

TOWN OF ERIE
BOARD OF TRUSTEES REGULAR MEETING 1
Tuesday, August 25, 2015
6:30 p.m.
Board Room, Erie Town Hall, 645 Holbrook, Erie, CO 80516

I. CALL MEETING TO ORDER

Mayor Harris called the August 25, 2015 Regular Meeting of the Board of Trustees to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE AND ROLL CALL

Roll Call:	Trustee Carroll	Present
	Trustee Schutt	Absent/Excused
	Mayor Pro Tem Gruber	Present
	Trustee Moore	Present
	Trustee Charles	Present
	Trustee Woog	Present
	Mayor Harris	Present

III. APPROVAL OF THE AGENDA

Action: Trustee Carroll moved to approve the August 25, 2015 Town of Erie Board of Trustees Meeting Agenda with the amendment of changing the order of X. Oil and Gas items with item b. Resolution 15-98 being heard before item a. Ordinance 21-2015; the motion was seconded by Trustee Moore. The motion carried with all present voting in favor thereof.

IV. CONSENT AGENDA

- a. Approval of the August 11, 2015 Meeting Minutes
- b. Approve Letter of Support for the Northern Integrated Supply Project
- c. Resolution 15-111; A Resolution Approving a Memorandum of Understanding Between the Town of Erie and the St. Vrain Valley School District Re-1J for a School Resource Officer
- d. Resolution 15-112; A Resolution Approving an Agreement with Urban Drainage and Flood Control Regarding Final Design, Right of Way Acquisition and Construction of Drainage and Flood Control Improvements for Coal Creek from County Line Road to Kenosha Road

Action: Trustee Charles moved to approve the August 25, 2015 Consent Agenda; the motion was seconded by Mayor Pro Tem Gruber. The motion carried with the following Roll Call vote:

Trustee Charles	Yes
Trustee Woog	Yes
Trustee Carroll	Yes
Trustee Moore	Yes
Mayor Pro Tem Gruber	Yes
Mayor Harris	Yes

V. PUBLIC COMMENT

Gerry Olow, 2255 Meadow View Parkway, Erie, CO., expressed concerns to the Board regarding Fair Housing issues.

VI. LAND DEVELOPMENT RESOLUTIONS AND ORDINANCES

PUBLIC HEARING

- a. **Ordinance 20-2015; An Ordinance of the Town of Erie, Colorado, Approving Canyon Creek Planned Development Amendment No. 9; Making Findings Supporting Canyon Creek Planned Development Amend No. 9; and Setting Forth Details in Relation Thereto**

The proposal for the Canyon Creek Filing No. 10 portion of the Canyon Creek PD is to designate three Principal Land Uses: 14.55 acres of CC-Community Commercial; 19.74 acres of HR-High Density Residential; and, 12.32 acres of MR-Medium Density Residential. The Canyon Creek PD Amendment No. 9 CC-Community Commercial Land Use, HR-High Density Residential Land Use, and MR-Medium Density Residential Land Use will follow the Unified Development Code Table of Permitted Uses in CC-Community Commercial, HR-High Density Residential, and MR-Medium Density Residential zone districts. PD Amendment No. 9 will allow Single Family Detached – Patio homes as a use by right, with the same architectural design guidelines as were adopted in Canyon Creek Filing No. 9 for the Boulder Creek Neighborhoods patio home development, within the HR-High Density Residential Land Use and MR-Medium Density Residential Land Use. Additionally, within 200 feet of the existing single family homes in Canyon Creek Filing 5, the applicant has proposed that the housing be restricted to alley loaded single family patio homes or duplexes. This will ensure an appropriate housing transition from the existing single family homes to the new development in Filing 10.

- b. **Resolution 15-101; A Resolution by the Board of Trustees of the Town of Erie, Colorado Approving the 4 Corners Pre-Development Agreement**

The Resolution provided for the Board of Trustees authorizes Town officials to accept, and to sign the 4 Corners Pre-Development Agreement. The Pre-Development Agreement addresses the current development proposal for residential and commercial development of the property, as illustrated in the Canyon Creek PD Amendment No. 9 application and the Canyon Creek Filing No. 10 Sketch Plan application that is being reviewed concurrently with the Pre-Development Agreement.

