

**MINUTES OF THE REGULAR MEETING OF THE
ARAPAHOE COUNTY PLANNING COMMISSION
TUESDAY, AUGUST 15, 2023**

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; Kathryn Latsis; Randall Miller, Chair; Dave Mohrhaus; Richard Sall; Lynn Sauve, Chair Pro-Tem; and Jamie Wollman.</p> <p>Also present were Robert Hill, Senior Assistant County Attorney; Jason Reynolds, Planning Division Manager; Ava Pecherzewski, Development Review Planning Manager (moderator); Molly Orkild-Larson, Principal Planner; Bryan Weimer, PWD Director; Chuck Haskins, Engineering Services Division Manager; Diane Kocis, Energy Specialist; and Kim Lynch, Planning Technician.</p>
CALL TO ORDER	<p>Mr. Miller called the meeting to order at 6:30 p.m.</p> <p>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. Sauve and duly seconded by Mr. Brockelman to approve the minutes from the August 1, 2023 Planning Commission meeting, as submitted:</p> <p>The vote was:</p> <p>Mr. Brockelman, Yes; Ms. Latsis, Yes; Mr. Miller, Yes; Mr. Mohrhaus, Yes; Ms. Sauve, Yes; Mr. Sall, Yes; Ms. Wollman, Yes.</p>
PUBLIC HEARING ITEMS:	
ITEM 1	<p>CASE NO LDC23-003, OIL AND GAS / LAND DEVELOPMENT CODE (LDC) AMENDMENT CONTINUATION – DIANE KOCIS, ENERGY SPECIALIST – PUBLIC WORKS AND DEVELOPMENT (PWD)</p> <p>Mr. Miller said the case had been properly noticed at the time of the hearing on July 18, 2023, therefore no additional noticing was required for the continuation. He stated that as this was a continuance of that hearing it would not be open for any further public comment. He added that since this</p>

item would be decided at the Board of County Commissioners (BOCC) hearing on October 10, 2023 the public would be invited to make further comment at that time.

Ms. Kocis recounted that on July 18, 2023, staff presented proposed revisions to the Oil and Gas regulations adopted in November of 2021, in part 5.3-6 of the LDC. She said that during the public hearing, the Planning Commission (PC) heard comments from the community, industry, and water providers over a period of approximately three hours. Ms. Kocis reported that many commentators expressed either opposition to portions of the draft regulations or suggested alternative wording. She added that many comments were received on the existing regulations that did not relate to the currently proposed revisions. She stated comments received from nearby residents indicated that they were not satisfied with the reservoir setbacks rule and the proposed rule revisions, the existing setback rules, or the ability for operators to apply for a lesser reservoir setback if conditions were warranted. She said comments received from the industry indicated that they were not supportive of the new reservoir setbacks because they did not believe there was adequate scientific evidence to support the setback. She added these industry comments included an objection to the proposed rule that states non-compliance with State or Federal rules could be enforced by the County. She concluded that staff recommended approval of the LDC amendment as presented. Ms. Kocis proceeded to address changes to the existing LDC as proposed during the July 18, 2023 hearing, that included the following:

- Creating setbacks from existing and planned public water reservoirs with a potential variance process.
- Codifying the relationship to State rules, whereby the County could take enforcement action for non-compliance with State rules.
- Notifications of neighborhood meetings to tenant residents as well as property owners of record and HOAs in a one-mile radius of a new well pad.
- Incorporation of new fire district and health and safety rules to include requirements for post-incident meetings, access roads construction standards to comply with fire code and an alternative access road if a well pad incident could prevent emergency access.
- Incorporation of a requirement for any application that proposes lesser setbacks to be approved by the BOCC.
- Adding a requirement for handwashing facilities during drilling and fracking operations.
- Improving the application process by clarifying and adding application submittal requirements.
- Adding cryptocurrency mining as an accessory use at well pads.

Ms. Kocis summarized a written statement from Colorado Oil & Gas Association (COGA) presented to the PC at the beginning of the hearing to further explain their position on the proposed setback changes to the LDC.

She said they stated the proposed one-mile setback was not reasonable or necessary to protect public health, safety, welfare, or the environment and wildlife resources. She added the State's technical experts Colorado Oil and Gas Conservation Commission (COGCC) now known at the Energy and Carbon Management Commission (ECMC) purposefully adopted a less restrictive setback of 1,000 feet that could also be reduced. She said this setback from surface water supply areas, areas with groundwater under the direct influence of surface water, was five times less than the one mile set back proposed here and even the proposed water reservoir setback of 2,000 feet downgradient is two-times that of the State's setback and there was no evidence that spills were likely to migrate even as far away as 2,000 feet. She concluded that a large cohort of public water suppliers and water experts endorsed the less restrictive 1,000-foot setback to protect water sources, and this was covered in the State's rule 411.

The PC asked the following questions:

- How were set back distances measured? Was a 2,000-foot setback measured at the surface level or from the horizontal bore?
- Were there any well sites within one mile of any reservoir?
- How were spills addressed when they occur?
- Have any other counties or cities, who have regulations like the proposed regulations, granted variance of a 2,000-foot setback?

Ms. Kocis said setbacks were measured from the surface only and the areas underneath reservoirs were not currently addressed because horizontal bores were 7000 feet under the surface of the land and therefore greater than one mile distance from the well property. She confirmed there were no well sites within one mile of a reservoir in Arapahoe County. She explained that an operator must assume cost of cleanup and mitigation for impacted residents in the event of a spill anywhere in Colorado. She reaffirmed that no other counties or cities, who have regulations like the proposed regulations, had granted a variance under a 2,000-foot setback to a reservoir.

