

**MINUTES OF THE REGULAR MEETING OF THE
ARAPAHOE COUNTY PLANNING COMMISSION
TUESDAY, NOVEMBER 12, 2024**

ATTENDANCE	<p>A regular meeting of the Arapahoe County Planning Commission (PC) was called and held in accordance with the statutes of the State of Colorado and the Arapahoe County Land Development Code.</p> <p>The following Planning Commission members were in attendance: Rodney Brockelman; Brooke Howe; Kathryn Latsis; Randall Miller; Dave Mohrhaus, Chair Pro-Tem; Richard Sall; and Lynn Sauve, Chair.</p> <p>Also, present were Robert Hill, Senior Assistant County Attorney; Jason Reynolds, Planning Division Manager; Ava Pecherzewski, Development Review Planning Manager (moderator); Bryan Weimer, PWD Director; Molly Orkild-Larson, Principal Planner and Kim Lynch, Planning Technician.</p>
CALL TO ORDER	<p>Ms. Sauve called the meeting to order at 6:30 p.m. and roll was called. The meeting was held in person and through the Granicus Live Manager platform with telephone call-in for staff members and the public.</p>
GENERAL BUSINESS ITEMS:	
APPROVAL OF THE MINUTES	<p>The motion was made by Mr. Mohrhaus and duly seconded by Mr. Miller to accept the minutes from the October 15, 2024, Planning Commission meeting, as submitted:</p> <p>The vote was:</p> <p>Mr. Brockelman, Yes; Ms. Howe, Yes; Ms. Latsis, Yes; Mr. Miller, Yes; Mr. Mohrhaus, Yes; Ms. Sauve, Yes; Mr. Sall, Abstain.</p>
PUBLIC HEARING ITEMS:	
ITEM 1	<p>CASE NO. LDC23-005, OIL AND GAS REGULATIONS / LAND DEVELOPMENT CODE (LDC) AMENDMENT – AVA PECHERZEWSKI, DEVELOPMENT REVIEW PLANNING MANAGER – PUBLIC WORKS AND DEVELOPMENT (PWD)</p> <p>Ms. Sauve asked the County Attorney if the PC had jurisdiction to proceed. Mr. Hill said that Case No. LDC23-005 had been properly noticed and the PC had jurisdiction to proceed.</p> <p>Mr. Reynolds stated this county-initiated project proposed multiple changes to the LDC that had been adjusted based on the feedback of both the PC and the Board of County Commissioners. He said the most notable changes from the last</p>

presented regulations included an expansion of reverse setbacks from 2,000 feet to 3,000 based on PC feedback; requirements for soil sampling at the time of reclamation; changes to aquifer testing and air quality testing requirements; and a requirement for alternative location analysis. He reported the BOCC also directed staff to ask the PC for a recommendation again on the amount of financial assurances to require.

Alternative Location Analysis (ALA)

He described how the regulations now included an ALA requirement if a proposed facility is within one mile of a childcare center, hospital, nursing home, or a preschool, elementary, middle, junior, or high school.

Financial Assurances

He reiterated the BOCC's direction for the PC to make a final recommendation on the financial insurance amount, and to choose between the original amount proposed (\$95,000) and the amount based on the Adams County case (\$120,000). He suggested that this could be achieved with the motions made to recommend approval for this case.

Air Quality Requirements

He related the BOCC direction to staff to include using electric equipment during the *drilling* phase of operations, and not just during production, *when available*. He confirmed this had been added to the draft regulations. He explained a clause in the regulations had been added noting that the operator and their monitoring consultant were required to provide public access to air quality monitoring data in a manner approved by staff. He discussed the language in the draft regulations which required an operator to test for seven days straight when a canister-triggering event occurred (and when the Colorado Department of Public Health and Environment (CDPHE) Health Guideline Values were exceeded) had also been changed as directed to “when a canister triggering event happens to require the operator to *immediately install a replacement for the triggered canister*.” He said the regulation that required operators to cease maintenance activities on ozone action days (based on feedback from industry and BOCC direction) was changed “to allow maintenance on ozone action days *when essential to ensure safety*.” He concluded that staff also clarified dust control measures in the access road standards.

