

District Court, Boulder County 1777 6 th St. Boulder, CO 80302	DATE FILED: December 3, 2018 10:20 PM FILING ID: 3A35F43FAD34F CASE NUMBER: 2018CV31116
ERIE THRIVING, LLC Plaintiff v. TOWN OF ERIE, COLORADO, a municipal corporation, statutory town, and political subdivision of the State of Colorado; JENNIFER CARROLL, in her official capacity as the Mayor of Town of Erie; GEOFF DEAKIN, in his official capacity as a trustee and Mayor Pro Tem for the Town of Erie; and SCOTT CHARLES, BILL GIPPE, ADAM HAID, CHRISTIAAN VAN WOUDEBERG, and DAN WOOG, in their official capacities as trustees for the Town Of Erie Defendants, and CRESTONE PEAK RESOURCES, INC.; Interested Party	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<i>Attorney for Plaintiff</i> James Daniel Leftwich, (CO Bar No. 38510) 1295 Wildwood Road Boulder, CO 80305 Phone: (720) 470-7831 Email: dan@minddrivelegal.com	Case No.: Division:
COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF	

Plaintiff Erie Thriving, LLC (“Plaintiff”) on behalf of its affected members, brings this action against the Defendants: Town of Erie; Jennifer Carroll, Mayor, Town of Erie (“Mayor”); Geoff Deakin, Trustee and Mayor Pro Tem, Town of Erie (“Mayor Pro Tem”); and the following Trustees for the Town Of Erie, Scott Charles (“Trustee Charles”), Bill Gippe (“Trustee Gippe”), Adam Haid (“Trustee Haid”), Christiaan Van Woudenbergh (“Trustee Woudenbergh”), and Dan Woog (“Trustee Woog”); in their official capacities, and in support of its claims Plaintiff states as follows:

NATURE OF THE ACTION

This case involves the unlawful and dangerous decision by the Mayor and the Board of Trustees ("BOT"), for the Town of Erie, Colorado ("Erie") approving an operator agreement with Crestone Peaks Resources, Inc. ("Crestone") that will result in large-scale oil and gas development negatively affecting multiple residential areas.

Plaintiff seeks injunctive and declaratory relief to protect its members' property rights, their health, safety and welfare, and to avoid the irreparable harm that is imminent should Crestone be allowed to proceed with oil and gas development pursuant to the Operating Agreement described below.

PARTIES

1. Erie Thriving, LLC is a Colorado nonprofit limited liability corporation that has as its mission the protection of the health, safety, property and democratic rights of its members. Erie Thriving members live, and their children attend schools, in Boulder, Broomfield, and Weld counties, including the Town of Erie, and will be negatively affected by the Crestone fracking operations proposed for the Acme pad location, as well as the unlawful approval process for this fracking location.

2. Erie is a Colorado municipal corporation operating as a statutory town within Boulder County and Weld County, Colorado.

3. The BOT is an elected body that serves as the legislative and governing body of Erie. The following individual members of the BOT are named in their official capacity: Jennifer Carroll, Mayor; Geoff Deakin, trustee and Mayor Pro Tem; and trustees Scott Charles, Bill Gippe, Adam Haid, Christiaan Van Woudenberg, and Dan Woog.

4. Crestone Peak Resources, Inc., joined in this Complaint as an Interested Party, is a Delaware corporation, registered in good standing with the Colorado Secretary of State to conduct business in the state as a foreign corporation with a principal place of business at 1801 California Street, Suite 2500 Denver, CO 80202.

JURISDICTION AND VENUE

5. This court has subject matter jurisdiction to hear these claims under the Colorado Declaratory Judgments Act, C.R.S. § 13-51-105 and 13-51-106, as well as C.R.C.P. 57(a) and (b); C.R.S. § 24-6-402(9), and Colo. Const. art. VI, § 9.

6. This court also has jurisdiction under C.R.C.P. 106(a)(4), and Erie Municipal Code, Title 10 - Unified Development Code, Erie, Colorado, (April 2018), §10.7.22 (C)(1).

7. The Court has personal jurisdiction over the Town of Erie pursuant to C.R.S. § 13-1-124(1), as it is a statutory town of Colorado.

