

# ELBERT COUNTY, COLORADO

The Board of Elbert County Commissioners (BOCC) met in a regularly scheduled meeting on Wednesday, July 10, 2013 with roll call of members as follows:

**Robert Rowland- PRESENT**

**Kurt Schlegel- PRESENT**

**Larry Ross- PRESENT**

The BOCC convened at 9:00 a.m., Chairman Robert Rowland called the meeting to order.

Pledge of Allegiance

**The Board of County Commissioner's meetings are streamed live via the Internet and are recorded for later use**

## **1. Agenda:**

- a.** Commissioner Schlegel advised they need to pull the approval of minutes from June 26, 2013 from the Consent Agenda as they are not yet complete. Commissioner Ross asked for clarification as he received the minutes that morning and plans on making reference to them in his comments today. Commissioner Schlegel moved that the BOCC approve the Agenda as amended. Commissioner Rowland advised they were referring to the Consent Agenda. Commissioner Ross said he understood the minutes from the June 26, 2013 Meeting to be complete and he moved they be included in the Consent Agenda. Commissioner Schlegel advised the minutes are not complete and cannot be added to the Consent Agenda. Commissioner Ross asked for the distinction between what was complete and what was not in the June 26, 2013 Minutes. Commissioner Schlegel advised they are not complete due to a Land Use item that a vote was taken on and that vote is not reflected in the June 26, 2013 Minutes. Commissioner Ross acknowledged that, but stated the items relating to today's topic ARE in there and he will be referring to them in his comments today. Commissioner Schlegel stated if anyone wants to use that draft document, they can; the reason he is proposing they be removed from today's agenda is because they are not complete. Commissioner Rowland advised there are two motions on the table; by rules of order, the last motion presented will be voted on first. No Votes were cast.



The motion to accept the Consent Agenda with the June 26, 2013 Minutes failed.

The motion to accept the Consent Agenda as amended was seconded by Commissioner Rowland. Commissioners Rowland and Schlegel voted Aye. Commissioner Ross voted Nay. Motion passed.

**2. Correspondence:** NONE

**3. Consent Agenda:** All matters listed on the Consent Agenda are considered routine by the Board and will be enacted by one (1) motion in the form below. There will be no separate discussion of these items. If discussion is desired on any item(s) and permitted by the Board, those items will be considered separately.

**4. Awards/Recognition:** NONE

**5. Elected Official/Department Heads/Staff Report:** The Elected Officials, Department Heads and Staff Report comments is a time when any elected official or department head may bring forth items of interest or concern.

- a.** Commissioner Ross shared an e-mail that he got from a Mr. Bob Davis with NexGen. He said he had spoken earlier with Mr. Bob Davis, who advised their seismograph tests in southern Elbert County indicate they are on top of a very good rock formation. The e-mail he received was in regards to the discussion of the Oil and Gas Regulations today and the issues of open pits, seismographic testing, re-fracturing and road use. It went on to say they are hoping they can work with Staff to resolve and reach a mutually accessible MOU.
- b.** Commissioner Schlegel said we have another Veteran that is going to be moving into our County soon. Homes for our Troops will be doing the ground breaking for a home for Veteran Gabe Martinez on Saturday, July 28, 2013 in Elkhorn Ranch and the public is invited to attend.
- c.** Commissioner Ross commented that he felt it was a bad promise, that not only the BOCC, but also the Public would be able to review any proposed amendments to the Oil and Gas Regulations. As of today, he has received none and he doesn't believe the public has received any. He stated as of today, there has been no disclosure. He said he approached the Commissioners Monday about this issue and asked when he could expect the amendments and was told he would have them today but still does not. He just wanted to make this clear to the public and to the BOCC.
- d.** Commissioner Rowland reminded everyone that the County Clerk and Recorder has resigned and the State Statute calls for the replacement to be



selected by the BOCC. They hope to be able to do that as quickly as possible but during this time the Deputy Clerk, Mandy Taylor, has stepped up and is filling that role at the moment with a lot of experience and a lot of enthusiasm. He further stated that beginning Thursday of next week the Motor Vehicle Department will be open four (4) days a week for walk in customers. He also commented Director of Public Works, Ed Ehmann and also Sheriff Heap will be offering to help out the MV Department any way they can. The County has put up a posting for letters of intent and resumes from interested persons to be appointed to the Clerk and Recorder's position. He reminded everyone that the Elections Clerk has also resigned and that position has already been posted and both of these postings will be up until July 25, 2013.

