



## MEMORANDUM

DATE: August 29, 2018  
TO: Board of County Commissioners  
FROM: Jason Meininger, Planning Director  
Re: Policy Consideration for Euclidean Zoning

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### I. Introduction

From 1970 to 2010, La Plata County's (county) population grew from 19,199 to 53,446, with the majority (and increasing number) of which (61%) has been absorbed by the unincorporated territory of La Plata County. The county's current land use regulations provide insufficient predictability for property owners, the county, and other governmental entities (e.g., city, towns, state, and tribal) when planning for growth. This memorandum explores Euclidian zoning as a potential improvement for providing predictability, promoting economic diversity and job growth, controlling costs of services, and identifying appropriate locations for future growth.

### II. Overview

Since the mid-1990s, the Planning Department (Department) has been utilizing District (or Area) Plans to understand and plan for the future development of unique geographical areas of the county. From the mid-1990s thru 2007, the residents of those individual areas participated in creating and updating each's plan, and its associated goals, objectives and policies.

In 2002 the Colorado Legislature directed counties to prepare and adopt master/comprehensive plans for the purpose of guiding development<sup>1</sup>. Comprehensive plans, including the areas they incorporate, are statements of policy which provide decision-makers with context to make informed decisions affecting the long-range economic, and physical growth of a community.<sup>2</sup> The comprehensive and area plans are not land use regulations, but rather provide a guide for future development and private and public investments. In 2016, the Planning Commission completed a technical update of the countywide Comprehensive Plan, relying on the district (area) plans to help inform the geographically specific considerations of this advisory plan, as well as identified broader countywide policies. The Planning Commission is working with residents of the county's 12 Planning Districts (or Areas) to update each plan.

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<sup>1</sup> C.R.S. §30-28-106

<sup>2</sup> *Id.*

### **III. Planning for Growth**

The 2016 Comprehensive Plan establishes goals, objectives and policies to guide future growth in the unincorporated areas of La Plata County. The Comprehensive Plan encourages the county to “develop and maintain a land use planning system which encourages a high quality of living environment with a mix of compatible land uses; and coordinates managed growth with other Plan Elements, promoting public health, safety and welfare.”<sup>3</sup> By identifying and zoning higher-intensity uses in established areas which have adequate infrastructure and are planned for more growth can help reduce dispersed growth and its associated impacts can be reduced.

Roads, which have become increasingly burdened in more rural areas of the county, are a good example of how inadequate infrastructure and unplanned growth can have a negative impact on the welfare of our community. Historically, the agricultural areas of the county were accessed by farm-to-market road systems. As a result of dispersed growth, those roads now see increased pressures from higher density rural subdivisions or commercial and industrial developments that generate daily car trips more typical of suburban/urban locations. Because the county lacks regulatory tools that examine growth possibilities and impacts proactively, development proposals are reviewed on a case-by-case basis with regulations which don’t adequately evaluate infrastructure adequacy or compatibility. If a proposal is not sufficiently “compatible” to receive approval by the Planning Commission or the BOCC, the developer must undertake additional measures to mitigate the incompatible aspects of the project. This somewhat haphazard approach to growth has led to neighborhood conflicts, while also negatively impacting infrastructure and the county’s ability to deliver necessary services (e.g. law enforcement patrols) to our growing population in a fiscally responsible manner.

#### **A. Financial Considerations of Growth**

To remain fiscally responsible, the county has worked to understand the impacts and costs incurred as a result of different types of development in the unincorporated areas of La Plata County. It is well known that the current land use system allows dispersed development and fails to account for financial impacts to the county and its taxpayers. A 2017 report by Tischler/Bise<sup>4</sup> concludes:

“[The] current county land use policy allows virtually the same densities 20 miles away from the City of Durango as it does one mile away. The pockets of population in the rural areas of the county have significantly higher negative fiscal impact on the county.”

