

RESOLUTION NO. 2014-29

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO, AMENDING CERTAIN PUBLIC NOTICING PROVISIONS CONTAINED WITHIN 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 July 10, 2014, and after receiving competent evidence at the hearings, made a recommendation to the Board to approve Project No. 2014-0324;

WHEREAS, the Board held a duly noticed public hearing on August 5, 2014 and heard testimony and received competent evidence that the Code should be amended to modify and add certain provisions related to public noticing of planning and land use projects, 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 the Code to modify and add certain provisions related to public noticing of planning and land use projects, 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, THAT:

1. The La Plata County Code shall be and is hereby amended to modify and add certain provisions related to public noticing of planning and land use projects, 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 on date of its adoption.

DONE AND ADOPTED IN DURANGO, LA PLATA COUNTY, COLORADO, this 5TH day of August, 2014.

ATTEST:



BOARD OF COUNTY COMMISSIONERS OF
LA PLATA COUNTY, COLORADO

Julie Westendorff
Julie Westendorff, Chair

Gwen Lachelt
Gwen Lachelt, Vice-Chair

Robert A. Lieb, Jr.
Robert A. Lieb, Jr., Commissioner

EXHIBIT A

Sec. 62-1. Definitions.

Surrounding landowner means an owner of property within a specified distance of the property boundary of the lot or parcel subject to an application for a land use permit.

(remainder of the section is unmodified)

Sec. 82-9. Location and extent review.

(a) *Purpose.* The purpose of the location and extent review is to evaluate public uses and utilities, whether publicly or privately owned, for consistency with the comprehensive plan and to provide the planning commission, or joint planning commission, and public with the opportunity to comment on such uses. Location and extent review is intended to be a review process, not a permitting process.

(b) *Uses subject to location and extent review.* Unless excluded under subsection (c) of this section, the following uses shall be subject to location and extent review:

- (1) Public roads and parks;
- (2) Public ways, grounds, and spaces; and
- (3) Public buildings and structures and utilities, whether publicly or privately owned.

(c) *Exclusions from location and extent review.* The following uses are excluded from location and extent review:

- (1) Uses located on unincorporated land that is an enclave within a municipality;
- (2) Upgrades to an existing use, including repairing and/or replacing old or outdated equipment, that are required by state, federal, or local regulation, provided that, in the director's discretion, the improvements do not materially expand levels of service beyond design capacity and that the upgrades do not materially alter the existing location of the existing use;
- (3) Any use or subdivision that has been reviewed and approved by the county as part of a separate land use process; and
- (4) Any use that is solely necessary to serve development that is exempt from land use review under subsection 82-7(a).

(d) *Application contents.* An applicant for location and extent review shall submit the following:

- (1) Applicant and agent's (if applicable) name;
- (2) Address and phone number;
- (3) If the applicant is not the owner of the property where the use is proposed, the parcel number, and the name and address of the property owner(s) where the use is proposed;
- (4) Project narrative that provides a general description of the full scope of the project; and
- (5) Map prepared at an easily readable scale showing:
 - a. Boundary, or alignment for linear projects, of the proposed use;
 - b. Relationship of the proposed use to surrounding topographic and cultural features such as roads, streams, and existing structures;
 - c. Proposed building improvements and infrastructure related to the project; and
- (6) Any other information that the applicant deems beneficial to the public review of the proposed use.

(e) *Planning department application review.* The planning department shall have ten business days to determine completeness of a location and extent application. If the application is incomplete, the planning department shall provide written notice to the applicant citing the application's deficiencies within the ten-day review period.

(f) *Planning commission/joint planning commission review.* Once an application is deemed complete, the planning department shall schedule a hearing before the planning commission or if the project is within the joint planning area, the joint planning commission. Such hearing shall occur within 30 calendar days of the date on which the application is deemed complete. The City of Durango shall be provided notice of any application that is within three miles of its boundaries within three days of the application being deemed complete. The planning department shall mail notice of the hearing to interested local, state and federal agencies and/or other jurisdictions, and to surrounding landowners pursuant to section 82-83. The planning commission or joint planning commission may approve the application, disapprove the application, or approve the application with conditions. A hearing may be continued upon consent of the applicant.

(g) *Appeal and notification of decision.* The planning commission or joint planning commission's decision may be appealed pursuant to C.R.S. § 30-28-110(1)(c). In the event the planning commission or joint planning commission's decision is overruled by the body or official having jurisdiction as provided in C.R.S. § 30-28-110(1)(c), the applicant shall notify the planning department in writing of such final decision, and any conditions related thereto, no later than 14 business days after the decision is made.

