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## STAFF REPORT

TO: Archuleta County Board of County Commissioners

FROM: Pamela Flowers, Development Director

DATE: April 14, 2021

STAFF

REPORT: UPDATED – Proposed Land Use Regulation Amendments

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### EXECUTIVE SUMMARY

These proposed changes to the *Archuleta County Land Use Regulations* will accomplish several things for the county. First, these changes define and implement a perpetual procedure for resolving an Improperly Divided Parcel within the County through an administrative procedure. Second, there is language presented that will redefine the method for applying for a Vacation Rental Permit and re-align this process under the appropriate section of the code. Finally, these changes provide more detailed standards for Vacation Rentals, as well as new standards (where there were previously none) for Lodging Establishments and Bed & Breakfasts. Additionally, there are administrative changes to some of the LUR tables, as well as updated and new definitions for Section 11 to ensure the entire code aligns with these new changes.

### REVIEW PROCEDURE

Section 1.1.9 of the *Archuleta County Land Use Regulations* provides the procedures required to amend the code. Specifically, the Planning Commission is charged with preparing or reviewing suggestions for amendments and presenting those to the Board of County Commissioners. All of these changes were reviewed at a public meeting of the Planning Commission, and updated in accordance with their input and recommendations. The Planning Commission voted to present these amendments to the Board of County Commissioners for approval and adoption into the code. The changes are presented by Section as outlined in the discussion below.

### DISCUSSION

**Section 1 – General Administration** – The only change this section is to modify the language describing the County’s enforcement power of “Stop Work” to include the ability to “Suspend Use.” As originally written, the Stop Work is focused on building and development of properties in the County when building is unsafe, deviates from agreed upon conditions, or is unpermitted. The changes to Section 1.4.3.4 are intended to clarify that the County may also suspend a previously approved use because it is unsafe or deviates from agreed upon conditions, or a use that is unpermitted. In the context of Vacation Rentals, this would allow the County to direct a Vacation Rental owner/operator to take down advertisements and cancel bookings until the unsafe or unpermitted situation is resolved.

**Section 3 – Zoning Regulations** – The changes to this section first eliminate the “Administrative Conditional Use Permit” process which previously existed exclusively for Vacation Rental Permitting. Further, these amendments add

a fully defined process for Vacation Rental Permitting. This process parallels the Conditional Use Permitting section very closely. Added are the submittal requirements, review procedures (including appeals), and criteria for approval.

The submittal requirements are listed in Section 3.2.7.2 and have been expanded or amplified in several areas.

- The previously identified requirement for a Local Contact has been changed to a Caretaker. Additionally, the Caretaker's role is more clearly defined in the amendment to Section 5.5.6.
- An applicant is now required to upload both a copy of the recorded property deed and additional documents if the owner is a Trust or LLC. These additional documents reveal all individuals associated with the property, as this information could be needed for enforcement.
- In the existing language, there is no discussion of proof of neighbor notification required. The new language requires proof, via Certificates-of-Mailing, that adjacent neighbors and any appropriate Owner's Association have been notified. Language has been added indicating that the Planning Staff will be available to assist with determining which property owners must receive the mailed notices. There is also a new form that is required to be used for neighbor notification to ensure the proper information is shared with these neighbors. The use of Certificates-of-Mailing is used in several areas of the code now, including Lot Consolidation and other permit applications.
- Previously, there was language requiring a parking "sketch," which is often submitted as a hand-drawn map. The new requirement is for an annotated aerial map, and does NOT allow the hand drawn diagram any longer. This requirement is again to support our enforcement efforts.
- There is a new requirement to submit proposed advertising and rules for renters in advance of permitting. A review of these items will help us head off many problems before Vacation Rentals are permitted or may lead to appropriate conditions for approval.

Section 3.2.7.6 discusses Approval and Effect and contains several new concepts.

- (1) This section indicates that the Vacation Rental Permit does NOT run with the land. Once a property is sold, the new owners will need to apply for their own Vacation Rental Permit, which will be subject to all rules in effect on the application date. This could also be impacted by the status of density in the area where the home is located, if that standard is adopted.
- (2-6) In these sections the Validation Inspection is defined. Additionally, this section explains that there will now be an inspection with renewal permits and after complaints, as well. These two inspection incidences are new to the program. Finally, Sec 6 reminds folks that new conditions can be applied after any Validation Inspection, if needed. The purpose of the additional inspection at the renewal is to ensure continued compliance with any conditions applied as part of the approval process, like bed counts and safety features.
- (7 & 8) Here it explains that failing to renew the permit *on time* will result in the Closing of the permit, and would require a brand new application. This could be significantly impacted in areas that are at or over the 5% density rules, if adopted. Note that property owners receive an email reminder to renew 30-60 days before the current permit expires and OPEN TASK reminders at the end of every month thereafter.

