

Date: Wednesday, July 17, 2024
Time: 6:00 PM
Location: Hybrid: In-Person, Hearing Room, 1st Floor, 200 West Oak Street, Fort Collins or Virtual, Zoom link -

PLANNING COMMISSION MEETING MINUTES

The Larimer County Planning Commission met in the Hearing Room as well as virtually by Zoom video at 6:00 p.m., on Wednesday, July 17, 2024, at which time the following business was transacted.

Board Members Present: Patrick Rowe, Lisa Chollet, Conor Duffy, Jordana Barrack, Jon Slutsky, Nick Casady, Jon Weiss, and Adam Eggelston.

Staff Present: Rebecca Everette, Community Development Director; Jenny Axmacher, Planning Manager; Matt Lafferty, Shalana Lysaght, Business Operations Supervisor; Jared Seay, Planner I; Laura Culleton, Planner I; Samantha Lasher, Planner II; Justin Currie, Planner II; Michael Whitley, Senior Planner; Smantha Mott, Senior Planner; Conner Sheldon, Civil Engineer I; David Pringle, Civil Engineer I; Caryn Nezat, Civil Engineer II; Lea Schnieder, Environmental Health Planner; Christine Luckasen, Assistant County Attorney I; Melissa Bruski, Community Information Resource Technician; and Christina Scrutchins, Recording Secretary.

AMENDMENTS TO THE AGENDA

Commissioner Chollet moved that the Planning Commission adopt the following Resolution: BE IT RESOLVED that the Planning Commission remove Discussion Item No. 2 - Legislative Rezoning from Open (O) and Rural Residential (RR-2) to Natural Resources (NR), File No. 24-ZONE3670 to a Consent Item. Commissioner Barrack seconded the motion. Motion carried (8-0).

COMMENTS BY THE PUBLIC REGARDING THE COUNTY LAND USE CODE OR REGARDING OTHER RELEVANT LAND USE MATTERS NOT ON THE AGENDA OR FUTURE PROPOSALS

None.

APPROVAL OF THE MINUTES FROM THE MAY 15, 2024

Commissioner Chollet moved that the Planning Commission adopt the following Resolution: BE IT RESOLVED that the Planning Commission approve the May 15, 2024, minutes of the Larimer County Planning Commission. Commissioner Duffy seconded the motion. Member Casady, Weiss, and Eggelston abstained. Motion carried (5-0).

CONSENT ITEMS

ITEM #1 – SUNFLOWER COMMUNITY AMENDED SPECIAL REVIEW, FILE NO. 22-ZONE3317

Request: Amended Special Review to convert an existing 14,783 square foot storage lot into two new residential mobile home sites in the southwest corner of the Sunflower Active Adult Community Mobile Home Park

ITEM #2 – BROWN FAMILY CONSERVATION DEVELOPMENT PRELIMINARY PLAT, FILE NO. 19-LAND3867

Request: Preliminary Plat approval for a Conservation Development which would divide a 35-acre parcel into one residential lot and one residual lot with a residential building envelope

ITEM #3 – PARK CREEK RESERVOIR LOCATION AND EXTENT, FILE NO. 24-ZONE3669

Request: Location and Extent Review for expansion of the Park Creek Reservoir for increased storage capacity and allowing for an existing recreation component for overnight camping and day-use to the southwest of the reservoir.

ITEM #4 – PIVOT ENERGY INC. 1041 PERMIT, FILE NO. 24-ZONE3646

Request: A 1041 review of a permit application for an activity of state interest pursuant to Article 10 of the Land Use Code for a proposed 1.485 MW solar energy facility.

ITEM #5 – LEGISLATIVE REZONING FROM OPEN (O) AND RURAL RESIDENTIAL (RR-2) TO NATURAL RESOURCES (NR), FILE NO. 24-ZONE3670

Request: A Legislative Rezoning to the Larimer County Zoning Map to change the zoning designation Open (O) and Rural Residential (RR-2) to Natural Resources (NR) on multiple publicly owned properties being utilized for open space or held for purposes such as conservation or public uses.

Commissioner Chollet moved that the Planning Commission adopt the following Resolution: BE IT RESOLVED that the Planning Commission remove Consent Item No. 4 – Pivot Energy Inc. 1041 Permit, File No. 24-ZONE3646 to a Discussion Item. Commissioner Barrack seconded the motion. Motion carried (8-0).

Members of the public requested that the Planning Commission remove Consent Item No. 3 – Park Creek Reservoir Location and Extent, File No. 24-ZONE3669 to a Discussion Item.

MOTION

Commissioner Duffy moved that the Planning Commission adopt the following Resolution: BE IT RESOLVED that the Planning Commission recommend to the Larimer County Board of County Commissioners approval of the consent agenda as amended. Commissioner Barrack seconded the motion. Motion carried (8-0).

Commissioner Duffy moved that the Planning Commission recommend to the Board of County Commissioners approval of the Proposed Zoning Amendments to the Larimer County Zoning Map and the Larimer County Front Range Zoning Map (Planning File No. 24-ZONE3670) to change the zoning designation of multiple publicly owned properties from O (Open) and RR-2 (Rural Residential) to NR (Natural Resources) as proposed by the Community Development Department, subject to the following condition: a. The properties identified in the referral comments received from the State Land Board will be removed from the proposed legislative rezoning change and remain zoned O (Open). And 2) I further move that the Planning Commission Certify the Larimer County Zoning Map and the Larimer County Front Range Zoning Map as proposed, subject to the following condition: a. The Zoning Maps will be revised to reflect removal of the properties identified in the referral comments received from the State Land Board remain zoned O (Open). Commissioner Chollet seconded the motion. Motion carried (8-0).

DISCUSSION ITEMS

ITEM NO. 1 – WELLINGTON OPERATION COMPANY – WF MUDDY UNIT #26-2 SPECIAL REVIEW & APPEALS, FILE NO. 23-ZONE3571

The subject request is to deepen, by 1000 feet, an existing Wellington Operating Company oil and gas well (WF Muddy Unit #26-2) from its current depth of 4,485 feet. The purpose for deepening this well is to explore the potential availability of oil and gas resources from known zones located at greater depths. If approved this activity, which from industry standards is a minor activity, will take approximately 1 month to complete, and will have a $\frac{3}{4}$ acre disturbance area or PAD.

While considered a minor activity requiring minimal permits through the State of Colorado - Energy and Carbon Management Commission (ECMC), Article 11 of the Larimer County Land Use Code considers the deepening of an existing well as a new well. Therefore, as a new well the County requires the submittal and approval of a special review application to ensure that all surface impacts associated with the drilling meets the minimum standards or demonstrates how potential adverse impact will be mitigated during the operations.

The WF Muddy Unit #26-2 well is situated on a 40+ acre property owned by the Wellington Operating Company, which property is also occupied by gathering tanks for other wells in the Wellington Field and a water treatment plant that reclaims water recovered from the wells (see site drawings on following pages). The well, which was originally spud (drilled) in 1979, has been temporarily abandoned (TA) since 1999, and due to its current classification, low producing, it is scheduled to be plugged before 2028.

A cursory review of the area directly surrounding the Well PAD reveals:

- The North Poudre Canal to the East and beyond that active oil and gas and water treatment facilities,
- Active agricultural fields and native land including wetlands to the north,
- Native land including wetlands to the west, and
- Rural residential uses including active agricultural activities to the south (across County Road 70).

As proposed, this request to deepen the existing WF Muddy Unit #26-2 well will only be a vertical drill and will not include any fracking of the well bore. The application material indicate that drilling as proposed will occur in November, which is outside of typical peak ozone generating periods. Additionally, the application indicates that if the drilling were to occur during the peak ozone months of May – September then best management practices for forecasted ozone advisory days would be implemented. The application material also illustrates mitigation measures such as containment berms and sound walls being utilized to protect adjacent wetlands and minimize noise impacts to nearby neighbors.

As proposed this application is for exploratory purposes only and upon completion of the deepening the well will be shut-in and scheduled for plugging by 2028. However, if deepening the well provides positive results and can be utilized for new resource production the well will be shut in and a new application to convert the well to a producing well will be submitted to the County for review and approval.

This application includes an appeal to §11.3.3. Air Quality to not be required to monitor for methane

emissions. The applicant indicates that the cost to monitor and process data for methane would be prohibitive to the exploratory and temporary nature of this project.

Appeals:

An appeal to §11.3.3. – Air Quality to not be required to monitor for methane emissions has been included in the application. According to the information provided by the applicant, providing the equipment for the monitoring of methane as well as the cost for processing the data would make this exploratory effort cost prohibitive.