The county maintains approximately 643 miles of roads, 221.9 miles of which are paved. Recognizing that roadways are a significant asset and maintenance is a major service of the county, La Plata County contracted with Infrastructure Management Services (IMS) to conduct a Pavement Condition Index Study; *Exhibit C*. The study analyzed existing pavement conditions, determined system deficiencies, and recommended annual budget levels to maintain existing

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<sup>3</sup> *La Plata County Comprehensive Plan: Land Use*, at 1.10 (2016).

<sup>4</sup> Tischler/Bise, *Cost of Land Use Fiscal Impact Analysis La Plata County, Colorado* (2017).

conditions. La Plata County scored an average of 66 out of 100, which “is slightly (1%) above average of other agencies recently surveyed<sup>5</sup>.”

The portion of the currently adopted budget for paved road maintenance is approximately \$1 million. The projected minimum budget necessary to maintain existing conditions is \$3.8 million annually; the IMS report recommended \$4.6 million annually. With the fourth-lowest mill levy rate in the state, combined with continued decline in property tax revenue and growing demand for services, it is becoming increasingly difficult for La Plata County to remain fiscally sustainable. The cost of dispersed development will continue to burden the county’s financial resources without regulatory tools that address the problem. For the complete Tischler/Bise report see *Exhibit B*

#### **IV. Application of Euclidean Zoning Principles**

For more than a century throughout the United States, Euclidean zoning has been an effective tool for planning growth and mitigating disparate land use intensities. The constitutional authority to apply zoning districts to properties was affirmed by the Supreme Court Decision *Village of Euclid, Ohio v. Amber Realty Co.*, which has since translated into what is known as “Euclidean zoning.”

Within Colorado, 58 of 64 counties utilize Euclidean zoning as a land use tool (exceptions are Baca, Delta<sup>6</sup>, Dolores, Kit Carson, Gunnison, and La Plata<sup>7</sup>). Portions of La Plata County, and the entirety of Bayfield, Durango and Ignacio utilize Euclidean zoning to plan for growth within their respective jurisdictions. However, the majority of La Plata County is regulated under performance zoning.

With Euclidean zoning, compatible land uses are identified and grouped together within areas similarly zoned. It is important to distinguish “zone districts” from the “planning districts” utilized in the district (area) plans. The planning districts are distinct geographical areas within the county (e.g., Florida Mesa, North County, Ft. Lewis Mesa, etc.). In contrast, zone districts are the description of a group of land use intensities that may be allowable on specific properties throughout the county.

The broadest types of zone districts are: residential, agricultural, commercial/industrial, and public. Within each zone district, there is often further distinction resulting in the development of more specific subzones (e.g., Residential 1 acre, Residential 20 acre, etc.) based on specific uses and property sizes. The benefit of developing subzone districts is to clarify if specific uses may be more appropriate within one area than another. For example, there could be uses that would be compatible if residential properties were 20+ acres (e.g., equestrian training), versus if the residential properties were 1 acre (e.g., home occupation).

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<sup>5</sup> *La Plata County, CO: Pavement Management Analysis Report*, at 21 (2018).

<sup>6</sup> Delta County has initiated implantation of a zoning plan (2017).

<sup>7</sup> Colorado Department of Local Affairs’ Community Development Office, *Land Use Survey* (2015).

<sup>8</sup> La Plata County administers Euclidean zoning only in the defined area of the Animas Valley, LPLUC Chapter 106.

## A. Zone Districts

Developing appropriate zone districts requires reviewing the type and intensity of uses that exist and are anticipated in the community. Those uses are then grouped into related districts which recognize similar principal uses as well as which types of uses customarily accessory or incidental to the principal use. A key aspect of zoning is that different rules for development apply to different zoning districts. Within each district, however, there must be uniformity in the manner properties are treated. Most zoning plans then concentrate on defining the land uses that are allowed (permitted uses), not allowed (prohibited uses) or conditioned (requires additional review and analysis prior to allowance) within each district type.

