - iii. Signs, displays, and art also protected
 - b. First Amendment: how does it operate?
 - i. Two kinds of Regulations
 1. Regulations on content (i.e., what display can say): courts very skeptical
 2. Regulations on anything other than content (e.g., size, placement, brightness): easier to sustain
 - ii. Government speech: government can say what it wants in public places (e.g., traffic signs)
 - c. City Rules: permitting right of way encroachments
4. Applying the Rules: Designing Content in Public Places
 - a. Do sidewalk sign design guidelines comply with the First Amendment?
 - b. Can a city allow some sidewalk advertising but not others?
 - c. Can a city create a public art program without accepting all submissions?
 - d. And others
5. Some legal solutions and best practices
 - a. Franchise agreements
 - b. Transit shelter advertising
 - c. Sign districts
6. Questions and Answers

LEARNING OBJECTIVES:

- Understand the First Amendment's protections for displays in public spaces.
- Know how to distinguish between problem rules (limits on content) and safer limits on how content can be displayed.
- Best practices for creating dynamic streetscape signage and art without violating the Constitution.

RECENT LAND USE DECISIONS IN THE ROCKY MOUNTAIN WEST

DESCRIPTION

Hear from the region's top experts, discussing trending cases of significance from all levels of the federal and state court system involving the latest in land use and zoning law as well as an opportunity to discuss areas ripe for further court or legislative action. Learn how recent case law may impact planning ordinances, procedures, and general plans.

SPEAKER INFORMATION

MODERATOR:

Jason Morris

Partner, Withey Morris, PLC
Phoenix, AZ

Jason Morris is a founding partner of Withey Morris, PLC. Experienced and effective, his dynamic presentations at public hearings on behalf of his clients prove that an attorney can be both personable and tenacious. While attending the University of Arizona College of Law, Mr. Morris was the Managing Editor of the Arizona Law Journal of International & Comparative Law. He also spent time as a congressional staff member in Washington, D.C. Throughout his career, Mr. Morris's practice has been exclusively in land use, government relations, zoning, and administrative law. His expertise has been critical to state legislative efforts surrounding land use over the past two decades and his cases include many of the area's most significant and notable developments. Mr. Morris's client list includes several national homebuilders, master plan developers, commercial-industrial land owners, national retailers, and Fortune 100 companies. He spends significant time giving back to the community by way of his involvement as State President of the Alliance of Boys & Girls Clubs as well as serving as the Mayor's representative to the City of Phoenix Infill Advisory Board, and the Chairman's appointment to the Maricopa County Board of Adjustment.

SPEAKERS:

David Foster

Partner, Foster Graham Milstein & Calisher, LLP
Denver, CO

David Foster is co-managing partner of Foster Graham Milstein & Calisher, LLP. Originally founded in 1999, FGMC was quickly recognized as one of Denver's "up and coming" law firms by providing effective and innovative legal representation focused on the achievement of client goals. Mr. Foster's practice is adept at balancing public and private interests and has been achieving serious results for his clients for nearly 20 years by consistently finding a better way to do the deal—better in terms of creativity, efficiency and the ability to bring parties with seemingly disparate interests to common ground. Mr. Foster earned a BA from the University of Colorado, Boulder. He earned his JD at the University of Denver and then went on to earn his MPA from the University of Colorado, Denver.

Jessica Lawrence

Attorney & Mediator; Lawrence Meeting Resources
Santa Fe, NM

Jessie Lawrence is an attorney and mediator who operates a solo practice focusing on dispute resolution, public engagement and participation, and planning. Most of her work is in the public sector, with a focus on the needs of governments and communities. Recent clients include the City of Albuquerque; the Community Environmental Working Group, a Corrales-based group with the goal of continuous environmental improvement at Intel New Mexico; the Rancho Viejo community in Santa Fe County; and the New Mexico Philharmonic. She serves on the State of New Mexico Statewide ADR Commission and the New Mexico State

Bar ADR Steering Committee, and co-chairs the ABA Section of Dispute Resolution's Committee on Public Policy, Consensus Building, and Democracy. Before opening her own solo practice, Jessie worked in capital planning for the State of New Mexico and for a private planning firm, assisting communities with the planning process and communicating technical information to governmental entities around the state. She has a JD and a master's degree in urban planning from the University of Michigan, maintains New Mexico and Michigan law licenses, and is AICP-certified planner. More information is available at <http://www.lawrencemeetingresources.com>.

