



**MEMORANDUM**

DATE: September 11, 2018  
TO: La Plata County Board of County Commissioners and La Plata County Planning Commission  
CC: Joanne Spina; Jason Meininger; Dan Murphy; Robert Bowie  
FROM: La Plata County Attorney's Office — Sheryl Rogers and Kim Perdue

**Re: Role of District Planning Commissions in La Plata County's Land Use Regulatory Scheme**

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**I. INTRODUCTION**

C.R.S. § 30-28-119 confers authority on the Board of County Commissioners (“BoCC”) of any *unzoned* county to appoint district planning commissions, upon petition, “[w]hether or not a county planning commission has been created.” The purpose of a district planning commission is to “prepar[e] plans for zoning certain portions of the unincorporated territory within [a] county.”

As discussed in more detail below, La Plata County is not unzoned, and the BoCC has not appointed any district planning commissions. Rather, the La Plata County Planning Commission (“PC”) has incorporated District (Area) Plans<sup>1</sup> into the County’s Comprehensive Plan, and charged the planning department to collaborate with the residents of each District (Area) Plan to update and/or develop plans and maps representing each community’s goals for future development.

However, as the Commissioners are aware, some County residents have made statements indicating a lack of clarity as to whether district planning commissions exist or may be appointed, and how, if appointed, they would correspond to the existing District (Area) Plans. For example, in a recent correspondence to the BoCC, certain community members identified themselves by titles suggesting formal leadership roles in their respective planning districts, e.g., “Chair — Animas Valley Land Use Planning District” or “Interim Chair, Southeast Planning District.” Assumption of such titles suggests those community members may believe they have a formal leadership role on a district planning commission or within their District (Area) Plans, which, for the reasons discussed below, is incorrect.

This memorandum, therefore, clarifies the requirements and procedures for appointing district planning commissions; their purpose and governance; how a district planning commission might interact (or conflict) with District (Area) Plans and/or county-wide land use regulations; and the circumstances under which district planning commissions may be dissolved.

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<sup>1</sup> District (Area) Plans are policy guidance documents that provide geographically focused goals, policies, and objectives for the physical development of specific areas in the County’s unincorporated territory. They are incorporated into the La Plata County Comprehensive Plan as appendices.



## II. REQUIREMENTS AND PROCEDURES FOR DISTRICT PLANNING COMMISSIONS' APPOINTMENT

### A. Unzoned Status

Significantly, the statutory authorization to appoint district planning commissions does not extend to La Plata County because the County already has adopted zoning. As discussed above, C.R.S. § 30-28-119(1) specifies that only the Board of County Commissioners of a county “which is unzoned” may appoint a district planning commission. Although the Colorado Revised Statutes do not define “zoned,” “unzoned,” or even “zoning,” C.R.S. § 30-28-111(1) generally describes the features and functions of a “zoning plan” to include a zoning resolution; maps; and recommendations for the regulation, by districts or zones, of land uses and buildings.

Pursuant to section 30-28-111, La Plata County adopted the La Plata County Land Use Plan — a Performance-based zoning plan — by Resolution no. 1990-39. That Plan, as amended and re-numbered, is the basis of our current La Plata County Land Use Code (“LPLUC”). Unlike the Euclidean zoning systems that most other Colorado counties employ, which prescribe physical standards for individual zoning districts, our land use system regulates through performance standards, e.g., noise, glare, and traffic limits, for all areas and types of development. Further, the 1990 Plan established a scoring system for proposed development, with weighted values specific to five mapped development districts.<sup>2</sup> That scoring system subsequently evolved into our current, more qualitative, compatibility analysis which evaluates (among other things) a proposed use’s consistency with the Comprehensive Plan, including the District (Area) Plans appended to it.

**Therefore, given the County’s adoption of a Performance-based zoning plan, C.R.S. § 30-28-119 does not authorize the BoCC to appoint district planning commissions.** However, so that the BoCC may have an informed discussion with community members about the purposes and roles of district planning commissions, the sections below discuss procedural requirements for the commissions’ appointment; their duties; governance; and dissolution.

### B. District Planning Commission Petition Process

For unzoned counties in which section 30-28-119 does allow for the appointment of district planning commissions, the person or persons desiring their appointment must submit a written petition including the following:

1. A list of each parcel (as shown in the assessor’s records) proposed to be included within the district<sup>3</sup>;
2. A list of the proposed district planning commissioners (three to five persons, each of whom must reside in the proposed district *and* own real property within it);

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<sup>2</sup> La Plata County Land Use Plan §§ 2.0 and 6.4.

<sup>3</sup> This requirement underscores the distinction between district planning commissions and the County’s existing District (Area) Plans. The district planning commissions would not automatically correspond to the existing District (Area) Plans. Rather, they would be formed as proposed in the petition, subject to modification by the BoCC.



