

# MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



## AIR QUALITY ADVISORY BOARD

### TYPE OF MEETING – REGULAR

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Monday, November 14, 2022, 5:30 – 8:00 pm  
via Zoom

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#### 1. CALL TO ORDER

5:32pm

#### 2. ROLL CALL

- List of Board Members Present
  - Karen Artell – Chair
  - Mark Houdashelt – Vice Chair
  - Wayne Chuang
  - Greg Boiarsky
  - John McDonagh
  - Dan Welsh
  - Sandra LeBrun
  - Greg Clark
- List of Board Members Absent
  - Thomas Gifford
- List of Staff Members Present
  - Cassie Archuleta, Staff Liaison, Air Quality Program Manager
  - Jason Komes, Senior Specialist, Environmental Services
  - Kirk Longstein, Senior City Planner
- List of Guests
  - Alejandra Major

#### 3. PUBLIC PARTICIPATION

- No public comment

#### 4. APPROVAL OF MINUTES

- John moved and Wayne seconded a motion to approve the October AQAB minutes as amended. Motion passed with two abstaining 4-0-2

#### 5. PREVIOUS BUSINESS

##### a. 1041 Regulations

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- City Council consideration of 1041 regulations has been moved to February, so Kirk can update the Board on that later and spend more time on oil and gas regulations tonight. John wanted to confirm there would be time to still discuss them as he believed there was a significant potential conflict between the regulations and Ordinance 122 as drafted. Kirk mentioned that tomorrow (11/15/22) is the extension of the moratorium that currently expires December 31, 2022; it will be extended to March 31, 2023, and he would be happy to come back to meet with the Board to discuss 1041 regulations further.

#### **b. Oil and Gas Regulations**

- Cassie updated the Board on when revised oil and gas regs went to Council. What they heard from Council was support for what staff had recommended. Staff recommended proceeding to adoption with the zoning, setback standards, and other things associated with the development review. Kirk will be taking over now and will lead the discussion today on what the actual code looks like. Staff also got support for not pursuing operational standards for existing wells right now because there are so few of them, and staff works with the State and County to plug and abandon legacy wells. The City is not proposing to adopt a whole operational standard program with a leak detection program. Part of that is the City bought the County a camera to help them with enforcement. Staff also got support from Council for revising code regarding reverse setbacks and that will come early next year. At this time, Council is proceeding toward adoption and consideration of zoning and setback standards along with other development review standards.
- Kirk introduced himself, provided background on his role with the City, and shared what projects he works on, including 1041 and O&G regulations. Kirk stated that, for developments near existing O&G facilities, the current land use code (now land development code or LDC) requires reverse setback buffering requirements which were first adopted in 2013 and revised in 2018. These setback requirements primarily follow State statutes. The October 25, 2022 Council work session was an update to Council since the adoption of Senate Bill (SB) 181.
- John asked about the minimum buffering distances as he saw 500ft for dwellings and 1000ft for high occupancy buildings. Kirk mentioned that those distances in the LDC were adopted prior to SB 181, which gives some authority to the City for reviewing O&G facility sitings. The LDC states 500 ft or COGCC [buffering requirements], whichever is more restrictive. The City currently requires 2000 ft buffers for residential buildings. Any developments

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near existing active or inactive wells must go through the development review process which includes a Type 2 (Phase II) environmental site assessment and monitoring. Karen mentioned that the City could not regulate oil and gas back in 2017/2018. John was concerned because he didn't see anything that had changed from the existing language in our brand-new land development code. He was also concerned that the 2000ft setback did not include pipelines.

