

LARIMER COUNTY PLANNING COMMISSION

Minutes of February 19, 2020

The Larimer County Planning Commission met in a regular session on Wednesday, February 19, 2020, at 6:30 p.m. in the Hearing Room. Commissioners Jensen, Wallace, True, Miller, Stasiewicz, Barnett, Johnson, and Choate were present. Commissioner Dougherty presided as Chairman. Also present were Matt Lafferty, Principal Planner; Don Threewitt, Planning Manager; Rob Helmick, Senior Planner; Frank Haug, County Attorney; Traci Shambo, Senior Civil Engineer; Lea Schneider, Environ Health Planner; Tom Butts, Environmental Health Director; Karin Madson, Code Compliance Super; Amy White, Code Compliance Inspector; Lesli Ellis, Community Development Director; Laurie Kadrich, CPIR Director; and Christina Scrutchins, Recording Secretary.

COMMENTS BY THE PUBLIC REGARDING THE COUNTY LAND USE CODE:

None.

COMMENTS BY THE PUBLIC REGARDING OTHER RELEVANT LAND USE MATTERS NOT ON THE AGENDA:

None.

POSTING OF MEETINGS IN COMPLIANCE WITH OPEN MEETINGS LAW:

MOTION: *Commissioner Jensen moved to approve the Planning Commission page on www.Larimer.org as the place for posting notice of public meetings, and if exigent or emergency circumstances prevent the online posting at such location, public notice shall be physically posted at the bulletin boards located at the north and south entrances to the Larimer County Courthouse Offices Building at 200 West Oak, Fort Collins, Colorado, in accordance with Colorado's open meetings laws.*

Second: Choate

This received unanimous voice approval.

Motion passed 9-0

APPROVAL OF THE MINUTES FOR THE JANUARY 15, 2020, MEETING:

MOTION by Commissioner Barnett to approve the minutes

Commissioner Miller seconded the motion

This received unanimous voice approval.

Motion passed 9-0

AMMENDMENTS TO THE AGENDA:

None.

CONSENT ITEMS:

ITEM #1 - RAMSEY SUBDIVISION, FILE #19-LAND3898: Commissioner Stasiewicz recused herself due to a conflict of interest to Item #1 the Ramsey Subdivision, File #19-LAND3898.

Rob Helmick gave a brief presentation regarding the applicant's request to Ramsey Subdivision. It is located north of Donath Lake and west of County Road 13. An appeal was granted by the Board of County Commissioners to allow the location to proceed as a subdivision rather than a Conservation Development. The applicant proposes to divide their 34.6-acre parcel of land into 13 lots, 12 lots of approximately 1.5-2 acres in size and one large lot, of 9.3 acres. The application meets the standards of review criteria for a subdivision and the proposed development service team recommendation to the Board of County Commission to approve the Ramsey Subdivision with 12 conditions.

No questions were asked to the staff or applicants.

MOTION

Commissioner Barnett 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 Ramsey Subdivision, File #19-LAND3898 subject to the following 12 conditions.

Commissioner Miller seconded the motion.

Commissioners Wallace, True, Miller, Barnett, Choate, Jensen, Johnson, and Chair Dougherty all voted in favor of the motion.

Motion passed 8-0.

DISCUSSION ITEMS:

ITEM #2 - AMENDMENTS TO THE LARIMER COUNTY LAND USE CODE REGARDING OIL AND GAS REGULATIONS, FILE #20-CODE0245: Matt Lafferty gave a brief presentation regarding the amendments to the Larimer County Oil and Gas regulations. The participants that have been involved in the project include Internal Staff Team, Oil and Gas Task Force, Community, and Professional Resources.

The internal staff team include the Community Development Department, County Attorney, Health Department, Natural Resources Department, and Engineering Department. In May 2019, the Board of County Commissioners completed assembly of the 15-member Oil and Gas Regulations Task Force. This Task Force was formed to review and provide input on draft oil and gas regulations developed by the county staff and provide a recommendation on the final set of oil and gas regulations. The community was a very active partner in communicating their

comments by email, attending open houses and other opportunities the county was offering. The professional resources included Colorado Oil and Gas Commission (COGCC), Colorado Department of Public Health and Environment (CDPHE), Larimer County Planning Commission, and the Larimer County Board of County Commissioners.

