

TOWN OF ERIE

*645 Holbrook Street
Erie, CO 80516*



Meeting Minutes

Wednesday, October 21, 2020

6:30 PM

via Virtual Meeting

**<http://bit.ly/Oct21PCMtg>
via Virtual Meeting**

Planning Commission

I. CALL TO ORDER & PLEDGE OF ALLEGIANCE TO FLAG

Chair Zuniga called the October 21, 2020 Planning Commission Meeting to order at 6:31pm.

II. ROLL CALL**Roll Call:**

Commissioner Hoback - present
Commissioner Luthi - present
Commissioner Ames - present
Commissioner Witt - absent/excused
Commissioner Sawusch - present
Vice Chair Fraser - present
Chair Zuniga - present

III. APPROVAL OF THE AGENDA

Commissioner Luthi moved to approve the agenda of the October 21, 2020 Planning Commission Meeting. The motion, seconded by Commissioner Hoback, carried with the following Roll Call vote:

Commissioner Hoback - yes
Commissioner Luthi - yes
Commissioner Ames - yes
Commissioner Sawusch - yes
Vice Chair Fraser - yes
Chair Zuniga - yes

IV. APPROVAL OF MINUTES

[20-510](#)

Approval of the October 7, 2020 Planning Commission Meeting Minutes

Attachments: [10-7-2020 PC Meeting Minutes](#)

Vice Chair Fraser moved to approve the meeting minutes of the October 7, 2020 Planning Commission Meeting. The motion, seconded by Commissioner Sawusch, carried with the following roll call vote:

Commissioner Hoback - yes
Commissioner Luthi - yes
Commissioner Ames - yes
Commissioner Sawusch - yes
Vice Chair Fraser - yes
Chair Zuniga - yes

V. PUBLIC COMMENTS

No Public Comments.

VI. GENERAL BUSINESS

[20-524](#)

Proposed Changes to the Unified Development Code

Attachments: [Resolution P20-19](#)
[Chapter 1-redline-092120 .ml](#)
[Exhibit A Chapter 1-clean-101420 .ml](#)
[Chapter 2-redline-101320 .ml](#)
[Exhibit A Chapter 2-clean-101420 .ml](#)
[Chapter 3-redline-101320 .ml](#)
[Exhibit A Chapter 3-clean-101420 .ml](#)
[Chapter 5-redline-100120 .ml](#)
[Exhibit A Chapter 5-clean-101420 .ml](#)
[Chapter 8-redline-092520 .ml](#)
[Exhibit A Chapter 8-clean-101320 .ml](#)
[Chapter 10-redline-101320 .ml](#)
[Exhibit A Chapter 10-clean-101420 .ml](#)
[Chapter 12-redline-101520 .bg](#)
[Exhibit A Chapter 12 -clean-101520 .bg](#)

Chair Zuniga opened the Public Hearing for Agenda Item 20-524 at 6:34pm.

Deborah Bachelder, Planning Manager/Deputy Director of Planning & Development provided an update and background regarding the proposed changes to the Unified Development Code.

Kendra Carberry, Town Attorney; Barbara Green, Special Counsel; Fred Starr, Director of Planning & Development; Farrell Buller, Deputy Town Administrator; and Martin Landers were available for questions of the Commission regarding the proposed changes.

Chair Zuniga brought it back to the Commission for comments/questions of staff. Some questions and comments included the following:

- Questions on Chapter 2: 10.2.1.3 re: newly annexed areas
- Statute 31.12.115 – zoning of newly annexed land
- How do these references apply?
- Heavy industrial terminology in Chapter 2
- Is there anything within our UDC to bar heavy industrial near residential
- Challenges as Commissioners – large developments in pieces/not meeting density – then adding high density at the end
- Density not consistent with the goals of the area
- Can we adjust the “loophole” regarding density?
- Adding language to put a cap on average density
- Adding language to maintain the density already approved/slotted for the area
- Add the language in the PD
- Zone classifications
- Catching these issues in the way we look at amendments
- Not that they’re trying to meet a density requirement, they’re trying to meet their diversity
- Comprehensive Plan update – UDC reflect what we’ve come up with in the Comp Plan
- Including similar language to the COGCC sitting rule and setback waivers

Some specific concerns and discussion regarding Chapter 12 included the following statements and questions:

Commissioner Luthi had no specific questions but does not like Chapter 12. Commissioner Luthi believes it is arbitrary and that with the oil and gas business gains, another hurdle comes up that they have to overcome and thinks it's bad for business.

Commissioner Sawusch:

- Was the discussion of setback waivers discussed with the Board of Trustees?
- Are we voting on the clean draft of the UDC Amendments to Chapters 1, 2, 3, 5, 8, 10, & 12?

