

DRAFT

PROPOSED AMENDMENTS TO CUSTER COUNTY ZONING RESOLUTION OF 2016

(Full copies of the Zoning Resolution are available at the Planning and Zoning Office)

(Page 24) Definition of Light Pollution

Now reads: Degradation of the night sky by artificial light rays above the projected horizontal plane of a light fixture.

Proposed change: *Light pollution is defined as any adverse effect of the use of artificial outdoor lighting at night. See Section 8.2.G and Appendix D.3(p) for further information.*

(Page 63) Proposed addition to Section 8: A new subparagraph will be added to Subsection 8.2 which will read as follows:

8.2.G: *In order to minimize light pollution, all outdoor lighting shall be of a rated correlated color temperature of 3000 Kelvins or less, and any light source exceeding 500 initial lumens must be fully shielded. A "lumen" is a measurement of the brightness of a particular light bulb or lamp. The following is a "lumens to watts table":*

Lumens	Incandescent (Watts)	Fluorescent (Watts)	LED (watts)
600	40	10	5-9
900	60	15	8-13
1125	75	19	10-16
1500	100	25	14-21
2250	150	38	20-32
3000	200	50	27-43

All outdoor lighting that now exists shall be "grandfathered in"; that is, such lighting shall not be subject to the restrictions set forth in this Zoning Resolution. All artificial outdoor lighting for new construction (residential, commercial, and agricultural), shall be subject to said restrictions. Any condition or circumstance resulting in the replacement of a non-conforming light source that was "grandfathered in" shall require the installation of a conforming light source in its place. Any new or additional outdoor lighting installed on property that was otherwise "grandfathered in" shall also require the installation of a conforming light source. No open zoning permit shall be closed until such time as a compliance inspection as described in paragraph D.3(p) of Appendix D of this Zoning Resolution establishes that

outdoor lighting meets the standards set forth herein. The remedy for non-compliance set forth in paragraph D.3(4)(b) of Appendix D shall apply.

(Page 140) Proposed addition to paragraph D.3 of Appendix D:

(3)(p) Applicant is in compliance with the requirements for outdoor lighting as set forth in Section 8.2.G.

WHY RESTRICTING LIGHT POLLUTION IS IMPORTANT

(This is informational only; it is not part of the proposed amendments)

The Board of County Commissioners for Custer County has been advised that a light source with a correlated color temperature (CCT) of 3000K has a warm yellow-white appearance. The American Medical Association has adopted an official policy statement that outdoor LED lighting—particularly street lights—should not exceed 3000K for the reason that lights that have a higher color temperature affect the normal circadian physiology of humans and mammals, disrupt sleep patterns, and have serious physical consequences such as increasing the risk of diabetes, obesity, breast cancer and other health problems. Bright lights have also been found to adversely affect wildlife by, among other things, disturbing the migratory patterns of birds and those aquatic animals that nest on shore, and also interfering with nocturnal animals that rely on darkness to hunt prey.

In addition to these potential health issues and ecological issues, the Board also seeks input on whether preservation of the rural heritage of Custer County and the affect increased light pollution may have on this heritage is important to its citizens.

For the reasons set forth above, the Board of County Commissioners is initiating a study to determine whether the current Zoning Resolution should be amended to the extent necessary to protect and promote the health, safety and general welfare of the citizens of Custer County with respect to the effects of encroaching light pollution. If the Board determines there is sufficient interest and support in the community regarding this issue to go forward, the matter will be referred to the Planning Commission in accordance with Section 2.5 of the Custer County Zoning Resolution.

ATTACHMENT 1

Current definition of light pollution in the Zoning Resolution

- exceptional topographic or geographic condition; or
- other extraordinary and exceptional situations or conditions of the land, that are not of the owners making.

Hazardous materials: Any products that meet the definition of hazardous materials set forth in Title 40 Code of Federal Regulations (CFR) Section 261.3, as that section may be amended by the United States Environmental Protection Agency.

Highway: The entire width between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for purposes of vehicular travel or the entire width of every way declared to be a public highway by any law of this state.

Home Occupation: An activity conducted within a dwelling or accessory structure by occupant(s) of the dwelling unit, where the occupation is secondary to the use of the dwelling and the residential character of the dwelling is maintained. See Section 9.8.

Homeowner's Association: An incorporated organization, operating under recorded land agreements, responsible for enforcing their covenants.

