

**BOARD OF COUNTY COMMISSIONERS
ARCHULETA COUNTY, COLORADO**

RESOLUTION NO. 2018-___

**ARCHULETA COUNTY IMPROPERLY DIVIDED PARCELS
EXEMPTION INTERIM RESOLUTION - A RESOLUTION ADDRESSING PARCELS
UNDER THE SIZE OF 35 ACRES AND OUT OF COMPLIANCE WITH C.R.S. § 30-28-
101(10)(a), et seq.**

WHEREAS, the General Assembly enacted a definition of subdivision at C.R.S. § 30-28-101(10)(a), together with a procedure for creating a “subdivision;” and

WHEREAS, C.R.S. § 30-28-102 provides, “The Boards of County Commissioners of the respective counties within this state are authorized to provide for the physical development of the unincorporated territory within the county and for the zoning of all or any part of such unincorporated territory in the manner provided in this Part One;” and

WHEREAS, C.R.S. § 30-28-133 provides, “the Board of County Commissioners shall adopt and enforce subdivision regulations for all land within the unincorporated areas of the county in accordance with this section not later than September 1, 1972”; and

WHEREAS, the Board of County Commissioners of Archuleta County adopted the Archuleta County Land Use Regulations by Resolution 2000-88, effective September 5, 2000, with a comprehensive revision by Resolution 2006-13, effective May 23, 2006, and as subsequently amended; and

WHEREAS, there exists an inordinate number of parcels of real property situated within the jurisdictional boundaries of Archuleta County that do not conform or comply with C.R.S. § 30-28-101(10)(a), et seq. as these parcels were either created prior to the enactment of the statutory provisions or subsequent thereto and are not in conformity with the procedures spelled out by the Colorado Revised Statutes or the Archuleta County Land Use Regulations; and

WHEREAS, the Board of County Commissioners of Archuleta County is the governmental agency with jurisdiction for the enforcement of C.R.S. § 30-28-101(10)(a), et seq. and the Board has determined these parcels were not created within the purposes of Part One of Article 28 “County Planning and Building Codes” of Title 30 of the Colorado Revised Statutes; and

WHEREAS, it would be unduly burdensome on the citizens, residents and taxpayers of Archuleta County for the Board to fail to create a procedure to document the legal lot status of the approximately 500-plus Improperly Divided Parcels of land within Archuleta County in technical violation of this statutory scheme and previously identified by the Board; and

WHEREAS, the Board wishes to clarify their interpretation of the definition of the terms “Subdivision” and “subdivided land” as they apply to unincorporated Archuleta County; and

WHEREAS, the Board believes the welfare of the citizens of Archuleta County is best served by adopting this Resolution and creating a procedure for memorializing parcels under 35 acres in size, which they consider exempt from the definition of “Subdivision” and “subdivided land”, not created for the purpose of evading Subdivision Review, and not created or otherwise divided within the purposes of Part One of Article 28 of Title 30 of the Colorado Revised Statutes.

NOW, THEREFORE, BE IT RESOLVED, that the Archuleta County Board of County Commissioners hereby adopts the Archuleta County Improperly Divided Parcels Exemption Interim Test Regulations, as set forth below, documenting the legality of parcels under 35 acres and in existence as of the date of this Resolution.

PART I - GENERAL PROVISIONS

Section 1.01 Title

These Regulations shall be known and referred to as the Archuleta County Improperly Divided Parcels (IDP) Exemption Interim Test Regulations (referred to herein as “Regulations”).

Section 1.02 Authority

Article 28 of Title 30 of the Colorado Revised Statutes provides the Board of County Commissioners of Archuleta County with wide authority and discretion, “To provide for the physical development of the unincorporated territory within the County and for the zoning of all or any part of such unincorporated territory”. Provided, further, as referenced above, C.R.S. § 30-28-101(10)(d) provides that the Board of County Commissioners has the discretion to determine whether or not sub-divisions of land less than 35 acres of size within the territory of the County are exempt from the purposes of Part One of Article 28 of Title 30 of the Colorado Revised Statutes.

