

**RESOLUTION OF THE SAN MIGUEL COUNTY
BOARD OF COUNTY COMMISSIONERS,
SAN MIGUEL COUNTY, COLORADO,
APPROVING A LAND USE CODE AMENDMENT TO SECTIONS 5-302 HIGH
DENSITY, 5-303 MEDIUM DENSITY, AND 5-304 LOW DENSITY ZONE
DISTRICTS TO ADD LANGUAGE REGARDING USES ALLOWED BY RIGHT
REGARDING HOUSE SIZE**

Resolution 2012-25

WHEREAS, this proposed Land Use Code (LUC) amendment affects property located in the High Density (HD), Medium Density (MD) and Low Density (LD) zone districts. The purpose of the amendment is to clarify an existing inconsistency in the LUC in terms of allowable house sizes as it relates to property in these zone districts. The proposed amendment cleans up an issue that was inadvertently created when the County was completing a series of LUC amendments which resulted in language that allowed homes under 5,000 sq. ft. and over 12,000 sq. ft. (by special review) but deleted the language regarding homes between 5,000 sq. ft. and 12,000 sq. ft. which required employee housing mitigation. The proposed amendment will fill in the missing language and allow the construction of homes between 5,000 sq. ft. and 12,000 sq. ft. in these zone districts;

WHEREAS, in 1990 the County Land Use Code (LUC) was amended to implement the goals and policies of the recently adopted County Master Plan. These amendments included the creation of the High Density, (HD), Medium Density (MD) and Low Density (LD) Zone Districts. As initially adopted each of these three zone districts identified single-family residences as Uses Allowed by Right but did not specify a maximum allowed house size;

WHEREAS, in 1991 the Land Use Code (LUC) was amended and the Low Density (LD), Medium Density (MD), and High Density (HD) zone districts each identified Single-family dwellings with less than 5,000 sq. ft. of Floor Area as a Use Allowed by Right. Additionally, each of these three zone districts identified Uses Allowed Subject to Administrative Review. The Uses Allowed by Administrative Review included:

1) "Accessory Dwelling Units subject to the County R-1 Housing Deed Restriction" and
2) "Single-family dwellings with greater than 5,000 sq. ft. but less than 12,000 sq. ft. of Floor Area. Such dwellings must include one Accessory Dwelling Unit (ADU) subject to the R-1 Housing Deed Restriction of at least 350 sq. ft. for each 5,000 sq. ft. of Floor Area. The San Miguel Housing Authority or its designee may accept payment of \$80,000 in lieu of construction of each required Accessory Dwelling Unit;"

WHEREAS, though not specifically stated in the LUC it is staff's understanding that the purpose for requiring an Administrative Review for Single-family dwellings greater than 5,000 sq. ft. but less than 12,000 sq. ft. was to ensure that the owner was either including the required Deed Restricted Accessory Dwelling Unit as an integral part of their

development plans and that such ADU was being properly-deed-restricted per the LUC or the applicant was making the \$80,000 payment in lieu of constructing the ADU;

WHEREAS, in 2006 the BOCC adopted an amendment to the LUC to add standards for processing Development Applications for Single-family Dwellings greater than 12,000 sq. ft. and amending the review process in various zone districts for reviewing Single-family Dwellings greater than 12,000 sq. ft. in size. Prior to this 2006 amendment, the HD, MD and LD Zone Districts allowed homes of more than 12,000 sq. ft. by Special Use Permit review and homes greater than 18,000 sq. ft. required Special Use Review and also required there be a deed restriction against future subdivision as illustrated in the following example:

5-304 D. Uses Allowed Subject to Administrative Review

- III. Single-family Dwellings with greater than 5,000 sq. ft. but less than 12,000 sq. ft. of Floor Area. Such dwellings must include one Accessory Dwelling Unit subject to the County R-1 Housing Deed Restriction of at least 350 sq. ft. for each 5,000 sq. ft. of Floor Area. ~~Homes of more than 12,000 sq. ft. require Planning Commission special use permit review. Parcels on which Single family Dwellings with greater than 18,000 sq. ft. of floor area are constructed must also be restricted by deed against any future subdivision.~~ The San Miguel County Housing Authority or its designee may accept payment of \$80,000 in lieu of construction of each required Accessory Dwelling Unit;