When considering whether to approve an appeal to deviate from standards or requirements of the Code, other than minimum lot size requirements, the County Commissioner may grant the appeal subject to safeguards and conditions with their findings concerning the following factors. The County Commissioners will consider each of the following factors and make findings pertaining to each one which, in their discretion, applies to the appeal:

- a. Approval of the appeal will not subvert the purpose of the standard or requirement.
- b. The purpose of the air quality standards is to minimize and manage emissions resulting from oil and gas drilling and operations. Typical oil and gas drilling activities take months to complete and result in facilities that will remain in operation for years if not decades. With regards to this application, the drilling activity is located in an area outside of the non-attainment zone, is a vertical drill only for exploration, is not to include hydraulic fracturing and is to be conducted during a two week period outside of the peak ozone season, and when complete the well will be shut-in until it is plugged and reclaimed, which is scheduled to happen before 2028.
- c. In addition to the above parameters the Health Department suggests that baseline air quality monitoring occur for a month before any drilling and the monitoring continues during any active drilling of the well, all of which will be in lieu of the full baseline and drilling plan.
- d. Given the recommendations of the Health Department, The Development Services Team believes this appeal based upon the condition a baseline and active drilling monitoring occurs this appeal will not subvert the purpose of the Code.
- e. Approval of the appeal will not be detrimental to the public health, safety, or
- f. property values in the neighborhood.
- g. Provided the limited location, limited time frame and nature of the drilling activity, this appeal will not be detrimental to the public health, safety, or property values in the area. Additionally, there have been no comments from residents in the area that would suggest that this appeal would be detrimental to them or their property.
- h. The request complies with this criterion in that is no evidence that approval of the appeals would be detrimental to the public health, safety, or property values in the neighborhood.
- i. Approval of the appeal is the minimum action necessary.
- j. Approval of the appeals is the minimum action necessary to create the facility intended by the applicant and property owner.
- k. Approval of the appeal will not result in increased costs to the general public.
- l. Approval of the appeal would not result in increased costs to the general public.
- m. Approval of the appeal in consistent with the intent and purpose of the Code.

As suggested in criterion a above, the Development Services Team believes that upon approval of baseline and active drilling monitoring plan in addition to the operation factors outline in the application, this appeal is consistent with the intent and purpose of the Code.

With regards to the requested appeal, the Development Services Team Supports this appeal based upon the condition that air quality monitoring occur at least one month prior to any drilling and continue through the active drilling process.

Development Services Team Findings

1. The proposed use has minimal impacts on the existing and future development of the area.
2. Any impacts associated with the environment, wildlife, access, traffic, emergency services, utilities, parking, refuse areas, noise, glare, odor, and other adverse impacts have been adequately addressed and/or mitigated.
3. The recommendations of referral agencies have been considered and adequately addressed.
4. The proposed use is consistent with the Comprehensive Plan.
5. The applicant has demonstrated that this project can meet applicable additional criteria listed in Article 11.0 – Oil and Gas Facilities.

Development Services Team Appeal Findings

1. Approval of the appeals would not subvert the purpose of the standard or requirement.
2. Approval of the appeals would not be detrimental to the public health, safety or property values in the neighborhood.
3. Approval of the appeals is the minimum action necessary.
4. Approval of the appeals would not result in increased costs to the general public.
5. Approval of the appeals would be consistent with the intent and purpose of the Code.

Development Services Team Recommendation

The Development Services Team recommends approval of the Wellington Operation Company – WF Muddy Unit #26-2 Special Review and Appeal, File No. 23-ZONE3571 subject to the following conditions:

1. This Special Review approval shall automatically expire without a public hearing if the use is not commenced within three years of the date of approval.
2. The Site shall be developed consistent with the approved plans and reports contained in the Wellington Operation Company – WF Muddy Unit #26-2 Special Review and Appeal, File No. 23-ZONE3571 except as modified by the conditions of approval or agreement of the County and applicant. The applicant shall be subject to all other verbal or written representations and commitments of record for the Wellington Operation Company – WF Muddy Unit #26-2 Special Review
3. Failure to comply with any conditions of the Special Review approval may result in reconsideration of the use and possible revocation of the approval by the Board of Commissioners.

4. This application is approved without the requirement for a Development Agreement.
5. In the event the applicant fails to comply with any conditions of approval or otherwise fails to use the property consistent with the approved Special Review, applicant agrees that in addition to all other remedies available to County, County may issue a written notice to applicant to appear and show cause why the Special Review approval should not be revoked, and/or bring a court action for enforcement of the terms of the Special Review. All remedies are cumulative and the County's election to use one shall not preclude use of another. In the event County must retain legal counsel and/or pursue a court action to enforce the terms of this Special Review approval, applicant agrees to pay all expenses incurred by County including, but not limited to, reasonable attorney's fees.
6. County may conduct periodic inspections to the property and reviews of the status of the Special Review as appropriate to monitor and enforce the terms of the Special Review approval.
7. The Findings and Resolution shall be a servitude running with the Property. Those owners of the Property or any portion of the Property who obtain title subsequent to the date of recording of the Findings and Resolution, their heirs, successors, assigns or transferees, and persons holding under applicants shall comply with the terms and conditions of the Special Review approval.
8. Upon completion of the exploratory drilling the WF Muddy Unit #26-2 well shall be shut-in until the well is plugged and the site reclaimed, or a new application is reviewed and approved to bring the well back into production status. Said plugging a reclamation shall occur prior to January of 2028.
9. All activities associated with the site preparation and drilling of the well shall occur during the month of November and only between the hours of 7am and 7pm.

PLANNING COMMISSION AND STAFF COMMENTS

Staff member Lafferty addressed concerns about the site being within what Wellington calls their Growth Management Area (GMA). Lafferty clarified that the GMA is essentially a planning area defined by the town of Wellington. Although it falls within Wellington's planning boundary, it does not comply with the GMA regulations and supplemental regulations in the county's land use code because Larimer County has not yet adopted an intergovernmental agreement with Wellington. This agreement would define a GMA boundary as an overlay district where such agreements would apply. Therefore, Lafferty emphasized that the site is in Wellington's planning area, which they call their GMA, but it is not recognized by the county in terms of the land use code criteria.

Commissioner Chollet inquired about the decision to move the project timeline from November to August. Staff member Lafferty explained that the change was at the applicant's request, as they found an opportunity to proceed with the drilling earlier. The applicant had initially scheduled the project over a year ago and requested the adjustment to accommodate their timeline.

Commissioner Chollet asked about the referral comments received from the town of Wellington. Lafferty confirmed that the two comments included in the packet were the only ones provided by Wellington, and they had been incorporated into the operating company's plan. No additional comments were received.

Commissioner Weiss sought clarification on the proximity of the site to the nearest residential development. Lafferty stated that the closest residences were about a quarter mile away, near County Road 70. These residents were informed of the application and had no objections, complying with the code requirement that drilling should not occur within 1,000 to 2,000 feet of an existing dwelling unless

the property owners expressly agree.

Lafferty clarified the distance to other residences and wetlands, mentioning a couple of homes down gradient from the site and others further away. To address potential noise impacts identified in a noise study, the applicant incorporated a sound wall into the project.

Commissioner Weiss inquired about the prevailing wind direction, to which Lafferty responded that during that time of year, the wind typically comes from the northwest to the southeast. Consequently, air quality monitors were placed to the south and east of the drill pad and one to the northwest to monitor potential impacts.

Commissioner Chollet asked about the distance from the site to the northwestern-most developed area within the town of Wellington. Lafferty used a map to measure the distance, determining it to be approximately 2.7 miles from the drilling site to the neighborhood near County Road 66.

Overall, the conversation focused on clarifying planning boundaries, addressing project timeline changes, ensuring compliance with referral comments, assessing proximity to residences, and evaluating environmental considerations such as noise and air quality.

APPLICANTS PRESENTATION

Connor Staley, the asset manager for Wellington Operating Company, provided an overview of the Wellington field and the company's operations. The Wellington field is an oil field with a history spanning nearly a century, characterized by its small footprint, covering approximately 1.5 miles east to west and 5 miles north to south. Presently, the field has 23 active wells, with the primary production coming from the Muddy J Sandstone formation at a depth of about 4,300 feet. Wellington Operating Company has been the operator of record since 1992 and has maintained a history of clean and safe operations. The main field foreman, Cam Gracie, resides within the field, ensuring operations are conducted responsibly. In 2019, King Operating Corporation acquired Wellington Operating and has since focused on continuous improvement and compliance with state and county regulations, including plugging and abandoning six wells in the past 24 months, improving tank battery and emissions systems, and enhancing water plant operations and groundwater monitoring.

Staley outlined the company's proposal to deepen an existing well in the Wellington field. This initiative aims to explore formations beneath the Muddy J Sandstone by deepening an existing well rather than drilling a new one. The company plans to extend the well by approximately 750 to 1,000 feet to explore the Entrada formation, which lacks modern penetration in the area. By re-entering an existing well, the company can leverage modern technology to gather data through logs, temperature surveys, pressure surveys, and fluid sampling. The project involves casing the deepened section and cementing it to the surface to create a secure barrier for the wellbore. Importantly, Staley emphasized that no fracking or fluid injection will occur in this project. This approach minimizes disturbance by using a smaller rig, which reduces the footprint compared to a full-sized drilling rig.

The purpose of deepening the well is to gather geological information and assess the potential for oil, gas, and water production in deeper zones. Staley explained that if the findings indicate commercial viability, the well will be shut in, pending further review. If not, the well will be plugged following state regulations. The company has submitted over 15 detailed mitigation plans, totaling around 650 pages, to demonstrate its commitment to environmental protection and regulatory compliance. Additionally, surrounding landowners and mineral interest owners have been notified, with offers to test shallow water wells for any residents concerned about groundwater contamination.

Staley highlighted local support for the project, citing a letter from Mike Blem, a landowner who owns

property on three sides of the well. Blem has lived in the field for an extended period and has not experienced any health concerns or adverse effects related to the oil and gas industry. They described Wellington Operating as a good neighbor and expressed support for the project's approval.

PLANNING COMMISSION AND STAFF COMMENTS

Commissioner Duffy began by inquiring whether King Operating or Wellington Operating had any ongoing infractions or investigations with the Colorado Department of Public Health, to which Connor Staley responded that they were not aware of any. Duffy then raised questions about the nature of the wells being developed, asking if they would involve fracking or just vertical drilling. Staley clarified that the wells in question were vertical, and that fracking had not been common practice when the original wells were completed.

