

**MINUTES OF THE REGULAR MEETING OF THE
ARAPAHOE COUNTY PLANNING COMMISSION
TUESDAY, OCTOBER 15, 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; Lynn Sauve, Chair.</p> <p>Also, present were Bryan Weimer, PWD Director; Robert Hill, Senior Assistant County Attorney; Jason Reynolds, Planning Division Manager; Ava Pecherzewski, Development Review Planning Manager (moderator); 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 public.</p>
GENERAL BUSINESS ITEMS:	
APPROVAL OF THE MINUTES	<p>The motion was made by Ms. Latsis and duly seconded by Mr. Brockelman to accept the minutes from the September 17, 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, Abstain; Mr. Sall, Absent; and Ms. Sauve, Yes.</p>
PUBLIC HEARING ITEMS:	
ITEM 1	<p>CASE NO. LDC21-001, LANDSCAPE CODE AMENDMENT / LAND DEVELOPMENT CODE (LDC) – MOLLY ORKILD-LARSON, PRINCIPAL PLANNER – PUBLIC WORKS AND DEVELOPMENT (PWD)</p> <p>Ms. Sauve asked the County Attorney if the PC had jurisdiction to proceed. Mr. Hill said that LDC21-001 had been properly noticed and the PC had jurisdiction to proceed.</p> <p>Ms. Orkild-Larson stated the goal was to establish water-efficient landscape standards that would enhance the environmental, economic, aesthetic, and recreational resources of the County and to promote sustainable management of the</p>



County’s water resources. She reported all landscape plans should be designed for optimum site accessibility and visibility; safe pedestrian and traffic circulation; compatibility with adjacent land uses; enhancement of outdoor recreational opportunities; protection of endangered and significant ecotypes, soils, and wildlife habitat; climate resilience; prevention of the spread of invasive species; and the reduction of water consumption. She added these amendments were also intended to clarify and simplify the code, add new landscape technologies and topics, and add professional requirements. She summarized the following amendments:

1. Adding a tree preservation section that included policy and regulations, creation of a tree survey, tree removal and replacement, and tree protection.
2. Amending landscape applicability to clarify what applications trigger landscape requirements.
3. Amending general landscape requirements including the selection and installation of plant materials, plant size and installation, and ground cover treatments.
4. Adding turf limitation criteria to reduce allowable turf areas and prohibiting high water demand turf in the county.
5. Adding plant diversity requirements criteria to increase diversity and reduce disease.
6. Amending soil amendments and mulch requirements.
7. Adding irrigation requirements on what type of irrigation to use, where it should be applied, and how to reduce water waste through design.
8. Adding buffering and screening requirements between land uses.
9. Amending planting ratios for urban and rural landscapes.
10. Amending parking lot design criteria and planting ratios.
11. Adding stormwater runoff criteria to irrigate landscape areas.
12. Amending landscape median and rights-of-way design criteria and compliance with the County’s Stormwater Management Manual.
13. Adding separation distances between utilities and trees.
14. Amending weed control – what plant species were allowed and erosion control guidance.
15. Adding wildfire defensible space design criteria.
16. Adding qualifications and certifications of the professionals designing, installing, and inspecting projects.
17. Adding and amending definitions to correspond with proposed landscape amendments.
18. Amendments to the Development Application Manual to reflect changes to the Land Development Code.

She described a series of staff conducted surveys in 2021-2024 designed to obtain input on the existing landscape regulations in which the comments received indicated an overall wish to conserve water and implement water-efficient landscapes through turf reduction, planting in hydrozones, and revising the plant list to require xeric and native species. She explained there were mixed comments on other topics:

- **Artificial Turf:** Some professionals wanted the flexibility of using artificial turf in their designs whereas SEMSWA, water districts, and other professionals

expressed concerns about permeability and impacts on the environment by using this product. Due to the toxins and inability to recycle this product, staff initially proposed limiting the use of this product to sports fields. However, the BOCC directed staff to remove this provision until further research could be presented to them regarding the potential health impacts.

