

Government Affairs Update

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LOCAL

Larimer County

Oil and Gas Taskforce Submits Draft Rules: Larimer County's Oil and Gas Task Force has finished its draft rules. The rules would require operators to maintain a 1,000 foot setback from any residential lot, 2,000 feet from any hospital, school or other high occupancy buildings and at least 500 feet from a body of water.

Drillers would also have to file multiple reports on how it would minimize emissions, odors, noise and potential discharge into local sources of water before the County would issue a drilling permit. Larimer County is one of several Front Range counties proposing tighter restrictions than the State code in the wake of Senate Bill 181, a sweeping reform on the oil and gas industry that changed the mission of the Colorado Oil and Gas Conservation Commission (COGCC) to prioritize human and environmental health and allowed local governments to enact their own additional rules.

Adams County, Boulder County and the cities of Erie and Louisville put temporary moratoria on all new drilling activity in their jurisdictions. Weld County, by far the state's largest producer of oil and gas, has formed its own permitting department. There are 36 pending drilling applications in Larimer County, according to COGCC data. The County currently has 206 active oil and gas wells, which produced just over 1.34 million barrels of oil and 7.35 million metric feet of natural gas in 2019. (This is miniscule in comparison with Weld County's 10,000 active wells producing 13.7 million barrels of gas and oil and 76.8 million metric feet of natural gas according to the latest data. <http://www.drillingedge.com/colorado/weld-county>)

The County Planning Commission will hear in-person comments on the proposals February 19 and March 23 at the Larimer County Courthouse. Public comments can be submitted via email to Matt Lafferty at laffermn@larimer.org.

Land Use Code Update: Following the adoption of the updated Comprehensive Plan last year, the County is preparing to update its Land Use Code. The intention is to update the regulations for clarity and enforceability, tailor regulations to the County's three context areas (mountain and foothill, rural/agriculture, and urban) and implement the Comp Plan as well as other major plans. More information is available here: <https://www.larimer.org/planning/luc2020>

Berthoud

Trustees Approve Mountain Avenue Overlay District: Berthoud's Board of Trustees approved the Mountain Avenue Overlay District. The overlay district is important because it illustrates the Town's vision for itself going forward. Its purpose is to protect and enhance the existing historical districts and direct the general character of new development on Mountain Avenue (Highway 56).

The overlay district defines and emphasizes unique character districts along the corridor and sets specific guidelines as to architecture, site planning, parking, urban design and streetscapes. The underlying zoning remains, but specific design, architecture and setback requirements are governed by the overlay district.

It extends along HWY 56 and is applicable to all properties within 150' of the centerline of Hwy 56 from CR 19 to I-25. It is divided into six different character districts: Berthoud West – Highway 287 to 8th Street. This area is envisioned as a vibrant, walkable commercial district.

Residential Conversion – 8th Street to 5th Street. Characterized by charming older homes occupied by businesses and commercial uses.

Downtown Commercial – 5th Street to 1st Street. A concentration of character and personality that shapes much of the Town's identity.

Berthoud East – 1st Street to County Line Road 1 (but extends a half mile more to the east on the south side). A transition district from the rural agrarian areas to the downtown core. It's envisioned as a vibrant walkable residential district with a mixed-use area near County Line Road 1.

Agricultural – County Line Road 1 to one half-mile west of I-25. The goal of this district is to retain the rural and agrarian character and protect the views of the Rocky Mountains.

Town Board Approves Rec Center Financing: On January 28 the Berthoud Board of Trustees voted 5-2 to approve an ordinance that will allow the Town to proceed with a plan to issue Certificates of Participation (COP) to fund the Waggener Farm Park and Recreation Center. COPs are commonly used by governments to fund infrastructure. Investors purchase a share of the lease revenues of a program rather than the bond being secured by those revenues. COPs do not require a public vote, unlike bonding or sales tax measures.