Section 1.03 Purpose

1.03.1. The Purpose of these Regulations are to:

(1) Provide for an orderly manner of documenting their interpretation of the definition of the terms “Subdivision” and “subdivided land” as they apply to unincorporated Archuleta County, and memorializing parcels under 35 acres in size and situated within Archuleta County, Colorado.

(2) Create a procedure for bringing Improperly Divided Parcels under 35 acres in size and situated within Archuleta County and existing as of the date of this Resolution into compliance with the Colorado Revised Statutes and the Archuleta County Land Use Regulations as they apply to parcels under 35 acres in size.

(3) Mitigate the existing negative impacts that these illegal parcels cause on the safe, orderly, efficient, development and regulation of lands within Archuleta County, Colorado.

(4) By enacting these Regulations, Archuleta County does not intend to encourage or promote the establishment of newly created parcels of 35 acres or less in size.

Section 1.04 Effective Date and Applicability of Regulations

1.04.1 As of January 1, 2019, there shall be an application process, as more fully set forth below, for the memorialization of Improperly Divided Parcels of real property less than 35 acres in size and situated in Archuleta County, Colorado. Provided, further, this Resolution is necessary to the immediate preservation of the public health, safety and welfare due to the immediate impact upon surrounding property owners as well as the impact on those owners of parcels less than 35 acres in size, including, but not limited to, their inability to develop or otherwise construct on those parcels. In addition, the effect of such lots on the economy of Archuleta County, Colorado, and all taxpayers within Archuleta County, Colorado and therefore, shall become effective immediately upon adoption.

1.04.2 Applications for Designation of Legal Lot. The Archuleta County Planning Department shall receive and process all applications by record title owners for a designation that their parcel of real property consisting of less than 35 acres is entitled to receive a Designation of Legal Lot Status pursuant to the terms, provisions and conditions of this Resolution. Such Applications may be received between January 1, 2019 and December 31, 2019.

Section 1.05 Definitions

1.05.1 Unless otherwise expressly provided herein, the definitions in C.R.S. § 30-28-101 et seq. shall apply in these Regulations with respect to the Archuleta County Improperly Divided Parcels (IDP) Exemption Test Regulations.

1.05.2 The following words, terms and phrases when used in these Regulations shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) “Board” or “BoCC” shall mean the Board of County Commissioners of Archuleta County, Colorado.

(2) “Department” shall mean the Archuleta County Planning Department.

(3) “Director” shall mean the Planning Manager or other head of the Archuleta County Planning Department as such person is appointed and/or titled from time to time by the Archuleta County Administrator.

(4) “Improperly Divided Parcel” shall mean any parcel of land less than 35 acres in size, situated in Archuleta County and which was not created, for whatever reason(s) through a documented process that complies with C.R.S. 30-28-101 et. seq.

(5) “Title Record Owner” shall mean that person(s) that is the owner of record of the real property in question.

(6) “Parcel” shall mean tract or plot of land outside of a recorded subdivision which was deeded separately and has had a separate deed, with the same legal description; a contiguous area of land, except for intervening easements or rights of way with a continuous boundary defined either by: a) an Aliquot part of a section; b) a metes

and bounds description; c) a book and page or reception number reference; or, d) any so called “assessors tract”. All of the above shall require the description of the parcel or a Surveyor’s Plat describing the parcel having been recorded in the office of the Clerk and Recorder of Archuleta County, Colorado.

(7) “Person” shall mean natural persons, corporations, partnerships, limited liability companies, associations, and other legal entities which are or may become taxpayers by reason of their ownership of real property.

(8) “Site Sketch” shall mean a sketch, drawing, Google Earth photo or GIS mapping of the Improperly Divided Parcel, of sufficient accuracy to be used for the purpose of discussion and classification. A Site Sketch need not be prepared by a Surveyor but must present the basic, overall layout of the Improperly Divided Parcel and must contain all of the information required by this Resolution.

(9) “State Engineers Permit” shall mean a permit issued by the Office of the State Engineer for the Colorado Division of Water Resources.

Section 1.06 Reaffirmation C.R.S. § 30-28-101

These Regulations are not intended to be inconsistent with or differ from the provisions of C.R.S. § 30-28-101, et seq. and are adopted to enhance such statutory provisions and the Board herein reaffirms its commitment to strict compliance with such statutory provisions in Archuleta County, Colorado.