Sec. 82-74. Reserved.

(Section deleted)

Sec. 82-81. Director report; administrative review; class I projects, lot consolidations, minor exemption subdivisions and boundary adjustments.

(a) Administrative review shall be subject to all procedures in this chapter, except sections 82-82, 82-88, 82-92(b),(d),(e) and (f), and 82-93.

(b) Class I projects and lot consolidations shall be subject to all of the procedures in this chapter, except sections 82-82 and 82-95. Boundary adjustments and minor exemption subdivisions shall be subject to all of the procedures in this chapter except sections 82-82. The director shall make a recommendation to approve, approve with conditions or deny the proposal. If the proposed development implements or has no effect on all relevant required standards, the director shall recommend approval of the proposed development. The director may attach conditions which are reasonably required or necessary to comply with the standards of this division. The results of this recommendation shall be referred to the joint planning commission or the planning commission for a public hearing. At the public hearing at which the project is presented to the joint planning commission or the planning commission, the joint planning commission or the planning commission may, by vote, approve, deny, approve with conditions, continue or remand the project to the planning director for additional review.

(c) Where class I projects, lot consolidations, minor exemption subdivisions and boundary adjustments, and any other project or facility made eligible for this procedure by this division, meet or exceed all required standards, requirements, procedures and specifications, and which are recommended for approval, or approval with conditions, the planning director, or his designee, may, but shall not be so required, place such matters on a minor projects proposed consent planning public hearing agenda. The planning commission may approve such consent agenda with a single motion, or pull any such project off of the proposed consent agenda for project specific review, at that public hearing. Any commissioner, member of the public, applicant or county staff person may request such project specific review at the public hearing.

Sec. 82-83. Surrounding Landowners.

(a) *Distance.* Surrounding landowners entitled to receive notices pursuant to sections 82-9, 82-85, 82-92, and 82-193 shall include those owners of property within five hundred (500) feet of the property boundary of the lot or parcel subject to an application for a land use permit unless the director determines that an exception applies pursuant to sub-section (b) below.

(b) *Exceptions.*

(1) For proposed developments subject to chapter 90, notices shall be sent pursuant to section 90-77.

- (2) For proposed developments subject to article III of chapter 106, surrounding landowners shall be established pursuant to section 106-112(e).
- (3) For proposed linear developments that cross multiple property lines, surrounding landowners shall include owners of property within two hundred and fifty (250) feet of the proposed development.
- (4) For proposed developments that the director determines may uniquely impact neighboring properties, surrounding landowners shall include all owners of property that may be uniquely impacted, but, under no circumstances shall the director exclude owners of property less than two hundred and fifty (250) feet from the proposed development.

(c) *Owners of Record.* Property owners shall be determined pursuant to the listed owner(s) of record according to the county assessor's records as of the date an application is submitted.

Sec. 82-85. Notification by applicant.

(a) *Mailed Notice.* Except for applications for administrative land use permits, final plats, and agreements to extend vested rights pursuant to section 82-202(5), within five (5) days following the submittal of all other applications to the planning department, the applicant shall mail written notice to surrounding landowners pursuant to section 82-83. At such time, the applicant shall also provide to the planning department a complete list of surrounding landowners, a copy of the letter sent to surrounding landowners, and a United States Postal Service Certificate of Mailing documenting that notices were sent to the surrounding landowners. Mailed notice to surrounding landowners shall not be required for applications for administrative land use permits, final plats, and agreements to extend vested rights pursuant to section 82-202(5).

(b) *Mailed Notice Contents.* Notices mailed pursuant to sub-section (a) above shall, at a minimum, include the following information:

- (1) Name of the applicant(s) and, if differing, owner(s) of record of the lot or parcel subject to the application for a land use permit;
- (2) Location in terms which would be understandable to the general public and in terms of section, quarter section, township and range of the lot or parcel subject to the application for a land use permit;
- (3) In the case of a conceptual development plan or preliminary plat, a description of the proposed subdivision and/or plan in terms of the proposed number of lots, the sizes of lots and the intended land uses of the subdivision; and
- (4) In the case of a class I or class II permit, a description of the proposed development, including the existing land use classification or zoning district, type of use, any building construction or remodeling, vehicular and pedestrian access, and any anticipated off-site impacts.

