

**Date:** Wednesday, July 21, 2021  
**Time:** 6:00 PM  
**Location:** Hearing Room, 1st Floor, 200 West Oak Street, Fort Collins

### PLANNING COMMISSION MEETING MINUTES

The Larimer County Planning Commission met on Wednesday, July 21, 2021, at 6:00 p.m. in the Hearing Room as well as virtually. Commissioners Bob Choate, John Barnett, Nancy Wallace, Anne Best-Johnson, Sean Dougherty, Jordana Barrack, and Patrick Rowe attended in person. Commissioners Abbey Pontius and Gary Green virtually attended with Commissioner Choate presiding as Chairman. The Larimer County staff in attendance were Leslie Ellis, Community Development Director; Matt Lafferty, Principal Planner; Matt Sura, Consulting Attorney; Lea Schneider, Environmental Health Planner; Frank Haug Assistant County Attorney II, Don Threewitt, Planning Manager, Amy White, Code Compliance Supervisor; Jenn Cram, Planner II, and Christina Scrutchins, Recording Secretary.

#### **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 JUNE 16, 2021, PLANNING COMMISSION HEARING**

*MOTION by Commissioner Dougherty to approve the minutes.*

*Commissioner Wallace seconded the motion.*

*This received unanimous voice approval.*

*Motion passed 9-0*

#### **AMENDMENTS TO THE AGENDA**

None.

#### **DISCUSSION ITEMS**

##### **ITEM #1 – AMENDMENTS TO ARTICLES 11.0. OIL AND GAS FACILITIES, 2.9.4. SETBACKS, AND 3.2. TABLES OF ALLOWED USES OF THE LARIMER COUNTY LAND USE CODE, FILE NO. 21-CODE0255:**

Mr. Lafferty gave a presentation regarding the request to amend the Larimer County Land Use Code by 1. Repealing and replacing Article 11.0. Oil and Gas Facilities, 2. Amending Article 2.9.4. Setbacks to add reciprocal setback provisions related to oil and gas facilities, and 3. Amending the table of allowed uses in Article 3.2.6. Table of Allowed Principle Uses (Rural) and Article 3.2.7. Table of Allowed Uses – (Urban) to eliminate oil and gas facilities from certain zone districts to align with the proposed Article 11.0. Oil and Gas Facilities regulations. The County, in February 2021, began the process of updating the current oil and gas regulations to align with, or exceed, those of the state. Since February, the county staff conducted five virtual public open houses and County Commission and Planning Commission work sessions to obtain public and Commissioners input on suggested changes. From the activities, meetings, and written comments received from the public, industry, special interest groups, Boards and Commissions, and others, the county staff and consultant, have derived proposed amendments to the current oil and gas regulations that we believe react to comments received. Mr. Lafferty closed his presentation with additional comments and the Development Services Team Recommendations.

Mr. Sura gave a presentation regarding the Larimer County Oil and Gas Regulation Amendments. The presentation was divided into five different sections: 1) The goals of the code amendment process. 2) Senate Bill 19-181. 3) Background on oil and gas development and landowner rights. 4) Areas that have been the focus of the amendment process – a) Avoiding impacts throughout location requirements, b) Minimizing impacts through protective standards, c) Mitigating impacts through monitoring and enforcement, 5) Your questions and direction on the draft regulations.

1) Project Objectives and Goals: The goal is to accomplish the project in a manner that protects the public's health, safety, welfare, environment, and wildlife resources. The objective of the oil and gas code amendments is to prepare oil and gas regulations that exceed or align with the recently adopted Colorado Oil and Gas Conservation Commission regulations.

2) Senate Bill 19-181: The bill was signed into law on April 16, 2019, allowing local governments explicit authority over oil and gas development and ends state preemption giving local governments authority over oil and gas development. The bill also reforms the COGCC Mission to protect public health and environment.

3) Background on oil and gas development and landowner rights: Images of the COGCC maps were presented showing the current oil and gas wells along with the 2019 oil and gas productions annual oil sales and annual Nat. gas sales.

