



# COUNTY OF ELBERT

## COMMUNITY & DEVELOPMENT SERVICES DEPARTMENT

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### MINUTES ELBERT COUNTY PLANNING COMMISSION MEETING May 23, 2013

Note: These meeting minutes are only a summary of the meeting. Duplications of the audio recording are available, for a fee, by contacting Community & Development Services.

The regular Planning Commission Meeting was called to order at 7:00 p.m. by Chairman, Grant Thayer.

#### PLEDGE OF ALLEGIANCE

#### ROLL CALL:

Commission members present: Tom Beshore, Ron Turner, Paul Crisan, Rick Brown, Mike Kelley, Paula Koch, Sue Link, Susan Saint Vincent, Grant Thayer. Bob Ware was in attendance but was not seated.

Staff present: Kyle Fenner – Director, CDS, Curtis Carlson – Senior Planner, Carolyn Parkinson - Floodplains Manager – Planner

#### STAFF REPORT ON BOARD OF COUNTY COMMISSIONERS ACTION(S):

**A. Curtis Carlson informed the Planning Commission that the Board of County Commissioners passed the Service district regulations 2 to 1. Also, the BOCC will be conducting weekly meetings beginning in June. Meetings will be held every Wednesday.**

#### CONSENT CALENDAR:

**A. Approval of meeting Minutes for March 28<sup>th</sup> and April 4<sup>th</sup>. Susan Saint Vincent made a motion to approve the meeting minutes. Paul Crisan seconded the motion. Motion carried 9 to 0.**

**COMMUNITY INPUT:**

**PUBLIC HEARINGS:**

**A: RZ 12-0004 Mason Rezone and MD 12-0004 Mason Minor Subdivision**

- a. **Curtis Carlson presented a request for Patricia and Robert Mason to rezone 39 acres from A to AR, for the purpose of creating three 10 acre lots. He stated that the minor development would include two lots with residences and one vacant lot for future development. In the proposal that Curtis presented;**
- b. **Elizabeth fire protection district requested that all roads meet County Road design requirements, Road names be approved by the fire department, the developer provide a map of the development to the fire department, that a review fee of \$192.00 be paid prior to the release of Resolution 99-35 and that the developer provide one of three options for water for fire protection.**
- c. **Elizabeth C-1 School district requested fees totaling \$6741.00 for improvements.**
- d. **Kiowa Conservation District had no objections but suggested the weed management program be reviewed.**
- e. **Intermountain Rural Electric will continue to maintain the existing utility easements unless otherwise requested by the applicant and they requested that they designate utility easements of 20' on the west boundary of the subdivision, 10' easements on all front lots and 5' easements on one side of each lot.**
- f. **The Colorado Department of Natural Resources water division, addressed the estimated water requirement for the three lots and the source of the water supply. It was stated that one existing well will require a new permit and an amended permit should be obtained for the second existing well.**
- g. **The Elbert County Engineer supported approval of the Mason Minor Subdivision provided their redline comments are addressed and that the final plat meets Elbert County regulations and standards.**
- h. **Elbert County Community & Development Services recommends approval of RZ 12-0004 with some conditions (conditions are listed in the staff report). Elbert County Community & Development Services also recommends approval of MD 12-0004 Mason Minor Subdivision with some conditions, noting that in condition 1, the 20' utility easement was a request of IREA not**

a requirement for the applicant (conditions are listed in the staff report). The applicant has made note of this request.

- i. **Bob Mason came forward to address the open space fees that the County is requiring. He would like to appeal the Open Space fees upon the consideration that, back in 1995 he divided an 80 acre lot into two 40 acre lots. Since dividing them, they have built two houses. At the time they built, the Mason's believe that they paid a recommended open space fee and all other applicable fees. The proposed subdivision would create 2 lots with existing houses and 1 vacant lot. Because all fees were paid at the time he built the two residences, he feels that he should only be subject to paying open space fees on the one vacant lot that is being created.**
- j. **Carolyn Parkinson reminded the Planning Commission Members that they recently heard a proposal for the Pederson Minor subdivision that in some ways resembled the Mason application. They created two lots from one under similar circumstances; they had two residences on one lot, after the minor subdivision they had two separate lots with existing residences on them. The applicant in that case was also required to pay open space fees.**
- k. **Grant Thayer opened the Hearing to Public Comment**
- l. **Jerry Waver. Stated that Stage coach trail runs on the east side of his home. He asked that, when they do build on the currently vacant lot, they be required to mitigate the dust caused by construction traffic.**
- m. **The Planning Commission Members discussed the issue of the open space fees. Tom Beshore felt the fees paid on the two existing homes should be considered in determining open space fees. Sue Link, Susan Saint Vincent and Rick Brown stated, all similarly, that they sympathized with the applicant in terms of the difficulty in paying all three open space fees at once, but the fees are set up in a manner that requires open space fees to be paid per lot at the time of subdivision, without exception.**
- n. **Paula Koch made a motion to approve the RZ-12004 Mason Rezone and MD 12-0004 Mason Minor Subdivision. Rick Brown seconded the motion. Motion carried 9 to 0.**

