

**New Castle, Colorado
Planning and Zoning Commission
Wednesday, May 8, 2024, 7:00 PM**

Call to Order

Commission Chair Apostolik called the meeting to order at 7:00 p.m.

Roll Call

Present	Chair Apostolik
	Commissioner Carey
	Alternate Commission Rittner
	Alternate Commissioner Parks
	Commissioner Sass
	Commissioner Cotey
	Commissioner Westerlind
Absent	Commissioner McDonald
	Commissioner Martinez

Also present at the meeting was Town Planner Paul Smith, Assistant Town Attorney Haley Carmer, Deputy Town Clerk Remi Bordelon, and members of the public.

Meeting Notice

Deputy Town Clerk Bordelon verified that her office gave notice of the meeting in accordance with Resolution TC 2024-1.

Conflicts of Interest

There were no conflicts of interest.

Citizen Comments on Items NOT on the Agenda

There were no citizen comments.

Items for Consideration

Oaths of Office –

Commissioner Sass, Commissioner Cotey and Commissioner Westerlind.

Deputy Clerk Bordelon conducted the oaths of office.

Consider Appointing Commissioner Vice Chair

MOTION: Chair Apostolik made a motion to appoint Commissioner Cotey as the Vice Chair. Commissioner Sass seconded the motion and it passed unanimously.

Public Hearing

Chair Apostolik opened the public hearing at 7:04 p.m.

Consider Resolution PZ 2024-3, A Resolution Recommending Approval of a Conditional Use Permit for Utility Transmission Line and Towers on Property Located in the Industrial Zone District.

Town Planner Paul Smith said the resolution was intended to consider a conditional use

permit (CUP) for Xcel Energy's replacement of the powerline poles located in the industrial zone on the south side of the Colorado River. He clarified that the CUP only pertained to the poles located within town limits. He added that the project of transmission poles replacement was a multi-municipal project.

Planner Smith introduced Xcel's representatives. He shared the background history of the transmission line and said the poles were constructed in the 1940s-1960s. He added that the particular use of the transmission poles was not on the prohibited or permitted list for the Town of New Castle and was therefore considered as a conditional use permit. He reminded the commission that a CUP had 30 days for a decision to deny, approve, or approve with conditions. He said that decision would then be sent to Council as a recommendation for their consideration.

Planning Commission – Public Hearing
Wednesday, May 8th, 2024
Resolution PZ 2024-3
Staff Report

Name of Applicant	<i>Public Service Company of Colorado, a Colorado corporation conducting business as Xcel Energy; Contact: Jennifer Chester</i>
Mailing Address	<i>1800 Larimer Street, Suite 400, Denver, CO 80202</i>
Property Address	<i>Multiple, see attached list</i>
Name of Property Owner	<i>Multiple, see attached list</i>
Existing Zoning	<i>Industrial</i>
Surrounding Zoning	<i>Industrial; Open Space</i>
Surrounding Land Uses	<i>Storage; Factory and industrial, low hazard; Park & boat ramp</i>
Existing use of property	<i>Existing 69kV Electric Transmission Line ROW Easement</i>
Proposed use of property	<i>Rebuild the existing Mitchell Creek to Rifle Ute 69kV Transmission Line and increase ROW easements.</i>
Property size	<i>N/A</i>

I. Background:

The Applicant proposes rebuilding the New Castle portion of the 69 kilovolt (kV) transmission line (Transmission Line 6584) located along the Grand Hogback between Mitchell Creek to Rifle Ute substations (~25 miles). According to the project narrative, Transmission Line 6584 was originally constructed between the 1940s through the 1960s and has reached the end of its serviceable life. New power lines and poles will be installed and the easement expanded all to improve the integrity and resiliency of the power grid.

