

RESOLUTION 2012-46

A RESOLUTION CONFIRMING AND EXTENDING RESOLUTION 2012-16 IMPOSING A TEMPORARY MORATORIUM ON BOULDER COUNTY'S PROCESSING OF APPLICATIONS FOR PROPOSED OIL AND GAS DEVELOPMENT IN ALL OF THE UNINCORPORATED COUNTY PENDING CONSIDERATION OF AMENDMENTS TO THE COUNTY COMPREHENSIVE PLAN AND REGULATIONS

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 (6) months, until August 2, 2012, and directed the County Land Use Department during this period 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"); 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 are sufficient to protect the public health, safety, and welfare, and whether an amended Comprehensive Plan and amended regulations are 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, at 4:00 p.m. ("the Public Hearing"), 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, 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 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, and 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 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 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, at 4:00 p.m., which was denominated 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 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, all as set forth in this Resolution, below.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Boulder County, based upon the Public Hearing on the Temporary Moratorium, as follows:

1. The Public Hearing has amply demonstrated that serious and legitimate concerns exist regarding the land use, environmental, and public health impacts of future oil and gas operations in the unincorporated County. Based on the Public Hearing, the Board believes that the responsible state and federal agencies may not be adequately addressing these impacts. Moreover, the County's existing planning and regulatory efforts in this area appear outdated and may not be sufficiently protecting the public health, safety, and welfare within the scope of the County's legal authority.
2. In the land use planning context, County staff, with the assistance of outside consultants (who may be retained as deemed appropriate and approved by the Board), is directed to process: (a) appropriate amendments to the Boulder County Comprehensive Plan, subject to the authorization of the County Planning Commission which County staff shall request; *and* (b) appropriate amendments to the Boulder County Land Use Code, consistent with the County's legal authority, including but not limited to considering the amendments suggested in the County Land Use Director's March 1, 2012 background paper (pp. 14-15) prepared for the Public Hearing, as well as possible transportation infrastructure/road impact fees, setbacks from open water sources, zoning to allow oil and gas operations in areas that will have the least impact, and lighting and noise controls.

The Board also authorizes staff to schedule a joint public meeting or hearing between the Board and the Planning Commission, if staff determines that such a proceeding will facilitate this land use planning and regulatory amendment process.

3. The Board emphasizes the importance of addressing the environmental impacts of oil and gas operations on air, water, and soil quality, on odor production, and from waste disposal, as well as in the context of promoting “clean” or “green” energy. The Board directs staff to consider whether such impacts and concerns can, and should, be addressed through the Land Use Code, or through possible Public Health regulations, or through alternative County efforts such as coordinating with other governmental agencies’ regulatory efforts, entering into memoranda of understanding or intergovernmental agreements with other agencies, promoting state or federal legislation, performing public education or outreach, and/or partnering with other involved organizations in the public and private sectors.
4. The Board urges 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.
5. The Board reserves the ability, based on forthcoming information, to add planning or regulatory areas related to oil and gas development in the unincorporated County that are not specified in this Resolution, should the Board or the Planning Commission determine that other issues are important to encompass within this effort.
6. In light of the extensive work that the Board envisions staff will need to undertake to implement this Resolution, the Board concludes that the Temporary Moratorium’s length of six months, initially imposed in Resolution 2012-16, is insufficient. The Board determines, based on present information, that another six months will be necessary to appropriately amend the County’s Comprehensive Plan and Land Use Code in light of the Board’s direction herein provided. *Therefore, the Board approves extending the duration of the Temporary Moratorium as stated in Resolution 2012-12, to and including February 4, 2013.*
7. In approving this extension of the Temporary Moratorium through February 4, 2013, the Board urges staff to move expeditiously on this project, 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 provide direction to the County staff, as stated above, and to confirm the Temporary Moratorium and extend its duration through February 4, 2013, was made at the April 16, 2012 public meeting (convened to act on the information presented at the March 1, 2012 Public Hearing), by Commissioner Toor, seconded by Commissioner Gardner, and passed by a 3-0 vote of the Board.

ADOPTED on this 1st day of May, 2012, nunc pro tunc the 16th day of April, 2012.

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



Cindy Domenico

Cindy Domenico, Chair

Will Toor

Will Toor, Vice Chair

Deb Gardner

Deb Gardner, Commissioner

ATTEST:

Cecilia J. Lacey

Clerk to the Board