(c) *Posted Notice.* For all applications, within five (5) days following the submittal of an application to the planning department, the applicant shall post a notice on the subject property. The notice shall be on a form provided by the planning department and shall be legible and visible from a public right-of-way. At such time, the applicant shall provide to the planning department a written and signed statement indicating the date the notice was posted.

(d) *Notice to mineral estate owners and lessees.* For applications for preliminary or final subdivision plats, minor exemption subdivision plats, or class II permits, the applicant shall notify in accordance with C.R.S. § 24-65.5-103 all owners and lessees of any mineral rights that have been severed from the subject property upon which a proposed development may be undertaken. Such notification shall be made not less than thirty (30) days before the initial public hearing on the application for development, and shall, at a minimum, meet the requirements of C.R.S. §24-65.5-103. Also, the applicant shall, prior to the initial public hearing on the application, provide certification to the planning department that the required notice has been provided to the owners and lessees of any mineral rights that have been severed from the subject property and registered in accordance with C.R.S. § 24-65.5-103.

Sec. 82-90. Reserved.

(Section deleted)

Sec. 82-92. Action by planning department.

(a) *Review for completeness; accept or reject.* Incomplete applications, as determined by the planning staff, shall not be accepted for review. The planning staff shall review the application for completeness within fourteen (14) calendar days of the receipt of agency review comments. If the application is deemed to be incomplete, the planning staff shall notify the applicant by mail of the deficiencies in the application and how the deficiencies may be remedied. The planning staff has no obligation to place incomplete applications on the planning commission or joint planning commission agenda. Complete applications shall be accepted.

(b) *Compatibility assessment; special study.* Within ten working days of the acceptance of a complete application, the planning staff shall determine whether a compatibility assessment and/or special study shall be required. (See sections 82-191 and 82-196.)

(c) *Review compliance with standards.* The planning staff shall review the application in terms of compliance with the required standards, encouraged standards of the permit system, and contents of subpart B of this Code. Within twenty-one (21) working days after acceptance of a complete application, the planning staff shall notify the applicant of the results of the review and how any deficiencies may be mitigated. Any and all variances to required standards shall be obtained prior to the processing of any project to the planning commission, joint planning commission and/or board of county commissioners. Applications shall not be processed subject to obtaining such a variance to any required standard.

(d) *Staff recommendation and report.* The planning staff shall write a staff report and recommendation. The report and recommendation shall include discussion of the relevant issues pertaining to the compliance of the application to the standards of this division and a recommendation of approval, denial or continuance for additional information. After the review of the standards is complete, should the applicant so desire, the applicant may request a conference with the director or his designee. The director shall make a decision to recommend approval, approve with conditions or deny the proposal. The director may recommend the attachment of conditions which are reasonably required or necessary to comply with the standards of this division. Such report shall include a copy of the application, the staff's impact analysis for the project, and any other relevant materials. At the public hearing at which the project is presented, the planning commission, joint planning commission or board of county commissioners may, by vote, approve, deny, approve with conditions, continue or remand the project for additional review.

(e) *Distribution of planning staff report and recommendation.* The planning staff shall send copies of the report and recommendation to the applicant, planning commission, joint planning commission and county attorney. The report and recommendation are also available, upon request, to adjacent property owners. The same process shall be used prior to the board of county commissioners hearing except that the board of county commissioners shall also be sent copies of the recommendation of the planning commission.

(f) *Notice of hearing distributed and publicized.* The director shall publicize in a local newspaper the planning commission and the joint planning commission's public hearing agenda once within a period of not less than ten (10) nor more than thirty (30) days before the scheduled hearing. The director shall also distribute notice of the public hearing to the applicant, the surrounding landowners pursuant to section 82-83, and the planning commission or the joint planning commission no less than seven (7) days prior to the scheduled hearing. Such notice may be by postcard. The contents of that notice shall be as follows:

- (1) Time and place of the public hearing;
- (2) Description of the lot or parcel subject to the application for a land use permit and specific characteristics of the proposed development; and
- (3) The address and telephone number of the county planning office where information concerning the proposed development can be obtained.

The director shall follow the same procedure when publicizing and providing postcard notice for the board of county commissioners' agenda prior to the scheduled meeting of the board of county commissioners.

Sec. 82-193. Procedure.

(a) *Generally.* The assessment procedure shall involve the following:

- (1) Review by director.

- (2) Neighborhood compatibility meeting.
- (3) Planning commission or joint planning commission hearing.
- (4) Board of county commissioners hearing, unless there is no call-up of the planning commission or joint planning commission determination.

