

Planning Commission Meeting Minutes
August 14, 2019

Planning Commission Members in Attendance: Angela Mackey, Kim Shay, Tate Locke, Steve Schrock, Layne Brones, Lucinda Stanley, Tom Kay, Jacob Gray, Eli Wolcott, Dick Gilmore, Steve Shea

Absent Members:

Planning Staff in Attendance: Community & Economic Development Director, Elyse Casselberry; Administrative Assistant, Vivian Archuleta.

Chairman Mackey opened the meeting at 5:30 with introductions.

Item #1: Approve Previous Meeting Minutes for July 24, 2019
Dick was absent

Motion: Kim Shay moves to approve minutes as presented

Second: Layne Brones seconds the motion

Minutes Approved

Item #2: Specific Development Regulations Amending Oil & Gas

Ms. Casselberry started the meeting with a brief explanation covering the proposed Amendment to the Specific Development Regulations regarding oil & gas

For the last year we have been in the process of working on updates to Land Use codes. We had a working group start meeting last summer to focus on oil & gas. In December of last year they made a set of high level recommendations to the County of the areas where the working group was able to find consensus that there is an appropriate potential regulatory or policy based conversation that needs to happen & had really broad support from all sides of the conversation. Those were things like hazmat, we want to insure that in the event that if there is any type of hazardous materials incident we have appropriate protections in place to both prevent it & to have the ability, if it does happen, to respond to it. & transportation, you were all at that meeting last December where the group presented their findings. In March we began meeting again to try & work towards more specific recommendations that can become regulatory recommendations. The work we did last year was much higher level 30,000 foot level, we wanted to see if we could work together to could get down to more specific recommendations. At that time, Senate Bill 181 was working through the legislative process & it wasn't clear if it was going to pass at that point in time or not so as a group we focused in on process related improvements as a starting point & decided that we would wait to focus in on what would be our performance standards, what we would call Performance Standards Today, but to hold off on that conversation until we saw what happened with Senate Bill 181. Senate Bill 181 is legislation that was passed by the State Legislation & signed by the governor into law in April & it does several things. It changes the mission of the Colorado Oil & Gas Conservation Commission, you'll hear me call them COGCC. It changed them from fostering & facilitating energy development to regulating energy development with an emphasis on protecting public safety health & welfare & developing new regulations that are reasonable & technically feasible & there is other language saying the idea of mitigating where you cannot prevent impacts to public health safety & welfare. It also got rid of the cloud of preemption. Preemption is where the State is regulating something & therefore the local government cannot & so we have a current set of regulations that is set up under what I would call the cloud of preemption. Senate Bill 181 took that cloud away but the state is still the primary regulator & is going to be setting a new floor. What 181 does is if local governments what to exceed that floor, so setbacks is a good example, the State is going to set a minimum setback & local governments can come in & say we want more setbacks for example. It's opposite today, the State set the setback & the local governments could not go more restrictive. That's the very highest level of what Senate Bill 181 did. It went into effect immediately, often times when

legislation goes into effect there's a period before it goes into effect so that the State Regulation Agencies can do all of the work that needs to happen in order to implement that. The COGCC put together, basically they've got a new regulatory requirement & then they have a set of regulations that now do not entirely conform with the requirements & so they put into place a set of what's called objective criteria & what they are doing is they are reviewing projects under the existing regulations & if there is anything about that project that is in front of them that requires higher scrutiny they're using the objective criteria to basically screen applications. So if it's a straight forward simple project it's moving forward under the old process & if it meets any of the objective criteria it's going through higher scrutiny & going under a stringer review with the State. The State has then put together a series of criteria & management tools to try to help with operators, local governments & themselves through this transition period. I've handed out copies of that information for you to look at so that you can see where the COGCC is currently. After Senate Bill 181 was passed we got back together with the County Commissioners, back in May, in a meeting to discuss how we move forward now that Senate Bill 181 is approved & in that conversation we discussed that the rule making process for the State, we've been given schedules by the State that show that that rule making process could take up to a couple of years to achieve & they are setting the new floor. So in that conversation we decided that we would slow down our updates so that we could continue to engage with COGCC & be participants in their regulatory update process & participate in what's called the rule making process with them & then work parallel to that & work our way towards updating our regulations. Then in June the Oil & Gas Working Group sat down & went back to those recommendations that they made last year & they began to start breaking them down & identify what has the potential to be a regulatory issue, that needs to have a regulatory solution & what is a policy solution. So they started to do the work of really figuring out where we are going to start focusing our energy so that as we work parallel with the State we can be strategic in aligning what we are doing with what the State is doing. Next thing that happened we had the seismic applications from Gunnison Energy that were reviewed & approved & then we were sued based on our current regulations. Following that lawsuit, which was dismissed, we started receiving calls from the community for a moratorium. At your last meeting we talked about a proposed alternative to the moratorium. A moratorium would basically stop the County from accepting any new oil & gas related applications while we are on a regulatory update. The Commissioners asked me to work with you guys & we also met with the oil & gas working group to talk about an alternative to doing a moratorium & what that would look like. So we've put together a proposal & that proposal is manifesting itself in 2 things, one an amendment to the Specific Development Regulations & 2, a proposed interim process, that we are still developing & I do want to get your feedback on that tonight. The concept is that we repeal our current oil & gas regulations & invest in building up our collaborative process with the State. In the existing regulatory structure that the State has in place, it is enhanced by the objective criteria that the State has put into place. Local governments that have a local government designee, LGD, have multiple opportunities to really enter the State's process very directly as more than just a public comment. For those of you that are familiar with the BLM's processes, it's something really similar to when the County or a town requests to be a cooperating agency or a consulting agency. Because we have an LGD, we are able to request consultation with the State & we're able to really kind of trigger certain things happening as the local government. That's part of what I built into the interim process & I'll go over that more specifically. That is what we're proposing here, that we really build up our capacity to engage directly with the State right now to address our concerns that we might have about oil & gas development in recognition that our current regulations are not perfect, they are imperfect, specifically in the actual process itself. & I want to remind you it's not just our oil & gas regulations, it's the reason we've been doing what we've been doing for the last year is because we believe that our Specific Development Regulations, overall, are no longer serving our needs & the oil & gas regulations are part of that. So we intend on doing something very different with the Specific Development Regulations in the next few months anyway & we just have brought this forward to fast track the oil & gas component of that, given everything that has been happening over the last 6-9 months & especially the last 3 months. The Commissioners asked me to bring to you guys some concepts & this is the one that we baked. We brought to you the idea of getting rid of our oil & gas regulations & I was using the language – lean into the State process & I've tried to define what that means for you. Also in our