Illegal Lot: A parcel of land created after the effective date of the original resolution (April 6, 1971), or any amendment thereto, which does not conform with the regulation of the zoning district in which it is located. Zoning and Septic Permits shall not be issued for illegal lots.

Industry, Light: Any trade, production or creative endeavor employing labor and capital in a process which is not noxious or offensive by reason of emission of odor, dust, smoke, gas, fumes, noise or vibrations, whose waste products are not allowed to escape or accumulate where they will cause discomfort or be unsightly to adjoining property owners or to the public in general and does not have a potentially threatening impact on the environment.

Infrastructure: Streets, water and sewer lines, and other utilities or common support facilities necessary to the functioning of a community or development.

Interior Lot Line: Platted lot line between two adjoining lots within the development.

Kennel: Any lot, tract, parcel or structure used in whole or in part for the purposes of grooming (where the animals are housed overnight), housing, boarding, breeding, raising and/or training of five (5) or more dogs or cats for remuneration. Pet shops or veterinary practices require a Special Use Permit.



Light Pollution: Degradation of the night sky by artificial light rays above the

projected horizontal plane of a light fixture.

Livestock: Cattle, horses, sheep, goats, swine, mules, poultry, alternative livestock, as defined in C.R.S. § 35-41.5-102, Definitions, and such domesticated animals as fox, mink, marten, chinchilla, beaver, and rabbits, and all other animals raised or kept for profit.

Lot: A division of a block of land or other parcel intended as a unit for the transfer of ownership or for development as described on a subdivision plat, survey map, assessor's map, or by metes and bounds.

Lot Line: The transfer of part of one lot to another for the purpose of improving the lot, correcting the lot line or legal description, or settling a boundary line dispute. Such adjustment cannot result in a change in the number of lots, nor can it result in a non-conforming lot unless it was non-conforming prior to the adjustment.

Manufactured Home: See **Factory Built Home**.

Master Plan: An advisory document to guide land development decisions (C.R.S. § 30-28-106).

Mineral: An inanimate constituent of the earth in a solid, liquid or gaseous state that, when extracted from the earth, is usable in its natural form or capable of conversion into a usable form as a metal, a metallic compound, a chemical, an energy source, or a material for manufacturing or construction material.

Minor Plat Amendments: Minor errors or necessary minor revisions on a recorded plat, which do not affect the character, density or original approval requirements of a development.

Mitigation: An action which will have one or more of the following effects:

1. Avoiding an impact by not taking a certain action or parts of an action;
2. Minimizing an impact by limiting the degree or magnitude of the action or its implementation;
3. Rectifying an impact by repairing, rehabilitating or restoring the impact area, facility or service.
4. Reducing or eliminating an impact over time by preservation and maintenance operations; and
5. Compensating for an impact by replacing or providing suitable biological and physical conditions; and by replacing or providing suitable services and facilities.

Mixed Use Development: A single building containing more than one type of use, or a single development of more than one building where the different types of land uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of vehicular and pedestrian access and parking

ATTACHMENT 2

Section 8.2 of the current Zoning Resolution. The proposed addition of subparagraph G would go where indicated by the arrow.

THE PERMIT FEE WILL BE WAIVED.

- C. No zoning permit for a dwelling shall be issued until:
 - 1. An approved Septic Permit has been issued. All residences and businesses must have a County approved permanent septic system installed before occupancy;
 - 2. The applicant establishes a legally adequate and physically available water source;
 - 3. The applicant demonstrates that the proposed structure shall comply with applicable provisions of this Resolution.
- D. Applications for all zoning permits shall be accompanied by:
 - 1. Permit fee;
 - 2. Proof of ownership;
 - 3. Plot plan;
 - 4. Floor plan for dwelling;
 - 5. An elevation drawing of the proposed structure relating the height of the structure to grade.
- E. A Zoning Permit for construction shall be valid for a period of two (2) years. If exterior construction has not been completed to a dried-in stage during the time period, a new permit is required. All Use Taxes on building materials used in construction to this point must be paid in full before the new permit will be issued.
- F. The Planning and Zoning Office must be notified if there are any changes to the original Zoning Application.
- G. Fees are established by the BOCC, published in the Custer County Planning and Zoning Fee Schedule, and maintained in the Planning and Zoning Office. Misrepresentation on an application shall cause a permit to be cancelled and shall require a new application.
- H. Permit fees are non-refundable.
- I. Zoning permits are required to reconstruct and/or repair existing structure that have been damaged due to catastrophic events such as high winds, blizzards, floods, fires, or explosion. However, the permit fees may be waived in these instances.

