

**Date:** Wednesday, October 20, 2021  
**Time:** 6:00 PM  
**Location:** Hybrid: In-Person, Hearing Room, 1st Floor, 200 West Oak Street, Fort Collins or Virtual, Zoom link - [https://larimer-org.zoom.us/webinar/register/WN\\_YrAGG1whSeek3wN90Abwmw](https://larimer-org.zoom.us/webinar/register/WN_YrAGG1whSeek3wN90Abwmw)

## PLANNING COMMISSION MEETING MINUTES

The Larimer County Planning Commission met in a session on Wednesday, October 20, 2021, at 6:00 p.m. in the Hearing Room as well as virtual video. Commissioners Anne Best-Johnson and Sean Dougherty attended virtually. Commissioners John Barnett, Nancy Wallace, Jordana Barrack, Patrick Rowe, and Bob Choate physically attended with Commissioner John Barnett presiding as Chairman. The Larimer County staff that physically attended were Lesli Ellis, Community Development Director; Don Threewitt, Planning Manager; Matt Lafferty, Principal Planner; Jenn Cram, Planner II; Frank Haug, Assistant County Attorney II; Christina Scrutchins, Recording Secretary. No one attended virtually.

### **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 SEPTEMBER 15, 2021, PLANNING COMMISSION HEARING**

*MOTION by Commissioner Choate to approve the minutes.*

*Commissioner Wallace seconded the motion.*

*This received unanimous voice approval.*

*Motion passed 7-0*

### **APPROVAL OF THE MINUTES FROM THE SEPTEMBER 22, 2021, PLANNING COMMISSION HEARING**

*MOTION by Commissioner Choate to approve the minutes.*

*Commissioner Wallace seconded the motion.*

*This received unanimous voice approval.*

*Motion passed 7-0*

### **AMMENDMENTS TO THE AGENDA**

None.

## **DISCUSSION ITEMS**

### **ITEM #1 – LAND USE CODE AMENDMENTS TO REPEAL AND REPLACE ARTICLE 10.0. AREAS AND ACTIVITIES OF STATE INTEREST (1041 REGULATIONS) AND AMEND RELATED SECTION 6.4.4. LOCATION AND EXTENT, SECTION 6.7.2. PROCEDURES, AND SECTION 20.3. DEFINITIONS TO ALIGN WITH THE CHANGES IN ARTICLE 10, FILE NO. 21-CODE0260**

Ms. Ellis gave a brief presentation regarding the request to repeal and replace Article 10, Areas and Activities of State Interest, of the Land Use Code, and amend related Sec. 6.4.4, Location and Extent, Sec. 6.7.2 Procedures, and Sec. 20.3, Definitions to align with the changes in Article 10. Project Goals for Updating the 1041 Regulations - As staff and consultants have worked with the community and boards to update the 1041 regulations, these goals have helped to frame the proposed amendments. The goals have been to 1. Revise the regulations to include appropriate Activities and Areas for which the 1041 process is the best tool for Larimer County, 2. Update the Activity/Area review criteria as needed to ensure a comprehensive application review to address environmental, community, and financial issues, 3. Comply with statutory parameters, 4. Integrate best practices for best outcomes, and 5. Clarify how Larimer County addresses post-permitting issues, such as financial guarantees. Ensuring that stakeholders and the community had an opportunity to participate was also important during the process. The Process started in Spring 2021 and incorporated input from Board of County Commissioners and Planning Commission. Information and background were shared on the webpage, including previous discussion drafts, and a public hearing draft. The following events were held to seek comments: PC/BCC Work Sessions, Virtual Public Open Houses, Written comments received through Sept. 10, ESAB discussed and provided comments, PC Work Session, and OLAB discussed. Public comments gave helpful input as well as asked for clarity of terms/language and applicability, and insights on specific interests, concerns or projects. Some comments were contradictory to work session feedback and statutory requirements and different ideas on changes or improvements. Along with public comments the City of Fort Collins, City of Thornton Environmental Science Advisory Board (ESAB), Save Rural NoCo, Tri-Districts, Individuals, County Departments: Natural Resources, Engineering, and Health. 1041 Regulations are delegated powers from the State of Colorado to local jurisdictions to regulate specific geographically defined areas or specific types of activities of state interest where the impacts and benefits may extend beyond one county and therefore are subject to state oversight.