4) Areas that have been the focus of the amendment process: Pre-Production includes well pad construction, building infrastructure, drilling, fracking (completions), and flowback/early production. The process of drilling a vertical and lateral hole, with a time frame from three weeks to six months, is to drill down 7,000-ft and then drill horizontally up to 3 miles. Fracking includes a mixture of water, sand, and chemicals pumped into the well at high pressure to open fractures and hold them open. Emissions, caused by gas-fired engines, create pollution such as NOx and PM by high pressure required to inject the chemical mixture into the well. Flowback/early production includes natural gas compressed and transported through pipelines; Oil stored in tanks on-site and then trucked away or transported through pipeline; and flowback/production water includes chemicals, sand and water that was originally injected, and can be trucked away or transported through pipeline. The 2019 Risk Assessment Health effects list the modeled risks of negative short-term health effects and showed low long-term health risks. A regulatory analysis in comparison of the oil and gas regulations throughout other local jurisdictions. The Special Review 6.4.2. process will continue as it is currently listed in the Land Use Code allowing the Planning Commission and the County Commission to approve with conditions or deny the application in accordance with the approval criteria in 6.4.2.D, Review Criteria. Due to comments received by the public and the Commissioners, it was brought to the county staff attention that the Special Review process was not appropriate for all Oil and Gas applications. A Special Administrative Review process would be more appropriate for a Seismic Survey Operation Permit's and Oil and Gas Pipeline Permit's. The best way to protect health safety and welfare and the environment is to find a good location and siting regulations. Mr. Sura explained more in detail the siting regulations through zoning, alternative location analysis, and setbacks. Landowner rights in oil and gas development were listed as followed:

- Landowners historically did not have the right to say no to oil and gas development on their property.
- COGCC rules allow operators to "bond on" by posting a \$2,000 surface owner damage bond and to drill without a surface use agreement.
- Until the recent mission change rulemaking, operator was granted up to 20 location per section in the GWA, and mineral owner also did not have the right to say no. If an operator was able to lease up to 40% of the materials it could "force pool" the remaining mineral owners.
- The COGCC and local governments allow the landowner to "waive" setbacks so they can place oil and as development closer to their own homes.
- Waiving setbacks allows landowners flexibility to allow oil and gas facilities closer to their own home by outside their pivot irrigation.
- Staff is proposing to require new plate to state if there is an oil and gas facility within 1,000-ft of a property. This gives notice to potential homeowners of the oil and gas facility.

The new protected standards, changes to regulations to avoid or minimize impacts to public health, safety,

welfare, and the environment, were also explained in detail and listed as followed: 11.2.9 – Application to existing facilities, 11.3.3 – Air quality, 11.3.4 – Leak Detection and Repair, 11.3.5 – Odors, 11.3.6 – Water Quality, 11.3.8 – Risk Management, 11.3.9 – Accident Reporting, 11.3.10 – Spills and Releases, 11.3.11 – Noise, 11.3.12 – Dust, 11.3.13 – Access, 11.3.14 – Wildlife, 11.3.25 – Financial Assurance, 11.5 – Enforcement and Inspections, 11.2.6 – Technical Expert Review, and 11.6 – Fees. Mr. Sura ending his presentation with 11.2.4 – Oil and Gas Application Review Criteria and closing comments.

### **PLANNING COMMISSION RECESS**

The meeting was recessed at 7:00 pm and reconvened at 7:06 pm.

### **PLANNING COMMISSION COMMENTS**

Commissioner Dougherty asked if Larimer County will be requiring an Oil and Gas Operators to purchase easements?

Mr. Sura stated in order for surrounding property owners are involved and can make sure there is an adequate amount of buffer, Larimer County will be requiring an oil and gas purchase easements.

Commissioner Dougherty asked if the applicants' location for an oil and gas facility is not affecting the surrounding neighbors with reverse setbacks then would the applicant be required to purchase an oil and gas easement?