**8.2 Closing an Open Permit/Compliance Inspection**

Before an open zoning permit may be completed and closed:

- A. The structure must be dried-in within a two (2) year period;

- B. Proof must be provided that a Rough and/or Final Electrical and/or Plumbing Inspections are complete (if required);
- C. County Use Tax obligations **must** have been met;
- D. A compliance inspection of the site has confirmed that the structure, individual sewage disposal system, water, and other zoning commitments are in compliance with this Resolution. Compliance Inspection requirements are in Appendix D;
- E. A county road access permit has been obtained if applicable;
- F. Placement of a reflective address marker that meets local fire department specifications shall be required.

Penalties for non-compliance are described in Section 12.6.

13 Use Tax

County Use Tax shall be collected, by the Planning and Zoning Office, on building materials purchased without paying State and/or County and/or City sales tax. If insufficient sales tax has been paid, then Use Tax is due. The owner is obligated to pay the difference. Usually affected would be materials purchased outside the County and delivered to a property located within the County. Building materials are defined as any material used in the construction of a structure to include, but not be limited to, built-in appliances, fixtures, and floor coverings. The Planning and Zoning Office staff is available to identify what qualifies as building material. Copies of receipts must be submitted to the Planning and Zoning Office to verify whether proper taxes have been paid at the time of purchase. It is the responsibility of the land owner to see that all applicable use tax is paid.

Depending on the circumstances, one of the following deadlines shall apply to the payment of County Use Tax per Custer County Resolution 93-4:

- A. If the total tax due is less than \$300.00 during one calendar year, the tax must be paid by January 20th of the following year; or
- B. If the anticipated total tax due is more than three hundred dollars (\$300.00), this amount shall be paid at the time of obtaining the Zoning Permit. The balance shall be due and payable after an audit by the Planning and Zoning Office at the closing of the permit. Use Tax payment is non-refundable.
- C. The Planning and Zoning Officer or his/her representative may enter a dwelling or structure with the owner or contractor or their representative present for the purpose of determining compliance with the Use Tax requirements.

Penalty and interest charges shall be due on a use tax payment, if filed late or if the

ATTACHMENT 3

Appendix D to the current Zoning Resolution. The proposed addition of subparagraph D.3 (p) would go where indicated by the arrow.

(Note: subparagraph D.3 (o) is reserved for an amendment concerning reflective address markers)

4. PC minutes
5. PC recommendation
6. Findings by seated members of the PC
7. Conditions



Planning and Zoning Office report submitted to BOCC and Applicant



BOCC meeting and action within forty five (45) days

The above steps presuppose approval of a given phase prior to advancing to the next phase. In the event that approval is not received, the process shall not continue. Approval of the Sketch Plan or Preliminary Plan does not guarantee approval of the Final Plan. Special meetings may be required, at any phase, to allow the PC, BOCC, and the Applicant to reach an agreement on specific actions or requirements. Site Tours may be required at all phases.

At any time from the pre-application conference to the end of the sketch plan phase, the applicant may request of the BOCC a waiver to eliminate the preliminary plan phase.



APPENDIX D

COMPLIANCE INSPECTION

D.1 Purpose

To inspect structures, SUPs or PUDs for compliance with the current Custer County Zoning Resolution and the Custer County Septic Regulations.

D.2 Criteria

A compliance inspection shall be performed when the following are met:

1. The structure is dried-in;
2. The appropriate plumbing inspection completed, if applicable;
3. The appropriate electrical inspection completed, if applicable;
4. The individual sewage disposal system has been installed and has passed inspection, if applicable;
5. The use tax obligation has been met.