conversations we had at the last work session we discussed concerns that you have as a group have about insuring adequate public input & adequate public engagement. & the next thing is the importance of this group weighing in on oil & gas overall. With Specific Development & amendments to Specific Development, the way the process works, the Commissioners have a public hearing, that is scheduled for September 3rd, prior to the public hearing the Planning Commission reviews the amendment to the Specific Development Regulations, which is what you have in front of you tonight & you make a recommendation just like you do on an application. In the Specific Developments we have gone in & found all of the references to oil & gas & that is Appendix 1, there are definitions & there are a few scattered places throughout the Specific Development Regulations where we talk about oil & gas. We have proposed deleting those sections & then adding oil & gas as an exempt activity, but that is not to say that is exempt from all regulations, it would be exempt from our regulations. We don't have any other way of dealing with that because that's the structure of our code right now. Silence on it is the same thing as being exempt I suppose. Your job tonight is to take public comment on the amendment & then take a motion & vote whether or not you recommend the amendment or if you've got suggested changes to it as well. The concept of amending the regulations is not about not regulating oil & gas & it's not about a permanent not regulation, it's not about Delta County not permanently regulating oil & gas. This is being proposed as an interim step, a bridge to the next set of regulations that we will continue to develop. A moratorium has been suggested, I've even read somewhere that is was suggested that 4-6 months could be adequate, however we are looking at a 18 month to 2 year process with the State with their rule making process & the commissioners have made it clear that they don't want to get out ahead of the State, they want to be working parallel & in partnership with the State to make those changes. A short moratorium doesn't seem like it would work under those circumstances. So we are proposing this as an interim & a couple things to be thinking about. First & foremost, when you look at the County Regulations & what we have & there are performance standards, which is what we have to measure & weigh applications against & you look at the State's regulations & what they are reviewing against, you have 2 things happening. Number 1, our regulations say we will not regulate what the State is already regulating & many of the things we have current concerns over, air quality, water quality, transportation, those kinds of things are already regulated by the State & are heavily regulated. So our current regulations do not allow us to weigh in those things anyway. The second thing is when you compare what the State is regulating vs what we are regulating, the list is significantly more. I did a real gross level topic based assessment of what we review vs what the State reviews & what the State looks at is far more comprehensive than what we look at. There are a couple gaps though & I want be clear about what those gaps are. The first gap is on transportation, the State does look at transportation & take it into consideration but the State is not going to enact a bond on our behalf. For example if there was damage to a County road, that would be something that we would have to figure out how to deal with & the working group has had conversations on ways of doing that that are independent or could be independent of our Land Use Regulations, like a heavy haul permit & would treat all industry the same & we will continue to talk about it. The second one is more of a difference in emphasis. We emphasize agricultural infrastructure as the focus in our Land Use Regulations. The State does not independently emphasize agricultural infrastructure but they do emphasize infrastructure of all sorts, but they do emphasize water quality which is connected to agriculture, so it's indirect with the State's process, whereas with us it is absolutely direct. When we talk about what we want to achieve & what we want to protect, the County is arguing that perhaps right now in this interim step while we work towards new regulations, maybe the State's regulations meet our needs to date better than our own regulations meet our needs & the State in both their current regulations & the added emphasis that is being provided through the objective criteria provides us an opportunity to weigh in there in a way we haven't taken advantage of for some years & we have an opportunity to reengage with them in a very meaningful way now. They've emphasized to me that they are placing strong emphasis on local issues, local needs & local concerns. & so the alternative here is we do away with our regulations but we engage very actively in the State process. To do that, I'll line for you how that would work. First & foremost we'd be able to say to the State, we want a consultation on any & every application that comes in & is in Delta County. The next thing that we have an opportunity to do is request extensions of public comment