WHEREAS, in 2007 the Board of County Commissioners (BOCC) adopted amendments to the County Land Use Code (LUC) regarding Residential Impact Fees in the R-1 School District, to promote affordable housing and to provide appropriate employee housing mitigation for proposed development. As a part of the 2007 LUC amendment process there was a discussion concerning the LUC provisions regulating Caretaker Units and Accessory Dwelling Units in terms of how these units can or should be used as employee housing mitigation. Even though they may be deed restricted these units are not required to be rented and may not be occupied by a qualified employee. Staff and the consulting team agreed that using these units as an alternative to the employee housing Impact Fee is not equitable. Therefore, as part of these proposed regulations, staff and the consultants recommended that Caretaker Units and ADU's should be allowed and encouraged, but should no longer be deed-restricted and that all residential development (unless exempted from payment of the employee housing Impact Fee by code) be required to pay the Impact Fee. All three zone districts allow Single Family Dwellings with less than 5,000 sq. ft. as a Use Allowed by Right. Toward this end the 2007 LUC amendments per BOCC Resolution 2007-11 included changes to the sections in the HD, MD and LD Zone Districts concerning Uses Allowed Subject to Administrative Review as follows:

- 5-302 D. High Density (HD) Uses Allow Subject to Administrative Review
- 5-303 D. Medium Density (MD) Uses Allow Subject to Administrative Review
- 5-304 D. Low Density (LD) Uses Allow Subject to Administrative Review;

WHEREAS, the above sections were amended as follows:

Uses Allowed Subject to Administrative Review

- I. Accessory Dwelling Units ~~subject to the County R-1 Housing Deed Restriction. The Floor Area of the Accessory Dwelling Unit shall be included in the calculation for employee housing Impact Fee mitigation as defined in Section 5-13 of this Code.~~
- II. Day care centers – allowed only on lots of at least one acre.
- III. ~~Single-family dwellings with greater than 5,000 sq. ft. but less than 12,000 sq. ft. of Floor Area. Such dwellings must include one Accessory Dwelling Unit subject to the County R-1 Housing Deed Restriction of at least 350 sq. ft. for each 5,000 sq. ft. of Floor Area. The San Miguel County Housing Authority or its designee may accept payment of \$80,000 in lieu of construction of each required Accessory Dwelling Unit;~~

WHEREAS, when the above language was deleted it left the three zone districts with no provision for a residence between 5,000 and 12,000 square feet. All three zone districts allow Single-family Dwellings with less than 5,000 sq. ft. as a Use Allowed by Right. The language adopted for Dwellings over 12,000 sq. ft. in the HD, MD and LD zone districts (5-302 K., 5-303 K., & 5-304 L.) is as follows:

Uses Allowed Subject to Two-step Special Use Permit Review

Single-family Dwellings greater than 12,000 sq. ft. require Planning Commission and Board of Commissioner Special Use Permit review pursuant to Section 5-703 L.;

WHEREAS, this Land Use Code amendment not only struck and removed the requirement that Accessory Dwelling Units are subject to the County's R-1 Deed Restriction it also removed the provisions concerning Single-family Dwellings with greater than 5,000 sq. ft but less than 12,000 sq. ft. of Floor Area from the three (3) Zone Districts without providing any sort of process for allowing Single-family Dwellings between 5,000 sq. ft and 12,000 sq. ft. either by Right, Administrative Review, or Special Use Review. In reviewing BOCC Resolution 2007-11, adopting Land Use Code amendments regarding Residential Impact Fees, in its entirety, staff does not find any discussion or recitals that would indicate there was a discussion of or an intent to modify or reduce the size of Single-family Dwellings in any of the County Zone Districts as a part of the Board's action to adopt and initiate Employee Housing Impact Fees. Rather it appears that removing the language concerning Single-family Dwellings greater than 5,000 sq. ft. but less than 12,000 sq. ft. as part of this 2007 LUC amendment was inadvertent. Staff believes the intent was to remove this language from the sections regarding Uses Allowed Subject to Administrative Review and revise the Uses Allowed

by Right sections to read Single-family Dwellings with less than 12,000 sq. ft of Floor Area. This change to address the Review Process for Single-family Dwellings with greater than 5,000 sq. ft. but less than 12,000 sq. ft of Floor Area is not included or reflected in the adopted resolution, Resolution 2007-11;

