

RESOLUTION 2013-18

A RESOLUTION CONFIRMING AND EXTENDING THE TEMPORARY MORATORIUM IMPOSED IN RESOLUTIONS 2012-16 AND 2012-46 PERTAINING TO BOULDER COUNTY'S PROCESSING OF OIL AND GAS DEVELOPMENT APPLICATIONS IN THE UNINCORPORATED COUNTY

WHEREAS, in Resolution 2012-16, adopted and effective on February 2, 2012, the Board of County Commissioners of Boulder County ("the Board") adopted a temporary moratorium for a period of six months, until August 2, 2012, and directed the County Land Use Department to not accept, process, or approve any Development Plan Review application for oil and gas operations under Article 4-900 of the Land Use Code ("the Temporary Moratorium") during this period; and

WHEREAS, the Board approved the Temporary Moratorium to allow County staff the time to analyze whether the existing County Comprehensive Plan and County regulations pertaining to oil and gas activities were sufficient to protect the public health, safety, and welfare, and whether an amended Comprehensive Plan and amended regulations were necessary to adequately mitigate impacts; and

WHEREAS, the Board fully specified in Resolution 2012-16 the reasons why it undertook this immediate action to impose the Temporary Moratorium, including, without limitation, the accelerated development and evolution of the oil and gas industry nationwide and in the Wattenberg Basin in the eastern portion of Boulder County and neighboring Weld County; the rapidly changing technology surrounding oil and gas drilling, involving primarily the controversial method of hydraulic fracturing ("fracking") of horizontally drilled wells; and the widespread, growing public concern over the land use, environmental, and public health impacts of fracking focusing on deteriorating air and water quality, questionable waste disposal practices, noxious odor and dust generation, intensification of erosion and other land disturbance impacts, proliferation of industrial-style extraction developments in rural and agricultural areas, increased heavy truck traffic with consequent damage to public roads, aggravation of geologic hazards such as earthquakes, safety concerns related to development in floodplains and floodways, and accelerated consumption of natural resources such as water, open space, productive agricultural land, and plant and wildlife habitat; and

WHEREAS, in enacting Resolution 2012-16 the Board scheduled a follow-up public hearing on the Temporary Moratorium, to be duly noticed and held on March 1, 2012, so that the Board could receive public comment on the appropriateness of the Temporary Moratorium, and consider whether to terminate, extend, or otherwise amend the Moratorium; and

WHEREAS, between the time of the Board adopting the Temporary Moratorium and the public hearing on March 1, 2012, County staff collected information and held numerous meetings to proceed with the study and analysis directed by the Board under the Moratorium, and worked diligently to prepare and compile substantial background materials for the Board's review at the public hearing; and

WHEREAS, at the public hearing on March 1, 2012, the Board considered the staff materials and background testimony presented by representatives of the County Land Use Department, County Parks and Open Space Department, County Transportation Department, and County Public Health, as well as the comments of many concerned members of the public, and

spokespersons for environmental groups, the Colorado Attorney General's Office, and the University of Colorado's Environmental Engineering program, among other speakers; and

WHEREAS, following several hours of testimony, the Board indicated the need for additional time to absorb the extensive information provided at the March 1 public hearing before it would be in a position to give direction to County staff regarding the nature and scope of the proposed oil and gas master planning and regulatory effort; and

WHEREAS, at the end of the public hearing on March 1, 2012, the Board, by spoken consensus, confirmed the necessity of keeping the Temporary Moratorium in effect until the Board had the opportunity to reflect and act upon the information from the public hearing; and

WHEREAS, the Board scheduled a continuation of the public hearing, for purposes of deliberating on, and giving direction regarding, the Temporary Moratorium, to be held on April 16, 2012, which was conducted as a public meeting as no additional public testimony was then to be taken; and

WHEREAS, at the April 16 public meeting the Board received updated information from County staff on certain topics raised at the March 1 public hearing, and proceeded to provide direction regarding how County staff should proceed with the study and analysis of the County's planning and regulatory efforts addressing future oil and gas operations in unincorporated Boulder County, and further, in light of that direction, confirmed and extended the duration of the Temporary Moratorium until February 4, 2013, all as set forth in Resolution 2012-46; and