- Kirk explained that they have three different workstreams they are working on related to oil and gas. The first workstream is just looking at new well sites, which are not covered by the current LDC. The second workstream is operational standards, also not in the current LDC. The third workstream is updating the existing reverse setback requirements included in the existing LDC, those that John is referring to. Staff is proposing to update these setbacks in quarter one or two of 2023. John expressed concern about that because the code they have in front of them also mentions pipelines and existing oil and gas facilities. John also expressed concern about rushing this to Council for first reading on December 6 and didn't believe it should be included on the Consent Agenda.
- Kirk clarified that "reverse" setbacks refer to setbacks of new developments (i.e. subdivisions, buildings, residential/commercial structures) from existing O&G wells as prescribed by the LDC. What is in front of the Board now is the proposed "draft" language that would be added to the recently adopted LDC, addressing new well sitings and pipelines as well as defining these types of siting activities as "development."
- Kirk mentioned that oil and gas facilities would be added to industrial zone districts as an allowed use and that oil and gas pipelines would be allowed in all zone districts. John was concerned about pipelines being allowed in every zone, including single and multi-family residential zones. He was concerned that the required a minimum 50 ft setback was too small and would be measured from the corner of the building and not the corner of the lot.
- Kirk stated they also updated, within the provisions, the application submittal requirements for review. When a new O&G facility application comes into development review, it will go through a basic development review with staff recommendations, and the recommendations would be given to the Community Development and Neighborhoods Director for a final decision. Director decisions are appealable to City Council. The applications would also go through the planning and zoning review process for a recommendation as well. The proposed changes include updates to the

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application submittal requirements, including application fees requiring the applicant to pay for the cost of specialized consultants that the City may need to hire to evaluate applications and the cost of required inspections of proposed O&G facilities. Currently, the land development code includes ecological characterization studies for new development within 500ft of a natural habitat feature. That will be updated to apply for proposed O&G facilities within 2000ft of a natural habitat feature. There are also some prohibited oil and gas facilities that are proposed to be included in the LDC that are consistent with COGCC definitions. New oil and gas facilities would be limited to the industrial zones and would require a 2000ft buffer from residential buildings. The proposed changes to the LDC also include an enhanced natural habitat buffer, e.g., current LDC requires a 100ft buffer from wetlands, while the proposed changes would require a 1000ft (enhanced) buffer.

- For pipelines in all zones that go through private property, the oil and gas operators would need to get permission from all private landowners whose property the pipeline would be going through. Operators cannot invoke eminent domain. Pipelines also have setback requirements of 50-150ft from buildings and surface water features. The enhanced natural habitat feature was not included, but Kirk recommended that it be included.
- Currently in the land development code, if a specific development doesn't meet 100% of the code, an applicant can apply for a modification of standards. In the proposed changes to LDC, the modification of standards would not be allowed for setbacks for oil and gas facilities.
- The City's regulatory authority with the code is based on surface activity. For instance, they don't have jurisdictional control over horizontal/directional drilling facilities that might be happening outside the City's jurisdiction but cross into our jurisdictional bounds. This is not something that our land development code can regulate. It is regulated through a permitting process through COGCC, and by definition, horizontal drilling would not be considered a pipeline. Greg C inquired about who has regulatory authority over horizontal drilling and extraction and shared that the US Department of Transportation would have some oversight related to certain O&G facilities. Kirk added as an example that, related to storage facilities, anything over 25,000 barrels of crude oil would be regulated through the US Department of Transportation. Greg B asked about the City gaining control over it again. Cassie mentioned the COGCC's permitting process has a surface use and downhole permit they require that includes cumulative impacts. Greg B asked about putting that kind of activity in the 1041 regulations. Kirk mentioned that

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if the activity is outside of the jurisdiction, the City would still not have clear legal authority over it.