WHEREAS, Planning Staff sent notice to all Medium (MD) and Low (LD) Density Zone District Homeowner Associations (HOS), as well as individual property owners who do not have an associated HOA. Steve Wilson of Last Dollar PUD responded indicating the Last Dollar HOA would like to see the requirement that the HOA would sign off on homes before Permits are issued by the County;

WHEREAS, in reviewing Development Permit records the Planning Department over the years has issued a number of permits for Single-family Dwellings with greater than 5,000 sq.ft. of Floor area in the Aldasoro Ranch PUD, which is zoned LD and we may have issued permits for dwellings greater than 5,000 sq. ft. in other subdivisions that are zoned MD or LD, such as Skyfield North, Elk Run, Raspberry Patch and the Preserve. I have also found several instances where the Planning office has issued Development permits for Single-family Dwellings greater than 5,000 sq. ft. in the MD and LD Zone districts since the adoption of BOCC Resolution 2007-11, which took effect on May 7, 2007, and is the LUC amendment that created the "gap" regarding house sizes between 5,000 and 12,000 sq ft in the subject zone districts. There are no properties remaining in the unincorporated area of the Telluride Region that are zoned HD at this time;

WHEREAS, Staff recommended three alternative amendments to the Planning Commission as follows (Underline indicates new language):

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Alternative 1.

- 5-302 C. High Density (HD) Uses Allowed by Right
- 5-303 C. Medium Density (MD) Uses Allowed by Right
- 5-304 C. Low Density (LD) Uses Allowed by Right

- I. Single-family dwellings with less than 12,000 sq. ft. of Floor Area.

Alternative 2.

- 5-302 C. High Density (HD) Uses Allowed by Right*
- 5-303 C. Medium Density (MD) Uses Allowed by Right*
- 5-304 C. Low Density (LD) Uses Allowed by Right*

- IV. Single-family dwellings with less than 12,000 sq. ft. of Floor Area. For Single-family dwellings with greater than 5,000 sq. ft. Floor Area of but less than 12,000 sq. ft. of Floor Area: if the proposed residence is located within a subdivision or PUD with an established Home Owner's Association (HOA), the applicant shall provide a written approval of the

proposed building plan from the HOA as part of their Development Permit application.

* All other provisions of these Sections will remain the same.

Alternative 3.

As an alternative if there is a specific concern with the size, scale and mass of structures in these existing subdivisions that are zoned MD and LD the CPC may consider recommending the following language to allow dwellings between 5,000 sq. ft. and 12,000 sq. ft. as an Administrative Review:

5-302 D. High Density (HD) Uses Allowed Subject to Administrative Review

5-303 C. Medium Density (MD) Uses Allowed Subject to Administrative Review

5-304 C. Low Density (LD) Uses Allowed Subject to Administrative Review

III. Single-family dwellings with greater than 5,000 sq. ft. but less than 12,000 sq. ft. of Floor Area.

A. Purpose of Administrative Review

To protect and promote visual character of the County by preventing the development of unsightly or obnoxious structures which are not properly related to their sites or adjacent land uses; do not enhance solar resources; or involve the indiscriminate clearing of property, excessive grading or the destruction of trees and shrubbery.

B. Submission Requirements:

- a. Site plan including location, architectural plans and/or design criteria sufficient to address 5-302 A.;
- b. Designs that blend with the character of the natural landscape in material, muted colors and texture are encouraged to minimize visual impacts.