periods. The State has a public comment process, you can go onto their website, it's very simple, you make comments directly through their website but the public does not get a direct notice, you have to monitor that website & that comment period is relatively short, about 14 days. We the local government can request an extension of that comment period. I'm proposing that we do that every time. When there is an application comes through, we will automatically request that extension to extend that public comment period window. In addition to requesting consultation, we would request that those applications automatically get kicked under the objective criteria. Right now it's an evaluation that occurs & they get sorted. We as the County can request that an application be reviewed under the objective criteria which would increase the scrutiny that is being given to that application by the State. I see the County being in a position to facilitate public comments & I'm using the word facilitate because as you follow through this with me it won't be an easy process to do that. First of all, the windows are short & it would really be no different than we send out a notice in the paper & then 2 weeks later we have a public hearing. The public has about 2 weeks to comment unless they got immediate notification so we really need to be working, not just when there is an application but ahead of time to help everybody be prepared so that when there is an application we're all ready to go on it. We can facilitate that in a couple of ways. Number 1, we receive automatic notification that an application has been submitted. Our LGD receives that notification, that is part of the role that the LGD plays is to be the point of contact between the State & the County. The public doesn't receive notification of an application, but we do so when receive notification we can immediately getting the word out there. We can discuss all of the right ways of doing that. I've thought up a couple & you can read through those & hopefully you can provide me with additional ideas on how we make sure that the public is aware that there is an application pending. We can do that by reaching out to our partners, reaching out to CHC, WSCC & we've got our network of emails building up & can look at how best to utilize our resources that we have been working on to get that word out. So that's first & foremost is working on the ability to get that word out that there is an opportunity for comment. So it gets tricky because the comment periods are short & you guys only meet twice a month, I think we'll have an opportunity to take public input & have you sort of be a facilitator of gathering that public input. I'm not for sure that that will work but that's what we're going to try to do so that people can make a verbal comment, not everyone will take the time to make a written comment on the website. So we can help facilitate that by gathering input. COGCC also emphasized to me that when the County attaches comments that they receive from their community it helps elevate those comments, so if we gather comments & input & we forward them as part of our response to the State it helps elevate those comments & helps elevate the way that COGCC sees those comments. COGCC also emphasized to me that it's not the quantity of comments, it's the quality of the comments. It is more helpful when the public comes to our meeting & voices if they like or dislike something adding why or what they would like to see instead or what can be different. We can also help ourselves & the public to understand with training sessions or other kinds of educational processes to help the public to not just be more effective in providing comments to us but to the State. I propose that we do that in order to prepare so that when we have an application we are ready to go. It's something I would just like to do as part of our Land Use Code update process overall. I want to emphasize that gathering community comments wouldn't be comments for the County, they would be comments for the State. So we need to help everyone frame & form those comments in a way that these are comments from Delta County residents to the State so there would have to be some educational training to help people understand. The last piece of this interim process would be that the County then would both consult with the State & then we would ultimately develop our own set of comments or recommendations. I don't know to what degree we would be successful with integrating public comments & County comments given the tight timelines but I think we can explore how that could work. So what I was thinking given that it might be challenging to fully integrate that because of the tight timelines that we would develop a set of criteria that the County would use in making its comments. So we know the things that the County is going to be looking at as we review those applications & where our focus areas are going to be & those would be tied back to those recommendations that the oil & gas working group are making. I think there are 33 recommendations, some of which are more policy related & less regulatory related but some of which are absolutely regulatory related so we'd work over the next month to develop what those criteria would look like & what that process

would be so that everybody know what we would be reviewing parallel to trying to gather public comment. We would then attach public comments received, we would not pick & choose, we would just attach the public comments received to the recommendations that the County makes & forward that all on to the State in this interim process. Going back to the objective criteria & oil & gas recommendations one of the key topics of conversation out of the oil & gas working group is that we as Delta County, for the most part, are going to be a pass through county of development in our water shed of oil & gas because the bulk of the currently known development activity is planned in Gunnison County & today we have very limited options for influencing what happens in Gunnison County other than we are a referral agency & I can write a letter to say whatever those things are. Even with the State's process we don't really get to weigh in today into the projects that are happening in Gunnison County. The objective criteria begin to change that & I think that is a foot in the door for inter-jurisdictional impact. So any project that is within 15,000 feet of the County line we can trigger objective criteria review as an adjacent county. We can weigh in with the State as an adjacent county. This helps us start to develop the routine & the relationships to be able to engage more effectively with the State & development activity in Gunnison County & to more effectively engage with Gunnison County. Gunnison County is open to that too, they want that as well. We've been having conversations about how to work & coordinate better together. Timelines, we are anticipating an 18-24 month rule making process with the State. They will be releasing a more definitive schedule. There are 4 different rule-making that they are required to accomplish by the end of 2020 & 2 of those impact us very much, so by the end of next year we may be at a point where we understand where the State is. CDPHE is also undergoing rule making around Senate Bill 181 & they've begun that process so there are a lot of moving pieces & parts. I would think that over the next 6-9 months we would be able to develop a solid framework for our new regulations based on tracking with the State's process & maybe have some minor gaps in there where we don't have complete clarity quite yet, but we intend to fully engage with the State from start to finish as they work through their process. One of the single most important part of their rulemaking process is what they are calling their mission adjustment, so that's where they are going to make the adjustment to address how they're going to address public health, safety, welfare & wildlife. It's important in terms of how we need to be aligning with them. They are starting with the flow line process, which addresses flow lines & abandoned wells & then the next process that they'll start is that mission. So that'll be some time this winter that they begin the conversation. I will be taking this to the oil & gas working group on Monday as well, it'll be at the Maloney house at 6:00 pm. I'll update that based on feedback received from you tonight & continue to update as we go along to replace & be transition from where we are to where we are working on going.