8. This court has personal jurisdiction over the Erie Town Board of Trustees, pursuant to C.R.S. §13-1-124(1) as they all are residents of the state and are elected officials for the Town of Erie. .

9. This court has personal jurisdiction over Crestone Peak Resources, Inc. as it is a corporation doing business in Colorado.

10. Venue is proper in this district pursuant C.R.C.P. 98(b) because the claim, or some portion thereof, arose in Boulder County.

FACTUAL ALLEGATIONS

A. The Operator Agreement

11. Mayor Carrol and other members of the BOT were elected on a platform of local control over energy development, and more aggressive restrictions on drilling.

12. During her campaign Mayor Carroll characterized herself as “the champion for more local control” and represented the core support for the town’s oil and gas overhaul.

13. Trustee Woog stated that "dealing with energy production is an area where we simply have to do better. Our current go-it-alone strategy has seen the town focus on optics and gimmicks. We've spent hundreds of thousands of dollars on an operator agreement and an odor ordinance and neither has done what we were told they'd do . . . Ask our neighbors who live near Pratt and Waste Connections if they feel like the operator agreement protected them. Ask our neighbors in Erie Village or Kenosha Farms if they feel like the noise BMP in the agreement did anything for them. Ask anyone in Erie if they feel like the odor ordinance protected them in any way. I have, and the answer is a resounding 'no.'”

14. During her campaign Mayor Carroll also indicated that she would “not accept donations from oil and gas special interests seeking political exchange for permission to operate oil wells with less scrutiny near Erie schools, churches and residences. Erie residents take priority.”

15. In July 2018, Erie enacted a six-month temporary moratorium that should have prohibited “acceptance, processing and approval of any applications under the Unified Development Code (UDC) related to oil and gas exploration, extraction and related operations” from August 1, 2018, through January 11, 2019.

16. Prior to the moratorium being enacted, Crestone had filed for a Type B application under the Erie UDC to drill 15 wells at the Acme location very close to the homes of some of Plaintiff’s members, and the application was not halted by the moratorium.

17. As a Type B application, the Town Board designated that proceeding as a quasi-judicial proceeding that prohibited citizens from commenting on the application, and prohibited Trustees from reading or being involved in the application process.

18. Despite this moratorium, Erie continued to negotiate with Crestone regarding Crestone's request to have large-scale oil and gas operations on two pad locations in close proximity to residential areas, as part of a proposed Operating Agreement instead of the Type B application process.

19. As the City and County of Broomfield ("CCOB") pointed out in a July 17, 2018, letter to Erie, the project proposed by Crestone is too vague, and contained many problematic shortcomings. *See* Exhibit 2, 7/17/18 Letter from CCOB.¹

20. One of the problematic shortcomings was that the Trustees had not even read the Acme application before it was to be approved in the proposed operating agreement.

21. At a Tuesday, October 30, 2018 public meeting, the BOT heard public comments that were largely opposed to the Crestone operator agreement which would allow 30 (instead of 15) oil and gas wells to be developed on one pad, the Acme Pad, which is in close proximity to multiple residential areas in Broomfield, Boulder and Weld counties (the "Crestone Operator Agreement").

22. At the October 30th meeting, the BOT voted 4 to 3 not to approve the Operator Agreement. Trustees Gippe, Van Woudenberg, Charles, and Woog voted against.

23. Inexplicably, on Saturday, November 3, 2018, at 8:46 a.m. a notice was posted on Erie's website that indicated that the Erie Board of Trustees would hold a special meeting on Sunday, November 4, 2018, from 2-4 p.m. to: "...consider the updated Crestone Peak Resources Operator Agreement." This special meeting notice did not inform residents that a vote on the Operator Agreement would be taken.

24. Upon information and belief, at least one improper non-public meeting of Trustees was conducted at or around this November 3, 2018 date to decide on new votes in favor of the Operator Agreement.

25. Upon information and belief, because the Operator Agreement had not been approved at the October 30th meeting, the Acme proposal remained as a quasi-judicial application proceeding, so the Trustees still were not allowed to read the Acme application prior to the hastily scheduled November 4th meeting.