**Section 4 – Subdivision Regulations** – All changes in this section are related to the approximately 500 remaining Improperly Divided Parcels in the County. This entire change was taken from Resolution 2018-54, Reception #21807304, dated 12/10/2018 which established the interim program to provide an administrative process to resolve Improperly Divided Parcels. Essentially, this new proposed amendment is taken almost directly from the resolution and codifies it into a perpetual program, always available to most owners of these types of parcels.

- Section 4.10.1 and 4.10.2 explain the Purpose, Intent, and Applicability for these procedures. Specifically, these sections define two types of parcels. The first are those referred to as the Improperly Divided Parcels (IDPs) which are identified as those less than 35 acre parcels, *outside a subdivision*, created after the state statute was implemented in 1972, but before the County implemented the Land Use Regulations in 2006. A distinction is also explained here for properties that have been created or modified after the *Archuleta*

*County Land Use Regulations* were published in May 2006, but did *NOT* follow the procedures outlined therein. These parcels can be inside or outside a subdivision and will be referred to as Illegal Lots. This procedure is not applicable to Illegal Lots, which must follow the Subdivision Exemption Plat Review process to legalize their parcel.

- Submittal requirements were derived directly from those outlined in the resolution. All items included will assist the Planning Department Staff with investigating the property and owner to ensure no violations exist that must be resolved as conditions of approval.
- Both application review and final adjudication are accelerated in this process to support a goal of making final determination within 30-45 days.
- After the investigation is conducted by the Planning Staff, the Development Director can administratively approve, approve with conditions, or deny the parcel for a Certificate of Designation of Legal Lot Status.
  - Those properties recommended for unconditional approval will be presented to the Planning Commission on the Consent Agenda for the next meeting that is at least two weeks after approval.
  - Properties that require conditions for approval will not be forwarded to the Planning Commission until and unless those conditions are satisfied. After the property is compliant, the Certificate of Designation of Legal Lot Status will be forwarded to the Planning Commission for their Regular Agenda.
  - If a property is determined to be an Illegal Lot, the application will be denied.
- All appeal procedures and review criteria are also included from the resolution.
- The section on Effects explains that the newly legal parcel will be exempt from parcel size for the zoning district (as applicable), that the new status will run with the land allowing current and future owners to use the land as they see fit, and reminds owners that they are allowed to make boundary line adjustments without danger of future difficulty, as long as the procedures in the Land Use Regulations are followed, as well.

**Section 5 – Development Standards** – This section contains performance and development standards for all Accommodations and Lodging, including Vacation Rentals. The current code has no standards for Lodging or Bed & Breakfast establishments. Standards for the configuration and operation of a Vacation Rental are outlined in greater detail under Section 5.5.6.

- Standards presented in Sec 5.5.1 – 5.5.3 and portions of 5.5.6 are derived from the Colorado Department of Public Health and Environment Sanitary Standards and Regulations for Public Accommodation (6 CCR 1010-14). This regulation was used to ensure lodging in Archuleta County conforms with other lodging establishments throughout the State of Colorado.
- Sec 5.5.6.1 establishes two categories of Vacation Rentals: Owner-Occupied and Non-Owner Occupied. These categories correspond to the fee schedule changes approved by the Board earlier this year. The amended language allows property owners who use a portion of their home as a long-term rental to receive credit for being Owner-Occupied in hopes of encouraging property owners to consider making housing available for locals, as well as travelers.
- Sec 5.5.6.2 is renumbered and removes the reference to the Administrative Conditional Use Permit that was removed from Section 3 above. All other content is unchanged from current LUR.
- Sec 5.5.6.3 contains changed language as outlined here:
  - (1) This section removes the concept of “local representative” and replaces it with “Caretaker.” Further it amplifies the requirement to live within 60 miles of Vacation Rental and adds clarity regarding the responsibilities for Caretakers and/or property managers.
  - (2) This section reiterates the requirement for applicants/homeowners *and* the Vacation Rental property to be in conformance with all codes. In other words, as outlined in Sec 1.4.3.1, if the owner of the Vacation Rental Property has open and unresolved violations on ANY parcel in the County, they will be denied a Vacation Rental Permit on this parcel, until all violations are resolved.

