

EL PASO



COUNTY

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

October 24, 2019

Mountain States Telephone and Telegraph
1801 California St.
Denver, CO 80202

RE: Administrative Determination for tract 32-11-62

File: ADM-19-009
Parcel ID: 2100000084

Dear Property Owner:

You have requested administrative determination regarding the above referenced property to confirm that the property was created in conformance with the El Paso County subdivision regulations and is considered a legal lot under the County regulations. You have also requested a determination of non-conformity for the existing tower. Authorization of building permit or zoning permit issuance is contingent upon a parcel's compliance with both the subdivision and zoning regulations of the El Paso County Land Development Code (2019).

The El Paso Land Development Code defines a legal lot as follows:

A lot, parcel or tract of land created by a legal conveyance of the lot, parcel or tract prior to July 17, 1972; a lot, parcel or tract shown on a subdivision plat which was approved and recorded prior to July 17, 1972, according to the subdivision regulations in effect at the time of approval; a lot, parcel or tract created by legally prepared survey dated prior to July 17, 1972; a lot, parcel or tract created by approval of the County commissioners in conformance with the subdivision regulations in effect at the time of approval; a lot, parcel or tract created by a contract for deed or signed but unrecorded deed, each dated prior to July 17, 1972; a parcel exempted from subdivision by the Board of County Commissioners (BoCC), or any parcel of 35 acres or more, which, when created, did not cause a parcel of less than 35 acres to remain; a parcel created by any court pursuant to the law of eminent domain, operation of law, or by order of any court if the BoCC has been given timely notice and opportunity to join in the action; a parcel modified or reduced in size due to land acquisition by a governmental entity.

Compliance with Subdivision Regulations:

The applicant is requesting confirmation that the parcel is a legal lot and is not subject to the El Paso County subdivision regulations as described in Section 7.2.1 of the Land Development Code. Based on staff research, parcel number 2100000084 was created by a warranty deed on April 13, 1970. The legal description and acreage of the parcel has remained unchanged since

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the creation date; therefore, parcel 2100000084 is a legal parcel because it was established prior to the subdivision regulations that went into effect in July 17, 1972.

Compliance with Zoning Regulations:

The subject parcel was zoned to the current A-35 (agricultural) zoning district in 1999. Prior to that date there were no zoning restrictions for the property and no permits were required by the El Paso County Planning and Community Development Department. The A-35 zoning district has a minimum lot size of 35 acres and the subject parcel has a lot size of 1 acre.

1. The Code defines a nonconforming lot as follows:

A nonconforming lot is a legally created lot or parcel of land which due to subsequent amendments of this Code, right-of-way acquisition by a government entity, or to the zoning or rezoning of the lot or parcel, does not conform with the minimum lot area requirement of this Code.

Because the subject parcel was legally created prior to the subdivision regulations and was an existing legally created lot at such time when zoning was implemented, the parcel is therefore considered non-conforming.

2. The Code defines nonconforming use as follows:

Any legally existing use, whether within a structure or on a piece of land, which does not conform to the use regulations of the zoning district in which the use is located, either at the effective date of this Code or as a result of the subsequent amendments which may be incorporated into this Code.

There is an existing tower on the subject parcel. Staff could not find record of approval; however, aerial photography from 1998 indicates that the tower was present prior to zoning. If this use was established today in the A-35(Agricultural) zoning district, the Code would require approval of a special use. Because the use was existing prior to the effective date of the Code, it is a legal non-conforming use.

3. The Code defines a nonconforming structure as follows:

Any legally existing structure which does not conform to the "location and bulk" regulations of this Code, either at the effective date of this Code or as a result of subsequent amendments which may be incorporated into this Code.

The Code requires that CRMS towers that are located within 250 feet from any property zoned for residential use be setback a minimum of one foot for every foot of facility height, plus an additional 10 feet. The parcel surrounding the subject parcel is zoned A-35 (Agricultural) which allows for residential use; therefore, the setbacks on all sides of the tower shall be the height of the tower plus 10 feet. Based on the height of the existing tower shown on the exhibit submitted with this application, the tower is 95 feet in height and would require setbacks of 105 feet from all property lines. The site plan exhibit shows the setbacks for the existing lattice tower as follows: North 102.12 feet, West 102.05 feet, South 107 feet, and East as 107 feet.

Currently, there are two existing 10-foot diameter microwave antennae located at the top of the existing tower that were installed when the tower was originally constructed. The Code requires that microwave antenna be no larger than 4 feet in diameter.

Because the tower was constructed prior to the date that El Paso County zoning applied to the location of the subject parcel, the non-compliant setbacks and the larger than allowed microwave antennae are considered legally non-conforming with regard to the current regulations.

Discussion and Conclusion:

With aforementioned circumstances, the telecommunication tower is non-conforming in regards to the use and dimensional standards. Any proposed modifications to the tower shall comply with the provisions of the Land Development Code, Section 5.6.6(B) Nonconforming Telecommunications Towers (see attached), and shall comply with all other applicable County, State, and Federal Regulations.

If you have any questions or concerns regarding this determination, please contact myself or Lindsay Darden, Planner II, at (719) 520-6302 or lindsaydarden@elpasoco.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig Dossey". The signature is written in a cursive, flowing style.

Craig Dossey
Executive Director
El Paso County Planning and Community Development Department

Attachment: Nonconforming Telecommunications Towers

Section 5.6.6(B) Nonconforming Telecommunications Towers

For nonconforming telecommunications towers there shall be no increase in the number of antennas located on a tower, or an increase in the height or weight bearing capacity of the tower beyond that necessary to conform to safety regulations adopted by the County, State or federal government, except that the following shall be allowed:

1. Replacement of Antennas. Antennas may be maintained, or replaced, with another antenna intended to provide the same service.
2. New Antennas Added to Tower. New antennas may be added to a tower where the tower and antennas do not exceed 200feet in height above the base of the tower, and the new antenna does not exceed 25feet in length and 8 inches in diameter, and does not extend above the height of the existing tower.
3. Maintenance and Repairs. Maintenance, repairs or alterations to legal nonconforming telecommunication towers may be performed that are necessary to maintain the tower in good condition and repair. The weight bearing capacity and wind loading capacity of a tower may only be increased to the extent necessary to maintain the tower in conformance with State or national standards for weight bearing capacity and wind loading capacity for the number of antennas otherwise allowed on the tower as set forth in this Section.
4. Removal of Unused Nonconforming Tower. If there are no antennas on a nonconforming telecommunications tower or if a nonconforming telecommunications tower has been abandoned for a period of one year, the tower and any accessory structures, structures or equipment shall be removed within one year from the expiration of the one year period or it shall be brought into conformity with this Code.