During the project process, the Oil and Gas Task Force conducted monthly meetings that focused on the following topics: Introduction, purpose and charter, and topics for regulations, introductory presentation and initial list of regulatory topics, Specific standards to include and purpose statement, refined standards and procedures, and recommendations for standards and procedures. Task force meetings were open to the public to attend and observe. Attendees were provided comment sheets to share their concerns. All meeting we recorded on video and posted on the web for non-attendees to watch. To keep all participant in the process informed, the Oil and Gas Regulations webpage was established in June and updated throughout the process. Other opportunities for the community to engage in the process included: posting comments on the webpage, online questionnaires (August and September), open houses (September and November), public comments on draft regulations (November and January), and public hearings (February and March).

Key points were mentioned during the explanation of the outline of the regulations. Section 17.0. Oil and Gas Facility is a new section of the regulations with eight subsections. The eight subsections are the following:

- 17.1 – Intent and purpose,
- 17.2 – Review procedures and required permits,
- 17.3 – Standards required for oil and gas facilities,
- 17.4 – Appeals,
- 17.5 – Enforcement and inspections,
- 17.6 – Fees and security for reclamation,
- 17.7 – Termination or modification of use, and
- 17.8 – Definitions.

Mr. Lafferty focused more in detailed on subsections 17.1 through 17.3. Subsection 17.1 is to establish the basis for having oil and gas facility regulations and set expectations for the review and consideration of applications for new oil and gas facilities. Subsection 17.2 provides the framework for the review and permitting of new oil and gas facilities by the county. Subsection 17.3 set forth the standards and requirements to be addressed when developed a new oil and gas facility in Larimer County.

Mr. Lafferty listed the steps and explained the Special Review process starting with the Sketch Plan Phase. Properties within a 500-ft radius from the project site is given notification to invite the public to review and provide comments regarding the project. He mentioned that 500-ft is the minimum statutory radius and could be expanded if the Planning Commission thought the distance was not reaching an adequate amount of surrounding properties. He completed his presentation with asking the commissioners if they had any questions.

Commissioner Wallace stated she would like for the distance to be expanded to reach more of the surrounding properties within a 2,500-ft radius.

Commissioner True asked how the 500-ft radius was determined.

Mr. Lafferty explained the State requirements for notification of an application to the public is posted by the public newspaper. The notification sent through the US postal service to the surrounding properties is a supplemental process within the county's regulations.

Commissioner True asked when the project would be reviewed again if the Planning Commissioner approved the project.

Mr. Lafferty stated that a re-evaluation could occur if they find or have concerns that stop the project from moving forward.

Commissioner Johnson wanted clarification regarding the difference between on and above the surface and at the surface below along with what the county is purposing for regulations and what COGCC regulates.

Mr. Lafferty explained that surface development is anything that happens above the hole or if an issue was a concern that required the county to monitor below the surface.

Commissioner Jensen asked what is the distance that is adequate to make an impact, what is the notification for, and what does the notification gain.

Mr. Lafferty explained that the notice is to inform the surrounding properties there is a project in their area as well as provide them with the opportunity to attend any meetings or hearings and voice their comments. Plans and studies are submitted with the application regarding how the applicant will handle impacts during the project. If there are impacts that arise during the project, the Planning Commission and Board of County Commission will re-evaluate and address them.

Commissioner Barnett expressed he felt that the larger expanded distance for surrounding properties should be considered.

Commissioner Miller asked for clarification regarding where the surrounding properties distance starts and how they are notified.

Mr. Lafferty confirmed the distance starts at the property line. The newspaper posting is only when there will be a public hearing, all other notifications are done through the postal service.