- e. Commissioner Ross stated in the interest of transparency, he was passing to the public copies of the letter he mentioned earlier in today's meeting.

**6. Old Business:** NONE

**7. New Business:** NONE

**8. Land Use:**

- a. Continuation from June 26, 2013 of Amendment to Elbert County Zoning Regulations for the provision of Oil and Gas Regulations.

Commissioner Ross reminded everyone that they still have a motion on the table from June 12, 2013, the motion being: That the BOCC approve and adopt the proposed amendment to the Elbert County Zoning Regulations regarding Oil and/or Gas operations and regulations as recommended for approval and as certified by the Elbert County Planning Commission and as presented by Elbert County Community and Development Services at the June 26, 2013 Public Hearing. Also, additional amendments to the document were passed. These are to be included: Section 27.1 (A) under Authority, replace the word "does" in the second sentence with the word "shall". Also, existing text says: Commissioner Rowland said "Point of Order..."

Commissioner Schlegel said those amendments were made, the first one passed and the second one failed. They are part of the record and are not part of the original motion.

Commissioner Ross advised in the interest of fully informing the public and all interested parties as to where we left off, this is relevant so he will continue.



Commissioner Rowland once again said "Point of Order" and asked for a moment to ask Counsel a question.

Commissioner Ross explained he is just trying to recap where they left off in the June 26, 2013 Meeting. He continued with the passed amendment: existing text says, "not supersede" and addition of "or pre-empt" State Law, Regulations and Rules pertaining to Oil and/or Gas was added and approved by the BOCC. All other motions to this document that were presented failed either to no second or the motion was withdrawn.

Commissioner Rowland repeated that the Motion to Approve the Oil and/or Gas Regulations for Elbert County was heard, that motion was seconded at that meeting and they went into discussion. If there is any further discussion he invites that.

Commissioner Schlegel called for question.

Commissioner Rowland repeated question has been called for.

Commissioner Rowland asked for a vote.

Commissioner Ross apologized, saying he misunderstood the motion.

Commissioner Rowland explained it is the motion that was on the table from two weeks ago and asked the Clerk to the Board to read the motion out loud.

Sheryl Caldwell, Clerk to the BOCC read,

Commissioner Ross moved that the BOCC approve and adopt the proposed amendment to the Elbert County Zoning Regulations regarding oil and/or gas operations and regulations, as recommended for approval and as certified by the Elbert County Planning Commission, and as presented by Elbert County Community and Development Services at the June 26, 2013 public hearing.

Commissioner Rowland repeated that the motion was heard, seconded, they called the question and asked again for a vote.

Commissioner Ross responded with "Point of Order", he believed they would pick up discussion amongst the BOCC if they choose.

Commissioner Schlegel responded with "Point of Order", the question has been called.

Commissioner Ross also pointed out that once again, in the interest of full disclosure and transparency for the public, an offer of additional discussion amongst the BOCC is appropriate and he addressed the public and thanked them for coming.

Commissioner Schlegel reminded Commissioner Rowland that he presides over the meeting and that according to Robert's Rules of Order, when the question is called, there should be an immediate vote on the issue.

Commissioner Rowland stated according to his interpretation that is correct.



Commissioner Ross advised his response is that this is not an opportune time to abridge his First Amendment Rights and what he feels is his obligation to address the point of which they left off in the last meeting.

Commissioner Rowland said following Robert's Rules of Order, this is protocol. The question has been called. Once again he called for a vote. All in favor say Aye, there was no response. All in favor say Nay, Commissioners Schlegel and Rowland voted Nay. The motion was defeated.

