



Arapahoe County

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Board Summary Report

File #: 24-605

Agenda Date: 10/29/2024

Agenda #:

To: Board of County Commissioners

Through: Bryan Weimer, Director, Public Works & Development

Prepared By:

Ava Pecherzewski, Development Review Planning Manager, Public Works & Development; Jason Reynolds, Planning Division Manager, Public Works & Development

Presenter: Jason Reynolds, Planning Division Manager, Public Works & Development

Subject:

1:00 PM *Update on Proposed Phase 2B Oil and Gas Regulations Amendment

Purpose and Request:

The purpose of this study session is to provide the BOCC with a summary of the comments received from the Planning Commission at their October 15, 2024, study session, to determine if any adjustments need to be made to the draft regulations. These code amendments are scheduled to go for a public hearing before the Planning Commission on November 12, 2024.

Background and Discussion:

In October 2023, the BOCC directed staff to proceed with amendments to the Land Development Code related to regulations for oil and gas development applications. The Board directed staff to create requirements for financial assurances, include additional requirements for air and water quality standards and monitoring, disallow commercial injection wells, increase reverse setbacks, and establish a County inspection program.

Staff brought draft regulations back to the BOCC on July 23, 2024, for consideration. The Board approved of the draft, with some minor edits. The Board directed staff to complete public outreach on the draft regulations and hold an open house, and to report the findings of the public outreach in late September prior to advancing the draft regulations to public hearings.

Staff presented the stakeholder findings to the Board at their September 24, 2024, study session. Additional adjustments were recommended to address concerns, including a change to the defined water types for testing,

and allowing reduced reverse setbacks with informed consent. Because there was community feedback that the proposed financial assurance amount of \$95,000 per well was not sufficient, the Board directed staff to complete further research on financial assurances and to query the Planning Commission on a recommended amount.

The Planning Commission held a study session on October 15, 2024, to discuss the proposed regulatory changes to oil and gas facilities (see Attachment 1). This study session will summarize the feedback received from the Planning Commission and staff would like the Board's feedback on whether any adjustments to the draft regulations need to be made prior to public hearings.

Planning Commission Comments

The Planning Commissioners did not have any comments on the provisions for air and water quality monitoring, or commercial injection wells. The commissioners were focused on the inspection fines, reverse setbacks, and financial assurances requirement and had general thoughts about the proposed regulations. A copy of the Planning Commission staff report is located in Attachment 2. Key highlights of their comments include:

- Concerns that the proposed regulations were burdensome on industry.
The oil and gas industry has unique impacts and the regulations are designed to address concerns of local residents. From 2019-2023, Arapahoe County received one new oil and gas pad application. In 2024, after adopting the stricter standards, we received six oil and gas pad applications. So far, the oil and gas industry has been able to meet our high standards and based on the past five years, those standards are not suppressing development.
- Concern that the County is adding staff for a new program during a budget crisis.
Staff clarified to the Planning Commission that this program is designed to collect reasonable and necessary fees from industry which will pay for the program's operating costs.
- Concern that the proposed financial guarantees duplicate state requirements and amount to "double dipping".
The financial guarantees are intended to support the state's program, which does not require a guarantee for each individual well. If an operator can demonstrate that their state financial guarantees cover the plugging and abandonment costs for each well on a site, they would not need to post a guarantee with the county. Likewise, if the state guarantee provides \$10,000 per well, the Arapahoe County financial guarantee could be reduced by that amount.
- Concern that financial guarantees would be used by the County for general fund purposes.
Staff clarified that financial guarantees are not absorbed into the general fund; they are held by third parties. If an applicant fulfills their obligation to plug and abandon a well, the financial guarantee is released.
- Concern that the proposed local fines duplicate the State requirements.
Staff explained to the commissioners that the goal is not to impose fines, but to encourage compliance. Second, the local fines are intended to provide additional incentives to meet state and local requirements. Third, the local fines address the local impact. The County may only impose fines for spills, leaks and emissions.
- Recommendation that the fine amounts should be on a graduated scale such that the fine gets higher for a third or fourth offense.

The current proposal sets forth a fine of up to \$15,000 fine per day, per occurrence. Staff is open to looking at increased fines for repeat violations or noncompliance.

- Concern was raised that reverse setbacks were less than regular setbacks. The Planning Commission asked for more clarification as to why setbacks from oil and gas wells to existing occupied structures was stricter (3,000 feet) compared to a developer wants to build a home from an approved well pad (2,000 feet). Staff explained that there is a difference between being an occupant of an existing home and a potential nuisance moves in close proximity versus a homeowner making an informed decision to build a home or move into an existing home near an oil and gas facility. In the latter case, the resident has made the choice to move near a drilling site versus the former case where the resident has no control over the neighboring drilling site moving in when it is a permitted use. However, based on this feedback the setback from proposed new structures to approved but not yet drilled sites could be increased to 3,000 feet, which matches Arapahoe County's oil and gas setback from occupied structures.

- Recommendation that the financial guarantees increase with construction costs. For example, if an operator posts a \$95,000 surety today, that surety amount should be increased over time to match increases in construction costs.

The proposed regulations tie surety requirements to the Colorado Construction Cost Index and require financial assurances to be renewed annually.

- The Planning Commission was split on a recommended amount for financial assurances. The staff report provided information on the costs of plugging and abandoning a well. The research included a real-life case in Adams County and a research paper from Carbon Tracker. The Planning Commission was asked to make a recommendation on whether to keep the current proposed amount of \$95,000, increase that amount to \$120,000 based on a recent case in Adams County or recommend a higher amount - \$150,000 - based on the Carbon Tracker report (see Attachment 3). There were six Planning Commissioners present (one was absent), and three commissioners recommended that we retain the current proposed amount of \$95,000, while three commissioners recommended \$120,000 based on the fact this was based on actual costs of a local case.

Schedule

Staff met with representatives of Save the Aurora Reservoir and with smaller oil and gas operators the week of October 14 and will meet with additional industry groups on October 25. We will report on their feedback and recommended adjustments at the study session. The following is the schedule moving forward for adoption of these regulations:

November 12, 2024: Planning Commission Hearing

December 10, 2024: BOCC Public Hearing and Adoption

Fiscal Impact: Fiscal impact from the proposed inspections program and financial assurances requirement will require staff administration. An Energy Program Manager position is currently open for applicants and the proposed 2025 budget package includes budget for one full-time oil and gas inspector.

Alternatives: The BOCC can 1) concur with the proposed changes made in the referenced regulations, 2) suggest/direct modifications to all or a portion of the draft regulations, 3) decline to give direction on these draft regulations.

Alignment with Strategic Plan:

- ☐ Be fiscally sustainable
- ☐ Provide essential and mandated service
- ☒ Be community focused

Staff Recommendation: Staff recommends that BOCC consider the feedback from the Planning Commission, make a final decision on a financial assurance amount, and determine if any additional changes need to be made to the draft regulations prior to advancing to public hearing before the Planning Commission on November 12, 2024.

Concurrence: The County Attorney's Office has reviewed this Board Summary Report.