Keep Moving Forward

OTTENJOHNSON
ROBINSON NEFF + RAGONETTI

>> ottenjohnson.com

OTTEN JOHNSON ALERT

What the Results of the 2018 General Election Mean for Real Estate in Colorado

November 2018 • Brian Connolly and Vincent Forcinito

Colorado voters' rejection of constitutional and statutory proposals involving regulatory takings, transportation funding, and setbacks for oil and gas wells will affect Colorado real estate in a myriad of ways. Most notably (or perhaps not at all), the law regarding these topics, for better and for worse, will remain the same. Here is a brief recap of a few statewide proposals, and what their rejection means for real estate development:

Amendment 74: Crisis Avoided

Amendment 74 proposed amending the Colorado Constitution to require that owners receive "just compensation" when their property is "reduced in fair market value by government law or regulation." Under this ill-conceived and poorly drafted proposal, any regulation with the effect of reducing the fair market value of private property, regardless of the public benefit generated, would have entitled property owners to compensation. This amendment, as further elaborated upon in last month's client alert, would have had many unintended consequences, including crippling local governments and halting real estate development in Colorado. While we fully support the private property rights of our clients, Amendment 74 went too far, with disastrous economic consequences to boot.

With Amendment 74 rejected, regulatory takings law remains unchanged. Both the federal and state constitutions allow owners to recover "just compensation" whenever the government takes private property for public use. When the government exercises its power of eminent domain, or engages in direct condemnation, just compensation must be paid. Regulatory takings, which occur when regulations go “too far,” are compensable where government action eliminates all or substantially all economic use of private property. Yet where some economically viable use of property remains, and a reasonable return on investment exists, it does not require that compensation be paid.

Propositions 109 and 110: On the (Quickly Deteriorating) Road Again

Colorado has struggled to accommodate recent surges in population and economic growth while keeping aging infrastructure up to par. The root of Colorado’s traffic problems is clear and traceable to a lack of sufficient state revenue dedicated to meeting our transportation needs.

Proposition 110, which proposed a statewide, 0.62% sales tax increase for transportation projects, would have gone a long way toward solving this problem, providing state and local governments with a long-term solution to infrastructure woes. Proposition 110 contained prescriptive provisions for how the revenue generated would have been used, as well as a clear plan for bond repayment. Proposition 109 was limited to borrowing for highways, did not support multimodal transportation options, and would have required borrowed funds to be repaid from the state’s existing funds, inevitably drawing money away from other state necessities. Voters rejected both propositions.

A functioning transportation network is important to Colorado’s economic development and prosperity. Solid infrastructure and a healthy economy in turn lead to continued real estate investment and development opportunities. While the opposition to Propositions 109 and 110 was evident at the polls, it is clear that something must be done to combat this growing problem, or else our state’s economic future will be at risk.

Proposition 112: Not in my Backyard (Or Anywhere Else)

In perhaps the most controversial measure appearing on the November ballot, Proposition 112 would have effectively banned oil and gas drilling operations in Colorado. The proposition would have increased oil and gas setbacks from 500 feet from homes and occupied buildings, to 2,500 feet from “occupied structures, water sources, and areas designated as vulnerable.” Further, Proposition 112 would have permitted both the state and local governments to increase setbacks within their jurisdictional control to greater than 2,500 feet. Had Proposition 112 passed—it did not—it would have essentially halted all new oil and gas development on non-federal lands throughout the state, due to the breadth of land that would have been proscribed from such activities.

Colorado is the nation’s seventh largest oil producer and fifth largest supplier of natural gas. Oil and gas exploration and development is an integral part of the Colorado economy. Proposition 112 would have wiped out the entire industry within the state, taking with it not only the high-paying jobs it creates, but the state and local taxes generated by the industry as well. Proposition 112 received bipartisan opposition, including from Governor-Elect Jared Polis. While Polis made his position on Proposition 112 known publicly, he has been tight-lipped regarding what setback increases he would support, if any. With a Democrat governor-elect, and soon to be Democratic control over both the state house and senate, it shouldn't be long before we receive our answer.

Otten Johnson attorneys in our Land Use practice group have substantial experience with development and governmental agreements. For more information on this Otten Johnson Alert or for help evaluating your current situation, contact any of the attorneys in the Land Use practice group. For a listing, click here.

More Great Reads

Rocky Mountain Real Estate Blog
The latest real estate and land use news and updates. Read More

Rocky Mountain Sign Law Blog
Regulatory, best practices, and other First Amendment news. Read More

---

950 Seventeenth Street, Suite 1600, Denver, CO 80202
Phone 303.825.8400 | Fax 303.825.6525 | ottenjohnson.com