

ROUTT COUNTY PLANNING COMMISSION

FINAL MINUTES

MARCH 4, 2021

The regular meeting of the Routt County Planning Commission was called to order at 6:00 p.m. with the following members present: Chairman Steve Warnke and Commissioners, Billy Mitzelfeld, Greg Jaeger, Andrew Benjamin, Roberta Marshall, Linda Miller, Peter Flint and Bill Norris. Troy Brookshire was absent. Planning Director Kristy Winser and staff planner Chris Brookshire also attended. Sarah Katherman prepared the minutes.

PUBLIC COMMENT

There was no public comment.

MINUTES - February 4, 2021

Commissioner Kelly moved to approve the minutes of the February 4, 2021 Routt County Planning Commission meeting, as written. Commissioner Benjamin seconded the motion. **The motion carried 9 - 0.**

MINUTES - February 18, 2021

Commissioner Kelly moved to approve the minutes of the February 18, 2021 Routt County Planning Commission meeting, as written. Commissioner seconded Benjamin the motion. **The motion carried 9 - 0.**

ACTIVITY: PL-19-129

PETITIONER: Ephphatha, LLC

Well name: Dry Creek 31-1A pilot hole

PETITION: Special Use Permit for Oil and Gas Exploration and Production

**LOCATION: Approximately 4 miles SW of Hayden, on the east side of CR 59 ;
located in the Johnson Ranch Subdivision**

Commissioner Kelly recused himself from hearing this petition. He said that he is an adjacent property owner and the president of the subdivision's water company.

Mr. Cory Sullins, manager of Ephphatha, LLC, reviewed the history of the well that had originally been drilled in 1991. He stated the first well to be drilled, Dry Creek 31-1 was issued a Special Use Permit (SUP) by Routt County. That well produced too much water and was abandoned. The Colorado Oil and Gas Conservation Commission (COGCC) then issued a permit for a second well 50 ft. away. The operator at the time did not apply for an SUP for this well (Dry Creek 31-1A Pilot Hole). The ownership of the well changed several times. Mr. Sullins stated this well was in production on and off between 1991 and 2005, but is currently shut-in due to the lack of an SUP. He said that the current owners had

put a great deal of effort into getting this well ready to go back into production, including conducting three mechanical integrity tests and multiple water tests of the two water wells in the vicinity. Mr. Sullins said that the well meets all COGCC requirements and is current in the COGCC records. He said that the well is completely drilled; there will be no additional drilling activities. He said that Ephphatha has owned the well since 2003. He reviewed the ownership group.

Ms. Brookshire stated that although the original well, Dry Creek 31-1, had been issued permits by the COGCC and by Routt County, Dry Creek 31-1A pilot hole, which is 50 ft. away from the original well, had been issued a COGCC permit, but not an SUP from the County. She said that the current operator is different from the party that drilled the well. She said that because no SUP was applied for or issued for this well, the current application should be considered as an application for a new well. Ms. Brookshire stated that when the permit application was submitted in 2019 it was under the old COGCC regulations. Very recently the COGCC has adopted a new mission statement and new regulations intended to implement that mission.

Ms. Brookshire presented a series of slides demonstrating how an oil well is drilled and constructed. She described the layers of casings on the Dry Creek 31-1A well. She stated that all downhole operations are regulated by the state. She presented a diagram of horizontal drilling and indicated the area within the target formation where hydraulic fracturing (fracking) occurs. Ms. Brookshire stated that the subject well is 10,000 ft. deep. She described how fracking operations are done, noting that the water usage and the chemicals used in the process are very controversial. The COGCC maintains a list of chemicals that cannot be used in fracking in Colorado. Ms. Brookshire said that she was uncertain if this well had been fracked.

Ms. Brookshire noted the 12-page letter from Matt Sura that had been received after the staff report had been distributed. This letter was provided to Planning Commission a few days prior to the meeting. She said that she had consulted the County Attorney who had confirmed that the current application should be considered a new application. The well is not non-conforming because it was never permitted. Ms. Brookshire stated that the well pre-dates the residential development and other improvements in the area. She said that the well does have a COGCC permit and is inspected regularly.

Ms. Brookshire stated the Routt County regulates some things that are not regulated by the state, including the access roads to the site, surface development, other off-site impacts and bonding. She said that the state regulates water testing and all downhole drilling and operations. She stated that the County regulations have been updated in response to the changes to the COGCC regulations.

