

Minutes of the Oil and Gas Advisory Committee  
City of Aurora, Colorado  
November 18, 2020

**Virtual Meeting**

Meeting was called to order at 4:04 p.m. by Chairman Pierce.

**The following were present:**

Brad Pierce, Committee Member, Chair, Citizen  
James Spehalski, Committee Member, Surface Owner  
Jim Rogers, Committee Member, Industry  
Marc Cooper, Committee Member, Surface Owner  
Philip Holmes, Committee Member, Industry  
Polly Page, Committee Member, Citizen  
Tom Tobiassen, Committee Member, Citizen  
William Gollhofer, Committee Member, Citizen

Jeffrey S. Moore, City of Aurora Oil & Gas Division Manager  
Colin Brown, City of Aurora Senior Planner  
Forrest Thorniley, City of Aurora Senior Inspector  
Ian Best, City of Aurora, Assistant City Attorney

Ron Pritchett, retired geologist, citizen  
Neil Ray, President of Colorado Alliance of Mineral Royalty Owners  
Logan Macmillan, retired petroleum geologist, citizen  
Bob Barrows, retired executive from Wagner Equipment, citizen  
Tom Harp, AIPG, Remediation Risk Reduction LLC

**The following were absent:**

Josh Reddell, Committee Member, Vice-Chairman, Citizen  
Max Blair, Committee Member, Industry

1. Brad Pierce, Chairman, called the meeting to order at 4:04 p.m. There was a quorum of 7. William Gollhofer also joined the meeting late.
2. Chairman Pierce introduced himself and asked those present to introduce themselves. Jeffrey Moore introduced City staff. Chairman Pierce asked members of the public to introduce themselves.
3. Approval of May 20, 2020 & July 15, 2020 Minutes. Polly Page moved for both minutes to be approved. Tom Tobiassen seconded. The motion passed.
4. Colin Brown provided the following update of oil and gas applications since the August 19, 2020 Meeting: Crestone Midstream has submitted applications for two additional laterals sections connecting new wells. GMT Exploration is in discussions with The Aurora Highlands about the location of their proposed pad. They requested continuation of their Council callup item to December 21, 2020. Crestone is submitting an update to its field-wide plans to City Council. Crestone and ARB pipeline applications are close to being finished. Chair Pierce asked for more information about the GMT Exploration pad.

Minutes of the Oil and Gas Advisory Committee  
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Jeffrey Moore provided additional insight that GMT's location application was approved on July 8, 2020 by the Planning and Zoning Commission and was subsequently called up by City Council.

5. Public Comment Period. Chairman Pierce asked for any comments. There were no comments from members of the public.

6. Briefing on COGCC Rulemaking – Jeffrey Moore providing an update on rulemaking at the Colorado Oil & Gas Conservation Commission (COGCC), including the general timing of their rulemaking process, and opportunities that Aurora has had to participate. Mr. Moore indicated that the final approval of the last series should occur on November 20, 2020, and that new rules will go into effect on January 15, 2021. Polly Page asked for clarification on one of Mr. Moore's comments about conflicts between different rule series.

Chairman Pierce asked about the next steps with Aurora's rules once COGCC rules are final. Mr. Moore described how any updates in COGCC rules will be incorporated into the draft Oil & Gas Manual (OGM) and then the OGM will be presented to the Planning and Economic Development Committee. Mr. Moore described how future updates to the OGM will be reviewed by the Oil & Gas Advisory Committee and then must go to City Council for approval as an ordinance.

Jim Rogers asked if the delay in rulemaking is causing any delay to operators. Jeffrey Moore indicated that the main operators currently in Aurora (Crestone Peak Resources and Extraction Oil & Gas) are working under the rules of their respective Operator Agreements and are not affected by the Aurora rulemaking process. As such, they are not delayed in their operations. Mr. Moore indicated that the Planning staff are not delaying any application reviews based on rulemaking.

Chairman Pierce asked about the status of the COGCC-proposed setback of 2000 feet from residences. Jeffrey Moore indicated that the setback had been approved. Mr. Moore also indicated there were multiple opportunities for operators to request variances from the rules.

7. Presentation by Colorado Alliance of Mineral and Royalty Owners (CAMRO) – Neil Ray, President  
Chairman Pierce asked Jim Rogers to introduce the speaker. Mr. Rogers introduced Neil Ray and provided information on Mr. Ray's extensive background and experience in minerals.

Mr. Ray described his presentation as "How are oil and gas minerals valued as a property right?" He is not an attorney but is experienced in how oil and gas is a property right. Mr. Ray described how case law in Colorado has established minerals as a property right.

The following are general notes from Mr. Ray's excellent presentation.

Why value the mineral estate? Because you want to have it developed or you want to enter into a lease agreement. There are IRS considerations as well. A Petroleum Engineer can assist with the evaluation. A third reason is because of just compensation ideas in the 5<sup>th</sup> amendment of the US Constitution: to evaluate the ultimate compensation.

After you decide to determine a value of the mineral property right, what happens if property is condemned under eminent domain? Under concepts of just compensation, the property is awarded in a court at the time that it is condemned or taken, or a court approves compensation. Over a 100 years ago,

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Justice Oliver Wendell Holmes in the case of *Coal vs Pennsylvania* wrote, “I don’t know how government could proceed if it had to pay for everything that it takes.” After that, governments began to minimize payments for minerals.