Action: Trustee Moore moved to continue Ordinance 20-2015 and Resolution 15-101 to the September 8, 2015 regular meeting; the motion was seconded by Trustee Charles. The motion carried with all present voting in favor thereof.

BRIDGEWATER

- c. **Ordinance No. 22-2015; An Ordinance Of The Town Of Erie, Colorado, Regarding The Bridgewater PUD Overlay Map – Amendment No. 3, Adopting Certain Findings Of Fact And Conclusions Favorable To The PUD Overlay Rezoning.**

The Colliers Hill property was annexed into the Town of Erie in October 2007 as Bridgewater. The property was granted initial zoning concurrent with the annexation. Included in the initial zoning was the approval of a PUD Overlay Map that modified certain development standards.

LAND DEVELOPMENT RESOLUTIONS AND ORDINANCES (continued)

The property owner is beginning the process of transferring a 10 acre site to St. Vrain Valley School District for a future elementary school. Concurrent with the minor subdivision to create the 10 acre tract, the applicant has proposed an amendment to the PUD Overlay Map as permitted by Title 10 of the Town of Erie Municipal Code. The PUD Overlay District is generally used when there is special public interest that doesn't coincide with the traditional zoning in a geographic area. The PUD Overlay District may only be used when an application is not able to meet the requirements of a standard zone classification. The PUD is a mapped area with restrictions in addition to, or less than, those in the underlying traditional zone. Rather than attempt to create a new zoning category, an overlay zone is superimposed over the traditional zone and establishes additional regulations, or reduces or extends the existing uses. The underlying zoning identifies permitted land uses; the overlay zone may provide design restrictions, additional setbacks, or other exceptions to the base district regulations. The applicant is proposing to move Tract 1, the 10 acre elementary school site shown in the Bridgewater PUD Overlay Map – Amendment No. 2, further west on Colliers Parkway into the Village 11 single-family detached residential planning area. The southern portion of Village 11 then shifts east to replace the elementary school planning area. The revised Village 11 allows for both single-family detached and attached residential uses. An amendment to the Bridgewater Master Subdivision has been submitted concurrent with this PUD Amendment to create the elementary school tract in order to convey it to St. Vrain Valley School District. This PUD Overlay Map amendment causes the PUD to be consistent with the subdivision amendment.

Action: Mayor Harris opened the Public Hearing for Ordinance 22-2015 at 6:36 p.m. Prior to taking evidence or testimony the Mayor received affirmation that the evidence and or testimony from those wishing to give it was true.

Testimony on behalf of the Applicant was presented by:

Jerry Richmond, Executive Vice President of Raintree Investment Corporation
7200 S. Alton Way
Centennial, CO 80112

Action: Hearing no one else wishing to make Public Comment, Mayor Harris closed the public hearing for Ordinance 22-2015 at 6:46 p.m. This was the first reading of Ordinance 22-2015 and it will be brought back for Board action at the September 8, 2015 Regular Meeting of the Town of Erie Board of Trustees.

d. Resolution 15-108; A Resolution of the Town of Erie Approving the Subdivision Plat for Bridgewater Master Subdivision Amendment No. 1

The Resolution, provided for consideration by the Board of Trustees, accepts dedications as shown on the Bridgewater Master Subdivision First Amendment Plat. The property owner is beginning the process of transferring a 10 acre site to St. Vrain Valley School District for a future elementary school. Concurrent with the PUD Overlay Map amendment, the applicant has proposed an amendment to the Bridgewater Master Subdivision Plat to relocate the 10 acre elementary school site. The minor subdivision divides Tract 9 of the master subdivision to create two tracts: a 10 acre tract for the future elementary school (Tract 9A); and a 57.96 acre tract for future development (Tract 9B). The Community Development Director and Public Works Director have conditionally approved the Bridgewater Master Subdivision First Amendment Plat, contingent upon the acceptance of the dedications by the Board of Trustees.

Action: Mayor Pro Tem Gruber moved to continued Resolution 15-108 to the September 8, 2015 regular meeting. The motion was seconded by Trustee Charles. The motion carried with all present voting in favor thereof.