Commissioner Sawusch asked that this be brought up with the Board of Trustees – there was a discussion about the setback waivers and it was said that it would be proposed to the Board of Trustees, and it sounds like there hasn't been a discussion. If the Commission is voting on this and will be approving, recommending with approval or recommended with changes, Commissioner Sawusch would like to see some explicit language which provides setback waivers. So that if we are saying it's 2,000 feet, anybody who has an agreement with a operator, can in fact have it within 500 to 2,000 feet if they notify any future residents; if they notify any renters; anybody who owns the property. This would be similar to what we see in the proposed rules from the COGCC. Commissioner Sawusch would like to discuss adding language in, which provides the setback waivers so that it's similar to what the COGCC has proposed with the rule making; which says "...shall not be within 2,000 feet unless there is an agreement made between the occupants; the property owner; the renters; and anybody notified in the future, so that if they want to say 'look you can have your operations within 500 to 2,000 feet', they can do so. That allows some wiggle room for those who are not really against or worried about it to whatever it might be, but provides that wiggle room that's similar to what the COGCC has proposed in their rule making.

Commissioner Hoback stated that it seems like (by adding this specific language) that's advocating the Town's rule making to specific neighborhoods and doesn't know of any other situations where we do that. Commissioner Hoback doesn't think a neighborhood of certain individuals can agree with a business to override the general rules that the Town has set forth.

Commissioner Ames is not against the waiver – he can see a need for it based on a number of different scenarios. The COGCC obviously thought about it and would be curious about what their language says but has a question on what is meant by "the Town may decide that a different setback is more appropriate based on the alternative site analysis.." Specific to the waiver process, a. does not disagree with the waiver process and a waiver would make sense when there's that one neighbor that wants to see it go in; his fear is that you have to have some assemblance of review or some sort of minimum standard within the waiver process and the process defined.

Vice Chair Fraser noted if anyone, whether it be oil and gas, or a developer, comes and wants to adjust an existing UDC requirement, they have to come before the Commission and the BOT to do it. Vice Chair Fraser would not be for automatically providing a means for someone to arbitrarily or have a waiver, he would rather have them come state their case and if they wanted to adjust that

distance, for whatever reason, then they can come before the Commission, have a public hearing and notify people, get feedback and the Commission can vote to adjust that. The code or the UDC can be adjusted. Vice Chair Fraser notes the waiver piece of it - if they want to adjust it and they fall within a certain perimeter that doesn't fit our requirement, they still have the means to do that.

Commissioner Sawusch shared with the Commission the proposed COGCC rule making language (Series 600) that is currently undergoing comment.

Commissioner Ames noted that the COGCC is a state body and not a local body and the Town may have a different way of governing this.

There were some concerns/question as to why the resolution was being brought forth as one single resolution to the Commission when it's being voted on in 2 separate ones with the Board of Trustees. Can the break Chapter 12 out of this resolution into a separate one?

Chair Zuniga would like to see a motion that looks into the diversity/density that was discussed this evening.

After some brief discussion, the first motion of the evening was made.

Commissioner Sawusch moved to approve Agenda Item 20-524/Resolution P20-19 with the condition that Chapter 12 be removed from the resolution, as well as adding terminology on density clarifications. The motion, seconded by Commissioner Hoback, carried with the following roll call vote:

Commissioner Hoback - yes
Commissioner Luthi- yes
Commissioner Ames - yes
Commissioner Sawusch - yes
Vice Chair Fraser - yes
Chair Zuniga - yes

Commissioner Luthi moved to create and approve Resolution P20-20 to include Chapter 12 only.

Commissioner Sawusch would like to add the condition of adding language in that is similar to the COGCC proposed Rule 604 which is the sitting rule regarding setback waivers. There was no second as questions then followed regarding clarification of the motions and approvals.

Commissioner Sawusch moved to approve Resolution P20-20 with the condition of adding language in similar to the COGCC proposed Rule 604 regarding setback waivers and sitting requirements. There was no second as questions regarding the proposed language to be added to the resolution were asked.

Barbara Green, Special Counsel, offered the background of the proposed language of the COGCC.

Commissioner Ames asked if the applicants would have to go through a waiver with the COGCC as well as what the Town is asking them to do.

Commissioner Sawusch shared the proposed language of the COGCC:

Rule 604 is noting setbacks and siting requirements.