Q: Are you asking us to approve or disapprove the change to the Specific Development Regulations & adopt the interim?

A: Tonight is the Specific Development Amendment. Developing this interim process based on our conversation is to help you understand that we are not just dropping & not doing something else & I'll be coming back to you & the oil & gas working group over the next 6-8 weeks to refine this concept & idea & then I'll take this to the County Commissioners & ask them to formally adopt it in some kind of mechanism that gives it weight, by resolution or something like that.

Dylan Fixmer – Paonia – Against

I live in Paonia & teach in Hotchkiss. I moved here from Garfield County to get away from O&G development. Being careful & diligent about where & when oil & gas is developed is the right track & I see this allowing the state COGCC is an inappropriate move. We value hunting fishing, recreation & ag need to be preserved being a conscious county by placing a moratorium in the meantime to evaluate the regulations to make sure it's done right. We deserve to have it done right & to create something presentable.

Andrew Forkes-Gudmundson – CHC – Paonia

Moratorium, 4-6 months is an alternative to the 18-24 months presented by us. It allows the county to this right. The problem I have with this action is it's only half of what needs to be done to make it right, we are repealing w/o replace. There are 6 well applications right now for Delta county pending under the current regulations that aren't good enough. No regulations is worse. Leaning into the state sounds great but what is it? Where is it? How do we hold anybody accountable to it? & how do we enforce it as a county. How can you repeal regulations that were designed to address gaps that we know exist at the State level. How can we lean on the state without a plan that we can vote on & take comments on? It costs money & it impacts our infrastructure. How do we pay for impacts to our roads when one single oil & gas project is going to take 10,000 heavy truck trips on the County roads? How do we pay for it?

Megan Randall – 327 North Fork – Paonia

Moved here from Rifle & knowing the health effects from oil & gas is from experience with loved ones & my students. I love the County & understand that people think jobs but we need to protect other jobs as well. They may not always have our interests taken into account but this is our opportunity to stand up with a voice for our values & protect our interests.

Lisa Niermann - Farmer – Hotchkiss

Against the proposal & would advocate for a 18-24 month moratorium to clean the slate & see where we are at & start fresh. We don't need to rely on the state to tell us, people that actually live here, what we are going to do with regards to oil & gas. How is the state listening to us? On the Front Range, they have a horrible tract record with oil & gas under the current regulations, so if we are working under the same regulations for the next 18-24 months, will we see 2 spills a day in our water shed like they see in the Front Range & rated F air quality. People are sick & children are getting leukemia. 18-24 month moratorium makes the most sense instead of letting the state steamroll us through this.

Mike Ludlow – Oxbow Mining – O&G Working Group

I support the County working with the State to develop & comment on the regulations. I do not support a moratorium. I think it is important for Delta County & Gunnison County & regulating O&G is being done effectively at the State & Federal level. They are highly trained & educated in their specific fields. The Delta County can be most effective by working with those people as oppose to trying to regulate & enforce, which is difficult & expensive without the right staff & I don't think Delta County is in a position to do that.

Steve Wolcott – Farmer - Paonia

I support the County working with the State on the regulations but I don't think it that it means the Delta County needs to give up regulating oil & gas for the next 18-24 months. There are holes & the County should fill the holes in the meantime. I manage domestic company & an irrigation company & the livelihood depends on the quantity & quality & I know how the coal mines were regulated in regards to protecting the water. They had a plan to replace the water if it was damaged by their activities, they had to show water rights, they had to show a plan how they could deliver that water & the coal mines were very responsible in doing that & they did it for decades. I think it gives the operators a real incentive to protect the water & that's what the county should do until it's clear when & if the state decides to do that. Delta County claims, in the Master Plan, to be a leader in protecting the residents & eliminating all of the regulations is counter to that which was just adopted.

