



Planning Commission Agenda

Thursday, September 21, 2023

Regular Meeting – 6:00 P.M.

Frederick Town Hall

401 Locust St.

Built On What Matters

In order to promote social distancing and to protect the health and safety of our Commission members, staff, and community this meeting will be hybrid and conducted via Zoom and in person.

Interested parties are encouraged to access the meeting via Zoom or in person at Town Hall.

The meeting information is as follows:

Join Zoom Meeting

<https://us06web.zoom.us/j/89396063281?pwd=MSStLN2FWYjcXWVBjTDNYUjNkV3k0QT09>

Meeting ID: 893 9606 3281

Passcode: 284631

Please contact Assistant Town Clerk- Records Emily Nitcher with questions regarding the meeting. 720-382-5582 or enitcher@frederickco.gov

Call to Order – Roll Call

Pledge of Allegiance

Additions to the Agenda

Action Agenda

A. Approval of minutes from the August 17, 2023, meeting

- Motions

Approval: *I move to approve the minutes for the August 17th, 2023, meeting as presented.*

Approval with Conditions: *I move to approve the minutes for the August 17th, 2023, meeting with the following conditions: 1. (list conditions)*

- Discussion

- Vote

Public Meeting

B. Consideration of Amendments to the Frederick Land Use Code Article 9, Oil and Gas Drilling and Production- Planning Manager van Deutekom and Special Counsel Matt Sura

- Staff presentation
- Questions for the Staff
- Motions

Approval: *I move to approve PCR-2023-06A, which recommends approval of the Land Use Code amendments.*

Approval with Conditions: *I move to approve PCR-2023-06C, which recommends approval of the Land Use Code amendments with the following conditions; 1. (list conditions)*

Denial: *I move to approve PCR-2023-06B, which recommends denial of the Land Use Code amendments.*

- Discussion
- Vote

Other Business

C. Upcoming Meetings- Regular Meeting Thursday, October 19th, 2023



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MINUTES
TOWN OF FREDERICK
PLANNING COMMISSION
MEETING CONDUCTED IN PERSON AND VIA ZOOM
August 17, 2023
6:00 PM

CALL TO ORDER: At 6:01 p.m., Chairperson Moe called the meeting to order and requested roll call.

ROLL CALL:

- Present: Chairperson Moe, Vice Chair Conroy, Commissioner Scott.
- Not Present: Commissioner Kelley, Commissioner Sammartino.
- Staff: Planning Manager Ali vanDeutekom, Assistant Town Clerk Emily Nitcher, and Comprehensive Plan Consultant Palmberg.

APPROVAL OF AGENDA:

APPROVAL OF JULY 6, 2023, MINUTES:

Motion by Vice Chair Conroy and seconded by Commissioner Scott to approve the July 6, 2023, Minutes.

Upon roll call vote, motion passed 3 to 0.

UPDATE ON THE COMPREHENSIVE PLAN PROGRESS:

Planning Manager Ali vanDeutikom and Comprehensive Plan Consultant Palmberg presented the update on the comprehensive plan progress to the Planning Commission.

OTHER BUSINESS:

Upcoming Meeting:

Regular Planning Commission Meeting Thursday September 21st, 2023.

There being no further business of the Planning Commission, Chairperson Moe adjourned the meeting at 7:21 p.m.

Built on What Matters.

Approved by the Planning Commission:

Tracy Moe, Chairperson

ATTEST:

Emily Nitcher, Secretary to Planning Commission



TOWN OF FREDERICK

Planning Commission

Tracy Moe, Chairman

Dennis Stark, Alternate Commissioner
William Mahoney, Alternate Commissioner
Roger Kelley, Commissioner

Kristin Conroy, Vice-Chairman
Nathan Scott, Commissioner
Joseph Sammartino, Commissioner

Consideration of Amendments to Article 9 within the Frederick Land Use Code.

Agenda Date: September 21, 2023

Attachments: A. Proposed Land Use redlines
B. PCR-2023-06 A-C

Submitted by: Ali van Deutekom
Planning Manager

Summary Statement:

In 2022, the Board of Trustees brought on Special Counsel, Matt Sura, to act on the Town's behalf in oil and gas matters. These are recommended interim code changes to Article 9 based on Matt Sura's assessment.