## **B. Elbert County Oil and Gas Regulations and MOU**

- a. **Carolyn Parkinson presented the changes that had been made to the Oil and Gas Regulations and MOU since January. She Thanked the Editing Committee for all their hard work and the citizens for their input.**
- b. **To summarize the relationship between the Oil and Gas Regulations and the MOU she explained that the Oil and Gas Regulations are mandatory no**

**matter what the circumstances of the application. The MOU is a contract between the County and the Operator. The purpose for the MOU is to give Elbert County an opportunity to require better protections and stricter BMP's (Best Management Practices). Local Governments are limited in what they can mandate, the MOU allows Elbert County to offer an option to operators that gives Elbert County the ability to tighten some requirements in the Regulations. If an operator agrees to enter into a contract (or MOU), we can require better protections and stronger BMP's and in return we can make the process for obtaining a permit faster for the operator. A Regular Special Use Review takes approximately 5-6 months. The MOU process would take 30-45 days. This is encouraging to operators because they can obtain their permits faster. It is important to Elbert County because we can ask for the things that we cannot mandate in our Regulations.**

- c. A Minor facility can chose to go through the regular Special Use Review or agree to an MOU. Each new MOU will be brought before the BOCC for approval. An Operator can use the approved, negotiated MOU for additional well sites. If, because of site specific reasons, the MOU must be changed, the MOU will need to be approved by the BOCC after changes are made, before the MOU is valid, and does not invalidate the MOU that was negotiated for other well sites.**
- d. A Major and Minor facility will be required to adhere to the Oil and Gas Regulations. The definition of Minor and Major facilities is available in the Oil and Gas Regulations.**
- e. Changes that were made to the Draft Regulations since it was reviewed in January were highlighted in the Regulations handed out to the Planning Commission members. These changes were made to address comments and concerns made by the public and by the Editing Committee, they were also discussed with COGCC for direction, and are found in the following sections (a highlighted copy is available in the CDS Office);**
  - i. Part II, Section 27.1, E. Non Conforming Uses; 1, 2 and 3**
  - ii. Part II, Section 27.1, F. Right to Enter**
  - iii. Part II, Section 27.1, I. Waivers**
  - iv. Part II, Section 27.1, J. Operational Conflicts Waiver**
  - v. Part II, Section 27.2, A. Special Use Permit Application, 1; e, f, g and i**
  - vi. Part II, Section 27.2, A. Special Use Permit Application, 2; b and f**
  - vii. Part II, Section 27.2, A. Special Use Permit Application; 3 and 4**
  - viii. Part II, Section 27.2, B. Policy Statement – MOU; 1, 2 and 4**
  - ix. Part II, Section 27.2, C. Minor Oil and/or Gas Facility (MOU); 2 and 3**
  - x. Part II, Section 27.2, E. Minor Oil and/or Gas Facility (special use); 2 and 7**
  - xi. Part II, Section 27.2, F. Performance Standards, 1, e**

- xii. Part II, Section 27.2, F. Performance Standards, 2, b; 1-4
- xiii. Part II, Section 27.2, F. Performance Standards, 2, b, 5; b, c and d
- xiv. Part II, Section 27.2, F. Performance Standards, 2, b; 6 and 7