The Applicant's proposed utility transmission line and tower use is eligible for conditional use review because it is not listed as a permitted or prohibited use under Section 17.52.050. Also, because the transmission line existed prior to the effective date of Municipal Code (MU) Title 17, the following procedural requirements are necessary before work commences:

- 1) In accordance with MU Section 17.84.080, "Any use that legally existed prior to the effective date of Title 17 shall continue as an approved conditional use upon written request of the owner." To date, no written request for a conditional use permit has been made. The current application shall serve as the request.*
- 2) In accordance with Section 17.84.070, "No approved conditional use may be altered, structurally enlarged, (...) or expanded in ground area unless the site plan is*

amended and approved in accordance with the procedures applicable to approval of a conditional use". In addition to #1 above, the application proposes several alterations as part of the conditional use approval:

- i. The existing transmission line easement will be enlarged from approximately 40ft to a standard of 60ft to improve the powerline alignment and meet industry safety requirements.
- ii. Existing poles and cables will be upgraded. Taller poles, allowing for longer powerline span, will reduce the total pole count from 20 to 18. Steel monopoles will replace the existing wood poles. Existing wood poles, averaging 40ft in height, will be replaced by rusted steel averaging 80ft in height. The Applicant has included a new site plan for the proposed rebuild, (**Exhibit A, pages 29-38**), and an example image (**Exhibit A, pg. 46**).
- iii. The easement terrain will be modified with vegetation management and grading.

As a conditional use application, the Planning Commission (P&Z) is required to hold a public hearing in accordance with the procedures set forth in Municipal Code Chapter 16.08.040. The hearing has been noticed, (**Exhibits D & E**). Within 30 days of the public hearing, P&Z must make one of these three recommendations to Town Council:

- 1) Approve the CUP unconditionally;
- 2) Approve the CUP with conditions;
- 3) Deny the CUP.

Xcel Representative Cory Miller shared a presentation to the commission regarding Transmission Line 6584 as a rebuild project (Exhibit A). He introduced Project Lead Engineer Johnathan Johnson and Burns & McDonnell Attorney Brook Heins. Mr. Miller said the overall project stretched from Rifle to Glenwood Springs, approximately 25 miles of transmission line. He said the purpose for rebuilding 69kV transmission lines was due to the wildfire mitigation plan with the State of Colorado. He said this project was statewide to ensure the transmission lines were 'fire hardened.' He said the transmission line within town limits extended approximately one mile with 20 poles.

Mr. Miller said Xcel would enter into temporary construction easement agreements with landowners where they would need access to the project site, and he verified that the agreements would sunset at the end of the project. Planner Smith asked if temporary access roads would exist for each property. Mr. Miller said there would only be a few points of access needed. Commissioner Parks asked if any of the roads would be kept as permanent access. Mr. Miller confirmed that one or two roads would be permanent, and Xcel would work with those property owners. He added that vehicles could park under the transmission line, however structures would not be permitted to build within the transmission line right-of-way. Mr. Miller acknowledged that agreements with property owners would have to be signed and submitted to the town before construction could begin. Commissioner Cotey proposed timing the Xcel transmission pole replacement before or after the Colorado Department of Transportation roundabout construction as both occupy a portion of the bridge and would affect traffic.

Mr. Miller said the replacement transmission poles would be steel monopoles of a height of 62-100 feet tall with a sixty-foot right-of-way easement. Mr. Miller said the

land would be reclaimed to its pre-construction state once construction was complete. He shared the designs of the monopoles and discussed the phases of construction. He added that the transmission poles would be equipped with static protection from lightning strikes which the previous poles were lacking. He said the static wire would also carry fiberoptic communication wires that would communicate with Xcel facilities for a quick response to line defects. Commissioner Carey asked if parts of New Castle would be without power during portions of construction. Mr. Miller clarified that a temporary powerline would continue to feed the substation, so no planned outages or disruptions in service would occur. Mr. Miller shared the community outreach contact information for any questions or concerns, found on page 11 of Exhibit A, as well as public outreach meeting dates to better inform the public of the project. Commissioner Sass asked if all the old poles would be replaced. Mr. Miller confirmed all poles would be removed. Commissioner Parks asked if concrete would be poured at the base of the poles. Mr. Miller confirmed one pole, site 332DE, would have a permanent structure and the rest of the poles would be positioned in a prepared hole that would be backfilled and compacted. Commissioner Westerlind asked why the pole height had increased. Mr. Johnson explained that the regulation comes from the National Electric Safety Code requiring a certain distance from transmission lines which sags and includes spacing requirements for the shield wire.