- Tree Preservation Plan: Comments were received stating it might be difficult to fit all the replacement trees on a property and adjacent road rights-of-way. If this was the case, staff could recommend the placement of these trees on other County parcels. Other respondents were encouraged that existing trees could be preserved, and count towards the landscape requirements.
- Turf Reduction: The percentage of turf allowed on residential development was questioned. The amendment proposed that turf should be limited to 25 percent of the total combined yard area or a maximum of 500 square feet on a lot, whichever was less, although location of turf wasn't specified in this amendment. Those who commented recommended the Town of Castle Rock's requirements or the City of Aurora's regulations as an alternative but it was noted this proposal limits total turf like these jurisdictions and gives more flexibility in where the turf can be placed.

She reported Staff had a BOCC study session on September 3, 2024 to discuss the concerns of the PC where the only comments received were for staff to remove the artificial turf from the proposed code amendment and to further research this topic. She stated once this has been done, staff is to return to the Board for further discussion on this topic. She affirmed there would be some added costs to an applicant and additional review time for staff with the introduction of the irrigation and tree preservation plans, however, there should be some offsetting cost savings as landscape inspections would be conducted by the applicant and the creation of standard landscape charts would also reduce the planner's review time. She stated the proposed amendments provided water conservation and efficiency methods crafted over four years with input and direction from landscape, planning, and engineering professionals, County staff, SEMSWA, water districts, referral agencies, and the public. She concluded staff recommended approval of the proposed Land Development Code and Development Application Manual amendments.

There was discussion regarding the following:

- Why was tree removal language stringent – what caused the need for this amendment?
- What is the problem with artificial turf?
- Were golf courses included?
- What about old growth trees?

Ms. Orkild-Larson said the tree removal language was stringent because the county had experienced an incidence of clear-cutting taking place at the time of recent development. She said the problem with the artificial turf regulation was that it was originally written for athletic fields not residential use. She agreed it was a fair question to further research toxicity and the use of the product. She confirmed golf courses were not included in this regulation. She said there was no moratorium at

this time. She also stated that landscape professionals would review old growth trees and if these trees were diseased the applicant wouldn't be required to replace them.

Ms. Sauve opened the public hearing. There was one member of the public present who questioned the unintended consequences of dry xeric landscapes and wondered whether they could still be used for people to grow food in their yards. She was also concerned with the impacts to natural drainage ways with these amendments. Staff explained that there were no restrictions to gardens or their location in the front or back yard of a residence in Arapahoe County and that the LDC amendments were in response to state legislation that would conserve water and minimize impacts to drainageways. Ms. Sauve closed the public hearing.

The motion was made by Mr. Brockelman and duly seconded by Mr. Mohrhaus, in the case of LDC21-001, Landscape Land Development Code Amendment, and Development Application Manual Amendment, I have reviewed the staff report, including all exhibits and attachments, and have listened to the staff presentation and any public comment as presented at the hearing and hereby move to recommend approval of the proposed amendment of the Land Development Code and Development Application Manual as presented in the staff report, subject to the following recommended stipulation:

1. Staff is authorized to make minor corrections or revisions to the proposed language, with the approval of the County Attorney, if necessary to incorporate the approved amendment into the text of the Land Development Code and Development Application Manual.

The vote was:

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

The tie vote indicates a motion failed and results in a recommendation to deny and will include the specific concerns and reasons for this recommendation from specific PC members as follows:

Ms. Latsis said she appreciated the spirit of these proposed changes but felt strongly that the amount of time and costs that would be incurred for developers and ultimately citizens who would absorb the costs be taken into account. She objected to the level of granularity of the amended regulations and thought the county should make fewer specific changes to the regulations.

Mr. Miller recommended caution with these types of specifics and reaffirmed the concern about costs being transferred to homebuyers.

Ms. Sauve suggested the BOCC review the streamed audio of the entire discussion here for specific recommendations regarding the outcome of the PC hearing. Mr. Mohrhaus agreed.