Section 1.07 County Reservations

1.07.1 Adoption of these Regulations is not intended to waive or otherwise impair any portion of the County’s discretion or authority under C.R.S. § 30-28-101 et seq. or anywhere else in the Colorado Constitution or the Colorado Revised Statutes.

1.07.2 Adoption of these Regulations is not intended to waive or otherwise impair the County’s authority to adopt specific or different standards or other regulations for the issuance or administration of local regulations from time.

PART II

(Reserved)

PART III - CERTIFICATES

Section 3.01 Certificate of Designation of Legal Lot Status

The Archuleta County Planning Department shall issue its Certificate of Designation of Legal Lot Status to applicants only for the purpose of establishing a Parcel as having been created or otherwise effectively complying with C.R.S. § 30-28-101 et seq.; and being exempt

from minimum lot size for zoning requirements for which current land uses are to be treated as non-conforming or “grandfathered,” as more specifically set forth herein below.

Section 3.02 Nature of Certificate of Designation of Legal Lot Status

A Certificate of Designation of Legal Lot Status issued pursuant to these Regulations shall apply to a specific parcel of property; shall, “run with the land” and shall not be transferrable.

Section 3.03 Availability of Certificate of Designation of Legal Lot Status

The Archuleta County Planning Department shall only accept applications for a Certificate of Designation of Legal Lot Status between January 1, 2019 and December 31, 2019 and may issue such certificates into calendar year 2020 if processing the Application requires such time.

No parcel of less than 35 acres and recorded after May 23, 2006 shall be eligible for a Certificate of Designation and must strictly comply with the Colorado Revised Statutes and the Archuleta County Land Use Regulations.

PART IV - CERTIFICATE REQUIRED

Section 4.01 Unlawful Acts

4.01.1 It is and remains unlawful and a violation of these Regulations to divide any real property in Archuleta County in any manner except as provided by the Colorado Revised Statutes or the Archuleta County Land Use Regulations.

4.01.2 It is and remains unlawful and a violation of these Regulations to create a parcel of less than 35 acres except in compliance with the Colorado Revised Statutes and the Archuleta County Land Use Regulations.

Section 4.02. Duration of Certificate of Designation

4.02.1 A Certificate of Designation of Legal Lot Status issued pursuant to these Regulation shall “run with the land” in perpetuity once it is recorded with the Office of the Clerk and Recorder for Archuleta County, Colorado.

PART V - CERTIFICATE APPLICATIONS

Section 5.01 Procedure

5.01.1 General Procedure. The Planning Manager shall consider and act upon all complete Applications as authorized by these Regulations. The Planning Manager shall grant or deny an Application before issuing a Certification of Designation of Legal Lot Status based solely upon the Planning Manager’s investigation and findings, and no public hearing shall be

required. The Planning Manager shall deny any Application that is not in full compliance with these Regulations.

Section 5.01.2 Application Forms

5.01.2.1 All Applications for a Certificate of Designation of Legal Lot Status shall be made upon forms provided by the Archuleta County Planning Department.

5.01.2.2 All Applications under this Resolution shall include the following supplemental materials:

- (1) The identity of the owner(s) of the parcel in question;
- (2) A Site Sketch of the parcel, including the following:
 - (1) The scale used,
 - (2) North arrow designating true North,
 - (3) The boundaries of the parcel including front, rear and sidelines,
 - (4) The location of all existing buildings or structures,
 - (5) The locations and dimensions of all existing driveways and roads, on and adjacent to the parcel, including driveways, easements, rights-of-way and existing utilities,
 - (6) Set-backs from buildings and structures, measured in feet (measured from the nearest lot line, road, right-of-way or platted right-of-way, whichever is closest to the eaves or projections from the building or from decks, for all sides of any structure),
 - (7) Location of signs, advertising, outdoor lighting, landscaping, and/or fencing, structural screening elements,
 - (8) Total acreage or square footage of the parcel,
 - (9) Total square footage of all buildings and total square footage of building footprints.
 - (10) Any Special Flood Hazard Areas or floodplains.
- (3) A list of all current uses on or of the property;
- (4) A description of how and when the Improperly Divided Parcel of less than 35 acres came to exist, including copies of the original deeds or, if applicable, the land purchase contract;
- (5) Proof of access to a public road by either: (a) recorded easement or right of way agreement, (b) entitlement to use of private road, (c) court decree; or (d) other legal entitlement to access; and

