

**CITY OF LOVELAND
PLANNING COMMISSION MINUTES
February 25, 2013**

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on February 25, 2013 at 6:30 p.m. Members present: Chairman Meyers; Vice Chairman Middleton; and Commissioners Molloy, Ray, Crescibene, Krenning, Massaro and Prior. Commissioner Dowding was absent. City Staff present: Troy Bliss, Current Planning; Robert Paulsen, Current Planning; Greg George, Director of Development Services; John Duval, City Attorney; Judy Schmidt, Deputy City Attorney.

These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.

CITIZEN REPORTS

There were no citizen reports.

STAFF MATTERS

Current Planning Manager Robert Paulsen reported the meeting on March 11 could be lengthy.

COMMITTEE REPORTS

Commissioner Molloy reported the Title 18 Committee met and discussed the Site Development Review process. Mr. Paulsen indicated that significant progress has been made and the Commission would be reviewing the Code amendments in the coming months.

COMMISSIONER COMMENTS

Chair Meyers introduced newly appointed Planning Commissioner Bob Massaro.

Commissioner Massaro briefly introduced himself, noting he previously served on the Transportation Advisory Board. He spoke of his reasons for wanting to volunteer to serve on the Planning Commission and felt that it was an opportunity to help shape the future of the community.

Commissioner Molloy commented that he had watched the recent City Council study session relating to the oil and gas regulations. He stated the Planning Commission spent a great deal of time discussing proposed regulations, offering recommendations, and that the Planning Commission had voted to recommend that the City Council extend the moratorium until the State had written their regulations. He did not feel that staff conveyed the Commission's recommendations adequately at the study session.

Commissioner Massaro concurred.

Development Services Director Greg George and **City Attorney John Duval** responded to the concerns of the Planning Commission, indicating that the City Council had been presented with information on the Planning Commission's recommendation. They further indicated that it was clear that the City Council was not interested in extending the moratorium on oil and gas development.

After a lengthy discussion the Commission re-emphasized the need for staff to accurately provide their deliberations and recommendations to City Council, as well as staff providing the Commission clear direction on their recommendations.

APPROVAL OF THE MINUTES

Vice Chair Middleton made a motion to approve the January 14, 2013 meeting minutes. Upon a second by Commissioner Crescibene the minutes were unanimously adopted (Chairman Meyers abstained).

Vice Chair Middleton made a motion to approve the February 11, 2013 meeting minutes. Upon a second by Commissioner Crescibene the minutes were unanimously adopted.

CONSENT AGENDA

1. South Shore Plaza Residential Condominium.

This is a public hearing to consider a height exception request for a 6-unit, 5-story residential condominium building proposed to be located on the south side of Eisenhower Boulevard across from Lake Loveland.

The property is zoned B – Developing Business. The building is proposed at 53 feet 3 inches in height. The building site is located within 50 feet of a residential zoning district, and is thereby limited to a maximum height of 35 feet unless a height exception is granted by the Planning Commission.

Commissioner Ray requested that Consent Item #1, *South Shore Plaza Residential Condominium*, be removed from the Consent Agenda.

The Height Exception for the South Shore Plaza Residential Condominium project was moved to the Regular Agenda as a public hearing matter. This item became the first item on the Regular Agenda.

Commissioner Massaro recused himself from discussion on this item.

Commissioner Molloy commented he had worked with the applicant on other projects but did not believe he had a conflict of interest.

The Commission accepted Commissioner Molloy's stated position.

Troy Bliss, Current Planning, gave a brief staff presentation. He stated that the subject property is located in the B - Developing Business zone district and the maximum height allowed by zoning is 35-feet because it is within 50 feet of a residential district. He reported the building would be a four-story, six-unit structure and noted there were several buildings in the area that have incorporated similar design features and were similar in height.

Mr. Bliss indicated that two people attended the neighborhood meeting. He stated based on the required findings, staff is in support of the application with the condition that the height not exceed 55 ft.

