



MEMORANDUM

DATE: September 12, 2018
TO: Board of County Commissioners
FROM: Jason Meininger, Planning Director
Re: Policy Consideration for Non-conformities

I. Introduction

The application of non-conforming regulatory measures applies to development that at one point in time was legally established but which does not conform to subsequent regulations. When considering a new (or updates to a) land use system, implementation of new standards has the potential to make previously developed properties or structures “non-conforming” with the new regulations. Non-conforming uses are also sometimes referred to as “grandfathered” uses.

As a means to preserve existing uses and structures that may not align with updated land use regulations, standards are often developed to offer flexibility and contemplate typical alterations as requested by members of the public. The current standards of the La Plata County Land Use Code have proved effective, but this memorandum proposes some modifications.

II. Overview

La Plata County (county) has a rich history of land use types (e.g. agricultural, commercial, residential, etc.) in varying locations in response to previous and current regulations that provide flexibility as to what may occur on a property. Because of this, uses that do not conform with current regulations exist throughout the county and vary from established businesses to multiple single family dwellings on one property. Rather than limiting non-conforming language to certain land use types, the existing provisions are applicable to nearly every non-conforming situation.

As currently defined, a non-conforming use is “a use that was legally established but which no longer complies with a use-related provision or requirement of this Code.”¹ The code provision applies to uses both in zoned and unzoned areas of the county, structures, property configuration, and signage.² Additionally, as set forth in LPLUC Sec. 82-20, limitations are prescribed regarding to what extent non-conforming uses may be relocated or altered.

¹ LPLUC Sec. 82-20(III)(A).

² *Id.*

By way of this code section, accommodating language is provided for property owners to continue their permitted uses without major compliance alterations. Additionally, allowances as described above also provide protections to the surrounding property owners that non-conforming uses may reasonably continue but may not receive administrative approvals for considerable expansion or alteration that increases the non-conformity. Although in theory the non-conforming use would cease at some future time, that is often not the case, which is why non-conforming provisions are necessary.

Expanding on current standards and offering more lenient approach to non-conformities could allow owners of properties with established uses to continue the venture, while at the same time offering protections to surrounding property owners. The following recommendations address the existing code as well as suggestions for amendments within the new land use code.

III. Recommendation

The Planning Department recommends the following policy considerations for non-conforming uses under the proposed new land use code:

1. Significantly maintain the existing provisions and standards of the existing LPLUC Sec. 82-20, including the allowance of non-conformities in both zoned and unzoned areas of the county.
2. Broaden existing codified language to provide for a 10% expansion beyond the floor area of the existing structure as currently adopted. Expanded allowance could include a 10% increase in average daily trips, site coverage, expansion of the building, replacement of structures within a mobile home park, etc.