



March 5, 2021

**Via Email**

City of Commerce City  
Mayor Ben Huseman  
And Members of City Council  
7887 East 60<sup>th</sup> Avenue  
Commerce City, CO

**Re: Proposed Amendments to City Land Development Code  
- Ordinance 2266 ("Proposed Ordinance")**

Dear Mayor and City Council,

We are writing to express concern with the Proposed Ordinance slated for second reading at the March 15, 2021 City Council Meeting.

The Proposed Ordinance requires, in part, that "For permitted or existing Well Sites where all permitted wells have not been plugged and abandoned in compliance with all applicable COGCC standards and regulations, no new residential lots may be platted within 1,000 feet of such site." As a result, based on the Reunion Village Plan, Oakwood Homes and L.C. Fulenwider, Inc. ("Fulenwider") would be precluded from platting the 195 lots that are proposed for location within 1,000 feet of the proposed well site of Extraction Oil and Gas, Inc. ("Extraction") under its proposed Heron Permit (Case No. OG-003-19).

Fulenwider urges the Council to revise the Proposed Ordinance to implement the January 14, 2021, recommendations of the Planning Commission. The Planning Commission's recommendations are intended to protect human health and safety by maintaining a 1,000-foot setback during the drilling phase, while allowing appropriate flexibility for development planning for lots at closer distances during the production phase, and better aligning with the statewide requirements of the Colorado Oil and Gas Conservation Commission.

Fulenwider understands the importance of considering oil and gas operations in land development. Fulenwider and Oakwood Homes have worked cooperatively with the City of Commerce City (the "City") and oil and gas operators to ensure coordinated planning, long before the new state rules and proposed changes to the City code. Fulenwider and Oakwood Homes have negotiated multiple agreements with the mineral operator, in coordination with the City, under which such parties have committed to a phased approach to ensure that mineral rights and nearby communities can be developed safely. While the proposal of the Planning Commission (see below) would properly account for these existing agreements, the Proposed Ordinance would not.

On January 11, 2021, the Planning Commission recommended adjustment of Ordinance 2226 to revise the setback requirements set forth on Exhibit G. The Commission made this recommendation following a review of the proposal, public testimony and written comment. As set forth in the Planning Commission's letter:



- As presented in the public testimony, the economic and possible legal ramifications of the 1,000-foot reverse setback would be detrimental to the overall development and future of Commerce City.
- As presented in the public testimony, the reverse setback, as currently proposed, presents an untested regulation that could expose the City to regulatory claims.
- Any landowner could potentially challenge the City's proposed reverse setback as a "regulatory taking" under the second *Penn Central* test, by asserting that they are deprived of the ability to develop property.
- Landowners (e.g., Oakwood/Reunion/Fulenwider) in the City have development plans and master planning involving substantial investment and coordination with the City. The City's responsibility to maintain existing development commitments is essential. Should these not be maintained, the ordinance could result in significant hardships on current, future development, and the development community in general.
- The amendment considered that homebuyers would be aware of the existence of an oil and gas facility nearby and make an informed decision.

Notably, the Planning Commission determined that the imposition of the reverse setbacks in the Proposed Ordinance would deprive landowners of the ability to develop property. In Reunion Ridge alone this would result in the elimination of 195 homes. Taking into account these concerns, the Planning Commission unanimously approved adjusted setbacks and requested that the City Council consider these revisions. To date, the City Council has rejected this request.

Fulenwider values the long, mutually beneficial working relationship with Commerce City and look forward to our partnership in continuing the high-quality development of Reunion. In conclusion, Fulenwider strongly supports the acceptance by City Council of the Planning Commission recommendations regarding the Proposed Ordinance.

Sincerely,



F. L. Belz III, President

L. C. Fulenwider, Inc.

March 5, 2021

**VIA EMAIL**

City of Commerce City  
Mayor Ben Huseman  
And Members of City Council  
7887 East 60th Avenue  
Commerce City, CO 80022

**Re: Proposed Amendments to City Land Development Code**

Dear Mayor and City Council:

We are writing on behalf of Clayton Properties Group II, Inc. dba Oakwood Homes ("Oakwood"), to express concern with the proposed amendments to the City Land Development Code Ordinance 2266 (the "Proposed Ordinance") slated for second reading at the March 15, 2021 City Council Meeting.

The Proposed Ordinance requires, in part, that "For permitted or existing Well Sites where all permitted wells have not been plugged and abandoned in compliance with all applicable COGCC standards and regulations, no new residential lots may be platted within 1,000 feet of such site." As a result, based on its Village Plan (as defined below), Oakwood would be precluded from platting the 195 lots that are proposed for location within 1,000 feet of the proposed well site of Extraction Oil and Gas, Inc. ("Extraction") under its proposed Heron Permit (Case No. OG-003-19).

Oakwood urges the Council to revise the Proposed Ordinance to implement the January 14, 2021, recommendations of the Planning Commission (copy enclosed as **Attachment 1** to this letter). The Planning Commission's recommendations are intended to protect human health and safety by maintaining a 1,000 foot setback during the drilling phase, while allowing appropriate flexibility for development planning for lots at closer distances during the production phase, and better aligning with the statewide requirements of the Colorado Oil and Gas Conservation Commission.

Oakwood understands the importance of considering oil and gas operations in land development. Oakwood has worked cooperatively with the City of Commerce City (the "City") and oil and gas operators to ensure coordinated planning, long before the new state rules and proposed changes to the City code. Oakwood and its development partners have negotiated multiple agreements with the mineral operator, in coordination with the City, under which such parties have committed to a phased approach to ensure that mineral rights and nearby communities can be developed safely. While the proposal of the Planning Commission would properly account for these existing agreements and protect Oakwood's vested property rights, the Proposed Ordinance would not.



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### **The Council Proposal Significantly Impairs Oakwood's Vested Property Rights**

On December 28, 2020 and January 22, 2021, Oakwood and L.C. Fulenwider, Inc. sent a joint letters to the City Council and the Mayor urging them to acknowledge in writing that the Proposed Ordinance will not apply to Oakwood's Village Plan – Reunion Ridge South (the "Village Plan"). Those letters detailed the extent to which the proposed setbacks would conflict with the Village Plan and interfere with Oakwood's work under existing agreements (copies enclosed as **Attachment 2** to this letter). The City included the December 28, 2020, letter in the record of the January 5, 2021 Planning Commission meeting and February 11, 2021, City Council meeting as a public comment. The City also included the January 22, 2021 letter in the record of the February 11, 2021 City Council meeting as a public comment.