Mr. Sura stated that the applicant would not be required to purchase an oil and gas easement if the applicants' location for the oil and gas process is not affecting the surrounding neighbors with reverse setbacks

Commissioner Dougherty asked if a homeowner would be allowed to build new home on an property that has existing oil and gas facility located on it?

Mr. Sura stated that the applicant would not be required to purchase an oil and gas easement if the applicants' location for the oil and gas process is not affecting the surrounding neighbors with reverse setbacks

Mr. Sura stated the 1,000-ft setback may be waived by the affected property owner within the first three years of the oil and gas production phase for a home to be built, but no certificate of occupancy will be issued until the three years production phase has be completed.

Commissioner Dougherty wanted clarification in section 11.3.6 – Water quality testing is it stating half-mile from the working pad or from the property line.

Mr. Sura clarified the water testing is stating half-mile from the working pad surface.

Commissioner Dougherty express his concern regarding section 11.5.2 – Right to enter. In case of an emergency, he feels County inspections should not occur without Operator present.

Mr. Haug stated in section 11.5.2 – Right to enter does state County inspections may occur without Operator present. However, unless urgent circumstances exist, the County will use best efforts to give four (4) hours prior notice to the Operator's contact person at the telephone number on file.

Commissioner Dougherty asked if there are any locations within residential zone districts that could host an oil and gas facilities.

Mr. Sura stated yes, there will be few locations that will be easily obtainable.

Commissioner Dougherty asked if there is an oil and gas map only for Larimer County?

Mr. Lafferty explained he sent a Larimer County oil and gas map in the addendum packet.

Commissioner Barnett asked what an existing oil and gas well facility needs to do if modifications are made?

Mr. Haug stated in section 11.2.9.A – Application to existing facilities any modification of oil and gas operations or facilities that the Director determines to be substantial requires a separate Special Review Application. The replacement of existing equipment, installation of emission control equipment, and the addition of equipment to fulfill mandated regulatory requirements are exempt.

Commissioner Best-Johnson wanted to clarify that the slide in Mr. Sura's presentation, regarding the Landowner Rights in Oil & Gas Development, is based on old technology and not how the oil and gas process is conducted now.

Mr. Sura confirmed Commissioner Best-Johnson's clarification that the slide in Mr. Sura's presentation, regarding the Landowner Rights in Oil & Gas Development, is based on old technology and not how the oil and gas process is conducted now.

Commissioner Best-Johnson asked what the "C" stand for in within section 11.3.11 – Noise?

Mr. Sura explained the C stands for "C" scale noise. A "C" scale noise would be more of a pressure noise where you would feel the noise in your chest.

Commissioner Best-Johnson asked if the limit of 60 db(C) required by Colorado Oil and Gas Conservation Commission has adopted or is it a discussion at this time?

Mr. Sura stated the limit is 60 db(C) during the night and 65 db(C) during the day.

Commissioner Best-Johnson wanted confirmation that Larimer County is only allowing 60 db(C) during the night and day.

Mr. Sura confirmed that Larimer County is only allowing 60 db(C) during the night and day.

Commissioner Best-Johnson wanted an example of what 60 db(C) is equivalent to.

Mr. Sura didn't have an example at the time.

Commissioner Best-Johnson asked if there is a time limit associated for the noise monitoring?

Mr. Sura explained the noise monitoring will be during the preproduction phase.

Commissioner Best-Johnson asked if the operators notified regarding the potential changes to the Land Use Code?

Mr. Lafferty stated the operators were included within notification requirements.

Commissioner Barrack asked if 13 months is a standard time frame to receive a warning letter after an inspection is completed by the state?

Ms. Schneider was not familiar with the state's inspection process but did explain that the county will send a report following with imminent follow ups.

Commissioner Barrack asked if the county has adequate resources to maintain air quality monitoring?

Ms. Schneider stated the county is relying on the state to start the process with the Air Pollution Control department.

Commissioner Barrack wanted to know the thought process of the County's Natural Resource team regarding

## Public Conservation Plans.

Mr. Sura explained more in detail that the County is a more appropriate location then downtown Loveland or downtown Fort Collins. The county doesn't want to see public lands be harmed in any way but there could be a reason for off site mitigation.

