

David Katz, Chair
Julie Stackhouse, Vice Chair
Michelle Haefele
Adam Sass
Ted Shepard
Samantha Stegner
York

Virtual Hearing
City Council Chambers
300 Laporte Avenue
Fort Collins, Colorado

Cablecast on FCTV, Channel 14 on Connexion &
Channels 14 & 881 on Comcast

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**Regular Hearing
July 20, 2023**

Chair Katz called the meeting to order at 6:00 p.m.

Roll Call: Haefele, Katz, Sass, Shepard, Stackhouse, Stegner, York

Absent: None

Staff Present: Frickey, Sizemore, Claypool, Yatabe, Guin, Longstein, Raymond, and Manno

Chair Katz provided background on the Commission's role and what the audience could expect as to the order of business. He noted that members are volunteers appointed by City Council. The Commission members review the analysis by staff, the applicants' presentations, and input from the public and make a determination regarding whether each proposal meets the Land Use Code. He noted that this is a legal hearing, and that he will moderate for civility and fairness.

Agenda Review

CDNS Director Sizemore reviewed the items on the Consent and Discussion agendas, stating that all items will be heard as originally advertised.

Public Input on Items Not on the Hearing Agenda:

None noted.

Consent Agenda:

1. Draft Minutes from May 18, 2023, P&Z Hearing

Public Input on Consent Agenda:

None noted.

Chair Katz did a final review of the items on consent and reiterated that those items will not have a separate presentation unless pulled from the consent agenda.

Member York made a motion that the Planning and Zoning Commission approve the Consent Agenda for the July 20, 2023, Planning and Zoning Commission hearing as originally advertised. Member Shepard seconded the motion. Vote: 7:0.

Discussion Agenda:

2. Land Use Code: Oil & Gas Reverse Setbacks

Project Description: This is a request for a recommendation to City Council amending the Land Use Code to update reverse setback standards from new development near existing oil and gas wells.

Recommendation: Approval

Secretary Manno reported that no new information had been received after the agenda packet was published.

Staff and Applicant Presentations

Senior Environmental Planner, Kirk Longstein, gave a brief verbal/visual overview of the project.

Public Input (3 minutes per person)

Bill Swalling, 6164 S. Fairfax Ct., presented on behalf himself, along with comments from the following individuals: Stuart Ellsworth, 7716 S. Harrison, Centennial, CO; Dade Neslion, 720 S. Jackson St., Denver, CO; Katelyn Hall, 350 Indiana St., Golden, CO; Tami McMullin, 350 Indiana St., Golden, CO; and Dan Nickless. Stuart spoke to the specifics of water injection wells and the process involved in maintaining these wells. Dade spoke to the buffer size, concerns, likelihood of changes, and safety. Dr. McMullin spoke to the potential of health impacts or, more likely, the lack thereof of health impacts. Dr. Hall spoke to air emissions and lack of health impacts due to the type of wells.

Michael Welty, 319 Orion Cir., spoke on behalf of the Builders Council. He is concerned that this is a continued path toward increasing the cost of new home construction. This hurts the construction industry and the number of jobs that are created.

Tim Gosar, 1908 Promenade Way, spoke to the Firestone tragedy and the possibility of 500' variances that could be granted. He is also concerned with the safety issues and potential for lack of or no reporting of spills.

Ed Beehan, 3580 Stanford Rd., is concerned with the proposed reverse setback standards, site monitoring, and the notification process.

Staff Response

Planner Longstein responded that he has had the pleasure of working with Bill Swalling and his team over the months and appreciates their time. Regarding available literature, it is not complete regarding oil recovery wells and setback attributes. This is the primary reason that staff has introduced the modification of standards opportunity from the 2000' setback, for instances where additional information could help the Commission make a decision. Staff does not recommend differentiating setbacks between pre- and post-production situations. Staff does continue to collect monitoring reports. Staff has tried to balance disclosures between ongoing monitoring and concerns about future contaminates in the community.

Commission Questions / Deliberation

Commission questions

Member Haefele asked for clarification regarding the buffer. Planner Longstein responded that if the developer submits a proposal today, under the current Code, it would be 500' or Colorado Oil and Gas Conservation Commission (COGCC) standards, whichever is stricter. Once the changes to Code are made, the buffer will be 2000'. Currently, the Code breaks the buffer, meaning that if there is an arterial or collector road, the buffer would not extend over that road. The proposed updates would remove this provision so that the buffer would extend.

Member Shepard asked for clarification on whether the proposed Code changes only affected occupiable buildings. Planning Manager Frickey responded that Code will affect only inhabitable buildings for which one would receive a certificate of occupancy.

Member Shepard asked what would happen if someone wanted to complete an addition on a main structure that fronts to a street. Planner Longstein responded that it would be allowed. Member Haefele asked if the proposed Code changes would apply to an addition to an existing building where the addition encroached into the buffer. Planner Longstein responded that this type of addition would be permitted. After additional discussion of alternative situations, Planner Longstein responded that if the existing home falls in the buffer, an addition would be allowed. If the home falls outside of the buffer and the addition encroaches into the buffer, it would not be allowed.

