



**Archuleta County Development Services Department**  
**ARCHULETA COUNTY PLANNING COMMISSION MINUTES**

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**Archuleta County Planning Commission Minutes, Regular Meeting February 24, 2016**

The Archuleta County Planning Commission held a meeting on Wednesday, February 24, 2016, at 6:00 PM at the Archuleta County Commissioners Meeting Room, 398 Lewis Street, Pagosa Springs, Colorado. Chairman Michael Frederick called the meeting to order at 6:02 PM.

**Commissioners in attendance:**

Michael Frederick, Anita Hooton, Peter Adams, and David Parker.  
Betty Shahan was excused.

**Staff in Attendance:**

John Shepard, AICP, Planning Manager; Todd Starr, County Attorney; Sherrie Vick, Planning Technician

**Public in Attendance:**

Chip Munday, General Manager PLPOA, and Jeff Sherer and Greg Chamberlin of Black & Veatch for Verizon Wireless. There were numerous members of the public, see attached sign-in sheet.

**Consent:**

Minutes from the January meeting were reviewed. Motion made by Commissioner Hooton to approve the minutes as submitted. Commissioner Adams second. Approved by a vote of 4-0.

**Old Business:**

**Pagosa Lakes Telecommunication Facility Development Plan Rezoning in the PUD zone, located at 1311 Lake Forest Cir.**

Commissioner Frederick stated that this hearing is a continuance from the January 27, 2016, meeting due to a request by the neighbors for more time to research concerns. The Chair allowed 20 min for each side starting with those opposed to the application, not including questions asked by the Commission.

County Attorney Todd Starr addressed the Commission. They may not to take any testimony on health effects, because that is addressed by Federal regulations and is not allowed to be addressed at this level. Addressing audience input, that if any one did mention health effects at this time it can trigger automatic approval of the project. If anyone mentions the radio frequency issue he would cut off the speaker so as to not risk the project being approved automatically.

Planning Manager John Shepard addressed the agenda and several points of order for the meeting, and asked members of the public to sign in.

Mr. Shepard continued by stating the staff report for this meeting only addressed changes to the original proposal, such as clarifying the access driveway on the site plan with a turnaround added to address Fire Department comments, which were also included. The access would be designed to a primitive road standard and there would be a gate and fence by the boat ramp which would limit vehicle traffic. There were more letters for and against the project and an attachment from a group of neighbors who put together a presentation. He also restated the rezoning criteria, noting the recommendations for or against approval would be based on whether or not the applicant demonstrated that they met the rezoning criteria.

Commissioner Adams made a disclosure that he had made some inquiries of different agencies, explaining the nature of his communication, but had not received any additional information on the project from his communication. County Attorney Starr asked Commissioner Adams if he was biased or if he could render a fair decision? Commissioner Adams sated there was no bias and he could give a fair decision.

Chairman Frederick stated that a group of neighbors had agreed to have one presenter represent the group. Public comment was opened and testimony started at 6:21 pm

Terri Thomas 207 Antelope Ave. made the presentation for a group of neighbors, with a power point (copy to the project file with staff).

Community awareness: In their opinion, many people were not aware this project has been going on. If they had been informed, they would not be in front of the Planning Commission at this hearing. They were informed by the PLPOA management that other neighborhoods were considered and the residents did not want it in their area, where the Lake Forest residents were not asked.

Public Safety: There are hazards that can occur. In the United States, there have been 15 tower collapses and tower fires. This is a very dry climate and fire danger is common and catastrophic.

Aesthetics: The development does not meet many sections of the County regulations. This PUD proposal is in the middle of a residential area. They feel the applicant has not met the long list of "shall meet" requirements with this project.

- *The project shall be compatible with the uses of adjoining property.* The adjoining property is residential and the construction of a road, equipment shed, and tower is not consistent.
- *The project shall protect natural features in the area and not cause degradation of the environment.* The PUD plan is creating a colocation for more towers and not preserving the natural open space of the lake area.
- *The design of the project will protect views and vistas.* This project is in direct view of the homes detracting from the view of the lake.

