

**Clear Creek County
Planning Commission
Resolution PC-20-04**

Rezoning Case #RZ2020-0002

Being a portion of Combined Lots 24/25, Imes Subdivision, by Lot Combination Agreement as recorded at Book 463, Page 940, in the Office of the Clear Creek County Clerk and Recorder, Clear Creek County, State of Colorado (“subject property”).

WHEREAS, CRS 30-28-116 et seq. authorizes boards of county commissioners to amend zoning maps pursuant to specified procedures including a recommendation by the County Planning Commission and proper public notice; and

WHEREAS, the subject property is currently zoned Mountain Residential – Single Family Units (MR-1); and

Whereas, the Imes Subdivision plat was filed in the Office of the Clear Creek County Clerk and Recorder on April 6, 1964 which was prior to the adoption of the County’s first Official Zoning Map and Subdivision Regulations; and

WHEREAS, Lots 24 and 25 were combined into one (1) legal parcel by Lot Combination Agreement and recorded in the Office of the Clear Creek County Clerk and Recorder at Book 463, Page 940; and

WHEREAS, the applicant, Clear Creek Broadband, has requested to rezone a portion of the subject property from Mountain Residential – Single Family Units (MR-1) to Planned Development (PD) for purposes of constructing a 60’ communications tower with attendant uses not to extend more than 65’ from the ground; and

WHEREAS, the Planning Commission, pursuant to public notice published November 25, 2020, held a public hearing on December 16, 2020 that was continued to January 20, 2021, to consider the request; and

NOW, THEREFORE BE IT RESOLVED that the Planning Commission hereby recommends **APPROVAL** to the Clear Creek County Board of County Commissioners to rezone a portion of the subject property from Mountain Residential – Single Family Units (MR-1) to Planned Development (PD), for the purposes of constructing a communications tower, no higher than **65 feet** in height with attendant uses, as further described in the Permitted Uses as attached hereto, pursuant to the following Findings of Fact and Conditions of Approval:

FINDINGS OF FACT

- 1) Public review agencies were notified of this request on November 18, 2020. Responses were received from the following:
 - Bear Creek Watershed Association
 - Evergreen Metro District
 - Intermountain Rural Electric Association (IREA)
 - East Mount Evans, Resources, Growth, and Environment (EMERGE)
 - Clear Creek County Site Development Department

- 2) Adjacent property owners were mailed notification of this request on November 17, 2020 and approximately 148 comments were received. ±130 responses were in favor and ±18 responses were opposed to the application.
- 3) Additional comments were received from the following;
Mountain Metro Association of Realtors
Memorandum of Opposition prepared by twelve (12) individuals in the immediate vicinity of the subject property
- 4) Public Notice regarding the subject request was published in the Clear Creek Courant on November 25, 2020.

4) STANDARDS FOR APPROVAL

The application adheres to the following standards for approval; outlined in *Section 9 – Planned Development, of the Clear Creek County Zoning Regulations*:

- a. **Uses Permitted**
The application shall contain a mix of uses, or specific uses, not allowed in other zoning districts while providing a continuity of design and development through total integration of project planning.
- b. **Area and Setback Standards**
Minimum/maximum lot/unit area and setback requirements shall be specified for the overall site in the approved Official Development Plan (ODP) with regard to those limitations established on similar uses and with regard to accommodating surrounding uses, services/infrastructure, etc. Flexibility may be allowed in order to further the purpose and intent of the PD zoning district.
- c. **Minimum Acreage/Number of Units**
Density/intensity, minimum/maximum acreage, and/or number of units shall be specified for the overall site in the approved Official Development Plan (ODP) with regard to those limitations established on similar uses and with regard to accommodating surrounding uses, public services/infrastructure, etc. Flexibility may be allowed in order to further the purpose and intent of the PD zoning district.
- d. **Services and Infrastructure**
The application shall demonstrate that the proposal will be provided adequate facilities for water supply, wastewater treatment, access, and adequate services for fire protection, police protection, EMS, electrical, telephone, natural gas, public schools, road and bridge service, and/or other public services.
- e. **Environmental Impact**
The application shall appropriately mitigate environmental impacts consistent with Section 10.
- f. **Building and Site Design**
The application shall demonstrate that the proposal meets the requirements for building and site design as specified in Section 10 (1003), Building and Site Design. Flexibility may be allowed in order to further the purpose and intent of the PD zoning district.