(b) *Neighborhood Compatibility Meeting.*

- (1) *Purpose.* A neighborhood meeting, which is not a public hearing, shall be held prior to the public hearing for the project. The purpose of the meeting is to provide public input to land use decisions at the local level. The planning commission, joint planning commission or board of county commissioners shall determine whether the proposed development meets compatibility standards as outlined in subsection (c) of this section.
- (2) *Notification of parties.* The director shall mail notice of the neighborhood meeting to surrounding landowners pursuant to section 82-83 at least seven (7) days prior to the meeting.
- (3) *Procedure and content.* The staff shall prepare an agenda and chair the meeting. The applicant shall explain the proposed project and shall produce a sketch plan showing how the buildings and associated uses will be located on the site, as well as distances to property lines, adjoining homes, buildings, streams and the like. The sketch plan may be rough in nature and need not be drawn to scale, but accurate distances shall be shown. The applicant shall state what methods are planned to make the use compatible with adjoining and surrounding uses. Following the applicant's presentation, the neighbors may question the applicant on issues presented and the impacts of the use on the neighborhood. After problems have been discussed, possible solutions will be sought by the applicant and the neighbors. Possible solutions include, but are not limited to, the following:
 - a. *Increased traffic.* Upgrade road design; control access; separate pedestrian and vehicular traffic; buffer parking and roads.
 - b. *Unightly view.* Screen use or view with natural or manmade materials; increase distance between proposed use and surrounding development; provide for the tidy arrangement of outdoor storage areas.
 - c. *Noise.* Create a noise buffer or barrier; shield noise generator; increase distance between noise generator and surrounding uses.

- d. *Odor, dust, glare, smoke, water vapor, radiation.* Change emitter specifications to mitigate problem; buffer; increase distance between the source of the problem and surrounding uses; increase lot size.
 - e. *Creation of effluent.* Filter or scrub pollution; increase distance between pollution generator and surrounding uses; change specification of emitter to reduce effluent.
 - f. *Change of neighborhood character.* Dedicate land for public use; buffer; increase lot size; combine above techniques.
- (4) *Summary.* Following the exchange of views between the applicant and the neighbors, the staff shall summarize the points of agreement and contention, and ask those present whether the positions thus stated are an accurate representation of the consensus of those present. On the basis of the summary discussion, the staff shall prepare a report on the compatibility meeting. The report shall include whether an agreement has been reached between neighbors and the applicant, the points of agreement and contention, and, if an agreement has been reached, recommended conditions of approval to be placed on the permit application.
- (c) *Planning commission/joint planning commission/board of county commissioners hearing.*
- (1) The planning commission, joint planning commission and board of county commissioners shall be given the report of the neighborhood meeting. The board of county commissioners shall be given the report of the planning commission determination. The planning commission at its hearing, the joint planning commission at its hearing and the board of county commissioners at its hearing shall make a determination on whether or not the development is compatible. In making its determination, the planning commission, joint planning commission and board of county commissioners shall use the criteria outlined in this subsection (c). This determination may be rendered as a finding in the decision on the development application. A recommendation of approval for the project shall constitute a finding of compatibility.
 - (2) A compatible development is one which will meet all of the following standards:
 - a. Traffic generated by the development will not create safety hazards, create traffic which is beyond the capacity of affected roads, or result in substantial increases over existing traffic volumes, or which results in the reduction of existing service levels;
 - b. Any one of the following will not disturb neighbors: noise, odor, smoke, dust, vibration, glare, radiation or late hours of operation;
 - c. The development will not create adverse or unsightly views for neighbors and/or the traveling public;

- d. The development will not cause pollution of ground or surface waters;
- e. The development will not adversely change the character of the neighborhood;
- f. The development will not significantly disturb the privacy of neighbors.

(3) Mitigation of identified significant adverse impacts may constitute compatibility. The applicant shall have the burden of proof in this regard.

Sec. 90-102. Application; submittal procedure; notice.

(a) The major facility application shall consist of all items identified in section 90-41 and any other requirements identified at the pre-application meeting.

(b) Prior to formal submittal of a major facility application, the department shall meet with the applicant to discuss and identify any additional information required to adequately review the proposed facility.