Location: Where is the location? Where the plan shows and where it was staked look different. The height of the tower is in question. It appears that there is no limit to the tower height. They had a surveyor shoot the elevations. The tower would need to be 120' high to clear the trees for a good signal.

Environmental: There is a wetland in the area and a marshy area. The State Fish and Wildlife Service have indicated that there may be wetlands and up to seven endangered species and 27 types of migratory birds in the Lake Forest area. They contacted the US Army Core of Engineers and they would consider doing a wetlands study in the spring. If a wetland is found the US Army Core would move to shut the project down.

Noise and Nuisance: The tower is in close proximity to homes and residence will be impacted by the generator noise, maintenance, worker radio transmissions when work is being done, and lights if the tower maintenance is being done at night or in case of an emergency. These things will also disturb the wildlife in the area. Once you approve this commercial use, there may be more things that come forward that may increase the impact to the area.

Economics: It is a fallacy that tower increase property value. Most people report a drop in value because of perceived issues. Ms. Thomas presented comments from nearby neighbors.

Other locations: There are locations that are zoned for commercial development and have adequate road access already established. 575 Navajo Trails near Terry's Ace Hardware, and 4 Corners Material on County Rd 600 which also is 300 feet higher in elevation.

Ms. Thomas concluded, stating the plan is bad because it is in the middle of a residential area. Local government has the opportunity to preserve this natural location that residence can enjoy for generations.

Commissioner Adams asked to see the slide with an overview of the wetlands area. The presenters drew the circle where wetlands could exist.

Chairman Frederick announced that there were two minutes left in the allotted 20 minutes if someone else would like to make comment.

Patricia Rydz at 67 Highland Ave. stated that she was in the process of purchasing the home she now rents but if an appraiser goes out and see the approximated location of the home to the tower that would diminish the value by perceived issues related to the tower.

At 6:42, the applicant's representative Jeff Sherer started his presentation, with a power point (copy to the project file with staff).

Mr. Sherer displayed site plan on the amended Development Plan, explaining the access change the fire department requested. There will be an additional two foot microwave transmitter because there is not fiber optics in the area. This transmitter will also be disguised with a needle sock. They will be seeking staff approval on the design and color of the bark and needles to match the mono-pine to the local trees. For safety, they added a split rail fence and gate to limit vehicle access beyond the boat dock except for maintenance crews.

Mr. Sherer turned the presentation over to the Engineer Greg Chamberlin. The tower search area was targeted based on trouble tickets report by costumers, dropped calls, low data usage, and our own statistic for coverage and signal strength in the area. Mr. Chamberlin expounded on the changes in technologies for cell use make more towers a requirement to meet the upgrades in the industry and the demand for better service. The site criteria is based on quality of service and types of service available in the targeted area. Coverage maps show the quality of service that would be provided to the target area by different potential locations. The site at Lake Forest was chosen because it gave the best results. Mr. Sherer continued, stating the site meets the Land Use Regulations' criteria and the coverage target goals, and an environmental study is being completed for this site. The site is being designed to mitigate visual impacts. This site will meet the needs of the residents, full-time, part time, and visitors to the area. Mr. Sherer concluded his portion stating that the demands for wireless serves are only becoming greats as more and more people change to the newer technologies and demand better service and availability.

Mr. Sherer turned the remainder of the time to Chip Munday, the Manager of the PLPOA. Mr. Munday thanked the Commission for the extension because it gave the PLPOA more time to have additional meetings, meet with the neighbors, and engage the community through use of their website. The PLPOA Board of Director supports this project and feels it meets their charge to provide a better quality of life for the whole and not just a few of their members.