- (3) The current regulation essentially has no density rules at all. It literally says you can have as many Vacation Rentals as you can have dwellings. The new language proposes a density limit of 5%. This section also explains that no permits will be revoked to achieve these limits. If a homeowner has a permit in an area that is above the cap, they will be allowed to continue with that permit and even renew it when it expires. They will be expected to follow the rules and renew each year **on time**. As long as they do these two things, they will be allowed to continue operating their Vacation Rental as long as they wish. Further explained in these sub-sections is how the cap will be calculated in these various neighborhoods:
  - a. In Major Subdivisions (4 or more lots/parcels), multiply the total number of lots/parcels (including vacant lots) by 0.05, then round the result UP to the nearest whole number.
  - b. In Condominium or Townhome Subdivisions, multiply the total number of units in the community by 0.05, then round the result UP to the nearest whole number.
  - c. In Minor Subdivisions (3 or fewer lots/parcels), only one (1) permit is allowed.
  - d. Only one (1) permit will be allowed per parcel, regardless of size. For parcels who currently have more than one (1) permit, when those permits expire, they will only be allowed to renew one (1), going forward.
- (4) Space and Occupancy standards and constraints are outlined in this section. It is important to note that once a person applies for a Vacation Rental Permit, they are changing the use of their dwelling from personal dwelling to a public accommodation. For this reason, rules are applied to ensure the safety of the guests as well as protect the property owner from liability if injuries occur. It is not possible to distinguish between times of personal versus public use. So these rules must be applied universally for Vacation Rental properties.
  - a. Dwelling limits are the same as before, two (2) guests per bedroom plus two (2) more per dwelling. Sub-sections here also describe how guest capacity will be calculated and now requires excess bed capacity to be removed from the dwelling. Further, it describes the criteria that must be met to have the dwelling's bedroom count increased, which in turn increases the guest limit.
  - b. Guest capacity per room is defined here. The room size, ceiling height, and bed capacity standards are outlined. Additionally, this section prohibits the use of Triple-bunk beds and ensures adequate headroom for double-bunk beds.
  - c. Structural and fire safety standards are covered here. They are mostly the same as in the existing regulations. Additions include egress window size, kitchen fire extinguisher requirement, and more detail about smoke and carbon monoxide detector requirements, as found in the Building Code.
- (5) This section includes the requirement for posting the permit number in all ads, as before. It also adds the requirement to ensure advertising reflects the sleeping capacity limit as on the permit and indicates the sleeping facility configuration must also match that limit.
- (6 & 7) These sections discussing refuse disposal and guest parking remain essentially the same as appear in the current regulation. The only enhancement is to point out that guest capacity can be limited if inadequate parking exists to support the one (1) space per bedroom requirement.
- (8) The On-Site Water Treatment System (OWTS) section has been enhanced to indicate that composting toilets and outhouses are NOT adequate sanitary facilities for Vacation Rentals.
- (9) Rental guest notice requirements are outlined here and remain the same as in the current regulation.
- (10) This section adds the requirement for each Vacation Rental to display an Identification Sign in front of their home or on the door of their condo/townhome. This sign will be provided initially by the County and can be replaced for \$25 if lost, stolen, or damaged. The sign will be made of aluminum and will display guest limit, parking limit, and phone number to County 24-hour complaint line to report violations. This is a totally new requirement intended to discourage guests

from violating guest limits, as well as empowering neighbors with useful, property specific information.

**Section 11 and Table Changes** – There are several changes to the definitions and tables that seek to avoid conflict in the regulation and clarify some of the terms used. These changes are only needed if the previous section changes are approved.

### **Summary**

The Staff anticipates little if any disagreement with the recommended amendments to Sec 1 or Sec 4. There has only been support for the idea of permanently instituting a procedure to legalize Improperly Divided Parcels. Additionally, there will be tighter observance by the Staff of the requirement to legalize these parcels before permits are issued. In turn, it is appropriate to provide a simpler process for these property owners to bring their parcels back in line with County and State requirements.

However, the changes regarding Vacation Rentals will likely bring strong public opinion on both sides of the issues. Some of the standards are unchanged, some are enhanced, and others are added with this amendment. This discussion will be focused on the items that are anticipated to create debate. Specifically, the tighter enforcement of the bed capacity limits within dwellings and the Density Cap should be discussed further.