VII. RESOLUTIONS

PUBLIC HEARING

- a. **Resolution 15-109; A Resolution of the Board of Trustees Of The Town of Erie, Colorado Approving the Service Plan for the 232 Metropolitan District; And, Authorizing The Town Of Erie, Colorado, To Enter Into An Intergovernmental Agreement Between The Town Of Erie And The 232 Metropolitan District, Ensuring Compliance With The Approved Service Plan And The Erie Municipal Code; Authorizing And Directing The Appropriate Town Officers To Sign Said Intergovernmental Agreement; And Setting Forth Details In Relation Thereto.**

The Town has received the Service Plan (Plan) for the Sierra Vista Metropolitan District (District). The District encompasses approximately 126 acres of land located at the southwest corner of Interstate 25 and Erie Parkway. State Statute requires the Board of Trustees to approve the Plan by resolution of any special district organized within the municipal limits of the Town. This is a required step for the District to participate in the November 2015 Title 32 district election. The Board of Trustees adopted a special district ordinance and model service plan in June 2007. The special district ordinance was amended in 2013. The Plan has been submitted in accordance with the ordinance and amendment thereto. The Plan was submitted using the model service plan as a guide and the Districts have complied with the amended Town ordinance. The District will provide public improvements and services to a proposed development (non-residential), currently known as Erie Exchange. The Plan identifies improvements and services expected to be provided by the District, the Plan also describes how activities will be financed. The Plan identifies powers of the Districts as well as describes the limitations. In addition, disclosure of the District is included that advises potential property owners to investigate financing, servicing of indebtedness, etc. Town staff and Kim Crawford, Special Counsel to the Town has reviewed the Plan and have found it to be in general compliance with the model service plan and the Town ordinance as amended. Approval of Plan does not constitute the Town's approval of any future development plan or zoning. The only significant deviation from the Town's Model Service Plan that the applicant is requesting is to Section VIII – Dissolution. The Model Service Plan requires dissolution of the District in the event that debt is not issued within three years. The applicant requests that this term be extended to six years in order to match their financial plan as the financial plan anticipates issuance of debt no sooner than 2021.

Action: Mayor Harris opened the Public Hearing for Resolution 15-109 at 6:48 p.m. Prior to taking evidence or testimony the Mayor received affirmation that the evidence and or testimony from those wishing to give it was true.

Testimony on behalf of the Applicant was presented by:

Joe Knopinski
Managing Principal, Development Planning &
Finance Group
1615 California Street, Suite 411
Denver, CO 80202

Erin Clark
McGeady Sisneros, P.C.
450 E. 17th Avenue, Suite 400
Denver, Colorado 80203-1254

Action: Hearing no one else wishing to make Public Comment, Mayor Harris closed the public hearing for Resolution 15-109 at 7:21 p.m. Trustee Charles moved to approve Resolution 15-109; the motion was seconded by Mayor Pro Tem Gruber. The motion carried with all present voting in favor thereof.

VIII. OIL AND GAS

- b. Resolution 15-98; A Resolution Authorizing the Town Of Erie, Colorado, to Enter Into an Operator Agreement With Encana Oil & Gas (USA) Inc.; Authorizing and Directing the Appropriate Town Officers to Sign Said Operator Agreement; and, Setting Forth Details in Relation Thereto

This item was presented by special counsel John Sullivan and Barbara Green of Sullivan Green Seavy LLC.

Action: Following Board discussion Mayor Pro Tem Gruber moved to approve Resolution 15-98; the motion was seconded by Trustee Carroll. The motion carried with all present voting in favor thereof.

PUBLIC HEARINGS

- a. Ordinance No. 21-2015; An Ordinance Of The Town Of Erie, Colorado, Repealing The June 2015 Title 10 Unified Development Code; Adopting By Reference The August 2015 Title 10 Unified Development Code; Providing For The Effective Date Of This Ordinance; Setting Forth Details in Relation Thereto; And, Declaring an Emergency Therefore.