A majority of the trustees were positive about the decision, saying the rec center will be a nice addition to the Town. Mayor Pro Tem, Jeff Hindman said studies show that towns get a good return on investments in parks and recreation. Even Mayor Will Karspeck, who voted against the ordinance, admitted the rec center will be a "huge transformational facility for our community." Town Manager Chris Kirk said staff is working with the Library District and it is possible a new library branch will also be added to the rec center site.

The Rec Center issue has been a thorny one for Berthoud. In 2018 town voters approved a measure to authorize a one percent sales tax to help fund the Rec Center but voted against a measure that would allow the Town to issue \$30 million in bonds. Then in 2019, a group led by the Mayor's father pushed a measure to limit the trustees' ability to take on debt. That ballot measure was aimed at preventing the trustees from using COPs to fund the Rec Center. The measure failed by two votes.

Trustee Resigns: Pete Tomassi, who joined the Berthoud Board of Trustees in 2018, resigned on January 29 in protest of the Board's vote to approve its agreement to issue COPs to fund a rec center. He looked uncomfortable during the Board's meeting on the 28th at which he joined Mayor Will Karspeck in voting against the ordinance. He told the Reporter-Herald, "As far as I'm concerned, using certificates of participation was in direct opposition to the voters in this situation."

In other election news, Trustee Brian Laak changed his decision and will not run for re-election. None of the seats in the April 7 election are challenged. Mayor Will Karspeck is running unopposed. With four candidates for four seats, incumbent Jeff Hindman and newcomers Mike Grace, May Soricelli and Lonnie Stevens will win seats on the Board of Trustees.

Loveland

Tentative Approval for Building Codes: The Loveland City Council passed a series of ordinances on first reading January 21 to adopt the 2018 building codes. Chief Building Official Samantha Everett listed the changes in the 2018 codes, most of which are inconsequential. Everett then brought up the issue of permit requirements for water heaters, furnaces and roofs, which became controversial several years ago.

Everett, who was hired last year, said her research showed that the City had never officially exempted the permit requirement for these items. She explained the Construction Advisory Board adamantly believes the permits are needed for resident safety. A homeowner can do the installation, but the permit still requires a City inspection, ensuring the work was done properly. Everett also noted the City routinely gets complaints from citizens about shoddy work but has little enforcement authority if the owner did not get a permit for the work in question.

The Council discussed the idea of charging a reduced permit fee for water heaters in particular, which are easier to install than furnaces, for example. Everett said the State recommends the permitting of water heaters because these appliances connect to potable water. City Manager Steve Adams said the staff will draft a resolution for the Council's consideration to charge a flat \$100 fee for water heater permits. (Currently the permit fee is based on a percentage of the cost of the heater plus staff time). The Council voted 7 to 1 to approve the ordinances, with Mayor Jacki Marsh opposed. Marsh did not explain the reason for her vote.

Planning Fees to Double: The City Council grudgingly approved an ordinance on first reading to double the fees charged by current planning for application reviews. The fees were recommended during the 2020 budget process but accidentally omitted. Current Planning Manager Bob Paulsen said the new fees will simply allow the City to recover the cost of staff time.

Councilman Dave Clark said, "I don't agree with 100 percent fee hikes." Councilman Rob Molloy suggested a sliding scale for small development applications since these projects shouldn't require the amount of time a larger application would require. Mayor Marsh liked this concept. The Council passed the ordinance 7-1 with Molloy opposed. It is unclear if 2nd reading on February 4th will include Molloy's sliding scale suggestion.

Council Approves Three Mile Plan: The City Council approved a resolution without comment to formally adopt a Three Mile Plan for 2020. The Three Mile Plan consists of the City's comprehensive plan, other adopted plans covering infrastructure, services and surrounding areas, and procedures and gives proper legal standing for the City of Loveland to annex.

The three-mile plan is a long-range planning opportunity for municipalities to consider where they want to annex, how they will provide service in the newly annexed areas, and how they will sustain adequate levels of service throughout the rest of the municipality. It ensures that the municipality will annex land only when it is consistent with pre-existing plans for the surrounding area.