26. During the November 4th meeting, Trustee Charles made the following comments at the beginning of a lengthy statement about the improper procedure that was being followed in the vote on the Operator Agreement:

"There is so much wrong with this process that must be recognized. It raises so many questions, while perhaps legal, it is certainly not open, transparent, or even inclusive of the entire board. If I as a board member, feel uninformed or excluded from the process, I can only imagine how our residents feel. It is disappointing to note that even a vote in a

¹ All exhibits are judicially noticeable public records pursuant to C.R.E. Rule 201. The July 17, 2018 CCOB letter can be found at: <https://www.broomfield.org/DocumentCenter/View/27790/July-17-2018-letter-to-Erie>.

public meeting is not enough to stop the majority of this board from pursuing its own agenda; someone or some group of boards members directed towns staff and our attorneys to renegotiate this OA outside of a public meeting or an executive session. So this raises additional concerns. Either one trustee or the mayor is directing staff to do significant tasks and spend town money and utilize resources outside the meeting or multiple trustees are meeting, behind closed doors and directing staff. Any of these situations is potentially wrong, unethical, violates sunshine laws, and at the very least is not transparent."²

27. At the Sunday, November 4th meeting, which was improperly noticed and convened, the BOT voted 4-2 to accept Resolution No. 18-400, which approved the entry of the Crestone Operator Agreement which allows Crestone to proceed with the large-scale residential oil and gas development activities in Erie despite the moratorium and despite the fact that the Operator Agreement does not protect the health and safety of Erie residents. See Exhibit 1, the Crestone Operating Agreement.

28. For instance, the Crestone Operating Agreement allows:

- a. 30 wells within close proximity to residences, gas stations, and a general aviation airport;
- b. Heavy truck usage during peak hours on main roads;
- c. Dangerous air emissions without adequate air quality monitoring;
- d. Operations without an adequate emergency preparedness plan or risk mitigation analysis;
- e. Operations near shallow mines without a proper geological survey;
- f. Town agreement to allow Crestone to seek Colorado Oil and Gas Conservation Commission permits after approval of the Acme project by the Town, without challenge by Erie;
- g. Crestone was allowed to operate without an approved comprehensive drilling plan including a traffic study, pipeline and plat map, development timeline; and
- h. Industrial operations were approved in an area zoned for Low Density Residential.

B. Residential Gas and Oil Operations Threat to Public Health, Safety, Property and the Environment – A Thorough Quantitative Risk Assessment Should be Completed Before Allowing Residential Oil and Gas Development

² The video of the Nov. 4th 2018 meeting can be viewed at https://drive.google.com/file/d/12APSD-OMfj9Wmz_5BjWAgfydMICcf8bD/view?usp=sharing.

29. An array of high severity threats to health, safety, property, and the environment have been associated with oil and gas operations in all phases of production.

30. Such health and safety threats include leaks of methane and volatile organic compounds (“VOCs”) exacerbating ozone pollution and climate change; exposure to benzene, ethyl-benzene, toluene, and other cancer causing chemicals in emissions; exposure to radioactive materials produced from underground during the hydraulic fracturing process; risk of explosions and water pollution caused by methane migration from improperly abandoned wells and flow lines; risk of catastrophic well and pipeline explosions, fires, and the associated pollution from smoke and the toxic substances used by first responders to combat such catastrophic events; permanently scarred landscapes; earthquakes; soil contamination; destruction of wildlife habitat; road and other infrastructure destruction and other threats to public health, safety, property, and the environment from enormous amounts of truck traffic.

31. Hundreds of peer reviewed studies have been presented in the last few years describing public health and safety hazards associated with oil and gas development. The Concerned Health Professionals of New York (CHPNY), an initiative by health professionals, scientists, and medical organizations for raising science-based concerns about the impacts of oil and gas development on public health and safety, has published five annual editions of a fully referenced compilation of the evidence outlining its risks and harms (the “Compendium”). The Compendium is a public, open-access document that is housed on the websites of Concerned Health Professionals of New York (www.concernedhealthny.org) and Physicians for Social Responsibility (www.psr.org).