After the motion was dead and recorded as such, Commissioner Ross spoke up and said for the record he wanted to go down as saying a Nay vote on it. He then apologized and corrected himself and said he voted in favor of the proposed Oil and Gas Regulations.

Commissioner Rowland advised the Clerk to the BOCC to record his vote.

Commissioner Schlegel moved that the BOCC direct County Staff to develop an alternative process to the Use by Special Review for the permitting of oil & gas facilities, to include a process for entering into a Memorandum of Understanding (MOU) and administrative use by special review.

Commissioner Rowland seconded the motion.

Commissioner Schlegel recognized that a number of people in Elbert County have worked on this process for the last two years and although a document with a lot of good work was in it was presented to them, it was defeated because he believes it was not yet ready. He stated again that we have State Rules and Regulations covering the exploration and production of oil and gas in the State and there is no reason for the County to have any overreaching regulations that exceed those State Regulations. But we do need a Memorandum of Understanding process so that there can be a negotiation with producers.

Commissioner Ross stated he disagrees with Commissioner Schlegel's assertions. He recognized the hard work and diligence of the Planning Commission, appointed by the BOCC, and relied upon for expert advice in order to create a workable partnership between us and the industry. Indications he has gotten from the Industry are that they respect our obligation to regulate land use in our County, as it is our right and obligation to our citizens and the Industry pays attention to this. He stated he feels that this much needed amendment to the Elbert County Zoning Regulations followed a very lengthy, well studied, scrupulous and honest composition of our Editing



Committee as seen in the fourth sentence of the proposed amendment it says, "It is Elbert County's intent by enacting this Section to facilitate the development of oil and gas resources within the unincorporated area of Elbert County, while mitigating potential conflicts between existing, as well as planned land uses." He said this document encourages the applicant to use Best Management Practices in order to protect the health and wellbeing of all of us and our land. He further stated the second sentence of this document as currently amended states, "This section shall not supersede or pre-empt State Law, regulations and rules pertaining to oil and/or gas development, but rather is meant to supplement those requirements where appropriate. This amendment to our zoning regulations was carefully considered, approved and recommended unanimously 9-0 by our Planning Commission and further recommended for approval by the Elbert County Community and Development Services Department.

Commissioner Ross then addressed the members of the BOCC and the citizens of the County stating it is time to act so that this development may begin in a responsible and accountable manner. He said as a County Commissioner he is absolutely committed to always advocating for the benefit of all our citizens first and foremost, and ahead of any special interests. He strongly recommended that the BOCC adopt the Oil and Gas Amendment, and unfortunately it was defeated.

Commissioner Rowland agreed that this is without a doubt one of the most important, serious, contentious issues that has come before the BOCC. He said he felt it is important to tell the public why they've done what was done and why they believe what they believe. He recognized and thanked every single person, planning commission member, citizen, editing committee member, and staff who did exactly what they were asked to do over 2 ½ years, under changing marching orders, sometimes with confusing objectives and through 2 different BOCC Administrations. The document, having been produced by all of this hard work, has come before this Board for a final decision. He stated over the past few months he researched this decision, talked to citizens, those involved in making this document, the Attorney General of the State of Colorado, Representatives of the Oil and Gas Industry and Commissioners and County Officials throughout the State who have experienced what they are going through today. He said he has not wavered from his promise to this County that he is for Oil, Gas Water and that he would, to the best of his ability, get this right. Commissioner Rowland said it became clear to him that there were several unmovable parameters that he, given his authority as a County Commissioner, had to recognize and that there were also some grey areas in