However, Oakwood has not received any response from the City indicating whether, or to what extent, the Proposed Ordinance will apply to the Village Plan. The Reunion community, of which the Village Plan is a part, has been developed over decades of cooperative work with the City, beginning with the Buffalo Hills Ranch PUD Zone Document in 2000 ("PUD Zone Document") and continuing with the 2001 Consolidated Development Agreement (the "Development Agreement") and, most recently, the Reunion PUD Zone Document, Amendment No. 5, approved by the City in 2019 (the "PUD Zone Amendment" and, collectively with the PUD Zone Document and Development Agreement, the "Approved Development Documents"). The 2001 Development Agreement has a twenty-year term and, by the terms of the Development Agreement, Oakwood will continue thereafter to maintain the development benefits associated with the zoning and land use approvals contained in the PUD Zone Document.

The City's Land Development Code and the Approved Development Documents establish Oakwood's vested rights under the Vested Property Rights Act, Sections 24-68-101, et seq. of the Colorado Revised Statutes (the "Vested Property Rights Act").

Section 21-1130 of the City's Land Development Code provides, in pertinent part, "[i]n the event that the terms of an approved PUD zone document conflicts with the provisions of this land development code, ***the terms of the PUD zone document shall control.***" (Land Development Code §21-1130, emphasis supplied).

The Vested Property Rights Act recognizes, as a matter of law, that, subject to certain exceptions:

"[a] vested property right, once established . . . precludes any zoning or land use action by a local government or pursuant to an initiated measure which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the property as set forth in a site specific development plan (C.R.S. §24-68-105(1))."

The PUD Zone Amendment provides, in the "General Provisions" at page 15:

"Concerning any instances where standards in this PUD Zone document differ from those existing City of Commerce City Codes and Ordinances, this PUD Zone document shall prevail, including land uses."



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The PUD Zone Amendment indicates, in the Land Use Table, at page 13, the average densities for Reunion Villages 9F and 9G, which are the two planning areas directly impacted by the 1,000-foot setback contemplated by the Proposed Ordinance.

Village 9F consists of 79 acres and is zoned residential with densities of 4 to 14 dwelling units/acre (DU/Ac). Village 9F also includes the site planned for oil and gas extraction which excludes 24.3 acres from the total for a gross developable area of 54.7 acres. A total of 18.5 acres is impacted by the 1,000-foot setback, resulting in a loss of up to 259 residential dwelling units.

Village 9G consists of 91.7 acres and is zoned mixed use with residential densities of 5 to 24 DU/Ac and non-residential floor area ratio of 0.15 to 0.3. A total of 18.4 acres is impacted by the 1,000-foot setback, resulting in a loss of up to 441 residential dwelling units.

If the City Council adopts and applies a 1,000-foot reverse setback to the Village Plan, the effect would extinguish residential zoning on a total of 36.9 acres and the total number of residential homes allowed under the current zoning would be reduced by 700 dwelling units. There are essentially no other land uses allowed in Village 9F and only non-residential uses would be allowed in Village 9G.

The calculations noted above are based on Attachment 3, illustrating the acreage impact on the approved PUD Zone Document.

Further, the Development Agreement provides in its "Recitals" at page 2:

"WHEREAS, the parties hereto wish to ratify and affirm the Owners' vested rights to develop the Property in a manner consistent with the Buffalo Hills Ranch PUD Zone Document, and further in a manner consistent with the laws of Colorado as set forth in Sections 24-68-101, et seq. of the Colorado Revised Statutes in effect as of the Effective Date (the "Vested Property Rights Act") and the duly adopted regulations of the City of Commerce City, Colorado as contained in Article VI of Chapter 17 of the Municipal Code ("Vested Property Rights Regulations");"

In addition, the Development Agreement provides in Section 5.1, as follows:

"Accordingly, the Owners shall, throughout the twenty (20) year term of this Agreement, enjoy the right to undertake and complete the development and use of the Property in a manner consistent with the terms and conditions of said site specific development plan, together with any subsequently approved amendments thereto. Except as the Vested Property Rights Act expressly provides otherwise, the vested property rights created hereby preclude any zoning or land use action by City or pursuant to an initiated measure of the City which would alter, impair, prevent, diminish, impose a moratorium on development or otherwise delay the development or use of the Property as set forth in the site specific development plan, in accordance with C.R.S. §24-68-105(1)."

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Based on the foregoing, Oakwood has established its “vested property rights” within the meaning of the Vested Property Rights Act. Accordingly, as a matter of law, the City cannot adopt any zoning or land use action which would alter, impair, prevent, diminish, impose a moratorium on, or otherwise delay, the realization of such rights, as established by the Approved Development Documents. Adoption of the Proposed Ordinance and application to the Village Plan would not only eliminate 195 homes and reduce approved zoning densities, but also violate the Development Agreement and the Vested Property Rights Act. These adverse impacts would substantially impair and diminish Oakwood’s vested property rights. As such, application of the Proposed Ordinance, if enacted, to the Village Plan is prohibited under the Vested Property Rights Act.

The Proposed Ordinance, if applied to the Village Plan, would also substantially impair and diminish Oakwood’s common law vested rights. To its detriment, Oakwood has taken substantial steps in reasonable reliance on the City’s representations about permitting and zoning under the Approved Development Documents. Oakwood’s reliance on such City approvals in moving forward with its planning and zoning of the project was reasonable, as there was no reason for Oakwood to believe at the time that Oakwood took such steps that the City would not honor its representations about Oakwood’s rights to develop the project on the terms of such City approvals.

Further, Oakwood reasonably relied on the City-approved Reunion Ridge Filing No. 1 Final Plat (“Filing 1 Plat”) as a basis for continuing development. The Filing 1 Plat actually provides rights for the location and development of the Extraction oil and gas site, along with an adjacent roadway for access thereto. Tracts “Y” and “Z” shown on such plat are actually designated thereon for oil and gas operations use. In addition, the City has accepted the dedication on the plat of the adjacent public right of way and has issued permits for grading work in this area, which is now on-going. During the approval process for the Reunion Ridge Filing No. 1 Final Plat, the City required that Oakwood design Potomac Parkway from 104<sup>th</sup> Avenue to 96<sup>th</sup> Avenue so that the edge of the right-of-way aligned with the boundary of the oil and gas site to ensure a 400-foot setback to the nearest structure. With an approved final plat, Oakwood had a reasonable basis to believe that Oakwood could proceed with development in accordance with the approved final plat.