Duffy further questioned the use of 3D seismic imaging and its implications for the feasibility of fracking in the area. Staley explained that while 3D seismic imaging shows the underground layers, the operator had determined that horizontal drilling, common in other regions, would not be feasible in this area. Instead, they would continue with vertical drilling.

The conversation then shifted to the equipment on-site, specifically whether a coil tubing unit would be used, to which Staley indicated that they would likely rely on a workover rig instead. Duffy also inquired about nearby houses and whether any residents had been compensated, with Staley confirming they had not.

Commissioner Chollet expressed concerns about the potential air quality impact, given the proximity to populated areas and the region's wind patterns. Staley acknowledged the minimal emissions expected from the equipment and mentioned that all necessary permits had been obtained. Staff Member Lafferty reminded the commissioners that Larimer County has specific regulations regarding air quality and distance requirements, based on studies that minimize potential impacts beyond 2,000 feet from the operation.

Commissioner Barrack raised questions about methane monitoring, expressing concern over the absence of specific methane monitoring despite its significance as a greenhouse gas. Staley and other staff members explained that methane is part of the broader volatile organic compounds (VOCs) being monitored, and the equipment in place would detect significant leaks. The discussion highlighted that more detailed monitoring would be required if the well became productive.

Staff Member Lafferty clarified that the current application and monitoring requirements apply only to the exploratory phase of the project. If the well is found to be productive, additional monitoring and compliance with state regulations would be required.

The conversation concluded with a focus on the broader implications of the monitoring protocols, potential emissions during operations, and the need for clear and effective response plans in case of any significant air quality issues. The commissioners emphasized the importance of ensuring that all state regulations are met and that any exemptions from county regulations do not conflict with state requirements.

PUBLIC COMMENT

Richard Seaworth

Comments

- The oil and gas industry has significantly improved over the past 50 years, highlighting the reduction of harmful practices such as burning pits that produced black smoke. This suggests that current operations are more environmentally responsible.
- The water provided by the oil and gas operations has improved the quality of water on their farm, which benefits their irrigation wells. This indicates a positive impact on local agriculture and water resources.
- Oil and gas companies contribute significantly to local tax revenues, particularly for schools. They argued that continued operations could provide much-needed funds for public services, potentially reducing the need for higher taxes on residents.
- The oil exploration efforts would be successful, suggesting that the companies wouldn't invest so much money if they didn't anticipate finding oil. This optimism supports the idea that the operations could be economically beneficial for the community.
- Health concerns associated with living near oil and gas operations are better than they were 50 years ago.

PLANNING COMMISSION DISCUSSION:

Commissioner Chollet expressed their support for a short-term project application, acknowledging the existence of 20 operating wells in the area. They emphasized the importance of implementing a monitoring system a month after the exploration is completed, as suggested by their fellow commissioners, to provide reassurance regarding the health and environmental impact on the county. Chollet stressed the need to balance mindfulness with not being obstructive, ultimately finding the request reasonable and voicing their support.

Commissioner Duffy sought clarification on the condition of approval, proposing that the applicant's air monitoring system, as detailed in the application, remain in place for 30 days, followed by the submission of a final monitoring report. This suggestion was met with further input from Staff Member Schneider, who clarified that the 30-day period would commence after the shut-in process. Staff Member Lafferty added that air quality monitoring would continue for 30 days post shut-in.

Commissioner Weiss voiced a preference for an additional off-site air monitoring location, leaving the specific location to staff discretion. Staff Member Lafferty recommended a condition that one of the monitoring devices be located elsewhere on the property, within 500 feet of the well, which was agreed upon by the commissioners.

Commissioner Slutsky expressed confidence in the company's capabilities, drawing from personal experience living near the area for 40 years without issues. However, they still had reservations about the appeal and suggested involving the health department for further approval. Staff Member Lafferty proposed a condition that monitoring of emissions at the site would not eliminate any state-required air quality monitoring. County Attorney Luckasen confirmed that the applicant would be responsible for adhering to all state and federal requirements, which is standard practice.

MOTION

Commissioner Duffy moved that the Planning Commission adopt the following Resolution: BE IT RESOLVED that the Planning Commission recommends approval of the Wellington Operation Company – WF Muddy Unit #26-2 Special Review and Appeal, File No. 23-ZONE3571 subject to the following conditions:

1. This Special Review approval shall automatically expire without a public hearing if the use is not commenced within three years of the date of approval.
2. The Site shall be developed consistent with the approved plans and reports contained in the Wellington Operation Company – WF Muddy Unit #26-2 Special Review and Appeal, File No. 23-ZONE3571 except as modified by the conditions of approval or agreement of the County and applicant. The applicant shall be subject to all other verbal or written representations and commitments of record for the Wellington Operation Company – WF Muddy Unit #26-2 Special Review
3. Failure to comply with any conditions of the Special Review approval may result in reconsideration of the use and possible revocation of the approval by the Board of Commissioners.
4. This application is approved without the requirement for a Development Agreement.
5. In the event the applicant fails to comply with any conditions of approval or otherwise fails to use the property consistent with the approved Special Review, applicant agrees that in addition to all other remedies available to County, County may issue a written notice to applicant to appear and show cause why the Special Review approval should not be revoked, and/or bring a court action for enforcement of the terms of the Special Review. All remedies are cumulative and the County's election to use one shall not preclude use of another. In the event County must retain legal counsel and/or pursue a court action to enforce the terms of this Special Review approval, applicant agrees to pay all expenses incurred by County including, but not limited to, reasonable attorney's fees.
6. County may conduct periodic inspections to the property and reviews of the status of the Special Review as appropriate to monitor and enforce the terms of the Special Review approval.
7. The Findings and Resolution shall be a servitude running with the Property. Those owners of the Property or any portion of the Property who obtain title subsequent to the date of recording of the Findings and Resolution, their heirs, successors, assigns or transferees, and persons holding under applicants shall comply with the terms and conditions of the Special Review approval.
8. Upon completion of the exploratory drilling the WF Muddy Unit #26-2 well shall be shut-in until the well is plugged and the site reclaimed, or a new application is reviewed and approved to bring the well back into production status. Said plugging a reclamation shall occur prior to January of 2028.
9. All activities associated with the site preparation and drilling of the well shall occur beginning in the month of August and only between the hours of 7am and 7pm.
10. Air Quality Best Management Practices (BMPs) as required by Article 11.3.3.F and 11.3.3.J. and the applicants representation. Air Quality Plan shall be adhered to on front range Air Quality Action Advisory Days posted by the Colorado Department of Public Health and Environment.
11. The air monitoring system detailed in the application will be required to stay in place for 30 days after shut in and the applicant will be required to provide a final monitoring report.
12. One air monitoring system or sensor will be placed outside of the drill site, but no further than 500 feet away from said drill site and between the wellhead and the adjacent residences to the southeast and between the wellhead and the adjacent properties to the southeast of the drill site.

13. The applicant will comply with all state required regulations and laws.

Commissioner Chollet seconded the motion. Motion carried (8-0).

ITEM NO. 2 – PIVOT ENERGY INC. 1041 PERMIT, FILE NO. 24-ZONE3646

Pivot Energy, requests approval of a 1041 Permit to conduct an Activity of State Interest as follows:

LUC Section 10.3.1.K: Site selection and development of any solar energy power plant including solar energy collectors, power generation facilities, facilities for storing and transforming energy, and other generally associated or accessory facilities, that together disturb an area greater than ten acres, or any addition thereto that expands the disturbed area. This designation shall not include roof mounted solar systems located on existing permitted principal and accessory buildings.

The specific request is to construct a 1.485-megawatt solar facility on approximately 11.5 acres of a 71-acre parcel of land. This is part of the Xcel Energy Solar Rewards Offsite program. According to the applicants' This program is similar to Xcel's "Solar Rewards Community" program but allows for larger power consumers to subscribe to a larger amount of solar.

The property is located approximately 3/4 mile east of the intersection of I-25 and E. County Road 62 on the south side of E. County Road 62, just east of the Town of Wellington town limits. It is located within the Wellington Growth Management Area. Access to the site will be through the existing access adjacent to the subject property to the west, which is owned by a different property owner.

The property is zoned O-Open and is currently being used as dryland pasture grazing along with an existing residential home, and the uses in the surrounding area include agricultural and residential. The area surrounding the site is rural, consisting of larger lots. There are some denser neighborhoods with smaller lots, .25 acre or less, but are within the Town of Wellington town limits. The impacts to the site and surrounding properties will be minimal. The construction will disrupt a portion of the site on a temporary basis during site development. There will be space below the panels to allow for the recovery of vegetative cover below them.

The applicants have indicated that once a site is awarded to a program, as Xcel awarded this site, it cannot be changed, per the award programs rules. As such, there are no alternatives once a site has been awarded. Prior to being awarded capacity, the alternative sites are those submitted by Pivot Energy to the overall program. An exhibit showing the typical structure design is included in the materials from the applicant. See Attachment H - Simulation of Appearance.

Per Section 10.8.2.G.2 of the Land Use Code, a 1041 permit application may be approved only when the applicant has satisfactorily demonstrated that the proposed project, including all mitigation measures proposed by the applicant, complies with all of the applicable criteria set forth in Article 10. If the proposal does not comply with all the applicable criteria, the permit shall be denied, unless the County Commissioners determine that reasonable conditions can be imposed on the permit which will enable the permit to comply with the criteria.

