

RESOLUTION NO. 2015-17

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO REGARDING TELECOMMUNICATIONS FACILITIES AND SPECIFICALLY AMENDING SECTIONS 62-1, 82-2, 82-3, 82-4, 82-205, 82-206, 82-207, 82-208, 106-115, 106-116, 106-373, AND 106-393 OF THE LA PLATA COUNTY LAND USE CODE.

WHEREAS, pursuant to the Colorado Planning Code, C.R.S. §§ 30-28-101, *et seq.*, the Board of County Commissioners of La Plata County, Colorado (the "Board") is empowered to plan and provide for the physical development of the unincorporated territory of La Plata County (the "County");

WHEREAS, the Local Government Land Use Control Enabling Act, C.R.S. §§ 29-20-101, *et. seq.*, empowers the Board to plan for and regulate the use of land within the unincorporated territory of the County, including but not limited to: regulating the use of land on the basis of the impact thereof on the community or surrounding areas; regulating the location of activities and developments which may result in significant changes in population density; providing for phased development of services and facilities; and otherwise planning for and regulating use of land so as to provide for the planned and orderly use of land;

WHEREAS, Colorado counties possess those powers enumerated by the Colorado Constitution and Colorado Revised Statutes and such further incidental implied powers as are reasonably necessary to carry out the express powers;

WHEREAS, the Colorado Planning Code and Local Government Land Use Control Enabling Act constitute a broad delegation of authority to the County generally encompassing the subject of land use;

WHEREAS, pursuant to these authorities, the Board adopted land use regulations and subdivision regulations set forth in Subpart B of the La Plata County Code (the "Code");

WHEREAS, the Planning Commission for the County held a duly noticed public hearing on April 23, 2015, and after receiving competent evidence at the hearing, made a recommendation to the Board to approve Project No. 2014-0324;

WHEREAS, the Board held a duly noticed public hearing on May 19, 2014, and heard testimony and received competent evidence that Sections 62-1, 82-2, 82-3, 82-4, 82-205, 82-206, 82-207, 82-208, 106-115, 106-116, 106-373, and 106-393 of the Code should be amended to modify and clarify certain provisions related to telecommunications facilities, as set forth in the attached Exhibit A; and

WHEREAS, the Board received competent evidence that it would be in the best interest of the general health, safety and welfare of La Plata County citizens to amend Sections 62-1, 82-2, 82-3, 82-4, 82-205, 82-206, 82-207, 82-208, 106-115, 106-116, 106-373, and 106-393 of the

Code to modify and clarify certain provisions related to telecommunications facilities, as set forth in the attached Exhibit A.

NOW THEREFORE, BASED UPON THE EVIDENCE AND TESTIMONY PRESENTED AT THE PUBLIC HEARINGS, BE IT RESOLVED BY THE LA PLATA COUNTY BOARD OF COUNTY COMMISSIONERS:

1. That the La Plata County Code shall be and is hereby amended as follows:
 - a. Chapter 82, Division 5 is repealed and re-enacted as set forth in the attached Exhibit A;
 - b. Sections 62-1, 82-2, 82-3, 82-4, 106-115, 106-116, 106-373, and 106-393 are amended as set forth in the attached Exhibit A;
2. The enactment of this Resolution is necessary for the immediate preservation of public health, safety and welfare and, therefore, this Resolution shall take effect immediately.

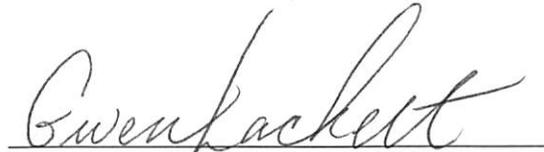
DONE AND ADOPTED IN DURANGO, LA PLATA COUNTY, COLORADO, this 19th day of May, 2015.

ATTEST:


Clerk to the Board



BOARD OF COUNTY COMMISSIONERS OF
LA PLATA COUNTY, COLORADO


Gwen Lachelt, Chair


Brad Blake, Vice-Chair


Julie Westendorff, Commissioner

EXHIBIT A

The following definitions are added to Section 62-1:

Antenna means any device mounted on a telecommunications tower or other type of structure to receive, transmit, or relay wireless telecommunications signals.

Collocation means the mounting of antennae and support facilities on a telecommunications tower or other type of structure that already has at least one (1) telecommunications facility mounted on it.

Freestanding facility means a telecommunications facility that consists of a telecommunications tower, attached antennae, and associated support facilities.

Lattice tower means any telecommunications tower comprised of interconnected poles, pipes, bars, or wires. A lattice tower includes, but is not limited to, any tower that incorporates guy or supporting wires.