3. The signatures of more than fifty percent of the qualified electors residing in the proposed district; and
4. The signatures of more than fifty percent of the persons or entities (whether residents or nonresidents) who own more than fifty percent of the area of real property within the proposed district's borders.<sup>4</sup>

Upon confirmation that a petition is complete, the BoCC must hold a noticed public hearing to evaluate whether the proposed commission should be appointed.<sup>5</sup> The petitioner carries the burden of proof as to whether the appointment serves the public interest.<sup>6</sup> Any owner of property within the proposed district's boundaries may file a written protest against the proposed commission's appointment.<sup>7</sup>

If the BoCC elects to appoint the proposed district planning commission, it may do so at the next regular meeting following the hearing on the petition.<sup>8</sup> The initial commissioners shall be those proposed in the petition, and shall serve a three-year term or less.<sup>9</sup> The BoCC may remove commissioners for nonperformance or misconduct and, should a vacancy occur, the BoCC is charged with filling it.<sup>10</sup>

### III. PURPOSE AND GOVERNANCE

Upon its appointment, a district planning commission assumes "all the powers and . . . duties conferred and imposed upon county planning commissions insofar as such powers and duties relate to zoning and in respect to the territory within the boundaries of such proposed district."<sup>11</sup> Thus, a district planning commission's role is limited to proposing a zoning plan for the district. That role is distinct from the separate process of creating and amending District (Area) Plans and maps, which falls to the Planning Commission, in collaboration with the community, and in coordination with the County Planning Department.<sup>12</sup>

Upon completion of a district zoning plan, the district planning commission must submit the plan to the County Planning Commission for review, and then certify it to the BoCC.<sup>13</sup> If the BoCC determines, after a public hearing, that the proposed zoning plan serves the public interest, it may

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<sup>4</sup> C.R.S. § 30-28-119(1).

<sup>5</sup> C.R.S. § 30-28-119(1.6).

<sup>6</sup> *Id.* Also see C.R.S. § 30-28-119(2.3).

<sup>7</sup> C.R.S. §§ 30-28-119(2.3) and (

<sup>8</sup> C.R.S. § 30-28-119(2.7).

<sup>9</sup> C.R.S. § 30-28-119(3)(a).

<sup>10</sup> *Id.*

<sup>11</sup> C.R.S. § 30-28-119(3)(b)I.

<sup>12</sup> See C.R.S. § 30-28-106(1).

<sup>13</sup> C.R.S. § 30-28-119(3)(b)(III). Review by the County Planning Commission also is required prior to a district zoning plan's certification to the BoCC.



adopt all or any part of the proposed zoning plan by resolution.<sup>14</sup> The BoCC also has discretion to exclude particular parcels from the zoning plan certified by the district planning commission.<sup>15</sup>

#### IV. ADMINISTRATION AND DISSOLUTION OF DISTRICT ZONING PLANS

Upon a district zoning plan's approval by BoCC resolution, it becomes part of the County's land use regulations.<sup>16</sup> The district planning commission's responsibilities substantially terminate with adoption of the district zoning plan. Upon its adoption, the responsibility for overseeing and amending the zoning plan transfers to the BoCC.<sup>17</sup>

The BoCC thus oversees the process of resolving conflicts between district zoning plans and other County- or area-wide regulations, e.g., standard building height restrictions, setbacks, or areas of parcels that may be occupied by structures. Colorado law provides for the resolution of such conflicts by directing that the stricter of any conflicting standard shall control.<sup>18</sup> For example, if a district zoning plan requires a greater setback than other, County-wide regulations, the district zoning plan shall apply.<sup>19</sup> But if the County-wide regulation requires a lesser building height than the district zoning plan, the County-wide regulation will control.<sup>20</sup> Thus, a single proposed development could be subject to a patchwork of two or more different regulatory schemes, confusion and inconsistency for the community, staff, PC and the BoCC.

Such confusion likely would compound upon adoption of a County-wide zoning plan. In such a scenario, the BoCC, PC, staff, and County citizens would have to compare a wide range of standards and procedural requirements, and even inconsistent allowances and preclusions for certain uses, and apply the most stringent of each. A case-by-case, ad hoc system of regulations would result, rendering the land use permit review process inconsistent, lengthy, and unduly complex.

To protect against such an undesirable result, the General Assembly allows for the dissolution of planning districts (i.e., districts created pursuant to the appointment of a district planning commission, *not to be confused* with the advisory District (Area) Plans incorporated into the Comprehensive Plan).<sup>21</sup> On its own initiative, or by a petition process similar to the appointment of district planning commissions, the BoCC must convene a noticed, public hearing and determine whether the proposed dissolution serves the public interest, and then either order the district's dissolution, or dismiss the dissolution petition.<sup>22</sup>

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<sup>14</sup> C.R.S. § 30-28-119(3)(c)(III).

<sup>15</sup> C.R.S. § 30-28-119(3)(c)(II).

<sup>16</sup> C.R.S. § 30-28-119(3)(c)(IV).

<sup>17</sup> *Id.*; C.R.S. § 30-28-119(5) (providing for amendment to a district's boundaries by BoCC order).

<sup>18</sup> C.R.S. § 30-28-119(4).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> C.R.S. § 30-28-119(6).

<sup>22</sup> *Id.*



## V. CONCLUSION

District planning commissions, though understandably attractive to those members of the community interested in participating in land use process, are intended primarily to fill a void created by the absence of either a County Planning Commission, or a County-wide land use system. Where a Colorado county elects not to appoint a County Planning Commission or adopt a county-wide zoning plan, district planning commissions allow the members of specific communities to propose regulations in their immediate area, for adoption and administration by the BoCC. Such piecemeal regulation, however, may prove incompatible in the event the BoCC subsequently adopts a broader zoning plan, at which time the dissolution of district planning commissions may be advisable.

There remains the potential for confusion between district planning commissions and the district zoning plans they create, and the advisory District (Area) Plans and maps which form part of the La Plata County Comprehensive Plan. However, given that La Plata County's prior adoption of a zoning plan precludes it from appointing district planning commissions, only our District (Area) Plans have a role to play in our land use process. Unlike district planning commissions, District (Area) Plans do not employ a formal leadership structure and cannot take any official action. Rather, they provide a means by which the community may participate in the development, refinement and amendment of the County's Comprehensive Plan.