

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

Prepared March 27 for the Planning & Zoning Commission  
Public Hearing of April 10, 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.

**FINDINGS OF FACT REGARDING NOTIFICATIONS:**

Idaho Code, Title 67; Section 67-6509, 67-6511, 67-6512, and Title 8, Section 8-6-1 of the Teton County Zoning Ordinance apply to public hearings held by Planning & Zoning Commission. A hearing for the Planning & Zoning Commission was noticed in the Teton Valley News for an amendment to the building height regulations.

**PUBLIC COMMENTS RECEIVED:**

No comments were received at the time of this report.

**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, 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.

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.

***What are the Planning Staff comments regarding the height regulations?***

The workshop held on March 13 before the Planning and Zoning Commission provided a range of options for modifying the height section of the existing ordinance. The reasons for amending the height regulations were also presented in writing and orally to the Commission. The Commission provided guidance and it was incorporated into the attached proposal to amend Section 8-4-4.

The Commission's directive to utilize a third-party architectural consultant was added to the height ordinance amendment (8-4-4-B-3-j). Nevertheless, staff does not endorse this method of reviewing non-residential architectural features. Architectural considerations sometimes become an important component of a community's identity, image or "branding". In the best case scenario, the community would write clear comprehensive plan policies to reflect the intended direction and style that has been agreed upon. When those clear policies and imaging are in place, an architectural review committee is typically used rather than a single architect.

Staff feels that a given architect's opinion about a proposed architectural feature may significantly vary from another architect's opinion about the project. Unlike engineering, geology, biology, or even historic district consistency, architecture is largely an art-form as well as practical design. Without set, quantifiable standards to judge a building's architectural features, it would be difficult to definitively judge whether a given design is appropriate. For example, if the architecture was required to be consistent with colonial Williamsburg or an adobe style like Sedona, Arizona, then some context for judging would exist. Even the Jackson Hole-Rocky Mountain vernacular seems to have quite a bit of variability in design.

Secondly, the contracting of a single reviewing architect would not account for the point of view of business operators or ordinary citizens. Typically, a town or resort area creates a design review committee that is comprised of varied membership with representatives having knowledge of fields other than just architecture. If decisions about a singular building's appropriateness become an issue, the Planning & Zoning Commissioners, Planning Staff, and Board of County Commissioners can all weigh into the deliberation. This multi-person,

multi-phase review method seems sufficient until the County commits to a more refined building design-oriented set of ordinances. Presently the county code does not contain even the more basic design regulations, such as floor-area ratios, square footage limitations, “big box” ordinances, or a lot-coverage / impervious surface limit. These basic planning tools for regulating the mass, bulk and appearance of structures could provide the first steps towards shaping the aesthetics and design of future buildings. For these reasons, Planning Staff is not an advocate for using a single architect to offer his/her opinion about the occasional non-residential structure that is proposed. This review could better be done by a diverse team. Even Teton County, Wyoming uses its professional staff and citizen planners to evaluate earth tone colors, materials, and building designs that are proposed on commercial buildings along their “Scenic Resources Overlay”.

- The Planning & Zoning Commission might reconsider the overall height limit of architectural features (8-4-4-B-3). Staff received comments from PZC members after the last work session; Planning Staff received comments from PZC members stating that 60-feet may not be an appropriate height in the A/ RR 2.5 zoning district.

*Does the proposed amendment accomplish the following?*

- 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, and church spires. Under the proposed amendment, these structures and some others should not need to get a variance approved. The Idaho state statutes have difficult variance findings, especially when applied to building height situations. Height variance 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.
- Provide height standards that are understandable and have well-defined, unambiguous terms.
- Treats the Scenic Corridor with greater restrictions. At present, the existing code allows 60-foot agricultural buildings anywhere in an A-2.5 or A-20 zone, in or out of the scenic corridor. The proposed amendment would not allow 60-foot buildings in the A-2.5 zone. The proposed ordinance would allow certain exceptions to a 30’ height requirement (as described) in the A-2.5 zone. However, these exceptions would not be allowed in the scenic corridor. Non-residential buildings or specialized structures in the A-2.5 zoning district can only be 30-feet tall.
- Remove inconsistencies in the existing code. The proposed amendment attempts to remove inconsistencies in the current code especially as they relate to wind mills.

**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 should consider the existing Comprehensive Plan when considering an amendment to the zoning ordinance. Chapter 13 is more directly oriented towards the height exceptions amendment than the other chapters.

**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.*

**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 should make findings of fact regarding any recommendation to approve this height amendment to the Zoning Ordinance. The Commission could consider whether the proposed amendment is consistent with the standards below.

1. **Consistent with purposes.** The Planning Commission may consider the proposed amendment and determine if it is consistent with Section 8-1-3 Purposes of Zoning Ordinance. Sections B, C and E, which are highlighted below, seem to be particularly relevant to the 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.*

2. **Consistent with Comprehensive Plan.** The proposed amendment should be consistent with the Teton County Comprehensive Plan 2004-2010. Above, this staff report found the Chapter 13 policies to among the most relevant to the proposed amendment.

3. **Consistent with other sections of the Zoning Ordinance.** The proposed amendment is consistent with other provisions of this Teton County Zoning Ordinance. 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.

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**COMMISSION ACTIONS:**

- A. Recommend approval of the text amendment after stating the findings of fact that support and justify the amendment to the Teton County Zoning Ordinance.
- B. Recommend denial of the text amendment after stating the reasons and justifications for the outright denial of the amendment to the Teton County Zoning Ordinance.
- C. Provide the Planning Staff with further guidance on developing a section of code that addresses the height of specialized structures.
- D. Continue the Commission'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
- Sean Moulton letter, March 30, 2012