If the County Commissioners determine at the public hearing that sufficient information has not been provided to allow them to determine if the applicable criteria have been met, the Board may continue the hearing until the specified additional information has been received.

The County Commissioners shall adopt a written decision on a 1041 permit application within 90 days after the completion of the permit hearing. The 1041 permit will be in the form of a findings and resolution signed by the Board of County Commissioners. The effective date shall be the date on which the findings and resolution is signed.

If this 1041 Permit is approved for the solar facility, the next step would be for the applicants to go through the Technical Review process. Technical Review is an administrative process intended to ensure compliance with the development and design standards of the Land Use Code and to encourage quality development reflective of the adopted goals and objectives of the County. The technical review procedure ensures that the County has an opportunity to ensure compliance with all conditions of approval and mitigate potential impacts of development prior to issuance of a building permit.

Notice of this application was sent to property owners within 500 feet of the proposed solar facility. To date, no comments have been received from any community members.

This application was also sent out to referral agencies for their review and comments. The referral comments are attached to this report (Attachment J). Comments were received from:

- Larimer County Engineering Department
- Larimer County Department of Health and Environment
- Larimer County Planning, Environmental
- Larimer County Building Department
- Division of Water Resources
- Colorado Parks and Wildlife
- Colorado Geological Survey
- Town of Wellington

The applicant reached out to the Town of Wellington and conducted a neighborhood hearing with property owners within 500 feet of the subject property. They also sent the invitation to the Park Meadows subdivision HOA located to the west of the subject property. The neighborhood meeting information can be found in Attachment J of the Planning Commission hearing agenda packet for July 17, 2024.

Notice of this application was sent to property owners within 500 feet of the proposed solar facility. To date, the Planning office has not received any comments on this request. The comments from referral agencies are included as Attachment I and are summarized below:

The most significant issues raised by referral agencies during the review of the solar facility has been the mitigation of the impacts of the project and revegetation and restoration of the site. Several referral agencies indicated they need more information and details. The concerns have been addressed with conditions of approval that can be addressed during Technical Review, which follows 1041 Permit approval.

Once the solar facility is constructed it will be unstaffed most of the time, except for a few days out of the year for operation and maintenance and should have few long-term impacts to the surrounding area or the site itself.

With the proposed conditions of approval in place, the referral agency concerns should be addressed, and this application meets the review criteria for a use of this type. Public comments were solicited. No

objections have been expressed by members of the public.

Development Services Team Findings

The Development Services Team finds that the request for the solar facility water meets the criteria found in Sections 10.9.1 and 10.10.1 of the Larimer County Land Use Code subject to the proposed conditions of approval which are intended to ensure compliance with referral agency comments.

Development Services Team Recommendation

The Development Services Team recommends approval of the Pivot Energy Inc. 1041 Permit, File No. 24-ZONE3646, subject to the following conditions:

1. The Final Plans shall be consistent with the approved preliminary plan and with the information contained in the CBEP Solar 3, LLC 1041 Permit, File 22-ZONE3408, except as modified by the conditions of approval or agreement of the County and applicant. The applicant shall be subject to all other verbal or written representations and commitments of record for the CBEP Solar 3, LLC 1041 Permit.
2. The applicant will be required to go through the post approval Technical Review to address any outstanding items raised in the referral agency comments.
3. The applicant shall submit a construction schedule, including planned workdays and hours, to be reviewed and approved by Larimer County Engineering and Health Departments.
4. The applicant shall allow access to Larimer County staff and consultants for inspections and construction observation throughout the Project and for the term of the construction.
5. Final design plans and specifications will need to be prepared for review and approval by the Larimer County Engineering Department. Should it be discovered that the final design, in the County Engineer's opinion, deviates significantly from the conceptual design to change the nature of impacts of the facility within the permit limits, the County reserves the right to require that the design be modified to address impacts as deemed necessary by the County Engineering and Planning Department.
6. A geotechnical subsurface investigation shall be submitted to Larimer County during the design process for those portions of the parcel impacted by the solar field. Any additional subsurface investigations that may be required by other local and state governments, federal agencies, or impacted utilities, including irrigation and water storage companies, shall be made available to Larimer County for review.
7. During construction, the applicant shall stabilize, resurface, and repave, if applicable, all areas disturbed or damaged during construction and operation within the Larimer County Road Rights-of-way (ROW). This condition also applies to any project appurtenances, such as utility connections, located within the County ROW.
8. The applicant shall submit phasing plans, including planned workdays and hours, to be reviewed and approved by the Larimer County Engineering Department.
9. A pre-construction inventory of County roads to be used for construction traffic will be created and updated as needed by the applicant during construction, documenting pre-construction conditions and the work conducted by the applicant to return the roads to pre-construction conditions when construction is complete.
10. The applicant shall be responsible for arranging and paying all costs of:

- Utility relocations and irrigation company requirements necessary to accommodate the solar facility.
 - The replacement of existing storm drainage infrastructure, culverts, roadway signage, pavement striping/symbols, landscaping and property fencing necessary to accommodate the solar facility.
 - Damage or relocation of private property services as necessary to accommodate the solar facility if a reasonable alternative is not possible.
11. The applicant shall allow access to Larimer County staff and consultants for inspections and construction observation throughout the Project and for the term of the construction.
 12. The applicant shall reimburse Larimer County for reasonable costs associated with County-provided construction observation/ inspection staff and/or independent, supplemental geotechnical or materials testing deemed appropriate by the County Engineer for purposes of quality assurance/ control. The applicant shall also reimburse Larimer County for time and expenses incurred with Project coordination, design review, permit review and processing and related Project activities during the duration of Project construction and closeout for the work conducted in unincorporated Larimer County.
 13. The applicant shall invite Larimer County staff to attend regularly scheduled coordination meetings during construction - at a frequency to-be-determined - to understand planned construction activities and stay abreast of issues arising from construction impacts to County infrastructure or the public.
 14. The applicant shall provide Larimer County Planning Department a public information contact with a phone number and email address that the public can contact to ask questions, express concerns or for project updates.
 15. The applicant shall submit to Larimer County a Traffic Control and Management Plan for review and approval by the County Engineer prior to construction addressing traffic control devices/personnel (warning signs, flaggers, traffic control supervisors, etc.), any specific delay times, adjacent neighboring property owner notifications, and use and placement of message boards. The Traffic Control and Management Plan will include requirements to provide safe and acceptable access for emergency responders, mail and package delivery, garbage pickup, and school bus stops. The Traffic Control and Management Plan will also identify all proposed access points.
 16. Whenever it is necessary to cross, close, or obstruct roads, driveways, and walks, whether public or private, the applicant will provide and maintain suitable and safe detours or other temporary expedients for accommodation of public and private travel, emergency vehicles, delivery services, garbage pickup, school bus stops, etc.
 17. When construction activity is impacting Larimer County ROW in any way, the applicant shall obtain and abide by the standards and conditions of applicable County ROW permit(s), per the Code of Ordinances and the Land Use Code. Construction plans will need to be provided detailing the work to be completed. Additionally, Traffic Control Plans, developed by a certified traffic control company, must be submitted and approved for all work performed within road ROW or that will directly affect the travelling public.
 18. Larimer County regulates access to county roads to maintain safe traffic flow, road drainage facilities, and efficient use of the County's roads. Access Permits will be required for any new access from Larimer County ROW regardless of whether they are to be used for temporary construction purposes or are to be permanent. Staff may also require an Access Permit for

existing access points proposed to be utilized for temporary construction or permanent access.

19. The applicant shall be required to designate planned haul routes. The existing surface condition of all planned haul routes will need to be evaluated prior to construction. If it is determined by the County Engineer that there has been an acceleration in deterioration of the roadway surface during or after construction as a result of construction traffic, equipment, or hauling, the applicant will be required to restore the roadways to their prior condition. This may include the need for regrading and or resurfacing.
20. Heavy equipment traffic will be subject to all weight limit restrictions along adjacent roadways and will obtain oversize/overweight permits.
21. The applicant shall obtain a storm water discharge and construction dewatering permit from the Colorado Department of Public Health and Environment for construction at drainage crossings and for land disturbances of one acre or more, per Article 4.12 of the Land Use Code. These permits will include the preparation of a Storm Water Management Plan and Best Management Practices to prevent storm water runoff and sediment in disturbed areas from reaching nearby waterways or otherwise leaving the site. Multiple state permits may be required for the project area.
22. The applicant shall adhere to Larimer County MS4 regulations for all applicable work
23. within the most up to date Larimer County MS4 boundary.
24. The applicant will be required to provide a drainage report that utilizes the MHFD memorandum for runoff coefficients and solar array layouts.
25. The applicant will be required to comply with County floodplain regulations. The requirements stated in Section II will need to be adhered to. Please contact Caryn Nezat (970-498-5734; nezatca@co.larimer.co.us) for additional information on this process.
26. The applicant shall be required to obtain any additional State, Federal, or Local permits necessary for construction. When applicable, the applicant or its contractors will be required to obtain other Larimer County issued permits as well. These could include, but are not limited to, Building Permits, Floodplain Development Permits, and/or Utility Permits.
27. The applicant shall develop and provide Larimer County with accurate as-built horizontal and vertical survey data (state plane coordinates and elevations in NAVD 88) and GIS shapefiles describing the locations of the facility and all appurtenant structures.
28. The applicant shall provide Larimer County with as-built construction drawings certified by a Colorado registered professional engineer, for all portions of the facility located in unincorporated Larimer County.
29. The applicant will be required to provide information that discusses how the proposed facility will be accessed for construction, maintenance and operation.
30. The applicant shall satisfactorily address all comments identified in the Memorandum from Lea Schneider with the Department of Health and Environment dated June 22, 2024.
31. The applicant shall satisfactorily address all comments identified in the Memorandum from Mark Leslie with the Colorado Park and Wildlife dated June 5, 2024.
32. The site shall be fully revegetated following construction to minimize soil erosion and mitigate visual impacts. A detailed landscape plan shall be provided at the Technical Review phase to address concerns regarding revegetation, restoration, and to provide screening/buffering from nearby properties.