B. Standards

- I. Reduce the adverse visual impacts of buildings, which, because of size, scale, color, location, lighting or materials either are out of harmony with the neighborhood in which they are to be constructed or diminish the natural beauty of mountain slopes or ridgelines;
- II. Minimize disturbances to the natural terrain; and/or
- III. Promote advantageous solar orientation and energy conserving design;
- IV. Demonstration of compliance with Scenic Quality standards in Section 5-2101.

WHEREAS, while the Planning staff has presented the above Administrative Review process for Single-family Dwellings greater than 5,000 sq. ft. but less than 12,000 sq. ft. in the HD, MD and LD zone districts, as an alternative to just allowing this range of

house sizes as a Use Allowed by Right, Staff is not sure it's appropriate to set up what is essentially an administrative "design review process" where many of the standards are relatively subjective. It may be more appropriate, at least for those properties that are in subdivisions or PUD's where there is a Home Owners Association/Company, to adopt a procedure where the planning office refers Development Applications for Single-family Dwellings to the HOA/HOC for their review and comment prior to issuing the County Development permit for residences in this house size range between 5,000 and 12,000 sq. ft of Floor Area. There are a limited number of MD and LD properties in the Telluride Region that are not within a subdivision or PUD and most of those un-subdivided parcels are relatively large in size;

WHEREAS, at its September 12, 2012 regular meeting the County Planning Commission unanimously recommended approval of the proposed Land Use Code Amendment for the High Density, Medium Density and Low Density Zone District Uses Allowed by Right as follows:

- 5-302 C. High Density (HD) Uses Allowed by Right*
- 5-303 C. Medium Density (MD) Uses Allowed by Right*
- 5-304 C. Low Density (LD) Uses Allowed by Right*

V. Single-family dwellings with less than 12,000 sq. ft. of Floor Area. For Single-family dwellings with greater than 5,000 sq. ft. Floor Area of but less than 12,000 sq. ft. of Floor Area: if the proposed residence is located within a subdivision or PUD with an established Home Owner's Association (HOA), the applicant shall provide a written approval of the proposed building plan from the HOA as part of their Development Permit application.

*All other provisions of these Sections will remain the same.

WHEREAS, the Board of County Commissioners of San Miguel County, Colorado, considered this application, along with relevant evidence and testimony at a Public Hearing on October 17, 2012; and find the proposed amendment meets standards in Land Use Code Section 5-1802 Land Use Code Amendment.

NOW THEREFORE BE IT RESOLVED that the Board of County Commissioners of San Miguel County, Colorado hereby unanimously approves the proposed Land Use Code Amendment to add the following language to the High Density, Medium Density and Low Density Zone Districts with a revision to the County Planning Commission's recommendation:

(Underline indicates new language):

- 5-302 C. High Density (HD) Uses Allowed by Right
- 5-303 C. Medium Density (MD) Uses Allowed by Right
- 5-304 C. Low Density (LD) Uses Allowed by Right

I. Single-family dwellings with less than 12,000 sq. ft. of Floor Area. For Single-family dwellings with greater than 5,000 sq. ft. Floor Area of but less than 12,000 sq. ft. of Floor Area: if the proposed residence is located within a subdivision or PUD with an established Home Owner's Association (HOA) that is responsible for administering an applicable design review board general declaration covenant requirement, the applicant shall provide a written approval of the proposed building plan from the HOA as part of their Development Permit application.

DONE AND APPROVED by the Board of Commissioners of San Miguel County, Colorado, on October 17, 2012.

SAN MIGUEL COUNTY BOARD OF COUNTY COMMISSIONERS

By: Elaine R.C. Fischer
Elaine R.C. Fischer, Chair

Vote:	Elaine R.C. Fischer	<u>Aye</u>	Nay	Abstain	Absent
	Joan May	<u>Aye</u>	Nay	Abstain	Absent
	Art Goodtimes	<u>Aye</u>	Nay	Abstain	Absent

ATTEST:

John Huer
Chief Deputy Clerk

[text/luc/house.size.ld.md.hd.bocc.reso]