Strategic Plan Alignment:



2. Community and Economic Vitality-

2.5 Continue work on updating the Land Use Code

Detail of Issue/Request:

On April 3, 2019, the Colorado State Senate passed SB 19-181. The Governor signed SB 19-181 into law on April 16, 2019. SB 19-181 amended the Colorado Oil and Gas Conservation Act (COGCA) to change, among other provisions, the Colorado Oil and Gas Conservation Commission's (COGCC) mission from "fostering" the oil and gas industry to "regulating" it to protect public health, safety, welfare, the environment, and wildlife. SB 19-181 also amended the Local Government Land Use Enabling Act to clarify the scope of municipal and county authority land use authority over oil and gas operations within their jurisdictional boundaries.

The Town of Frederick's Land Use Code should be updated to utilize the additional authority over oil and gas development that local governments received from the passage of Senate Bill 19-181. Substantial

changes to the Land Use Code are needed but will take considerable time to adopt. These changes are being incorporated into the greater Land Use Code updates being developed by Todd Messenger with input from Matt Sura. In the interim, the proposed changes redlined in the Ordinance (Attachment A) would give the Town some additional authority and could be adopted quickly before the comprehensive updates are completed.

Review Criteria:

Section 4.7.9.b. For the purpose of establishing and maintaining sound, stable, and desirable development within the Town, the text of this Code shall not be amended except:

- (1) To correct a manifest error in the text of this Code;
- (2) To provide for changes in administrative practices as may be necessary to accommodate changing needs of the community and the Town staff;
- (3) To accommodate innovations in land use and development practices that were not contemplated at the adoption of this Code; or
- (4) To further the implementation of the goals and objectives of the Comprehensive Plan.

All four of the review criteria shall be met with the proposed code amendments.

Public Notice: This project was properly noticed according to the requirements found in C.R.S. §24-6-402(2)(c).

Legal/Political Considerations: The application has been reviewed by the Town Attorney, whose comments have been incorporated accordingly.

Alternatives/Options:

Approval: I move to approve PCR-2023-06A, which recommends approval of the Land Use Code amendments.

Approval with Conditions: I move to approve PCR-2023-06C, which recommends approval of the Land Use Code amendments with the following conditions;

1. (list conditions)

Denial: I move to approve PCR-2023-06B, which recommends denial of the Land Use Code amendments.

Staff Recommendation: Staff requests that the Planning Commission consider approving PCR-2023-06A which recommends approval of this request without conditions.

AMENDING ARTICLE 9, OIL AND GAS DRILLING AND PRODUCTION, TOWN OF FREDERICK LAND USE CODE, SECTIONS 9.1, 9.2, 9.3, 9.4, AND 9.14 TO CREATE GREATER OVERSIGHT OF OIL AND GAS DRILLING AND PRODUCTION WITHIN THE TOWN IN ACCORDANCE WITH THE AUTHORIZATIONS PROVIDED IN SENATE BILL 19-181, PROVIDING FOR REPEALER, PROVIDING FOR EFFECTIVE DATE.

Section 1. Sec. 9.1, *Purpose*, Town of Frederick Land Use Code, is hereby amended as follows (strikeout represents deleted text):

These regulations are enacted to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the present and future residents of the Town. ~~It is the Town's intent by enacting these regulations to facilitate the development of oil and gas resources within the Town, while mitigating potential land use conflicts between such development and existing, as well as planned, land uses. It is recognized that, under Colorado law, the surface and mineral estates are separate and distinct interests in land and that one (1) may be severed from the other. Owners of subsurface mineral interests have certain legal rights and privileges, including the right to use that part of the surface estate reasonably required to extract and develop their subsurface mineral interests, subject to compliance with the provisions of these regulations and any applicable statutory and regulatory requirements. The State has a recognized interest in fostering the efficient development, production and utilization of oil and gas resources, and in the prevention of waste and protection of the correlative rights of common source owners and producers to a fair and equitable share of production profits. Similarly, owners of the surface estate have certain legal rights and privileges, including the right to have the mineral estate developed in a reasonable manner, and "m~~Municipal² governments have a recognized, traditional authority and responsibility to regulate land use within their jurisdiction. These regulations are intended as an exercise of this land use authority.