Additional Water Quality Monitoring

He explained the regulations required operators to hire a licensed environmental consultant to complete the testing and staff believed that this met the standard of CDPHE and confirmed that when a spill was reported to CDPHE, they did require subsequent testing to confirm the extent of the impact when a leak or spill was detected. He reported that Arapahoe County had zero reported spills, and no waterways were reported to have been impacted during the last five years, according to publicly available data. He added staff did not therefore recommend more frequent water testing given that the data did not suggest more frequent testing would yield better results. He stated, that with Colorado’s arid climate, it was difficult to conduct water sampling on a scheduled basis and if water

monitoring had to include perennial, intermittent, and ephemeral water bodies this would be difficult to enforce. He noted that it would be more enforceable to use the term based on the Colorado definition of “Waters of the State” (as defined in the Colorado Revised Statutes), which includes these water types. He discussed that the current regulations required operators to test all four groundwater aquifers as a baseline prior to commencing operation and explained the rationale for changing the requirement to testing only the highest and the lowest aquifers would achieve the same goal and decrease costs. He discussed the added language, at the direction of BOCC, to require soil sampling as part of the reclamation process. He explained the regulations prohibited vehicle and equipment maintenance within 500 feet of State Waters and required refueling on impermeable material.

Commercial Injection Wells

He reported that staff had added a code section clarifying that commercial injection well activity was expressly not permitted. He stated the permitted use table had also been updated to reflect this in the draft regulations.

Reverse Setbacks

He asserted reverse setbacks were applicable to *new development* that was proposed *from* an existing oil and gas facility. He explained the LDC that required new developments to be set back 250 feet from an oil and gas facility of any status (permitted but not drilled yet, drilling, completing, producing, active gas storage, injecting, shut-in, temporarily abandoned, dry and abandoned, or plugged and abandoned prior to 2014). He said the BOCC directed staff to include administrative ability to reduce these setbacks when a property owner provided an informed consent document that would be recorded as a Notice against the title on the property, but in no case could the setback be any closer than 250 feet. He confirmed staff had included this language in the draft regulations, including a requirement that a Notice needed to be recorded against the property to notify future buyers that an oil and gas facility was planned adjacent to their home or parcel. Finally, he said that based upon discussion with the BOCC at their October 29th study session, staff had been directed to increase the reverse setback from *approved but unconstructed* oil and gas facilities to 3,000 feet, and staff had incorporated that change into the draft regulations.

Inspection Program

He stated, if these regulations were adopted, staff would work on a procedure manual prior to the inspection program going live on July 1, 2025. He reported that Staff had created a matrix of fines and penalties to address PC concerns about the flat rate dollar amount of fines, regardless of the infraction, and the recommendation for more detailed clarification was now reflected in the draft regulations. He added that language regarding inspection enforcement was also revised to eliminate due process concerns noted in stakeholder meetings with the industry.

Ms. Sauve opened the hearing for public comments. There were thirty-four members of the public present who spoke and there were seven callers. All speakers were opposed to the regulations (except for one who was in favor but

felt they could be stricter). Nineteen speakers had objections to the regulations because they were not protective enough of the environment, wildlife, and residents, and nineteen speakers were opposed to the regulations because they were duplicative or even more stringent than State regulations and added time and cost to developing oil and gas business in Arapahoe County.

The public hearing was closed.

There was discussion around the following questions or concerns:

- Methane monitoring concerns.
- Why was the electrification of Oil & Gas operations stated, “as available”?
- Explain monitoring cannisters replacement schedule.
- How are financial assurances adjusted for inflation?
- What kind of setbacks are included in these amendments?
- Public hearings A: the existing regs allow for a public hearing process but delegates the responsibility to choose a public hearing process to the PWD Director so public interest in a hearing is factored into the decision but not applicable in every situation where a site is within 3,000 feet of residents.
- Why is the inspection process for the County included? A: 1x/3years. 91 inspections for the entire county. This is inadequate so we propose 2x/year in Arapahoe.
- Is there thought to including language or advice for the purchase of properties in close proximity to O&G sites currently? Is this only discoverable in the deed? A: Legal implications need to be considered in subsequent purchases of a property. Distance to O&G sites recommend how to compel 1st sellers to disclose O&G siting. A: This is a good idea to consider this going forward.
- Proposed regs don’t meet citizen-requested protective needs. What do you say to this? Bob Hill-A: A baseline of 3,000-foot setback is the largest setback in CO. Jason Reynolds-A: These regs are protective and do accomplish many of the goals of public protection heard here. But we have also heard these are over-restrictive, and overreaching, and would be a complete disaster for industry and those who chose to pursue this type of development. So as the county develops to consider both and balance the public need for additional protections with industry needs to conduct business in our county. Accomplish many protections brought up by the public but certainly not all.