32. In the Fifth Edition of the Compendium, released in March 2018, the CHPNY and PSR summarized the findings at 266:

All together, findings to date from scientific, medical, and journalistic investigations combine to demonstrate that fracking poses significant threats to air, water, health, public safety, climate stability, seismic stability, community cohesion, and long-term economic vitality. Emerging data from a rapidly expanding body of evidence continue to reveal a plethora of recurring problems and harms that cannot be sufficiently averted through regulatory frameworks. There is no evidence that fracking can operate without threatening public health directly or without imperiling climate stability upon which public health depends.

33. The TEDX FrackHealth Database is another widely cited source of open-access peer-reviewed literature on health effects associated with unconventional oil and gas drilling. Carol Kwiatkowski, Ph.D, Executive Director of TEDX, has done an overview for TEDX of the studies evaluating health risks from air pollution associated with unconventional oil and gas operations (“UOG”),³ and made the following findings:

³ Letter of Carol Kwiatkowski, Executive Director, TEDX, *Re: Scientific literature addressing the health effects of unconventional oil and gas development*, available at <https://drive.google.com/file/d/1bZYYtzF5hRKdK0543fAt64125rZKkwU9/view> pp. 21–31 (June 29, 2018).

a. A review of 48 peer-reviewed studies analyzing air samples near UOG found benzene, ethylbenzene, toluene and xylenes (BTEX) were among the top most frequently found chemicals. These hazardous air pollutants have known respiratory, cardiovascular, neurological and carcinogenic effects, as well as having endocrine disrupting effects.

b. Ten of the studies sampled the air in Colorado, with eight being in the Denver Julesburg Basin (within which Erie is located). Multiple studies from NOAA researchers collecting top-down emission concentrations found high levels of non-methane volatile organic compounds and traced it to UOG extraction.

34. Peer-reviewed studies of the health and safety impacts from oil and gas development in Colorado have shown serious adverse health impacts and high risks from living near oil and gas operations. Dr. Kwiatkowski summarized those studies from the University of Colorado School of Public Health:

a. In 2018, McKenzie *et al.* conducted a risk assessment demonstrating that air pollutants, and associated acute and chronic health risks, increased with increasing proximity to UOG. Earlier work from the same group also concluded that residents living less than a half mile from wells are at greater risk of experiencing health effects such as neurological and developmental effects and cancer than those living further away.

b. Other research has investigated the health impacts of prenatal exposure to UOG. In 2014 McKenzie and others published a study using a retrospective cohort of 125K birth records in 57 rural-Colorado counties. Results showed a linear relationship between well density/proximity and the likelihood of a baby having a congenital heart defect. Neural tube defects were also associated with a higher density/proximity score.

c. In a recent case-control study of childhood risk, experts concluded that children with acute lymphocytic leukemia were more likely to live near oil and gas wells.

Id. n.2 *supra*, at 24–25.

35. On May 12, 2018, Dr. David Nolan, a Broomfield-based gastroenterologist, published a summary of conclusions based on his review of peer-reviewed medical and public health studies of the health risks to residents living within proximities of up to 2,500 feet from hydraulic fracturing operations. Dr. Nolan wrote that all the studies he reviewed “show significant medical risk.” He references “well written and well powered retrospective studies demonstrating increased risk for low birth weight infants, asthma exacerbations as well as nose bleeds, psychiatric and gastrointestinal illnesses.”⁴

36. Dr. Nolan’s meta survey included a finding of up to four-fold increase in the risk of acute lymphocytic leukemia in people living within 1000 ft of oil and gas operations. This has been backed up by a study from the University of Colorado showing an eight-fold increase in lifetime risk of cancer in those living within 500 ft – the current setback distance for residences.

37. These and other peer-reviewed studies provide sufficient information regarding the threats to public health, safety, property and the environment from air pollution to warrant a

⁴ See <https://broomfieldconcerned.org/community-blog/a-local-doctors-take-on-the-dangers-of-oil-and-gas-development-in-our-neighborhoods/>.

thorough quantitative risk assessment from Crestone so the Defendants, and the citizens of the intersecting counties, Broomfield, Weld, and Boulder, can determine whether the OA (and resulting Crestone permits for oil and gas development in the Town of Erie) comply with the OA, the Erie Unified Development Code, and state law before the Acme project is approved.