Chairman Choate asked that off-site mitigation couldn't happen unless the lead agency authorized it by an agreement?

Mr. Sura stated that it depends when it was put into trust and if there was a preexisting lease but the requirements that would be put into place would have more control and protection over any conservation easement.

Mr. Lafferty gave an example to help explain how an adjacent property would be more appropriate on a natural resource property to protect another resource.

Commissioner Rowe wanted to voice his concern that he wanted to make sure that the County is not preventing groups from reinvesting and upgrading the technology.

Mr. Sura stated the county is open to any ideas and did state the code has illustrations on what would be allowed.

Commissioner Rowe asked for clarification regarding the financial assurance.

Mr. Sura stated it is still in discussion.

Commissioner Rowe asked if there is a map that shows where the oil and gas activity could still occur?

Mr. Sura stated there isn't a map that shows where the oil and gas activity could still occur but has tried to retain flexibility for alternate locations.

Commissioner Rowe asked who will oversee assigning the fees for the projects?

Mr. Haug stated the fees will be overseen by the county staff and then brought forth to the Board of County Commissioners.

Commissioner Dougherty asked if the purchased easement time sensitive or will they be permanent?

Mr. Sura explained that once an Oil and Gas facility is closed and abandoned then the purchased easement will no longer be in effect.

Chairman Choate wanted to voice that he feels it would be beneficial to the public and the Commissioners to have access to a map that shows what areas are no longer accessible for the oil and gas development for mineral owners.

Mr. Sura stated that they will compose a map to be available to the public and the Board of County Commissioners.

## **PUBLIC COMMENT**

**In-person Commenters:** Chris Colclasure (Receiving), Randy Evans (donated to Chris C.), Cameron Gracey (donated to Chris C.), Ed Behan, Trisha Fanning (Receiving), Bill Ward (donating to Trisha F.), Tom Hoehn, Janett Juell, Sandy Harem, Bradley Tidd, Emily Gallichotte (Receiving), Lori Brunswig (Donating to Emily G.), Bruce Bowman, Scott Koskie, Chris Nelson, Dave Cordle, Doug Henderson (Receiving), Janice Lynne (Donating to Doug H.), and Tim Gosar (Receiving), Susan Quinnell (Donating to Tim Gosar).

**Virtual Commenters:** Charles Kopp, Mary Bedosky, Karen Artell, Gayla Martinez, Rich Coolidge, Ted Walkup,

Rick Casey, Rutilio Martinez, Nancy York, Lynn Granger, Andrew Forkes-Gundmundson, Deb Bjork, David Austin, Jay Young, Michael Blehm, and Nadine Jung.

- Wellington operators received a decline for any meetings and to submit comments in writing
- Rules are vague regarding what types of modification will be reviewed.
- Rules exceed the County's authority.
- Financial Assurance rules
- Rules violate State Statute
- Air Quality Network
- Canister censor
- Deadlines being changed
- Provisions not included in draft
- Ignoring the benefits of oil and gas
- Staff taking over Commissioners rights
- Prevent operator's from upgrading facilities and technology
- Losing tax revenue
- Rules are pushing oil and gas residents and businesses away.
- Feel the Commissioners are Hypocritical
- Taking away jobs from the community
- Public Health
- Impact property value
- Environmental impact
- Fracking
- Impact to Wildlife
- Oil and Gas spills
- Impact in economic value
- Takes away mineral owners' rights
- Water Use and possible water extinction
- Reduction in gravel pit revenue
- Public feel powerless
- Moving regulations too fast
- Public safety not protected
- Needs faster or real time air quality monitoring
- Setbacks be reevaluated
- Public conservation lands
- Error and omissions insurance
- Location restrictions
- Public comments have been ignored.

Commissioner Dougherty asked if Ms. Gallichotte has reports that oil pads are being sited on poor operated areas?