Mr. Lafferty spoke about setbacks and if an applicant can meet the setback requirement there might be a simpler process. The setback is operated that is set in place by the state COGCC as well as more information regarding setbacks.

Commissioner Choate asked if an applicant wants to go below the surrounding property distance, they would have to receive confirmation by the Board of County Commissioners and the COGCC with an appeal and what will happen after the COGCC completes their regulations.

Mr. Lafferty explained the applicant would have to go through the appeal process but was unsure of how everything will come together after the COGCC regulations are complete.

Commissioner Choate wanted a description of what the property sign sates for the notification.

Mr. Lafferty did not have the sign with him but explained it says "Special Review application with contact information."

Commissioner Choate asked how many signs are posted on the proposed property.

Mr. Lafferty responded the county only requires one sign to be posted on a busy street.

Commissioner Jensen expressed he thought the notification sign may not be seen by neighbors that do not live passed the applicants property.

Commissioner Wallace thought a condition of approval should include the regulations will be re-evaluated once the COGCC completes their regulations as well as list the regulations of the state currently.

Mr. Lafferty agreed.

Commissioner Jensen wanted clarification that the current regulations state the impacts aren't to be eliminated but minimis.

Mr. Lafferty confirmed that was correct.

Commissioner Stasiewicz expressed concern that there isn't a set date when the state will complete their regulations.

Mr. Lafferty explained the state is expecting to have the regulations completed by the end of the summer or early fall of this year.

Commissioner Choate stated the applicant can submit an application with the state and the county simultaneously but "approval by the county prior to construction" was removed and wanted to know why. Also did the county give any consideration regarding the requirement to the applicant to receive county approval first.

Mr. Lafferty stated it would start early in the sketch plan phase by the applicant submitting an analysis to staff giving the options for possible siting locations. If there are any concerns regarding the applicants chosen location the applicant can then defend the site.

Commissioner Choate asked if the applicant specifies where the site will be placed on the property before the application is approved.

Mr. Lafferty stated that was correct.

Commissioner Barnett felt there should be a condition of approval stating that if the regulations move forward then once the COGCC complete their regulations, the county should re-evaluate and update their regulations.

Mr. Lafferty agreed.

PUBLIC COMMENTS:

The official record of the public comments is on the tape from the hearing.

Brad Pomeroy and Jay Young expressed their understanding when working in the Oil and Gas industry that they are taking and listening to the publics concerns.

Chris Colclasure and Brandon Taylor presented requests for four targeted changes to the Draft rules. The changes requested are Administrative permitting process, Appeal standings, Odors, and Recycle, reuse and disposal.

Mary Bedosky who spoke as a community member and task force member expressed her desire to improve the regulations.

Randy Evans explained the water waste process and concerns regarding those parts of the regulations.

Rick Casey, Tim Gosar, Deb Bjork, Nancy York, Karen Artell, Tom Hoehn, Joseph Salazar, Ed Behan, Anne Sutherland, Elizabeth Lynch, Andy Peterson, Andrew Forkes-Gudmundson, Gayla Martinez, Rutilio Martinez, Stephanie Malin, Gina Janett, David Lehman, Will Karspeck, Tom Rhodes (Sierra Club), Robyn Dolgin, and Warren Schneider were community members who spoke regarding the following concerns:

- Moratorium on fracking,
- approval of new well before regulations are completed,
- getting sued,
- air quality,
- water quality,
- smells,
- monitoring,
- spills and releases,
- inspections,
- health safety,
- environmental safety,
- flaws in the regulations,
- not enough process,
- abandonment,
- exploratory drilling,
- open space protection,
- setbacks,
- nocent impacts,
- COGCC regulations,
- task force selection, and
- Notification.

RESPONSE TO PUBLIC COMMENTS:

Mr. Lafferty explained that he hears the public's concerns and the desire for a moratorium. The staff did present the moratorium as an option because the Board of County Commissioners had not given that direction. He also expressed the importance of putting regulations in place because there are not any county regulations at this time.

Commissioner True asked if all the Task Force members were Larimer County residents.