- g. Signs and Outdoor Advertising**
Signs and outdoor advertising standards applicable to the PD zoning district shall be as specified in Section 10 (1004), Signs and Outdoor Advertising Devices. Flexibility may be allowed in order to further the purpose and intent of the PD zoning district if the applicant submits a comprehensive sign plan for the PD that is determined to be suitable for the PD and provides the minimum sign area necessary to direct users to and within the PD.
- h. Off-Street Parking**
Off-street parking and loading provided in the PD shall comply with the standards of Section 10 (1005), Off-Street Parking Requirements.
- i. Fencing, Walls, and Landscaping**
Fencing, Walls, and Landscaping provided in the PD shall comply with the standards of Section 10 (1006), Fencing, Walls, and Landscaping Standards. Variations from these standards may be authorized where the applicant demonstrates that the proposal provides sufficient buffering of uses from each other (both within the PD and between the PD and surrounding uses) to minimize noise, glare, and other adverse impacts, creates attractive streetscapes and parking areas, adequately mitigates wildlife impacts, and is consistent with the character of the area.
- j. Animals**
The keeping of animals in the PD shall comply with the standards of Section 10 (1007), Animals.
- k. Other Performance Standards**
No use shall be made of any land in the PD unless the use meets the other performance standards of Section 10 (1008), Other Performance Standards.
- l. Compatibility with Surrounding Land Uses.** The development proposed for the PD shall be compatible with the character of surrounding land uses.
- m. Consistency with Master Plan.** The PD shall be in general conformity with the Clear Creek County Master Plan 2030, and any ancillary County-adopted specialty and community plan documents, or responds to a change of an economic, physical, or social nature that has occurred to the neighborhood.

5) TELECOMMUNICATION FACILITY PERFORMANCE STANDARDS; Section 18

The application adheres to the following Performance Standards for telecommunication facilities; outlined in *Section 18 of the Clear Creek County Zoning Regulations*;

- a. Facilities shall be sited to take advantage of existing land forms and vegetation to aid in screening and to blend in with the surrounding built and natural environmental. Buildings, cabinets, antennas, and their support structures must be architecturally and visually compatible with existing and historic uses in the area, or those likely to exist under the terms of the applicable zone district.**
- b. Facilities, access roads, and utility lines should be located to avoid a dominant silhouette on ridge lines and to preserve view corridors.**

- c. Building, wall, and roof mounted antennas shall be of a non-reflective material and screened or camouflaged to match the background or structure.**
- d. A variety of screening techniques should be used depending on site conditions. Techniques may include, but are not limited to, landscaping, berming, camouflaging, screening, and fencing, where appropriate. Equivalent screening shall be maintained throughout the life of the facility and until such time as conditions no longer warrant equivalent screening, as determined by the Board of County Commissioners.**
- e. Any telecommunications facilities not being used for telecommunications purposes must be removed within twelve (12) months of cessation of use of the site.**
- f. At any time, the County Planning Department may request a letter from the applicant certifying that the facility is in use in accordance with FCC regulations. If the County Planning Department determines that the facility is not in use, a letter will be sent to the land owner and/or the telecommunication company providing sixty (60) days' notice to remove the facility and reclaim the land. If the facility is not removed and the land reclaimed, a lien may be filed on the property equal to the cost of removing the facility and the associated clean up, including administrative costs, if said costs exceed the amount secured pursuant to the conditions outlined below. Appeal of the County Planning Department's determination may be made to the Board of County Commissioners at any time within the sixty (60) day notice period.**
- g. Planned Development rezoning applicants shall evaluate whether the proposed site is capable of accommodating other low power telecommunication service providers. The applicant's written evaluation shall include an analysis of the available space, access, power, telephone, willingness of landowner(s), and relative visual/environmental impacts. No low power telecommunication service provider shall act to exclude any other low power telecommunication provider from using the same location for other low-power telecommunication facilities. If co-location is determined to be not technically feasible, the applicant shall provide evidence/justification as to why co-location is not feasible.**
- h. All low power telecommunication facilities and related infrastructure shall be designed to meet the Development Standards identified in Section 10.**
- i. Whip antennas which are allowed as a use-by-right shall be setback five (5) feet from the edge of the roof or structure to which they are mounted, may extend no more than ten (10) feet above the parapet of the roof or the structure with an allowable increase of six (6) inches for every one (1) foot of increased setback, not to exceed fifteen (15) feet in height.**
- j. Panel (or antenna configurations other than whip) antenna and accessory equipment which are allowed as a use by right, shall be mounted to the structure and may extend no more than six and one-half (6.5) feet above the parapet of a flat roof with a required five (5) feet setback from the edge of the structure, with an allowable increase of six (6) inches for every one (1) foot of increased setback not to exceed ten (10) feet in height. The antenna and equipment shall be subject to the Performance Standards outlined in this Section. If the roof is not flat and the**