Chairman Frederick asked Mr. Munday to give the Commission some history on the property. It has been implied that this land was designated open space. Mr. Munday stated that the Lake was not included in any of the surrounding subdivision when they were platted, so it is a un-subdivided track of land that PLPOA now owns. The covenants that apply to the surrounding subdivisions do not govern this parcel. The parcel primarily holds the Lake Forest reservoir, and the water in the reservoir is owned by PAWASD. Chairman Frederick asked about restrictions on the parcel. Mr. Shepard stated that it has no restrictions on the parcel because it was a remainder tract left out of the original subdivision plats and has no permitted uses either. Commissioner Hooton asked if the percentage of open space remaining was enough to meet our criteria. Mr. Munday responded that there is only a small space being used for the tower and building. The rest is remaining as it is and the road is on a utility easement. Commissioner Hooton restated with the road and the tower sited does it take up 50% of the area. Mr. Munday responded that it was not close to 50%. Commissioner Adams asked for clarification on the fencing. Mr. Munday pointed out on the site plan that the fence would match the current fence at the boat dock area. A gate would be added across the road being installed and then toward the lake leaving room for pedestrian traffic but no other vehicles.

Mr. Sherer concluded with some additional information. In regard to fire, the tower is grounded with a lightning rod so the site is less likely to catch on fire then the surrounding trees. The proposed site development will be the only approved plan; any other changes or development of the site would go through the PLPOA and the County for approval. The site meets the County's economic and communications sections of the comprehensive plan and regulations.

Commissioner Parker then asked if there was an existing coverage map. Mr. Sherer replied they did not have one. Commissioner Hooton asked, of the five sites looked at, if any others were not owned by PLPOA. Mr. Munday replied the PAWASD and Golf Course sites are not owned by PLPOA. Mr. Sherer stated that when they examined potential locations, they did the studies based on the best results not by who owned the sites. Mr. Sherer continued by saying that they tried to contact the materials site that was suggested by the neighbors, but the site was locked and they could not get in. There is also a sign on the site which states no cell usage allowed. Commissioner Hooton ask why there was not more effort to look at commercial sites in the area. Mr. Chamberlin explained that Verizon had a target area that needed better coverage and the sites were chosen by how well those locations provided service quality to the target area. Mr. Sherer pointed out that the commercial locations were outside the target area and the

mono-pine design would fit better in this area. Commissioner Adams asked how the search ring was established. Mr. Chamberlin repeated that the search area was determined by customer complaints and internal data based on dropped calls, low data service, and no service. Commissioner Adams asked if this project meet needs in the Lake Hatcher area? The answer was no; it is focused on the central core area need. Commissioner Adams asked about a point in the presentation that customers with older phone would not see an increase in service but others with advanced services would. Mr. Chamberlin said that was correct but the technology is advancing that older phones would need to be upgrade to the new technology. Commissioner Adams asked about co-location. The Tower is being designed for that (as required). They would only have to install antennas on the tower, and equipment would fit in the same shed. Commissioner Adams asked if there was specific information on dropped 911 calls in this area and asked Mr. Shepard if he had spoken to the communications director at the fire Department. Mr. Shepard added that there was no information on 911 dropped calls. Combined dispatch for emergency service would handle that issue.

Public Comment was closed at 7:20 PM by Chairman Frederick and he opened deliberations by encouraging the Commission to express their opinions in full for the benefit of the Board of County Commissioners. Mr. Shepard emphasized that this is a Rezoning and will have a specific development plan. Unlike a Conditional Use Permit, they cannot come back with minor amendments to change administratively. This approval is for a 70-foot tower with one equipment shed and this only.

Commissioner Hooton started the discussion by asking for clarification, on why we are rezoning this from PUD to what? Mr. Shepard answered it is from PUD to a PUD with a specific development plan. Commissioner Hooton then proceeded to clarify that review is under sections 3.1.6.3 and listed the criteria.

Commissioner Adams expressed that in light of the criteria of keeping open space in residential areas open, this project didn't fit in this location. The zoning is currently silent on the permitted use in this area. He also expressed a concern about setting precedents without more clarification in our zoning regulations. As a builder, he would be reluctant to want to build a home by a tower.

Commissioner Parker asked Mr. Shepard, regarding the Land Use Regulations, is the project in compliance. Mr. Shepard responded that the Applicant put in the narrative how they feel they met the criteria of the regulations. Staff reviewed the submittal for completeness and looked at how it is meeting the criteria. The comprehensive plan encourages both keeping open space and promoting advanced communications in the area. People come here for the open spaces but want to be connected so having better connectivity is desired. Commissioner Parker concluded that the Commission should look at the developments benefit to the whole community. If this was in his neighborhood he would welcome it, and as an architect he is impressed with the effort they are making to have it blend into the area.