SESSION INFORMATION

OUTLINE:

1. Update on recent legislation
 - a. Arizona
 - b. New Mexico
 - c. Colorado
 - d. Others
2. Update on recent case law
 - a. Arizona
 - b. New Mexico
 - c. Colorado
 - d. Others
3. Learn what is happening in other states
4. Q&A

LEARNING OBJECTIVES:

- Participants will learn about land use issues in Arizona.
- Participants will learn about land use issues in New Mexico.
- Participants will learn about land use issues in Colorado.

STRUCTURES & USES. CONFORMING & NONCONFORMING. LEGAL & ILLEGAL. WHAT'S THE DIFFERENCE?

This session will chart out and discuss the differences between conforming, nonconforming, legal, illegal, and compliant structures and uses, as defined in zoning codes. Then, the panel will discuss the practical implications of what a particular designation may mean to a municipality, property owner, party acquiring an existing building, or a lender and how they may help or hinder adaptive reuse of buildings. In particular, the ability to rebuild, how a property is underwritten and property insurance implications. The panel will also discuss how zoning and these designations can be used to shape areas to match municipal redevelopment goals.

SPEAKER INFORMATION

MODERATOR:

Caitlin Quander

Attorney, Brownstein Hyatt Farber Schreck
Denver, CO

With an emphasis on land use and entitlements, Caitlin Quander's practice spans all areas of real estate development including acquisitions and dispositions, zoning and development disputes, as well as serving as special and general counsel to various governmental and quasi-governmental entities, including urban renewal authorities. Caitlin understands the interplay between the public sector and private real estate developers. She represents urban renewal authorities and private developers throughout Colorado in negotiations on tax increment and other public financing. Additionally, Caitlin has extensive experience structuring and negotiating Public Improvement Fee (PIF) and Payment in Lieu of Taxes (PILOT) Covenants, allowing her clients to successfully bridge the gap between available public and private financing sources. Caitlin advises clients on development and entitlement matters related to land use issues, including performing zoning diligence and drafting and negotiating development agreements, memorandums of understanding and intergovernmental agreements. She guides clients through board of adjustment, annexation, landmark designation, and planning and zoning processes.

SPEAKERS:

Tina Axelrad

Zoning Administrator, City and County of Denver
Denver, CO

As the Zoning Administrator for the City of Denver, Tina supervises commercial, residential, and project permitting teams as well as the general zoning administration staff. She interprets the Zoning Code and makes determinations on the legal designations of properties. She will present legal definitions and charts explaining the meaning of conforming, nonconforming, legal, illegal and compliant, as applied to structures and uses.

Jesse Bank

Associate, Urban Villages, Inc.
Denver, CO

Jesse Bank is an associate on the development team at Urban Villages, Inc. He works on the front end of new projects, including architect selection, market research and financial analysis. He also oversees concept design, site due diligence, and other predevelopment activities. He also serves on the Jefferson County Planning Commission. He will discuss how these legal designations influence his analysis of potential projects and opportunities for adaptive reuse, including his experience with how lenders view these issues.

Gretchen Ricehill

Assistant Director of Economic & Community Development, City of Glenwood Springs
Glenwood Springs, CO

Gretchen Ricehill is the Assistant Director of the Glenwood Springs Economic & Community Development Department. She has been employed with the city since 2006 where she started as the department's senior planner. Prior to Glenwood Springs, Ms. Ricehill worked as a long-range planner for the City of Sioux City, Iowa where she specialized in historic preservation and neighborhood planning. Ms. Ricehill earned Master's Degrees in Historic Preservation from Colorado State University and Urban & Regional Planning from the University of Colorado, Denver.