33. The applicant shall update all the necessary plans and/or reports to reflect the change in project scope and size due to Xcel Energy requesting a change in the total megawatts the site will produce.
34. At the Technical Review phase, a Development Agreement may be necessary if it is determined that it is needed to document agreed upon construction and post-construction elements. This could include the requirement to post collateral.
35. At the Technical Review phase, all easements shall be shown on the plans, and no solar panels may be located within any easements.
36. Building permits must be obtained or substantial progress must commence within three years after permit approval unless otherwise approved by the County Commissioners, or the approval shall lapse. The three-year period shall commence upon the completion of all required additional permitting by other agencies or when a final decision is rendered for any appeals or litigation.
37. Following the three-year period, the terms of the original approval shall continue to apply, and the applicant must continue to abide by the terms of all approvals, permits, and conditions that were part of the original approval. An applicant may request of the County Commissioners a one-time extension of up to three years for the 1041 permit. An extension request shall be made in writing prior to the expiration date of the original permit. The County Commissioners may impose additional conditions at the time of renewal if necessary to ensure that the project will comply with the LUC and the original permit.
38. Approval of a permit shall lapse after the applicable term unless:
 - a. Development permits are obtained for commencement of construction, if such permits are required; and remain in effect, or
 - b. The activities described in the permit have substantially commenced.

PLANNING COMMISSION, STAFF, AND APPLICANT COMMENTS

Commissioner Chollet raised questions about the proposed construction near Wellington, focusing on the timeline and community impact. They emphasized that, although post-construction impacts are lower, effective communication with the nearby community is crucial. Chollet expressed concerns about the notification process, noting that while residents within 500 feet were notified, more distant neighborhoods were not, which could lead to communication gaps.

Staff Member Currie explained that notifications were sent within the required 500-foot radius and that the HOA of the neighboring communities was informed but acknowledged that the applicant could provide more details about the neighborhood meeting. Chollet highlighted the importance of involving the community, especially in light of the town of Wellington's concerns about the project's duration, which they considered temporary despite a potential 22 to 40-year span.

Kyle Sunman, from the applicant's side, explained that the project is temporary because it has a defined end date, after which the site would be decommissioned and restored. Sunman mentioned that they proactively reached out to the town of Wellington to introduce the project and gather feedback, despite not being required to do so. This was done to ensure the community was informed and had the opportunity to voice concerns.

Chollet was particularly concerned about the traffic impacts during construction, especially since the site access involves routes through residential areas in Wellington. They requested that the town be included in the traffic planning to ensure safety and minimize disruption. Staff and the applicant assured that these concerns would be addressed during the technical review phase, where Wellington would have further opportunities to provide input.

Overall, the discussion highlighted the importance of clear communication, community involvement, and careful planning to address potential impacts on Wellington, ensuring that the project proceeds with consideration for local residents and infrastructure.

PUBLIC COMMENT

None.

PLANNING COMMISSION DISCUSSION:

Commissioner Duffy expressed a firm stance regarding the responsibility of the town of Wellington, stating that if the town has concerns about the project, it is their duty to voice them. Duffy acknowledged the applicant's efforts and pointed out that the commission does not have jurisdiction over Wellington, implying that the town needs to take action if it has objections.

In response, Commissioner Chollet shared their initial hesitation about recommending the project due to concerns related to the town of Wellington, where they reside. However, Chollet appreciated the applicant's willingness to engage with their questions and concerns, particularly those stemming from their knowledge as a resident. Despite typically being cautious, Chollet indicated a shift in their stance, expressing a willingness to recommend the project based on the applicant's responsiveness and the trust that they would take care of Wellington's interests.

This exchange highlighted a critical aspect of the approval process, where commissioners weighed the applicant's responsiveness against potential local impacts, ultimately leading to a nuanced decision that considered both the applicant's efforts and the potential effects on the Wellington community.

MOTION

Commissioner Duffy moved that the Planning Commission adopt the following Resolution: BE IT RESOLVED that the Planning Commission recommends that the Board of County Commissioners approve the Pivot energy. Inc. 1041. Permit File No. 24-ZONE3646 subject to the conditions as outlined in the staff report. Commissioner Barrack second the motion. Motion carried. (8-0)

ITEM NO. 3 – PARK CREEK RESERVOIR LOCATION AND EXTENT, FILE NO. 24-ZONE3669

The purpose of this Location and Extent is for the Expansion of the capacity of the existing Park Creek Reservoir and alteration of the existing camping use to the southwest of the Reservoir. This also includes managing both the camping activities and water activities on the reservoir. This request includes the following:

- The permitting and creation of a temporary batch plant to expand the reservoir.
- Raising the existing dam to accommodate the expansion of the reservoir.

- Formally establish a recreational camping use for the reservoir.

Refer to the applicants attached project description and site maps for more details on future activities (Attachments A and B). There are proposed changes to the water supply of the reservoir and access to the camping location pursuant to the increased capacity of the reservoir, however, there are no changes in the adjacent roadway access, fire protection, etc. at this time.

This request includes multiple parcels (Parcel # 9018000918, 9018000919, 9008000945) totaling approximately 202.62-acres according to the County Assessor's information. They are all zoned O-Open. The properties are owned by the North Poudre Irrigation Company. This project also entails an additional reconfiguration of parcel layouts so that North Poudre Irrigation Company may accommodate the reservoir expansion. This reconfiguration would prospectively include adjacent portions of parcels 9017000002 and 9007000030 owned by Ackerman Family Farms and Ranches LLC to be procured and added to the existing parcels already owned by North Poudre Irrigation Company. The parcel reconfiguration has not occurred yet. Neighbors within 1000 feet of the proposed changes were aptly notified of this application and no comments were received. The parcels are not located within a designated Growth Management Area. The properties are situated due north of existing West County Road 80 and located approximately 2 miles west of North County Road 19 in northern Larimer County. The Park Creek Reservoir consists of a combined recreational use and irrigation water storage reservoir. Review of the project identified that the expansion of the reservoir component will not require a need for potable water and wastewater services as the operations will not be manned but rather visited for operations, maintenance and inspections.

The applicant's project description offers the following summary of the project regarding the reservoir expansion:

"The existing Reservoir will be expanded by approximately 75.8 acres, to be added for an inundation buffer. It is currently used for managed irrigation. The proposed expansion will raise the normal water storage level ten (10) feet from 5814 to

5824, providing approximately 3050 ac-ft of additional water storage. The dam crest

modification increases the dam crest elevation from 5824 to 5832 [Feet above sea level], providing seven feet of freeboard. The concrete spillway is designed for a crest elevation of 5824."

To accommodate these 3050 acre-feet of additional water storage expansion, the following construction will occur and be added to the existing Park Creek Infrastructure:

- Construction of a dam crest wall.
- Construction of a concrete spillway and spillway cutoff walls, monitoring instrumentation, gate house modifications to accommodate the new water capacity.
- Addition of a downstream chimney filter or drain, toe drain, and stability berm to existing reservoir infrastructure.

North Poudre Irrigation Company additionally allows for recreation on the property in the form of a membership-based club that consists of 20 core members. The current uses include boating, fishing, picnicking, camping and other general passive recreation activities. It consists of 23 sites and typically accommodates approximately 60 to 80 friends and family members associated with the membership holders but will accommodate up to approximately 130 individuals during peak use time on summer

holidays. Anywhere from 1-6 vehicles are observed on these designated campsites while in use. Each site is equipped with a concrete pad that allows for recreational vehicles to more easily set up on each site. Tent camping is permitted in conjunction with the vehicle and recreational vehicle uses. Access for this recreation use is available along County Road 80 immediately adjacent to the reservoir. The access will remain the same with the prospective expansion, but the roadway will be shifted slightly to the south to accommodate the new waterline. The recreational use is from April 1st to October 15th annually.

If the Location and Extent Review is approved, the North Poudre Irrigation Company will utilize Larimer County Community Development processes to obtain necessary building permits and comply with site development and technical review standards for the reservoir expansion and campground structures.

This specific request did identify the need to obtain as-built permits for certain structures associated with the existing camping use as well as the procurement of necessary permitting from the Colorado State Division of Water Resources, Army Corps of Engineering, Western Area Power Authority, and Larimer County Public Health. These comments do not delay the timely processing of this Location and Extent application as applicable referral agency comments will be conditioned to be addressed pursuant to the approval of this proposal.

Please note that Location & Extent applications do not require public notice to surrounding property owners. To be consistent with other Location & Extent applications, this request was publicly noticed to property owners within 1000 feet of the subject property. As of the date of drafting this staff report staff did not receive any emails from community members.