- John stated that zoning authority is not the City's only authority. The key is in the definitions. He believes it looks like the proposed LDC was written by the O&G industry. Kirk stated that the code they are looking at are additions and subtractions to the existing land development code, so all other development standards would apply. John believes the codes conflict with each other and the ones they are looking at will prevail because they were subsequently adopted. Kirk stated they look at the applications comprehensively and will review everything, including alternatives and mitigation factors to the proposed design and standards in the LDC. John is concerned because he thinks the new land development code curtailed to the rights of appeal and that proposed oil and gas facilities would not get a public hearing. John stated that the oil industry will take advantage of every loophole that is in there. Kirk mentioned that there are neighborhood meetings associated with the basic development review, and the new code would expand the distance of who will be notified up to two miles. Greg B was concerned that one of the neighborhood meeting requirements had been removed because these meetings allow people who are being affected to provide their input. The Board discussed interpretation of some of the language regarding site location. Kirk stated that is during the conceptual process before the applicant submits a full site plan. Greg B recommended strengthening the language and agreed with expanding the notification distance requirement.
- John was concerned that there was not a conceptual review included in the development review process, nor a broader public meeting, and no staff report unless someone challenges a decision. Kirk stated that there is a conceptual review with staff and the applicant. The staff report is submitted to the Director and is open record. If a decision is appealed, then that information would be provided as well. John was not clear that the development review process applies to pipeline construction. Kirk confirmed the development review process would apply to pipelines. John was concerned about the Director having discretion and the authority to waive requirements. He also was concerned that only landowners would receive notification and not the apartment dwellers as well. Kirk mentioned it is in the applicants' best interest to have a conceptual review to see if they are in conformance with the code. He mentioned that his job is to avoid adverse impacts to natural resources and find alternatives or ways to mitigate the impact. Kirk offered that the Director could waive certain requirements but that would be unlikely and added that the development review process has been around for a long time.

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- John expressed concern that the development review process has only been applied to “minor” activities traditionally and not for O&G pipelines through a neighborhood.
- John recommended looking at financial assurance guarantees. Kirk mentioned they have a development agreement that includes a two-year maintenance guarantee and a five-year repair guarantee. The bonding requirement is through the COGCC, so there is a financial assurance for operators at the state level. John expressed that the City could go beyond the COGCC’s financial assurance requirements. He is also concerned about the having the industrial zoning and buffer zone requirements as the only public protection mechanisms to fall back on. He also thinks the new code conflicts with the existing land development code and has holes in it. He thinks that we need to be looking at cumulative impacts and thinks we will get more oil and gas production in the City if this code goes through. He believes the City should be looking at more including public health options, financial assurances, and cumulative impacts. He is also concerned about the appeal rights, political pressure, and the director’s discretion.
- Cassie mentioned that the proposed zoning and buffering, coupled with the exclusion of exemptions, leaves no surface area available for oil and gas development within the City. John expressed concern about the potential to rezone areas to allow for more oil and gas opportunities in the future. He reiterated his concerns regarding political influence, director discretion, and the lack of a written staff decision.
- The code has been worked on for the last three years and is based on work at the State level. Greg B also agreed with the concern about code requirements having too many exceptions and thinks the language should be strengthened or just removed so that one person cannot make decisions or exemptions. Kirk and Greg B discussed language clarification. Kirk explained the basic development review (BDR) process. Greg B believes it will be easier in the long run if staff does not have to make discretionary decisions.
- Greg C suggested being more specific on what the code does and does not include, writing it more like a manual and using a different philosophy with the way it is written. John mentioned oil and gas is unique and not like the other types of development. John expressed concern about directional drilling and 50 ft setbacks for pipelines. Karen asked how it was decided that pipelines be allowed in every zone, and Sandra asked if an oil and gas pipeline is considered the same as carrying natural gas to homes. Cassie stated natural gas lines are part of a different regulation conversation. This is more about



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transporting from a well to a storage facility. Kirk mentioned that because operators don't have eminent domain, these types of pipeline projects would either co-locate with existing utilities or easements and pancake with utility lines. Eliminating them from specific zone types didn't seem necessary because the City does not have a lot of activity coming from existing facilities. There is also a tradeoff - if code limits or excludes pipelines, operators would still require transportation of the product which could instead include surface and ground transportation. The City decided against promoting that option due to noise and other nuisances from above ground trucking. John does not believe it is a choice of one or the other and that the City has zoning for a reason. He worries about the operators wanting to take the cheapest route. Karen mentioned the concern of carbon capture with gas lines. Kirk reiterated that applicants and operators do not have eminent domain and cannot just run a pipeline through your backyard without permission. John reiterated his concern for abuse of Director discretion and the need for financial assurance.

