

**Meeting Minutes of the Local Government Regulation Study Group of the
North Carolina Mining and Energy Commission
March 22, 2013**

1. Preliminary Matters

Mining and Energy Commission Chairman James Womack called the meeting to order at 1:30 pm and welcomed all study group members and others attending. He read the ethics statement and asked Study Group members whether or not they had any conflicts of interest with respect to any action items on the agenda. No conflicts were noted.

The following personnel were in attendance for all or part of the meeting:

Study Group Members

James Womack
Charles Holbrook
Johanna Reese
Richard Whisnant
Mack Paul
Becki Gray
Ginger Warner

DENR Staff Members

W.E. "Toby" Vinson
Walt Haven

Others in Attendance

Refer to the meeting sign in sheets attached to these minutes.

3. Presentation on Planning and Zoning Authority and Regulations – Bob Bridwell and Marshall Downey (Sanford/Lee County Planning and Community Development)

Messrs. Bridwell and Downey presented a memorandum to the Study Group titled "Local Planning Response to Oil and Natural Gas Activity" (see attached memo). They discussed the following matters with the Study Group, in relation to their memorandum:

- a. The Unified Development Ordinance implemented for Lee County;
- b. Potential for legislative action and Mining and Energy Commission action to either impact or preclude local zoning authority;
- c. Land use zoning related to water lines, gas lines, material storage, worker housing, and equipment yards;

- d. Ability of Lee County to already address complex land use operations, and the ease of implementing zoning and local regulations related to oil and gas operations;
- e. Desire to provide services to both local citizens and to industry; and
- f. Desire to have local regulatory involvement with respect to oil and gas facilities and the ability to respond to or anticipate related local impacts.

Mr. Bridwell explained that his chief concern was related to proper land use, as opposed to tax assessment values for specific properties. Additional discussion related to Lee County zoning and local regulations included the following:

- a. Special use permitting for specific properties, such as forestry districts, agricultural areas, and family farms, while also allowing other land uses, such as development of resources (i.e. shale gas) on these same properties;
- b. Ability of existing local ordinances to address multiple land uses;
- c. Local, special use standards being established to address properties with multiple land uses. Thus, a provision for oil and gas operations would be written into a respective special use permit, so that these operations could still occur within designated special use permitted lands;
- d. Addressing the installation of gas lines through specifically zoned areas in a similar manner as public utility lines;
- e. Setbacks for noise, light, and other restrictions being addressed in special use permits; and
- f. The desire for local governments to have authority to regulate setback distances.

The Study Group also addressed land use and property tax values with Messrs. Bridwell and Downey.

- a. Taxing of surface rights and subsurface rights (i.e. mineral rights) separately;
- b. The impact of surface land value based on subsurface rights and value;
- c. The intent to preserve family farms, based on current Lee County zoning ordinances, and the disincentive to maintain these farms if subsurface rights are taxed separately or at higher rates; and
- d. The potential for land-owner abuse of special use or “present value” designation to avoid taxation on the production of subsurface resources;

Further Study Group discussion focused on the ability of municipal water or wastewater treatment centers to handle wastewater from oil and gas operations. Lee County officials explained that water from these operations would need pre-treatment before final treatment at a municipal facility.

4. Discussion of Meeting Minutes

Meeting minutes from the February 15, 2013 meeting were discussed. Requested corrections were made to those minutes by staff. Additionally, the Study Group discussed benefits associated with meeting minutes that would not necessarily capture detailed conversation, but would instead provide discussion content and Study Group decisions.

5. Discussion of Previously Identified Issues and the Report Outline

The Study Group discussed the following items as identified in their report outline:

Infrastructure Placement/Impacts

- a. Potential limitation of local authority resulting from current session law and other possible legislation;
- b. Complexity of industry operations resulting from varied zoning practices from one county to another;
- c. Use of “conditional zoning” for large, complex projects and possible applications for oil or gas sites;
- d. Establishment of minimum zoning standards across the State;
- e. Defining or recommending legal authority to be held by the State, versus authority which should be held by local governments;
- f. Establishment of specific zoning ordinances for oil or gas operations, versus having uniform standards for all industry; and
- g. Establishment of State standards related to noise and light, with local flexibility to alter these requirements through a local government variance authority.

Unfunded Mandates

- a. Possibility of State mandated rule implementation being delegated to counties;
- b. Current examples of state-mandated rule enforcement involving restaurant inspections and other county health department operations.

6. Additional Property Tax Discussion

Group discussion again turned to discussing property taxes and related mineral rights ownership. These issues were addressed.

- a. The local use and authority of ad valorem taxation;
- b. The need for a standard approach for the taxation of severed mineral rights;
- c. Taxing of “proven” subsurface resources, exploited resources, and the potential for legal challenges to applied taxes;
- d. Taxing of oil and gas operational equipment being stored on-site;
- e. Taxing of surface owners with unexploited mineral resources, versus taxing of unexploited resource lands based on present value;

- f. Taxing of mineral rights only when resources are exploited; and
- g. Taxing of joint surface and mineral rights at the time of property sale.

6. Study Group Report Progress

The Study Group decided to address the report outline topics of “Environmental Concerns” and “Property Rights” during a future meeting. Additionally, the Group decided that the final report to the MEC could have both recommendations and dissenting arguments from members.

7. Written Remarks from the Audience

Two sets of written remarks (underlined) were received from the audience as follows:

Today (March 22, 2013) is “World Water Day”, and the writer explained her hopes that everyone would work to keep water safe. The Study Group agreed.

With water wells being a source for most of Lee County residents, how can we feel safe? The Study Group explained EPA documentation related to the lack of potable groundwater being contaminated from hydraulic fracturing operations. Additionally, the Group discussed the use of tracer technology, proper well construction, and baseline testing as strategies to protect water.

8. Concluding Remarks

Ms. Reese and Mr. Whisnant volunteered to assess different zoning policies among various counties. Additionally, the Study Group noted that no additional action was pending regarding Senate Bill 76.

The Study Group adjourned at 3:28 pm.

DEMLR staff contact for these minutes: William E. Vinson, Jr., Chief Engineer, Land Quality Section.