Oakwood also reasonably relied on its Surface Use Agreement (“SUA”) with Extraction in proceeding with its development planning and zoning. The SUA establishes a 1000-foot buffer zone for platting of lots during the initial four-year period, but thereafter would allow Oakwood to plat lots not less than 400 feet of the Extraction facility wellheads. Oakwood’s agreement to this four-year moratorium was based on its ability to plat lots outside the 400-foot buffer at any time thereafter. Without that ability, Oakwood would not have entered into the SUA on these terms, but it did so, in part, based on the City’s informal approval of the lot locations contemplated under the SUA. Based on the City’s participation in the SUA process, Oakwood designed the Reunion Ridge Community around the final SUA well-site and residential lot development plan, as well as then current City and State oil and gas ordinances.

Further, Oakwood has invested substantial monetary and human resources in reliance on the Approved Development Documents, Filing 1 Plat and SUA, a substantial portion of which will have been expended for no benefit if the City proceeds with the Proposed Ordinance. Oakwood estimates that it has expended more than \$2 million in out-of-pocket engineering, planning and zoning costs alone. In addition, Oakwood would suffer substantial losses as a result of the elimination of 195 dwelling units from the Village Plan and the reduction in the total number of residential homes allowed under the approved zoning by 700 dwelling units.



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Moreover, imposition of the Proposed Ordinance on the Village Plan would amount to taking without just compensation under both the United States and the Colorado Constitutions, because it would render Oakwood's property within the proposed setback zones essentially useless, and therefore, worthless.

### **The Council's Proposal Ignores the Clear Recommendations of the Planning Commission**

On January 11, 2021, the Planning Commission recommended adjustment of Ordinance 2226 to revise the setback requirements set forth on Exhibit G. The Commission made this recommendation following a review of the proposal, public testimony and written comment. As set forth in the Planning Commission's letter:

- As presented in the public testimony, the economic and possible legal ramifications of the 1,000-foot reverse setback would be detrimental to the overall development and future of Commerce City.
- As presented in the public testimony, the reverse setback, as currently proposed, presents an untested regulation that could expose the City to regulatory claims.
- Any landowner could potentially challenge the City's proposed reverse setback as a "regulatory taking" under the second *Penn Central* test, by asserting that they are deprived of the ability to develop property.
- Landowners (e.g., Oakwood/Reunion) in the City have development plans and master planning involving substantial investment and coordination with the City. The City's responsibility to maintain existing development commitments is essential. Should these not be maintained, the ordinance could result in significant hardships on current, future development, and the development community in general.
- The amendment considered that homebuyers would be aware of the existence of an oil and gas facility nearby and make an informed decision.

Notably, the Planning Commission determined that the imposition of the reverse setbacks would deprive landowners of the ability to develop property, and would therefore give any landowner a potential Constitutional takings claim. Taking into account these concerns, the Planning Commission unanimously approved adjusted setbacks and requested that the City Council consider these revisions. The Council has rejected this request without comment, explanation, or justification.

### **Conclusion**

Oakwood has statutory and common law vested property rights that, by adoption of the proposed Ordinance and application to the Village Plan, would eliminate 195 homes and reduce approved zoning densities and thereby substantially impair and diminish Oakwood's vested property rights. Adoption and application of the Proposed Ordinance may well result in the City breaching its obligations under the Development Agreement, violating the Vested Property Rights Act, and taking vested property rights without payment of just compensation. If this were to occur, Oakwood would have to consider taking appropriate action.



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The approach recommended by the Planning Commission recognizes the differing risks at different stages of well development. In tailoring restrictions as necessitated by risk, the Planning Commission has developed a system that protects current and future residents while accommodating existing agreements.

The Council has not identified any additional benefit provided by its Proposed Ordinance, as compared to the proposal of the Planning Commission. At the same time, the Council Proposed Ordinance presents a significant impediment to current and future developments by impairing vested property rights and interfering with existing agreements.

Oakwood values its long history of working with the City of Commerce and remains committed to the quality developments in which it has invested in this region. We are hopeful that the Council will accept the recommendations of the Planning Commission and revise the Land Development Code.

Very truly yours,

A handwritten signature in blue ink that reads "Spencer Fane LLP".

**Spencer Fane LLP**

**Attachments**

Cc: Commerce City Planning Commission  
Roger Tinklenberg, Interim City Manager  
Jason Rogers, Community Development Director  
Domenic Martinelli, City Planner  
Robert Sheesley, Esq., City Attorney  
Bruce Rau, President, Oakwood Land Company  
James A. Hayes, Director of land Acquisition and Development, Oakwood Land Company  
Kelly Leid, Executive Vice President, Oakwood Land Company  
Ted Leighty, Metro Denver HBA  
Ferd Belz, L.C. Fulenwider, Inc.  
Blake Fulenwider, L.C. Fulenwider, Inc.





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ATTACHMENT 1

Planning Commission Recommendation dated January 14, 2021

January 14, 2021

City of Commerce City  
City Council  
7887 E. 60<sup>th</sup> Ave.  
Commerce City, CO 80022

Subject: Ordinance 2266: Subsurface Extraction Operations

Dear City Council:

This letter is a follow up to Planning commission's approval of ordinance 2266 in regard to subsurface extraction operations and best management practices. On January 5, 2021, the Commerce City Planning Commission unanimously voted to approve ordinance 2266. The approval included amendments to the originally proposed ordinance as it relates to the oil and gas setbacks included in Section 21-6280, exhibit G.