Monopole tower means a telecommunications tower which consists solely of a ground-mounted support pole or pipe, without guy or supporting wires.

Speculative tower means a telecommunications tower for which no antennae are immediately proposed.

Stealth tower means a telecommunications facility consisting of a telecommunications tower, antennae, and support facility that have been designed to effectively blend in with the existing environment by use of camouflaging techniques.

Structure-mounted facility means any telecommunications facility, antenna, or support facility mounted upon a structure that is not a telecommunications tower as defined by this section.

Substantial change means a change to a telecommunications facility meeting one of the following criteria:

- a. For telecommunications towers outside of public rights-of-way, a change increasing the height of the tower by more than ten (10) percent, or by the height of the new antenna array with separation from the nearest antenna not to exceed twenty (20) feet, whichever is greater (thus, a 150-foot tower may be increased in height by up to fifteen (15) feet without constituting a substantial increase in size. If there is already an antenna at the top of the tower, the tower height may be increased by up to twenty (20) feet plus the height of a new antenna to be located at the new top of the tower);
- b. For telecommunications towers in public rights of way and for structure-mounted facilities, a change increasing the height of the tower or structure by more than ten (10) percent or ten (10) feet, whichever is greater;

- c. For telecommunications towers outside of public rights-of-way, a collocation protruding from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the collocation, whichever is greater;
- d. For telecommunications towers in public rights-of-way and for structure-mounted facilities, a collocation protruding from the edge of the tower or structure more than six (6) feet;
- e. A change involving installation of more than the standard number of new equipment cabinets for the telecommunications technology involved, but not to exceed four (4) cabinets;
- f. A change entailing any excavation or deployment outside the current site of the telecommunications tower or structure;
- g. A change that would defeat the existing concealment elements of the telecommunications tower or structure; or
- h. A change that does not comply with conditions associated with the prior approval of construction or modification of the telecommunications tower or structure-mounted facility unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding substantial change threshold identified above.

Support facility means any electrical or mechanical equipment, equipment cabinets, wiring, and other forms of physical improvements used in support of antennae.

Telecommunications facility means any antennae, telecommunications towers, and support facilities used to provide telecommunications services. The term telecommunications facility shall not include:

- a. Amateur radio operators' equipment licensed by the Federal Communications Commission;
- b. Any satellite earth station antenna two (2) meters (*i.e.* six feet and six and six eighths inches) or less in diameter which is located in an area whose existing or intended use is commercial or industrial;
- c. Any non-commercial satellite earth station antenna one (1) meter (*i.e.* three feet and three and three eighths inches) or less in diameter;
- d. Telecommunications towers with a tower height of less than thirty-five (35) feet, located on a gas or oil well pad, supporting only antennae that are solely used to transmit or receive information related to gas or oil well production;
- e. Utility meters that enable communication between the meter and the central utility system;
and

- f. Small cells and distributed antennae systems that are mounted upon or completely contained within a residence or commercial operation and have the sole purpose of improving telecommunications service for occupants of the residence or employees of the commercial operation.

Telecommunications provider means an entity licensed by the Federal Communications Commission to provide telecommunications services to the general public.

Telecommunications tower means any structure whose primary purpose is to support one or more antennae in order to provide telecommunications services.

Section 82-2 (Administrative Permits) is amended as follows:

~~(7) Telecommunications facilities pursuant to section 82-207 (a) (1) Collocation of a telecommunication tower or other type of structure that constitutes a substantial change.~~

~~(8) Replacement or modification of antennae or support facilities that constitutes a substantial change.~~

Section 82-3 (Class I Permits) is amended as follows:

~~(7) Telecommunications facilities pursuant to section 82-207 (a) (2) Construction or replacement of a stealth tower.~~

Section 82-4 (Class II Permits) is amended as follows:

~~(24) Telecommunications facilities pursuant to section 82-207 (a) (3); and Construction of a telecommunications tower not subject to class I permit;~~

(25) Marijuana Facilities;

~~(26) Replacement of a telecommunications tower not subject to class I permit; and~~

~~(27) The first placement of a structure-mounted facility on a structure that is not a telecommunications tower.~~

Chapter 82 Division 5 is repealed in its entirety and re-enacted as follows:

DIVISION 5. TELECOMMUNICATIONS FACILITIES.

Sec. 82-205. General provisions.