Elizabeth Garvin, with Clarion Associates, gave a presentation regarding the draft of the Land Use Code Amendments to Repeal and Replace Article 10.0. Areas And Activities of State Interest (1041 Regulations) And Amend Related Section 6.4.4. Location And Extent, Section 6.7.2. Procedures, And Section 20.3. Definitions To Align with The Changes in Article 10. Sec. 10.1 - Includes expanded purpose and intent statements. 10.2 - Clarifies applicability. Sec. 10.3 – Clarifies and expands specific Activities and Areas including: Modified definition of pipelines, adds highways and interchanges, collector highways and new communities, adds certain areas mapped by state: natural resources, historical or archaeological. Secs. 10.4 and 10.5 - Clarifies exemptions and process for establishing matters. Sec. 10.6 – Clarifies relationship to state and federal process. Sec. 10.7 – Clarifies and expands review criteria and submission requirements by specific Activity or Area. Sec. 10.8 – Expands permit application and review process and clarifies timelines (statutorily defined). Sec. 10.9 – Expands generally applicable review criteria from 12 to many more specific criteria addressing impacts to: Property rights, environment and natural resources, hazardous materials, public safety, adequate public facilities and services, local economy, recreation opportunities, etc. Sec. 10.10 – Expands specific review criteria for: Power plants, highways/collector highways, water, and sewer projects and for Areas, including historical and archaeological, natural resource areas. Sec. 10.11 – Adds new financial guarantees. Secs. 10.12 to 15 – Expands on term of permit, post approval requirements, technical revisions, and permit administration and enforcement. Changes from Draft two include the following: Refined purposes to include climate change goals Updated Activities: retained new arterials/collectors/intersections, fine-tuned applicability, and definitions, added new communities, fine-tuned applicability, refined easement measurement instructions, water/sewer transmission line activity, and definition of appurtenant facilities. Updated Areas: Removed natural hazards (geological and floodplains) and areas of visual/recreational significance pending future mapping and updated general and specific review criteria to include site-specific hazard, visual, and recreation review for individual projects. Clarified applicability criteria for 1041 Permit application requirement. Reviewed and confirmed statutory time limits for application process. Incorporated new and revised designation and review criteria for: climate change, flood hazard, fire risk, wildlife harm air and water quality, ecosystem stability, and impact mitigation.

Added review criteria for new community applications. Refined post-permit financial guarantee and terms of permit language for clarity. Revised definitions to reflect use of terms in Larimer County and remove redundant terms. The definition of New Community is an establishment of an urbanized growth center consisting of 100 homes or more with supportive commercial and other services in unincorporated areas outside of established growth management areas.

Ms. Ellis explained the New Community activity with regard to the Comprehensive Plan and Code regarding Growth Management Areas, Zoning (rural and larger lot sizes outside GMAs), Adequate public facilities requirements, and Subdivision standards (conservation development) - Sec. 5.4.6.C - Special Area Plan for Large and Contiguous Clusters.

Mr. Lafferty stated that the New Community was intended for large scale developments.

Commissioner Choate asked if adding in the 1041 option make it feasible to create a large development in a rural area?

Mr. Lafferty stated that it's possible but rare.

Commissioner Choate asked if the Comprehensive Plan discourages 1041 projects outside the GMA.

Mr. Lafferty confirmed that the Comprehensive Plan discourages 1041 projects outside the GMA.

Chair Barnett thought that if a 1041 project was submitted outside of the GMA, then the Comprehensive Plan would need to be appealed and does not see it possible to be approved.

Ms. Ellis closed the presentation with additional comments, Development Services Team Recommendations, and the suggested motion.

### **PLANNING COMMISSION COMMENTS**

Chair Barnett asked how the comments received by the jurisdictions are being addressed?

Ms. Garvin stated all comments were reviewed, vetted, and changed in a way where staff and the consultant believed the draft given to the Planning Commission that is in line with what the County finds appropriate for a 1041 project.

Mr. Haug stated the County's goal is for the Planning Commission and the Board of County Commission to have the option to approve or deny 1041 projects based on what is submitted as well as comments made by the public and jurisdictions.

Chair Barnett wanted staff to speak to the comment made by Save Rural Northern Colorado regarding waste disposal activities not being regulated under the 1041 proposed regulations.

Ms. Ellis stated the Board of County Commissioners gave direction to not include Solid Waste Facilities as part of the activities that would be regulated during the 1041 regulations during a previous work session.

Mr. Haug added that all Solid Waste Facilities are regulated under a separate system where they obtain a Certificate of Designation from the State and the County.

Commissioner Wallace asked if Larimer County has been reviewing the State regulations that would apply and if there is a way to determine if the Solid Waste Facilities have the same review structure?

Mr. Haug stated the Solid Waste Facility regulations are very thorough where the Certificate of Determination is an involved process.

Commissioner Best-Johnson asked if Section 10.15.3 – Transfer of Permit is a consistent provision in other Land

Use permits in the code or just specifically to 1041 permits?

Ms. Garvin confirmed that Section 10.15.3 – Transfer of Permit is specifically for 1041 permits.

Mr. Haug gave an example that if a property owner wanted to transfer a large facility to a new owner, the new owner would have to demonstrate that they can operate the large facility according to the original approved project.