F. There are Already Reported Adverse Effects from Oil and Gas Operations in Erie and Surrounding Areas - Further Evidence of Risk from the Crestone Project

38. Front Range residents living near gas and oil developments, including many families in Erie, have filed hundreds of complaints with the COGCC and the CDPHE describing personal experiences of nosebleeds, headaches, nausea, dizziness, rashes, chronic pain and fatigue, and also sleep disturbances due to the oil and gas drilling and production.

39. As a result of the impacts complained about to the COGCC, CDPHE, and local governments, parents have resorted to testing their young children for levels of VOCs in their children's blood. Test results in Erie and other communities near the proposed Crestone Acme project have shown alarming levels of cancer-causing VOCs, including benzene and ethylbenzene, that have been associated with living in proximity to the hundreds of oil and gas wells that have already been permitted in those areas.

40. Defendants are aware of these complaints and health studies, but approved the Operating Agreement without any demonstrable assessment of whether the Operating Agreement does, in fact, protect the health, safety, and welfare of Colorado residents in and around Erie.

G. Catastrophic Risks Must be Thoroughly Evaluated to Determine if the Public Health and Safety are Protected Before Approval, Not After

41. Crestone touts itself as an expert, but has not accounted for the catastrophic risks associated with putting these multi-well megapads in close proximity to homes, gas stations, schools, an airport, and existing wells.

42. In Colorado, there have been more than a dozen explosions due to oil and gas operations in just the past two years. Nationally, there have been massive explosions that show clearly how reckless "residential fracking" could be.

43. In January 2018, a drilling rig exploded in Oklahoma, killing 5 workers, in the deadliest U.S. drilling accident since the 2010 Deep-Water Horizon rig explosion in the Gulf of Mexico. Federal investigators recently found that an uncontrolled influx of gas in the well ignited during the routine activity of drill pipe being removed, and the blowout preventer failed. According to reports at the scene, emergency workers were kept 3/4 mile away for hours due to the heat of the fire, toxicity concerns, and secondary explosions that occurred.

44. In February 2018, an uncontrolled gas leak at a fracking well site in Ohio caused a fire that required a one-mile evacuation for firefighters and well control experts from Texas and Oklahoma could extinguish the fire and 20 days to stop the gas flow from the well.

45. While most explosions and well fires have occurred in rural areas where deaths and injuries have been limited, the Operator Agreement approved by the BOT fails to account for

the increased risk to public health and safety of moving these operations into residential areas.

46. Recent peer-reviewed studies on the adequacy of setbacks, and the minimal setbacks approved for the Acme project, must be included in a risk analysis before allowing Crestone to engage in further residential drilling at this site.

47. On April 17, 2017, Front Range communities experienced the trauma of seeing the explosion in Firestone that killed two people, severely burned another, and terrorized the entire neighborhood.

48. Preliminary reports stated that a 1-inch severed flow line thought to be abandoned, but still connected to a well less than 200 feet from the leveled house, seeped gas into the soil and into the house's basement, where it ignited during repairs on a water heater.

49. COGCC Director at the time, Matt Lepore, assured residents in Firestone in the days following the disaster that the agency had identified the isolated methane leak that had caused the explosion and it was perfectly safe for them to return to their homes. Those assurances were false. On May 25, 2017, two other high concentration pockets of flammable methane gas had been found underneath a street in the same Firestone neighborhood, where the house exploded more than a month earlier, according to the state's vapor test findings. Again, the COGCC "did a significant amount of public outreach in the Firestone community to let them know that it is safe and there are no ongoing concerns." *Id.*

50. These assurances of public safety were made despite only having preliminary findings about the cause of the disaster. To date, nearly 18 months later, the National Transportation Safety Board, which assumed control over the investigation, still has not issued a final report identifying the cause. Yet the COGCC continues to approve permits like those sought by Crestone, for new wells to be drilled near and under neighborhoods where there are abandoned wells, old flowlines, and sources of methane leaks.

51. On Dec. 22, 2017, a leaking valve at Extraction Oil and Gas' Stromberger 22-E multi-well pad complex outside of Windsor, Colorado led to a fire and several explosions that threatened health and safety for the entire town and its surrounding region. According to reports, one worker was hospitalized with third degree burns.