Mary Jursinovic – Hay ranch on Bone Mesa - Paonia

I've appeared before the BoCC on numerous occasions pleading with them to do everything possible to protect our irrigation & domestic water source received from Paonia reservoir. This proposal is a slap in the face. It's saying we don't care about the water source or our farmers in this region, we're just going to give it to the State to control. I don't think it should be given to the state to do with what they please. I think the moratorium is the safest way to go & giving it to the

State is not going to do that. At least there is something in writing saying that the County wants to protect the health safety & welfare of the county residents.

Patrick Dooling – Executive Director WSCC - Paonia

WSCC has been on the oil & gas working group for over a year & has been working really well. I'm disappointed that there is a rush to repeal the regulations w/o a firm well reviewed process to replace it. The group discussed this idea of repealing the county regs & we didn't find consensus on whether or not this was the right approach or not & there was very limited discussion on what a replacement process might look like & now a few weeks later we're looking at a full repeal of plans. The idea of consultation with COGCC with the State comes with no guarantee of action so the county can develop the most well thought out common sense concerns but the state is under no obligation to listen. I feel like the only effective way our county's concerns are addressed is by having our regulations & working to improve them. I also have concerns about the mechanisms to insure that this review process by the County would happen & that all of the concerns are being heard. The review criteria should be developed & fully vetted or it's hard to tell if it's going to be a good idea. I do think that the public notice process in this repeal is too vaguely defined & narrow in scope. I don't think there is adequate ways for the community to raise concerns to the Planning Commission or to the County Commissioners that would go to the State level & I don't know their level of involvement with all of the local concerns we would have. The best way for the County to relay our concerns as the community is to have regulations. The timeframes in the State process are very tight even with an extension & the idea of local accountability if an issue arises that impacts locals we would need to rely on the State process for review & there are a lot of uncertainties about what the public would do in the event of an incident. I look forward to the opportunity to comment on this further at the next oil & gas meeting next week.

Brad Thacker – Paonia

I would like to comment in opposition to the proposal. I would like to talk about Senate Bill 181. The 2 things I think are most important is it prioritizes the health & safety of citizens & establishes local control, so I urge this commission in the long run to really take that to heart & please protect the health & safety of the citizens. I agree with the moratorium - I don't think that the current regulations are that good & the objective criteria are not that objective either. The COGCC proposed a 1500 foot setback that I think was just pulled out of a hat, it's more than the current standards but it's less than a lot as research has shown to be safe. There is research by Lisa McKenzie who has come out with several papers saying that it's not safe within 2500 feet. There are an increase in health & birth defects because of it. Before repealing the regulations & waiting for the state to come up with new ones I don't think it's a good idea to not have anything in place in the meantime. It's important to keep the current regulations in place & have a moratorium so that we can look at the rulemaking & perhaps the State may decide to maybe increase the setbacks. I support a moratorium & keeping the current regulations in place.

Brad Burritt - Redlands Mesa – Hotchkiss

I'm opposed to getting rid of the current regulations & waiting for the state & waiting for us to go through our process. Hopefully the State will function as a floor for regulation but we should surely not give up the chance to regulate dangerous activity, which oil & gas development is. We should be afraid or shy away from getting in front of the state. In the early 2000's Delta County sued the state for the right to regulate oil & gas development & established standards that were stronger than the state's standards. That failed but it was for good reason that we tried to do that. We need to be willing to protect ourselves when it comes to our safety & welfare.

Melissa Munoz – Paonia

I was at the last oil & gas meeting & it seems as though they've really come together in tremendous stride to identify categories that they felt the county was lacking in & that they need to elevate & address. This is a moratorium on new permits, this does not try to erase what has already been done up to this point. We just pause to deal with those & deal with those, but anything new coming in just gets paused. It seems odd to repeal w/o replace. This does not show leadership.

Wendell Koontz - Hotchkiss

Support this amendment. Under the current regulations, anything that the county does will end up in a lawsuit. This last go around with the seismic permit, I'll have you notice that Gunnison County was secluded, it was strictly Delta County. I think our resources, time & efforts of the working group & County Staff would be better spent addressing new regulations & understanding what SB 181 is going to bring to us. The moratorium is not necessary.

Q: I would like to hear clarification as in timing. Are the lawsuits the primary motivator to delete the regulations at this point instead of deleting them when we have a replacement?

A: It's a couple of things, 1st it was the call for the moratorium. The Commissioners began receiving emails & letters requesting it. They asked staff to discuss some alternatives. We took it to the oil & gas working group to try & come up with alternatives. If we don't have a moratorium or something else in place, every time we receive an application we have to process it. & if the application complies with our regulations we have to approve it. & if we are going to be sued every time we do that, we are wasting our resources defending decision making while we are in the process of trying to adjust our process, so that has definitely played into it.

Q: It was mentioned that there are 6 current applications pending, are they on private or federal land?

A: There are not 6 applications. There is an application from Gunnison Energy for the expansion of the well pad at an existing well, they want to expand that & add up to 6 wells. That is all under one application for that site & it still pending.

Q: Was that the one we had reviewed?

A: Yes

Q: & there is a water pipeline associated with that?

A: Yes

Q: Is the state requiring 18-24 months before they have their new set of regulations, can the moratorium match that?