Per Board of Trustees direction, the Town's Special Counsel is proposing an amendment to Title 10 and has provided the proposed amendment attached to Ordinance 21-2015 as Exhibit A. Barbara Green of Sullivan Green Seavy will present the proposed Code amendments to the Board of Trustees and be available to answer questions. The application to amend Title 10 of the Municipal Code of the Town of Erie, Colorado may be approved if the Board of Trustees finds that the approval criteria of Chapter 7.21.C.9 have been met: The proposed amendment will promote the public health, safety, and general welfare; The proposed amendment is consistent with the Town's Comprehensive Master Plan and the stated purposes of the Code; and The proposed amendment is necessary and desirable because of changing conditions, new planning concepts, or other social or economic conditions. The required public notice for the Title 10 Amendment is in compliance with Section 7.2.F of the Code and C.R.S. 31-16-203 (which requires two published notices when a Title of a Code is adopted by reference); with published notice in the Colorado Hometown Weekly on August 5, 2015 and August 12, 2015. Mailed and posted notice is not required for amendments to Title 10

Action: Mayor Harris opened the Public Hearing for Ordinance 21-2015 at 8:29 p.m. Prior to taking evidence or testimony the Mayor received affirmation that the evidence and or testimony from those wishing to give it was true.

Testimony on this Ordinance was presented by:

Deandrea Arndt, 828 Lehigh Circle, Erie, CO.

Kim Cook, Anadarko Petroleum, 1099 18th Street, Denver, CO.

Joe Evers, Colorado Oil and Gas Association (submitted letter for the record see exhibit A)

Kyle Roth, 2829 Prince, Erie, CO.

Liz Fisher, 635 Moffat St., Erie, CO.

Ray Schlott, 255 Meadow View Parkway, Erie, CO.

Jim Hoffmeyer, 1168 Fletcher Drive, Erie, CO.

Action: Mayor Harris closed the public meeting for Ordinance 21-2015 at 9:20 p.m. Trustee Moore moved to table this Ordinance to the September 8, 2015 regular meeting to be considered on a second reading in lieu of an Emergency. The motion was seconded by Trustee Woog; the motion carried with all present voting in favor thereof.

IX. BOARD OF TRUSTEES REPORTS & APPOINTMENTS

Action: Trustee Carroll moved to appoint Erica Beatman to the Tree Board; the motion was seconded by Trustee Charles. The motion carried with all present voting in favor thereof.

Trustee Woog reported on a recent Erie Economic Development Council meeting he attended.

Trustee Moore noted that there was a meeting on September 3, 2015 regarding the new school being built by the BVSD.

Mayor Pro Tem Gruber asked former Mayor Andrew Moore to speak to them regarding BVSD possibly selling fiber outside of the School District.

X. EXECUTIVE SESSION

- a. EXECUTIVE SESSION specifically, for discussion of a personnel matter under C.R.S. Section 24-6-402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; specifically, to discuss the annual performance evaluation of Town Administrator A.J. Krieger.

Action: Trustee Charles moved to go into Executive Session specifically, for discussion of a personnel matter under C.R.S. Section 24-6-402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; specifically, to discuss the annual performance evaluation of Town Administrator A.J. Krieger. The motion was seconded by Mayor Pro Tem Gruber. The motion carried with all present voting in favor thereof.

It's Tuesday August 25, 2015, and the time is 9:28 p.m. For the record, I am the presiding officer, Mayor Tina Harris. As required by the Open Meetings Law, this executive session is being electronically recorded. Also present at this executive session are the following persons:

Mayor Pro Tem Mark Gruber; Trustees Janice Moore, Jennifer Carroll, Dan Woog, Scott Charles; and Town Administrator A.J. Krieger

This is an EXECUTIVE SESSION specifically, for discussion of a personnel matter under C.R.S. Section 24-6-402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; specifically, to discuss the annual performance evaluation of Town Administrator A.J. Krieger.

Upon completion of the Executive Session, Mayor Harris announced that the time is now 11:50 p.m., and the executive session has been concluded. The participants in the executive session were:

EXECUTIVE SESSION (continued)

Mayor Pro Tem Mark Gruber; Trustees Janice Moore, Jennifer Carroll, Dan Woog, Scott Charles; and Town Administrator A.J. Krieger;

For the record, if any person who participated in the executive session believes that any substantial discussion of any matters not included in the motion to go into the executive session occurred during the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, I would ask that you state your concerns for the record. Seeing none, the next agenda item is adjournment.