proposed antennae exceed the height of the peak of the roof, panel antenna shall be a use-by-right subject to Planning Commission site plan review and approval. All other antenna which are mounted to the walls or roof and do not exceed the height of the peak of the roof, may be allowed as a use by right subject to Planning Staff review and issuance of a Low-Power Telecommunications Permit.

- k. A reclamation bond, irrevocable letter of credit, or other security approved by the County Attorney adequate to ensure site demolition, removal of structures, access improvements and earthwork associated with the site, and reclamation in accordance with an approved plan with engineered cost estimates, shall be provided upon final approval prior to the issuance of a County Building Permit. The reclamation plan may accommodate anticipated future uses in conformity with the zoning district involved. The County may, from time to time, review the adequacy of the security in light of inflation to ensure adequate security to fund one-hundred (100) percent of the work in accordance with the approved reclamation plan.
- l. It shall be unlawful for any person, firm, or corporation to erect or construct a low-power telecommunications facility as a use-by-right under Subsection A.1 without first obtaining a permit from the Planning Department or review and approval by the Planning Commission.
- m. A third party independent study, performed by a qualified entity specializing in radio frequency electromagnetic fields, may be required by the County to insure compliance with FCC guidelines for human exposure to radio frequency electromagnetic fields on any new telecommunications facility.

4) STANDARDS FOR ZONING AMENDMENT

The application and proposed change is justified in that the advantages of the application substantially outweighs the disadvantages to the County and neighboring lands. The application adheres to the following standards for review for a Zoning Amendment; outlined in *Section 19 – Zoning Amendment to the Official Zone District Map, of the Clear Creek County Zoning Regulations*:

- 1905.1 Consistency with the Clear Creek County Master Plan.** Does the proposed amendment consider the purposes and intents of the Clear Creek County Master Plan, any ancillary County-adopted Specialty and Community Plan documents, and is it consistent with all relevant goals, policies, and implementation strategies?
- 1905.2 Compatible with Surrounding Uses.** Does the proposal provide compatibility with the type, intensity, character and scale of existing and permissible land uses surrounding the subject property? Dimensional limitations of the proposed zone district, when applied, should result in development that will be harmonious with the physical character of existing neighborhood(s) surrounding the subject property.
- 1905.3 Public Benefit.** Does the proposal address a demonstrated community need or otherwise result in one or more particular public benefits that offset the impacts of the proposed uses requested, including but not limited to; affordable local resident housing; childcare facilities; multi-modal transportation, public recreational opportunities; infrastructure improvements; preservation of sensitive lands.
- 1905.4 Adequate Infrastructure.** Is the property subject to the proposal served by adequate roads, water, sewer and other public use facilities?

1905.5 Change in Circumstances. If the proposed amendment would otherwise be in conflict with the Clear Creek County Master Plan or any ancillary County-adopted specialty and community plans, does the proposed amendment address or respond to a change of an economic, physical, or social nature that has occurred to the neighborhood?

**Stipulations and Conditions of the Official Development Plan
(additions are in red and deletions are slashed-out)**

The following Stipulations and Conditions shall run with the Official Development Plan:

1. Uses

Unless otherwise provided in the Clear Creek County Zoning Regulations, no building or land shall be used and no building shall be hereafter erected, converted or structurally altered except as specifically depicted on this Official Development Plan for one or more of the following uses;

a. The site may contain a maximum of one, sixty-five (65) foot tall unlighted wireless telecommunications facility with related ground based equipment. **Such ground-based equipment shall not exceed five (5) feet in height.** Backup diesel or liquid propane power generator and attendant uses also permitted. Such uses must be in compliance with the “electronic industrial association” standards or other applicable industry standards. The primary purpose and function of the site is to transmit and receive wireless communications frequencies ~~and allowed uses in the MR-1 zoning district.~~

b. **All permitted uses within the MR-1 zoning district.**

c. Outdoor lighting shall consist of one (1) downcast ~~fluorescent or incandescent~~ light bulb with a maximum luminosity of ~~75-watts~~ **100 watts-equivalent** in a fixture mounted to the platform to be illuminated only when the platform is occupied.