A: Moratoriums needs to be time specific. For a moratorium it's important to note a few things. Number 1, we could put a moratorium on private lands for that timeframe, but the question of Federal preemption remains an issue, whether or not we'd be able to prevent activity on Federal lands is a big question mark, that is where the majority of the activity is happening. Our current regulations do not allow us to approve or deny anything on Federal lands it only allows us to address of-site impacts. So I want to emphasize that I'm not sure what a moratorium would do or wouldn't do when it comes to Federal mineral lease development on private land.

Q: How can we enforce or add teeth to for heavy loads coming & going from development on our road ways. Can we stop until a better plan on transportation?

A: Currently, looking at existing applications, it's not Delta County roads that are being utilized, it's all Gunnison County roads. Gunnison County has an agreement with Gunnison Energy about road maintenance management. Should we end up in a situation where there are transportation routes that are utilized on Delta County maintained roads, a heavy haul permit might be a good solution. It's something we could look at relatively quickly. In 2010 Delta County did a road impact fee study & could refer to that & add updates & look to implement a heavy haul permit which would help at least in the interim address that issue. We are at risk of a spill with or without oil & gas development just given the amount of tanker trucks moving around on our highways. We can't address highways because that is State owned just County roads but it would help us address impacts.

Q: It was mentioned that the County intends on engaging in the SB 181 process, what does that mean?

A: We are already doing it. We are on their contact list & they are holding monthly webinars with the local government designees, Tony Vervloet & I've been participating as well & we've had conversations with COGCC staff, we've met with the Executive Director. We attended a meeting coordinated by Colorado Counties with COGCC staff & the executive director. So right now we are participating in conversations with them. Additionally we did sign up to participate formally in the rulemaking process. We are working with Garfield County & Piceance Basin Counties to help coordinate some of those comments, but we're also prepared & ready to submit

our own comments in the event that those 5 counties & where they're heading doesn't align with what we want & we're also coordinating with Gunnison County to participate in that process too in the formal rulemaking process & it acts like a legal process. You have to submit statements & rebuttals, etc.

Q: How do the public & county residents participate with the county in that process?

A: Anyone can sign up to participate. In terms of participating with the county, at least in the rule making process, it moves so quick that we had to, within a few weeks, digest a ton of information, follow 100's of email chains & engage & submit our own comments. That is part of why we are working with Garfield County & the other Piceance Basin Counties because they've got some capacity that we do not have to help deal with that volume of information that has to be dealt with very quickly, so it's a challenge.

Q: When would you expect to have a clear replacement proposal? How the County would participate with the State?

A: Within the next 6-8 weeks we should have a plan fleshed out.

Q: So it would be before you meet with the Commissioners?

A: Yes, it's important to note that we do have one pending application with the State right now & two with the County, the pipeline & the well pad. But we're not the Front Range community that sees hundreds of applications. We may see a few more come in this year or next year so I think we've got breathing room.

Q: How would the county treat the existing applications? Does it divert to the State as soon as this is repealed?

A: We would request that the state reopen the public comment period on their application & we would engage with the State on that application & whether or not the current applications we have move forward, it would, to some degree, be up to Gunnison Energy. They have a pending application that we could finish reviewing under our current regulations & they could also withdraw it.

Q: In terms of the application pending, the recommendations, action & comments, how would it be handled on to the State?

A: I intend to incorporate that into our process with the State.

Q: If it's tight timelines & we don't have a process developed for another month would we actually be able to participate with them?

A: Yeah, I think we would be able to work with the State. I've had conversations with them about what that would look like. We might have to trial this out a bit & learn from the experience & make adjustments.

Q: Are you aware of the MOU between the COGCC & the BLM & Forest Service? & how does that effect Federal preemption?

A: I haven't seen the updated MOU, so I'd have to look at that to understand it better. I did mention that I'm not sure how that all plays out but it something we have to look at in terms of Federal preemption.

Q: When do the new regulations for SB181 take place?

A: A couple years, total. They are doing it topic by topic.

Q: If we voted to remove ourselves from the application process, it would be under the State's regulations during that time?

A: Yes & the objective criteria they've developed

Q: If we went forward with something like the heavy haul permit, not industry specific, would that affect all of the heavy hauling with agriculture?

A: That would be something that would have to be discussed.

Q: The 33 points we heard, we haven't seen them.

A: You did, it was part of the report from the working group, when we had our joint work session with the BoCC last December

Q: High level points & low level points, agreement areas & non-agreement areas & non-actionable points or issues or things that the commissioners could put to use in regulatory changes, am I correct?

A: Yes, the working group did identify those high level points of agreement & the work that they are doing now, so far, has been focused on process improvements because we've been dealing

with this 181 conversation. We're at the point now where as we work parallel with the State we can begin to developing those actionable items.

Q: The oil & gas working group would do refinements to those 33 points & come forth with specifics that can be included in this interim?

A: They can be included in this interim process & can also be incorporated into new regulations.

Q: Mr. Gudmundson, why are we to believe that you won't be against oil & gas development in the future with respect to any regulations that Delta County arrives at?