To provide clarity of Planning Commissions recommended amendment, a comparison of the ordinance and the Commission's recommendation is as follows:

1	EXHIBIT G TO ORDINANCE 2266
2	Sec. 21-6280. Additional Subdivision Standards relating to Oil & Gas Sites
3	Oil & Gas Site Setbacks.
4	(1) For permitted or existing Well Sites where all permitted wells have not
5	been plugged and abandoned in compliance with all applicable COGCC
6	standards and regulations, no new residential lots may be platted within
7	1,000' of such site.
8	(2) Measurements shall be taken from the edge of the production site, in the
9	same manner as defined in 21-5266(5).
10	(3) Plat requirements. The following information shall be denoted on all final
11	plats:
12	a. The location of any oil and gas wells, flowlines, and gathering lines,
13	and any associated easements;
14	b. The location of all recorded surface use agreements; and
15	c. The location of any plugged and abandoned oil and gas wells,
16	flowlines and gathering lines, including a plat designation
17	surrounding such wells and expressly prohibiting any habitable
18	building or structure within 50 feet.
19	(4) Vacation of Existing Easements. No easement may be vacated for a
20	previous or existing well, flowline, or gathering line, unless documentation
21	is provided to the city demonstrating such well, flowline, or gathering line
22	has been vacated in compliance with all applicable COGCC regulations.

#### Original Ordinance

1	PLANNING COMMISSION ENDORSED
2	EXHIBIT G TO ORDINANCE 2266
3	Sec. 21-6280. Subdivision Standards relating to Oil & Gas Sites: Oil & Gas
4	Site Setbacks
5	(1) For permitted or existing Well Sites where all permitted wells have not
6	entered Completions, no new residential lots may be platted within 1,000'
7	of such site.
8	(2) For permitted Well Sites where all permitted wells have entered
9	Completions, but have not been plugged and abandoned in compliance with
10	all applicable COGCC standards and regulations, or the permit has
11	otherwise lapsed, been revoked, or forfeited, and is not subject to renewal
12	or resuscitation, then no new residential lots may be platted within the
13	minimum setbacks set forth in Table VI-1
14	Table VI-1 Setback from new residential lots to Production Sites
15	
16	Well Count
17	1-10
18	11-24
19	25 or more
20	Setback
21	500'
22	400'
23	500'
24	(3) Measurements shall be taken from the edge of the production site, in the
25	same manner as defined in 21-5266(5).
26	(4) Plat requirements. The following information shall be denoted on all final
27	plats:
28	a. The location of any oil and gas wells, flowlines, and gathering lines,
29	and any associated easements;
30	b. The location of all recorded surface use agreements; and
31	c. The location of any plugged and abandoned oil and gas wells,
32	flowlines and gathering lines, including a plat designation
33	surrounding such wells and expressly prohibiting any habitable
34	building or structure within 50 feet.

#### Updated Ordinance

The Planning Commission's recommended amendment was not done inadvertently and was after careful consideration of the proposed ordinance along with public testimony during the meeting. Furthermore, public testimony and written comments were received from Oakwood Homes, L.C. Fulenwider, and the Home Builders Association that all opposed the approval of ordinance 2266. The following highlights the comments received:

- Clayton Properties Group II, Inc. dba Oakwood Homes ("Oakwood") and L.C. Fulenwider
  - "The City's comments are **inconsistent with the terms of multiple agreements** between development parties and the mineral operator, which agreements were negotiated in partnership with the City."
  - "Under the proposed City regulations, the phased reverse setbacks applicable to land developers under Section 21-6280 and the oil and gas facility 1000-foot setback applicable to operators under Section 21-5266(6) are both measured from the edge of the "Production





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*Site" to the residential unit boundary. The City definition of "Production Site" includes any fenced or enclosed area. In applying these measurement standards to the Village Plan, Oakwood would not be able to plat lots according to the 400-foot buffer because that buffer would be extended outward under the proposed measurement standard. If the 400-foot buffer is pushed out to meet the proposed measurement standard, a total of **35 lots would become ineligible** for platting."*

- *"In short, we strongly encourage the City Council to consider the effect of these important policy matters on **our vested property rights**".*
- Home Builders Association of Metro Denver
  - *"We **strongly recommend the City Council maintain the Production Phase setbacks** as outlined in the most recent draft ordinance. The reduced setbacks are consistent with private agreements, recent City entitlement approvals, and commitments from the City."*
  - *"With average densities of five to six homes per acre, a 1,000-foot setback would eliminate the ability to build **500-700** homes."*
  - *"we strongly encourage the City Council to consider the **legal implications** of this important policy matter on property rights and current private agreements"*

The Commission's insight was the overall ordinance and best management practices met the criteria for approval and was generally thought to be in the best interest of the City. As outlined above, the oil and gas 1,000-foot reverse setback included in Section 21-6280, Exhibit G, could not be approved as written. The determination for the amended Exhibit G was based on the following:

- As presented in the public testimony, the economic and possible legal ramifications of the 1,000-foot reverse setback would be detrimental to the overall development and future of Commerce City.
- As presented in the public testimony, the reverse setback, as currently proposed, presents an untested regulation that could expose the City to regulatory claims.
- Any landowner could potentially challenge the City's proposed reverse setback as a "regulatory taking" under the second, Penn Central test, by asserting that they are deprived of the ability to develop property.
- Landowners (e.g., Oakwood/Reunion) in the City have development plans and master planning involving substantial investment and coordination with the City. The City's responsibility to maintain existing development commitments is essential. Should these not be maintained, the ordinance could result in significant hardships on current, future development, and the development community in general.
- The amendment considered that homebuyers would be aware of the existence of an oil and gas facility nearby and make an informed decision.

In conclusion, the Planning Commission unanimously approved ordinance 2266 with the amended Section 21-6280, Exhibit G to reduce the reverse setback. The Planning Commission requests City Council consider the revised ordinance for approval and carefully consider the feedback provided by the Planning Commission and valued community partners.

Sincerely,

Commerce City Planning Commission

Jonathan Popiel

Andrew Amador

Dennis Cammack

Jordan Ingram

David Yost



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ATTACHMENT 2

Oakwood and Fulenwider Letters dated December 28, 2020 and January 22, 2021





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CLAYTON PROPERTIES GROUP II, INC.  
4908 Tower Road  
Denver, Colorado 80249

L.C. FULENWIDER, INC.  
1125 17th Street, Suite 2500  
Denver, Colorado, 80202

December 28, 2020

City of Commerce City  
Mayor Ben Huseman  
And Members of City Council  
7887 East 60<sup>th</sup> Avenue  
Commerce City, CO 80022

Mayor and City Council,

Clayton Properties Group II, Inc. dba Oakwood Homes ("Oakwood") and L.C. Fulenwider, Inc. and its affiliates ("Fulenwider") appreciate this opportunity to respond to (a) the City's recent feedback on Oakwood's Village Plan – Reunion Ridge South (the "Village Plan") submittal and (b) the proposed amendments to the City Land Development Code posted on December 23, 2020 regarding oil and gas regulations.

