

Staff Report

To: Planning and Zoning Commission

From: Michael Springfield, Director, Planning and Zoning Division

Date: July 21, 2017

Re: Planning Division Recommendations for Zoning for Oil and Gas Development

On May 12, 2017, the Board of County Commissioner's held a work session to discuss oil and gas development in Sandoval County. At their Strategic Planning work session of May 26, 2017, the County Commission directed staff to present draft language to the Planning and Zoning Commission to amend the Comprehensive Zoning Ordinance (CZO) for more specific regulations for oil and gas development within the County's jurisdiction.

On June 29, 2017 and July 11, 2017 the Planning and Zoning Commission held public discussions on the issue of zoning and regulations for oil and gas development and review of draft new regulations and review procedures for oil and gas. During these meetings, it became clear that the draft regulations and review procedures for oil and gas development prepared by Planning and Zoning Division staff were not supported by concerned citizens or by oil and gas industry representatives. During these public meetings, staff reported that the County had three options available if the draft language was rejected. One option was to develop restrictive regulations which would conflict with State mandate preemptions regarding oil and gas development. The second option was to develop less restrictive regulations than those currently outlined in the CZO. The third option was to not amend the Zoning Ordinance at all. At the July 11 2017 meeting, Planning and Zoning Commission Chair John Arango spoke to the issue of leaving the Zoning Ordinance as is, and explained the advantages of taking such an action.

After reviewing all options available to the County regarding this issue, it is staff's recommendation that the County proceed with utilizing the existing Special Use

(SU) zone district for review and consideration of oil and gas development proposals.

The County's SU zone district is designed for land uses "...that require special considerations because of their magnitude, unusual nature, infrequent operations, questionable impact on surrounding property, or other similar reason..." (Comprehensive Zoning Ordinance, Section 10, SU – Special Use District, p. 32). The SU zone district addresses oil and gas development as "Oil and gas exploration and production, and the structures and facilities associated with that use". Oil and gas land use has been listed with the SU zone district since 1990.

The County's Comprehensive Zoning Ordinance (CZO) establishes a procedure for review of a proposed change of zoning which includes criteria from the specific zone district which is under consideration, as well as general criteria for all requests for a change of zoning. The specific criteria for review of a change of zoning to the SU zone district are the following:

1. To assure that compatibility of property uses shall be maintained in the general area;
2. To preserve the integrity and character of the area in which the Special Use District will be located, and the utility of property in the Special Use District and in adjacent zone districts; and
3. To assure that the Special Use District will not become detrimental to the public health, safety, or general welfare of the County.
4. To assure that the Special Use District will not conflict with the Sandoval County Comprehensive Plan or any other applicable land use plans adopted by the County.

This review approach, as applied to an application for oil and gas development, provides the County's Planning and Zoning Commission and Board of County Commissioners with a series of questions an applicant is required to answer before the application may be considered for approval. These questions may be crafted to adhere closely to the elements of individual applications, giving the County flexibility in establishing the information required for an application to be reviewed. In the case of the SandRidge oil and gas development application for SU zoning, submitted in November 2015 and continued through January 2016, the applicant was not prepared to provide answers to all the related questions for this request. The Planning and Zoning Commission voted unanimously to send the

Board of County Commissioners a recommendation of denial of the SandRidge request. SandRidge later withdrew their application from further consideration.

Staff is recommending that in addition to leaving the current regulations in place, that staff also develop a set of Standard Operating Procedures (SOP) that clearly define the type of questions asked of an applicant regarding their proposed operations. The current oil and gas regulations drafted by staff would be the template for the SOP's. Included with the draft regulations are a list of criteria that are more specific to oil and gas development, and are the following:

- Facility/Site Plan.
- Road/Traffic Plan.
- Emergency Response Plan.
- Waste Management Plan (land use only regarding surface pits).
- Terrain Management Plan.
- Lighting
- Noise
- Setbacks
- General/Environmental Liability Insurance.
- Financial assurance for roads, where needed.
- Financial assurance for emergency response support, where needed.

In addition to the establishment of SOP's, the Planning and Zoning staff will begin developing other process improvements including:

- Working with the Sandoval Public Works Department to develop road bonding criteria.
- Further refining definitions and explanations of Federal and State preemptions.
- Developing a notification process for Tribal and Municipal interests.
- Development of an administrative process for the coordination of permit application and processing between Sandoval County and the NM Oil Conservation Division.

It is staff's view that review of an application for SU zoning for oil and gas development benefits from the series of questions that stem from the SU and change of zoning criteria, and would also benefit from provision of criteria specific to oil and gas development as listed above. The specific criteria listed above do not currently exist within the County's zoning regulations, nor does any form of a

time frame for application review. Currently the minimum time frame involved in the process of review of an application for SU zoning by the Planning and Zoning Commission and the Board of County Commissioners is approximately 90 days. The Bureau of Land Management (BLM), in contrast, takes anywhere from 120-240 days to process an application for drilling (up to 500 days according to NMOGA).

Staff recommends addressing the oil and gas specific review criteria and review time frame through an administrative Standard Operating Procedure (SOP) for oil and gas applications. The burden of adequate information for timely review and consideration of an application will be on the applicant, as was the case with SandRidge.

This procedure will provide the basis for a thorough and detailed review of an application for SU zoning for oil and gas development that provides for securing the health, safety, and general welfare of the citizens of the County, while also providing a reasonable time frame for review in consideration of the applicant.

Staff Recommendation:

That the Planning and Zoning Commission recommend to the Board of County Commissioners that the County leave the current Zoning Ordinance language in place as is and direct the Planning and Zoning Division staff to develop a set of Standard Operating Procedures that define the application process for oil and gas development within Sandoval County.