(a) *Purpose.* The general purpose of this division is to regulate the placement, construction, and modification of telecommunications facilities in order to protect the health, safety, or welfare of the public, while considering the need for sufficient telecommunications facilities and competitive wireless telecommunications services in unincorporated La Plata County, Colorado. More specifically, the purposes of this division are:

- (1) To regulate the location of telecommunications facilities in unincorporated La Plata County;
- (2) To protect residential areas and land uses from potential adverse impacts of telecommunications facilities;
- (3) To minimize potential adverse visual impact of telecommunications facilities through careful design, siting, landscaping, and camouflaging techniques;
- (4) To encourage shared use of telecommunication facilities as the preferred option to construction of new telecommunications towers; and
- (5) To avoid potential adverse impacts caused by telecommunications facilities by ensuring that such structures are carefully designed, constructed, modified, and removed when no longer used.

(b) *Development not subject to land use permit.* A director's determination letter that no land use permit is required or a permit approved in accordance with this division shall be required prior to construction or modification of all telecommunication facilities, except that the following development shall not be subject to county land use code permitting:

- (1) Repairs that will not alter the physical appearance of the telecommunications facility;
- (2) Removal of a telecommunications facility, or removal of antennae or support facilities from a telecommunications facility;
- (3) Replacement of existing antennae on a telecommunications facility if the director determines that the new antennae are comparable in size to or smaller than the existing antennae; and
- (4) The addition of support facilities within a structure that will not expand the existing structure.

Sec. 82-206. Permitting process and application requirements.

(a) *Permitting process.*

(1) Director's Determination Letter that No Land Use Permit is Required. Construction or modification of telecommunication facilities that do not constitute a substantial change as defined within chapter 62 will receive a director's determination letter that no land use permit is required. In order to demonstrate that a substantial change is not occurring, the applicant must submit the following items for review. If review of these items demonstrates that a substantial change is occurring, the construction or modification will require a land use permit.

- a. A narrative describing the purpose of the proposal and the nature of the construction or modification.
- b. Scaled plan and elevation drawings of at least two (2) sides of the telecommunications facility and all structures on the site.
- c. A professional engineer's certification that the proposed construction or modification is structurally sound.
- d. A professional engineer's certification that the proposed construction or modification meets Federal Communication Commission requirements regarding electromagnetic radiation emissions.

(2) Land Use Permit Required. Construction or modification of telecommunications facilities that constitute a substantial change will require a land use permit as described in sections 82-2, 82-3, and 82-4.

(b) *Application requirements.* The application requirements in this section shall be required for land use code permitting in addition to all other application requirements in this subpart b. Only items determined by the director to be relevant to the proposed development shall be required. An application shall not be deemed complete until the department receives all information required in this section. Application review and actions by planning staff shall be as described in sections 82-81 and 82-92.

(1) General and Administrative application requirements. The following items shall be required for all applications for construction or modification of a telecommunications facility submitted pursuant to this division.

- a. Proof that the lot subject to the application was legally subdivided.
- b. A written narrative describing the purpose of the proposal and the nature of the construction or modification. The narrative shall clearly explain the type of service to be provided and the frequency or bandwidths to be used. The narrative shall also

address lighting, security, and signage for the telecommunications facility and explain how applicable requirements regarding these are met.

- c. A propagation study demonstrating that the facility is no larger than necessary to efficiently provide telecommunications service (and space for collocation if necessary). The study shall include a graphic depiction and estimated size of the area in which service will be newly provided and estimated size of the area where service will be improved by the proposed facility. The county may hire a consulting professional engineer to review the study; the applicant shall be financially responsible for having the study prepared and, if necessary, reviewed.
 - d. Elevation drawings of at least two (2) sides of the proposed telecommunications facility in its entirety. Drawings of structure-mounted facilities must include the structure.
 - e. Photo-simulations of at least two sides of the proposed telecommunications facility. For modifications of existing facilities, photographs of the facility in its current state shall also be provided.
 - f. A professional engineer's certification that the proposed construction or modification is structurally sound.
 - g. A description of the size, type, and output of any proposed lighting on the telecommunications facility. This may be included on the above-mentioned elevation drawings.
 - h. Written certification from a professional engineer that demonstrates compliance with Federal Communications Commission standards regarding electromagnetic radiation emissions.
- (2) Class I application requirements. In addition to the general and administrative requirements, the following items shall be required for all applications for construction or modification of a telecommunications facility submitted pursuant to this division and requiring a class I land use permit.
- a. A director's determination that the camouflaging scheme is sufficiently effective that the tower meets the definition of a stealth tower.
 - b. A written narrative describing the camouflaging scheme and the potential for future collocation on the stealth tower. The potential for collocation shall also be shown on the elevation drawings and certified by a professional engineer.
 - c. A landscaping plan.
- (3) Class II application requirements. In addition to the general and administrative requirements, the following items shall be required for all applications for construction or

modification of a telecommunications facility submitted pursuant to this division and subject to class II permitting.