In considering this letter, please keep in mind that Oakwood and Fulenwider have worked cooperatively with the City on an on-going basis to ensure the balanced planning and development of Reunion, beginning with the Buffalo Hills Ranch PUD Zone Document in 2000 and continuing with the 2001 Consolidated Development Agreement and, most recently, the Reunion PUD Zone Document, Amendment No. 5. approved by the City in 2019. We understand the importance of considering oil and gas operations in land development and would like to continue with our joint spirit of cooperation in meeting these challenges in a manner consistent with recent regulatory trends, and current best practices for the industry and the vested property rights of Oakwood and Fulenwider ("vested property rights").

We appreciate the time you and your staff have spent discussing the potential regulatory changes with us. However, we are concerned that the City's comments regarding the application of the new City regulations to our planned developments do not appropriately reflect our vested property rights. It is these vested property rights, rather than potential requirements of future City code changes, that govern the City's review of the Village Plan and other development plans arising out of our vested property rights in Reunion, including any future development plans for Reunion PUD Village 1-Reunion Center (collectively, the "Development Plans"). Further, the City's consideration of the regulatory changes should also take into account the vested property rights of owners affected by those changes.

In that regard, we note that the new Colorado Oil and Gas Conservation Commission ("COGCC") rules are not applicable to our Development Plans. These rules apply to the permitting and location of oil and gas operations, not the location of home sites for development with residential structures. Therefore, the new COGCC regulations do not govern the siting of residential lots under our Development Plans. In addition, we do note that Section 21-6280 establishes reverse setbacks from well sites applicable to developers when platting lots. However, under Section 21-6280, the setback rules apply only to permitted well sites. To our knowledge, the Extraction Oil & Gas, Inc. "Extraction" wells have yet to be permitted and, therefore, Section 21-6280 on reverse setbacks does not currently apply to the City's review of our Development Plans. We are in any event providing the analysis below to demonstrate the adverse impacts to our development as if the Extraction wells were permitted.

With regard to the proposed City code regulations released on December 23, 2020, we believe that these may be applied to our Development Plans only to the extent they do not interfere with our vested property rights and the vested property rights of other landowners. This is, in fact, recognized by the City Code and consistent with state common law and statutory law.

The source and scope of the vested property rights applicable to our Development Plans are derived from two primary sources: (i) formal entitlement approvals granted by the City for Reunion as described below and (ii) several private agreements between the Fulenwider and Extraction, two of which have also been executed by Oakwood. The City has been a partner in the negotiations on these matters and the Reunion Ridge community has been designed around these agreements and current City and State oil and gas ordinances. Also, Oakwood and Fulenwider have made substantial investments in engineering and planning documents based on this coordination with the City. As discussed in more detail below, the City's interpretation of the potential future requirements, as expressed in the comments, are a substantial impairment to our vested property rights. The appropriate basis for review continues to be the standards set forth in the entitlements and private agreements described below.

With regard to the entitlements, there have been several formal entitlement approvals granted by the City for Reunion, as follows:

Consolidated Development Agreement for Buffalo Hills Ranch PUD dated December 17, 2001  
Reunion Overall PUD Amendment – Approved March, 2019  
Reunion Metro District Service Plans/IGAs – Approved November, 2019  
Reunion Natural Resources District  
Reunion Ridge Metropolitan District Nos. 1-4  
Reunion Ridge Filing No. 1 Final Plat– Approved March, 2020 (included herewith)  
Includes Potomac Parkway alignment – access to oil and gas site  
Grading, Erosion and Sediment Control Plan for Reunion Ridge Filing No. 1-Approved December 2019

It is important to note that the City-approved Reunion Ridge Filing No. 1 Final Plat actually provides rights for the location and development of the subject oil and gas site, along with an adjacent roadway



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for access thereto, on which we have relied. Tracts "Y" and "Z" shown on such plat are actually designated thereon for oil and gas operations use. In addition, the City has accepted the dedication on the plat of the adjacent public right of way and has issued permits for grading work in this area, which is now on-going. During the approval process for the Reunion Ridge Filing No. 1 Final Plat, the City required Oakwood to design Potomac Parkway from 104<sup>th</sup> Avenue to 96<sup>th</sup> Avenue so that the edge of the right-of-way aligned with the boundary of the oil and gas site to ensure a 400-foot setback to the nearest structure.

Further, based on the plat approval, Fulenwider has taken additional steps to plug and abandon four well sites in Reunion for the express purpose of consolidating the well field in the approved area located in the southwest corner of the community. This not only allows for superior community design, but represents substantial investment by Fulenwider in implementing the overall mineral extraction plan.

Additionally, the City's comments are inconsistent with the terms of multiple agreements between development parties and the mineral operator, which agreements were negotiated in partnership with the City. In particular, the Surface Use Agreement ("SUA") among Fulenwider, Oakwood and Extraction establishes a 1000-foot buffer zone for platting of lots during the initial four-year period, measured by the distance between the well pad and the nearest existing or planned residential unit, as opposed to the parcel boundary. The measurement for the 400-foot setback was always intended to be measured from the well pad and not the fence/property line.

Under the proposed City regulations, the phased reverse setbacks applicable to land developers under Section 21-6280 and the oil and gas facility 1000-foot setback applicable to operators under Section 21-5266(6) are both measured from the edge of the "Production Site" to the residential unit boundary. The City definition of "Production Site" includes any fenced or enclosed area. In applying these measurement standards to the Village Plan, Oakwood would not be able to plat lots according to the 400-foot buffer because that buffer would be extended outward under the proposed measurement standard. If the 400-foot buffer is pushed out to meet the proposed measurement standard, a total of 35 lots would become ineligible for platting.

In addition, if Oakwood continues to plat in a manner consistent with the terms of SUA (i.e., no residential unit closer than 1000 feet to the well pad), our development plan would no longer be feasible because the fenced area around the planned oil and gas facilities location would no longer be 1000 feet away from the closest platted parcel boundaries. As result, Extraction would not be able to construct its facilities as previously laid out, or maybe not at all given the size and location of the facilities surface area. The SUA and other agreements were made to ensure safe and coordinated land development in conjunction with oil and gas operations, even before such conditions were mandated by state or local law. These agreed terms remain protective for the development proposed by the Village Plan and should be maintained.