Commissioner Sawusch is specifically looking at 604 (b) which states “No working Pad Surface will be located more than 500 feet and less than 2,000 feet from 1 or more Residential Building Units or High Occupancy Building Units unless one or more of the following conditions are satisfied:

- (1) The Residential Building Unit owners and tenants and High Occupancy Building Unit owners and tenants within 2,000 feet of the Working Pad Surface explicitly agree with informed consent to the proposed Oil and Gas Location;
 - (2) The location is within an approved Comprehensive Plan Area that included preliminary siting approval pursuant to Rule 314.b.(5) or an approved Comprehensive Development Plan;
 - (3) Any Wells, Tanks, separation equipment, or compressors proposed on the Oil and Gas Location will be located more than 2,000 feet from all Residential Building Units or High Occupancy Building Units; or
 - (4) The Commission finds, after hearing pursuant to Rule 510, that the proposed Oil and Gas Location and conditions of approval will provided substantially equivalent protections for public health, safety, welfare, the environment and wildlife resources, including Disproportionately Impacted Communities.
- This is what Commissioner Sawusch is talking about when he’s mentioning waivers. It’s consent, legal consent and agreement that they can within 500 to 2,000 feet if there is an actual legal agreement with the operator and the occupants as well as the owners. There can be language were its “all tenants” and “all owners” have to agree to it.

Commissioner Hoback still believes that we’re assigning waivers and rule making to specific property owners that should remain within the body that has been elected to oversee town interests. There is already a process to address waivers that come before the Board.

Commissioner Sawusch asked if we can potentially have approval of these waivers that relies on the consent of the Board of Trustees as it provides language so that they can within this? It’s not saying that they’re going to go within 500 feet vs. the arbitrary language which says now, if deemed within the purview of the Board to allow for a reduction. It allows for another form and way for the situations which could potentially rise to have this available to them.

Vice Chair Fraser: notes: It seems cumbersome – what if there’s a condo unit; or townhomes; or if 19 of the 20 homeowners that are adjacent to it agree and 1 doesn’t. Does that mean they use force majeure and get the setback waiver anyway? The intent of what the Commission is trying to do should be different and separate from what the COGCC is trying to do. The initial requirements in a lot of these documents was for rural development. If we’re going to allow local municipalities to do that, you follow the process and procedures within the municipality. If we’re going to make a Chapter 12 that is going to outline all of these things, then we should have them follow those outlines and not cross or co-mingle language between the 2 documents.

Commissioner Sawusch noted as special counsel has advised, if we (Town) don’t have anything in there and we say there’s no leniency, there is no way to do so, then there are no waivers.

Vice Chair Fraser noted they can come before the Board. They can request a variance for it and it will come before the Commission and the Board. It’s no

different than a side setback distance, a rear, a front – all of these things are up for review. We set the limit and if the limit is more stringent than what the COGCC has, they have to follow our limit. Even if the language is put in there, you risk conflating the two because if we're gonna put a hard stop at a setback distance. Simplify it and have them follow the process and procedures we already have in place.

Commissioner Ames noted a precondition to any board consideration of coming within setbacks, that they receive the COGCC waiver. Do you obtain a COGCC waiver to even be considered by the Board?

Commissioner Luthi noted that Erie does have the final say. The COGCC is putting forward – giving rights to the town, to the local municipalities, that was the intent. The COGCC is still coming up rules and is taking the time to do so. Commissioner Luthi agrees that it's good that Erie has the final say but doesn't agree with how Chapter 12 is written.

After Commission discussion, the final motion of the evening was made.

Commissioner Luthi moved to create and approve Resolution P20-20 to include Chapter 12 Oil & Gas Regulations to the Unified Development Code. The motion, seconded by Vice Chair Fraser, failed 3 to 3 with the following roll call vote:

Commissioner Hoback - yes
Commissioner Luthi- no
Commissioner Ames - yes
Commissioner Sawusch - no
Vice Chair Fraser - yes
Chair Zuniga - no

The Commission made mention that they felt that Chapter 12 wasn't ready and that's reflected in their vote. They believe it's more than the issue that was raised by Commissioner Sawusch. Is this something that they should revisit or leave as is? Some Commissioners voted on principal and some on specifics. In general, the Commission believes they did their job this evening.

VII. STAFF REPORTS

Deborah Bachelder, Planning Manager/Deputy Director of Planning & Development noted that she is going through emails and will be pulling together information regarding the steering committee with Commission and Trustee members and a meeting date.

VIII. COMMISSIONER REPORTS AND DISCUSSION ITEMS

Commissioner Sawusch noted that there are utility bill grants available for those who have received hardships caused by the COVID 19 public health crisis. The Town is offering \$100 grants to those financially impacted due to the crisis to have it applied to their utility bill. More information is available on the Town website.

IX. ADJOURNMENT

Chair Zuniga adjourned the October 21, 2020 Planning Commission Meeting at 7:54pm.