A: I would like to clarify that whatever my personal feelings are on oil & gas development, which should be apparent through my work, CHC's position is that we are opposed to new Federal oil & gas leasing & where the private or public rights to develop minerals exist, we will work for as great of mitigation as possible to prevent adverse impacts from oil & gas development. Private property rights are a real thing & I don't think that anybody from CHC has ever said to throw out that bundle of property rights. Do I wish that surface owners had more say over what happens on their surface than the subsurface owners? Maybe, that's not CHC's mission. CHC is not in here advocating on a moratorium that plugs & abandons everything well in Delta & Gunnison County & shuts down oil & gas development. Whatever what I might personally think Citizens for a healthy community is not advocating for that & we've been very clear about that & I would appreciate it if you would take that into consideration as I answer your question. But I don't think your question is appropriate. Whatever we do as an organization, advocating for good governance, it's up to the County to follow its rules & if they don't, the public is going to hold the County accountable. We will advocate for as good of rules as we could possibly get & we're going to hold the County accountable to that.

Q: What have prior lawsuits looked like? What are getting sued on under our current regulations?

A: The lawsuit was that we've acted capriciously in approving the seismic project & didn't follow our process. That lawsuit was dismissed, the judge did not grant a temporary restraining order that was requested. Prior to that when it was related to oil & gas activity, going back to one of the comments, we didn't sue the State, the state sued us & we lost, which is why we have the regulations that we do have today because we redid them to avoid preemption. So all of things we attempted to put in place in 2003, we had to go back & redo because we lost the lawsuit. As far as lawsuits, those are the only ones I'm familiar with, I don't know if there are others out there or not.

Q: What do you see as your role in the interim process? What is your function? Hearing that the eyes & ears will be lost. When & if we repeal, what other counties are in this position? Where is the safety provision that is missing in this?

A: We have the LGD, he's our conduit, he's our point of contact & he's who we funnel info & receive information through. My job is to support him & make sure he has the right information to funnel up to the State. One of the provisions in the interim process is that we could help everyone understand how they can individually track & monitor the opportunity to comment & show them how to do it. I propose that we actually take that next step because it does increase communication & accountability & that we facilitate community input not just help people understand how to do it but actually facilitate it & working with the LGD would help make that happen. By attaching those public comments to our comments we help elevate their importance & bring awareness that we want our community's voice to be heard. Our job is to hold the states feet to the fire & it's also the public's job to do that. For those in our county that feel strongly that there should be no oil & gas development the county is not the entity that says no, we get to say how. It is the State that has the authority to say yes or no. So let's focus our resources & make sure that the State is doing what they are supposed to be doing & we can help to facilitate that while we work to develop a better set of regulations that help us address how it happens & when it happens.

Q: If during the process brings something up that was otherwise unnoticed & you bring it up to all of higher ups, is that something we can have a component in?

A: I think that will be possible. Also, our regulations were made at a time that the state's regulations were weak & their enforcement was nonexistent & everything was done out of the Denver office. Starting in 2008 the State put new regulations in place & they have been updated again circa 2012. As a state our regulations are some of the strongest in the nation. The scrutiny is certainly increasing.

Q: If we were to repeal the current the Specific Development regulations, could we in say 4-6 months, have a document that could be changed later, as the rules change, within a short amount of time in order to placate a lot of county concerns?

A: Maybe, because there is so much unknown right now. One of the prints out I gave you is a communication with CDPHE that basically says, Dear local governments, you have been given more authority & the opportunity to regulate more, but we're still the regulating agency. So we shouldn't jump out ahead of ourselves & move forward carefully & as the picture becomes more clear, we can move more quickly then.

Q: Are the regulations, as they stand, indefensible in court?

A: No, I wouldn't say that. The processes of the Specific Development Regulations are complicated & difficult to interpret & that makes it hard on everybody involved to know how exactly to connect the dots. The performance standards are ok but there are gaps & then they also defer to the State & again there's that cloud of preemption. So there is a demand for us to do something that our regulations don't allow us yet to do & 181 is giving us the opportunity to regulate more, our regulations don't allow us to regulate more. We have to change them to take advantage of 181 & we're being asked to look at our current regulations as if 181 was what was governing our regulations. Our entire land use authorities established based on protecting public health, safety & welfare. We are statutorily aloud to regulate land use to protect public health safety & welfare. Our regulations can go further now than they could've 6 months ago. I just don't think that defending them is the best use of our resources right now.

Q: Voting on a moratorium is not on the agenda tonight right?

A: No

Q: Are there other examples of what we defer to State on?

A: Electrical Permits, Plumbing Permits, water, sewer compliance. It's not just deferring to the State, its working and collaborating with the State.

Q: I'd like to see some kind of notification system in place, is that possible?

A: We would just choose to do it. Once we are notified by the State, we would then send out notifications to the adjacent property owners.

Q: Can we work on something to make this happen quicker?

A: That could be possible

Q: Our regulations are indefensible in court?

A: No, our Regulations are difficult to understand & interpret, the performance standards are ok but the also defer to the state. 181 gives us the opportunity to. Our land use authority is for defending health safety & welfare. I think they are defensible but they are imperfect. We can regulate air & water quality.