The application was also referred to numerous referral agencies. As of the date of drafting the staff report, comments were received from the following referral agencies (See Attachment C):

- Larimer County Health
- Larimer County Building Division
- Larimer County Flood
- Western Area Power Administration
- Larimer County Environmental Planner
- Larimer County Code Compliance
- Larimer County Engineering

Referral agencies that did not provide comment include:

- Larimer County GIS
- Larimer County Road and Bridge
- Larimer County Parks

As stated, prior, as-built permitting for structures erected for the existing camping use will be required as a condition of this application. The application will additionally be conditioned to obtain necessary and identified permits and approvals pertaining to comments received by Western Area Power Authority, Division of Water Resources, Larimer County Public Health, Larimer County Engineering, and Army Corps of Engineering.

A condition of approval has been added that requires Technical Review and approval for the recreational camping component of the application, but not the expansion of the reservoir component.

The applicant has provided information with respect to this proposal which does not reveal any significant issues or conflict conditional that the applicant comply with the requirements of referral agencies attached. The Larimer County Development Services team finds that this proposal is consistent with the Larimer County Comprehensive Plan.

Development Services Team Findings

The Development Services Team finds that this proposal is consistent with the Larimer County Comprehensive Plan as noted above.

Development Services Team Recommendation

The Development Services Team recommends Approval of the North Poudre Irrigation CO - Park Creek Location and Extent, File No. 23-ZONE3669, subject to the following conditions:

1. The applicant must obtain all the applicable building and construction permits including those identified by Larimer County Code Compliance, Larimer County Health and Larimer County Engineering Department, for any county, state, and federal permits, and any required access permits to construct any future uses at this site. This includes but is not limited to Army Corps of Engineers, Colorado State Division of Water Resources, and any other permits identified by referral agencies for this Location and Extent.
2. Technical Review and approval is required for the recreational campground component prior to any construction at the site for the recreational use and prior to applying for building permits for the recreational use.

PLANNING COMMISSION AND STAFF COMMENTS

Commissioner Weiss sought clarification on the users of the water from the reservoir, specifically whether they were individuals with water rights related to the reservoir. Staff Member Seay confirmed that the reservoir is primarily an irrigation reservoir, used by individuals who receive irrigation water from it. Because the reservoir's primary purpose is irrigation, it does not require a 1041 permit. The additional capacity being discussed would be used to increase the reservoir's ability to supply irrigation water. Seay also mentioned that recreational use of the reservoir is independent of its irrigation use.

Commissioner Chollet then inquired whether the recreational use of the reservoir would remain exclusive to the approximately 20 members currently using it and whether it would be open to the public. Staff Member Seay confirmed that, aside from some minor alterations to the access point due to an existing water line, the recreational use would remain the same, staying exclusive to those members and not being open to the public.

This exchange underscored the primary function of the reservoir as an irrigation resource, with recreational use being a secondary, limited benefit for a small group of individuals.

APPLICANTS PRESENTATION

Chris Hines, legal counsel for North Poudre Irrigation Company, provided a detailed overview of the Park Creek Reservoir expansion project during the hearing. He introduced key team members, including Tad Moen (General Manager), Tara Scudder (Lead Engineer from Tessara Water, Inc.), and Dan Susak (Construction Company Representative), who were available to address any questions.

Hines explained that North Poudre Irrigation Company is a mutual ditch company managing 19 reservoirs and 200 miles of canals, primarily in Larimer County. The current project involves raising the dam at Park Creek Reservoir by 8 feet, which would increase the water level by 10 feet. To accommodate this expansion, the company plans to acquire 75 acres of land from Ackerman Farms, which will be impacted by the increased water level.

Hines highlighted that the existing campground at the reservoir, which consists of 23 sites used by 20 members, would be relocated due to the new waterline. The current structures at the campground will be removed, and any new structures will require county permits after the relocation. The expansion project has already received state approval, with construction set to begin shortly after the hearing.

Hines also addressed specific points from comments received, clarifying that the boating club associated with the reservoir is a private club, open only to selected members and not limited to North Poudre personnel or shareholders. He reassured the commissioners that North Poudre is committed to complying with all legal requirements related to the project and its water rights. Hines emphasized that the project supports both agricultural use, which benefits the shareholders, and outdoor recreation, aligning with the values outlined in the county's comprehensive plan.

In conclusion, Hines asserted that the project conforms to the county's comprehensive plan, as it enhances agricultural capacity and maintains recreational opportunities, although the latter remains limited to a small group of private members.

PLANNING COMMISSION, STAFF, AND APPLICANT COMMENTS

Commissioner Chollet questioned how the recreational use of the Park Creek Reservoir by a small group of 20 families could be considered a benefit to the entire county, given that the project is intended to conform with the county's comprehensive plan, which supports outdoor recreation. Chris Hines, legal counsel for North Poudre Irrigation Company, responded by stating that the county's comprehensive plan endorses outdoor recreation, implying that the project aligns with this goal. However, County Attorney Luckasen clarified that the review criteria focus on whether the project conforms with the comprehensive plan, rather than on whether it benefits every resident of the county. Chollet then raised a hypothetical scenario, asking whether the recreational use of private property could technically meet the criteria for conformity. Luckasen explained that it is up to the commissioners to decide if the project meets the criteria for location and extent review.

Commissioner Rowe summarized that the project is primarily agricultural in nature, and the stakeholders and beneficiaries are those involved in agriculture, though there are also recreational aspects to consider. Commissioner Barrack added that the comprehensive plan highlights inclusive opportunities and wondered whether the 30% increase in the reservoir's capacity might justify a similar increase in membership to allow more people access to recreation. Hines acknowledged this point, suggesting it might be something the company would consider.

The discussion then shifted to the agricultural benefits of the reservoir expansion. Commissioner Slutsky inquired whether all shareholders of North Poudre would benefit from the increased water capacity or if only certain farms had access to the water from Park Creek. Tad Moen, General Manager of North Poudre, confirmed that all shareholders would benefit, as the increased capacity would lead to a higher allocation of water across the entire system. Moen explained that North Poudre's water is dedicated to agriculture and cannot be used for municipal purposes like drinking water, emphasizing that the expansion is intended to support crop irrigation.

Commissioner Slutsky expressed concern that water from the reservoir could potentially be traded by shareholders, such as the city of Fort Collins, for municipal water rights. Moen reassured that such trades are not possible under the current system, as the water is strictly for agricultural use. He explained that the expansion is meant to provide more security for farmers, allowing them to store water and better manage resources, especially in years with uncertain water availability.

Finally, Commissioner Barrack asked Moen to clarify what "harvesting water" means in this context. Moen explained that North Poudre has been accumulating water rights over time, which has enabled them to expand their storage capacity. The project does not involve new water rights but optimizes existing rights to ensure more consistent water availability for irrigation. This strategy helps balance the decision of when to run or store water, ultimately supporting the agricultural needs of the shareholders.

The overall discussion highlighted the dual focus of the project: enhancing agricultural capacity while maintaining limited recreational opportunities, with the primary benefits directed toward the agricultural stakeholders in the county.

PUBLIC COMMENT

Eldon Ackerman and Mile Cikara

Comments

- The expansion will provide additional water storage, which is essential for supporting local agriculture. This is critical for maintaining farming operations that rely on the reservoir for irrigation.
- The project is seen as necessary to sustain agricultural activities in the area, helping to secure water resources needed for crop production.
- By expanding the reservoir, the project aims to address future water needs, ensuring a more reliable supply during times of drought or water shortages.
- The recreational benefits of the reservoir are restricted to a small number of private members, raising concerns about the project's broader public benefit in terms of outdoor recreation.
- Potential negative impacts on nearby residents include increased traffic, noise, and light pollution due to 24/7 construction activities. There are also concerns about flooding risks and air quality issues.
- Some local residents have expressed that they were not adequately informed or involved in the planning process, leading to concerns about transparency and the consideration of community impacts.
- The construction could disrupt local ecosystems, affecting wildlife migration patterns and breeding activities. There are also concerns about dust and air quality, particularly in high-wind areas.
- The project may lead to a significant increase in heavy traffic, which could pose safety risks for local residents, especially on rural roads used for daily activities.
- The expansion may alter the landscape, obstructing views and changing the natural character of the area, which could affect the local quality of life.
- Comments urged careful consideration of the long-term consequences, including potential reservoir failure, flooding, and broader environmental impacts.

PLANNING COMMISSION, STAFF, AND APPLICANT COMMENTS

The discussion on the Park Creek Reservoir expansion provided a comprehensive overview of both the technical aspects of the project and the broader implications for the local community. Key points were raised about construction timelines, community impact, and the limitations of the planning commission's authority in this type of review.

The project representatives addressed concerns about the potential for 24-hour construction, clarifying that while the standard schedule is set from 7 AM to 5 or 6 PM, there is a possibility of extending work hours later in the season. This would only occur if weather conditions or delays threaten to push the project behind schedule. The primary concern is preventing the dam from freezing, which could disrupt the irrigation season. If necessary, construction would shift to a 24/7 schedule to ensure the dam's stability and completion within the required timeframe. This approach is driven by the need to adhere to state regulations, which mandate that the reservoir be operational in time for the next agricultural season.

Commissioner Rowe and other commissioners expressed some uncertainty about the role of the planning commission in this process, particularly given the nature of the location and extent review. Staff clarified that this type of review is high-level and primarily focused on ensuring that the project aligns with the county's comprehensive plan. The commission's role is more about confirming that the project does not conflict with the overarching goals of the county, such as supporting agriculture, rather than delving into the specifics of construction logistics or environmental impacts.

It was explained that the technical review, which follows the location and extent review, would be more detailed but would focus specifically on the recreational components of the project. Meanwhile, the project team is required to secure all necessary state, local, and federal permits, which will address issues like environmental impact, water quality, and safety regulations. This means that while the planning commission has limited authority to impose conditions, the project is still subject to stringent oversight from other regulatory bodies.