Chairman Frederick then shared his observations. Looking at the standards for review in Section 3 and 5 the applicant has provided enough evidence for him to approve this project. The staff report addresses Section 3.1.7.3, indicating this section has been met, and as far as the neighbor's objections based on Section 5.5.3 that there be no adverse effect on their property. The fact that the Community Plan expressed a need for communication to be advanced in 2000, and that need still exists in this area, is an issue that we need to address. He believes that this application meets a need in the area. The neighbors are implying this is a commercial or industrial use and not compatible with the adjacent residential use. However, that is not what our zoning calls this use. It is allowed in all zoning areas as long as the impacts are mitigated sufficiently for the surrounding areas. He would also defer to the PLPOA Design Committee because they make these kinds of decisions for the surrounding subdivisions and he is not inclined to second guess their decision. It can be acknowledged that no one wants to live by a cell tower but we need to balance that with the need in the community for better cell coverage.

Commissioner Adams stated he could see five to six criteria that the project did not meet, and in the PUD section four or five that were not met, because there is a lot of grayness in the criteria. He continued by saying he was not convinced that enough research has gone into possible site locations.

Commissioner Hooton agreed that not enough research had been done on potential sites that would be better for this project. There has not been enough documentation presented to eliminate other sites except that it would be a shorter tower and less expensive to do it in this location. She continued that because this site is so close to homes we need to be sure we have enough information to determine this is the best site for this project.

Commissioner Hooton then made a motion to recommend disapproval of the Pagosa Lakes Telecommunication Facility Development Plan Rezoning in the PUD zone, located at 1311 Lake Forest Cir., stating that it did not meet Section 3.1.6.3(2) which states the PUD shall be compatible with the scale, intensity and type of uses located on adjacent property; Section 3.1.6.3(6) the design and layout of the PUD shall protect unique natural features and will no cause significant degradation of the environment; Section 3.1.6.3(8) the layout of the PUD shall preserve views and vistas, construction on ridgelines that are visible from major roadways or residential development shall prohibited and the design of the activity shall be compatible with the surrounding natural environment, and section 3.1.7.3(10) that the rezoning will not create an isolated spot zone district unrelated to adjacent or nearby areas which is residential.

Commissioner Adams seconded the motion. Vote 3-1 Commissioners Hooton, Adams, and Parker voted for and Commissioner Frederick opposed.

Mr. Shepard will forward the Planning Commission's recommendation to the Board. It is scheduled to be heard on Tuesday March 8<sup>th</sup> at a special meeting, 5pm at the Emergency Management Building at 777 County Rd 600. Mr. Shepard recommended to the public that they car pool because while there will be more meeting space at the location but there is limited parking area. The project was closed at 7:50PM.

### **New Business:**

#### **Elections of Officers**

In the bylaws, this is to be done at the first meeting of the New Year. We had an extended meeting in January so we need to do that now. Commissioner Hooton nominated Commissioner Frederick as Chair Commissioner Adams Second vote 3-0; Commissioner Parker nominated Commissioner Hooton for Vice Chair Commissioner Adams Second vote 3-0.

#### **Discussion Item: Standards for Noncommercial Marijuana Cultivation.**

Chairman Frederick asked Mr. Shepard to give his report. The Board of County Commissioners has asked staff to develop potential land use regulations for non-commercial marijuana. The Colorado Constitution allows growing and consumption of marijuana, up to 6 plants per adult 21 and older. On the other end of the spectrum the County has licensed retail and medical dispensaries and commercial cultivation. The County has adopted an ordinance for licensed uses, only allowed in commercial or industrial zones. There is a grey area between personal use of 6 plants and the commercial licensed activities which the Legislature has tried to make a little less grey. Senate Bill 15-14 addressed Medical Caregivers and limits the amount of plants that can be cultivated to 36-99 with specific prescriptions, starting in Jan of 2017, and subject to local zoning. Several counties have adopted regulations and more specific plant counts for parcels. House Bill 15-1305 prohibited the production of marijuana concentrate with explosive chemicals outside of licensed facilities, effective July 2015.