Q: Voting on a moratorium isn't tonight right?

A: No

Q: We defer to the state for other matters as well, other example defer

A: Water sewer, electrical, plumbing. It's working with & collaborating with the state, not deferring.

Q: If I'm a neighbor how will I know? Notifications?

A: I'll have to check the State's notification process. We can help make that notice happen

Q: Would we be waiting until we come up with new regulations to do that?

A: We could add that into the interim process

Q: Who do we call if there are concerns? With a response in a timely manner? COGCC? Can we set up heavy haul fees?

A: We can set up a heavy haul permit independent of our regulations. We would be the conduit for communications with the State. We have a specific person & enforcement unit direct contact information & emergency response direct contact information. Senate bill 181 makes it so that the COGCC staff increases by 25 FTE to help implement the Bill & that will give resources to implement the increased capacity for access & communications.

Q: After we establish our rules & regulations, what does the process to get our control back?

A: Adopt new oil & gas regulations that have what we want in them. A public hearing, 30 days public notice, public hearing & all of the ground work from the oil & gas working group & community meetings & work sessions. The County has a choice whether or not to regulate oil & gas we just have to go through the appropriate process to put new regulations in place.

Q: Are our state regulations are more strict than the County's?

A: In some areas. For example, water quality performance standards, our regulations say that we can request more monitoring, that is all our regulations allow us to do. The state has complete jurisdiction over water quality. Our current regulations are silent to water quality so when the issue of water quality is brought up, really all we can do is say we'll do more monitoring. We are already relying on the State to adequately regulate & address water quality. With 181 we will have the opportunity to address it further.

Q: Is there anything in our regulations that protect us?

A: Our emphasis on agricultural infrastructure as an emphasis is important. Water quality & agricultural infrastructure, it's the pipes & ditches, etc. & water quality ties in to that but our regulations have them separate.

Q: Why don't we appeal the things that the State has stronger & keep the things that we're concerned about like Ag quality & public notice? Can we do that?

A: Yes

Q: So it's agricultural impact not just agricultural infrastructure?

A: When you read the definition, it's really about the infrastructure.

Q: Can we make a motion to take no action?

A: Yes, if the commissioners decide not to repeal, it's ultimately up to them.

Q: We have this meeting because the rules require it? The commissioners have the say?

A: Yes. Any amendment to Specific development has to come to you all for recommendations, input & modification & then it goes to the BoCC.

Q: All or nothing right now?

A: We could look at it, it would be challenging to pick & choose. There are so many scattered pieces.

Q: Is this operations of order that we have to repeal something before we do an interim or could we finalize an interim process simultaneously with taking out current regulations

A: It's important to know there is a plan, that it's not just a repeal & walk away & defer. That is why the interim conversation is important to this conversation. But from the process standpoint, we are required to do public notice & have a public hearing & so on, so we initiated the process because that's where we have the conversation. I think we could have an interim process ready by September 3rd but I also think it needs more work & conversations to get it where we want it. This is just a starting point, not a final proposal.

Q: If we do make a recommendation to make amendments to Specific Development but we don't get to see the final proposal, how do we get rid of something if we don't to see the final interim proposal, why can't it be done all at once?

A: I'm taking this to the oil & gas working group, you all have one more meeting before September 3rd & I'll make some tweaks & I'll be bringing it back to you. So that what goes in front of the Commissioners on the 3rd is a potential interim process, reflecting all of our conversations. But I do think we'll have to continue to adjust it even after that but we can get it place & get it established knowing we will continue to improve it.

Q: & it can be conditional?

A: Yes, you can add conditions.

Deliberation of the Planning Commission:

Enforcement

Conditions

Transportation/Heavy haul/load permit &/or fee should be Industry specific

Communication

Notification

Public comment submittal

COGCC LGD (acts as a monitor) – Better understanding of their role

More fleshed out plan

Ag infrastructure protected

Retain local control in decision making

Motion: **Lucinda Stanley** moves to recommend that the Planning Commission approve staff's proposed deletions of oil & gas records throughout the Regulations including Appendix 1, with conditions that in the interim process staff works with the oil & gas working group to improve the proposed interim process which would address transportation, such as adding a heavy load permit or impact fees for the oil & gas industry, to also provide sufficient public notice & allow ample time for public comment & continue to maintain & protect agricultural infrastructure & a timeline to bring a revised interim process to the next meeting on August 28th for review & recommendation.

Second: **Kim Shay** seconds the motion

Mr. Schrock requests a roll call vote:

Steve Shea: Agree

Tom Kay: Vote to repeal with conditions. Agree

Layne Brones: Agree

Kim Shay: Agree

Angela Mackey: Agree

Jacob Gray: No

Steve Schrock: yes

Tate Locke: No, it adds another layer of disconnect with the citizens to comment on impacts

Lucinda Stanley: Agree

7 vote yay

2 vote nay

Motion carries

Meeting adjourned at: 8:10 pm

Respectfully submitted by:

Vivian Archuleta