Several community members and commissioners raised concerns about the impact of the construction on nearby residents, particularly regarding traffic, dust, noise, and air quality. The project representatives acknowledged these concerns and outlined their mitigation strategies. For instance, they emphasized that all project vehicles are equipped with GPS tracking, allowing them to monitor and address any issues related to speeding or unsafe driving practices. Additionally, they committed to using water trucks to control dust on the construction site and employing bag house filters on batch plants to minimize air pollution.

The representatives also addressed concerns about communication with neighboring property owners. While some residents felt they had not been adequately consulted, the project team stated that they had made efforts to engage with the community, including discussing ways to mitigate the impact on local cattle, families, and businesses. They expressed a commitment to continuing these conversations and ensuring that the project proceeds with minimal disruption to the surrounding area.

County Attorney Luckasen provided important context regarding the legal framework governing the review process. The location and extent review is dictated by state law, which limits the county's ability to impose conditions unless they directly relate to ensuring consistency with the county's master plan. This framework is designed to facilitate coordination between public utilities and local governments, ensuring that projects like the reservoir expansion are aligned with local zoning regulations and land

use goals. However, it also means that many of the concerns raised by residents—such as traffic and air quality—are considered private matters that fall outside the scope of the commission's review.

Throughout the discussion, the commissioners expressed a strong alignment with the project's goals, particularly its importance for supporting local agriculture. However, they also emphasized the need for the project team to remain sensitive to the impacts on the local community. Commissioner Chollet, in particular, voiced frustration over the limited ability to impose conditions that could mitigate the impact on surrounding property owners. They urged the project team to uphold the county's values of being good neighbors and caring for the land and community.

In conclusion, while the planning commission recognized the vital role of the reservoir expansion in supporting agriculture, they also highlighted the importance of addressing community concerns. The project team was encouraged to maintain open communication with local residents and to take all necessary steps to minimize the impact of construction on the surrounding area. The discussion reflected a careful balancing act between advancing a critical infrastructure project and ensuring that the rights and well-being of nearby residents are respected.

MOTION

Commissioner Chollet moved that the Planning Commission adopt the following Resolution: BE IT RESOLVED that the Planning Commission approve the North Poudre Irrigation CO - Park Creek Location and Extent, File No. 23-ZONE3669, subject to the following conditions:

1. The applicant must obtain all the applicable building and construction permits including those identified by Larimer County Code Compliance, Larimer County Health and Larimer County Engineering Department, for any county, state, and federal permits, and any required access permits to construct any future uses at this site. This includes but is not limited to Army Corps of Engineers, Colorado State Division of Water Resources, and any other permits identified by referral agencies for this Location and Extent.
2. Technical Review and approval is required for the recreational campground component prior to any construction at the site for the recreational use and prior to applying for building permits for the recreational use.

Commissioner Weiss seconded the motion. Motion carried (8-0).

ITEM NO. 4 – LARIMER COUNTY LAND USE CODE AMENDMENTS, FILE NO. 24-CODE0278

Adoption of the current Larimer County Land Use Code (Code) was on December 7, 2020. This Code is viewed as a living document as land use matters are always evolving and there are continual opportunities to improve County regulations and procedures to align to best practices. As such, there have been numerous amendments to the Code since it was adopted. In many cases, the amendments address errors or omissions that occurred in the transition from the previous code, while other amendments are the result of new procedures or regulations necessary to address an ever-changing framework of land use activities.

This proposal, like many of the previous amendments, includes a variety of changes ranging from very minor changes resulting from errors in the transition from the previous code to more substantive changes focusing on procedures or addressing new uses. Staff believe that Amendments 1-6 are the most substantive of the proposed changes.

Proposed Amendments

- 1) Amend Article 3.0 – Use Regulations, Section 3.4. – Accessory Uses and Structures, Subsection 3.4.7.B – Home Occupations and Subsection 3.4.7.C. – Rural Occupations to require the submittal of a completed and signed registration certificate for the operation of such uses on a residential or rural property.
- 2) Amend Article 3.0 – Use Regulations, Section 3.4. – Accessory Uses and Structures, Subsection 3.4.5.A. – Accessory Living Area to allow accessory living areas as a use by right in all residential zones, unless otherwise specified in said Article 3.4.5.A., also to Amend Tables 3.3 and 3.4 in Subsection 3.2.8. – Tables of Allowed Accessory Uses to correspond with the changes made to Article 3.4.5.A..
- 3) Amend Article 3.0 – Use Regulations, Section 3.4. – Accessory Uses and Structures, Subsection 3.4.5.C. – Extended Family Dwelling by deleting said use, including amendments to delete all references to extended family dwellings found in Article 2.0 – Zoning Districts, Subsection 2.7.2.G.1.b.iv.(b), Article 3.0 – Use Regulations, Tables 3.3 and 3.4 in Subsection 3.2.8. – Table of Allowed Accessory Uses, Article 3.0 – Use Regulations, Subsection 3.3.3.E.- Manufactured Home, and Article 20.0 – Rules of Interpretation and Definitions, Subsection 20.2.7.B. – Accessory Dwelling Unit (ADU).
- 4) Amend Article 20.0 – Rules of Interpretation and Definitions, Subsection 20.3.1. – Definitions, by updating the terms Family and Living Unit to reflect state legislative changes that prohibit the regulation of occupants based upon family relation, also to amend Article 13.0 – Supplemental Regulations for the Estes Valley, Section 13.8. – Definitions by updating the terms Household Living and Household to reflect legislative changes that prohibit the regulation of occupants based upon family relation, and to amend all references in the Land Use Code of where the term family can be replaced by unit (i.e. single-family, multi-family or the like to single-unit, multi-unit, or the like).
- 5) Amend Article 2.0 – Zoning Districts, Subsection 2.9.4.E.3. – Annexed Roads to allow for greater flexibility in setback requirements along major roads inside of an adopted Growth Management Area, and Article 6.7. – Flexibility and Relief Procedures, Subsection 6.7.1.D.4. – Additional Criteria for Modifications to Setbacks from County Road Setbacks.
- 6) Amend Article 20.0 – Rules of Interpretation and Definitions, Section 20.3. – Other Terms Defined to refine the definition of Tiny House on Wheels, Article 20.0 – Rules of Interpretation and Definitions, Section 20.2.2. – Residential Uses by adding Subsection 20.2.2.9. – Dwelling, Tiny Home to define when a tiny home of wheels can be considered a dwelling, Article 3.0 – Use Regulations, Subsections 3.3.3.A – Dwelling Cabin, 3.4.5.A. – Accessory Living Area, and 3.4.5.D. – Farmstead Accessory Dwellings to define where tiny home on wheels on a temporary foundation is allowed or not allowed.
- 7) Amend Article 3.0 – Use Regulations, Section 3.4. – Accessory Uses and Structures, Subsection 3.4.4.I. – Personal Horses and Livestock to remove the term livestock, also to make the same amendments to Article 3.0 – Use Regulations, Tables 3.3 and 3.4 in Subsection 3.2.8. – Table of Allowed Accessory Uses, and Article 20 Rules of Interpretation and Definitions, Subsection 20.2.7.A.9..
- 8) Amend Article 2.0 – Zoning Districts, Section 2.9. – Measurements and Exceptions,

- Subsection 2.9.4.E.3. and Table 2-9: Allowed Setback Encroachments in Subsection 2.9.4.I.4. by changing the term administrative variance to minor modification to conform with the terminology used in Article 6.0 – Review Procedures, Section 6.7. – Flexibility and Relief Procedures, Subsection 6.7.1. – Minor Modifications.
- 9) Amend Article 3.0 – Use Regulations, Section 3.3. – Use-Specific Standards, Subsection 3.3.5.B.2.q.iv. by removing the requirement for a copy of a current registration with the Fire Department.
 - 10) Amend Article 5.0 – Land Division Standards, Section 5.9. – Design Standards, Subsection 5.9.4.C.3. by generalizing who will be the grantee if a conservation easement is used on the residual land in a Rural Land Use Plan (RLUP).
 - 11) Amend Article 2.0 - Zoning Districts, Section 2.9. – Measurements and Exceptions, Table 2-9: Allowed Setback Encroachments in Subsection 2.9.4.I.4. by changing adding allowances for stairs attached to decks to encroach into the required setbacks.
 - 12) Amend Article 3.0 – Use Regulations, Section 3.3. – Use-Specific Standards, Subsection 3.3.3.G. by clarifying that the standard does not apply to agricultural storage buildings and garages.
 - 13) Amend Article 3.0 – Use Regulations, Section 3.3. – Use-Specific Standards, Subsection 3.3.5.B.2.x. by including clarifying language regarding what drivable surfaces can be used to measure amount of length of parking separation from the floodplain.
 - 14) Amend Article 6.0 – Review Procedures, Section 6.4. – Use-Specific Standards, Subsection 6.4.3.C.2. by deleting language stating that a neighborhood referral is not required.
 - 15) Amend Article 8.0 – Signs, Section 8.3. – Standards for Permanent Signs, Subsection 8.3.2.F. by deleting the term pole as it is not applicable.
 - 16) Amend Article 20.0 - Rules of Interpretation and Definitions, Section 20.3 – Other Terms Defined, Definition - Growth Management Area (GMA) by removing the sentence pertaining to Estes Park as there is no longer a GMA for the Town of Estes Park.