~~e. Any facilities not being used for telecommunications purposes must be removed and the site shall be reclaimed and left in good condition, reasonable wear and tear expected, within twelve (12) months of cessation of use at the site. Cessation of operations shall justify initiation by the county commissioners of action to consider reclassification and rezoning of said site to a more restrictive zone classification or classifications.~~

d. Clear Creek County reserves the right to place equipment and antennae on the site after full consultation with ~~telecommunications company that is using the site at the time.~~ **the owner of the telecommunications facility and the owner of the property.**

e. In addition, uses permitted also include those related to the access route.

f. Minor alterations and modifications may be made to the access route as needed without additional amendments to this official development plan.

~~g. The official development plan shall include revegetation of the surrounding ground around the telecommunications facility.~~

g. Co-location by other users is permitted under this official development plan. This includes equipment on the tower as well as on the ground.

2. Antennae

The height of said telecommunications **facility**, antennae, ~~including~~ **and** all attachments and appurtenances, shall not exceed 65 feet above finished grade.

3. Access

Access will be consistent with the ten (10)-foot wide access easement that is presented on this official development plan.

4. **Electric utility Service**

All new service lines installed that provide electric service to this facility shall be buried underground.

5. IREA Utility Setbacks

The telecommunications facility shall be a minimum distance of the total height of the tower plus an additional 25% from any existing overhead electric facilities.

6. Rights-of-Way

Rights of way for ingress and egress for service and emergency vehicles is granted over, across, on and through the access easement as described.

7. County, State and Federal Regulations

To the extent that applicable county or other governmental rules, regulations, or codes and ordinances or laws are more restrictive than the preceding paragraphs, such applicable regulations shall supersede and govern at all times.

8. Revision and/or Amendment

The Conditions, restrictions, stipulations, agreements, and covenants set forth herein shall not be waived, abandoned, terminated, nor amended except by unanimous written consent of the then parcel owner and consent of the then Board of County Commissioners.

9. Environmental Health

Electromagnetic radiation density at the boundaries of the site shall not exceed 200 micro watts per centimeter squared. At such time as maximum radiation density standards are established by the environmental protection agency (EPA), or other environmental standards developed by the FCC or local health department, such standards shall replace the standard stated above.

10. Erosion Control

~~All soils exposed by excavation or construction at either the building site or as any part of any road construction shall be revegetated by the end of the first full growing season following the end of the first full growing season following final building inspection to prevent soil erosion, areas that are following final building inspection to prevent soil erosion, areas that are disturbed are to receive fire-resistant seed mix with fast establishing species. All side slopes and banks shall be constructed to maintain a slope not steeper than 1 ½:1. IN areas of solid rock, slopes may be cut on a ½:1. Rock cuts greater than 10 feet in height shall be inspected by a qualified engineering geologist to determine proper cut slope design if such a potential does exist. All slopes should be made as stable as possible to prevent rockslides from occurring. When possible, fill areas should be stripped of vegetation and the fill placed on top of those tripped areas. This is intended to prevent vegetations from forming a slip plane between the fill and the existing slope.~~

All excavation, grading and earthwork shall comply with the County's Grading and Excavation Regulations. If the installation of the telecommunications facility results in more than 800 square feet of disturbance, or requires a new connection to the County road system, a Grading and Excavation Permit shall be required.

11. Wildfire Hazard

In order to alleviate the wildfire hazard which may be associated with this wireless facility site, a "defensible space" will be developed around the facility prior to operational start up. ~~Compliance with the "Colorado State forest Service" recommendations will be required prior to issuance of a building permit and at all times hereafter no live trees are to be cut and/or removed from the site unless stipulated by the Colorado State Forest Service.~~ A Defensible Space Permit shall be required for its construction.

12. Enforcement

In case of any violation of the provisions hereon, the board of county commissioner may, in addition to other remedies at law, including an action for damages, have such violators enjoined or in the case of violation of any of the provisions hereof, may have such building, structure, or thing removed by the proper legal procedure. Inaction by the board of county commissioners to perfect and enforce their rights shall not be deemed a waiver of the right of enforcement of same, even though such inaction may be of long duration.

13. Performance Guarantee

Any facilities not being used for telecommunications purposes must be removed within twelve (12) months of cessation of use at the site. A performance bond ~~will~~ shall be secured in the amount of \$ ___ prior to the issuance of a building permit for any structure to be constructed on the site that is associated with the communications use. Such performance bond shall remain in full force and effect until all obsolete or unused facilities have been removed.