WHEREAS, after the April 16 public meeting on the moratorium extension, County staff developed a first draft of proposed amendments to the Boulder County Comprehensive Plan, denominated as Docket BCCP-12-0001, Boulder County Comprehensive Plan amendments addressing oil and gas operations and development; and

WHEREAS, after public hearings held on May 16, June 20, and July 18, on August 15, 2012 the Planning Commission approved Docket BCCP-12-0001; and

WHEREAS, following the Planning Commission's August 15, 2012 adoption of Docket BCCP-12-0001, and a joint public study session on prospective oil and gas regulations convened between the Planning Commission and the Board on August 22, 2012, County staff developed a first draft of proposed oil and gas review regulatory amendments to the Land Use Code, denominated as Docket DC-12-0003, to implement the Boulder County Planning Commission's direction reflected in Docket BCCP-12-0001; and

WHEREAS, the Planning Commission held duly-noticed public hearings on the proposed regulatory amendments in Docket DC-12-0003 on September 24, October 1, and October 17, 2012; and

WHEREAS, on October 30, 2012, the Planning Commission took official public action to recommend approval of Docket DC-12-0003, and certified the Docket to the Board for ensuing public hearings, consideration, and action; and

WHEREAS, on November 13 and 15, as continued to December 4 and 13, 2012, the Board held duly noticed public hearings on Docket DC-12-0003 as certified to it by the Planning Commission, at which time the Board considered the documents and testimony presented by the

County Land Use Department staff, and by a large number of members of the public, all as reflected on the official record of the public hearing; and

WHEREAS, at the public hearing on December 4, 2012, the Board took public testimony on the amendments proposed in Docket DC-12-0003 and also on the appropriate length of the Temporary Moratorium (then due to expire on February 4, 2013), and determined in light of that testimony to convene another public hearing to make a decision on the length of the Temporary Moratorium considering the complexity and extent of the proposed regulations and the anticipated administrative demands involved in their implementation, which hearing the Board scheduled for January 24, 2013; and

WHEREAS, at the December 4 public hearing the Board further directed staff to analyze whether additional text amendments would be necessary to implement transportation fees related to oil and gas development, and also estimate the permit application fees necessary to administer the Proposed Amendments, and recommend appropriate transportation and application processing fee amounts to the Board for consideration at the January 24, 2013 public hearing; and

WHEREAS, at its continued public hearing on the text of the proposed amendments on December 13, 2012, the Board found that the regulations in Docket DC-12-0003 met the criteria for text amendments contained in Article 16 of the Land Use Code, in that the existing text was in need of amendment; the Proposed Amendments were not contrary to the intent and purpose of the Land Use Code; and the Proposed Amendments were in accordance with the Boulder County Comprehensive Plan, all as set forth in and supported by the record of the public hearing, and the Board thus concluded that the proposed amendments in Docket DC-12-0003 should be approved for incorporation into the Land Use Code, to be effective on the Temporary Moratorium termination date specified in Resolution 2012-46, as that termination date might be extended at a public hearing on January 24, 2013; and

WHEREAS, the Board's decisions and direction to staff at the December 13, 2012 continued public hearing were memorialized in Resolution 2012-142, duly adopted and signed December 20, 2012; and

WHEREAS, on January 24, 2013, the Board held a public hearing to review results of final Oil & Gas Roadway Impact Study prepared by the County's retained consultant on road impacts and associated fees, and considered the setting of appropriate transportation fees for oil and gas activities in the unincorporated county, and also considered the adequacy of the length of the Temporary Moratorium in terms of finalizing the regulations approved in Docket DC-12-0003 and developing a plan to administer those regulations, at which hearing numerous members of the public testified; and

WHEREAS, at the January 24, 2013 hearing, staff presented an Implementation Work Plan as further described in the Staff Recommendation of the same date, which stated that in order for the County staff to be equipped to start processing oil and gas development applications under the adopted regulations many tasks needed still to be accomplished, including, without limitation, development of a Request for Qualifications and hiring of outside expertise; staff training; coordination with involved departments and agencies such as affected fire protection districts; preparation of application materials, handouts, and information for the public; development and adoption of planning and permit fees, as well as inspection schedules; updating internal databases and tracking systems; coordination with industry on submission of

applications; and coordination with the Colorado Oil and Gas Conservation Commission ("COGCC") to harmonize new state rules with new county regulations; and