Mr. Lafferty explained the Board of County Commissioners chose some task force members that did not live in the county of Larimer. They were looking for subject matter experts.

Commissioner Jensen asked if the town of Berthoud or any other county is part of the notification process.

Mr. Lafferty stated that all of the surrounding towns and counties are notified and given the opportunity to submit comments.

Commissioner Jensen asked what the differences between the administrative processes are and why an administrative review is not part of the regulations.

Mrs. Ellis explained one of the administrative process is a Site Plan Review and the steps throughout the process.

Mr. Lafferty stated determining which application will go through Administrative or public is still being determined but based on the impacts they felt this application should be brought to a higher attention.

Commissioner Jensen wanted to know if there is a timeframe or a date when the county will set rules to determine which process an application will follow.

Mr. Lafferty explained the county has not had enough experience yet with these types of applications and they can place a condition of approval for a timeframe for the regulations to be re-evaluated.

Commissioner Jensen expressed he would like to see a timeframe of 2 years.

Commissioner Johnson agreed with Commissioner Jensen but would like to add to the condition of approval that if there is anything that is of concern or needs attention the re-evaluation is sooner. She also asked Mr. Haug what an appellate standing means from one of the public comments?

Mr. Haug stated the comment from the public could mean they are wanting to change the language of the regulation that instead of anyone from the general public that an appeal can be placed by the applicant themselves or someone that is affected.

Commissioner Johnson asked Mr. Lafferty to remind the Planning Commission how the 500-ft. setback was determined.

Mr. Lafferty stated that is a regulation set by the COGCC.

Commissioner Miller asked what our current Section 17.3.E.3 say regarding odors.

Commissioner Dougherty added there isn't anything in the proposed regulations regarding odor.

Mr. Lafferty explained that E.1. states there should be a mitigation plan that will identify methods. If there is an odor problem the mitigation plan should help with a process to follow.

Mr. Butts explained if there is an odor issue, then an investigation is performed.

Mr. Lafferty added the public is wanting to have a timeframe if there is an issue that cannot be resolved for the operation to be shut down, and this applies to all new wells.

Commissioner Dougherty thinks the County Attorney should look at the section because the operation should have time to fix the issue before shutting down.

Mr. Haug stated they will look into the section.

Commissioner Johnson wanted to confirm, if the operation is in violation with the code there will be a code compliance case along with the special review process.

Mr. Lafferty confirmed that is correct and how the process is currently.

Commissioner Barnett wanted to confirm a larger setback (notification area) could be placed for notification.

Mr. Lafferty confirmed that is correct.

Commissioner Miller wanted someone to address the EPA not being part of this process and is the verbiage in the section 17 needing to be cleaned up as requested by King Representatives.

Mrs. Schneider explained the state of Colorado has CBPAG's water quality control division has the authority through EPA. However, the state of Colorado has authority. The verbiage will be cleaned up to reflect that.

DISCUSSION

Commissioner Choate discussed leak issues along with the shutdown time and an on-site air quality pre-development testing.

Commissioner True wanted to know who would be required to pay for the pre-development testing.

Commissioner Choate replied the applicant.

Mr. Lafferty explained the applicant should submit an air quality report with the application.

Mr. Butts added a baseline study is challenging.

Commissioner Barnett wanted more clarification.

Mr. Butts explained the air quality plan could include a modeled emissions as in what the applicant expects their emissions to be and how they will control it. He also mentioned that the weather could affect the air quality and again it would be very challenging to get a baseline study.

Motion

Commissioner Choate moved that sections 17.3.C.1 requires a plan with baseline data added.

Commissioner Barnett seconded the motion.

Commissioners Barnett, Stasiewicz, Wallace, True, Johnson, and Choate all in favor

Commissioners Miller, Jensen, and Dougherty all opposed.

Motion passed 6-3

Commissioner Dougherty asked if there are regulations in place with Oil and Gas that explain what immediate safety item is.

Mr. Lafferty explained that once a leak is determined the operator has 72 hours to fix any issues before they are to shut down.

