
MEMORANDUM

TO: Erie Board of Trustees
Malcolm Fleming, Town Administrator

FROM: Fred Starr, AICP - Planning and Development Director

SUBJECT: Study Session - Discussion of development setbacks to Oil and Gas facilities

DATE: June 1, 2021

Introduction: The Board of Trustees wishes to evaluate options for amending the existing setbacks from oil and gas facilities in Section 10-6-14 of the Unified Development Code (UDC) that apply to the land development process. This memorandum will provide a review of similar requirements adopted by communities in the area. We will ask for recommendations regarding any proposed increase in the current setbacks so we may present these recommendations to the development community for their comment and suggestions prior to the introduction of an Ordinance for consideration by the Planning Commission and Board of Trustees.

We have created maps showing the location of Producing Wells and Plugged and Abandoned wells with varying buffers. New requirements cannot be imposed on properties that already have vested property rights. Consequently, new setback requirements would only apply to areas where this is not the case. The areas shaded in Blue on these maps identify those areas where new regulation may apply. (See attached Exhibits)

Background: The UDC currently has two separate provisions that address setbacks between Oil and Gas facilities and developed areas within the Town. Chapter 10-12 of the UDC sets standards that apply to any Oil and Gas Operator as they propose new sites within the Town. Chapter 10-6-14, is applied to any land development activity and is designed to separate land development from existing oil and gas facilities. These provisions are summarized below:

Chapter 12 of the UDC “Regulations for Oil and Gas Operations”

The purpose of these regulations is to protect public health, safety, welfare and the environment by using the town's police power to:

- Regulate the surface impacts of oil and gas operations in a reasonable manner to address matters specified in C.R.S. § 29-20-104(1)(h) and to protect and minimize adverse impacts to public health, safety, welfare, and the environment.
- Implement such requirements that are necessary and reasonable to avoid adverse impacts from oil and gas operations and to minimize and mitigate the extent and severity of those impacts that cannot be avoided.
- The town reserves the right to deny any application that does not meet all standards set forth herein.

Within Chapter 12 is section 10-12-4 Oil and Gas Standards – “The following standards are the minimum standards that will apply to all proposed oil and gas operations, and shall be in addition to any state or federal standards that may apply. In the event of a conflict between these standards and another applicable standard, the more stringent standard shall apply.” This section identifies the following Location Standards:

- The operation is located within a zone district that allows heavy industrial uses.
- The operation is located at the site from which the minerals can be accessed with the least adverse impact to public health, safety, welfare and the environment in compliance with all applicable standards in this section 10-12-4.
- Any type of well pad and above-ground production facility shall be located at least 2,000 feet from the boundary line of platted residential lots or parks, sports fields and playgrounds, or other outside activity areas and any occupied structure. Measurement shall be taken from the edge of the disturbed area to the boundary line. The town may decide that a different setback is more appropriate based on the *Alternative Site Analysis*.
- The operation shall be at least 500 feet from any surface water body.
- The operation shall be at least 500 feet from any domestic or commercial water wells or irrigation wells.
- The operation is not located within a floodway district as defined in section 10-2-7 C.4 of the UDC.

Chapter 10-6-14 Development and Design Standards to accommodate Oil and Gas Wells and production facilities. The following is a summary of the three categories of setbacks in this section that apply to (1) wells and production facilities, (2) pipelines, and (3) abandoned wells and production facilities:

Setbacks from Existing oil and gas wells and production facilities:

- All development with existing oil and gas wells and associated above ground production facilities shall provide the following setback to lots, buildings, streets, trails and parks from existing wells and associated above ground production facilities:
 - Residential lots and nonresidential buildings, community parks, neighborhood parks and pocket parks, shall be set back a minimum of 350 feet.
 - Street rights-of-way and trails shall be set back a minimum of 150 feet.
 - Residential lots platted prior to May 4, 2018 and residential lots designated in plats submitted to the town pursuant to completed preliminary plat, final plat, or minor subdivision applications prior to May 4, 2018 shall be subject to the former minimum 150-foot setback standard.
 - Nonresidential buildings, other than assembly buildings, shall be subject to the former minimum 150-foot setback standard if at least one of the following conditions exists prior to May 4, 2018:
 - a. The nonresidential building is existing.

- b. The nonresidential lot is existing.
 - c. The nonresidential lot is proposed in a completed preliminary plat, final plat, or minor subdivision application submitted to the town.
- In a residential subdivision the well and associated production facilities shall be placed in a non-development tract.

Setbacks from Oil and gas well pipelines:

- Gas and oil well pipelines and their associated easements shall not be located on residential lots.
- Streets should be platted so pipelines cross at a substantially right angle to the street.
- The final plat shall show easements for gas and oil well pipelines that are a minimum of 30 feet wide.

Setbacks from Abandoned oil and gas wells and production facilities:

- Oil and gas wells and production facilities shall be abandoned and reclaimed before approval of a final plat. The following shall be completed before approval is granted by the town:
 - a. A letter of confirmation from the state shall be submitted to the town regarding the completion of the abandonment and reclamation process in accordance with state law and COGCC regulations.
 - b. Recorded documentation of abandonment of easements associated with the well shall be submitted to the town.
- Capped wellheads shall be identified by a concrete and brass monument that will be recorded and noted on the final plat.
- All subdivisions with wellheads abandoned and reclaimed in accordance with state law and COGCC regulations shall use the following standards to plat lots and streets:
 - a. Streets may be platted over abandoned wellheads if conflicts do not occur with infrastructure requirements within the street.
 - b. A nonresidential lot may contain an abandoned wellhead. The plat shall identify a building setback of 25 feet from the monumented abandoned wellhead.
 - c. Residential lots one acre or larger may plat over an abandoned wellhead. The plat shall identify a building setback of 25 feet from the monumented abandoned wellhead.
 - d. Abandoned wellheads, and the required setback surrounding the abandoned wellhead, shall not be located in single-family lots under one acre in size.
 - e. Abandoned wellheads, and the required setback surrounding the abandoned wellhead, shall not be located in multi-family lots.