Over the past few years, the community has seen the effect of lax enforcement of the bed capacity limit. Over-renting is a systemic problem that was encouraged by the previous policy of never making a property owner remove furnishings from their Vacation Rental. Even if they had more beds than their limit allowed, the previous policy was that the property owner was giving their guests “flexibility” on how they used the excess beds. But the result was the guests using the full capacity of the dwelling, thus frequently over-renting. This will help property owners address over-renting by scofflaw guests. The Vacation Rental is not a personal use. Once a permit is issued, the dwelling becomes a public accommodation and regulation is not only allowed, but appropriate to bring them into alignment with all other public accommodations in Colorado.

It is anticipated that many property owners will not like being told to remove beds from their dwellings, especially if they were allowed to keep them after previous property inspections. But this new approach is just part of our tighter enforcement. The Staff heard the voices of many neighbors during the fee debate indicating their frustration at lax enforcement. With our growing team, the Staff will be changing direction, and these rules regarding guest capacity limits, room size requirements, and bed configurations will be the foundation of that enforcement program.

The second, and likely more controversial proposal, is the Density Cap. The idea behind using density as the driver here was to avoid the more arbitrary county-wide cap. This approach will allow people who wish to buy a home for a Vacation Rental to find a place in the county to do that. It will simply cause them to target areas of the county that have lower Vacation Rental numbers resulting in a more balanced distribution and providing some relief to the communities that are somewhat overwhelmed by the sheer numbers of Vacation Rentals that surround them.

Please remember, property owners who currently have permits will be allowed to keep those permits, as long as they renew on time and follow the standards outlined in the regulation. They will even be allowed to renew those permits consistent with the language in the LUR that defines existing non-confirming uses. They will be essentially “grandfathered.” Until the property owner decides to take their property off the Vacation Rental market or sell the property, the permit can be renewed.

The greatest impact of the limits will be new permits. The subdivisions and condo communities that are at or over their cap will not see any new permits issued until and unless the neighborhood comes below their cap. In many

areas, this will likely take many years for attrition to make its mark. However, the trend will be toward balance in these neighborhoods.

It has been suggested by some members of the public that instituting the Density Cap will cause potential developers to cancel plans to build communities in our County. Specifically, the concern presented is that if a developer learns that he would only be allowed to have two (2) Vacation Rentals in a development of 40 properties, he will decide to develop in another county. However, there are two flaws with this logic. First, there have not been any new Major Subdivisions developed in the county in more than a decade. So if this logic were truly at play, there would have been many developers building these "Vacation Rental Subdivisions" during this period when there were no limits to Vacation Rentals in the County. As this has not been the case, there is no reason to believe a Density Cap would have any impact on development in the County. Secondly, a developer does not seek approval for a subdivision with significant consideration for how the homeowners will be using their homes. The Community Plan, which is driven by the goal of preserving open space and requirements for infrastructure to support a development, provides the constraints and restraints that determine if a developer will pursue a new subdivision in this County.

The final area of likely controversy in the amended language is the new limit of one (1) Vacation Rental Permit per parcel. This will impact anyone who has more than one legal dwelling on a parcel that currently has permits for both. These individuals will be able to continue operating both Vacation Rentals through the end of their current permits. Once they expire, only one (1) will be allowed to renew. This is also an effort to minimize over-renting, especially in the case of duplexes or dwellings with garage/basement apartments. Additionally, there is hope this will encourage property owners to long-term rent a portion of their property.

Public input has been received by this office, and those submissions have been forwarded to the Commissioners for consideration.

#### RECOMMENDATION AND FINDINGS

The Staff and the Planning Commission carefully considered all the language that has been included in these Amendments. The motives take into consideration the health, safety, and general welfare of all citizens in Archuleta County; those who operate Vacation Rentals as well as those who live around them; those who live in Archuleta County full-time as well as those who call it their second home; and those who have investment properties as well as those who need a place to live. The goal of the Vacation Rental amendments is to attempt to bring the needs of all those constituencies into closer alignment.

Therefore, the Planning Commission and the Staff recommend that the **Board of County Commissioners approve these Amendments to Sections 1, 3, 4, 5, 11, and Various Tables of the Archuleta County Land Use Regulations** as presented with, no changes.

#### PROPOSED MOTION

**I move to APPROVE the Amendments to Sections 1, 3, 4, 5, 11, and Various Tables of the Archuleta County Land Use Regulations as presented.**

#### ATTACHMENTS

None.