State statute requires a three-mile plan to generally describe the proposed location, character and extent of future public utilities and infrastructure (e.g., streets, bridges, parks, playgrounds, aviation fields, waterways, open spaces and other public grounds) as well as proposed land uses for the area. The master or comprehensive plan takes into account all land that is functionally related to the growth of the municipality, not just land within three miles of the municipal boundary.

Adoption of the resolution ensured Loveland in good legal standing to grow and annex property. The failure to have a plan prior to the completion of an annexation could prevent the annexation from moving forward legally.

Colorado law limits those who have a right to challenge annexations to property owners within the annexed area, the county in which the land is located and neighboring municipalities within one mile. In areas with growth pressures, it is increasingly likely that these three groups will use the lack of a plan as grounds for invalidating the annexation.

REGION

NISP Secures Final State Approval: The Colorado Department of Public Health and Environment issued Colorado 401 Water Quality for Northern Integration Supply Project (NISP). Northern Water hopes to get approval from the U.S. Army Corps of Engineers by June. Northern Water will also require a 1041 permit from Larimer County. If the final permits are approved, construction could begin in 2023.

NISP would store 170,000 acre-feet of water at Glade Reservoir north of Fort Collins and 45,000 acre-feet at Galeton Reservoir northeast of Ault. The project would serve 15 towns and water districts, including Windsor, Erie, Evans, Lafayette, Severance and the Tri-Towns (Firestone, Frederick and Dacono). The project has been in the works since 2000. For more information, click here:
<https://www.northernwater.org/sf/nisp/project-info/project-overview>

COLORADO ASSOCIATION OF REALTORS®

LPC Takes Positions on Bills: CAR's Legislative Policy Committee (LPC) spent hours at its first meeting of the session taking positions on real estate-related bills. Here is a sample of the most interesting bills and CAR's positions:

SB-096 "Remote Notaries Protect Privacy" CAR Position - Support

SB-096 authorizes notaries public to perform a notarial act through use of audio-visual communication, commonly referred to as "remote notarization" and, most importantly, prohibits the use or sale of personal consumer information by a remote notary or the provider of a remote notarization system outside the notary transaction.

CAR supports uses of new technology such as remote notarization; however, data privacy concerns of consumers must be considered. This legislation would protect consumer data privacy in a meaningful way for consumers and it also aligns with NAR and REALTOR® ethics standards.

SB-109 "Short-term Rentals Property Tax" CAR Position - Oppose

SB-109 changes the definition of a residential improvement property tax classification from residential to commercial property when a building, or portion of a building, designed for use predominantly as a place of residency by a person, a family, or families, but that is leased or available to be leased for short-term stays during the property tax year. This would change the property taxes from 7.1% to 29% for those that rent out their property as an investment.

Classifying a short-term rental unit as a nonresidential property interferes with the private property right of a homeowner and excessive regulation could be considered a taking of property under the U.S. Constitution.

HB-1141 "Fees Charged to Tenants by Landlords" CAR Position - Oppose

The bill prohibits a residential property manager or landlord of a mobile home park from charging a tenant a late fee for late payment of rent unless the rent payment is late by at least 14 calendar days or charging a late fee in an amount that exceeds \$20 or 3 percent of the tenant's or home owner's monthly rent or 3 percent of the amount of the rent that has not been paid. Additionally, the proposed legislation would prevent the initiation of eviction procedures as a result of the tenant's failure to pay late fees. A landlord could not charge a late fee more than once per late rent violation or charge interest on the late fee imposed. Finally, any amount of the late fee would not be allowed to be taken from a rent payment but instead from a security deposit.

Many of Colorado's property owners enter the rental market as landlords because they are looking to downsize, are required to relocate due to occupational demands, such as military orders, as a source of income, or to provide retirement stability. Property owners do not have the opportunity to pay their mortgage late if a tenant is late paying their rent and do not have enough savings to cover their mortgage payments when rent is late or does not show up at all. This legislation does not balance the property owner and tenant obligations evenly, it adds litigation procedures and treble damages for not acting in good faith.