First, the county must determine what types of general zone districts (e.g., Agricultural, Residential, Commercial, Industrial, and Public) will work best for our community. La Plata County in general has five very broad land use types which, at minimum, should become established zone districts: agricultural, residential, commercial, light industrial, public/quasi-public. Uses of these types comprise the majority of existing uses and development applications submitted to La Plata County. Mechanisms for more discrete zone districts can be considered based upon factors such as property size/types, and the location and intensity of proposed uses.

The next step is to identify the types of uses which may be appropriate within each of the zones and what, if any, permitting processes might be necessary to allow certain uses to commence. Following this exercise, the next step is to begin determining where the districts may apply. There are many criteria used in making these determinations such as cost of public service, quality and availability of infrastructure, and whether the zoning application would further the vision and goals of the comprehensive plan.

In addition to residential zoning districts, commercial/mixed-use and/or light industrial districts within the county could strengthen, diversify and vitalize the local economy. The current land use system lacks predictability regarding where these types of uses may locate or expand. With limited infrastructure beyond the areas surrounding the county's three municipalities, businesses have limited access to available properties with adequate infrastructure. As a result, development proposals commonly contemplate projects on properties with inadequate infrastructure, leading to heightened costs for businesses and the county, disproportionate impacts, potential community opposition and uncertain outcomes.

Other Colorado counties have a broad range of established zone districts. For example, Chaffee County has established a very basic system containing six zone districts.<sup>9</sup> Weld County, which has a larger population than La Plata County, has adopted 16 zoning districts.<sup>10</sup> These examples demonstrate that there is not a "one-size fits all" model for the appropriate number of zoning districts, but rather an opportunity to balance the interests of current county residents with an eye toward future growth and economic vitality.

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<sup>9</sup> *Article 2: Zone Districts*, Chaffee County, Colorado (2018).

<sup>10</sup> *Chapter 23, Art. III. Zone Districts*, Weld County, Colorado (2018).

A common model for more discrete residential zoning districts is classification based on parcel size, e.g. “residential 1,” or “residential 20.” The former could apply to properties one-acre or greater, typically used for single family residences. The latter could apply to residential properties 20 acres or greater and may include some use of the land for other purposes beyond strictly residential. Either district could have built-in use-by-right provisions for home-based businesses scaled to the property size. A difference between the two could be number of employees allowed before triggering a county review to ensure potential impacts are mitigated.

Establishing suitable zone districts will result in faster approvals for allowed projects, as the analysis of infrastructure and compatibility of uses will have occurred at the front end of the development review process, instead of at the end of the process.

Below is a comparative table showing how sample counties in Colorado utilize zoning. The existing La Plata County Land Use Code identifies 14 zone districts in the Animas Valley, and the average number of zoning districts in the sample counties is 15.5.<sup>11</sup>

<b>County</b>	<b>Euclidean Zoning</b>	<b>Performance Based Zoning</b>	<b>Total Number of Zone Classifications</b>
Chaffee	Yes	No	6
Elbert	Yes	No	15
Gunnison	No	Yes	N/A
La Plata	Yes <sup>12</sup>	Yes	14 <sup>13</sup>
Larimer	Yes	No	23
Mesa	Yes	No	23
Montrose	Yes	No	10
Weld	Yes	No	16

The total number of zoning districts normally correlates to the unique and specific characteristics of uses, intensities, and property sizes. Typically, a greater number of districts within a zoning table corresponds to more precise descriptions of uses, intensities, and lot sizes. Conversely, fewer zoning districts typically result in less definitive descriptions of allowed uses and intensities, and may require additional public process to ensure compatible intensities.

## **B. Zoning Map Analysis**

With the potential establishment of Euclidean zoning within the county, questions may arise such as:

- How does the County go about determining the zone district for a specific property?

<sup>11</sup> For comparative purposes Gunnison County was excluded

<sup>12</sup> Only within the Animas Valley, LPUC Ch. 106

<sup>13</sup> *Id*

- What criteria are used to determine how a property can be rezoned?
- What uses will be allowed within each zone, and what uses will require a permit?