STUDY SESSION ITEMS:

ITEM 1

CASE NO. LDC23-005, OIL & GAS REGULATIONS / LAND DEVELOPMENT CODE AMENDMENT – JASON REYNOLDS, PLANNING DIVISION MANAGER – PUBLIC WORKS AND DEVELOPMENT (PWD)

Mr. Reynolds recounted the history of this process to change the County’s governance of site approval for oil and gas wells and facilities as granted by Colorado Senate Bill SB19-181 and explained events leading up to direction by the BOCC to prepare additional amendments to the Oil & Gas Regulations, including the creation of requirements for financial assurances; additional requirements for air and water quality monitoring; disallowing commercial injection wells; the creation of an inspection program; increasing reverse setbacks and cleaning up some redundant sections of the code. He reported over the past several months, staff had been conducting research on best practices and had reviewed regulations in other jurisdictions to determine the best requirements for Arapahoe County. He described how staff had shared draft changes to the regulations with the BOCC in July of 2023 and direction to staff to conduct public outreach and seek comments. He added the draft regulations were most recently posted on the County’s website between July 29th to September 6th, 2024, for public comment. He said since there had been a significant increase in oil and gas development in the eastern county and that it was anticipated to only increase in the near term, this project had an ambitious schedule. He clarified these regulations focused on site operations and monitoring and as such, with pending applications, it was important to have additional protections in place before drilling commenced. He outlined the schedule for approval to begin with the public hearing for a PC recommendation on November 12th, followed by a public hearing for approval with the BOCC on December 10th. He then described specific amendments to the regulations by topic:

Reverse Setbacks

He stated the regulations set minimum distances that new oil and gas facilities must be set back from existing structures and bodies of water. He said reverse setbacks were applicable to new development that was proposed from an existing oil and gas facility and were currently allowed 250 feet from an oil and gas facility of any status. He added that during community discourse last year, there were concerns raised that these setbacks were too close so the proposed regulations would expand the reverse setback requirement from 250 feet to 2,000 feet for oil and gas facilities under application review or permitted but not drilled; or to 1,000 feet for oil and gas facilities that were actively producing, shut-in or temporarily abandoned; or 250 feet from oil and gas facilities that were plugged and abandoned.

Commercial Injection Wells

He explained this type of well was where operators injected used, contaminated water from the hydraulic fracturing process into deep rock formations for disposal. He said despite layers of protective casing in these wells, concerns remained regarding potential leaks and compromising the water table. He added they also generated a significant amount of truck traffic and had the potential to draw that traffic from well sites outside Arapahoe County thereby increasing wear on county roads. He said this

type of well had created seismicity in Colorado in the past and state response to those events, requiring slower injection rates and monitoring, had mitigated this problem but prohibiting commercial injection wells for the disposal of wastewater removed the risk altogether. He concluded that, as directed by the BOCC, staff had added a code section clarifying that this activity was not permitted.

Additional Water Quality Monitoring

He described the proposed regulations would require more robust baseline water sampling requirements for both groundwater and surface water and a sampling and monitoring plan would be developed, with testing required within a half-mile radius of the facility of both upgradient and downgradient water bodies. He said that operators would be required to conduct water sampling and monitoring within six months of drilling and every 12 months after production and if contamination was noted, a follow-up test and inspection would be required within six months.

Air Quality Requirements

He reported although the State currently required air and water quality monitoring at oil and gas facilities through the Colorado Department of Public Health and Environment (CDPHE) and the Energy and Carbon Management Commission (ECMC), feedback from the public at last year’s rulemaking hearings suggested the County enact more protective rules for air quality reporting. He stated the BOCC directed staff to further enhance the County regulations adopted in November 2023 for air quality monitoring, and staff conducted extensive research into additional requirements, in collaboration with staff from the Arapahoe County Public Health Department. He confirmed the proposed regulations focused on best management practices for avoiding and minimizing (rather than mitigating) releases of emissions which impacted air quality. He explained currently the operator was required to test for air pollutants prior to drilling to measure for a baseline, and conduct continuous air quality monitoring during the drilling, completion, and production phases.