Commissioner Cotey asked how the vegetation management would impact the landscape from the construction and expanded easements. Mr. Miller explained the expanded easements accommodated sway from the conductor line. He said within the 'wire zone,' trees would be pruned. He added that ground vegetation could grow to a moderate size, anything under eight feet, before any vegetation management would take place. Mr. Miller said the restoration plan included reseeding disturbed ground to avoid soil erosion. Commissioner Rittner asked about raptor nests in the area, and Mr. Miller confirmed Xcel was working with Colorado Parks and Wildlife requirements and regulations concerning wildlife, specifically raptor nests.

Mr. Miller described the planned steps of construction as: digging of the holes, assembly of the poles, setting the poles in the holes and affixing the conductor wire to the crossarms of the transmission poles. He said helicopter use was anticipated during construction due to the steep terrain. He said the fully assembled transmission poles would be delivered to the construction site by helicopter. Mr. Miller said Xcel had to get approval from the Federal Aviation Administration (FAA) with a permit prior to construction. He said part of the FAA regulations included the inability to fly over structures including homes and businesses. He said project construction was scheduled to begin at the end of 2024. Planner Smith estimated Xcel would begin construction work in New Castle in 2025. Mr. Miller confirmed that was the most likely scenario. Commissioner Carey suggested considering the impact of noise in the area from both the jackhammers digging the holes as well as the helicopters. Mr. Miller said the helicopters would fly in the new poles and fly the old poles back, estimating a total time of one week. Commissioner Carey suggested notifying the public prior to the use of the helicopters and ensuring the public would have Xcel's contact information. Mr. Miller agreed.

Chair Apostolik asked Planner Smith about staff recommendations for Xcel to provide their construction management plan (CMP) before the conditional use permit and

asked what verbal commitments were exchanged. Planner Smith explained that the verbal commitments to the construction management plan were: storage, bathroom locations, access to private properties, vehicle parking, and related topics. Chair Apostolik stressed the size of Xcel's construction management plan for the overall project. Mr. Miller clarified that Xcel would draft a CMP unique for the Town of New Castle and verified the town's requirement that any storage outside of the permitted area would have to be removed. Mr. Miller added that dumpsters and bathrooms would be located at the 'laydown yard,' off site of New Castle. Commissioner Carey asked for the locations of the laydown yards. Mr. Miller referred to the staging yard map found on page 2 of Exhibit A. Commissioner Rittner asked if any night lighting would be utilized. Mr. Miller said no lighting would be needed and the yards were unlit. He said at most there may be a security trailer at the laydown yards.

II. Application Requirements:

The purpose of this conditional use review is to determine if the nature of the proposed use is appropriate to the location and character of the New Castle Industrial Zone.

1) Site Plan:

- e. *Adjacent land uses and location of adjacent structures;
Adjacent land uses include storage (Intermountain, Gabossi), low hazard industrial (National Propane, Bramco Bld.), factory use (Blue Barrel cabinetry shop, Granite Shop), business (All Dogs and Cats), and open space (Breslin Park).*
- f. *Boundary and size of lot;
The project spans numerous lots and parcels in the county. Within New Castle, the application proposes widening easements to 60ft across 10 lots. Temporary access roads will use existing egress points for ground access for construction and pulling/tensioning sites (**Exhibit A, pg. 29**). Private easement agreements are being negotiated with private landowners affected.*
- g. *Building location, height and setbacks;
All utility infrastructure will lie within easement boundaries. Although transmission poles are exempt from building height restrictions per Section 17.72.040 of the Code, the packet summarizes the height variation between existing poles and replacements in Table 2-2 (**Exhibit A, pg. 15**). Heights and locations of each pole are provided in the Site Plan, (**Exhibit A, pages 29-38**).*
- h. *Off-street parking and loading areas;
Temporary access routes off Colorado River Road (County Road 335) will allow for construction vehicles and equipment to access pole locations and tensioning stations. Temporary tensioning stations will be situated at the far west Town boundary. The application does not currently comment on offsite delivery/loading/storage of materials or daily construction parking. However, the Applicant has verbally committed to providing a construction management plan prior to issuance of a conditional use certificate.*
- i. *Points of ingress and egress;
Except for various access road driveways (**see Exhibit A, pages 29, 34, 37, and 38**), the replacement work will be conducted in the updated utility easement. CR 335 will serve as the primary access to each lot. Nine poles will be placed by helicopter assist and coordinated with the FAA. A Health and Safety Plan has also been provided (**Exhibit G**) per the request of Colorado River Fire Rescue (CRFR).*
- j. *Service and refuse areas;*