WHEREAS, the County Staff thus recommended to the Board at the January 24, 2013 public hearing that the adopted regulations not be effective until June 10, 2013, and the Temporary Moratorium be extended until that date, to allow the staff sufficient time to prepare to accept applications under the new regulations and to ensure that applications would be processed as effectively and efficiently as possible; and

WHEREAS, based on the information and testimony presented at the January 24, 2013 public hearing, the Board determined that it was reasonable and appropriate to extend the Temporary Moratorium for the additional limited time requested by the County Staff, and direct the staff to pursue a program including appropriate and defensible fees related to the impacts of oil and gas development on the County road system for further consideration and possible adoption by the Board, as further set forth in this Resolution, below.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Boulder County, based upon the January 24, 2013 public hearing to review results of the County consultant's final Oil & Gas Roadway Impact Study, as follows:

1. Staff is directed to use the findings and recommendations in the Study to propose the maximum legally defensible impact fee or an alternative equally effective cost recovery mechanism, to be considered by the Board after a public hearing in two to three months, thus prior to the end of the Temporary Moratorium.
2. Staff is also directed to recommend to the Board at that public hearing, the time and date of which is yet to be determined, any necessary amendments to the transportation sections of the oil and gas regulations approved in Docket DC-12-0003, to conform to the proposed impact fee or other cost recovery mechanism.

A motion to provide direction as stated above to the County staff was made at the January 24, 2013 public hearing by Commissioner Jones, seconded by Commissioner Gardner, and passed by a 3-0 vote of the Board.

BE IT FURTHER RESOLVED by the Board of County Commissioners of Boulder County, based upon the public hearing to consider the adequacy of the length of the Temporary Moratorium, in terms of finalizing regulations under Docket DC-12-0003 and developing a plan to administer those new regulations, to include discussion of setting appropriate permit review and related fees necessary to administer the regulations, as follows:

1. The Board continues to urge staff to consider the full range of tools and responses that may be available to the County to address legitimate concerns over the impacts of oil and gas operations, particularly in areas where the County may be legally preempted from exercising its regulatory authority, or where other governmental entities are in a significantly better position to exercise their regulatory authority.
2. In light of the extensive work that the Board envisions staff will need to undertake to implement the recently enacted Land Use Code amendments in Docket DC-12-0003, integrate the new county regulations with the new COGCC regulations on setbacks and groundwater monitoring, and implement the findings of the Roadway Impact Study via

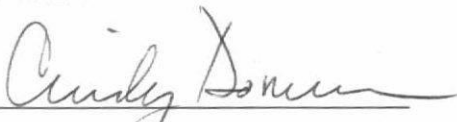
an impact fee or other equally effective cost recovery mechanism, the Board concludes that the Temporary Moratorium's length of one year, initially imposed in Resolution 2012-16 and later extended in Resolution 2012-46, is insufficient. The Board determines, based on present information, that extending the moratorium for approximately four additional months, specifically to June 10, 2013, is reasonable and necessary.


3. In approving this extension of the Temporary Moratorium to June 10, 2013, the Board urges staff to move expeditiously, so that the Board can end the Temporary Moratorium sooner if appropriate plans and regulations are in place. Conversely, the Board reserves the right to extend the Temporary Moratorium if forthcoming circumstances indicate that additional time is reasonably necessary to study, process, and enact appropriate plans and regulations. Any change in the duration or other terms of the Temporary Moratorium shall occur at a duly noticed public hearing of the Board.

A motion to confirm the Temporary Moratorium and extend its length by approximately four months, to June 10, 2013, was made at the January 24, 2013 public hearing by Commissioner Gardner, seconded by Commissioner Jones, and passed by a 3-0 vote of the Board.

ADOPTED on this 5th day of February, 2013, nunc pro tunc the 24th day of January, 2013.

**BOARD OF COUNTY
COMMISSIONERS OF BOULDER
COUNTY:**


Cindy Domenico, Chair


Deb Gardner, Vice Chair


Elise Jones, Commissioner



ATTEST:


Clerk to the Board