Section 2. Sec. 9.2, *Definitions*, Town of Frederick Land Use Code, is hereby amended as follows (strikeout represents deleted text, * * * represents large blocks of text that are unchanged by this amendment):

a. All terms used in this Article that are defined in the Act or in Commission regulations, and not otherwise defined in this Section, are defined as provided in the Act or in such regulations as of the effective date of this Article. All other words used in this Article are given their usual customary and accepted meaning; and all

words of a technical nature, or peculiar to the oil and gas industry, shall be given that meaning which is generally accepted in said oil and gas industry. When not clearly otherwise indicated by the context, the following words and phrases used in this Article have the following meanings:

Act means the Oil and Gas Conservation Act of the State.

Commission or ~~ECMCOGCC~~ means the Oil and Gas ~~Conservation~~Energy and Carbon Management Commission of the State.

Day means a period of twenty-four (24) consecutive hours.

Director means the Director of the ~~Oil and Gas Conservation~~Energy and Carbon Management Commission of the State.

* * *

Twinning means the drilling of a well within a radius of fifty (50) feet from an existing well bore when the well cannot be drilled to the objective depth or produced because of an engineering problem, such as a collapsed casing or formation damage.

Substantial Modification means addition, removal, replacement, or modification of equipment or other changes to a well site or production site that increases the site's footprint, harmful emissions, traffic, noise, or odor, or could negatively impact public health, safety, welfare, or the environment or wildlife. This includes, without limitation, redrilling, sidetracking, twinning, or recompleting a well, or change of use to an injection well. Maintenance activities, installation of emission control equipment, and the addition of equipment necessary to fulfill mandated regulatory requirements are not substantial modifications.

Use tax means the tax paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the Town.

* * *

Section 3. Sec. 9.3, *Requirements and Procedures*, Town of Frederick Land Use Code, is hereby amended as follows (strikeout represents deleted text, underline represents inserted text, * * * represents large blocks of text that are unchanged by this amendment):

a. *Proposed new wells, redrilling certain wells and other specific enhancements.*

1. It shall be unlawful for any person to drill a well that has not been previously permitted under this Article, reactivate a plugged or abandoned well, or ~~perform initial installation of accessory equipment or pumping systems (in cases where a well is not being drilled)~~ make a substantial modification to an existing well site or production site, unless a conditional use permit has first been granted by the Town in accordance with the procedures defined in this Article.
2. The granting of such conditional use permit shall not relieve the operator from otherwise complying with all applicable regulatory requirements of the Town, the State and the United States.
3. When a conditional use permit has been granted for a well, reentry of such well for purposes of ~~sidetracking, twinning, deepening, recompleting or reworking~~ maintenance or repair to return it to production shall not require a separate conditional use permit.
4. The conditional use permit is limited to the current proposed facilities as shown in the approved plan. To the extent the applicant desires, after initial completion of a well, to place additional equipment on a tank battery or wellhead location which was not shown in the approved plan, the applicant must, except in a situation where additional equipment is necessary for a period of fourteen (14) days or less, apply for and be granted a minor modification prior to thenotify the Town of installation of such additional equipment. In the event the Planning Manager determines that the additional equipment is a substantial modification, the operator must apply for a new conditional use permit.
5. Within thirty (30) days after completion of operations, the applicant shall provide to the Town “as-built” drawings showing all facilities, pipelines, flow lines and gathering lines which the applicant has placed on the land subject to this permit.

* * *

c. Inspection fee.

1. The inspection fee shall be set by resolution of the Town Board from time to time~~four hundred dollars (\$400.00) per well for each year or part of a year during which such well has not been plugged and abandoned.~~ No inspection fee shall be due for any year following the year in which a well is plugged and abandoned, unless a conditional use permit is granted with respect to such well. No inspection fee shall be due for any calendar year in which the fee for an application for conditional use permit, as provided in Subsection (e) below, is paid. Any inspection fee which becomes due and payable after January 1 of each year shall be paid by the operator within thirty (30) days after receipt of an invoice from the Town. An operator contesting the amount of the invoice may, upon payment of the invoice under protest, appeal directly to the Board of Trustees.