Steve McMillian, applicant, clarified the reasons for the height exception as follows:

- Underground parking for a more positive design solution, noting if the underground parking were removed the building could be lowered approximately 6 feet;
- The building was designed in a more vertical arrangement to obtain the number of units while allowing for a smaller building footprint and more attractive usage.

He commented the 4th floor has been set in on all 4 sides so that the view of Lake Loveland and the Mountains would not be obstructed.

Citizen Comments

There were no citizen comments.

Commissioner Comments

Commissioner Ray expressed concerns that the height was a 40% increase beyond the regular code provisions and the building is next to a residential neighborhood; he asked if there were any mitigation efforts that can be done to lower the building.

Mr. McMillian stated that lowering the parking would be problematic in that the driveway would be greatly extended. Another solution would be to remove the 4 floor, but that would make the project not feasible. He clarified that building up would leave more open space and the closest residential house was approximately 180 feet away.

Mr. Bliss stated there is no standard or policy guidance on whether the parking lot is covered or not. He commented that underground parking would be more aesthetically pleasing noting parking lots do require screening, light mitigation and basically more design requirements and evaluation.

He clarified that the residential use is not a use-by-right in the B Zone District and the applicant will have to go through the special review process to gain permission for the use—upon determination of the height exception.

Commissioner Crescibene stated that he felt the current height requirements in the code need to be adjusted and he stated he had no objection to the height of the building.

Mr. Paulsen noted he did not have the authority to grant a height exception and reemphasized the applicant would be coming through the special review process for project approval. He commented the applicant believed it would be beneficial to go through the height exception process prior to the special review process to be certain the height would be allowed. He did not believe there was a negative consequence for the height allowance.

He highlighted the following points:

- Due to the relationship of the building to the residents, staff did not believe there would be a significant shadowing effect
- Existing grades prevent views of the lake from nearby residential properties, therefore, the building would not be blocking anyone's views. The proposed structure is in keeping within the type of construction in the area, including the height of nearby buildings.

Commissioner Krenning opposed the process and believed the use was not consistent with the neighborhood.

Mr. Paulsen clarified the Special Review process is an administrative process and would only come before the Planning Commission if the project were appealed. He emphasized that the applicant was attempting to gain approval of a design parameter that is crucial to the financial feasibility of the project and that it was logical for the applicant to seek this approval prior to completing the overall design and engineering of the site.

Commissioner Prior asked the applicant if he had considered lowering the building and changing the garage access in an attempt to reduce the building height.

Mr. McMillian stated it was possible to further recess the building but the driveway would be very long as a result. He stated he felt that the building has been lowered as far as it could be and cited other buildings in the community that had similar or greater heights. He stated that this is a very nice property and believed the design was a compatible use of the property.

Chair Meyers indicated that he did not believe building was compatible with the surrounding neighborhood.

Commissioner Molloy stated he felt it was a new urban style living and believed it did fit with the surrounding area.

Commissioner Krenning stated that he would not vote to approve the height unless there was a condition that the Commission would be able to review the full project design prior to construction.

Mr. McMillian commented that prior to construction the lender is requiring the units be pre-sold. He stated the Planning Department recommended this approach, i.e., asking for the height exception prior to the Special Review saving him thousands of dollars if the height exception were denied.

Mr. Bliss clarified that under the Special Review provisions, an appeal can be filed by two Planning Commissioners. This approach would enable the Planning Commission to hear the (future) special review if so desired.

Commissioner Crescibene commented that he too would like to see final designs, but commented that with many projects the Commission does not see the final projects which is why he trusts that staff is doing their job. He supported the project.

Commissioner Molloy concurred with Commissioner Crescibene's statement.

Commissioner Prior stated he liked the overall concept but would like to see the building height lowered.

