

**TOWN OF OPHIR, COLORADO  
ORDINANCE NO. 2017-03**

**AUTHORIZING ISSUANCE OF A SPECIAL USE PERMIT FOR  
INSTALLATION OF A BROADBAND TRANSMISSION UTILITY POLE AND  
RELATED EQUIPMENT IN TOWN OF OPHIR PUBLIC RIGHT-OF-WAY  
LOCATED AT EIGHTH STREET BETWEEN BLOCKS 9 AND 10 IN EAST  
OPHIR.**

WHEREAS, over the last several years the Town of Ophir has been exploring ways to increase and improve broadband services available to Ophir residents and property owners; and

WHEREAS, in order to provide 'last-mile' broadband service within Ophir, a utility pole must be installed in a location that will provide 'line-of-sight' radio broadband transmission to most homes within the Town of Ophir; and

WHEREAS, after conducting a duly-noticed public hearing on May 30, 2017 and having previously reviewed several proposed pole locations and configurations, the Ophir Planning & Zoning Commission has recommended to the General Assembly that it approve the issuance of a special use permit ("SUP") for installation, repair and replacement of a wooden broadband transmission utility pole ("Pole") and related equipment in the Town of Ophir public right-of-way located at Eight Street between Blocks 9 and 10, East Ophir (north of Aurum Ave.) The proposed Pole location is shown on the attached aerial photo, which is attached hereto and incorporated herein as Exhibit 1. Such public right-of-way is unzoned; and

WHEREAS, the proposed Pole location is near where a weather equipment pole was historically located. The Pole would be approximately 200 feet from existing high-voltage electric power transmission lines and poles that are over 60 feet tall. The height of the Pole will be approximately 45', or the minimum necessary to establish line-of-sight to most homes in Ophir. The Pole will be designed and located to enable line-of-sight transmission to most homes in Ophir, and potentially to several homes along County Road 630 in the Ophir Valley. The related equipment consists of an electric power feed and a climate-controlled equipment cabinet with dimensions of approximately 26" wide by 26" deep by 69" tall. Upon separate and further authorization by the Town of Ophir, there will be two privately-owned sector broadband transmission radios mounted on the Pole, each of which measures approximately 5" x 24", and various supporting equipment. These radios and the supporting equipment is referred to herein as the "Related Equipment"; and

WHEREAS, §1206 of the Ophir Land Use code contains the following STANDARDS FOR REVIEW OF SUP APPLICATIONS:

The general criteria in this section shall be used by the Ophir Planning and Zoning Commission and the General Assembly, in addition to any other criteria in this OLUC for certain SUP applications. The Ophir Planning and Zoning Commission and the General Assembly must find that each of the following criteria is satisfied before approval of a Special Use Permit.

§1206.1

The SUP complies with the Town of Ophir Master Plan.

§1206.2

The SUP is compatible with uses on adjacent properties.

§1206.3

The SUP will not negatively affect the values of adjacent or nearby properties nor shall negatively affect the quality of life of adjacent or nearby properties.

§1206.4

The SUP will not create additional impacts greater than uses allowed by right in the zone district, including but not limited to the following impacts: parking, visual, odors, vibrations, noise, increased traffic, increased congestion, adverse impacts to wildlife, the natural environment and wetland areas, adverse impacts to existing and potential scenic view corridors of adjacent properties, and adverse impacts to the rural and alpine wilderness character of the Town of Ophir.

§1206.5

The SUP application is complete and the information is legible and understandable.

; and

WHEREAS, the May, 2010 Ophir Regional Master Plan provides at Article IV. PUBLIC FACILITIES AND SERVICES:

This Article IV., Public Facilities and Services, establishes goals, objectives and policies concerning public facilities and services. General goals regarding public facilities and services are stated below, followed by specific public facilities and services with separately identified objectives and policies.

Goal A:

Develop, maintain, and enhance public facilities and services that are directly related to the health and safety of the community as the first priority.

Goal B:

Develop and maintain public facilities and services to meet the demands of the residents and property owners of Ophir on a timely, predictable, and economical basis.

; and

WHEREAS, the provision of high-speed internet service that will be enabled in part by erection of the Pole and installation of the Related Equipment is in compliance with the Master Plan and is necessary for the preservation of the public health, safety and welfare of the Town of Ophir; and

WHEREAS, the Pole is similar to power line poles that are commonly installed in public rights of ways, is similar to the old weather pole that existed at the Pole location, and is generally compatible with adjacent vacant lots owned by the Town of Ophir; and

WHEREAS, given the backdrop of high-voltage transmission poles and lines, installation of the Pole and Related Equipment should not impair the value of nearby or adjacent properties, and indeed, provision of high speed internet service within the Town of Ophir is expected to increase property values within the Town of Ophir; and

WHEREAS, the Pole will ideally be replaced someday by underground fiber optic cables to structures in Ophir when and if the Town of Ophir can so afford; and

WHEREAS, the Ophir Broadband Committee recognizes that the federal government sets the levels for facilities that emit radio frequency emissions, and that federal law has preempted local regulatory authority in this area; however, the Town shall ensure that all wireless facilities located on the Pole and any related equipment shall be compliant with applicable federal standards.

**NOW, THEREFORE, THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR HEREBY ORDAINS:**

**SECTION 1. SPECIAL USE PERMIT AUTHORIZATION.**

The Ophir General Assembly hereby adopts the foregoing recitals as Findings of Fact and authorizes the issuance of a SUP to the Town of Ophir for the installation, repair and replacement of the Pole and Related Equipment in the location and with the dimensions described hereinabove. Minor variations to the dimensions or type of the Related Equipment or changes in the Pole location of less than ten yards may be authorized by the Town Manager without need to formally amend the SUP. Any major variations to the pole dimensions (e.g., over 10' taller) or type of the Related Equipment or changes in the Pole location of 10 yards or more from the proposed location within the existing public right of way or public alley may be reviewed by the P&Z Commission at a single public hearing and approved by the General Assembly by motion and vote after public hearing without need to formally amend the SUP. Installation of any additional utilities on the Pole shall require prior issuance of a separate SUP on a non-discriminatory basis as provided by section 2, below. The SUP shall be reviewed by the Ophir Planning & Zoning Commission on or around the tenth anniversary of the issuance of the SUP.

**SECTION 2. NON-DISCRIMINATION**

The Town acknowledges that its approval of the SUP is not in any way to be considered an exclusive arrangement, and that the Town will not unreasonably discriminate against any applicants that wish to deploy broadband infrastructure within the Town in accordance with applicable federal and state law.

SECTION 3. PUBLICATION. After final adoption, notice of passage shall be published in the manner prescribed by the Town Charter.

SECTION 4. SEVERABILITY.

If any one or more sections or parts of this Ordinance is adjudged unenforceable or invalid by a court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, the intention being that the various provisions herein are severable.

SECTION 5: EFFECTIVE DATE:

This Ordinance shall take effect upon publication of notice of passage.

Introduced, Read and Heard at Public Hearing on First Reading by the General Assembly of the Town of Ophir on the 1st day of June, 2017.

Approved and Adopted on Second and Final Reading as Amended by the General Assembly of the Town of Ophir on the 20th day of June, 2017.

(SEAL)

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Town Attorney