52. The initial explosion at the Extraction site reportedly caused homes to shake more than a mile away. Secondary explosions were reported by firefighters and residents in the area. First responders had to stand off from the fire, setting up a one-mile evacuation zone, for hours because of the concern that oil and flowback storage tanks could explode "like bombs." It took at least eight firefighting crews from throughout northeast Colorado approximately six hours, using massive amounts of fire-suppression foam and water to get the fires on the pad controlled.

53. According to public reports, researchers from INSTAAR [the Institute of Arctic and Alpine Research at the University of Colorado] were making their routine examination of measurements registered at the Boulder Reservoir in the days following the explosion at the Stromberger site, and found readings of exceptionally high levels of the atmospheric pollutants ethane, propane, benzene, and toluene, higher than any ever recorded at the station, representing exposures 10–100 times background levels. The INSTAAR researchers were able to use forward

and backward wind trajectories to trace the extreme levels of pollutants to the Stromberger explosion, nearly 40 miles away.

H. Crestone's Safety Record Must Be Considered in Any Risk Assessment

54. Crestone has accumulated at least five Notices of Alleged Violation (NOAV) on its wells in Colorado in one year (October 2017 to October 2018), and has been penalized by the COGCC for violations in Weld County related to odors and dust, venting or flaring of gas, permit and reporting violations, and a shut-in well violation.

55. The COGCC reports that residents in Weld, Boulder and Broomfield counties have thus far been subjected to operations from all operators that have accumulated 379 NOAVs.

56. In 2017 and 2018 Crestone has reported 24 spills of either condensate, flow back, or produced water on its projects.

57. The COGCC reports that residents in Weld, Boulder and Broomfield counties have thus far been subjected to operations that have accumulated 6094 spills of either oil, condensate, flow back, waste, drilling fluid, or produced water.

58. These violations, and environmental hazards, have been committed despite the proliferation of negotiated Operator Agreements, like the Crestone Operator Agreement, approved in lieu of regulation of oil and gas operators by municipalities and towns like Erie.

FIRST CLAIM FOR RELIEF

Declaratory Judgment: Art. II, § 25 - Procedural and Substantive Due Process Violations

59. Plaintiff incorporates each allegation of the foregoing paragraphs as if fully set forth herein.

60. Art. II, § 25 of the Colorado Constitution states: "No person shall be deprived of life, liberty or property, without due process of law."

61. Defendants were at all relevant times acting under color of state law.

62. Plaintiff has members who are landowners within the drilling and spacing unit proposed by Crestone or adjacent thereto, and have the right to use their property under the terms and conditions of a site specific development plan in place when their property was purchased.

63. Plaintiff represents members who have a legally protected interest in protecting their property from adverse effects caused by legally deficient rezoning of adjacent property.

64. Plaintiff represents members who have vested property rights, which preclude any zoning or land use action by a local government regulation or pursuant to a negotiated agreement which would alter, impair, diminish, prevent, or otherwise delay the development or use of the property as set forth in a site specific development plan.

65. The Defendants' approval of the OA and the Acme project provisions without a demonstration on the record that it is consistent with the protection of public health, safety, and welfare, including the environment and wildlife resources, is arbitrary and capricious and

contrary to law as set out by the Court of Appeals in *Martinez v. Colorado Oil and Gas Conservation Commission*, 2017 COA 37 (Colo. App. 2017).

66. The conduct of the Defendants described herein deprived the Plaintiff's members of rights, privileges, or immunities secured by the constitution and laws of Colorado, without due process of law and without just compensation.

67. Plaintiff's members have property and/or liberty interests, rights, status, or other legal relations that are affected by the Defendants' approval of the Crestone Operator Agreement, as alleged herein.

68. Plaintiff is entitled to demand compensatory or nominal damages, as well as declaratory relief and other relief as appropriate.

69. A real and substantial controversy exists between the parties regarding whether the approval of the Crestone Operator Agreement is invalid, void, and of no effect. A declaratory judgment will terminate the uncertainty and controversy giving rise to this proceeding.

SECOND CLAIM FOR RELIEF

Declaratory Judgment: State Law Preemption

70. Plaintiff incorporates each allegation of the foregoing paragraphs as if fully set forth herein.

71. Plaintiff's members have property and/or liberty interests, rights, status, or other legal relations that are affected by the Defendants' approval of the Crestone Operator Agreement, as alleged herein.