After further discussion regarding the height of the proposed building and surrounding building heights, *Commissioner Middleton made a motion to make the findings listed in Section VIII of the Planning Commission staff report dated February 25, 2013 and, based on those findings, not approve the requested height exception subject to the condition listed in said report, as amended on the record. Upon a second by Commissioner Ray the motion passed 4-3. Yeas: Commissioners Middleton, Meyers, Ray and Krenning. Nays: Commissioners Prior, Crescibene and Molloy.*

(Secretary's Note: Commissioner Massaro returned to the meeting.)

REGULAR AGENDA

1. Zoning regulations for oil and gas development.

This item is a public hearing to consider amending the Loveland Municipal Code by adding a new Chapter 18.77 to establish zoning regulations for oil and gas development in the City of Loveland. These new regulations have been drafted to be consistent with the Statement of Direction adopted by City Council on August 21, 2012. The regulations address concerns raised by Loveland citizens regarding impacts on public health, safety and welfare and the environment and recognize the City's legal authority to regulate oil and gas development. This matter is legislative in nature; as the City Council has final authority on this matter, the Planning Commission's role is to make a recommendation on the proposal to the City Council.

Greg George, Director of Development Services, introduced this item to the Planning Commission and outlined changes to the regulations as a result of the February 12, 2013 City Council Study Session. Mr. George noted that there are currently no development standards in place for oil and gas development because it was never anticipated that oil and gas drilling would be permitted in the City Limits.

He clarified that a moratorium on oil and gas development has been in place for nine months and City Council has directed staff to develop regulations that would not be pre-empted by State Law. He briefly updated the Planning Commission on the two-component process contained in the proposed regulations. Baseline standards, which are mandatory, would apply to all new oil

and gas development. The Planning Commission would have approval authority for applications addressing only the baseline standards. Enhanced standards are voluntary and supplement the baseline requirements. The Development Services Director would have the authority to approve applications which comply with the enhanced standards. Once approved by the Director, the approval could not be appealed to the Planning Commission or City Council.

Mr. George indicated that the COGCC had recently adopted new setback and mitigation measures, and that the proposed ordinance has taken those new provisions into account.

Mr. George also indicated that staff had worked with Anadarko Petroleum in developing the enhanced standards and that Anadarko indicated a willingness to comply with those standards.

Mr. George reported that abandoned well sites were originally exempted from the setback rules established by the State, but the Director of the COGCC had recently indicated that re-entering any existing or abandoned well would be considered the same as permitting for a new well and would be subject to compliance with the COGCC's new setback and mitigation rules.

Commissioner Krenning questioned how an appeal of an approval of the enhanced standards would be handled.

Mr. Duval clarified that all appeals would go to the District Court. Mr. Duval stated that setbacks will also apply to abandoned wells.

Mr. George summarized the new state regulations. He noted that the enhanced standards in the proposed ordinance would establish a 500 foot setback from the boundaries of natural areas, wetlands and conservation easements managed by a government or non-profit entity.

Public Comment

Citizen comments, thirteen citizens spoke against the proposed regulations.

- Five of those who testified asked for a ban on oil and gas development within the city.
- Seven of the thirteen raised concerns about impacts on quality of life and public health.
- One citizen has concerns about reduced real estate values near an oil and gas development.

Susan Aldridge, 1099 18th Street, Suite 1800, Denver Colorado representing Anadarko, commented that she is hearing and understands the concerns made by the citizens. She clarified that Anadarko has been working with staff to come up with the enhanced measures and was available for questions.

Corby Bracken, representing Anadarko, stated he too understood the concerns of the citizens. As an air quality expert, he urged concerned citizens to contact their State Representatives to support the budget amendment for the 1.3 million dollar air quality study for the Front Range. He responded air quality concerned raised by the Planning Commission and citizens, and he indicated that Anadarko would install up-to-date air quality mitigation devices on their production facilities.

There was a discussion regarding air and groundwater monitoring standards and current impacts on air quality resulting from oil and gas development in the region.