The Application omits plans for waste/sanitation management and staging of materials and equipment existing poles. The Applicant will provide a construction management plan prior to construction.

k. Signs and exterior lighting;
Permanent signage and exterior lighting are not anticipated with the project. However, temporary traffic control signs along CR 335 can be expected during the replacement process. Traffic control plans are subject to a ROW permit as regulated by the Public Works Department.

l. Fencing, landscaping and screening;
Fence screening is required for lots operating fabrication, repair, or storage facilities. Additionally, property lines adjacent to public parks shall have tree and shrub screening. Neither case obtains with the current application, hence, no fencing or landscape screening is proposed.

m. Compliance with performance standards;
Performance Standards are a commitment from the Applicant to minimize potential nuisances. The Applicant has signed the Performance Standards, (Exhibit F).

n. Anticipated utility requirements;
The project creates no additional demand for water, sewer, or electricity.

2) Development Timeline:

The Applicant provided an anticipated schedule of development (Exhibit A, pg. 14). Project construction located in New Castle, Segment 2, is anticipated to begin in Spring 2025, pending permit approvals. Materials would be delivered to the site approximately January 2025. If that schedule is tracking, construction and restoration activities are expected to be completed by late Fall 2025 and restoring service on Segment 2 of the transmission line by January 2026.

III. Approval Criteria:

A decision on a conditional use application shall be made based on the following criteria:

- 1) Is eligible for conditional review under § 17.72.040;
Staff Comment – The application is eligible for conditional review subject to sections 17.84.070 & 17.84.080 as discussed above.
- 2) Is generally compatible with adjacent land uses;
Staff Comment – The existing transmission line pre-dates New Castle's industrial zone by several decades (platted in 2000). The utility's consistency with other industrial uses in the area has generally been taken as a given. Nevertheless, consistency with surrounding uses has been a priority with the Applicant. The transmission line replacements will retain the same general appearance as the existing conductors. Replacement poles will remain brown though made of rusted steel rather than wood. Easements will be widened, following the general path of the existing easement, which will make minimal difference to the look of the landscape. Notably, new poles will significantly exceed the height of existing poles. Typically, this would be considered incompatible with adjacent land uses. However, heights for transmission towers are excluded from height considerations per Section 17.84.040.
- 3) Meets all requirements of § 17.84.020, is in compliance with Title 17 of the Code, and minimizes potential adverse impact of the conditional use on adjacent properties and traffic flow;

Staff Comment – The application demonstrates compliance with Section 17.84.020 as overviewed in Section II above. The Applicant should also satisfy all recommendations specified in the referral comments submitted by the Town engineer and Colorado River Fire Rescue as provided in **Exhibits B & C**.

4) Is consistent with the comprehensive plan and

Staff Comment – The Comprehensive Plan provides guidance on impacts to the natural environment (**Goals EN 1-2**). Other than pole material and height, the transmission line project should retain the general appearance of the existing lines. Furthermore, though short-term impacts to the environment will be necessary during the replacement process, compliance with the Town Engineer's recommendations should help keep those impacts to a minimum.

5) The Town has the capacity to serve the proposed use with water, sewer, and fire and police protection.

