

RESOLUTION NO. 2014-28

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO, AMENDING AND CLARIFYING CERTAIN PROVISIONS REGARDING THE REGULATION OF NONCONFORMITIES IN SECTION 82-20 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 July 10, 2014, and after receiving competent evidence at the hearings, made a recommendation to the Board to approve Project No. 2014-0163;

WHEREAS, the Board held a duly noticed public hearing on August 5, 2014 and heard testimony and received competent evidence that Section 82-20 of the Code should be amended to modify and clarify certain provisions related to nonconformities, 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 Section 82-20 of the Code to modify and clarify certain provisions related to nonconformities, as set forth in the attached Exhibit A.

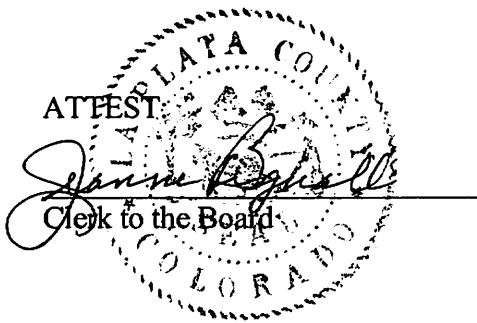
NOW THEREFORE, BASED UPON THE EVIDENCE AND TESTIMONY PRESENTED AT THE PUBLIC HEARINGS, BE IT RESOLVED BY THE LA PLATA COUNTY BOARD OF COUNTY COMMISSIONERS, THAT:

1. The La Plata County Code shall be and is hereby amended to modify and clarify certain provisions of Section 82-20 related to nonconformities, 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.

BOARD OF COUNTY COMMISSIONERS OF
LA PLATA COUNTY, COLORADO

ATTEST




Julie Westendorff, Chair


Gwen Lachelt, Vice-Chair


Robert A. Lieb, Jr., Commissioner

EXHIBIT A

Sec. 82-20. Nonconformities.

(1) *Purpose and applicability.*

- (a) *Purpose.* Within the county there are uses of land, structures, lots, and signs that were legally established or created but that do not comply with the current requirements of this Code. The purpose of this section is to establish provisions that recognize the interests of property owners in continuing to use and maintain their property but that also reasonably limit expansion of nonconformities, re-establishment of nonconformities that have been discontinued or destroyed, and relocation and change of use of nonconformities.
- (b) *Applicability.* This section shall apply to all nonconformities related to lots, parcels, development, buildings, structures, signs and uses of land throughout unincorporated La Plata County. This Section shall not apply to any nonconformities related to oil and gas development, which shall be subject to the provisions of chapter 90 of this Code. Illegal lots, parcels, development, buildings, structures, signs and uses of land throughout unincorporated La Plata County are addressed through other provisions of this Code.

(2) *Authority to continue.* Legally established nonconformities shall be allowed to continue only if complying with the provisions of this section.

(3) *Types of nonconformities.* The provisions of this section address the following types of situations, which collectively are referred to as "nonconformities".

- (a) *Nonconforming uses.* A nonconforming use is a use that was legally established but which no longer complies with a use-related provision or requirement of this Code. Nonconforming uses in the county are as follows:
1. *Properties in zoned areas.* For properties in areas where the county has applied zoning regulations, a nonconforming use is a use that was legally established but is either no longer listed as a permitted use in the underlying zoning district in which it is located, or is a use which would require a special use permit but has not obtained such a permit.
 2. *Properties requiring a land use permit.* For properties that would be required to obtain a land use permit, a nonconforming use is a legally established use that would require an administrative, Class I or Class II permit but has not obtained the permit that is applicable to that use.
 3. *Nonconforming as to the number of dwellings on the parcel.* If a legally established lot or parcel contains more legally-established single-family dwellings than would be allowed by the applicable provisions of this Code, the additional units beyond the maximum number allowed are considered to be nonconforming uses. In determining which unit or units on the property are considered to be nonconforming, the dwelling with the greatest total floor area on the lot or parcel shall be the conforming use and the smaller dwelling(s) shall be the nonconforming use(s).
 4. *Nonconforming as to parking standards.* If a use was legally established and does not provide the number of parking or loading spaces that would be required for that use by this Code, that use shall not be considered to be a nonconforming use. However, a use that provides fewer parking or loading spaces than are required by this Code shall not be expanded or be changed to a use that requires more parking or loading spaces unless the required number of spaces is provided.