Ms. Winser stated that the 72 suggested conditions of approval (COAs) included the staff report are typical for oil and gas SUPs. She said that the COAs primarily

involve mitigations and protections for typical concerns and potential on-site and off-site impacts, as well as bonding. She offered that the COAs that refer back to the COGCC regulations provide a “belt and suspenders” approach. Ms. Brookshire added that such COAs serve to remind the operator of the requirements. She stated that the County and state regulations are closely intertwined.

Chairman Warnke offered that this application is unusual because the well is already there, and yet it should be evaluated as an application for a new well. He said that it is difficult to figure out how the new COGCC regulations apply to an existing well. He noted, for instance, that the existing well would not meet the new required setbacks. Ms. Brookshire confirmed that the well did meet the setbacks that were in place when the well was drilled.

In response to a question from Commissioner Jaeger, Ms. Brookshire reviewed that the County uses the state regulations for noise. She said that in the event of a complaint, the Department of Environmental Health would monitor the site. The state would also be contacted if there were questions about compliance. Ms. Winser cited suggested COA #60.

Chairman Warnke asked about the Colorado Parks and Wildlife (CPW) and Road & Bridge referrals. Ms. Brookshire stated that no comments from the CPW had been received, but that the standard conditions regarding wildlife for oil and gas operations have been included in the suggested COAs. She added that the COGCC now also has regulations regarding wildlife impacts, and these new regulations are cited in the suggested COAs. Ms. Brookshire stated that the letter from the Road & Bridge Department was included in the meeting materials and that the recommended COAs had been included. She said that all required road improvements would have to be completed prior to the well going into production. She added that ongoing mitigations for issues like dust control are included in the COAs. The operator would also be responsible for the cost of repairing any damage to the roads that may result from the operation. In response to a question from Commissioner Marshall, Ms. Brookshire stated that even though the well is in existence and no new drilling would occur, the well may need to be re-worked or fracked, which would involve extensive equipment and traffic. She emphasized the importance of protecting the County’s roads from the impacts associated with oil and gas drilling and production.

In response to a comment from Commissioner Mitzelfeld, Ms. Winser stated that the owner has the right to make an application and that the suggested COAs are based on a template that is designed to address potential impacts. It is up to Planning Commission and the Board of County Commissioners to determine if the potential impacts can be adequately mitigated.

Commissioner Miller asked about flaring. Ms. Brookshire stated that gas flaring is prohibited unless granted a specific exception. The new flaring regulations apply

to all wells even if flaring was allowed when the well was originally permitted. She noted that the CDPHE as well as the COGCC are involved.

Public Comment

Mr. Matt Sura, an attorney representing the Johnson Ranch Water Company, stated that he is recommending denial of the permit. He reviewed many of the issues discussed in the letter he submitted and cited Routt County Zoning Regulations 5.1.2 and 9.2.K specifically. He also noted that under the new COGCC regulations the County is allowed to go above and beyond the standards required by the state. He reviewed the new mission of the COGCC, which puts health, safety, welfare, wildlife and the environment before the interests of oil and gas production. Mr. Sura stated that the application being reviewed does not refer to the most recent regulations, particularly those related to flaring, setbacks and water quality. He noted that if the water supply for the residences in vicinity of this well is contaminated, there is no alternative source of water.

Mr. Sura presented a map indicating the location of the existing houses that are within the current COGCC setbacks. He also presented a map indicating critical wildlife habitat. He stated that under the new regulations no new oil and gas wells, roads or pads would be allowed in this area. He said that the operation needs to have a complete CPW wildlife mitigation plan, which the current application does not include. In addition, Mr. Sura cited the absence of an adequate Emergency Response Plan. He stated that the proposed operation does not protect the health, safety and welfare of the residents and does not meet the minimum standards now required by the COGCC.

Mr. James Parscal, a resident of Johnson Ranch for about 5 years, stated that the water well that serves the community had not been properly permitted when it was created and the residents using the water system did not originally have legal rights to it. He said that the community worked very hard to secure the water rights on the water well that is very close to the proposed oil and gas well, and to address the various issues that had made Johnson Ranch a not very desirable subdivision. He said that the area is now a very nice place to live, and is affordable. He said that several properties had been under contract, but that the prospective buyers had walked away when the oil well was proposed. Mr. Parscal stated that he is concerned about the impact of the proposed operation on the subdivision which worked so hard to come into compliance with the County's regulations. He added that he is concerned with the inexperience of the operator. He asked Planning Commission to stand with the community and deny the petition.