There haven’t been any regulatory “takings” cases in Colorado. There was a case in La Plata County of a rancher growing wheat and corn, and also operating a gravel pit. He wanted to expand the gravel pit, but the local commission would not give him permission to expand pit. He sued in Colorado court and won. However, the Court applied the “parcel as a whole” concept. So, they took the value of his whole property and operations, and paid compensation only on the percent increase for the lost expansion of the gravel pit as a percent of the whole, which was much less than the value of the gravel pit expansion.

Judges are now using the “rational basis” standard. It is the lowest level available to decide. “Parcel as a whole” does not work when 100% of a property is taken. The highest standard of judicial review is “fundamental right.”

Where are we now with regulatory takings? A few years ago in the US Supreme Court, there was a case of *Rosemary Nick vs Scott Township of Pennsylvania*. Pennsylvania decided all cemeteries should be open to public including private cemeteries. Rosemary’s family owned a family cemetery for 150 years. Ms. Nick sued and won. Justice Roberts wrote, “you no longer had to exhaust all actions in state courts first, you could come directly to federal court with takings cases.” That overturned 100 years of state law and changed the “just compensation” concept. The result was that local authorities can pass any law they want, if they can afford it.

Personally, Mr. Ray wants laws that protect his property but also that compensate him if takings occur. Senate Bill 19-181 was contrived before the Nick decision. It was envisioned that it could be applied and not cost much. However, he is now aware of many attorneys waiting for final COGCC rules to be put in place, and other locals as well, to bring lawsuits for those that go too far, perhaps in Boulder County and Broomfield.

He and wife Susan has endowed a professorship at Denver University and a \$2 million center to educate people in the nation on property rights. Jan Laitos will be professor. It is the only endowed center of its kind at all 300 law schools in the United States.

Chairman Pierce asked if there were any questions for Mr. Ray.

Forrest Thorniley asked how to determine fair market value since commodities fluctuate. Mr. Ray says it is at the time of taking with some estimate of future value. A judge would determine if the value was computed correctly. The IRS will accept valuation based on price of oil at the time plus a five-year projection. Appraisers are available to help determine value.

Philip Holmes asked, “Do you have any planned test cases to take to court?” Mr. Ray says no, they are waiting for rules to be codified. They are looking at the rules implementation rather than Senate Bill 19-181. There is no provision for class action lawsuits on these types of decisions.

Minutes of the Oil and Gas Advisory Committee  
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November 18, 2020

Ms. Page thanked Mr. Ray for his contribution to Denver University. Mr. Ray says that when the announcement went out, Professor Laitos put together a short course on property rights for this term. It was limited to 10 students and he had 400 applications.

Chairman Pierce said lots of people are waiting until final rules are set.

Mr. Ray says now that there are 6 US Supreme Court Justices who believe in the fundamental right concept of judicial review, these ideas can now be considered under the concept of originalism.

Chairman Pierce thanked Mr. Ray for his presentation.

8. 2021 Calendar and Discussion Topic Ideas (3rd Wednesdays of January, March, May, July, September and November) - Chairman Pierce asked about the vacancy on the committee. He proposed getting a press release for the vacancy and deadline for application to consider at the next meeting. He asked Jeffrey Moore to describe the process. Mr. Moore described the Communications Department press release opportunity and supported the idea. He also mentioned he had recently spoken at the Civic Engagement Academy and he mentioned the opening in that venue. Chairman Pierce asked Mr. Moore to ask the Communications Department to create the press release and provided guidelines, including: make sure it for a surface owner, give specific criteria of the position, include the function of committee, and a deadline of December 31. Include a link to the application that has box to check if they are close to oil and gas.

Chairman Pierce mentioned dates for meetings for next year, and Jeffrey Moore shared the dates proposed. January 20, 2021, March 17, 2021, May 19, 2021, July 21, 2021, September 15, 2021, and November 17, 2021. All meetings at 4:00 PM and to be held virtually until further notice.

Chairman Pierce mentioned potential topics for 2021 meetings. In January, an interview for the open committee position and an update from Jeffrey Moore on rulemaking. Jim Rogers proposed an idea to invite a long-term geologist, Bob Raynolds who works at Denver Museum to discuss Denver area aquifers. He has done extensive work on shallow aquifers under Denver. Bob is a geologist and would be a good resource to discuss migration of fluids and how petroleum issues could affect. Proposed for the January or March meeting. Chairman Pierce suggested the January agenda might be full, so March might be better. Chairman Pierce asked Mr. Rogers to reach out to Bob Raynolds and ask about presenting at the March.

Polly Page stated that understanding the rule changes at COGCC is very important and understanding how those rules will affect Aurora is also important. Jeffrey Moore responded that various rules have changed and there may need to be some adjustments in local rules as a result. Local rules do not need to duplicate COGCC rules. Mr. Moore described some of the discussions during the rulemaking about how the State and local jurisdictions can partner together for success. Mr. Moore will provide a summary for the next meeting. Chairman Pierce concurred.

Chairman Pierce asked for further comments. Polly Page asked if we should get a council member to come in May to discuss how Council feels about the new rules from COGCC and OGM.

10. The general meeting was adjourned at 5:15 p.m.