the law and in the regulations, that include as of yet, untested legal issues about the regulatory authority versus our local control. He feels they approached this opportunity as best they could, but believes they have not yet reached the goal in the process offered in the documents that are before them today. He feels that they cannot and will not be permitted to conflict with State oil and gas regulations and the Attorney General's Office or the COGCC and this is the foundation of his decision and vote today. He said they tried to craft a regulation that does not conflict with the State of Colorado's regulations. However, this regulation in his opinion crosses over into what he considers to be conflicts and if they persisted, would likely result in the loss of use of Elbert County resources that we don't have and it could result in our losing any chance to control locally the issues that we all deem so important; such as produced water on roads, open pits, setbacks, and notifications. He stated his objective is to exercise our legal authority, as given to us in Colorado Revised Statutes 30-11-1, called "the powers of the County" which states, "Counties have the authority to adopt and enforce ordinances and resolutions regarding health, safety and welfare issues as otherwise prescribed by law." He said that the issues he described earlier, that we deem so important, ARE related to health, safety and welfare and he believes that they were excluding by definition the major facilities from the MOU process and preventing us from negotiating the changes and conditions that we all want and feel that we need. He said we could not do that in these proposed regulations, but we can do them in an MOU outside of the regulations. He believes we are now close to the finish line and that this is the right course and they now will have in place a realistic, practical and workable plan to manage oil and gas in Elbert County, within our authority and giving up none of our regulatory or statutory rights, and puts us in a position to offer an expedited process that will result in our being able to accomplish our goal of protecting our resources, our environment and our lifestyle.

Commissioner Ross stated he appreciated and respected Commissioner Rowland's rights to his opinion and his comments, however, based on the language presented in his comments and the prepared nature that they were completely written out in advance of this meeting, in case that pre-supposed the outcome of the vote that we took on these issues, he moved that this hearing be declared invalid and of no effect.

Commissioner Rowland called for a second. There was none. Commissioner Rowland declared the motion dead.



Commissioner Rowland asked Commissioner Schlegel to re-read the remaining motion on the table.

Commissioner Schlegel moved that the BOCC direct County staff to develop an alternative process to the Use by Special Review for the permitting of oil and gas facilities, to include a process for entering into a Memorandum of Understanding (MOU) and administrative use by special review.

Commissioner Rowland advised he already seconded the motion and called for vote.

Commissioner Ross requested to make an additional motion.

Commissioner Schlegel advised they can only make an amendment to the motion that is on the floor.

Commissioner Ross moved that this motion be amended to include, "and return the original document as presented by the Planning Commission to the Planning Commission for further study and editing".

Commissioner Schlegel advised that was not germane to the motion that is on the floor, it is to direct staff to develop a process.

Commissioner Rowland agreed and asked Commissioner Ross to clarify.

Commissioner Ross withdrew his previous motion.

Commissioners Rowland and Schlegel voted Aye. Commissioner Ross voted Nay. Motion passed.

- b.** Oil and Gas Development Permit Fees, Carolyn Parkinson (Community and Development Services). Ms. Parkinson advised Staff planned on a "Plan A - Plan B scenario. Plan A's fee schedule was specific to the Oil and Gas Regulations and in the event those regulations failed, Plan B was a prepared Resolution for an amendment to the current fee schedule. That amendment would add a third "special use" classification to the existing fee schedule and is specific to oil and gas.

Commissioner Rowland asked Ms. Parkinson if the prepared resolution scenario is standard procedure. Ms. Parkinson advised yes, if they have reason to believe the application is going to be denied, then they do this.





Ms. Parkinson then asked the BOCC to approve the resolution for an amendment to the current fee schedule to include a third category of Special Use that is specific to Oil and Gas.

Commissioner Ross advised Ms. Parkinson as of this moment, this resolution presented today is the only one presented of the two possible outcomes of today's meeting and therefore he asserts that given these facts, the outcome of that vote was predisposed, perhaps predetermined.

Ms. Parkinson advised Staff was just trying to be proactive.

Commissioner Ross asked where the document is that addresses the eventuality of an affirmative vote on that measure.