Ms. Carmen Ashbaugh, the owner of the closest house to the proposed well, stated that the oil and gas operation would be very disruptive. She expressed concern that the well would be very close to two water wells that supply 15 residences. She said that the water wells are fragile and could not stand the pressure of disturbance nearby. She asked Planning Commission to recommend denial.

Mr. Patrick Childers stated that he has lived in the area for about 4 years and was planning to move and sell his home. He said that it is a great place to live, with great views, a great community, wildlife, etc., but that the sale of his home had fallen through as a result of the proposed oil and gas well. He said that the area provides a high quality of life at an affordable price, and is an inappropriate location for an oil well operation.

Mr. Robert Downs stated that the proposed well would have a major negative impact on the Johnson Ranch and Hidden Springs Subdivisions. He said that his house had been under contract but that the contract had been cancelled when news of the oil and gas well came out. He stated that the residential property taxes would far exceed any taxes from the oil and gas operation. Mr. Downs said that he had had some bad experiences with the entity that owns the well. He said that they had not been forthright and had not followed through with promises made. Mr. Downs noted that there is a major elk migration that crosses the property, as well as an antelope calving area, critical sharp-tailed grouse habitat and a large flock of sand hill cranes. He said that all of this wildlife would be adversely affected by the oil and gas operation. He asked Planning Commission to recommend denial.

In response to a question from Chairman Warnke, Mr. Downs and Mr. Childers discussed why they had decided to leave the area.

There was a discussion of whether it would be appropriate for Mr. Kelly to comment. Ms. Winser stated that she had consulted with the County Attorney, who had said that because Mr. Kelly would be directly impacted by the proposal, and because the Zoom format would allow for him to speak without video, it would be acceptable for him to do so. Mr. Kelly said that in order to avoid any perception of impropriety or influence, he would not comment.

Mr. Dennis Paul stated that while he lives in Michigan, he has owned property in the vicinity of the proposed well since 2004/5. He said that he thought that he would be building there soon, since all the difficulties with the water, etc. had finally been resolved. He offered that it would be a shame to see all of the work that went into correcting these problems to be wasted. He urged Planning Commission to recommend denial.

Mr. Shawn Sills stated that he is the owner of the property on which the proposed well is located, as well the adjacent lot. He said that his family had been the original developers of the subdivision and had purchased the well, which was already in existence, when they purchased the property. He said that they had signed-off on the easements and had done everything the residents in the area had asked of them. He added that when he had discussed the water well with Mr. Kelly, Mr. Kelly had said that it would not be a problem that it was so close to the oil well. Mr. Sills stated that he did not think the well going into production would harm the property values, particularly given the significant improvements that

would be made to the roads. He asked Planning Commission to recommend approval of the SUP.

Mr. James Parscal described the problems with the water well, noting that the developer had left the situation in a state that had taken years to resolve. He noted that the plat for the area had not been recorded, that the water rights were not obtained for the well that serves the subdivision and that those who purchased the lots in the subdivision had been left with a mess.

Seeing no further comment, Chairman Warnke closed public comment.

Ms. Brookshire reviewed the suggested COAs, citing in particular COA # 7 regarding bonding and COA #8 regarding hazardous materials. She also noted that the amount of gravel needed to adequately improve the private access road had not been determined.

Ms. Winser stated that the COAs had been amended to correspond with and support the revised COGCC regulations. She also noted that COA #5 means that the operator would have to comply with the current COGCC regulations.

In response to questions from Commissioner Benjamin, Ms. Brookshire stated that Routt County had not received any complaints regarding safety at the site. She said that the mineral rights are owned by the state and that the well last produced in 2005. Mr. Benjamin stated that economic considerations cannot play a part in Planning Commission's decision.

Commissioner Flint asked how the current setbacks can be applied to an existing well, and asked if the well were "grandfathered in" under the old COGCC regulations. Ms. Brookshire confirmed that if the well did not exist, drilling at this site would probably not be allowed under the current COGCC regulations. Routt County does not have setback regulations regarding oil and gas wells.

Commissioner Benjamin stated that if the well were new, he would recommend denial, but because the well is pre-existing its status is unclear. Ms. Winser stated that the well does have current permit with the state, and that she is uncertain if it would be considered exempt from the newly revised regulations. Ms. Brookshire discussed the changes in the water testing regulations. She added that new monitoring wells could be required by the County, and that the County is now allowed to exceed the state's requirements.