Staff Comment – The replacement project will not have any new impacts on water, sewer, and police protection. The Applicant has provided a health and safety plan which overviews fire mitigation and life safety strategies (**Exhibit G, pages 6 & 9**).

Planner Smith reviewed the five approval criteria for the application. He stated that Xcel's application was unique in the sense that it was an already existing permitted use. Planner Smith stated that utility pole heights were exempt. He said Town Engineer Jeff Simonson was comfortable moving forward with the project and he was in the process of reviewing the application and providing comments. He said once the project moved closer to construction, Engineer Simonson would provide his final feedback. Planner Smith said Fire Marshall Orrin Moon had reviewed the application and provided a safety plan, that was included in the packet.

IV. Staff Recommendations:

Staff recommends approval of Resolution 2024-3 with the following conditions:

1. No construction shall begin until a conditional use certificate has been issued by the Town Planner subject to Section 17.84.040.
2. No construction shall begin until the Applicant has obtained new or revised easements from all Property owners. Applicant shall provide recorded copies of all such easement agreements to the Town at the pre-construction meeting called for in Condition E, below;
3. Prior to issuance of the conditional use certificate, the Applicant shall demonstrate conformance with recommendations provided by the Town Engineer and CRFR (**Exhibits B & C**).
4. Prior to the issuance of a conditional use certificate, a construction management plan shall be provided for review and approval by Town staff. A construction management plan shall include, but is not be limited to, the identification of off-site storage & delivery locations, any contractor off-site parking, refuse management, and bathroom locations.
5. The Applicant shall conduct a pre-construction meeting with Town staff and relevant agencies at least 14 days prior to the beginning of construction.
6. The Applicant shall apply for any right-of-way permits through the Town's Public Works Department.
7. Easement adjustments shall be consistent with the site plan (staff report Exhibit A, page 15), as approved by Town Council. A revised boundary plat showing all altered easements shall be provided prior to the issuance of a conditional use certificate;
8. Applicant shall comply with all applicable building and municipal code requirements, including all signage permitting, and county licensing requirements.

- 329 9. *No approved conditional use may be altered, structurally enlarged, expanded in parking area*
330 *or expanded in ground area unless the site plan is amended and approved in accordance*
331 *with the procedures applicable to approval of a conditional use as set out in § 17.84.070 of*
332 *the Code;*
- 333 10. *In the event the Town receives any complaints about the use of the site or observes or*
334 *becomes aware of any violations of the conditional use approval, the Applicant and/or*
335 *owner may be summoned before the Town Council in a public meeting to show cause why*
336 *the permit should not be revoked, suspended, or additional conditions imposed. Such show-*
337 *cause hearing shall be open to the public and the applicant or owner may present testimony*
338 *or offer other evidence on its behalf.*
- 339 11. *All representations of the Applicant in written and verbal presentations submitted to the*
340 *Town or made at public hearings before the Planning Commission or Town Council shall be*
341 *considered part of the application and binding on the Applicant.*
- 342 12. *The Applicant shall reimburse the Town for any and all expenses incurred by the Town*
343 *regarding this approval, including without limitation all costs incurred by the Town's outside*
344 *consultants such as legal and engineering costs.*
345

346 Planner Smith stated the conditional use certificate would not be issued until some of
347 the open-ended matters were resolved following final comments from Engineer
348 Simonson. He clarified that the application process may move forward, and staff would
349 work with Xcel to resolve any pending matters before construction could begin. Planner
350 Smith noted the potential noise nuisance violation with construction and use of
351 helicopters. He said he had spoken with Assistant Town Attorney Hailey Carmer and
352 discussed a potential condition to exempt the noise violation.
353

354 **V. Application Exhibits:**

- 355 A. *Land Development Application*
356 B. *CRFR Referral – Kurt Lundin, January 23, 2024*
357 C. *Town Engineer Referral – Jeff Simonson, January 24, 2024*
358 D. *Public Notice*
359 E. *Notarized Affidavit of Notice*
360 F. *Signed Performance Standards*
361 G. *Health and Safety Plan*
362