Commissioner Best-Johnson asked if an approval of a 1041 permit is appropriate instead of an approval of a Development Agreement or the bonding capabilities that would provide assurance to Larimer County residents that the new owner has the capability to operate the facility? She feels uncomfortable that there isn't a transparent process of what would give a reason to deny a transfer.

Ms. Garvin stated that the goal for Section 10.15.3 – Transfer of Permit, was for the transferee not to have to apply for a permit and is written so the Commission shall ensure that the transferee can comply with all requirements terms, and conditions contained in a 1041 permit.

Commissioner Best-Johnson recommended that the language for Section 10.15.3 – Transfer of Permit should clarify that there is a process and that the transferee does not need to apply for a new 1041 permit but shall demonstrate that they can operate the large facility according to the original approved 1041 permit.

Commissioner Choate would like clarification regarding Section 10.15.3.

Commissioner Best-Johnson agreed with Commissioner Choate in thinking that Section 10.15.2 does not read clearly.

#### **PUBLIC COMMENT**

None.

#### **PLANNING COMMISSION DISCUSSION**

Commissioner Choate asked if the intent regarding Section 10.15.3 is that after three years any future transferees will have to comply with specific standards?

Mr. Haug stated the intent is to make sure that a project is completed within a certain time frame following with specific Development Agreements and it continues to be managed and operated based on the project's original permit.

#### **MOTION**

*Commissioner Choate moved that the Planning Commission amend Sec. 10.15.3, Transfer of Permits to read as followed: A permit may be transferred only with the written consent of the County Commissioners, which shall not be unreasonably withheld. The County Commissions shall ensure, in approving any the transfer, that the proposed transferee can and will comply with all the requirements terms, and conditions contained in the permit. and LUC; and that an adequate guarantee of financial security can be made.*

*Commissioner Best-Johnson seconded the motion.*

#### **PLANNING COMMISSION DISCUSSION**

The Planning Commission commented that the changes are recommended because existing draft language included too much subjectivity and discretion that might lead to county overreach and implied the need to start over and apply for a new permit, which wasn't the intent with this section.

After extensive discussion Commissioner Choate withdrew the following motion: *The Planning Commission*

*amend Sec. 10.15.3, Transfer of Permits to read as followed: A permit may be transferred only with the written consent of the County Commissioners, which shall not be unreasonably withheld. The County Commissions shall ensure, in approving any the transfer, that the proposed transferee can and will comply with all the requirements terms, and conditions contained in the permit. and LUC; and that an adequate guarantee of financial security can be made.*

### **VOTE**

*Commissioner Best-Johnson, Dougherty, Choate, Wallace, Rowe, Barrack, and Chair Barnett voted in favor of the motion.*

*Motion passed 7-0*

### **PLANNING COMMISSION DISCUSSION**

The Planning Commission discussed that including the sections on new communities because it is not necessary, it might give developers the wrong idea that they could apply for a new community outside the regular subdivision, and county supports new communities, and might conflict with the comprehensive plan and policies.

Additionally, the Planning Commission discussed the language regarding “not adversely affecting water quality or water rights of any upstream, downstream, or agricultural users...” in Sec. 10.3.1.J could conflict with responsibilities of the Water Court and should be removed if this section on New Communities stays in the 1041 regulations. Other language to that affect had been removed in the third draft.

### **MOTION**

*Commissioner Wallace moved that the Planning Commission remove Subsection 10.3.1.M. and Subsection 10.10.8 regarding upstream, downstream.*

*Commissioner Choate seconded the motion.*

### **VOTE**

*Commissioner Dougherty, Rowe, Barrack, Choate, Wallace, Best-Johnson, and Chair Barnett voted in favor of the motion.*

*Motion passed 7-0*

### **PLANNING COMMISSION DISCUSSION**

The Planning Commission discussed that the language may encourage inefficiencies and may have unintended consequences. The committee wanted to allow for increases in design capacity, as long as it doesn't create more impacts.

### **MOTION**

*Commissioner Choate moved that the Planning Commission amend Section 10.4.2.D. Specific Ongoing Operations and Maintenance to read the following: 1. Replacement of an existing water diversion structure can be made in a manner that does not create new flood or navigation hazards. 2. Operation, maintenance, repair and replacement of existing water and sewage collection, treatment, storage and delivery facilities and associated works, provided that improvements or replacements of existing facilities do not materially alter the location of the existing facility, including any outfalls or effluent discharge points.*

### **VOTE**

*Commissioner Rowe, Choate, Barrack, Dougherty, Best-Johnson, and Chair Barnett voted in favor of the motion.*

*Commissioner Wallace voted in opposition of the motion.*

*Motion passed 6-1*

### **PLANNING COMMISSION DISCUSSION**

The Planning Commission discussed this being problematic in the criteria section in terms of timing but want to ensure that applicants obtain all necessary permits and rights and moving it within the regulations achieves that objective.

