Differentiating between Local Government Zoning Laws

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Presentation Objective

- Explain authority for local government regulations and its limits
- Explain the process by which local governments adopt and amend regulations
- Outline common types of local government regulations
- Identify trends in local government regulation of drilling activities
- Case Study: Commerce City, Colorado
What motivates local governments to regulate oil and gas operations?

- Social and economic concerns
- Environmental and health concerns
- Infrastructure concerns
Where do local governments derive their authority to regulate oil and gas drilling and production activities?

- 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?

- Constitutionality
- Preemption by federal or state statute
- Manner of preemption:
  - Expressly
  - Impliedly
  - Operationally
- What about a ban?
- What does this mean for regulated oil and gas operations?
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
Adoption and Amendment of Local Regulations

- Local procedures govern
- Notice and public hearing required
- Surface Development Notification Act available in Colorado (H.B. 1088)
Common 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
Zoning and Special or Conditional Use Permits

ARTICLE X
CONDITIONAL USE PERMITS

10-1 GENERAL PROVISIONS

10-1-1 Building Permits Distinctively

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 Commission. 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 Distinctively

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 uses 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 10-2-2-2 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
Subdivision Regulations
Impact Fees

Taken from Garfield County Energy Advisory Board
“Community Guide to Understanding Natural Gas Development”
Surface Use Agreements

Agreements between mineral interest owners and surface owners regarding “reasonable use of the surface”

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

Sometimes may be required by local regulation or as a permit condition
Temporary Moratoria
1041 Powers
Watershed Protection and Floodplains
Recommended Approaches

- Research the city and/or county in which you are planning to develop.
- Establish a relationship with the local government early on.
- Explore opportunities to conduct outreach with local residents to develop support for your project.
- Enter into a surface use agreement, even if it is not required by the local government.
- Track local regulatory developments.
Trends in Local Government Regulation

- Increasing and revamping local regulations
- Model regulations authorized by state statute to avoid preemption concerns (PA) and cooperative agreements between localities and state regulatory authorities (CO)
- Shift to administrative process and away from full public hearing
- Requirements to enter into surface use agreements before permit issuance
- Increased collaboration with local stakeholders
Weekend fracking by drillers has Commerce City and residents complaining

COMMERCE CITY – Frustrated residents and city officials complained Monday night that they were blindsided by a drilling operation that took place over the weekend.

They mostly blamed Adams County for not telling them that oil and gas companies would begin using a controversial exploration method known as hydraulic fracturing, or fracking, near their backyards in an unincorporated portion of the county.

"Adams County let us down," said Commerce City Councilwoman Jodie Carson. "It's almost like we were violated."

The well site is located near the intersection of Tower Road and East 104th Avenue near the Reunion subdivision in Commerce City.

It was originally permitted in 1979. The state owns the mineral rights to the well, while a private owner maintains the surface ownership.

Adams County is overseeing the project but did not notify Commerce City that the fracking would occur over the weekend, city officials said.

In fact, no one in the city knew about the drilling until City Councilman Steven Douglas drove by the site early one morning and saw equipment.

Reunion residents and city officials had an impromptu meeting with oil company officials Saturday night.
Lessons Learned

- Oil and Gas Developers
  - Regulatory voids can be as difficult to manage as regulatory hurdles
  - Public relations are critical in dense or developing areas
- Private Surface Owners and Developers
  - Consider extra-territorial notice provisions in surface use agreements
- Localities
  - Intergovernmental agreements could help with cross-jurisdictional impacts
  - Utilize all tools
- Other thoughts?
Questions?

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Good One-stop Resource Reference:
http://www.oilandgasbmmps.org/laws/index.php