Mr. Reynolds confirmed that methane monitoring, while not addressed in changes discussed tonight, was addressed in previously accepted regulations which stated, “air pollutants measured shall include methane and total VOCs including vtechs”. He explained the language regarding electrification of oil and gas operations was stated as where available and accessible with respect to the existing electric grid. He said this would apply to Lowry CAP type sites that had similar remoteness and access to existing electric lines while recognizing other sites that were truly remote and where providing availability was not feasible. He added staff would work with energy providers to determine availability and defend those sites that

were truly remote. He described how supply chain disruptions and expirations had spurred requirements that a spare monitoring canister be available by contract with those who provide monitoring of these for operators. He stated that regulations included a clause that ties the Financial Assurance to the Colorado Construction Cost Index so depending on the baseline set that would increase with inflation to keep up with construction costs. He confirmed that only reverse setbacks were addressed here, and these would apply to newly proposed developments only.

Ms. Sauve suggested multiple motions to split out the question of recommending a financial assurance amount as a separate vote from recommending approval of the proposed amendments.

The motion was made by Ms. Latsis and duly seconded by Mr. Mohrhaus, in the case of LDC23-005, Oil and Gas Regulations, Land Development Code Amendment, I have reviewed the staff report, including all exhibits and attachments, and have listened to the presentation and any public comment as presented at the hearing and hereby move to recommend approval of the proposed amendments to the Land Development Code, subject to the following:

- ~~1. That the financial assurance amount be established at \$95,000 or \$120,000 (pick one). Striking Condition 1 and including Condition 2.~~
- 2. Staff, with the approval of the County Attorney, may correct typographical errors and make such revisions to the Code amendment as are necessary to incorporate the approved amendment into the Land Development Code for publication.**

The vote was:

Mr. Brockelman, No; Ms. Howe, No; Ms. Latsis, Yes; Mr. Miller, No; Mr. Mohrhaus, Yes; Mr. Sall, Yes; Ms. Sauve, Yes.

The motion was then made by Ms. Latsis and duly seconded by Mr. Sall, in the case of LDC23-005, Oil and Gas Regulations, Land Development Code Amendment, I have reviewed the staff report, including all exhibits and attachments, and have listened to the presentation and any public comment as presented at the hearing and hereby move to amend the motion to recommend approval of the proposed amendments to the Land Development Code, subject to include the following:

- 1. That the financial assurance amount be established at \$95,000.**

The vote was:

Mr. Brockelman, No; Ms. Howe, No; Ms. Latsis, Yes; Mr. Miller, No; Mr. Mohrhaus, No; Mr. Sall, Yes; Ms. Sauve, Yes.

This motion failed on a vote of 3-4.

	<p>It was then moved by Ms. Latsis and duly seconded by Mr. Sall, in the case of LDC23-005, Oil and Gas Regulations, Land Development Code Amendment, I have reviewed the staff report, including all exhibits and attachments, and have listened to the presentation and any public comment as presented at the hearing and hereby move to amend the motion to recommend approval of the proposed amendments to the Land Development Code, subject to include the following:</p> <p>1. That the financial assurance amount be established at \$120,000.</p> <p>The vote was:</p> <p>Mr. Brockelman, No; Ms. Howe, No; Ms. Latsis, Yes; Mr. Miller, No; Mr. Mohrhaus, No; Mr. Sall, Yes; Ms. Sauve, Yes.</p> <p>This motion failed also on a vote of 3-4 resulting in the recommendation to the BOCC to recommend approval of the amended regulations with no recommendation for a financial assurance amount.</p>
ADJOURNMENT	<p>There being no announcements or further business to come before the Planning Commission, the meeting was adjourned.</p>