- a. For construction of a telecommunications tower, evidence that demonstrates there are no existing towers or other types of structures capable of supporting antennae that will provide the proposed telecommunications service, or evidence that demonstrates an unsuccessful good-faith effort to collocate on existing towers or structures.
- b. For construction of a telecommunications tower, in addition to the requirements of Sec. 82-206 (b) (1) (c), the propagation study shall include graphic depictions and estimated sizes of the areas in which service would be provided or improved at lesser tower heights.
- c. For construction of a lattice tower, documentation indicating that the construction and maintenance of a monopole tower would not meet the standards of this division, documentation indicating aesthetic considerations favor the use of a lattice tower at the proposed location, or a written certification from a professional engineer that a monopole tower would not be technically feasible for the proposed project.
- d. For construction of a telecommunications tower, a written narrative describing the potential for future collocation on the tower. The potential for future collocation shall also be shown on the elevation drawings and certified by a professional engineer.
- e. For construction of a telecommunications tower, a landscaping plan.

Sec. 82-207. Standards.

- (a) *Applicability.* In addition to all other applicable standards in subpart b of the La Plata County Code, the provisions of this division shall apply. If the standards identified in this section conflict with any other standards and cannot be read harmoniously with such standards, the standards in this section shall control and apply.
- (b) *General standards.* Except as provided below, the following standards shall apply to all telecommunication facilities.
 - (1) All telecommunications facilities shall demonstrate compliance with Federal Communications Commission standards regarding electromagnetic radiation emissions.
 - (2) Building plans for telecommunication facilities shall be certified by a professional engineer to be structurally sound and must meet applicable building code requirements.
 - (3) Except for those that have received a director's determination letter that a land use permit is not required, telecommunications facilities shall be no larger than necessary to efficiently provide telecommunication services and space for collocation as required by section 82-207 (d) (6).

(c) *Standards for structure-mounted facilities.* In addition to the requirements of paragraph (b) of this section, the following standards shall apply to structure-mounted facilities that require a land use permit:

- (1) All structure-mounted facilities shall be designed and constructed to blend with the architectural characteristics of the structure they will be mounted upon.
- (2) Support facilities associated with structure-mounted facilities shall be either inside the structure, inside an existing mechanical penthouse, or in a new shelter adjacent to and similar in material and color to an existing mechanical penthouse or to the structure itself.

(d) *Design and performance standards for freestanding facilities.* In addition to the requirements of paragraph (b) of this section, the following standards shall apply to freestanding facilities and modifications of freestanding facilities that require a land use permit:

- (1) Collocation as opposed to new telecommunications tower construction shall be required. The requirement may be waived by the director upon a submittal of a written request by the applicant that demonstrates a need for a new tower. To demonstrate a need for a new tower, the applicant shall provide evidence that demonstrates that there are no existing towers or other types of structures capable of supporting antennae that will provide the proposed telecommunications service, or evidence that demonstrates an unsuccessful good-faith effort to collocate on existing towers or structures.
- (2) For collocations on stealth towers, new antennae must match the pre-existing camouflage scheme.
- (3) Speculative towers shall not be permitted.
- (4) Lattice towers are prohibited unless the director determines in writing that:
 - a. The construction and maintenance of a monopole tower would not meet the standards of this division, such as the requirement for collocation;
 - b. Aesthetic considerations favor the use of a lattice tower at the proposed location;
or
 - c. A professional engineer provides written certification that a monopole tower would not be technically feasible for the proposed project.
- (5) New freestanding facilities shall be capable of supporting at least three (3) additional antennae mounts and associated antennae.

- (6) The maximum telecommunications tower height allowed shall be one hundred and ninety-nine feet.
- (7) The setback from a telecommunications tower to any property line shall be at least 1.3 times the tower height.
- (8) Support facilities associated with freestanding facilities shall meet the following requirements:
 - a. Support facilities at ground level such as equipment cabinets and backup power sources shall be located in an enclosed structure that is architecturally compatible with the surrounding environment or shall be screened completely with other visual mitigation techniques, including but not limited to, vegetation, berms, landscaping boulders, or an architecturally compatible wall or fence;
 - b. Where security fencing is used, such fencing shall enclose the minimum space necessary for safety and be designed to blend with the character of the existing environment;
 - c. Support facilities shall be grouped as closely as possible to each other and the telecommunications tower;
 - d. Support facilities at ground level shall not exceed a surface area of four hundred and fifty square feet per telecommunications provider; and
 - e. Light fixtures located on or used for support facilities shall be shielded to prevent light trespass.