- Karen recommended a special meeting to discuss this more. She is also concerned about some of the language regarding written notice and the code not being transparent. John expressed concern about appeal rights, giving notice, financial assurances, and going beyond COGCC requirements. Greg B also expressed concern about setbacks from water, especially potable drinking water and things like water wells. Greg C expressed concern about the way the code is written and operators potentially being able to get around the system. Kirk reminded the Board that folks that are directly impacted by the oil and gas industry will also be weighing in on this. Greg C believes they need to do what they can to protect themselves. Kirk mentioned they cannot ban oil and gas from the community. John believes they could go further than this code as it does not exercise the full authority the City has. He thinks the oil and gas industry will take advantage of what is being written.
- John asked who wrote the draft. Cassie stated that she and Kelly Smith were the leads and had a legal consultant, Matt Sura. The City ultimately wrote it. She also mentioned the new land development code was not part of the conversation when the oil and gas code was written. John mentioned that Matt is a lawyer who has represented oil and gas industries as well as the other side.
- Greg C believes the code should be very specific and Greg B believes they should remove the part about discretion. Council had asked for an expedited timeline but what Kirk is hearing from stakeholders is the need to slow down. John stated the need to understand what is being written and get it right. He also believes that Matt knew where to put the loopholes.

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- Kirk stated he will advocate to delay the Jan 17<sup>th</sup> second reading of the code, but it will be up to Council. He also hears the need for more detail and attention. He mentioned that policy decisions will be Council's decision, but he can discuss it with them.
- John reiterated his concern for the ability to rezone. The Board discussed another meeting. Greg reminded the Board their role is to advise, not write the code. They will schedule a special working group meeting to create a list of recommendations for the code. John will send his notes to the Board. The Board asked for closure on the recommendations they will submit. They want to know if and/or how the code gets modified. Kirk will provide updates after presenting to Council. Dan recommended those who can, fine tooth comb through the code and then phrase what they do and don't like into recommendations that align with their statement of purpose. The Board agreed to using their feedback from the meeting as advocacy to delay the timeline.

## 6. NEW BUSINESS

### a. Ozone Season Update

- Wayne was going to provide an ozone season update but the Board agreed to delay this topic to a later meeting.

### b. 2023 Annual Work Plan

- Karen Artell, AQAB Chair, discussed the 2023 AQAB work plan with the Board. The Board wordsmithed the draft Karen presented. Greg B recommended a strong statement for Active Modes Plan and safe bicycling. He also asked about adding something about working with other Boards. Mark also mentioned adding budget revision offers, electric vehicles and waste emissions. John asked about it being a catch-all since Council might push certain topics. Wayne also mentioned adding alternative modes of transportation. The draft will be in the folder for the Board to review. They will vote on it in December.

## 7. BOARD MEMBER REPORTS

- a. Karen put a letter together to congratulate the City, County and everyone involved in applying for the American Rescue Plan Enhanced Air Quality Monitoring for Communities Grant. If it is okay with the Board, she wants to send it to Council. The Board agreed and wordsmithed the memo. Cassie will add it to letterhead.
- b. Greg B gave an update from the Bicycle Advisory Board. They have been discussing



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the idea of rezoning the City into a 15 minute City. The City has applied for a grant to extend the Power Trail across Harmony. The City was in support of an FTE for Shift your Ride. The grant would be used for the construction. It would be an air quality win.

- c. Mark asked about the budget offers Council had asked staff to add additional funds for. He thought it was around \$3.5 million. He was wondering if there was a complete list of the budget offers they requested more money for. Cassie will try to find the list.

## 8. OTHER BUSINESS

### a. Agenda Planning

- December
  - Oil and gas
  - Indoor AQ grant update
  - Draft 2022 annual report
  - Finalize work plan
- January
  - Ozone season update
  - AQ team staff work plan overview
  - 1041 regulations and possible recommendation
- February
  - Wildfire season

## 9. ADJOURNMENT

- The meeting was adjourned at 8:06 pm.