Brian Cain, representing Anadarko, thanked the citizens for their time and valuable input. He emphasized there is a right and wrong way to produce energy and clarified that Anadarko is the only oil company to be recognized by the Environmental Protection Agency for its best practices. He responded to questions and reported that 90 percent of all oil and gas wells are hydraulically fracked and the fracking process lasts from three to five days.

Paul Schneider, representing Anadarko, spoke of water quality issues and clarified that a small portion of the east side of Loveland is in the Greater Wattenberg Area.

COMMISSION COMMENTS

There was discussion of the proposed regulations, including the following:

- the need for enhanced water and air quality regulations and monitoring;
- the lack of an appeal process for the administrative approval process;
- the lack of incentives for applicants to pursue the enhanced standards process;
- the unknown effects of oil and gas production on public health and the environment; and
- the potential loss of property values due to oil and gas development.

Commissioner Molloy expressed frustration that the City is required to update its Comprehensive Plan only to have the State or the COGCC pre-empt it through regulations that would mandate large setback areas that would preclude urban-level development.

There was a discussion regarding how setbacks from potential drilling sites could negatively affect new development within the City.

The following motions were made:

Vice Chair Middleton made a motion to recommend that City Council adopt the accompanying ordinance to regulate oil and gas development within the City of Loveland, subject to any revisions recommended by the Commission. Upon a second by Commissioner Molloy, the motion failed 1-7. Yeas: Commissioner Middleton. Nays: Commissioners: Massaro, Crescibene, Molloy, Meyers, Ray, Krenning, Prior and Ray.

Commissioner Krenning stated he would support a motion that would allow for a direct appeal to the City Council under the administrative approval process. He stated his biggest opposition was that he felt the community should have the right to appeal without filing a lawsuit in District Court. He further stated that the original motion could be supplemented with language to read that the Planning Commission would encourage City Council to consider the options of monitoring and testing air quality and water quality.

Commissioner Molloy indicated that he did not believe the regulations were rigorous enough for urban areas.

Commissioner Ray stated that if he were going to make a motion he would suggest recommending approval of the regulations as they stand but establish zoning regulations to prohibit drilling next to a residential property unless the operator agrees to regulations that protect neighborhoods and human health and the environment.

He stated no one knows what if any health or environmental issues will be caused by oil and gas production, and he could not support going forward, stating these regulations are not good enough. He stated in an urban area there is not enough information one way or another to know if this is a safe practice.

Commissioner Massaro thanked everyone for attending the meeting and stated he was inclined to vote no; he stated the health issue continues to concern him.

Commissioner Prior suggested adding language regarding air and water quality issues in the baseline standards, commenting that it would alert companies ahead of time so they can consider if they want to do the baseline process or would it be worth it to go to litigation.

Commissioner Krenning made a motion to recommend that City Council adopt the proposed ordinance to regulate oil and gas development within the City of Loveland, subject to modification that the administrative issuance of a permit is subject to an appeal to City Council. Upon a second by Chairman Meyers the motion failed 2-6. Yeas: Commissioners Krenning and Meyers. Nays: Commissioners: Massaro, Crescibene, Prior, Middleton, Ray, and Molloy.

Commissioner Ray made a motion to recommend that the City Council adopt the accompanying ordinance to regulate oil and gas development within the City of Loveland, subject to these revisions recommended by the Loveland Planning Commission;

1. *Enhanced groundwater monitoring regulations proposed by an environmental expert;*
2. *Air monitoring regulations more stringent than the ones provided and that are protective of human health and the environment consistent with point source monitoring at facilities while drilling and while an active site that the proposal either complies with these two things;*
3. *Specifically exclude drilling within residential districts; and*
4. *Include an administrative appeal process.*

Commissioner Krenning stated he was not comfortable drafting a motion from the "hip". There was no second made on Commissioner Ray's motion.

ADJOURNMENT

Commissioner Krenning made a motion to adjourn; upon a second by Vice Chair Middleton, the motion was unanimously adopted.

Buddy Meyers, Chair

Vicki Mesa, Secretary

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