Ms. Gallichotte did not have the reports with her at the time but stated she would get them to the Planning Commission.

Chairman Choate asked what the errors in omission insurance coverage insure?

Mr. Gosar stated any errors, mistakes, or accidents that occur.

### **PLANNING COMMISSION RECESS**

The meeting was recessed at 8:43 pm and reconvened at 8:53 pm.

### **PLANNING COMMISSION COMMENTS**

Commissioner Dougherty asked if the state has a fund and whom monitors the amount that would be used for the oil and gas facility pad clean up?

Mr. Sura and Mr. Haug explained more in detail and stated there is information in the draft to reflect the oils and gas facility pad cleanup.

Commissioner Rowe asked if there is a way to real time monitor the air quality?

Ms. Schneider stated that as of May 2021 the state requires, for new drilling, continuous monitoring ten days before the drilling on ambient air quality monitoring, through the well completion phase, early production phases, and then the remaining production. The reports are then reported monthly by Larimer County. The County does want to have real time monitoring to the public would have to be brought and discussed to the Board of County Commissioners. (Lea should clarify last sentence as it need to be clearer what was said or implied)

Commissioner Rowe wanted clarification regarding public opportunity to give comment.

Mr. Haug stated the County felt written comments or public open public forms for everyone to have the same information.

Commissioner Rowe asked how the Oil and Gas open houses had been conducted?

Mr. Lafferty explained in detail that the County conducted five virtual open houses.

Chairman Choate asked if the County has the authority to veto the surface owner?

Mr. Haug stated there are other agreements that could be used to give an oil and gas company's a legal right to be on a property.

### **PLANNING COMMISSION DISCUSSION**

Commissioner Best-Johnson, Wallace, Dougherty, Rower, Barrack, and Chairman Choate gave closing comments in favor and in opposition. (what were their general thoughts?)

Mr. Sura and Mr. Lafferty addressed in detail the Commissioner closing comments.

### **MOTION**

*Commissioner Wallace 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 approve the Land Use Code amendments by removing and replacing to Article 11.0. Oil and Gas Facilities, adding language regarding reciprocal setbacks to Article 2.9.4. Setbacks, and removing use allowances for oil and gas facilities in specific zone districts delineated in the Use Tables (urban and rural) in Article 3.0 as noted in 11.3.2. Location Restrictions of the proposed Article 11.0 amendments, as found in File #21-CODE0255 – Oil and Gas Regulations Code Amendments, subject to the following the effective date of the regulations will be September 15, 2021 and review the minutes from the Planning Commission hearing on July 21, 2021.*

*Commissioner Barnett seconded the motion.*

*Commissioner Barrack, Wallace, Barnett, Rowe, and Chairman Choate voted in favor of the motion.*

*Commissioner Dougherty, Best-Johnson, and Green voted in opposition of the motion.*

*Motion passed 6-3.*

### **PLANNING COMMISSION DISCUSSION**

None

### **ELECTION OF THE PLANNING COMMISSION CHAIR, VICE CHAIR, AND SECRETARY**

#### **CHAIR NOMINATIONS AND MOTION**

*Commissioner Dougherty nominated Commissioner Barnett for Chair.*

*Chairman Choate second the motion*

*No other nominations were made*

### **VOTE**

This received unanimous voice approval.

Motion passed 9-0

**VICE CHAIR NOMINATIONS AND MOTION**

*Commissioner Dougherty nominated Commissioner Best-Johnson for Vice Chair.*

*Chairman Choate second the motion*

*No other nominations were made*

**VOTE**

This received unanimous voice approval.

Motion passed 9-0

**SECRETARY NOMINATIONS AND MOTION**

*Commissioner Dougherty nominated Commissioner Wallace for Chair.*

*Chairman Choate second the motion*

*No other nominations were made*

**VOTE**

This received unanimous voice approval.

Motion passed 9-0

**REPORT FROM STAFF**

None

**ADJOURN**

With there being no further business, the hearing adjourned at 10:51 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.

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John Barnett, Chairman

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Nancy Wallace, Secretary