SB-138 “Consumer Protection Construction Defect Time Period” CAR Position: Oppose

This bill attempts to roll back some of the construction defects legislation supported by CAR three years ago by making it easier to file lawsuits against builders of condominiums and single-family homes. It would extend from six years to 10 years the time period for homeowners to file legal action based on purported construction defects. It also would require that a homeowner know that a problem was caused specifically by a construction defect before the two-year statute of limitations begins on that particular issue.

Meanwhile, the Home Ownership Alliance coalition (which includes CAR) issued a statement saying that the bill comes at exactly the wrong time, as local leaders are seeing a boost in condo development but continue to look for ways to spur even more of the lower-cost housing. (Denver Business Journal, Jan. 29)

HB-1155 “High Efficiency New Construction Residence” CAR Position: Oppose

CAR's Vice-president of Public Policy Liz Peetz told the LPC this particular bill is a high priority for the Democratic leadership in the House and the Senate. It would require home builders to offer an electric vehicle charging system, or a wiring upgrade to accommodate the future installation of a charging system in new single-family or owner-occupied condominium units. The LPC voted to oppose the bill because its requirements would add yet another cost to new residential construction.

SB-108 “Landlord Prohibitions Tenant Citizenship Status” CAR Position: Neutral

“The bill creates the “Immigrant Tenant Protection Act” (Act), which prohibits a landlord from demanding, requesting, or collecting information regarding or relating to the immigration or citizenship status of a tenant; disclosing or threatening to disclose information regarding or relating to the immigration or citizenship status of a tenant to any person, entity, or immigration or law enforcement agency...”

This bill was the subject of a long LPC discussion. LPC members said they had no desire to wade into an immigration controversy. They simply want to ensure landlords or property managers can do background or credit checks and there were concerns provisions in SB-108 could interfere with those tasks. CAR lobbyists are working with the bill’s sponsors to request revisions.

SB-133 “Business Fiscal Impact Statements” CAR Position: Support

Sponsored by Senator Rob Woodward (Larimer County), SB-133 would require the preparation of fiscal impact notes to assess the potential direct economic effects of a bill on Colorado businesses, including costs related to compliance, impacts on hiring or job losses, savings or cost reductions, and other fiscal impacts.

The LPC supports this bill because it would “provide policymakers with the financial analysis to better understand how legislation impacts Colorado businesses.”

STATE

What’s Next for Transportation Funding? Following the failure of multiple transportation measures to gain voter support, the question now is how can Colorado fund highways? CDOT has a \$9 billion list of needs and the legislature will need to decide if it is willing to allocate any general fund dollars to supplement the Colorado fuel tax, which is declining in value. The fuel tax has not been increased in our state for nearly 28 years.

The Fix North I-25 Alliance, advocates for a \$300 million general fund annual allocation. A fuel tax increase and an increase in the fees paid by electric vehicle owners might be the most equitable and simple solution to augmenting Colorado’s transportation budget, if legislators would support it.

In the meantime, a bill (HB-1151) was introduced by Representative Matt Gray (Broomfield) and Senator Faith Winter (Westminster) that would allow groups of local governments to create transportation planning organizations and impose various taxes (with voter support) for transportation and transit solutions. Some transportation advocates fear this idea would simply “balkanize” Colorado’s highway system and put rural areas at a disadvantage.

Gray and Winter do not intend to hold hearings on the bill for a while, hoping that a statewide solution will emerge. However, if no bi-partisan agreement is found, Winter said the bill will move forward.

Note: Only seven states (including Colorado) have not increased their fuel tax since 1997.