(6) If floodplains are present on the property, execution of a form available from the Archuleta County Planning Manager acknowledging the land is subject to FEMA regulations and that compliance with such regulations may be required in the future.

5.01.2.3 If the Application is for a Parcel upon which a physical structure has been built and Archuleta County has previously issued a Certificate of Occupancy for such structure then, in addition to the materials required in 5.01.2.2 above, the Application shall also include:

(1) Documentation proving the issuance of a Certificate of Occupancy by Archuleta County.

(2) Copies of applicable permits if a well and/or septic system are present.

5.01.2.4 If the Application is for a Parcel upon which a physical structure has been built and Archuleta County has not previously issued a Certificate of Occupancy for such structure then, in addition to the materials required in 5.01.2.2 above, the Application shall also include:

(1) Documentation proving the structure was built in compliance with all applicable building and fire codes in existence and governing the construction of structures of the type in existence at the time of said structure's construction to the satisfaction of the Building Official.

(2) Documentation establishing that water and sewage needs of the existing structure are adequately met and do not pose a threat to public health, safety and welfare.

5.01.2.5 If the Application is for a Parcel upon which no physical structure has been built then, in addition to the materials required in 5.01.2.2 above, the Application shall also include:

(1) Permits or other applicable documentation related to well use or availability of water which may include a copy of a State Engineer's Water Supply Information Summary form.

(2) A description of how sewage will be treated on the property and, if a septic system already exists, a copy of an existing San Juan Basin Public Health Department permit.

5.01.3 The Planning Manager may, in his discretion, waive specific submission requirements or require the submission of additional materials as may be useful in making a determination under these Regulations.

5.01.4 The applicant must update any of the information required of an Application by this Section 5.01 in the event of any material change between the time the Application is first submitted and the issuance of a Certificate of Designation of Legal Lot Status.

5.01.5 By submitting an Application hereunder, the applicant, and if the applicant is not the owner, the owner of the Parcel to receive a Certification of Designation of Legal Lot Status shall certify that the applicant has received permission from all parcel owners to allow inspections as may be desired by the Planning Department to process such Application. This Section shall not in any way limit any inspection authority of any governmental entity or agency or department thereof authorized under any other provision of law.

Section 5.02 Processing Applications

5.02.1 No Application for a Certificate of Designation of Legal Lot Status may be submitted to the Planning Department before January 1, 2019 or subsequent to December 31, 2019.

5.02.2 Applications shall be submitted directly to the Planning Department.

5.02.3 Applications will be deemed submitted only when complete and when accompanied by the applicable fees as established on the Archuleta County Fee Schedule adopted and amended from time to time. Notwithstanding having deemed an Application complete, the Planning Department may, in its discretion, require the submission of additional information and materials as may be useful in investigating the Application and making a determination under these Regulations

5.02.4 Upon a determination that a complete Application, including all required forms and fees for a Certificate of Designation has been received, the Planning Department will refer copies of the Application or relevant portions of it, to the following agencies or departments for the following purposes which agencies and departments shall submit their written findings and conclusions to the authority no later than twenty-one (21) days after the referral:

(1) Building Department: for determination of compliance with Archuleta County Building Regulations relative to structure features.

(2) San Juan Basin Public Health Department: for determination of compliance with sanitation system regulations and whether there are unresolved public health enforcement actions with respect to the Parcel.

(3) Archuleta County Treasurer: for determination that the Parcel is paid current on all applicable property taxes.

(4) Any other county department deemed relevant in the circumstances for determination of compliance with its regulations.

5.02.5 The Planning Manager shall endeavor to take final action on an Application within ninety (90) days after a complete Application, together with all applicable fees has been submitted.

