

DUCHESNE COUNTY

PLANNING COMMISSION MEETING

JUNE 26, 2024

REQUEST TYPE: Zoning Ordinance Text Amendment
APPLICANT: Duchesne County
PROPOSAL: Amendments of the Zoning Ordinance regulations associated with Flare Gas Power Generation facilities
LOCATION: County Wide
ZONING DESIGNATION: N/A

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FINDINGS OF FACT

1. PROPOSAL DESCRIPTION

Duchesne County proposes to amend its zoning ordinance to define flare gas, flare gas power generation and flare gas power generation facilities, specify in which zoning districts such facilities are allowed and specify how their impacts are to be mitigated. It is recommended that flare gas power generation facilities be allowed with a conditional use permit in the Commercial, Industrial, A-10, A-5, and A-2.5 zoning districts. They would be prohibited in the R-1 and R-1/2 zoning districts.

The proposed ordinance requires flare gas power generation facilities be set back at least 1,320 feet from primary or secondary residences or buildings open to the public. A noise study would be required to be conducted before the public hearing. To mitigate noise impacts, a flare gas power generation facility must be designed to avoid more than a 35 decibel increase above ambient levels, but not to exceed 60 decibels. Flare gas power generation facilities must also comply with Section 3-1-4 (G) (1) (d) of the County's Nuisance Ordinance, which defines a nuisance as:

“The use of any mechanical device, operated by compressed air, steam, gasoline or otherwise, unless the noise created is in connection with work being done by authorized agencies or an agricultural activity and/or is effectively muffled between the hours of nine thirty o'clock (9:30) P.M. and seven o'clock (7:00) A.M.”

To minimize high frequency vibration concerns, flare gas power generation equipment must be installed on professionally-designed industrial vibration isolators or other vibration reduction technology.

The ordinance can not apply retroactively to flare gas power generation facilities that have already been established in the county. The provisions of this ordinance will not apply if a citizen elects to build a home or construct a building open to the public within 1,320 feet of an existing flare gas power generation facility.

2. HISTORY OF EVENTS

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|---------------------|---|
| April 5, 2024 | The application was submitted. |
| April 5, 2024 | The application was deemed complete. |
| April 17 & 24, 2024 | Notice of Hearings published in the Uintah Basin Standard |
| May 1, 2024 | Planning Commission hearing (recessed to June 26, 5:00 PM) |
| May 6, 2024 | County Commissioner's hearing (recessed to July 8, 2:00 PM) |
| June 26, 2024 | Continuation of Planning Commission hearing |
| July 8, 2024 | Continuation of County Commissioners hearing |

3. ZONING ORDINANCE: The procedure for considering amendments to the zoning map or text are set forth below:

SECTION 8-1-7: AMENDMENTS TO TITLE AND MAP:

A. Application: A proposed amendment to this title and map may be initiated by any property owner, any person residing in the county, any business owner, the county commission, planning commission, board of adjustment or the county staff by filing an application for zoning ordinance and map amendment. **Findings: The applicant is Duchesne County.**

B. Notice of Public Hearings and Public Meetings:

1. The county shall give:
 - a. Notice of the date, time, and place of the first public hearing to consider the adoption or modification of a land use ordinance; and
 - b. Notice of each public meeting on the subject.
2. Each notice of a public hearing under subsection B.1.a. of this section shall be:
 - a. Mailed to each affected entity at least ten (10) calendar days before the public hearing;
 - b. Posted:
 - (1) In at least three (3) public locations within the county; or
 - (2) On the county's official website; and
 - c. Published:
 - (1) In a newspaper of general circulation in the area at least ten (10) calendar days before the public hearing; and
 - (2) On the Utah public notice website at least ten (10) calendar days before the public hearing; or
 - (3) Mailed at least ten (10) days before the public hearing to:
 - (A) Each property owner whose land is directly affected by the land use ordinance change; and
 - (B) Each adjacent property owner within three hundred feet (300') of the boundary of the rezone area.
3. Each notice of a public meeting under subsection B. 1. b. of this section shall be at least twenty-four (24) hours before the meeting and shall be posted:
 - a. In at least three (3) public locations within the county; or
 - b. On the county's official website.
4. a. If the county plans to hold a public hearing in accordance with section 17-27a-502 of the Utah code to adopt a zoning map or map amendment, the county shall send a courtesy notice to each owner of private real property whose property is located entirely or partially within the proposed map at least ten (10) days prior to the scheduled day of the public hearing.
 - b. The notice shall:

