

**STAFF REPORT:
AN AMENDMENT TO ADD THE SECTION
“HEIGHTS FOR SPECIALIZED STRUCTURES”
TO SECTION 8-4-4 OF THE
COUNTY ZONING ORDINANCE**

Prepared May 25 for the Board of County Commission
Public Hearing of June 14, 2012

APPLICANT: Teton County Planning Department

APPLICABLE CODES: Title 8-4-4 of the Teton County Zoning Ordinance,
as amended August 11, 2011.

REQUEST: An Amendment to Title 8 to include a new section of text that further refines the types and heights of structures that would have different standards from those in Section 8-4-4 (A) Height of Buildings. The new section would be entitled Heights for Specialized Structures.

DESCRIPTION: The proposed text would make refinements about height-limits for specialized structures that are different from the types of buildings or structures that are governed under the general standards in Table 2 of section 8-4-4. Presently, footnote b in Table 2 specifies that silos, barns, and granaries may exceed the general height limits in the AR 2.5 District, A-20 District, and R-1 District.

PLANNING & ZONING COMMISSION RECOMMENDATIONS:

The Commission recommends approval of a text amendment to Title 8 to add to Section 8-4-4 (A) Height of Buildings. The new sub-section would be entitled Heights for Specialized Structures.

CONSIDERATIONS:

Why are changes to the County’s building height regulations being proposed?

1. The present set of regulations do not contain special provisions for tall structures such as cell towers, windmills, various antennas, church spires, cupolas, and other architectural features.
2. The use of variances to permit structures taller than the height limits involves making difficult legal findings that requires an “undue hardship” determination. Because the Idaho variance statute does not contain a clause about the “intended use of a building or structure”, the granting of a variance for extra height is not a practical way to handle these unique structures.
3. The present regulations have inconsistencies, such as indicating that a wind mill can be 60-feet in one code section (8-6-2-B-42), but not calling them out as an exception to the general height standards in the height-specific section (8-4-4).
4. The present code technically allows a non-farming landowner to put up a large 60-foot-tall barn on a parcel zoned for A/ RR 2.5. Barns, silos and grain elevators are agricultural structures that are typically associated with substantial agricultural operations and larger-acreage parcels. Presently, these extra tall structures can be built on any of the rural-residential lots with only a building permit application. The change in the code would

only allow parcels with A-20 zoning to utilize the height exception for agricultural structures. With the proposed change in the code, lot owners of parcels in the A/ RR 2.5 zoning could still build 30-foot-tall barns, but not 60-foot-tall barns (PZC proposed adding language that would allow a 60' barn in an A-2.5 zone with a CUP).

5. In some cases a Conditional Use Permit review could provide for a site-specific and use-specific determination of a proposed non-residential structure's height. The height would be evaluated in the course of the project review and no "hardship" or variance would need to be considered. For example, a cell tower CUP application could be allowed to exceed the 30-foot height limit and may even be allowed to be much taller because of the capability to co-locate more carriers and eliminate the need for other cell tower sites. The existing code would require a variance. The proposed amendment would allow a CUP to determine the height for certain types of structures such as cell towers, wind mills, batch plants, sports-field lighting, and certain publicly owned facilities.

How did the presently proposed height regulations get to the stage that they are now?

A workshop was held on March 13 before the Planning and Zoning Commission and Staff provided a range of options for modifying the height section of the existing ordinance. The range of possibilities was drawn from a dozen codes from jurisdictions; most were within the region. Some codes gave blanket height exemptions for architectural features such as steeples and other codes had multiple stipulations that were based on the structure's function or to various elements related to the appearance of an architectural feature. There seemed to be general agreement about the basic categories of specialized structures and that a height of 60-feet might possibly be attainable if various shape and design parameters were met. A recap of the discussion (see workshop minutes of March 13, 2012) stated that a 60-foot limit on architectural features was the most that they would like to see and that the 60-foot limit had some precedence in the present code for barns and silos. However, there was no vote and some PZC members expressed discomfort with a 60' allowance.

In the April 2012 public hearing, the Planning & Zoning Commission examined the Planning Staff's attempt at a height ordinance. It was based on the direction that the P & Z Commission had provided during the previous month's work session. The Planning & Zoning Commission deliberated further and four of five of the present Commissioners agreed that even more limitations on height exemptions should be put in place. For example, the overall height limit for steeples was held to be the same as the maximum building height, which are 30-feet in the A-20 and A 2.5 Districts. The exemptions for steeples to be taller than 30-feet (with certain design parameters met) was removed. In retrospect, the direction for height exemptions provided during the workshop was somewhat different than the resulting recommendations that came from the P & Z public hearing. The P & Z's recommended text is attached to this report.

Does the proposed amendment accomplish the following?

1. Minimize the need for future variance applications. Creating an ordinance that would require variances to it on a regular basis is not desirable. The ordinance should therefore be written so that a large category of structures is not missed. Structures that are not addressed in our present code include cell towers, transmission power lines, wind turbines, copulas, and church spires. The Idaho state statutes have difficult variance findings, especially when applied to building height situations. Height variances should be almost

unheard of in rural counties- but that requires a land use code to be precise enough to specify heights or a range of heights or specifications for various specialized structures.