For this topic, restrictions on *ex parte* communications does not apply because the request is Legislative (zoning amendment) rather than Semi-Judicial (land use application), to explore regulations and solicit public comment so the Planning Commission can give a recommendation to the Board.

County Attorney Starr pointed out that the County has direct regulations for Medical and Retail marijuana. Caregivers are not in those regulations and tend to operate out of their homes. As an example, if Person A has a prescription from a doctor for 100 plants and person B has one for 200 plants and they went to their Caregiver, that Caregiver could grow the 300 plants currently. Senate Bill 15-14 was passed to limit the amount of plants a Caregiver could grow. The County Commissioners are concerned because of traffic, and that future buyers of those homes may not know it was used in that way. Caregivers are not well addressed in the law and there are possible hazards that might arise which can only be regulated through the tool of land use regulations.

Chairman Frederick asked for clarification of the hazards. Mr. Starr gave examples of mold created by the growing or the plants, equipment and supplies used to care and grow the plants and how are they disposed of.

Commission Hooton ask Mr. Starr about the financial relationship between the caregiver and the patient. Mr. Shepard explained that they are not allowed to get paid, only reimbursed for their expenses. The Caregiver relationship is a non-commercial relationship. Mr. Shepard pointed out that in our regulations,

we excluded commercial marijuana from our definition of Agricultural Uses. An example is your personal 6 plants you grow at home is agricultural by definition but you can't sell it. We have in the code that a Land Use Permit is required for legal cultivation of marijuana at this point, in Section 2.1.2.1. So if staff get a complaint, they would open a land use investigation and ask that person to demonstrate how they are in compliance with the law.

Chairman Frederick opened the meeting to public discussion.

Bill Hudson, 268 Pagosa Street, spoke on the safety difference between marijuana and the other drug uses such as alcohol, prescription pain medication, and other illegal drugs. Chairman Frederick asked Mr. Hudson if he was for regulations or not. Mr. Hudson responded not to add regulations.

County Attorney Starr added that the regulations cannot be about whether it is good or bad for people. We need to look at how Caregivers have a business-like impact on the land use in the County, and how to regulate the impact of this use on the health and safety of the community.

Chairman Frederick asked about the real purpose of the County regulating this activity, if that was to protect adjoining property owners? Mr. Starr said yes, the Commissioners are concerned that neighboring property owners to the Caregivers are suffering adverse effects and to address that.

Claudia Smith, 660 Justin's Rd, Aspen Springs. Neighbors across the street have not come to the neighborhood to live there. They are just growing marijuana on the property, and have stated they are Caregivers. The impacts are many. They grow inside structures with exhaust fans, lights on and off all the time. They say they plan to expand and it is her opinion that this is an industrial use. The buildings are probably not permitted and not wired properly which is a fire hazard and they are in a high fire danger area. It would take out the whole neighborhood before help could arrive. It is essentially a business because they are not living there. Commissioner Hooton asked Mrs. Smith to describe what she sees when she looks at the property. Mrs. Smith replied, she sees several sheds and there are others in neighborhood that have put up sheds on their property for growing. This also brings crime into the neighborhood because it is a cash crop and they are targets.

Greg Gietz, 351 S. 7th Stree, stated that what Mrs. Smith just expressed is happening all over the County, but it is like bootleggers in 1920's; you are not going to stop it.

Matt Brewer, Chimney Rock Farms 500 County Rd 175, stated he is a professional grower and they grow hemp, which is different from the marijuana grown for retail or medical use. Please be careful how we label these products so it doesn't impact growers like his which are for industrial uses. Greenhouse production should be promoted; it is environmentally friendly and works better. Commercial growers are regulated by the state department of agriculture and they are strictly regulated. Chairman Frederick asked if we come up with regulations and state in those regulation if you licensed by the department of agriculture you are exempted from these regulations, would that be appropriate? Mr. Brewer responded that would be great because they have lots of regulations to follow now. The only difference in his product and retail product is the amount of THC in the plant. The plants look the same. They are tested regularly because they are only allowed a small percentage of THC.