- (1) Identify with specificity each owner of record of real property that will be affected by the proposed zoning map or map amendments;
 - (2) State the current zone in which the real property is located;
 - (3) State the proposed new zone for the real property;
 - (4) Provide information regarding or a reference to the proposed regulations, prohibitions, and permitted uses that the property will be subject to if the zoning map or map amendment is adopted;
 - (5) State that the owner of real property may no later than ten (10) days after the day of the first public hearing file a written objection to the inclusion of the owner's property in the proposed zoning map or map amendment;
 - (6) State the address where the property owner should file the protest;
 - (7) Notify the property owner that each written objection filed with the county will be provided to the municipal legislative body; and
 - (8) State the location, date, and time of the public hearing described in section 17-27a-502 of the Utah code.
- c. If a county mails notice to a property owner in accordance with subsection B. 2. c. (3) of this section for a public hearing on a zoning map or map amendment, the notice required in this subsection B. 4. may be included in or part of the notice described in subsection B. 2. c. (3) of this section rather than sent separately.
5. The planning commission shall consider all written objections received during their public hearing process and forward a copy of all such objections to the county commissioners.
 6. The county commission is designated as the land use authority for zoning text or map amendments. The commission shall consider the proposed zoning ordinance text or map amendment and the recommendation of the planning commission pursuant to the procedures established by this section and Utah Code Annotated. The county commission may approve the amendment, revise the proposed amendment and approve the proposed amendment as revised, or reject the proposed amendment. There is no minimum area or diversity of ownership requirement for a zone designation. Neither the size of a zoning district nor the number of landowners within the district may be used as evidence of the illegality of a zoning district or the invalidity of a county decision.

Findings: The public notice requirements have been met by publication of the hearings notice in the Uintah Basin Standard on April 17 and 24, 2024, on the county website, posting in the county administration building and, in the Utah Public Notice website. Planning Commission agendas are emailed to affected entities and interested parties one week in advance of the meeting. It was announced at the May 1, 2024 Planning Commission that the public hearing would be recessed to June 26, 2024.

C. Criteria for Approval: In considering a proposed amendment to the zoning ordinance and map, the applicant shall identify, and the planning staff, planning commission and the county commission shall consider, the following factors:

1. The overall community benefit of the proposed amendment;

Findings: The amendments have been proposed to define flare gas, flare gas power generation and flare gas power generation facilities, specify in which zoning districts flare gas power generation facilities are allowed or prohibited, and specify how their impacts can be mitigated. The County has recently received noise and high frequency vibration complaints from citizens living near such facilities.

A variety of stakeholders, such as the Utah Petroleum Association, Crusoe Energy Systems LLC, Ovintiv, Javelin, Holland & Hart LLP, have reviewed and commented on the proposed ordinance. The ordinance seeks to strike a balance between industry interests and the interests of property owners and residents near these facilities.

2. Consistency with the goals and policies of the general plan;

Findings: The general plan states: “Today, extractive-use industries: livestock, timber, mining, and oil; remain the backbone of the region's economy. The County continues to encourage and support these industries, acknowledging that industry patterns, fluctuating markets, and changing political winds predict periodic good times followed by lean.” Flare gas power generation facilities provide a way to put flare gas to use generating electricity rather than having it wasted by flaring or venting (which is problematic in the Uinta Basin with its winter ozone issues). Such facilities are typically located on or near oil and gas well pads. Consistent with the general plan, the county supports the siting of such facilities in an appropriate manner that will protect public health, safety and welfare.

3. Compatibility with the neighborhood;

Findings: This criterion is not applicable as the proposed amendment would affect all areas of the county; not just a particular neighborhood. However, the mitigation measures in the proposed ordinance are intended to protect neighborhoods from the adverse impacts of noise and vibration that can be generated by flare gas power generation facilities.

4. What changes have occurred in the neighborhood since the zoning ordinance and map or latest amendment was enacted;

Findings: This criterion is not applicable as the proposed amendment would affect all areas of the county; not just one particular neighborhood. The changes that have occurred in some neighborhoods are associated with an influx in oil and gas drilling and production on private lands that has brought several impacts, to include noise, dust, vibration, and truck traffic. These changes in certain neighborhoods have generated the need for this ordinance.

5. Whether a change in the use for the affected properties will unduly affect the uses of adjoining properties; and

Findings: This criterion is not applicable as the proposed amendment would affect all areas of the county; not just a particular neighborhood. The goal of the County in considering this ordinance is to avoid undue negative impacts on properties in the vicinity of flare gas power generation facilities.

6. Consider the interest of the applicant.

Findings: The County is the applicant in this case and has an interest in amending its zoning ordinance to ensure that flare gas power generation facilities are defined, reviewed and permitted in an appropriate manner to protect public health, safety and welfare.

- D. Effect of Amendment: An amendment to the zoning ordinance and map shall not authorize the development of land. After an amendment has been approved by the county commission, no development shall occur until the required development permits and licenses have been issued by the county.

CONCLUSIONS

1. The request complies with the text amendment criteria in Section 8-1-7 of the Zoning Ordinance.

RECOMMENDATION

Recommended Motion:

I move that the Planning Commission recommend to the Duchesne County Commissioners the approval of the amendments to the Duchesne County Zoning Ordinance as set forth in proposed Ordinance #24-407.

Mike Hyde, AICP
Community Development Administrator

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