Roundtable Discussion

Commissioner Benjamin stated that he is conflicted because of the difficulty of considering this as a new permit when the well already exists. He noted that the proposal, if considered as a new application, is in conflict with several sections of the Master Plan, citing 7.2.A. He asked whether the negative impacts of the proposal could be sufficiently mitigated. He added that he is uncertain that

vertical separation between oil and gas production and water wells is a reliable safeguard. He said that he was leaning toward denial.

Commissioner Mitzefeld stated that he is opposed to approval of the petition, but if it moves forward he would like to see the addition of COAs to address screening and paint color, parking, drainage, revegetation and an improved site plan. He offered that whether the well is existing or not doesn't matter if the County supports the new COGCC setback regulations. He cited the negative impacts on the quality of life of the neighbors, the economic impact, and the rural character of the area.

Commissioner Jaeger stated that he had not seen any comments from referral agencies recommending that the petition should be denied. He said that although the residents of the area have discussed concerns regarding wildlife, the CPW has not. He offered that a decision to deny should be based on the opinions of experts. He added that the well is permitted by the COGCC. He stated that he would support approval because no agency has raised any red flags about the proposal.

Commissioner Benjamin asked if Commissioner Jaeger felt that the proposed operation is compatible with the surrounding land uses (suggested finding of fact #3 for approval). Commissioner Jaeger stated that there are other oil and gas wells in the area, and noted that the well pre-dates the current residential development. He said that the nearby well was considered to be compatible with the area when it was permitted, even though the County permitting of the second well was botched. He said that it is impossible to consider this application as if the well did not exist.

Commissioner Benjamin agreed that mineral extraction of all types has always been a part of the western rural landscape.

Commissioner Marshall stated that the existence of the well is not relevant because it does not have a permit. She stated that the County Attorney has determined that the proposal should be considered a new application. She said that based on current COGCC regulations this well would not be allowed. She added that the proximity to the water supply for a large number of homes is a huge concern. Commissioner Marshall stated that a contaminated water well cannot be mitigated. She also said that the proposal contains no best management practices (BMPs) to address air quality. She cited concerns regarding the health, safety and welfare of the neighbors, particularly with reference to air and water quality as reasons to deny the permit. Commissioner Marshall added that wildfire the lack of an adequate Emergency Response Plan is also a major concern. She stated that she would vote to deny the petition.

Commissioner Flint stated that the well should be considered as a new operation since it is not permitted and is not operational. He said that the proposed well cannot meet the current COGCC regulations regarding setbacks for a new

permit. He said that if the state confirmed that the well was grandfathered in under the old regulations it might change his mind, but that at this point he would vote no.

Commissioner Norris stated that he would also vote to deny. He said that the proposal poses too great an impact on the community, particularly with the possibility of contaminating the water. He said that since the County Attorney has said that the permit should be considered as a new application, and it cannot comply with the current regulations, it should be denied.

Commissioner Miller stated that she would also support denial. She stated her agreement with the previous comments regarding the threat to the health, safety and welfare, and the impact on the immediately adjacent community. She agreed that the application must be considered as if it were a new well.

Chairman Warnke said that he was somewhat conflicted. He stated that although he usually supports the concept that new development must accept the conditions that were in existence when the development occurred, the circumstances in this case are unique because the well was not permitted. He stated that if it is to be considered as a new application it should not be approved because it cannot meet the current rules and requirements. He stated that he could not support the proposal.

MOTION

Commissioner Benjamin moved to recommend denial of the petition for oil and gas exploration and production based on the finding of fact that the proposal is not compatible with the immediately adjacent and neighborhood properties (Master Plan Section 7.2.A) and because the proposal cannot meet the current COGCC required setbacks. He added that the proposal lacks community support.

Commissioner Flint seconded the motion.

On a roll-call vote, the motion to deny carried 7 - 1, with the Chair voting yes.

Commissioner Jaeger voted in dissent.

ADMINISTRATOR'S REPORT

Ms. Winser stated that a joint meeting with the Board of County Commissioners regarding the Master Plan update would be scheduled for April 1, 2021. She said that the scope of services for the RFP for the consultant would be discussed.

Ms. Winser stated that the new process and fee schedule would go into effect on April 1st. She reviewed the Safe Build contract, and the search for a Planner Technician and a replacement for Ronee. She also noted that the open positions on Planning Commission and the Board of Adjustment are being advertised. Ms. Winser added that the new software would go live on June 1st.

The meeting was adjourned at 9:00 p.m.