Member Haefele asked about how requests from an existing operator to go back into an injection would be treated once the regulations go into effect. Planner Longstein responded that the response might need a follow up. However, if it were even feasible, the operator would have to go through a COGCC process. There is no local process. Member Haefele asked about a situation where a developer gets a modification of standard because a well is not producing but later wants to go back into an injection or a plugged and abandoned well. Planner Longstein responded that the operator would have to go through the State process.

Member Haefele asked if the disclosure relates to real estate transaction and whether these would be required for every transaction for the property. Planner Longstein affirmed her understanding. Member Haefele asked to be walked through how this would happen during a transaction. Planner Longstein responded that he is not a licensed real estate professional. The intent of the Code is not to regulate private transactions; however, the State of Colorado has rules and guidance around disclosures that the real estate professional would include. The Code is specific around the language that should be provided to the seller. Chair Katz understands this and suspects this would be a signed disclosure from the buyer.

Vice Chair Stackhouse asked if every house in the radius would receive the disclosure if they sold their homes. Planner Longstein confirmed that the Code changes would require the disclosure.

Chair Katz asked whether the continued monitoring is specific to the Enhanced Oil Recovery or all types of production wells. Planner Longstein responded that a well is reclaimed is through cement, and we do not know when cement might fail. It is reasonable to assume that older wells are going to be at a higher risk than the newly plugged wells. Wells will be monitored for five years once they are plugged. Vice Chair Stackhouse asked about the environmental consequences if a failure were to occur. Planner Longstein responded that it would depend on the exposure related to the industrial contaminants. Member York asked who would be responsible in the instance of a failure. Planner Longstein responded that if a contamination is identified from the monitoring, the development would be required to bring it back to an acceptable level. Member York asked who would be responsible after the expiration of monitoring? Planner Longstein responded the homeowners, Homeowners Association, or the landowner.

Commission Deliberations

Member Shepard commented in regard to peer municipalities and stringency of standards, the City of Fort Collins is second most stringent. This resonates with him. Vice Chair Stackhouse commented the proposed Code language reflects a compromise. It provides protection but is not so arduous that it creates unintended consequences. She feels this is a reasonable compromise and she supports the Code language.

Member Haefele commented on the five-year monitoring for plugged and abandoned wells, noting a likelihood that failure will occur over time. She proposed that the Commission recommend to the Council a period of monitoring that is longer and less frequent than annual. She also believes homeowner disclosures should be upfront and not buried. Member York agreed with the Member Haefele's longer and less frequent monitoring proposal. Vice Chair Stackhouse asked if this meant monitoring in perpetuity. Planner Longstein then clarified that monitoring will not tell us if the plug is failing. Rather, the monitoring is groundwater and soil gas to evaluate for contaminants. Member Sass requested clarification on whether the five years was only on the abandoned wells. Chair Katz confirmed this understanding and noted that the reclaimed wells require one inspection upon permit. Member Sass also requested clarification on the setbacks for each: reclaimed is 150' setback, dried is 500' setback and 2000' for injected and production. Chair Katz confirmed the understanding.

Chair Katz asked the Commission for comments in support or opposition. He is sensitive to some of the public comments and has considered what has been said. He encourages the modification of standards process. He supports the staff's recommendation. Member Sass asked the Commission if members understand the distance between an injection well and a production well. He wants to understand why a 2000' setback is proposed for both types when they operate very differently. Member Haefele responded that the injection well could again be used for development and production. She feels they should be treated the same. Member York feels there should be consistency between them regardless of what the fluid is. Vice Chair Stackhouse feels the staff's proposal is a conservative approach. For that reason, there are going to be consequences to existing homeowners and future development; however, it is a tradeoff. Chair Katz feels this will not have much of an effect on existing residents, but more so for the new development. Both Chair Katz and Member Shepard support this proposal. Member Shepard suggested the addition of a couple of columns to the peer city slide to show Council what other cities have the modification of standard procedure and which do not. He asked if 2.8.2h1-4 be the same criteria. The response was yes. Member Shepard expressed comfort with this proposal, as did Chair Katz.

Member Stackhouse made a motion that the Planning and Zoning Commission recommend that the City Council adopt the Land Use Code amendment addressing setbacks from existing oil and gas facilities, including language that permits any applicant that submits a completed Basic Development Review Project Plan, planned unit development, or building permit application prior to the effective date of the proposed ordinance to continue development review under standards adopted by Ordinance 114-2018. Member York seconded. Member Shepard thanked the public for speaking. He also commented that he feels staff has engaged in a rational process with sufficient and comprehensive public engagement. Member York thanked everyone, and he will be supporting. Chair Katz commented that he learned a lot and it was very well put together and he will be supporting the recommendation. **Vote: 7:0.**

For more complete details on this hearing, please view our video recording located here:
<https://www.fcgov.com/fctv/video-archive.php?search=PLANNING%20ZONING>

Other Business

Vice Chair Stackhouse spoke to the rules of public participation and if it could be posted on the website for future audiences. Director Sizemore responded that staff will look into it and let the Commission know at the next work session. Attorney Guin commented that the city code addresses the rules/procedure. They are forwarded to the Clerk's office and maintained by the Clerk.

Adjournment

Chair Katz moved to adjourn the P&Z Commission hearing. The meeting was adjourned at 7:49 pm.

Minutes respectfully submitted by Shar Manno.

Minutes approved by a vote of the Commission on: September 21, 2023.

Paul Sizemore, CDNS Director

David Katz, Chair

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