72. A real and substantial controversy exists between the parties regarding whether the approval of the Crestone Operator Agreement is invalid, void, and of no effect. A declaratory judgment will terminate the uncertainty and controversy giving rise to this proceeding.

73. Defendants' approval of the Crestone Operator Agreement and the Acme location and operations is impliedly preempted by the state's dominant interest that the development of oil and gas in Colorado is to be regulated subject to the protection of public health, safety, and welfare, including protection of the environment and wildlife resources, as set out by the Colorado Oil and Gas Conservation Act, §§ 34-60-101 et seq., and the Court of Appeals in *Martinez v. Colorado Oil and Gas Conservation Commission*, 2017 COA 37 (Colo. App. 2017).

74. The Defendants' approval of the Crestone Operator Agreement in the manner described herein irreconcilably conflicts with state law in an area of mixed state and local interest, and is preempted.

THIRD CLAIM FOR RELIEF

Violations of the Open Meetings Laws C.R.S. § 24-6-402 ("OML")

75. Plaintiff incorporates each allegation of the foregoing paragraphs as if fully set forth herein.

76. Defendants comprise a “local public body” pursuant to the OML.

77. The Defendants have held non-public meetings where public business was discussed or at which formal action was taken.

78. Defendants have held non-public executive sessions without properly announcing the topic for discussion in the session, including citation to the statute authorizing such a session and identification of the particular matter to be discussed.

79. Defendants have held non-public executive sessions which considered matters outside those that are authorized by the OML.

80. Defendants have held non-public executive sessions wherein they adopted a proposed policy, position, resolution, rule, regulation, or formal action.

81. Defendants have held non-public meetings at which Trustee votes on the OA were discussed and decided.

82. Defendants have held non-public executive sessions outside of properly scheduled and noticed regular or special meeting.

83. Defendants have failed to provide full and timely notice of public meetings and executive sessions.

84. Upon information and belief, Defendants' public vote on the Crestone Operator Agreement at the November 4th, 2018 special meeting was little more than a confirmation of votes taken in one or more non-public meetings.

85. Plaintiff have been denied or threatened with denial of rights that are conferred on the public by the OML, and have suffered an injury in fact to a legally protected interest.

FOURTH CLAIM FOR RELIEF

Violation of Erie Zoning Law and Unified Development Codes (UDC)

86. Plaintiff incorporates each allegation of the foregoing paragraphs as if fully set forth herein.

87. Erie has adopted the UDC which sets forth minimum requirements to promote the public health, safety, and welfare.

88. The provisions of this UDC are specifically intended to:

- a) Foster quality, compatible, and efficient relationships among land uses;
- b) Promote a healthy and convenient distribution of population by regulating and limiting the density of development;
- c) Ensure greater public safety and accessibility through quality physical design and location of land use activities;
- d) Encourage the efficient use of the available land supply;

- e) Promote a balanced supply of residential, commercial, industrial, institutional, and transportation land uses that are substantially compatible with adjacent land uses and that have good access to transportation networks;
- f) Preserve the character and quality of the Town's residential neighborhoods;
- g) Promote a balanced, diverse supply of affordable, quality housing located in safe and livable neighborhoods;
- h) Enhance the appearance, visual scale, orientation, quality, and mix of land uses of new developments;
- i) Ensure that developments are substantially compatible with the Town's Comprehensive Master Plan;
- j) Promote the vitality and development of the Town's major employment centers, town centers, and its other commercial and mixed-use districts;
- k) Manage traffic congestion in the streets;
- l) Ensure the provision of adequate open space for light, air, and fire safety;
- m) Preserve the value of buildings and land;
- n) Manage the preservation of existing trees and vegetation, wetlands, floodplains, wildlife and habitat, stream corridors, scenic views, and other areas of scenic and environmental significance from adverse impacts of land development;