SESSION INFORMATION**OUTLINE:**

1. First 45 minutes:
 - a. Definitions and charts explaining the meaning of conforming, nonconforming, legal, illegal and compliant, as applied to structures and uses.
 - b. Discuss how communities can adopt new zoning codes while accounting for existing structures and uses and how to handle future expansions and nonconforming site features.
2. Last 45 minutes:
 - a. Panel discussion by Tina Axelrad, Caitlin Quander and Jesse Bank, with Urban Villages and on Jefferson County Planning Commission, on the practical implications of what these designations mean:
 - i. - to a municipality
 - ii. - to a property owner
 - iii. - to a party considering buying an existing building
 - iv. - to a lender
 - b. Discussion about how these designations may help or hinder adaptive reuse of buildings.
 - c. Discussion on ability to rebuild after casualty events, and ability to voluntarily modify existing buildings.
 - d. Jesse Bank will discuss how he underwrites / values a property, and how conforming v. nonconforming impacts that process. He will also discuss his experience with how lenders analyze these designations and associated risks in determining whether or not to commit funds to particular projects.
 - e. Discussion about using these designations, along with zoning, to shape areas over the long-term to match municipal planning documents and redevelopment goals.

LEARNING OBJECTIVES:

- Understanding of the legal differences between conforming, nonconforming, legal, illegal, and compliant structures and uses, as defined in zoning codes.
- Understanding how to approve and implement a new zoning code and account for existing structures and uses that may become nonconforming under the new code.
- Understanding differences and pros and cons by examining definitions from multiple zoning codes.
- Understanding the practical implications of these designations and how municipalities and the development community can better use them to achieve intended planning goals.

TRYING TIMES: CONSERVATION EASEMENTS AND FEDERAL TAX LAW

Since 2005, the courts have issued more than 100 opinions involving challenges to deductions claimed for conservation easement donations and there are additional cases in the pipeline. Nancy A. McLaughlin, Professor of Law at the University of Utah, as well as Karin Gross and Luke Ortner, representing the U.S. and Colorado branches of the IRS Office of Chief Counsel, will discuss this growing body of case law, with an emphasis on what easement donors, as well as government and nonprofit holders, need to know when drafting of conservation easements. The presenters also will discuss the IRS's current areas of focus in this context. This session will be helpful to landowners, government and nonprofit easement holders, and attorneys who represent landowners or holders.

SPEAKER INFORMATION

SPEAKERS:

Nancy McLaughlin

Robert W. Swenson Professor of Law, University of Utah SJ Quinney College of Law
Salt Lake City, UT

Professor McLaughlin writes and lectures extensively on conservation easement, tax, and nonprofit governance issues. She consults with land trusts, landowners, and others regarding conservation easements. She serves on the board of Utah Open Lands and on Vital Ground and the Wildlife Land Trust advisory boards. She has published many articles on conservation easements and blogs on easement current developments (see http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=95358).

Karin Gross

Special Counsel, Income Tax and Accounting, IRS Office of Chief Counsel
Washington, DC

Karin has worked for more than 30 years as an attorney for the Internal Revenue Service, specializing in the charitable contribution deduction under Internal Revenue Code section 170(h). She is a frequent speaker on conservation easement deduction issues. Before working at the IRS, Karin was a member of the Office of Legislative Counsel, US House of Representatives, where she was responsible for drafting legislation. She is a graduate of the University of Wisconsin Law School and holds a tax law degree from Georgetown University Law School.

Luke Ortner

Special Counsel, Income Tax and Accounting, IRS Office of Chief Counsel
Denver, CO

SESSION INFORMATION

OUTLINE:

- I. Introduction
- II. Recent Case Law (subject to change with issuance of new case law)
 - a. Extinguishment and movable homesites
 - b. Proceeds clause and improvements
 - c. Amendments
 - d. Adjacent parcels encumbered by similar easements
 - e. Satisfying the conservation purposes test
 - f. Donations by lessees
 - g. IRS Form 8283

- h. Contemporaneous written acknowledgments
 - i. Mortgage subordinations
 - j. Recordation date and date of donation
 - k. Quid pro quo
 - l. Valuation
- III. Current Areas of IRS Focus, Including Syndications

LEARNING OBJECTIVES:

- Understand the issues the IRS has focused on in recent litigation and intends to focus on in future litigation.
- Understand the manner in which the courts have interpreted various federal tax law requirements.
- Understand how to satisfy various federal tax law requirements interpreted by the courts.