After more discussion regarding leaks all Commissioners agreed a motion is not needed due to the proposed regulations.

Commissioner Jensen wanted then to discuss the 500-ft setback and have the setback distance be expanded.

Mr. Lafferty confirmed setback distance could be expanded.

Motion

Commissioner Wallace moved that the notification be expanded to a half mile and will be re-evaluated in the future.

Commissioner Barnett second the motion

Commissioners Choate, Miller, Stasiewicz, Jensen, Barnett, True, Wallace, and Dougherty all in favor

Commissioner Johnson opposed.

Motion passed 8-1

Commissioner True wanted to speak upon more signs to be placed around the applicant's property notifying the surrounding residences.

Mr. Lafferty reminded the Planning Commission that the sign is only placed on a property 14 days prior to a public hearing after the neighborhood notification.

Motion

Commissioner True moved a sign must be posted at every access road on the applicant's property.

Commissioner Choate second the motion

Commissioner Johnson, Barnett, Wallace, Miller, Stasiewicz, True, and Dougherty all in favor.

Commissioner Choate and Jensen all oppose.

Motion passed 7-2

Motion

Commissioner Johnson moved that the Planning Commission add a condition of approval to tonight's standards that within 120 days of completion of the Colorado Oil and Gas Conservation Commission rule making, the County shall review Section 17 of the Land Use Code and compare it to the state's regulations.

Commissioner Miller second the motion

Commissioners Johnson, Miller, Jensen, True, Stasiewicz, Barnett, Wallace, Choate, and Dougherty all in favor.

Motion passed 9-0

Motion

Commissioner Johnson moved that 2 years after the adopted regulations, the Larimer County staff will evaluate the opportunity for an Administrative Review process and bring the findings back to the Planning Commission and the Board of County Commissioners for consideration.

Commissioner Jensen second the motion.

Commissioners Barnett, Choate, Wallace, Jensen, Stasiewicz, Miller, Johnson, True, and Dougherty all in favor.

Motion passed 9-0

Motion

Commissioner Johnson moved that Section 17.3.L.6. shall not prevent discharges or beneficial uses of water reviewed or permitted by the CDPAG Water Quality Control Division or another agency jurisdiction.

Commissioner Miller second the motion.

Commissioners Wallace, True, Miller, Barnett, Jensen, Stasiewicz, Johnson, Choate, and Dougherty all in favor

Motion passed 9-0

Motion

Commissioner Wallace moved to add a setback of 1,000 feet from any habitable structure unless the COGCC regulation setbacks is greater.

Commissioner True second the motion.

Commissioners Stasiewicz, Barnett, Choate, True, and Wallace all in favor

Commissioners Jensen, Miller, Johnson, and Dougherty all opposed.

Motion passed 5-4

Commissioner Barnett asked what the floodplain regulations would be regarding Oil and Gas facilities.

Mr. Lafferty stated section 4.2 in the Land Use Code would apply to the Oil and Gas facilities.

Motion

Commissioner Barnett moved that staff refer the application to the appropriate flood plain staff for review before it is presented to the Board of County Commissioners.

Commissioner True second the motion

Commissioners Barnett and True in favor

Commissioners Miller, Johnson, Choate, Jensen, Stasiewicz, Wallace and Dougherty all opposed.

Motion failed 7-2

MOTION

Commissioner Johnson 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 Land Use Code Amendments regarding Oil and Gas facilities as found in file 20-CODE0245 titled Oil and Gas Regulations as recommended by staff in the draft regulations dated February 5, 2020, with the changes voted separately per the record.

Commissioner Jensen seconded the motion.

Commissioners Stasiewicz, Johnson, Miller, Jensen, Choate, Wallace, Barnett, Dougherty in favor of the motion.

Commissioner True in oppose if the motion

Motion passed 8-1.

REPORT FROM STAFF:

None

With there being no further business, the hearing adjourned at 10:54 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.

Sean Dougherty, Chairman

Nancy Wallace, Secretary