(c) Prior to submittal of a major facility application, notification of the intent to develop must be sent to the surface owner as well as the owners of any land adjacent to or located within one-quarter of a mile (1,320 feet) of the exterior boundary of the parcel(s) upon which the facility will be located as such ownership is indicated for tax purposes in the current records of the county assessor's office. This notice shall be mailed no less than ten days prior to the application being submitted to the department. The applicant shall present proof of such notice by submitting a copy of the letter, a list of the land owners notified, and certified mail receipts. The notice of intent to develop shall be in the form prescribed in this subcategory and shall contain the following:

- (1) A description of the proposed facility site location, including a legal description, as well as a street address for the site, if available from the county's rural addressing system. The identification of the applicant and its agent for the application, if any; the current business address and telephone number for the applicant and its agent, if one has been designated, and a vicinity map per the specification of this chapter and brief description of the facilities and equipment proposed to be located at the site when operational.
- (2) The submittal date of the application to the department. A statement that comments from the parties receiving notice may be submitted to the department.
- (3) A statement concerning the county's need to enter property which is the subject of a major facility permit as follows: For the purpose of implementing and enforcing the county's oil and gas regulations, county personnel and its consultant, may, from time to time, need to enter onto the property which is the subject of a major facility application.

- (4) A statement that if there is a private entity or entities that maintain any private road that accesses the proposed facility, that a designated representative contact the applicant or agent.
 - (5) A statement informing the surface owner that they may request written notification by the operator of the commencement of construction and commencement of drilling operations (if the application is approved). Those parties requesting notification shall advise the department in writing of such request within 15 days from receipt of the written notice required by this section. The applicant shall provide written notice(s) to the department and those landowners desiring notice no less than ten days prior to the commencement of construction and no less than ten days prior to commencement of drilling operations. One letter may be used by applicant to provide notice of the estimated date of commencement of construction and drilling operations. Notice may be provided by mail or electronic mail. For the purposes of this paragraph, commencement of construction shall mean any activity which disturbs the surface, including vegetation, but not survey work.
 - (6) The current mailing address, website address, telephone number for the department and COGCC, as well as a statement that additional information on the application will be available from the department.
- (d) The applicant shall publish an accurate notice of intent to develop in a newspaper of local circulation once within 30 days prior to submitting a major facility application. The applicant shall present proof of such notice by submitting a copy of the published notice and a receipt from the newspaper of local circulation showing payment for publication of the notice. The notice shall include:
- (1) Name of the applicant.
 - (2) Location in terms of the section, quarter section, township and range of the land on which the major facility will be located as well as in terms of the location for the proposed major facility that will be understandable by the general public.
 - (3) A description of the proposed major facility, including any proposed equipment, building(s) and square footage thereof.
- (e) Post notice of the proposed project on the property as set forth in subsection 82-85(c).

Sec. 102-66. Reserved.

(Section deleted)

Sec. 106-112. Animas Valley Land Use Plan.

- (a) *Use.* This article is to be used in conjunction with the Animas Valley Land Use Map.
- (b) *Basic plan provisions.* The basic plan provisions are as follows:
 - (1) Any preexisting, legal lot of record made nonconforming by this plan shall be entitled to one single-family residence, uses that are customarily secondary to a single family residence, including accessory uses, and other developments that do not require a land use permit as described in section 82-7 and other applicable provisions of this Code.
 - (2) Any preexisting dwelling unit made nonconforming in terms of density shall enjoy the right of replacement unless the entire site is being redeveloped, at which time the entire site shall be made to conform to the plan.
 - (3) Uses made legally nonconforming shall enjoy the right to regular maintenance, repair and to some extent replacement and expansion, as provided in section 82-20(4).
 - (4) No new subdivisions shall occur on steep slopes (30 percent or greater). One (1) dwelling unit is permitted on any preexisting, legal lot of record lying on steep slopes. This subsection shall in no way supersede the county's geologic hazards map regulations.
 - (5) Accessory uses shall be allowed in all Animas Valley Land Use Plan Districts so long as meeting the standards established in section 82-5 and/or permitted pursuant to section 82-5.
- (c) *Special use permit.* Special use permits shall only be approved through the class II land use permit procedures.
- (d) *Conformance.* Applications for development which are not in conformance with the Animas Valley Land Use Plan shall not be accepted by the planning department. To be submitted, the plan must first be amended to allow for the intended use or density. The process for considering amendments to the plan shall be the full class II process, with a public hearing before the planning commission, joint planning commission, and/or the board of county commissioners.
- (e) *Notification.* Any development requiring a public hearing shall require a notification of surrounding landowners. For purposes of this provision, surrounding landowners shall include those owners of property within one thousand (1,000) feet of the property boundary of the lot or parcel subject to the application for a land use permit.