We are also aware of certain pending applications for oil and gas development on property adjacent to Reunion, including, without limitation, one for Extraction's "Owl Site" to be located northeast of



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112<sup>th</sup> Avenue and Tower Road near E-470. We are concerned that our future Development Plans for Reunion Center Property-Village 1 and other projects may be impaired by application of the reverse setback rules specified in Section 21-6280 if an oil and gas facility, like the Owl Site, is located on adjacent property within 1000 feet of any subsequently proposed residential lot boundary otherwise allowable under our vested property rights.

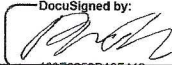
In short, we strongly encourage the City Council to consider the effect of these important policy matters on our vested property rights. As a remedy, we request that City recognize that our Development Plans will be exempted from the new City regulations (however they may be ultimately adopted) to extent they impair and infringe upon our vested property rights.

Oakwood and Fulenwider value our long history of working with the City, including proactive planning to ensure development is safely coordinated with mineral rights. We look forward to working with you to resolve any questions as we work towards the continued development of Reunion Ridge.


Thank you for your time and consideration on this matter.

Sincerely,

Clayton Properties Group II, Inc.

By:   
Name: Bruce Rau  
Title: Secretary

L.C. Fulenwider, Inc.

By:   
Name: Ferd Belz  
Title: President

Attachments:

Oil and Gas Offsets  
Reunion Ridge Oil and Gas Detail  
Reunion Ridge Filing No. 1 Final Plat (on file with City)

Cc: Commerce City Planning Commission  
Roger Tinklenberg, Interim City Manager  
Jason Rogers, Community Development Director  
Domenic Martinelli, City Planner  
Bruce Rau, Oakwood Land Company President  
Kelly Leid, Executive Vice President, Oakwood Land Company  
Ted Leighty, Metro Denver HBA





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Blake Fulenwider, L.C. Fulenwider, Inc.



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CLAYTON PROPERTIES GROUP II, INC.  
4908 Tower Road  
Denver, Colorado 80249

L.C. FULENWIDER, INC.  
1125 17th Street, Suite 2500  
Denver, Colorado, 80202

January 22, 2021

City of Commerce City  
Mayor Ben Huseman  
And Members of City Council  
7887 East 60<sup>th</sup> Avenue  
Commerce City, CO 80022

Mayor and City Council,

Clayton Properties Group II, Inc. dba Oakwood Homes ("Oakwood") and L.C. Fulenwider, Inc. and its affiliates ("Fulenwider") appreciate this opportunity to respond to (a) the City's recent feedback on Oakwood's Village Plan – Reunion Ridge South (the "Village Plan") submittal and (b) the proposed amendments to the City Land Development Code posted on December 23, 2020 regarding oil and gas regulations. We have updated this letter based on the outcome of the Planning Commission public hearing on January 5, 2021.

In considering this letter, please keep in mind that Oakwood and Fulenwider have worked cooperatively with the City on an on-going basis to ensure the balanced planning and development of Reunion, beginning with the Buffalo Hills Ranch PUD Zone Document in 2000 and continuing with the 2001 Consolidated Development Agreement and, most recently, the Reunion PUD Zone Document, Amendment No. 5. approved by the City in 2019. We understand the importance of considering oil and gas operations in land development and would like to continue with our joint spirit of cooperation in meeting these challenges in a manner consistent with recent regulatory trends, and current best practices for the industry and the vested property rights of Oakwood and Fulenwider ("vested property rights").

We appreciate the time you and your staff have spent discussing the potential regulatory changes with us. However, we are concerned that the City's comments regarding the application of the new City regulations to our planned developments do not appropriately reflect our vested property rights. It is these vested property rights, rather than potential requirements of future City code changes, that govern the City's review of the Village Plan and other development plans arising out of our vested property rights in Reunion, including any future development plans for Reunion PUD Village 1-Reunion Center (collectively, the "Development Plans"). Further, the City's consideration of the



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regulatory changes should also take into account the vested property rights of owners affected by those changes.

In that regard, we note that the new Colorado Oil and Gas Conservation Commission ("COGCC") rules are not applicable to our Development Plans. These rules apply to the permitting and location of oil and gas operations, not the location of home sites for development with residential structures. Therefore, the new COGCC regulations do not govern the siting of residential lots under our Development Plans. In addition, we do note that Section 21-6280 establishes reverse setbacks from well sites applicable to developers when platting lots. However, under Section 21-6280, the setback rules apply only to permitted well sites. To our knowledge, the Extraction Oil & Gas, Inc. "Extraction" wells have yet to be permitted and, therefore, Section 21-6280 on reverse setbacks does not currently apply to the City's review of our Development Plans. We are in any event providing the analysis below to demonstrate the adverse impacts to our development as if the Extraction wells were permitted.

With regard to the proposed City code regulations released on December 23, 2020, we believe that these may be applied to our Development Plans only to the extent they do not interfere with our vested property rights and the vested property rights of other landowners. This is, in fact, recognized by the City Code and consistent with state common law and statutory law.

The source and scope of the vested property rights applicable to our Development Plans are derived from two primary sources: (i) formal entitlement approvals granted by the City for Reunion as described below and (ii) several private agreements between the Fulenwider and Extraction, two of which have also been executed by Oakwood. The City has been a partner in the negotiations on these matters and the Reunion Ridge community has been designed around these agreements and current City and State oil and gas ordinances. Also, Oakwood and Fulenwider have made substantial investments in engineering and planning documents based on this coordination with the City. As discussed in more detail below, the City's interpretation of the potential future requirements, as expressed in the comments, are a substantial impairment to our vested property rights. The appropriate basis for review continues to be the standards set forth in the entitlements and private agreements described below.