- f. Changes that were made to the Draft MOU since it was reviewed in January were highlighted in the MOU handed out to the Planning Commission members. These changes are found in the following sections (a highlighted copy is available in the CDS Office);
  - i. Disclaimer on page one. Meant to explain the relationship between the MOU and the Oil and Gas Regulations
  - ii. Section B.,4
  - iii. Section B.,5
  - iv. Section B.,8
  - v. Addendum A. Statement at beginning of Addendum A.
  - vi. Addendum A, 5 through 9
- g. Grant Thayer opened the Meeting to Public Comment.
- h. John Hubart, a resident of Elbert County, thanked Carolyn and the Planning Commission for their work. He stated that in any case, for the property surrounding him, he hopes for a good neighbor. Overall, he likes the Regulations.
- i. Brooks Imperial asked what standards the Planning Commission would use to evaluate these regulations. He questioned whether Elbert County should be the ones regulating Oil and Gas drilling, or the State. Just because you can build local regulations doesn't mean you should. He feels the regulations come from a lust for power to build. He stated that no one in the room is elected and that this is a non representative process.
- j. JB Condil of Renegade Oil stated that the regulations need more work.
- k. Lisa Zimmerman asked why we are not putting moratorium on oil and gas drilling in the County. She felt that any jobs created by oil and gas development would not benefit Elbert County because the oil and gas companies will employ their own people. She stated the economic benefits would only last a few months. She said the oil and gas leases in Elbert County were bought by the Chinese or the French and that allowing production of oil and gas in our County is neither good for our economic growth nor is it patriotic. She feels that this is solely for the almighty dollar. She asked if the money is worth the health and environmental risks. She suggested that more jobs would come of making Elbert County attractive for business. She closed by asking the Planning Commission to please put Elbert County residents and environment above money.

- l. Tony Corrado served as a member of the Oil and Gas Edit Committee. He stated that there was a lot of diversity of opinions on the Committee, but they worked hard to address the concerns that faced them.**
- m. Rick Blotter, a resident of Agate, thanked Carolyn for all her hard work. He does not believe that any fracking can be done safely. He said that Elbert County has a right to protect our water, the COGCC cannot regulate that. He feels that a moratorium is a reasonable thing to do. He brought up several points that he asked Planning Commission to consider in making their decision, including; increased setbacks, closed loop systems, baseline and continued water sampling, no waste water on the ground for dust mitigation, testing of abandoned wells and requiring all green fracking fluids.**
- n. Chip Swan feels if we have higher restrictions in Elbert County than the counties that surround us, this opportunity will pass us by.**
- o. Tom Duggan, Attorney for Conoco Phillips, had several points to address within the MOU. He said that the set backs are too high, notification requirements are extreme, the 90 day time line is unrealistic and that rule 609 was recently adopted by the COGCC and should be the governing standard. The MOU is too extreme and he feels no one will sign it. He also stated that he had some concern on section 27 of the regulations. He submitted a letter to the Planning Commission Members that included his comments.**
- p. Steve Castleberry spoke about respect for our land and teaching our children to recognize its value, while asking the Planning Commission Members do the same in making their decision.**
- q. Robert Brown is a land owner in Elbert County. He asked about protection on open space and who has the final say over open space development. He voiced concern over migratory routes being eliminated by oil and gas development.**
- r. Jamile Bailey addressed the health hazards related to open pits. She voiced concern with ground water contamination, citing several incidents in New Mexico, Ohio, Texas and Wyoming. She stated that open pits are also a source of air quality pollution. She feels that Pit & liner longevity should be examined further. She informed the Planning Commission that Ohio and Texas have banned earthen pits due to evidence of contamination.**
- s. Leslie Anderson said that this is not a liberal or conservative issue. One neighbor makes a lot of money, one neighbor gets the shaft. She asked the Planning Commission not to move too quickly because once the regulations**

- are decided upon, we can't go back. She also asked, if an oil and gas company has a mishap, can they come back and drill again in our county.
- t. **Greg Hanz stated that the MOU requires closed-loop systems, but that reserve pits are safer. He spent 25 years in the oil and gas industry. He said that the oil and gas industry will bring good jobs to Elbert County residents. He also said that if we slow down on writing our regulations too much, we may take away some people's right to develop their minerals because we waited too long. He feels the document needs more work.**
  - u. **Robert Thomason feels that people concerned with the environment are being villainized. There is science to support claims that chemicals seep through the linings of these pits and migrate through our soil. Our water is our only resource. He is concerned about the health and well being of the residents in Elbert County.**
  - v. **Kyle Schult, a civil engineer and environmental consultant who has benefited from oil and gas development. The company that he works for monitors regulations constantly and they help other companies to produce oil and gas responsibly. Companies hire them to help them comply with environmental issues. Unfortunately, people sometimes latch on to misinformation without knowing the science. He stated that this can be done responsibly.**
  - w. **Gertrude Summers, an Elbert County Resident, asked if fracking sites in Elbert County are established and, where are fracking site maps available. In the draft regulations it addresses medical treatment based on impact of fracking. Medical treatment is ineffective if source of the ailment or sickness is not removed.**
  - x. **Dupree asked that the oil and gas representatives to explain why Idaho stopped and banned fracking. She said that the University of Idaho said it causes earthquakes. She is concerned that earthquakes may be an impact that faces Colorado if fracking is allowed.**
  - y. **Ceve Pennington stated that Oil and gas are commodities and as a land and mineral rights owner he has the right to sell those commodities.**
  - z. **Paul Crisan stated that he understands that the County is divided, but was disappointed that no one spoke about compromise, instead only argued. Elbert County Community & Development Services, along with the Planning Commission, has spent two years working on this. These are property rights issues. We all have skin in the game, so these regulations have been written through compromise. We have to look for the medium. Not everyone can have exactly what they want.**
  - aa. **Tom Beshore stated that the set backs were his biggest issue with the regulations the last time they were reviewed. Now that the MOU has**