PART VI - APPROVAL CRITERIA

Section 6.01 Basic Criteria

Before approving an Application and issuing a Certificate of Designation of Legal Lot Status, the Planning Manager shall determine that all of the following requirements have been met by the applicant:

(1) The appropriate Application is complete and the full Application fee has been paid;

- (2) The premises has all required water and sanitary system permits;
- (3) The premises is not subject to an unresolved enforcement action by the San Juan Basin Public Health Department or Archuleta County;
- (4) All property taxes have been paid and no tax liens exist on the Parcel;
- (5) The applicant and the Parcel are in compliance with all other applicable County regulations;
- (6) The Application, including any required attachments and submissions, does not contain a material falsehood or misrepresentation; and,
- (7) Proof of access to a public road by either: (a) recorded easement or right of way agreement, (b) entitlement to use of private road, (c) court decree; or (d) other legal entitlement to access;

Section 6.02 Applicant Burden of Proof

The applicant bears the burden of proving it satisfies all requirements herein.

PART VII - ACTION ON APPLICATION; HEARINGS

Section 7.01 Action on Applications

The Planning Manager shall consider and act upon all complete applications as authorized by these Regulations. The Planning Manager shall deny any Application that is not in full compliance with these Regulations. Except as otherwise provided in these Regulations, the Planning Manager may take action administratively, without hearing.

(1) The actions of the Planning Manager in granting a Certificate of Designation of Legal Lot Status shall be affirmed by Resolution of the Board of County Commissioners at a meeting subsequent to the Planning Manager's granting the Application but in no event more than sixty (60) days after the Planning Manager's determination.

Section 7.02 Review of Planning Manager's Decision

If an Application is denied by the Planning Manager, the applicant may request a hearing by the Board of County Commissioners by writing, delivered to the Planning Department within twenty (20) days after notice of the Planning Manager's action. The Planning Manager shall immediately notify the County Administrator for clearance of a date on the agenda of the Board of County Commissioners.

7.02.2 If an Application is denied or conditionally approved following a public hearing by the Board of County Commissioners, that decision shall be deemed a final action and the

applicant's sole remedy is review of the decision pursuant to Colorado Rules of Civil Procedure 106(a)(4).

Section 7.03 Public Hearings and Public Notice

7.03.1 A public hearing to consider an applicant's appeal of the Planning Manager's decision shall begin not less than thirty (30) days after receipt of the applicant's request to review the Planning Manager's decision. The Board of County Commissioners shall cause to prepare and the applicant shall post and publish public notice thereof, not less than ten (10) days before the hearing. The applicant shall give public notice by posting a sign in a conspicuous place on the Parcel for which an Application has been made and by publication in a newspaper of general circulation in the County.

7.03.2 Notice given by posting shall include a sign of suitable material as prescribed by the County, not less than 36 inches wide and 24 inches high composed of the name of the applicant(s), the nature of the appeal, and the date and time of the public hearing; reasonably visible and legible from each adjacent public right-of-way or access easement .

7.03.3 Notice given by publication shall contain the same information as that required for signs.

Section 7.04 Preliminary Findings

The Planning Manager shall provide the Board with written findings based on his/her investigation for publication with the Board's agenda.

Section 7.05 Application Findings

7.05.01 Before rendering any decision approving, conditionally approving, or denying the Application, the Planning Manager shall consider, except where these Regulations specifically provide otherwise, the facts and evidence adduced as a result of his/her investigation, as well as any other facts, and any other pertinent matters affecting the qualifications of the applicant.

Section 7.06 Decision on Application

7.06.1 The Board of County Commissioners has the authority to affirm or reverse the decision of the Planning Manager.

7.06.2 The Board of County Commissioners, within thirty (30) days after the public hearing, shall issue a decision approving, approving with conditions, or denying the Application, by Resolution of the Board. The decision shall be in writing and state the reasons for the decision.

ADOPTED this ___ day of _____, 2018

**THE BOARD OF COUNTY COMMISSIONERS
OF ARCHULETA COUNTY, COLORADO**

By: _____
Steve Wadley, Chairman

ATTEST:

By: _____
June Madrid, County Clerk