Sec. 82-208. Abandonment, removal and reclamation.

- (a) *Abandonment prohibited.* Telecommunications facilities shall not be disused unless they are also removed.
- (b) *Abandonment and removal determination.* The director may request that the board hold a hearing on abandonment and removal of a telecommunications facility. The board shall declare a telecommunications facility abandoned and require removal if the facility is unused by all telecommunication providers for a period of at least one hundred and eighty (180) days or if the facility presents an imminent danger to the health, safety or welfare of the public. If requested, a permittee shall provide to the director documentation of usage. Notice of the abandonment and removal hearing shall be provided to the permittee and property owner by certified mail at least ten (10) days prior to the hearing.
- (c) *Removal.* Upon a determination by the board that the telecommunications facility is abandoned and removal is required, the permittee shall have ninety (90) days to resume use of the facility or remove it.

- (d) *Reclamation*. If a telecommunications facility is removed, the property owner shall at his or her expense restore the lot or structure containing the facility to a condition substantially similar to that existing before the development. Such removal shall not include removal of any landscaping unless the director approves the removal or the property owner requests the removal.

Section 106-115 is amended as follows:

Sec. 106-115. Personal marijuana cultivation; marijuana facilities.

- (a) *Personal marijuana cultivation*. Personal marijuana cultivation shall only be permitted as either accessory uses subject to the standards and permitting requirements established in section 82-5 or as class II land uses subject to all applicable standards in subpart b of the La Plata County code including the general standards imposed by section 82-210.
- (b) *Marijuana facilities*. When proposed to be located in the Animas Valley Land Use Plan Area, marijuana facilities shall meet all applicable standards imposed by this article ~~III H~~ as well as the general and additional standards imposed by sections 82-210 and 82-211. If the general and additional standards imposed by section 82-210 and 82-211 conflict with the applicable standards imposed by this article ~~III H~~ and cannot be read harmoniously with such standards, the stricter standard shall control and apply.

Section 106-116 is amended as follows:

Sec. 106-116. Telecommunications Facilities.

- (a) In the Animas Valley ~~Land Use Plan Area-Planning District~~, telecommunications facilities ~~as defined in chapter 82, division 5~~ may only be constructed in the neighborhood commercial, general commercial, and industrial land use plan districts, except for the collocation of antennae on existing ~~telecommunications~~ towers ~~or other types of structures~~ in any district.
- (b) The construction of new telecommunication facilities or collocation of antennae as described above shall ~~be subject to the permitting processes in chapter 82-require approval of a special use permit. Application requirements shall be those listed for Class II approval in section 82-207 (b).~~
- (b)(c) ~~When proposed to be located in the Animas Valley Land Use Plan Area, telecommunication facilities shall meet all applicable standards imposed by this chapter as well as the general standards imposed by chapter 82, article II, division 5. If the general standards imposed by chapter 82, article II, division 5 conflict with the applicable standards imposed by this chapter and cannot be read harmoniously with such standards, the stricter standard shall control and apply.~~

Section 106-373 is amended as follows:

Sec. 106-373. Uses permitted by special use permit.

Uses permitted by special use permit in the general commercial district include low-intensity, tourist-oriented recreational uses, motels, restaurants, outdoor entertainment, professional office buildings, plant nurseries, sale of goods hand-produced or hand-assembled on site, neighborhood-oriented businesses, public and quasi-public facilities, telecommunications facilities, and marijuana facilities as defined in section 62-1. In all cases, outdoor storage shall be screened, and lighting shall be minimal. Noise levels shall be maintained so as to minimize the nuisance for nearby residents. Intersections along public rights-of-way shall be consolidated where appropriate and improved to a level commensurate with any approved development. Developments shall be encouraged to provide for adequate internal circulation between properties in order to facilitate the sharing of road intersections. Parking shall be as required under section 106-111. It is an objective of this plan to provide for high quality commercial development at locations so designated. Projects proposed within the neighborhood and general commercial districts should be designed in a comprehensive manner with regard to access, internal circulation, drainage, parking and landscaping. It is not the purpose of these commercial districts to promote small lot subdivisions that lead to a strip commercial development.

Section 106-393 is amended as follows:

Sec. 106-393. Uses permitted by special use permit.

Uses permitted by special use permit in the industrial district are sand and gravel operations, asphalt plants, public and quasi-public facilities, telecommunications facilities, and marijuana facilities as defined in section 62-1. The location of sand and gravel type industrial properties indicated on the Animas Valley Land Use Plan Map are based on the permitted areas map provided by the state division of minerals and geology. If there is any question of land use map accuracy, the records of the state division of minerals and geology shall prevail.