NATION

Administration Streamlines NEPA Reviews: The National Association of REALTORS® is backing the Trump administration's proposal to reform the National Environmental Policy Act, which NAR President Vince Malta says could help modernize environmental standards while also helping to alleviate housing shortages. Malta joined President Donald Trump and other officials at a White House event Thursday to announce the proposed NEPA changes, which would be the first in more than 40 years.

The Trump administration says the reforms will help streamline approval of infrastructure and housing projects, highways, and energy pipelines. The plan is still subject to public hearings before it can be approved. Malta says the reforms could reduce regulatory burdens while still retaining strong environmental quality standards. "NAR has long advocated for common-sense reforms to promote infrastructure development and streamline review processes without compromising on critical environmental protections," Malta said in a statement. "Since NEPA was last updated nearly four decades ago, the housing industry has seen countless infrastructure modernization projects paralyzed by arbitrary delays and unreasonable cost increases."

In recent months, NAR has intensified its calls for comprehensive reforms to the nation's infrastructure. "The National Association of REALTORS® is confident that the reforms announced [Thursday] will remove the barriers standing in the way of infrastructure improvements that stimulate economic growth and create jobs," Malta said. "We look forward to partnering with the White House as it works to implement these changes in the most responsible and effective way possible."

NAR's sentiment was echoed by other housing groups, including the National Association of Home Builders, which says the reforms could help spur new home construction. "This proposal to modernize and reform the NEPA review process will streamline the NEPA reforms and could help spur new-home construction permitting process and reduce unnecessary costs and delays for vital infrastructure projects that are needed to support residential land development projects," says NAHB CEO Jerry Howard. "For the housing industry, those uncertainties and delays create challenges for communities, businesses, and builders, and further exacerbate the current housing affordability crisis. We welcome the latest action by the administration to remove regulatory barriers that hinder housing and economic growth."

AQB Proposes Update to Appraiser Criteria: On January 6 the Appraiser Qualifications Board (AQB) released proposed changes to the Appraiser Qualification Criteria that would align with recent changes by the federal banking agencies allowing the use of evaluations for residential properties under \$400,000 in lieu of an appraisal in federally related transactions. The proposed changes to the criteria would allow licensed residential real property appraisers to perform appraisals of complex one-to-four residential unit properties up to \$400,000. Currently the limit is \$250,000 which reflects the former value used by the Federal banking agencies. Comments are due February 6, 2020.

Top Ten Issues Affecting the Industry: The Counselors of Real Estate have identified the current and emerging issues expected to have the most significant impact on real estate, with U.S. infrastructure being the leading concern of the 1,100-member organization. The report indicates that “roads, bridges, tunnels, railways, airports, the power grid, water systems, and levees are giving way with greater frequency. While the White House and Congressional leadership have discussed funding of up to \$2 trillion, it remains unclear what action government leaders will take.”

The list was released during the National Association of Real Estate Editors’ annual conference in December 2019. After infrastructure, the other top issues include housing in America, weather and climate-related risks, the technology effect and end-of-cycle economics. To read more about these issues and why they made the top 10 list, click here: <https://www.nar.realtor/commercial-connections/the-top-ten-issues-affecting-the-industry>.

EPA Finalizes WOTUS Rule: EPA Administrator Andrew Wheeler and Assistant Secretary of the Army for Civil Works R.D. James announced a new, clear definition for “Waters of the United States.” With the Navigable Waters Protection Rule, the U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army) are delivering on President Trump’s promise to finalize a revised definition for “Waters of the United States” that protects the nation’s navigable waters from pollution and will result in economic growth across the country. NAR supports this new rule because it will allow states to more efficiently manage local waterways while maintaining current environmental protections and encourage economic development.

The Navigable Waters Protection Rule ends decades of uncertainty over where federal jurisdiction begins and ends. For the first time, EPA and the Army are recognizing the difference between Federally protected wetlands and State protected wetlands. It adheres to the statutory limits of the agencies’ authority. It also ensures that America’s water protections – among the best in the world –

remain strong, while giving our states and tribes the certainty to manage their waters in ways that best protect their natural resources and local economies.