Answering these questions requires an analysis of existing and projected uses, existing and projected infrastructure, existing and projected service levels, and planned growth areas.

Best practices in land use regulation encourage commercial, industrial, mixed use, and higher density residential developments in areas where adequate infrastructure and services exists. Infrastructure availability – namely water, sewer and traffic access – as well as compatibility with neighboring uses are the primary factors analyzed when beginning a development review process. If infrastructure is lacking in certain areas, those areas may not currently be suitable for more intense or additional development. Conversely, more intense uses are discouraged from areas lacking adequate infrastructure.

It is important to analyze the data to determine zone classifications to ensure that decisions are made fairly and equitably, with all properties evaluated according to substantially similar criteria. If zone districts are established without the appropriate analysis, sporadic and illogical development can occur, ultimately leaving the taxpayers to absorb the financial consequences associated with degraded roads, inadequate infrastructure or overburdened public safety services.

The necessary analysis can be done in a number of ways, most notably through geographical information systems (GIS) modeling. The county has the in-house capacity and expertise to produce models necessary for analysis which can assist in determining appropriate areas to support new development and growth without creating negatively impacting the county and taxpayers. Specifically, staff recommends utilizing the “McHargian Model” to conduct this analysis, as described in *Exhibit A*.

### **C. Overlays**

Overlay zones are special districts that create special requirements that are in addition to the underlying zoning requirements<sup>14</sup>. Often, overlays are applied to address an area’s special purpose or unique characteristic, such as floodplains, airport safety zones, or geologic hazard zones. Within overlays, increased or decreased standards can be applied to protect the values, purposes and characteristics of the overlay. In San Miguel County,<sup>15</sup> overlays are utilized in areas identified as the wildland-urban interface (WUI)<sup>16</sup> where there is an increased likelihood that wildfire could cause significant personal or property damage. In these overlay areas, there are development standards to help mitigate the risks of a wildland fire.

Overlays are a tool responsive to a community’s desire to recognize unique features of specific properties. Similar to zone districts, overlays are analyzed via GIS modeling systems (see *Exhibit*

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<sup>14</sup> Selmi, Kushner, Ziegler. *Land Use Regulation: Cases and Materials*, at 95 (4<sup>th</sup> Ed. 2012).

<sup>15</sup> *San Miguel County, Colorado: Community Wildfire Protection Plan* (2009).

<sup>16</sup> “Any area where man-made improvements are built close to, or within, natural terrain and flammable vegetation, and where high potential for wildland fire exists.” Colorado State Forest Service, *Colorado’s Wildland- Urban Interface* (2018).

A) to identify unique characteristics that could be addressed with development standards within an overlay to promote, protect or address the overlay's specific focus.

## **V. Rezoning**

Zone districts, like all land use regulations and policy documents, should be reviewed and revisited periodically to ensure they are responding to a community as it grows and changes. The grounds for granting a rezoning include compliance of the proposed rezoning with the comprehensive plan, some change in the conditions of the area to support the rezoning or an error in the original zoning.<sup>17</sup> The land use code must provide clear criteria for when and how a particular zone district may change.

Under the current land use code, rezoning amendments only take place within the Animas Valley, and are subject to review by the Planning Commission and approval by the Board of County Commissioners. In the remaining areas, amendments to the advisory maps lack specific review criteria and certainty for a developer, neighboring property owners, or the county to anticipate how properties may change over time. Additionally, they are approved only by the Planning Commission and such amendments are not binding on the Board of County Commissioners.

## **VI. Recommendation**

Staff believes it is in the best interest of the general public's health, safety, and welfare to adopt Euclidean zoning throughout La Plata County.

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<sup>17</sup> *Kings Mill Homeowner's Ass'n Inc. v. City of Westminster*, 192 Colo. 305, 557 P.2d 1186 (1976); *Theobald v. Board of County Commissioners*, 644 P.2d 942 (Colo. 1982); *Information Please, Inc. v. Board of County Commissioners*, 42 Colo. App. 392, 600 P.2d 86 (1979).