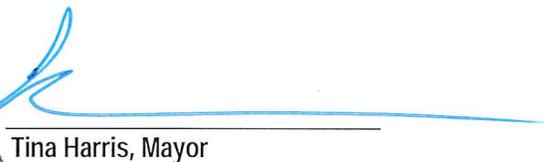
XI. ADJOURNMENT

Action: Trustee Woog moved to adjourn the August 25, 2015 Regular Meeting of the Town of Erie Board of Trustees; the motion was seconded by Mayor Pro Tem Gruber. The motion carried with all present voting in favor thereof.

Action: Mayor Harris adjourned the August 25, 2015 Regular Meeting of the Town of Erie Board of Trustees at 11:51 p.m.

Respectfully Submitted,


Nancy J. Parker, CMC, Town Clerk


Tina Harris, Mayor





COLORADO
OIL & GAS
ASSOCIATION

1800 GLENARM PL.

SUITE 1100

DENVER, CO 80202

Phone 303.861.0362

Fax 303.861.0373

WWW.COGA.ORG

August 25, 2015

Town of Erie Board of Trustees
Attn: Mr. Ostholthoff, Community Development Director
645 Holbrook St.
Erie, CO 80516

Re: Town of Erie – Board of Trustees: Consideration of Ordinance 21-2015

Dear Mr. Ostholthoff and Town Board of Trustees,

This letter is a follow-up to the August 19, 2015 letter that was sent by the Colorado Oil and Gas Association (“COGA”) to the Town of Erie Planning Commission regarding its consideration of Resolution P15-25 at its regularly scheduled August 19, 2015 meeting. Please see the attached August 19, 2015 letter for your convenience.

We are writing you to again express our disappointment with the with the Town of Erie’s (“Erie”) unwillingness to engage stakeholders in open and collaborative discussions in regards to the Town of Erie’s hasty consideration of Ordinance 21-2015. Despite attempts in June 2015 by COGA staff to offer assistance or collaboration to Erie as updates to its Municipal Code were considered, Erie has never sought input from COGA, or its over 300 members. This is contrary to comments from Barbara Green, Special Counsel to Erie, during the August 19, 2015 Planning Commission meeting, in which she alluded that industry had been consulted and was in support of the proposed increased regulations. This is not the case, despite her additional statements to multiple operators in Memorandum of Understanding (“MOU”) negotiations that operators would be included in any oil and gas regulation updates undertaken by Erie. COGA and its members do not support Ordinance 21-2015 as it is currently drafted.

As stated in COGA’s August 19, 2015 letter to the Planning Commission, the requirements outlined in the proposed amendments to Erie’s Municipal Code are burdensome, overly restrictive, and in many instances supersede, seek to duplicate, or go beyond existing state laws, rules, and regulations. Certain provisions of Ordinance 21-2015 intrude into technical areas of regulation and materially impede the state’s ability to regulate oil and gas operations. The regulation of which is clearly under the purview of the state, preempting Erie’s ability to regulate areas of oil and gas development in a manner which creates an operational conflict between existing state laws, rules, and regulations.

The lack of collaborative stakeholder input regarding the amendments to Erie's oil and gas regulations has resulted in a "Type A permit process" that no operator will likely be able to comply with in a permitting situation and will result in all operators pursuing the "Type B permit" process, which is inefficient and redundant. This benefits the people of Erie in no way. If Erie would have brought operators to the table in this process, reasonable and technically feasible best management practices ("BMPs") could have been cooperatively developed between Erie and operators.

Instead of taking the time to gather stakeholder input, Erie has declared an emergency, without due warrant, concerning Erie's current Unified Development Code ("UDC") for oil and gas wells and production facilities and the current oil and gas regulations as contained in the UDC, which Erie claims are "old and inadequate."¹ Ordinance No. 21-2015 seeks to repeal the June 2015 Title 10 UDC. The Type B Permit, which the Planning Commission recognized as being the option that nearly all operators would choose, represents little departure from the current processes contained in Erie's Municipal Code.

Again, COGA renews its request for Erie to delay the approval of Ordinance 21-2015, in order to allow stakeholders to work with the town regarding the potential impacts that would result from the adoption of Ordinance 21-2015. COGA respectfully requests the opportunity to understand Erie's concerns and to work towards a collaborative solution together. Should you have any questions, or would like to discuss the contents of this letter further, please do not hesitate to contact the undersigned at your convenience.