D.3 Procedure

1. The applicant shall call for a compliance inspection after the above criteria are met.
2. The Planning and Zoning Office shall schedule the compliance inspection.
3. The inspection shall be performed using the following standards:
 - a. Height: Custer County Zoning Resolution. The vertical distance from the highest point of the finished grade of the building perimeter to the high point of the building structure must not exceed thirty (30) feet. The maximum height limit for any structure in Custer County is thirty (30) feet.
 - b. Septic: Custer County Septic Regulations or Engineer Design specifications. The number of bedrooms and appliances shall be confirmed to verify sizing of the leach field and septic tank.
 - c. Setback: Custer County Zoning Resolution. Setback compliance shall be confirmed on all sides of the structure. If the setback distance is substantially over the current setback requirements, an estimate may be substituted.
 - d. Square footage: Custer County Zoning Application. The outside dimensions of the structure shall be measured to the nearest whole foot and compared to the square footage of the structure on the application.
 - e. Single-family dwelling: Custer County Zoning Resolution. Custer County allows one single-family dwelling per parcel of land unless a variance has been granted or the structures existed before zoning was adopted.
 - f. Water Source: Show proof of a legal water source.
 - h. Electrical Inspection: A copy of the appropriate State Electrical Inspection, if necessary, shall be required before the compliance inspection is performed.
 - i. Plumbing Inspection: A copy of the appropriate State Plumbing Inspection, if necessary, shall be required before the compliance inspection is performed.
 - j. Access Inspection: Verify that County Access Requirements have been met.

- k. Use Tax: Use Tax, if owed, shall need to be verified and paid.
 - l. Special Use Permit: Applicant is in compliance with terms and conditions of approval.
 - m. Wildlife Review: Agreed upon mitigation has been undertaken.
 - n. Planned Unit Development: Applicant is in compliance with terms and conditions of approval.
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4. The Planning and Zoning Office shall review the findings from the inspection and determine if the property is in compliance.
- a. If the property is in compliance, a letter will be sent to the property owner stating the property is currently in compliance and the zoning permit will be closed.
 - b. If the property is not in compliance, a letter will be sent to the property owner, certified return receipt, pointing out the non-compliance and how to come into compliance. The property owner will then have to bring the property into compliance within thirty (30) calendar days from the date of notification. The property must be brought into compliance before occupancy.
 - 1) After thirty days, a re-inspection shall be made of the property. If the matter of non-compliance has not been corrected or an agreement has not been reached by the Planning and Zoning Office with the property owner, the property file will be turned over to the County Attorney for prosecution, as prescribed by the current Custer County Zoning Resolution.

APPENDIX E

PUBLIC MEETING PROCEDURES

The BOCC, PC, and the BZA meet in regularly scheduled meetings. The dates are scheduled at the beginning of each year, although special circumstances occasionally arise that cause a meeting date to be changed. All meeting dates, times, and locations shall be posted on the officially designated Courthouse bulletin board.

Special meetings shall be held as necessary and advertised as required.

Meetings of the BOCC, PC, and the BZA are open to the public. Interested citizens may voice their concerns on agenda items in either of two ways:

- a) by means of personal testimony at the meeting; or

ATTACHMENT 4

Information as to potential penalties

(See the Zoning Resolution for complete version)

An aggrieved party, by a violation or apparent violation of the provisions of this resolution, may file a complaint with the Planning and Zoning Office. Complaints may be received in writing, by telephone, electronically or anonymous message. The Planning and Zoning Office shall begin an investigation within five (5) business days of receiving the complaint. If violations are found to exist, the Planning and Zoning Office shall take appropriate legal action to have the violation remedied and/or the violator penalized. Any structure that is in violation of any part of this Zoning Resolution shall be required to be brought into compliance or removed.

No permits shall be issued for any property subject to outstanding zoning violations.

The authority for complaint investigations is contained in Section 2.2.

2.5 Notification

Whenever the Planning and Zoning Office finds a violation of any of the provisions of this resolution, the person responsible for the violation shall be notified, in writing by a certified and non-certified letter to the address listed in the records of the Custer County Assessor, and shall be ordered to make the necessary corrections within a period of thirty (30) calendar days.

2.6 ✖ Penalties

There are potential criminal penalties and civil penalties for a violation of any provision of this Zoning Resolution. The criminal penalties are set forth in § 30-28-124 of the Colorado Revised Statutes. The civil penalties are set forth in § 30-28-124.5 of the Colorado Revised Statutes. Both of these statutes are set forth verbatim below.

30-28-124. Penalties

1) (a) It is unlawful to erect, construct, reconstruct, or alter any building or structure in violation of any regulation in, or of any provisions of, any zoning resolution, or any amendment thereof, enacted or adopted by the board of county commissioners under the authority of this part 1. Any person, firm, or corporation violating any such regulation, provision, or amendment thereof, or any provision of this part 1 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment. Each day during which such illegal erection, construction, reconstruction, or alteration continues shall be deemed a separate offense.