addressed the setback issue in a way, he feels, which the Oil companies can work with, he feels more comfortable with it.

- bb. Rick Brown wanted to respond to some concerns that were addressed. He said that the County is not in a position to recommend a moratorium. The State gets to regulate what goes on underground. We cannot ban fracking. The Editing Committee had to find a balance. People have a right to develop their minerals as much as their neighbor has the right not to. We cannot eliminate all risks but we can try to blunt the negative impacts. Any negotiated MOU must go before the BOCC and the public will have an opportunity to comment.
- cc. Mike Kelley stated that people have the right to sell their assets and the rights to preserve their way of life. This document addresses both with compromise.
- dd. Ron Turner stated that he had some reservations with the document but overall feels it is a good compromise.
- ee. Paula Koch stated that the oil industry is one of the highest regulated industries. She recognizes that Elbert County is concerned about aquifer protection, but that state standards follow strict EPA standards. She stated that there is a difference between produced water or treated produced water when referring to use on roads for dust mitigation.
- ff. Paul Crisan responded to Paula by stating that the Committee did consider treated produced water however, even treated produced water evaporates and leaves solids. What is left behind is a concentrated version of what was originally applied. When Elbert County gets “gully washers”, as we do, we were concerned that it could become a hazardous situation. This is why we felt it was best not to allow produced water to be used for dust mitigation on our roads.
- gg. Paula further stated that she feels comfortable about the setbacks being in MOU and not in Regulations, that the one mile notice area is onerous and she is concerned about time schedules being too tight for County Staff, but overall she feels that everything appears to be negotiable through the MOU.
- hh. Sue Link stated that Oil production is heavily regulated. Many very smart people worked very hard to produce regulations. She agrees with Paula on Setbacks. She closed by saying that Elbert County should not assume all Oil and Gas companies do bad business.
- ii. Susan Saint Vincent stated that we have to put some trust in the experts that we picked. She respects the people that have commented and the people who have put so much time into these regulations.

- jj. Grant Thayer stated that the regulations may not be perfect but they are good. We felt it was necessary to put in time and effort to come up with the best possible document for the County Regulations, not a moratorium. There is no perfect answer for pits. We have to compromise. This document gives the framework to move forward.**
  
- kk. The Chief of Big Sandy Fire District said that the Fire District's contributions to the regulations were for safety. They just want to keep Elbert County residents safe.**
  
- ll. TJ , the Fire Chief for Elizabeth Fire District, further explained that the Fire District's input for the regulations was based on the International Fire Code Standard, adopted by Elbert County in 2006. He stated that he appreciates the work of the BOCC, Community & Development Services and the Planning Commission.**
  
- mm. Tom Cure with the COGCC stated that he has been with the COGCC for 23 years. He has attended many meetings and acknowledges that compromise is never easy. He stated that the compromises that were made were a contribution to the document. He also stated that the COGCC does not like produced water on roads and, in that respect, they would only be more stringent. He informed the Planning Commission that the COGCC does not require temporarily abandoned wells to be plugged because that complicates things if the well is not 100% produced and they need to re-enter.**
  
- nn. Grant Thayer called for a vote. Paul Crisan made a motion to approve the amended Oil and Gas Regulations. Susan Saint Vincent seconded the motion. Motion carried 9 to 0.**
  
- oo. Meeting adjourned at 10:35pm**

**UNFINISHED BUSINESS:**

**NEW BUSINESS:**

**ANNOUNCEMENTS:**