Sincerely,



Anne Carto
Community Outreach Coordinator



Sarah Landry
Chief Operating Officer

cc: A.J. Krieger
Joe Evers
Nancy Parker

¹ See Section 7, Ordinance 21-2015, available at: <http://www.erieco.gov/DocumentCenter/View/7078>



1800 GLENARM PL.

SUITE 1100

DENVER, CO 80202

Phone 303.861.0362

Fax 303.861.0373

WWW.COGA.ORG

August 19, 2015

Town of Erie Planning Commission
Attn: Mr. Ostholthoff, Community Development Director
645 Holbrook St.
Erie, CO 80516

Re: Consideration of Resolution P15-25 at August 19, 2015 Planning Commission
Regular Meeting and Request for Continuance of Approval to Future Planning
Commission Meeting

Dear Mr. Ostholthoff and Planning Commission Members,

The Colorado Oil and Gas Association (“COGA”) is a nationally recognized, non-partisan trade association. COGA’s mission is to foster and promote the beneficial, efficient, responsible and environmentally sound development, production and use of Colorado’s oil and natural gas resources. COGA emphasizes collaborating with elected officials and stakeholders, while maintain a science-based, pragmatic dialogue regarding the oil and gas industry’s operations and contributions in Colorado.

This letter is in regard to Resolution P15-25 (“Resolution”) and proposed text amendments to Title 10 of the Town of Erie Municipal Code. Despite COGA’s early attempts to facilitate an open and collaborative dialogue regarding Erie’s potential amendments to its Municipal Code regarding oil and gas development, COGA was not aware of the proposed amendments contained in Resolution P15-25 until Monday, August 17, 2015, when COGA staff discovered Resolution P15-25 referenced in the Planning Commission’s meeting agenda for August 19, 2015. Erie’s lack of transparency on this matter is disconcerting, especially following explicit requests for meetings. Stakeholders within the regulated community who would be directly and adversely affected by the Resolution have been afforded zero opportunity to voice concerns about how the arbitrary amendments proposed to the Town of Erie’s Municipal Code could harm their property rights and oil and gas operations. COGA and its diverse membership note with importance that the Colorado Supreme Court has roundly rejected prior attempts by municipalities to restrict or prohibit oil and gas development. *See Cty. Comm’rs of La Plata Cty v. Bowen/Edwards Assoc. Inc.*, 830 P.2d 1045 (Colo. 1992); *See also Voss v. Lundvall Bros., Inc.*, 830 P.2d 1061 (Colo. 1992).

While some of the proposed amendments found in Resolution P15-25 are workable, many are infeasible and clearly superseded by existing state laws, rules, and regulations.

Specifically, and despite the stated intention in 10.12.1(B) to the contrary, many of the standards outlined in the proposed amendments are preempted by Colorado Oil and Gas Conservation Commission (“COGCC”) Rules and Regulations, the Colorado Oil and Gas Conservation Act (“Act”), and Colorado Department of Public Health and Environment (“CDPHE”) Rules and Regulations. Attached hereto, please find a bullet point list of general COGA comments and issues pertaining to the Resolution, which outline, but do not encompass the totality of, COGA’s specific concerns with the proposed amendments and offers suggested edits.

At first glance, Resolution P15-25 appears to outline a use by special review (“USR”) process similar to those currently used by other local governments across the state. However, a deeper reading the Resolution reveals Erie’s attempt to extend its regulatory authority over oil and gas into realms far beyond land use, in areas that are clearly within the jurisdiction of the COGCC, and in some instances the CDPHE. The requirements outlined in the Resolution are burdensome, overly restrictive, and in many instances, seek to duplicate or go beyond existing state laws, rules and regulations.

As a statutory city, Erie possesses only the regulatory authority expressly conferred upon it by the Colorado constitution and statutes. *Board of County Com’rs, La Plata County v. Bowen/Edwards*, 830 P.2d 1045, 1055 (1992). Colorado courts have consistently held that statutory cities may not enact an ordinance that “materially impedes” the state’s dominant interest in oil and gas regulation. E.g., *Bowen/Edwards* 830 P.2d at 1059; *Town of Frederick v. North American Resources*, 60 P.3d 758 (2002).