* * *

e. *Application fee.* A nonrefundable fee set by resolution of the Town Board from time to time~~of one thousand dollars (\$1,000.00)~~ shall accompany the application.

f. *Specialized Consultants.* In the Planning Manager's discretion, the Town may retain the services of third-party consultants with specialized knowledge that the Town requires to adequately evaluate an application, the costs of which must be paid by the applicant with such payment agreed to in writing at the time of application submittal. Selection of third-party consultants to review portions the proposal will be at the sole discretion of the Town.

Section 4. Sec. 9.4, *Application Elements*, Town of Frederick Land Use Code, is hereby amended as follows (strikeout represents deleted text, underline represents inserted text, * * * represents large blocks of text that are unchanged by this amendment):

An application for a conditional use permit pursuant to this Article shall be filed with the Town Clerk and shall include the following information:

1. *Application requirements, site plan.* The site plans for a well site submitted with an application for a use by conditional review shall be submitted on one (1) or more

plats or maps, at a scale not less than one (1) inch to fifty (50) feet, showing the following information:

* * *

- i. Well site or production site and existing lease boundaries.
- j. The names of abutting subdivisions or the names of owners of abutting, unplatted property within two thousand (2,000) ~~four hundred (400)~~ feet of the well site or production site.
- k. The name and address of the operator and the name of the person preparing the site plan or map.

l. List of operator's spills or releases within the Town limits over the past three (3) years and the remediation status of those spills or releases.

m. List of ECMC or Colorado Department of Public Health and Environment notices of alleged violations issued to operator over the past three (3) years for activities within the Town limits and the status of those alleged violations.

2. *Application requirements, vicinity maps.* The vicinity maps for a well site or production site submitted with an application for a use permitted by conditional review shall be submitted on one (1) or more plats or maps showing the following information:

- a. Location of all existing water bodies and watercourses, including direction of water flow. This information shall be submitted on USGS 7.5 minute series or assessor base maps which indicate topographic detail and show all existing water bodies and watercourses with a physically defined channel within a four-hundred-foot radius of the proposed well.
- b. Location of existing oil and gas wells as reflected in ~~OGCE~~ECMC records. This information shall be submitted on a map and shall include any and all wells within a one-thousand-foot radius of the proposed location for the well.

c. Location of drill site. The information to be submitted shall be ~~Commission~~ECMC Form 2 and shall include the Parcel Tax Identification Number.

3. *Application requirement narrative.* In addition to the site plans and the vicinity maps required in Subsection (1) and (2) above, the application shall include the following:

a. The operator's and surface owner's names and addresses, and copies of any required ~~OGCEC~~ECMC Form 2 A plans (once Form 2A is deemed complete) and designation of agent, if applicable.

b. An operating plan.

c. A list of all permits or approvals obtained or yet to be obtained from local, state or federal agencies other than ~~OGCEC~~ECMC.

* * *

g. Sanitary facilities must comply with Section 602(g) of the ~~OGCEC~~ECMC regulations.

Section 5. Sec. 9.5. Review Criteria, Town of Frederick Land Use Code, is hereby amended as follows (strikeout represents deleted text):

a. The Board of Trustees shall approve an application for a use permitted by conditional review for a well site if the application submitted by the applicant conforms to the following requirements:

1. The site plans for a well site application comply with the requirements of Section 9.4(1) above.

2. The vicinity maps for a well site application comply with the requirements of Section 9.4(2) above.

3. The narrative for a well site application complies with the requirements of Section 9.4(3) above.

4. When applicable, compliance with the provisions for geologic hazards, floodplains or floodway required in Section 9.10 of this Article.

5. When applicable, compliance with the provisions for wildlife mitigation procedures required in Section 9.12 of this Article.

6. There are no outstanding violations of ECMC rules or Town of Frederick code provisions at any well site or production site owned or operated by the applicant within the Town limits.