79. The residential zoning districts contained in UDC are intended to:

- a. Provide appropriately located areas for residential development that are substantially consistent with the Town's Comprehensive Master Plan and with standards for public health, safety, morals, and general welfare;
- b. Allow for a variety of housing types that meet the diverse economic and social needs of residents;
- c. Allow mixed-density residential development in certain districts where district and development standards ensure that mixed use development will maintain and improve the function and appearance of surrounding development and traffic flow;
- d. Provide the opportunity to protect sensitive environmental and cultural resources;
- e. Protect the scale and character of existing residential neighborhoods and community character;
- f. Ensure adequate light, air, privacy, and open space for each residential dwelling unit, and protect residents from the potentially harmful effects of excessive noise, glare and light pollution, traffic congestion, and other significant adverse environmental effects;
- g. Protect residential areas from commercial and industrial hazards such as fires, explosions, toxic fumes and substances, natural hazards such as mining subsidence and flooding, and other public safety hazards;

- h. Facilitate the provision of services, such as utilities, telecommunications technology, and streets and roads to accommodate planned population densities; and
 - i. Protect residential development from neighboring uses that are incompatible with a residential environment.
80. The commercial and industrial zoning districts contained in UDC are intended to:
- a. Provide appropriately located areas substantially consistent with the Town's Comprehensive Master Plan for industrial, retail, service, and office uses;
 - b. Expand the Town's economic base and provide employment opportunities primarily for Erie residents and the region;
 - c. Minimize any potentially negative impact of commercial and industrial development on adjacent residential districts;

81. The UDC provides specific regulations that provide a framework for the responsible exploration and production of oil and gas resources in a manner that preserves other natural resources, that is sensitive to surrounding land uses, and that mitigates adverse impacts to and protects public health, safety, welfare and the environment of the Town.

82. The UDC allows the BOT to enter into an operator agreement that exempts oil and gas operations from the UDC only when specific conditions are met, including but not limited to prior approval of permits by the appropriate state agency, a neighborhood meeting, public notice 15 days before any hearing, a publicly available staff report, and implementation of specific best management practices.

83. Any operator agreement that is deemed exempt from the UDC cannot contract away the rights of citizens of Erie to enforce the protections of the public health, safety and welfare required by the UDC.

84. The Defendants failed to comply with the UDC when entering into the Crestone Operator Agreement.

85. The UDC allows appeal of decisions by the BOT directly to the courts, and requires that the filing of an appeal stays all proceedings in furtherance of the contested action until the appeal is resolved.

86. Plaintiff are aggrieved by the Defendants' actions and omissions, and are entitled to a reversal or modification of the decision.

FIFTH CLAIM FOR RELIEF

C.R.C.P 106(a)(4)

87. Plaintiff incorporates each allegation of the foregoing paragraphs as if fully set forth herein.

88. The Defendants in exercising judicial or quasi-judicial functions have exceeded their jurisdiction and abused their discretion,

89. There is no plain, speedy and adequate remedy otherwise provided by law:

90. Plaintiff are entitled to a determination of whether the Defendants have exceeded their jurisdiction and abused their discretion.

SIXTH CLAIM FOR RELIEF

Common Law Trespass

91. Plaintiff incorporates each allegation of the foregoing paragraphs as if fully set forth herein.

92. The Defendants' actions and omissions permit physical intrusion upon the property of another without the proper permission from the person legally entitled to possession.

93. The Crestone Operating Agreement sets in motion a force which, in the usual course of events, will damage property of another and the Defendants are responsible for an impending trespass on such property.

94. Plaintiff seek a declaratory judgment and injunctive relief to avoid an imminent threat of irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF respectfully request that the Court:

1. Declare that Defendants' actions and omissions in approving the Crestone Operator Agreement were unlawful and unenforceable;
2. Issue an order pursuant to C.R.C.P. 106(a)(4)(VI) to have Defendants certify the record or otherwise for the Court to "determine the manner and timing of proceeding with respect to all claims."
3. Enter an injunction, precluding further development under the Operating Agreement unless and until approval of such development is completed lawfully;
4. Award Plaintiff costs and attorneys' fees incurred in prosecuting Open Meetings Law claims pursuant to C.R.S. § 24-6-402(9)(b);
5. Award Plaintiff costs pursuant to C.R.C.P. 54(d); and
6. Award Plaintiff such further relief as the Court finds proper.

Date: December 3, 2018

Respectfully submitted,

/s/ James Daniel Leftwich

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