Mitigating Oil and Gas Impacts on Urban and Rural Landscapes

Local Government Regulation and Private Surface Use Agreements

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Presentation Objective

• Explain authority for local government regulations and its limits
• Outline common types of local government regulations
• Explain the purpose and typical scope of private surface use agreements
What motivates local governments to regulate oil and gas operations?

- Social and economic concerns
- Environmental and health concerns
- Infrastructure concerns
Local Government Authority

- Common law police powers
- State enabling statutes
  - Land use and building code enabling statutes
  - Environmental and natural resource enabling statutes
  - Other
What limits exist on this authority?

- Constitutional limits generally
- Preemption by federal or state statute
- Manner of preemption:
  - Expressly
  - Impliedly
  - Operationally
- What about a ban?
Colorado Preemption Law

• Oil and Gas Conservation Act and the COGCC Regulations do not entirely preempt local regulation of oil and gas

• Do local laws “materially impede[] or destroy[]” the interest of the state legislature?

• Local governments cannot:
  – Totally ban oil and gas drilling
  – Impose technical or financial requirements that “go beyond” state requirements
How do disputes over local government regulations play out procedurally?
Regulatory Tools of Local Governments

- Master plans
- Zoning and special or conditional use permits
- Subdivision regulations
- Impact fees
- Surface use agreements
- Temporary moratoria
- 1041 powers
- Watershed protection and floodplain regulations
Master Plans

Legend
- Green: Existing Industrial Areas
- Yellow: Potential Industrial Areas
- Blue: Buffalo City Boundary

Roads
- Red: Interstate
- Black: State Highway
- Purple: County

Johnson County
Land Use Plan

Existing and Potential Industrial Areas
City of Buffalo and Vicinity

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Figure 8-1
Zoning and Special or Conditional Use

ARTICLE X
CONDITIONAL USE PERMITS

10-1 GENERAL PROVISIONS

10-1-1 Building Permits Distinguished
Building permits and occupancy permits are not conditional use permits and cannot be issued by the County-wide Planning Commission, the Board of Adjustment or the County Commissioners. If the offices of Zoning Administrator and Building Inspector are occupied by separate individuals, building permits cannot be issued by the Zoning Administrator.

10-1-2 Variances Distinguished
Variances may be granted only by the Board of Adjustment and are not conditional use permits. The Board of Adjustment is not authorized to issue conditional use permits.

10-1-3 Purposes

10-1-3-1 Conditional use permits are provided herein as a means for allowing uses which would otherwise be prohibited by this Ordinance, by imposing limits upon their establishment and operations so as to mitigate or eliminate undesirable impacts.

10-1-3-2 The purpose of this Article is to establish standards, rules and procedures for granting or denying conditional use permits and for identifying and addressing issues which may arise in the permitting process.

10-2 PERMIT TYPES

10-2-1 Level 1 Permits

10-2-1-1 Level 1 conditional use permits may be granted by the Zoning Administrator upon findings that are required herein.

10-2-1-2 Level 1 Permits are intended for uses having limited impact on surrounding land uses, where all issues are resolved by the required conditions set forth herein for such use.

10-2-1-3 If the Zoning Administrator determines that an application for a Level 1 conditional use permit presents novel or unusual land use planning issues or involves concerns which fall within Subsections 10-2-1-2 or 10-2-3-2, he/she may refer such application to the Countywide Planning Commission for review as a Level 2 permit or Level 3 permit as the case may be.

10-2-1-4 Appeals may be made to the Planning Commission of any decision made by the Zoning Administrator by any aggrieved person or by an
Impact Fees
Temporary Moratoria

COMMERCE CITY — The City Council is set to consider a six-month ban on hydraulic fracturing for oil and gas development within the city limits at its meeting tonight.

If the council approves the moratorium, the city would join Colorado Springs and El Paso County in moving to temporarily limit the use of the controversial oil-field technique.

The hiatus would allow the city to review its land-use standards and policies as they relate to oil and gas exploration, city spokeswoman Michelle Halstead said.

“This is for our education,” Halstead said. "We just want to see where we are in this process."

The move was prompted, in part, by a proposed fracking operation at Settler’s Crossing, on the east side of Tower Road just north of East 96th Avenue.

Hillcorp Energy Co. already has a producing well there but plans...
1041 Powers (CO Only)
Watershed Protection and Floodplains
Trends in Local Government Regulation

• Expanding and revamping local regulations
• Model regulations authorized by state statute to avoid preemption concerns and cooperative agreements between localities and state regulatory authorities (CO)
• Shift to administrative process and away from full public hearing
• Increased collaboration with local stakeholders
• Requirements that oil and gas developers enter into surface use agreements before permit issuance
Surface Use Agreements

• What is a surface use agreement?
  Agreement between mineral interest owners and surface owners or developers regarding “reasonable use of the surface”

• Background law: “reasonable accommodation”

• Relative bargaining power of parties affects scope and terms
Why enter into a surface use agreement?

• Private benefits to both estates: defines “reasonable accommodation”
• Land use regulations trigger requirements
  – Direct requirements
  – HB1088 “Surface Development Notification Act”
• COGCC regulations
What matters does a surface use agreement typically address?

- Locations where oil and gas development may take place
- Access to sites, hours of operation, coordination of mineral and other surface development activity, noise, and aesthetics
- Release of claims, bonding, indemnities, and insurance
- Notice of operations and materials used
- Other site specific issues
Illustrations