Kyle Fenner, Director of Community and Development Services answered Commissioner Ross' question by saying the document they have before them IS the Fee Schedule that accompanied the Oil and Gas Regulations, had they been approved. These were created by direction, based on some of the meetings they had in the last couple of days, they had a sense it could go either way and they did not want to leave Elbert County taxpayers with a bill that would far exceed any fees they collected. So this document was created in case the regulations did not pass.

Commissioner Ross again stated he only received this one document, not the alternate one in case the regulations passed.

Ms. Fenner advised the original Fee Schedule was in the original packet of paperwork given to the Commissioners 2 weeks ago.

Commissioner Schlegel verified with Staff that the only change in this Fee Schedule document is the addition of the \$7500.00 fee for Special Use Review Fee for Oil and Gas. Ms. Fenner advised yes.

Commissioner Schlegel moved that the BOCC approve and execute a resolution to revise the current Elbert County and Development Services Fee Schedule for the inclusion of a Special Use Review fee for Oil and Gas Facilities in the amount of \$7,500.00. Commissioner Rowland seconded. All three Commissioners voted AYE. Motion Passed.



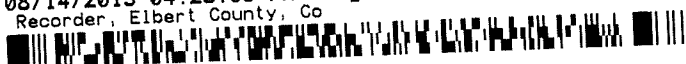
**9. Alex Beltz, Attorney to the Board of County Commissioners: NONE**

**10. Public Comment:** The public comment period is a time when any citizen may bring forth items pertaining to County business. During this time each individual will have three minutes to present their view(s) on County matter(s). In the interest of time, please have your comments prepared for presentation as each person will be allowed one (1) opportunity to approach the podium. Please keep your comments to a three (3) minute maximum. No formal action will be taken on these items during this time due to open meeting provision; however, the items may be placed on a future posted Agenda if action is required. The public comment portion of the BOCC meeting is not to be used for political or campaign purposes; comments and questions should be limited to matters of current County affairs and business. When you approach the podium please identify yourself, spell your last name and give your address.

- a.** Richard Brown – Kiowa. Mr. Brown commented he was disappointed with what he called the “wholesale rejection” of all that the Planning Commission and Edit Committee Members have worked on regarding the Oil and Gas Regulations and believes the County has been left at risk for negative impacts.
- b.** Michelle Smith – Elbert. Ms. Smith commented she is for owners’ rights AND responsible oil and gas development. She commended the BOCC for going the MOU route.
- c.** Rick Blotter – Agate. Mr. Blotter commented he feels the BOCC has chosen not to protect Elbert County citizens and requested they approve a moratorium on Oil and Gas and also do a health impact study.
- d.** Bill Thomas – NewPlains.com. Mr. Thomas commented he believes the August 2011 memo received from Alex Beltz (Attorney to the BOCC) declaring meetings by the County Commissioners at night prohibitive is in error, as the memo was on an hourly and not salary basis. He advised BOCC meetings at night could be attended by more people as there are too many issues that are coming up that the public needs to attend and therefore it is incumbent on the BOCC to have meetings at night similar to school boards and other public entities.

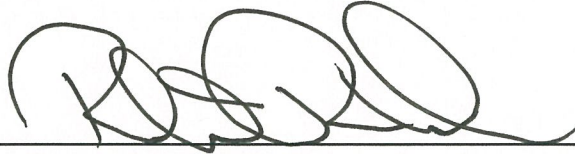
**Meeting Adjourned at 10:05 a.m.**

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Recorder, Elbert County, Co



**BOARD OF COUNTY COMMISSIONERS**

**ELBERT COUNTY, COLORADO**



Robert Rowland, Chairman



Larry Ross, Vice Chair

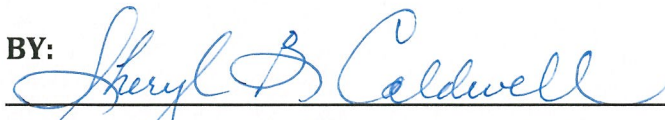


Kurt Schlegel, Commissioner

**ATTEST: Diana Hartsough**

**County Clerk**

**BY:**



Clerk to the Board of County Commissioners