Mr. Reynolds further explained if an applicant could demonstrate a down gradient distance of up to 2,000 feet away from a reservoir, then they could be less than one mile away with permission of the water provider, or a variance could be granted if an operator was requesting a variance under 2,000 feet if the applicant met the criteria as proposed in the draft regulations.

Ms. Latsis added if a reservoir was already designated an outdoor activity venue, then no lesser variance could be considered.

Mr. Hill clarified that the only setback in question for the regulations proposed here tonight was the one-mile reservoir setback or 2,000' if down gradient and the variance process for less if the geography provides for this.

Regarding the request to codify the relationship to State rules, whereby the County could take enforcement action for non-compliance with State rules,

Ms. Kocis explained that industry had objected to this since the County did not have the authority to monitor and enforce State rules. She clarified that the BOCC had suggested staff propose a rule along these lines.

Ms. Latsis stated she felt that since state monitoring happened every two years or so it was reasonable that the county could implement additional and more frequent monitoring as had been done in Adams County.

Ms. Kocis clarified that neighborhood meeting and owner/tenant notification within one mile was the industry practice and this had been in place since Arapahoe County implemented these regulations in 2021. She added there had been no objection by applicants to this regulation.

Mr. Hill confirmed that the regulations read so that the Planning Division Manager could decrease or increase this distance as needed.

There were discussions concerning fire district health and safety rules to include requirements for post-incident meetings, access roads construction standards to comply with fire code and an alternative access road.

Ms. Kocis said that major operators had already been building the 20-foot-wide access roads required to meet the fire code standards so there were no industry objections to this rule. She said there was general willingness on the part of operators to comply with post incident meeting.

When asked what the definition of an incident was, Mr. Hill provided the regulation definition “Formal incident reports are required for, but not limited to: spills, releases, uncontrolled release of pressure, loss of well control, vandalism, terrorist activities, explosions, fires, detonations, lightning strikes, any accidental or natural event that damages equipment; any accident that results in fatality, significant injury or chemical exposure; or any occurrence that threatens safety on any of the operators facilities including pipeline.”

Mr. Miller agreed that was a comprehensive list of possible incidents.

Mr. Reynolds explained that adding a requirement for handwashing facilities during drilling and fracking operations to the regulations would provide clarity to operators of the Health Department’s expectation and any site plans approved by the county would include such adequate handwashing facilities.

Ms. Kocis explained staff would like to improve the application process by clarifying and adding application submittal requirements that are not usually provided at the County application level such as a visual simulation of how the pad would look to adjacent properties and a narrative to explain the entire application requirements such as health and safety and wildlife considerations.

Ms. Kocis revisited the previous hearing’s discussion about the limited knowledge of how the crypto currency mining process would impact the environment as it was such a new technology; how no assessment had been made of crypto currency mining contaminants that could be airborne; or how the use of a stranded well by flaring natural gas to provide power for the operation could be a beneficial use of available resource.

The PC reiterated that it felt further study was needed before this accessory use should be allowed with respect to potential hazards or potential benefits.

The motion was made by Ms. Latsis and duly seconded by Ms. Wollman, in the case of LDC23-003, Oil and Gas Regulations / Land Development Code (LCD) Amendment, that the Planning Commission reviewed the staff report, including all exhibits and attachments, listened to the presentation and such public comment as was presented at the hearing, and moved to recommend approval of the proposed amendment to the Land Development Code as presented, except for the proposed amendment to allow cryptocurrency mining as an accessory use to an oil and gas facility which was recommend be denied, and instead that staff develop more comprehensive regulations for such accessory uses of an oil and gas facility that better define the allowable accessory uses, which may include cryptocurrency mining or possibly other uses, and to develop appropriate operational standards, such as maximum size of the allowed accessory uses, duration of uses, nuisance abatement standards related to noise and light, and to mitigate any potential environmental impacts to air quality, or other surface impacts from the uses; subject to the following stipulation.

- 1. 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 PC Members were invited to state their specific recommendations for the BOCC with respect to these LDC Amendments as heard on July 18, 2023 and August 15, 2023.

Ms. Latsis said she recommended a refinement of the regulations to include an agreed upon body of scientific data that could be used to make new regulations going forward.

Mr. Brockelman affirmed the regulations as presented now were a starting point and the best that could be done to protect life, liberty, and justice.

Mr. Mohrhaus suggested the BOCC consider the addition of a county inspector to provide oversight perhaps in the next phase of regulation development.



	<p>Mr. Miller stated these were mineral rights that belonged to the landowner who had the right to develop those personal assets. He stated that continually adding more stringent regulations was against these rights and no more regulations should be needed or considered at this time, in his opinion.</p> <p>The vote was:</p> <p>Mr. Brockelman, Yes; Ms. Latsis, Yes; Mr. Miller, No; Mr. Mohrhaus, Yes; Mr. Sall, Yes; Ms. Sauve, Yes; Ms. Wollman, Yes.</p>
ADJOURNMENT	<p>Ms. Orkild-Larson reported that the Arcadia Final Plat was approved at the August 8, 2023, BOCC Public Hearing and that the BOCC would be hearing the LDC O&G Amendment on October 10, 2023.</p>
ADJOURNMENT	<p>There being no further business to come before the Planning Commission, the meeting was adjourned.</p>