### **MOTION**

*Commissioner Choate moved that the Planning Commission Remove Section 10.9.1.A. from Section 10.9.1. - Review Criteria for Approval of all 1041 Permits and add it to Section 10.13.1. – Permits.*

*Commissioner Wallace seconded the motion.*

### **VOTE**

*Commissioner Barrack, Rowe, Wallace, Best-Johnson, Dougherty, Choate, and Chair Barnett voted in favor of the motion.*

*Motion passed 7-0*

### **PLANNING COMMISSION DISCUSSION**

The Planning Commission discussed to remove the word “most” in Section 10.10.4.E as it seems to be unnecessary language.

### **MOTION**

*Commissioner Choate moved that the Planning Commission amend Section 10.10.4.E to read the following: The project emphasizes the efficient use of water, including, to the extent permissible under existing law, the recycling, reuse, and conservation of water and will be consistent with any applicable Water Conservation Plan.*

*Commissioner Dougherty seconded the motion.*

### **VOTE**

*Commissioner Choate, Wallace, Dougherty, Barrack, Best-Johnson, Rowe, and Chair Barnett voted in favor of the motion.*

*Motion passed 7-0*

### **PLANNING COMMISSION DISCUSSION**

The Planning Commission questioned if the intent was to retroactively apply the regulations with the draft language and suggested this clarification. There was some discussion about also adding the word “process” at the end of the clause, after application.

### **MOTION**

*Commissioner Wallace moved that the Planning Commission amend Section 10.15.2.B. – Permit Suspension or Revocation to read the following: The County may revoke a 1041 permit if any of the activities conducted by*

*the permittee violates any of the conditions of the permit or these regulations in effect at the time of approval of the permit, or the County determines that the project as constructed or operated the applicant willfully failed to report impacts in the application. The County Commissioners shall hold a public hearing prior to acting on a revocation request.*

*Commissioner Choate seconded the motion.*

### **VOTE**

*Commissioner Best-Johnson, Wallace, Dougherty, Choate, Rowe, Barrack, and Chair Barnett voted in favor of the motion.*

*Motion passed 7-0*

### **PLANNING COMMISSION DISCUSSION**

The Planning Commission discussed to remove the word “without” and add language to Section 10.15.4 – Inspection.

### **MOTION 7**

*Commissioner Choate moved that the Planning Commission amend Section 10.15.4. – Inspection to read the following: Any permit issued pursuant to this article shall be deemed to include the granting of the permit holder's consent to entry and inspections by the County Commissioners and authorized representatives as may be necessary at any time during regular county business hours, with reasonable prior notice to the permittee except in the instance of an emergency, to determine compliance with the terms of the permit.*

*Commissioner Dougherty seconded the motion.*

### **VOTE**

*Commissioner Barrack, Choate, Wallace, Best-Johnson, Dougherty, and Chair Barnett voted in favor of the motion.*

*Motion passed 7-0*

### **MOTION FINAL**

*Commissioner Wallace moved that the Planning Commission adopt the following Resolution:*

*BE IT RESOLVED that the Planning Commission recommend to the Board of County Commissioners approval of the request to repeal and replace Article 10, Areas and Activities of State Interest (1041 Regulations, File #21-CODE0260), and minor amendments in Sec. 6.4.4., Sec. 6.7.2.B.2.a., and definitions in Sec. 20.3., except as modified by motion approval at this hearing, as detailed in the staff report and shown in Attachments A and B, and as recommended by Community Development Department staff.*

*Commissioner Choate seconded the motion.*

### **PLANNING COMMISSION DISCUSSION**

The Planning Commission gave thanks to staff and Clarion on the project and to commenters. They also asked for staff to please look into definition of the water transmission system to help clarify the types of pipelines.

### **VOTE**

*Commissioner Wallace, Dougherty, Choate, Best-Johnson, Barrack, Rowe, and Chair Barnett voted in favor of the motion.*

*Motion passed 7-0*

### **REPORT FROM STAFF**

Ms. Ellis gave information to the Planning Commission that the Board of County Commissioners approved the Land Use Codes on September 27, 2021, regarding the Estes Park campground, RV and parking standards. On October 25, 2021, the Board of County Commissioner will be reviewing the Housing and Urban Agriculture section of the Land Use Code. On November 15, 2021, the Board of County Commissioners will be reviewing the 1041 Regulations. Ms. Ellis also wanted to inform the Planning Commission that the Board of County Commission would like to celebrate all the success the year of 2021 has completed.

The Planning Commission and staff discussed that the hearings would continue to be in person and virtual.

### **ADJOURN**

With there being no further business, the hearing adjourned at 8:20 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.