Inspection Program

He explained the State conducted inspections on oil and gas wells (by both ECMC and CDPHE), however, there were relatively few inspectors for the large number of well pads throughout the state. He said the BOCC directed Staff to investigate setting up a County inspection program to be funded by operators through an additional fee. He stated this County program would be an enhancement to the state’s program that was not able to keep up with the inspection demands and would therefore increase the level of inspection service. He added County inspectors would be responsible for enforcing County regulations. He confirmed Staff had included a section in the attached code amendment which established an inspection program.

Financial Assurances

He described how assurances were often required of oil and gas operators by the State to ensure that costs associated with decommissioning an oil and gas facility were covered, in the event the operator defaulted on the facility and were typically in the form of a bond but could also appear as an irrevocable letter of credit, or cash deposit. He reported these amounts were typically low and Staff were directed to require a supplementary financial assurance based on best practices in other

jurisdictions. Mr. Reynolds asked the PC to voice their opinion of which level of assurance should be required by the county of the following options:

- \$95,000 standard assurance
- \$120,000 based on a recent cost example from Adams County
- \$150,000 recommendation made by Carbon Tracker

There was discussion regarding the following:

- Who at the County would conduct the proposed additional air and water quality inspections?
- How would financial assurances be managed? Where did the assurances go? Did this replace or augment what the state is doing?
- Did 100% of wells need plugging?

Mr. Reynolds reported that a job opening for an Energy Program Manager was currently posted for the Planning Division to replace the Energy Specialist position previously held by Chris Laramie. He added there was a plan to add an inspector to report to this manager if the regulations proposed were approved. He said that 2 inspections / year would be needed to encourage responsible O&G development in concert with state regulations and requirements and these would be funded by reasonable and necessary fees added to support this program. Mr. Hill explained the financial assurances would be 3rd party held but called upon by the county only in the event that plugging or abandonment support was needed at the end of the life of the well. In the event these funds were not needed, he affirmed this bond or letter of credit would be released back to the operator when the ECMC certified that well plugging had been completed according to State regulations by the operator. Mr. Reynolds confirmed that all wells eventually needed plugging. He asked the PC member to all weigh in on the level of assurance that should be brought before the BOCC.

Mr. Brockelman asked wasn't this assurance like a fine to operators? He said it seemed punitive and excessive and down into the weeds since the State already required financial assurance. He stated this would likely keep O&G providers from doing business here. As such he would only recommend the lowest assurance of \$95,000.

Mr. Mohrhaus requested assurance that these would be held by a 3rd party and recommended the \$120,000 level. He also stated fines structure should begin at \$15,000 and recommended a graduated scale for repeat offenders. He said that he felt reverse setbacks should be equal protection for each well status.

Ms. Sauve favored \$120,000 assurance as a real-life recent example.

Ms. Howe agreed and expressed concern that \$150,000 was too much. She added she was supportive of additional air and water monitoring and the start-up cost of monitoring equipment being covered with annual operator fee funding.



	<p>Ms. Latsis questioned how this would work with state assurances and said she felt additional county assurances could be a help but could also accelerate the problem. She suggested we find the balance between assuring wells would be closed when operators defaulted on wells and being open for business.</p> <p>Mr. Miller said he felt a 5-mile reservoir setback was not reasonable. He added he was not supportive of added monitoring by the county and the added O&G fees to operators as these piled costs to the consumer ultimately therefore the \$95000 lowest impact assurance was preferable to any higher level.</p> <p>Ms. Pecherzewski thanked the PC for their input and confirmed their comments would be incorporated into the record and combined with November PC hearing recommendations to be addressed at the time of the BOCC Public Hearing on December 10, 2024.</p>
ANNOUNCEMENTS	<p>Ms. Orkild-Larson confirmed there would be a public hearing for the Oil & Gas regulations here at the East Hearing Room on November 12, 2024 at 6:30pm.</p>
ADJOURNMENT	<p>There being no further business to come before the Planning Commission, the meeting was adjourned.</p>