- (b) *Nonconforming structures.* A nonconforming structure is a building or structure (including manufactured housing) that was legally established but no longer complies with the applicable dimensional standards (such as minimum setbacks, maximum height, and maximum lot coverage) of this Code.
 - (c) *Nonconforming lots.* A nonconforming lot is a lot that was legally created but which no longer complies with the minimum lot size, minimum lot width or other applicable dimensional standard of this Code.
 - (d) *Nonconforming signs.* A nonconforming sign is a sign that was legally established but which no longer complies with the sign regulations of chapter 98 of this Code.
- (4) *Nonconforming uses.*
- (a) *Normal repairs and maintenance.* Normal repairs and maintenance necessary to permit the continuation of a legally established nonconforming use and to keep it in a safe condition shall be allowed.
 - (b) *Alteration, extension or expansion.* A nonconforming use may be altered beyond normal repairs and maintenance, and may be extended or expanded provided that the alteration, extension and/or expansion does not result in a new violation of the Code, does not create any new nonconformities, such as setback violations, and complies with the provisions below.
 - 1. *Size limits.* The expansion of a nonconforming use shall be limited to an increase of no more than ten percent of the floor area or an extension of the use by no more than ten percent into areas of the structure or onto areas of the site that were not previously occupied by the use. Upon demonstration that such expansion or extension will not create adverse onsite or offsite impacts, the applicant may, at the discretion of the director, expand beyond this ten percent limitation, so long as the expansion or extension does not exceed 1,000 square feet.
 - 2. *Single-family dwelling.* A legally established single-family dwelling that is nonconforming because there are more single-family dwellings on the lot or parcel than would be allowed by this Code shall not be subject to the size limitations stated in subsection (b)1. above. Instead such dwelling may be replaced with a new dwelling or may be expanded, provided the replaced or expanded dwelling contains no more than 2,500 square feet of total floor area.
 - (c) *Relocation.* A nonconforming use shall not be moved in whole or in part to any other portion of the subject lot or parcel, or to another lot or parcel, unless the relocated use will be in conformance with this Code.
 - (d) *Change in use.* A nonconforming use may be changed to another use, provided the new use conforms to this Code. Change in use shall include, for example, a change from a residential use to a commercial use and a change from one type of commercial use to another type of commercial use.
 - (e) *Abandonment or discontinuance.*
 - 1. *Time limits.* If a nonconforming use ceases to operate or is discontinued for a period of 12 consecutive months, then any further use of the property shall only be for a use that conforms to this Code. If the use is of a seasonal nature, then failure to operate the use at any time during a 12-month period shall be considered to be abandonment or discontinuance.
 - 2. *Administrative extension.* The director is hereby authorized to issue a one-time 12-month extension of the above time limits if the owner has clearly demonstrated due diligence in

continuing to operate the use or to re-start the operation of the use. At the end of the 12-month extension the use shall be fully operational or the nonconformity shall be considered to be abandoned and further use of the property shall only be for a use that conforms to the use-related provisions of this Code.

- (f) *Damage or destruction.* A legally established nonconforming use, other than a single-family residence, that is damaged or destroyed to any extent by fire, explosion, flood, or act of God, or that is willfully demolished to the extent of 50 percent or less of its market value, may be restored to the same degree of nonconformity as existed prior to the damage or destruction. A legally established nonconforming use that is willfully demolished to an extent greater than 50 percent of its market value shall thereafter only be restored in conformance with the provisions of this Code. The market value of the use shall be established by a real estate appraiser as of the time of its damage or destruction. Replacement of a nonconforming single-family residence is allowed, up to a maximum of 2,500 square feet of total floor area.

(5) *Nonconforming structures.*

- (a) *Normal repairs and maintenance.* Normal repairs and maintenance necessary to permit the continuation of a legally established nonconforming structure and to keep it in a safe condition shall be allowed.
- (b) *Alteration, extension or expansion.* A legally established nonconforming structure may be altered beyond normal repairs and maintenance and may be extended or expanded, provided the alteration, extension, or expansion does not result in a new violation of the Code and does not increase the extent of the existing non-conformity. So, for example, if a structure is nonconforming as to setbacks, then the structure may be altered, extended or expanded in ways that do not extend the structure further into the setback or that do not increase the amount of the structure that is located within the setback.
- (c) *Relocation.* A nonconforming structure shall not be moved in whole or in part to any other portion of the subject lot or parcel, or to another lot or parcel, unless the relocated structure will be in conformance with this Code or unless the relocation will lessen the extent to which the structure does not conform to those dimensional limitations. So, for example, if a portion of a structure penetrates into a setback by ten feet and is proposed to be relocated such that it would only penetrate into the setback by five feet, that relocation could be permitted as lessening the extent of the nonconformity.
- (d) *Damage, destruction or demolition.* A legally established nonconforming structure that is damaged or destroyed to any extent by fire, explosion, flood, or act of God, or that is willfully demolished to the extent of 50 percent or less of its market value, may be restored to the same degree of nonconformity as existed prior to the damage or destruction. A legally established nonconforming structure that is willfully demolished to an extent greater than 50 percent of its market value shall thereafter only be restored in conformance with the provisions of this Code. The market value of the structure (net of any land value) shall be established by a real estate appraiser as of the time of its damage, destruction or demolition.

- (6) *Nonconforming lots.* A lot that is nonconforming as to minimum area may only be used for 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.

(7) *Nonconforming signs.*

- (a) *Normal repairs and maintenance.* Normal repairs and maintenance necessary to permit the continuation of a legally established nonconforming sign and to keep it in a safe condition shall

be allowed. This shall include activities such as re-painting, electrical repairs and replacement of neon tubing.

- (b) *Change of copy.* Change of copy or substitution of panels or faces on a legally established nonconforming sign shall be allowed.
- (c) *Discontinuance.* Any nonconforming sign that ceases being used for a continuous period of 12 consecutive months or more shall not be re-used for sign purposes until it is brought into full compliance with the standards of chapter 98, Signs. Any nonconforming sign that pertains to a business or institution that ceases operation for a period of 12 consecutive months or more shall not be re-used for sign purposes until it is brought into full compliance with the sign regulations of chapter 98, Signs.