2. Provide height standards that are understandable and well-defined, with unambiguous terms. The proposed amendment is unambiguous in that the only exceptions are articulated- all other structures have the same regulatory standards.
3. Treats the Scenic Corridor with greater restrictions. The proposed amendment does not treat structures within the scenic corridor any differently than structures outside of it.
4. Remove inconsistencies in the existing code. The proposed height limits in the Scenic Corridor would allow 60-foot barns, silos and grain elevators, but only in the A-20 zone. It would eliminate them from the smaller ARR/ 2.5 zoned lots. Non-residential buildings or specialized structures in those districts can only be 30-feet tall.

FINDINGS OF FACT REGARDING NOTIFICATIONS:

1. The Board of County Commission public hearing of June 14, 2012 was duly noticed in the Teton Valley News.
2. The Planning & Zoning Commission's April public hearing was legally noticed in the Teton Valley News.

PUBLIC COMMENTS RECEIVED:

The comments letters in the Board's packet were received before the Planning Commission Public Hearing. No comments have been received after the public hearing. All written comments specifically associated with this Height for Specialized Structures amendment are attached to this staff report and any oral comments made during the hearing are in the minutes from the Planning & Zoning Commission hearing.

FINDINGS OF FACT REGARDING THE PROPOSED AMENDMENT'S CONSISTENCY WITH THE APPLICABLE POLICIES OF THE TETON COUNTY COMPREHENSIVE PLAN 2004-2010

The Planning and Zoning Commission considered the existing Comprehensive Plan when they evaluating this amendment to the zoning ordinance. They found Chapter 13 is most directly oriented towards the height exceptions amendment; at least more than the other chapters. The relevant section is excerpted below:

Chapter 13 Community Design:

Policy 1: Encourage the preservation of the scenic vistas, open space, mountains, forests, night skies and wetlands.

Policy 2: Encourage the preservation of the county's rural character.

IMPLEMENTATION:

Implementation 1: Encourage the preservation of the mountain, forest, rural, and small town atmosphere and appearance of the county by control of land use and structures.

Implementation 2: Revisit the approval of design for all commercial establishments adjacent to the highway in the scenic corridor.

Staff Comments: The proposed amendment eliminates the opportunity for any part of structures to be taller than 34' in most of the unincorporated County. Tall buildings, in general, do not add to the rural character of a location and preserve scenic vistas. Restricting tall buildings, therefore, will help preserve these values.

FINDINGS OF FACTS FOR AMENDING THE TEXT OF THE ZONING ORDINANCE:

The present Zoning Ordinance does not stipulate specific standards or findings of fact for approving amendments to the text of the ordinance. Nevertheless, the Commission made findings of fact regarding the recommendation to approve this height amendment to the Zoning Ordinance. The Board of County Commissioners could consider whether the proposed amendment is consistent with the standards below.

1. **Consistent with purposes.** The Planning & Zoning Commission considered the proposed amendment and determined it to be consistent with Section 8-1-3 Purposes of Zoning Ordinance, Sections B, C and E (emphasis in bold), which are particularly relevant to this proposed amendment.

***8-1-3: PURPOSES OF ZONING ORDINANCE:** This title is enacted for the purpose of promoting the health, safety, morals, convenience and welfare of the people of the county. More specifically, it is the intent of this Title to regulate the use of land and guide development in the County in harmony with the policies and guidelines of the officially adopted Teton County Comprehensive Plan and to achieve the following objectives:*

A. Encourage orderly growth and development of land:

- 1. To mitigate adverse impacts upon the water supply, sewage disposal, public safety and emergency services, educational facilities; and*
- 2. To mitigate the unnecessary imposition of an excessive expenditure of public funds for the delivery of such services.*

B. To protect residential, commercial, industrial uses and public areas from unreasonable intrusion of incompatible uses.

C. To provide for appropriately located residential areas with opportunities for a variety of dwelling types and densities.

D. To provide for adequate parking on and off street.

E. To encourage variety, excellence and creativity in the design of development, preservation of critical open space areas and preservation of the natural beauty of the area.

F. To provide the manner and form for preparing and processing applications for modification of and variances from zoning regulations.

G. To encourage the proper distribution and compatible integration of agricultural, residential, commercial and industrial uses within designated areas.

H. To ensure that additions and alterations to or remodeling of existing buildings or structures is completed in accordance with the restrictions and limitations imposed in this title.

3. **Consistent with Comprehensive Plan.** The Planning & Zoning Commission believed the proposed amendment should be consistent with the Teton County Comprehensive Plan 2004-

2010. The Planning & Zoning Commission found the Chapter 13 policies to be among the most relevant to the proposed amendment. They found the proposed height amendment to be consistent with the policies of the present Comp-Plan.

4. **Consistent with other sections of the Zoning Ordinance.** The proposed amendment was found to be consistent with other provisions of this Teton County Zoning Ordinance. For example, the proposed amendment rectifies the height for wind energy systems specified in Section 8-6-2-B-42 with the height limits enumerated in Section 8-4-4.

COMMISSION ACTIONS:

- A. Approve of the text amendment after stating the findings of fact that support and justify the amendment to the Teton County Zoning Ordinance.
- B. Deny the text amendment after stating the reasons and justifications for the outright denial of the amendment to the Teton County Zoning Ordinance.
- C. Remand the text amendment back to the P & Z Commission with further guidance on developing a section of code that better addresses the height of specialized structures.
- D. Continue the Board's deliberation to a future Public Hearing with reasons given as to the continuation or need for additional information.

Attachments:

- Section 8-4-4-B Heights for Specialized structures, (as directed to be amended by P & Z)
- P & Z Commission meeting minutes for work session held on March 13, 2012
- P & Z Commission public hearing minutes from hearing on April 10, 2012
- Sean Moulton comment letter
- Clint Grosse comment email