Jason Werby, 346 Swiss Village Dr., explained that a Caregiver is allowed to have 5 patients and themselves to grow for, but there is a large black market of growers out there doing commercial business. The State is now trying to limit that to 99 plants. In Denver they limit it to 12 plants. Has a licensed Marijuana business, regulated and pay fees to the State and the County and now the Town which all have their regulations as well. The Caregivers are in a large grey area. While they are only to be reimbursed, it is well know they are getting paid for what they are doing. He believes common since regulations would allow people to have their medicine or have Care providers grow reasonable amounts of the product. Mr. Werby believe that a goal for the plant count should be between 36-99 plants. Chairman Frederick asked how much room it takes to grow 6 plants. Mr. Werby replied that it depends on the size of the plants. Mr. Starr stated that staff could arrange for a visit to a licensed facility, as long as we would post that we were taking the tour.

Chairman Frederick asked Mr. Starr if there was comment from the Sheriff's department. Mr. Starr said in general the Sheriff would like to see it well regulated. Mr. Shepard added he spoke to the Sheriff also, and that while this may not be the preferred approach, land use regulation is the option the State makes available. From a complaint basis, Mrs. Vick related that people are putting up buildings under 180 sq. ft.

because they think they don't need a permit for that size building, but that applies to storage buildings only. That limit does not apply to this use. They are putting up grow domes and larger buildings without permits, all over the county not just in Aspen Springs. Our Building Official goes out on complaints and is fearful of coming across these illegal use and the people involved with it. Mr. Shepard then continued summarizing examples of what had been adopted by other counties.

The Planning Commission directed Mr. Shepard and Mr. Starr to reflect on this discussion and develop some language that they could look at.

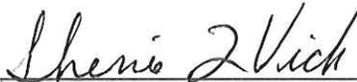
**Announcements:**

None

**Next Meeting:** March 23, 2016 (Regular Meeting)

**Adjourn:** Commissioner Hooton Moved to adjourn the meeting, Commissioner Adams Second Meeting adjourned at 9:13PM

Approved this *23* day of *March*, 2016

  
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Sherrie Vick  
Planning Technician

  
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Michael Frederick  
Chairman

# ARCHULETA COUNTY PLANNING COMMISSION

Meeting Attendance  
February 24, 2016

Name	Address	Phone
Deni Blaisch	172 Wildermass Dr.	970-903-0958
TERRI THOMAS	207 Antelope Ave	603-512-3397
Veronica Thomas	207 Antelope Ave	603-512-3398
Maxim Wilkerson	172 Wildermass	970-903-1951
Pete Clive	29 Lowman Ct	505-463-7698
SYLVIA CLIVE	"	"
Brian Chiodon	2731 S. Verber Ln. Aurora CO	402-305-2978
Ann + Elvira Tombaras	140 Business Cir	970-731-5869
KIM CONNOR	65 Wildermass Dr	970 946 9105
Kim Smith	65 Wildermass Dr	902-0466
Donna Cell	P.O. Box 2977	946-7489
Wendy Williams	P.O. Box 822	731-1699
Robert Jimmy Helala	316 Antelope, Ariz	432-349-4362
Mike Ryan	22 Beard Cir	303349 5300
LEN KUPNER	315 HEATH	870-731-1674
Bonnie Connor	1001 Ute drive	970-731-8589
Phil Daley	2817 Turner Meadows #3013	970-731-4589
Scott DeLong	317 Yarrow Creek, Sedona, Arizona	970-731-1702
Kimberly Bradshaw	20 Quartz Ct.	970-576-8076
Chad Johnson	359 Blue Horizon	970-807-7045
Pete Adams	67 Sealand Ave, N.S. U 8157	970-946-7964
Marshall Daborn - SUN	107 CR 506	720-448 6514
Tara Moxley	149 Morning Place	731-4656
Tina + Janet Tombaras	128 Beaver Cir	903-4291
Frances Anderson	350 Cedar Lake Ave	940-200