14. Maintenance

All facilities on the site shall be maintained in good structural condition and shall maintain their original aesthetic integrity. ~~Operation of the facility shall generate no discernable noise when measured by the standard of a person with ordinary sensitivities standing at the closest point of the nearest house~~ and shall comply with the Noise standards outlined in Section 10 of the Clear Creek County Zoning Regulations. The board of county commissioners or its designees may order remedies for any facility which is not maintained in accordance with these standards.

15. Severability

Invalidation of any of these restrictions or agreements by judgement of court order shall in no way affect any of the other provisions hereof which shall remain in full force and effect.

16. Agreement and Approval

Conditions of approval to be determined.

In consideration of the clear creek board of county commissioners zoning approval of the land uses described herein, we hereby waive all claims against Clear Creek County for damage or loss to out person/s and/or property which may be caused by such zoning approval of the land uses described herein, and we hereby agree to hold harmless, indemnify, and defend Clear Creek County in any action which may arise in connection with any and all errors, omissions, or mistakes in this official development plan and/or other information which we have submitted in connection with this request. We hereby further acknowledge and state under oath that we are the legal owners or the property described hereon; we hereby agree that sheets 1-2 of this official development plan constitutes the “site specific development plan” which establishes all vested property rights pursuant to CRS 24-68-101, et seq.; and we hereby agree to abide by the conditions and stipulations contained herein.

~~15. Landscaping~~

~~Revegetate all disturbed areas in accordance with Clear Creek County Site Development Standards.~~

~~16. Construction Schedule~~

- ~~Week 1: Mobilize and plane erosion control devices~~
- ~~Week 2: Establish access route and obtain permits~~
- ~~Week 3: Excavate tower foundation~~
- ~~Week 4: Place and backfill tower foundation~~
- ~~Week 5: Set tower~~
- ~~Week 6: Install electric service to equipment~~

~~Week 7: Install tower mounted equipment and revegetate disturbed areas~~

17. At any time, the County Planning Department may request a letter from the applicant certifying that the facility is in use in accordance with FCC regulations. If the County Planning Department determines that the facility is not in use, a letter will be sent to the land owner and/or the telecommunication company providing sixty (60) days' notice to remove the facility and reclaim the land. If the facility is not removed and the land reclaimed, a lien may be filed on the property equal to the cost of removing the facility and the associated clean up, including administrative costs, if said costs exceed the amount secured pursuant to the conditions outlined below. Appeal of the County Planning Department's determination may be made to the Board of County Commissioners at any time within the sixty (60) day notice period.

18. A third party independent study, performed by a qualified entity specializing in radio frequency electromagnetic fields, may be required by the County to insure compliance with FCC guidelines for human exposure to radio frequency electromagnetic fields on any new telecommunications facility.

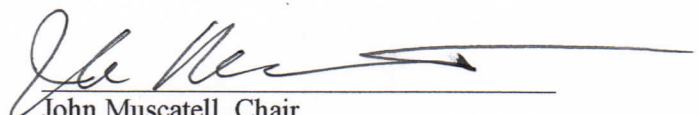
CONDITIONS OF APPROVAL

1. Final Documents

- a. The Official Development Plan (Exhibit A), subject to the Article 16, General Surveyor Requirements of the Clear Creek County Zoning Regulations, shall be recorded in the office of the Clear Creek County Clerk and Recorder no later than six (6) months after the date of this Conditional Approval.
- b. The approved Official Development Plan shall also be submitted in a digital form as specified by the County Mapping Department.
- d. Final Approval is not valid until the Official Development Plan and Resolution are signed by the Chair of the Board of County Commissioners, and all are recorded with the County Clerk and Recorder.
- e. The applicant is responsible for payment of all recording fees associated with the Land Survey Plat.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that it is respectfully recommended that, should meaningful additional or conflicting information regarding this case be presented to the Board of County Commissioners during the Board's public hearing(s), or if the Board feels major modifications are necessary, the Board remand the case to the Planning Commission for further review prior to deciding on the case.

ADOPTED this 20th day of January, 2021, at a regularly scheduled meeting of the Clear Creek County Planning Commission.


John Muscatell, Chair
Clear Creek County Planning Commission

Attest:

Adam Springer, Secretary
Clear Creek County Planning Commission