With regard to the entitlements, there have been several formal entitlement approvals granted by the City for Reunion, as follows:

Consolidated Development Agreement for Buffalo Hills Ranch PUD dated December 17, 2001  
Reunion Overall PUD Amendment – Approved March, 2019  
Reunion Metro District Service Plans/IGAs – Approved November, 2019  
Reunion Natural Resources District  
Reunion Ridge Metropolitan District Nos. 1-4  
Reunion Ridge Filing No. 1 Final Plat– Approved March, 2020 (included herewith)  
Includes Potomac Parkway alignment – access to oil and gas site  
Grading, Erosion and Sediment Control Plan for Reunion Ridge Filing No. 1-Approved December 2019

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It is important to note that the City-approved Reunion Ridge Filing No. 1 Final Plat actually provides rights for the location and development of the subject oil and gas site, along with an adjacent roadway for access thereto, on which we have relied. Tracts "Y" and "Z" shown on such plat are actually designated thereon for oil and gas operations use. In addition, the City has accepted the dedication on the plat of the adjacent public right of way and has issued permits for grading work in this area, which is now on-going. During the approval process for the Reunion Ridge Filing No. 1 Final Plat, the City required Oakwood to design Potomac Parkway from 104<sup>th</sup> Avenue to 96<sup>th</sup> Avenue so that the edge of the right-of-way aligned with the boundary of the oil and gas site to ensure a 400-foot setback to the nearest structure.

Further, based on the plat approval, Fulenwider has taken additional steps to plug and abandon four well sites in Reunion for the express purpose of consolidating the well field in the approved area located in the southwest corner of the community. This not only allows for superior community design, but represents substantial investment by Fulenwider in implementing the overall mineral extraction plan.

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We are also aware of certain pending applications for oil and gas development on property adjacent to Reunion, including, without limitation, one for Extraction's "Owl Site" to be located northeast of 112<sup>th</sup> Avenue and Tower Road near E-470. We are concerned that our future Development Plans for Reunion Center Property-Village 1 and other projects may be impaired by application of the reverse setback rules specified in Section 21-6280 if an oil and gas facility, like the Owl Site, is located on adjacent property within 1000 feet of any subsequently proposed residential lot boundary otherwise allowable under our vested property rights.


The Planning Commission considered all of this information as part of their deliberations and recommended eliminating the 1,000-foot reverse setback from Section 21-6280 from the draft ordinance. Specifically, the Planning Commission recommended an amendment to the ordinance to include the Production Phase setback table, outlining setbacks of 300, 400, or 500 feet depending upon the number of wells at each location. This table was provided in the March 10, 2020 draft of the ordinance. We concur and support the Planning Commission recommendation to the City Council and strongly encourage the City Council to consider the effect of these important policy matters on our vested property rights. As an alternative remedy, we request that City recognize that our Development Plans will be exempted from the new City regulations (however they may be ultimately adopted) to extent they impair and infringe upon our vested property rights.

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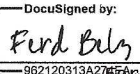
Thank you for your time and consideration on this matter.

Sincerely,

Clayton Properties Group II, Inc.

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By:   
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Title: Secretary

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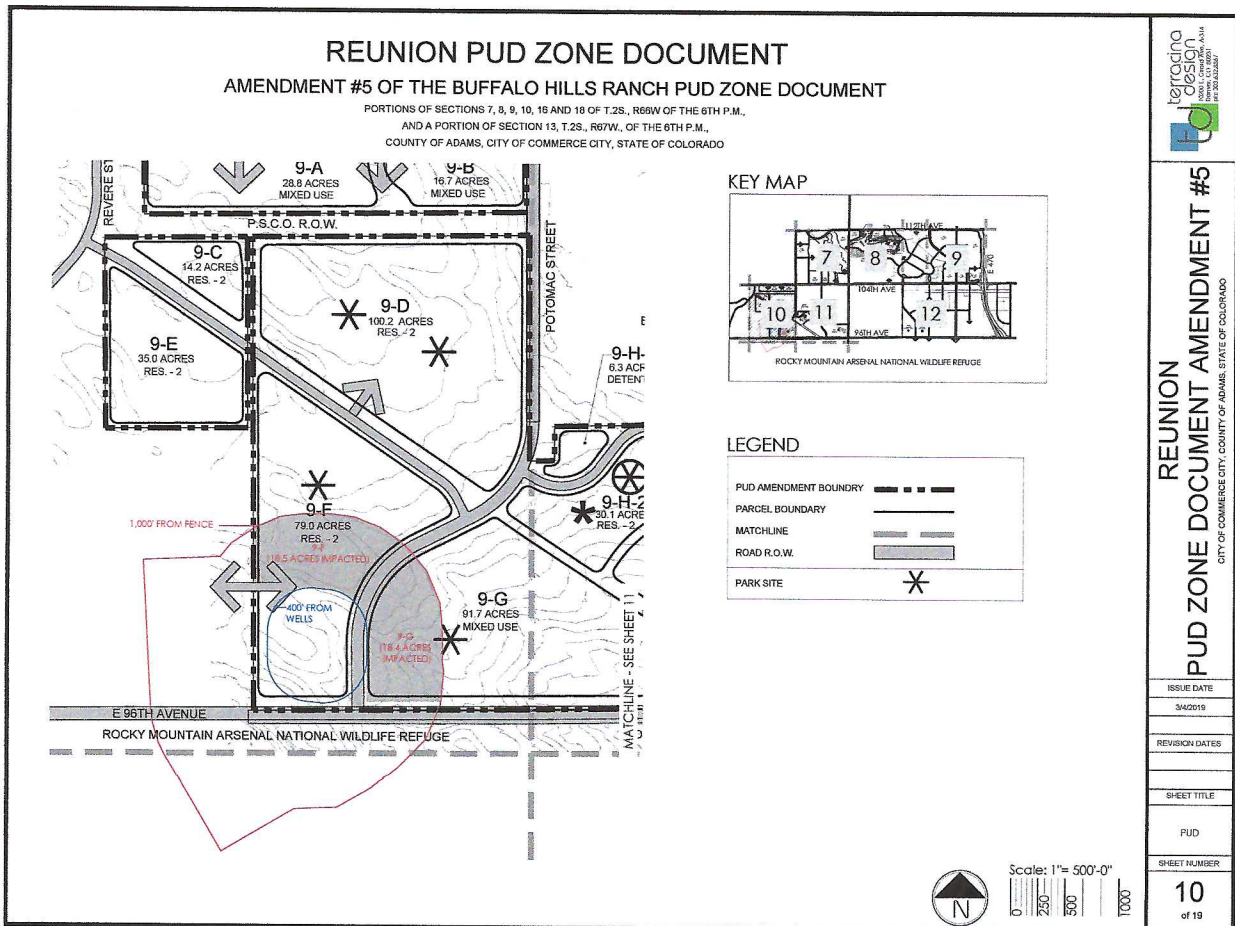
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Ted Leighty, Metro Denver HBA  
Blake Fulenwider, L.C. Fulenwider, Inc.