363 Rubin Vigil, a resident of Garfield County, stated he owned a land lot on the hillside
364 across from the Riverpark Condominiums. He asked if Xcel could relocate the
365 transmission line further up the hillside or closer to the road as it was currently
366 planned to run directly through his property which would restrict any structure from
367 being built. Mr. Miller said he would provide an Xcel contact for them to reach out to as
368 his role was strictly involved with the municipal permitting process. He clarified that
369 there was a separate land use application for Garfield County that he would speak with
370 him about, after the meeting concluded.
371

372 Jose Gonzales, a resident of Garfield County, stated he owned a land lot on the hillside
373 as well and asked for the transmission line to be relocated so they could build on the
374 property. He said the current location of the transmission line proposed condemned his
375 property.
376

Commissioner Cotey said consideration of the location of the transmission line was a valid point as it was limiting the development of the community with the line running through the middle of properties instead of the edge boundary. Planner Smith clarified that the original transmission line ran through the same area. Commissioner Cotey stated the expanded easement from thirty feet to sixty feet was a significant difference. Commissioner Parks asked if it would be possible to shift the easement of specific properties. Mr. Miller explained that the property owner would be compensated for the expanded easement. He added that Xcel keeps contract negotiations with property owners private. He said, prior to construction, Xcel would be submitting a final copy of the property agreements to the town. Commissioner Cotey asked what would happen to the project if Xcel did not get an agreement for the signed Xcel line. Mr. Miller said there were a few options that included trying to work on an agreement with the property owner, referring to the existing easement, or as a last resort, acquiring the land if needed. Commissioner Carey stressed the importance of considering property owners who would be impacted by the expanded easement instead of just the simple solution of monetary compensation. Mr. Miller said Xcel tries to maintain existing land rights to the greatest extent possible and would continue to work with the property owners.

Chair Apostolik closed the public hearing at 8:12 p.m.

Assistant Attorney Carmer stated the resolution recommended approval of the application and the proposed property use of location and operation of an electric transmission line and related poles, towers, facilities and equipment. She added the recommendation of section three of the resolution included the same conditions as what Planner Smith reviewed in the staff report. Assistant Attorney Carmer said a condition may be added, as condition M, to exempt the potential construction noise from the nuisance violations of the town as well as the need to perform replacements or maintenance.

MOTION: Chair Apostolik made a motion to approve Resolution PZ 2024-3, A Resolution Recommending Approval of a Conditional Use Permit for Utility Transmission Line and Towers on Property Located in the Industrial Zone District with the added condition, line M, to exempt project noise from the town's violations. Commissioner Westerlind seconded the motion, and it passed on a roll call vote: Commissioner Westerlind: Yes; Alternate Commissioner Parks: Yes; Commissioner Carey: Yes; Commissioner Sass: Yes; Chair Apostolik: Yes; Alternate Commissioner Rittner: Yes; Commissioner Cotey: Yes.

Staff Reports

Planner Smith reported the preliminary meeting for R2 Partners was scheduled for June 26, 2024. Deputy Clerk Bordelon informed the commission of the scheduled attorney work session on the topic of water rights. She added that the town had scheduled a community ice cream social for public outreach and asked if the commission was interested in participating. The commission expressed interest.

Commission Comments and Reports

Commissioner Parks reported Historic Preservation Commission held their open house for the community on May 2, 2024. He said it was a light turnout, however Lindsey Flewelling attended from History Colorado. He stated the commission learned a lot regarding incentives for designation at the open house.

Review Minutes from Previous Meeting

MOTION: Chair Apostolik made a motion to approve the April 10, 2024 meeting minutes. Alternate Commissioner Cotey seconded the motion and it passed unanimously.

MOTION: Chair Apostolik made a motion to adjourn the meeting. Commissioner Westerlind seconded the motion and it passed unanimously.

The meeting adjourned at 8:28 p.m.

Respectfully Submitted,

Chuck Apostolik, Chair

Remi Bordelon, Deputy Town Clerk

475
476
477
478

Exhibit A

Xcel Presentation Packet

DRAFT