With regard to the proposed amendments outlined above, staff believes that such changes to the standards, regulations and procedures will ensure that the intent of the code provision will be achieved as was originally intended.

Development Services Team Recommendation

Staff recommends that the Planning Commission recommend to the Board of County Commissioners approval of the Land Use Code amendments which generally include clarifying the intent and applicability of setbacks and standards, adding and updating various use allowances and use descriptions, and refining processes, procedures, and standards for clarity and ease of use, as found in File No. 24-CODE0278, subject to the following condition:

1. The effective date of the proposed code amendments will be August 12, 2024.

APPLICANTS PRESENTATION

Staff member Lafferty discussed various items that were presented at the previous work session and

invited new commissioners to review them. They suggested focusing on specific items that commissioners were interested in, as many of the items were technical and not substantial. Commissioner Rowe suggested focusing on the home occupation item due to previous lengthy discussions, while Commissioner Chollet requested a brief overview of the home occupation item. Commissioner Duffy asked for a review of the item updating definitions of family and living units for public clarification.

Lafferty explained that the section of the land use code regarding home and rural occupations sets standards for businesses operating in residential areas to prevent them from becoming large commercial operations. The code has included a suggested home occupation certificate, which is a simple one-page form for residents to fill out to ensure compliance with the standards. This certificate aims to inform residents of the standards and confirm that their operations meet them. The goal is to educate residents about what they can do and to document that a business is operating within legal limits. Lafferty mentioned that a code compliance assessment suggested making the certificate a requirement rather than an option to reduce conflicts between neighbors and ensure compliance with county regulations.

Commissioner Chollet asked if there was a cost associated with filing the certificate and if there was a penalty for not filing it. Lafferty clarified that there is no cost for the certificate, and the county is not seeking to charge residents for it. The purpose of the certificate is to have a record of compliance, not to penalize residents.

Commissioner Slutsky raised concerns about the impact on farmers who might supplement their income with businesses that could inadvertently exceed the permitted vehicle trips for home occupations. Lafferty explained that the standards for vehicle trips are already written into the code and that family trips are counted separately from business trips. For rural occupations, which might involve larger equipment, there are accessory rural occupations with different standards that accommodate farming equipment used in daily farm activities.

Commissioner Weiss asked about the enforcement of the home occupation standards and whether there would be consequences for those who have not filled out the form. Lafferty explained that if a resident is operating within the standards but has not filled out the form, they will be asked to complete it, but there will be no penalties if they comply with the limits of the law.

Commissioner Rowe inquired about the frequency of conflicts between neighbors regarding home occupations. Lafferty estimated that such issues occur tens of times a year and emphasized the preference for neighbors to resolve conflicts independently to avoid government intervention. The registration certificate is intended to preemptively address conflicts and reduce the need for code compliance officers to investigate complaints.

Commissioner Eggelston asked about the potential need for additional staff to enforce the registration requirement. Lafferty noted that the registration certificate could reduce staff time spent on resolving conflicts by providing a quick reference for complaints, thus minimizing the need for additional resources.

Lafferty also addressed the item concerning updating the definitions of family and living units. They explained that recent state legislation prohibits regulating the occupancy of dwellings based on familial relationships. The code previously allowed a family plus two unrelated individuals to live in a unit, but this has been updated to allow any number of unrelated people to live together, subject to health and safety standards. The definitions have been updated to align with state statutes and ensure

clarity in the code.

Commissioner Rowe appreciated the clarification and noted that there was no significant controversy around this item. Lafferty concluded by stating that the remaining items in the packet were straightforward, and they were open to answering any questions from the commissioners.

PUBLIC COMMENT

None.

PLANNING COMMISSION DISCUSSION:

Commissioner Rowe expressed concerns about requiring small business owners to fill out additional forms, even if they seem minor individually, as these requirements can become overwhelming when accumulated. They acknowledged feeling uneasy about the potential for government overreach and were wary of the suggestion that there would be no enforcement, expressing skepticism about such assurances. Rowe questioned the necessity of mandating registration unless it was proven to be a significant issue. They highlighted the benefit of reducing false positives, where complaints about home businesses could be quickly addressed if there was documentation showing compliance.

Staff member Lafferty responded, explaining that the purpose of the home occupation registration form is to ensure that individuals running home or rural occupations understand the operational limitations they must adhere to. The form helps the county maintain a record of compliance without proactively inspecting businesses. Lafferty noted that unlike cities, Larimer County cannot license businesses due to state statute limitations, making it challenging to track business activities and compliance.

Amy White, the Code Compliance Supervisor, elaborated on the county's assessment and the potential benefits of registration. They explained that requiring business registration, authorized since 2021, would help track commercial activities, prevent illegal startups, and reduce complaints. The registration would allow departments to collect baseline data, ensuring compliance with various codes and facilitating the resolution of violations. White emphasized that illegal businesses often start small and grow into larger operations, causing neighborhood issues.

Lafferty showed the simple form currently in use, which collects basic information about the business. Commissioner Rowe inquired whether property owners needed to contact multiple departments, and Lafferty clarified that owners should be aware of standards and might need to consult relevant agencies. Commissioner Slutsky asked about how other counties manage similar issues. White noted that most counties are moving towards registration, with some already requiring it.

Commissioner Slutsky mentioned the balance between business activity and family life in rural areas, suggesting a differentiation between small informal activities and more substantial businesses. White explained that complaints often arise from larger operations with significant impacts, like landscaping or construction companies, and that the form would help address these issues more efficiently.

Commissioner Duffy asked about the process of handling complaints and how the form could save time and resources. White and Lafferty explained that having the form could reduce the need for inspections by providing documented compliance. Lafferty mentioned that many issues could persist without the form, leading to ongoing investigations and conflicts.

Commissioner Weiss expressed concern about the form's adequacy and suggested expanding it to gather more detailed information. They also inquired about potential penalties for non-compliance and questioned whether a legal framework could be used to enforce truthful reporting.

Commissioner Slutsky argued against mandatory registration, seeing it as unnecessary regulation and questioning its effectiveness if businesses choose not to comply. They suggested maintaining a voluntary approach to encourage self-regulation and compliance without government intervention.

Commissioner Chollet supported the registration, citing benefits like increased compliance and the ability to respond effectively in emergencies. They highlighted the importance of knowing what activities are occurring in the community and ensuring safety and compliance.

Commissioner Eggelston compared the registration to other systems, expressing concern about potential future regulatory creep and the creation of a "black market" for unregistered businesses. They questioned the necessity of the requirement given the relatively low number of complaints.

Commissioner Rowe acknowledged the potential educational benefits but remained concerned about proactive enforcement and possible misuse. They expressed willingness to support the staff's recommendation if it proved beneficial for education and compliance without overreach.

White reiterated that the intent is not malicious and emphasized the focus on compliance and education. The registration aims to address complaints and ensure operations within limits without unnecessary government interference.

Commissioner Barrack supported the staff's perspective, acknowledging the value the registration brings to the county in terms of resource management and enforcement efficiency.

Commissioner Slutsky remained skeptical, advocating for a voluntary system that allows for education without mandatory registration. They argued that compliance should be based on self-regulation, and voluntary measures could achieve the same outcomes.

Staff member White explained the priority levels in code compliance, focusing on significant neighborhood impacts. They reiterated that voluntary compliance is preferred, with enforcement action only taken when necessary. Commissioner Slutsky moved to recommend maintaining a voluntary approach to registration.

MOTION

Commissioner Duffy moved that the Planning Commission adopt the following Resolution: BE IT RESOLVED that the Planning Commission recommend approval of the Land Use Code amendments which generally include clarifying the intent and applicability of setbacks and standards, adding and updating various use allowances and use descriptions, and refining processes, procedures, and standards for clarity and ease of use, as found in File No. 24-CODE0278, subject to the following conditions 2 through 16. Commissioner Chollet seconded the motion. Motion carried (8-0).

MOTION

Commissioner Duffy moved that the Planning Commission adopt the following Resolution: BE IT RESOLVED that the Planning Commission recommend approval of the Land Use Code amendments which generally include clarifying the intent and applicability of setbacks and standards, adding and

updating various use allowances and use descriptions, and refining processes, procedures, and standards for clarity and ease of use, as found in File No. 24-CODE0278, subject to the following condition: 1. The effective date of the proposed code amendments will be August 12, 2024. Commissioner Chollet seconded the motion. Motion carried (5-3).

ACTION ITEM

ITEM NO. 1 – ELECTION OF THE PLANNING COMMISSION CHAIR, VICE CHAIR, AND SECRETARY

MOTION

Commissioner Duffy moved that the Planning Commission adopt the following Resolution: BE IT RESOLVED that the Planning Commission appoint Commissioner Rowe as the Planning Commission Chair. Commissioner Chollet seconded the motion. Motion carried (8-0).

MOTION

Commissioner Duffy moved that the Planning Commission adopt the following Resolution: BE IT RESOLVED that the Planning Commission appoint Commissioner Chollet as the Planning Commission Vice Chair. Commissioner Barrack seconded the motion. Motion carried (8-0).

MOTION

Commissioner Chollet moved that the Planning Commission adopt the following Resolution: BE IT RESOLVED that the Planning Commission appoint Commissioner Duffy as the Planning Commission Secretary. Commissioner Barrack seconded the motion. Motion carried (8-0).

REPORT FROM STAFF

None.

ADJOURN

With there being no further business, the hearing adjourned at 10: 43 p.m.

These minutes constitute the Resolution of the Larimer County Planning Commission for the recommendations contained herein which are hereby certified to the Larimer County Board of Commissioners.