

RESOLUTION 2020-055

Second Extension of Moratorium on Processing Oil and Gas Development Applications

Recitals

A. On June 28, 2019, the Boulder County Board of County Commissioners (“Board”) adopted Resolution 2019-59, establishing a temporary moratorium on the processing of applications for Special Review of proposed oil and gas development under existing Article 12 (the “Moratorium”). The Moratorium originally extended until March 20, 2020.

B. On March 2, 2020, the Board adopted Resolution 2020-20, extending the Moratorium to July 31, 2020 to allow staff time to complete the revisions to the Boulder County Land Use Code Article 12 – Special Review for Oil and Gas Operations, including all necessary public hearings before the Board and the Boulder County Planning Commission.

C. On March 11, 2020, the Governor declared a disaster emergency in Colorado due to the presence of COVID-19. On March 20, 2020, the Board vacated all scheduled public hearings planned for completion of the Land Use Code amendments prior to July 31, 2020. This was followed by the Governor and Colorado Department of Public Health and Environment issuing the first Stay at Home Order on March 26, 2020, which was then extended with modifications that maintained the recommendation to limit public gatherings through June 30, ensuring that no public meetings could be held at the county during that time.

D. In addition to cancelling public hearings and meetings, Boulder County staff in all departments were required to spend significant time on the county-wide COVID-19 response. Therefore, no staff resources were available to continue work on the Land Use Code amendments during the months of March, April, May, and portions of June.

E. Boulder County has now been able to resume public hearings by use of virtual platforms and staff has been able to bring resources back to bear on the code update. Consequently, staff created a new schedule for completion of the Land Use amendments.

F. Staff presented the revised schedule to the Board at a duly noticed public hearing on July 14, 2020. The new schedule accommodates the public’s need for advance notice of upcoming public hearings and also avoids dates set aside by the Colorado Oil and Gas Conservation Commission for its “Mission Change” rulemaking. County staff involved in the Land Use Code amendments are also heavily involved in the state-level rulemaking, as are many members of the public and other parties interested in the Land Use Code hearings.

G. To make such accommodations and allow time for adequate public review and participation, as well as time for deliberative bodies to receive all necessary input and engage in robust discussion, the proposed schedule begins with public hearings in August and culminates in December 2020.

H. The Board reasonably anticipates that applications for new oil and gas development under Article 12 may be filed between July 31, 2020, and the Board's anticipated adoption of the Land Use Code amendments;

I. The Board believes it has not only the right but the responsibility to exercise all authority granted to it by S.B. 19-181 and LUCEA to best protect and promote the health, safety, and general welfare of the present and future inhabitants of Boulder County and to best protect the Boulder County environment and wildlife resources.

J. It is inconsistent with the Board's responsibilities to protect the local environment and population of the County to accept, process and review applications for new oil and gas development while it is developing amendments to applicable portions of the Code based on recent changes in state law.

K. The U.S. Supreme Court and the Colorado Supreme Court recognize that in the field of land use regulation, temporary moratoria of reasonable duration are often employed to preserve the status quo in a particular area while developing a long-term plan for development; indeed, in countering the incentive of property owners to develop their property quickly to avoid the consequences of an impending land use plan for the jurisdiction, moratoria are a crucial tool for local governments.

L. Under express and implied authority granted by the Colorado Revised Statutes and multiple Colorado and federal appellate decisions upholding temporary moratoria on land use applications while amendments are considered, the Board has the legal authority to reasonably extend the Moratorium in these circumstances.

M. At the public hearing on July 14, 2020, the Board considered staff's presentation of the revised schedule, along with comments submitted in writing by the public and other evidence regarding the Moratorium.

NOW, THEREFORE, the Board resolves:

1. The Boulder County Community Planning & Permitting Director must not accept or process any submissions or hold any conferences under Article 12 of the Land Use Code, including: (a) accepting operator registration submissions; (b) conducting pre-application conferences; and (c) accepting or processing applications for Special Review for Oil and Gas Operations. The Director may process and approve requests for maintenance and repair of existing oil and gas operation under Article 12-900.E.

2. Further, in anticipation of new regulations addressing seismic testing for oil and gas under the authority of S.B. 19-181, no seismic testing operations may be conducted in Boulder County during the duration of the temporary moratorium extended by this Resolution.

3. The Moratorium shall remain in effect until December 31, 2020, unless earlier terminated or extended.

4. The Board directs County staff to continue to review whether existing County regulations pertaining to oil and gas activities are sufficient to protect the public health, safety, and welfare, the environment, and wildlife, or whether amended regulations will be necessary to implement S.B. 19-181 and to adequately mitigate impacts.

A motion to this effect was made at the July 14, 2020, public hearing by Commissioner Elise Jones, seconded by Commissioner Matt Jones, and passed by a 3-0 vote of the Board.

ADOPTED on this 14th day of July, 2020, nunc pro tunc July 14, 2020.

BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY:



Deb Gardner, Chair



Matt Jones, Vice Chair



Elise Jones, Commissioner

ATTEST:



Clerk to the Board