Additionally, under *Bowen/Edwards* and other Colorado decisions, a statutory entity cannot impose, “technical conditions on the drilling or pumping of wells under circumstances where no such conditions are imposed under the state statutory or regulatory scheme, or ... impose safety regulations or land restoration requirements contrary to those required by state law or regulation.” *Bowen/Edwards*, 830 P.2d at 1060. As *Bowen/Edwards* states, Colorado has a significant interest in the regulation of oil and gas development and production. The COGCC (created by the Act) is vested with the authority to enforce provisions of the Act, and to adopt and enforce regulations pursuant to the Act. C.R.S. §§ 34-60-104, 105. The COGCC has the authority to regulate throughout the state of Colorado: the drilling, producing, and plugging of wells and all other operations for the production of oil or gas; the shooting and chemical treatment of wells; the spacing of wells; the operation of oil and gas wells so as to prevent and mitigate significant adverse environmental impacts. *Id.* § 34-60-106(2).

Pursuant to the Act, the COGCC has adopted comprehensive regulations covering drilling, developing, producing and abandoning wells (300 Series), baseline water quality testing (600 Series), aesthetics and noise control (800 Series), waste management (900 Series), protection of wildlife (1200 Series), among many other areas.¹ Resolution P15-25 seeks to supplant the COGCC Rules listed above.

Because portions of Resolution P15-25 appear to conflict with the Act and COGCC/CDPHE Rules and Regulations, certain portions of the proposed local

¹ COGCC Rules available at: <http://cogcc.state.co.us/reg.html#/rules>

regulations must be amended. Specifically, the proposed Resolution intrudes into technical areas of regulation and materially impedes the state's ability to regulate oil and gas operations by attempting to supersede existing state law, rules and regulations in the areas of hydraulic fracturing, air quality, water quality and management, mandates completion techniques, and dictates when operators shall submit permits, amongst other things.

COGA and its members respectfully request that the Town of Erie Planning Commission delay the introduction, or at a minimum, the approval of Resolution P15-25, in order to allow robust stakeholder input on the potential impacts that would result from the adoption of the Resolution, as the ordinance seemingly "forbids what state statute authorizes." *Webb* at 492. We respectfully request the opportunity to understand the Town's concerns and work toward a collaborative solution together.

Thank you for your attention to this matter. COGA looks forward to strengthening our partnership with the Town of Erie and resolving the concerns outlined in this letter at your earliest convenience. Please contact the undersigned with any questions or comments.

Sincerely,



Anne Carto
Community Outreach Coordinator



Sarah Landry
Chief Operating Officer

cc: A.J. Krieger
Joe Evers
Nancy Parker

COGA Comments Regarding Town of Erie Resolution P15-25

- **10.12.1.B:** Despite the stated intent in this section, many of the standards and regulations proposed in Resolution P15-25 are clearly superseded by existing state laws, rules and regulations. This is especially true in instances where the proposed Erie Regulations attempt to foist municipal control over issues clearly within the jurisdiction of the COGCC, the Act and the CDPHE.
- **10.12.1.D:** Existing state law does not allow municipalities to have jurisdiction over subsurface (downhole) operations associated with oil and gas development. This is plainly under the jurisdiction of the COGCC. As such, “or partially” must be deleted from this section.
- **10.12.2.D.7:** COGA objects to this Section in its entirety. Specifically, subsections (a) and (b), pertaining to air quality and hydraulic fracturing, respectively, are both outside of the purview and jurisdiction of municipalities and regulated by state agencies, as are almost all of the subsections contained in 10.12.3.D.7. As such, Erie lacks the jurisdiction to assert control over these facets of oil and gas development.
- **10.12.3.B:** Setbacks, noise and air quality regulations are established in existing COGCC or CDPHE rules and regulations. Therefore, these aspects of the Resolution are superseded by state law, rules and/or regulations and should be stricken.
- **10.12.3.B.1.j:** This provision would eliminate the ability of all operators to apply for a Type A Permit under the Resolution. Underground injection wells are the only feasible option for disposal of produced water.
- **10.12.3.F:** Municipality cannot dictate when operators submit permits to the COGCC for any operation.
- **10.12.4.B.21:** Spill and Release Response and Reporting – these are things currently required by COGCC rules and regulations and should not be required as a part of a local permit.
- **10.12.4.B.23.j:** Not feasible to require all permanent equipment with engines that can be electrified to be electrified from power grid.