7. The proposal will, to the extent necessary and reasonable, avoid adverse impacts on public health, safety, welfare, and the environment, including wildlife resources, or will adequately minimize and mitigate potential adverse impacts.

b. The Board of Trustees' decision shall be based upon evidence presented in the application and at a public hearing. Following the conclusion of the public hearing, the Board of Trustees may proceed to render its provisional decision orally on the application, or it may take the matter under advisement until an announced date certain not to exceed fourteen (14) days, at which time it shall orally render its decision. In the event that an application is granted with conditions, the applicant may, within fourteen (14) days of the Board's decision, request a rehearing to demonstrate that removal or modification of one (1) or more of the conditions is ~~necessary to prevent waste or protect owners of correlative rights in a common source to a fair share of production profits, or that the decision is otherwise~~ inconsistent with state laws and regulations. Following the Board of Trustees' oral announcement of its decision and any subsequent rehearing, a written resolution shall be adopted as its final action or decision on the application. This written resolution shall set forth the findings of the Board of Trustees. The Town Attorney shall prepare the written resolution for the Board of Trustees' consideration within fourteen (14) days of the oral decision or any subsequent rehearing. Such written resolution shall be adopted within twenty-one (21) days of the announcement of the Board of Trustees' oral decision, unless the applicant requests rehearing, in which case the written resolution shall be adopted within thirty (30) days of the oral decision. For the purposes of judicial review, the Board of Trustees' final action or decision on an application shall be deemed to have been made as of the date upon which the Board of Trustees executes the written resolution, which shall constitute the final decision of the Board of Trustees.

Section 6. Sec. 9.14, *Violation and Enforcement*, Town of Frederick Land Use Code, is hereby amended as follows (strikeout represents deleted text, * * * represents large blocks of text that are unchanged by this amendment):

* * *

e. *Prospective application.* Unless specifically provided otherwise, this Article shall apply only to wells which are drilled or substantially modified in the Town on

and after the date that this Article is adopted. ~~The reentering of a well in existence prior to the date of adoption of this Article for purposes of deepening, reCompleting or reworking shall not require approval of a use permitted by conditional review.~~

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**A Resolution of the Planning Commission Recommending Approval of
Amendments to the Town of Frederick Land Use Code Article 9**

5 Be it resolved by the Planning Commission of the Town of Frederick, Colorado:

7 Section 1. The Frederick Planning Commission finds that:

1.1 Amendments to Land Use Code Section 9 to update oil and gas drilling
and production regulations.

0 1.2 Said amendments generally conform with the applicable requirements of
1 Section 4.7.9.b. of the Frederick Land Use Code.

2 Section 2. This resolution constitutes the written report, findings, and decision of the
3 Town of Frederick Planning Commission.

4 Section 3. On the basis of the above, the Town of Frederick Planning Commission
5 recommends approval of the application.

8 This resolution approved this 21st day of September 2023, by a vote of _ to _.

1 Tracy Moe, Chairman, Planning Commission

1 **PCR-2023-06B**

2 **A Resolution of the Planning Commission Recommending Denial of Amendments to**
3 **the Town of Frederick Land Use Code Article 9**

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5 Be it resolved by the Planning Commission of the Town of Frederick, Colorado:

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7 Section 1. The Frederick Planning Commission finds that:

8 1.1 Amendments to Land Use Code Section 9 to update oil and gas drilling
9 and production regulations.

10 1.2 Said amendments generally conform with the applicable requirements of
11 Section 4.7.9.b. of the Frederick Land Use Code.

12 Section 2. This resolution constitutes the written report, findings, and decision of the
13 Town of Frederick Planning Commission.

14 Section 3. On the basis of the above, the Town of Frederick Planning Commission
15 recommends denial of the application.
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18 This resolution approved this 21st day of September 2023, by a vote of _ to _.
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21 Tracy Moe, Chairman, Planning Commission
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**A Resolution of the Planning Commission Recommending Conditional Approval of
Amendments to the Town of Frederick Land Use Code Article 9**

Be it resolved by the Planning Commission of the Town of Frederick, Colorado:

Section 1. The Frederick Planning Commission finds that:

1.3 Amendments to Land Use Code Section 9 to update oil and gas drilling
and production regulations.

1.4 Said amendments generally conform with the applicable requirements of
Section 4.7.9.b. of the Frederick Land Use Code.

Section 2. This resolution constitutes the written report, findings and decision of the
Town of Frederick Planning Commission.

Section 3. On the basis of the above, the Town of Frederick Planning Commission
recommends approval of the application with the following conditions:

This resolution approved this 21st day of September 2023, by a vote of _ to _.

Tracy Moe, Chairman, Planning Commission