## ATTACHMENT 3

### Reunion PUD Zone Document with 400-foot and 1,000-foot setback limits





Dear Commerce City City Council,

I am formally writing to you to express my deep concern for the numerous fracking projects that are in the works in our community and that look to be pushed through, despite opposition by many constituents. As our representatives and leaders, you have taken on the job of protecting our community, our families, our health, safety, and welfare, and also our environment. If we continue on this selfish and destructive path, what will be left for future generations. I am adamantly opposed to fracking in Commerce City, Adams County, Colorado and our world. It is time for us to move forward with new innovations that free us from fossil fuels and send the message that we that caring for the planet AND creating economic stability aren't mutually exclusive. It MUST start at the local level. I urge you, the leaders of Commerce City to listen to the voices of those you represent and to stand strong AGAINST special interests in the pockets of oil and gas. It is incumbent on you to protect our public health and safety.

Thank you, Jana Bozeman 310.872.4114 [janabozeaman@gmail.com](mailto:janabozeaman@gmail.com)

To whom it may concern,

My name is Levi Hancock, I have lived and worked in Colorado in the Oil and Gas Industry since 2005. I have seen our industry go through massive changes to protect the environment and the communities we work within. Our industry has had an all out war launched on us which has not only affected our families and friends but the communities in which we live. The regulations that keep getting placed on our industry has not only affected our economy in a negative way but it has destroyed family after family and job after job. We are not only humans in this world but we are Coloradans! We live here, work here and play here. We want to protect the environment and our communities not only for all Coloradans but our families, friends and future generations. There is a better way to coexist with one another. We are hardworking, caring and loving Coloradans and we can find a better way to boost our economy and bring good high paying jobs back to Coloradan families. There is a way to build a better tomorrow without destroying a whole industry, many families and lives. The regulations that have been placed on our industry in the last few years have no logic nor scientific basis. We can do better together by bringing understanding to what our industry does and what we benefit we provide for all Coloradans!

Please let's take a step in the right direction by working together. We are all humans working for the betterment of Colorado!

Thank you, Levi Hancock

Thank you for this opportunity to give public comment!

Word has it that Commerce City is about to approve more oil & gas fracking wells. For the health and safety of your community I believe this is a bad plan! The COGCC is now honoring setbacks of 2,000 feet but I do not think this is far enough. In the event of an explosion the fire department would move the public back at least a half a mile or more.

In Texas, researchers found that babies born near frequent flaring are 50 % more likely to be premature. In Colorado, the state Department of Health discovered that people living near fracking sites face elevated risk of nosebleeds, headaches, breathing trouble, and dizziness. In Pennsylvania, researchers found that people living near fracking face increased rates of infant mortality, depression and hospitalizations for skin and urinary issues. Further studies of fracking communities throughout the country have found that living near fracking wells increases the risk of premature births, high-risk pregnancies, asthma, migraines, fatigue, nasal and sinus symptoms, skin disorders and heart failure. Laboratory studies have linked chemicals used in fracking fluid to endocrine disruption which can cause hormone imbalance, reproductive harm, early puberty, brain and behavior problems, improper immune function, and cancer.

Fracking chemicals have been found in the bodies of people living close to fracking wells. Chemicals in water, air and urine samples that are linked to a wide range of harmful health impacts include cancer-causing chemicals in air samples at levels that exceeded recommended safety thresholds. Additionally, biomarkers for harmful chemicals like ethylbenzene, styrene, and toluene in the bodies of southwestern Pennsylvanians at levels significantly higher than the average American. Families that live closer to fracking wells had higher levels of chemicals like 1,2,3-trimethylbenzene, 2-heptanone, and naphthalene in their urine than families that live further away. Exposure to these compounds is linked to skin, eye, and respiratory issues, gastrointestinal illness, liver problems, neurological issues, immune system and kidney damage, developmental issues, hormone disruption, heart disease and increased cancer risk.

"We have enough evidence at this point that these health impacts should be of serious concern to policymakers interested in protecting public health," Irena Gorski Steiner, an environmental epidemiology doctoral candidate at the Johns Hopkins Bloomberg School of Public Health, told Environmental Health News (EHN).

If I lived in Commerce City I would want my community leaders to think very seriously about the health impacts of fracking to my family and fellow citizens. Health and safety should be your top priority!

Janice Brown Retired critical care RN Englewood, CO

As a resident of a neighboring county (Broomfield-CCOB) and having been involved in the CCOB work on regulations, I encourage you to go as strongly as possible to realize the regulatory powers that SB181 and HB 1261 afford you to protect public health and the environment. You by now have most likely been educated on the downsides of oil and gas (O&G) development and also have experienced the pressure of developers and O&G industries to not require more of them as their profits will be affected. Please realize that developing strong regulations to avoid and minimize impacts is the moral thing to do at this point--you are acting to protect the general welfare, not just the entitlements of some.

It is unfair that we citizens end up subsidizing and bearing the costs of these industries as we move in a more sustainable direction--these costs are many: not only dealing with the health costs of pollution and noise, odor, and traffic nuisances but also often having to clean up the messes of abandoned O&G infrastructure. Please look to the Boulder regulations and CCOB's current draft to make sure that your financial assurances section covers the true costs of doing business.

As to setbacks, another thorny issue, please do a hard setback of 2000' for proposed pads from existing schools and homes and the 1000' reverse setback. This will help to reinforce communities' abilities to set some hard and clear lines that have a solid foundation in current health studies. Well density is another thorny issue that communities need to start considering as a region because we all know that the current density in Weld county contributes to our serious non-attainment of National Ozone standards. This speaks to a need for communities to all work towards stricter regulations on the industry.

Thank you for being open to feedback from your neighbors as we all grapple with the economic, health, and environmental impacts of our reliance on fossil fuels. And please stay open to the evolving science and the growing awareness of complex realities/facts. Closing your minds while clinging to old beliefs and ideologies will only lead to more suffering.

Lois Vanderkooi