- f. In subdivisions where an abandoned wellhead cannot be placed in a street or lot meeting the standards of this subsection, the abandoned wellhead shall be placed in a tract. The abandoned wellhead and required setback surrounding the abandoned wellhead may not be located in a park.

Information prepared for the Broomfield City Council: The City and County of Broomfield is also considering amending their current regulations for oil and gas setbacks as applied to land development activity. As part of that work, Broomfield staff prepared a Study Session Memorandum dated March 30, 2021, (attached) which provides a summary of the current City of Broomfield regulations for setbacks that new residential lots must maintain from producing oil and gas facilities as well as plugged and abandoned wells. As referenced in that memorandum:

- “Broomfield currently requires new residential lots to be a minimum of 1,320 feet from producing oil and gas facilities unless specific notice is recorded against the title and provided to the lot purchaser. Additionally, no residential units may be built within 200 feet of an existing oil and gas facility.”
- “For plugged and abandoned wells, the Municipal Code requires notice to lot purchasers within 200 feet and requires a 50 foot by 100-foot easement. Structures are not permitted within the easement.”

In addition to summarizing the existing City of Broomfield regulations, the memorandum also provided a summary of the “Reciprocal Setback” requirements currently in place by other communities in the region. The comparisons listed in the Broomfield Memo are as follows:

Municipality	Reciprocal Setback
Broomfield	Residential lot: 200 feet School: 500 feet *
Boulder	None
Fort Collins	Residential buffer: 500 feet (or COGCC designated setback, whichever is greater) High Occupancy buffer: 1,000 feet Public or private playgrounds, parks, recreational fields, or community gathering spaces are not allowed within the “buffer” <i>High Occupancy Building Unit</i> means same as COGCC’s regulations a. Any School, nursing facility, hospital, life care institution or correctional facility provided the facility or institution regularly serves 50 or more persons; b. An operating Child Care Center; or c. A multifamily dwelling unit with four or more units
Erie	Residential lots and nonresidential buildings, community parks, neighborhood parks and pocket parks: 350 feet Street rights-of-way and trails: 150 feet
Commerce City	1,000 feet “for permitted or existing Well Sites where all permitted wells have not been plugged and abandoned in compliance with COGCC standards and

	regulations.” Plugged/Abandoned: 50 feet (Code requires a “plat designation surrounding such wells and expressly prohibiting any habitable building or structure within 50 feet.” see page 42).
Thornton (1)	Any development within 500 feet of the city will notify the owner/operator and triggers certain requirements
Aurora	None
Loveland	Residential: 500 feet. High Occupancy: 1000 feet
Longmont	Proposed occupied buildings, platted residential lots, sports fields and playgrounds shall be 750 feet or more, or the maximum distance practicable as determined by the city, from existing oil and gas wells and production facilities. Plugged/Abandoned: 150 feet

- (1) As part of my research into the setbacks used by adjacent jurisdictions, I found the same information with the exception of the City of Thornton. The City of Thornton is considering an amendment to their land development code that would require a “minimum separation” of 500-ft between an Oil and Gas production site and any proposed main “Buildings” with an Occupancy of Group A, E or I as defined by the International Building Code, and 350-ft for proposed main buildings with all other occupancy groups. Examples of Group A uses are: Assembly uses such as theaters, nightclubs, restaurants, bars, banquet halls, churches, community halls, libraries and museums. Examples of Group E uses are: Schools, Examples of Group I uses are: hospitals, nursing homes, day cares, etc. This would mean that Group R uses such as: single family residences, multi-family residences, could be no closer than 350-ft.

Thornton (Proposed)	Setback
Existing or Proposed Production Sites	500-ft between the production site and any proposed main building in any Group A, E or I Occupancy as defined by the International Building Code. 350-ft between the production site and any proposed main buildings for all other Occupancy Classifications
Flowlines and Gathering Pipelines	Minimum separation of 50 feet from any building required to get a Certificate of Occupancy. Measurement to be taken from the edge of the Flowlines or Gathering Lines and the outside wall of the building. The subdivision plat shall show easements for flowlines and gathering lines. Every plat where flowlines or gathering lines are located shall include a notation that states: “The location of flowlines and gathering pipelines shall be disclosed to all prospective purchasers

	<p>of lots within a 200 foot radius of all flowlines and gathering pipelines”</p> <p>Markers to be installed every 350 feet along the flowline or gathering pipeline</p> <p>Abandoned flowlines must be removed per City Code</p>
Plugged and Abandoned wells	<p>In residential districts, plugged and abandoned wells shall be located in restricted tracts which shall not be less than 50 feet in width by 100 feet in length.</p> <p>No building requiring a certificate of occupancy shall be constructed within 50 feet of a plugged and abandoned well.</p> <p>Every plat shall include a note: “The location of plugged and abandoned wells shall be disclosed to all prospective purchasers of lots within a 200 foot radius of all plugged and abandoned wells.</p>

The Broomfield memorandum also discussed the option of having “Varying setbacks based on Drilling/Development Phases” The Broomfield staff made the following observation in their memorandum: “I have not been able to find any jurisdiction that has developed setbacks based on Drilling or Development Phases.” Their memo also states: “Staff is not aware of any jurisdiction that has adopted setback distances from existing well sites based on the drilling/development phase of the wells at the oil and gas facility”

The Broomfield memorandum also discusses the Potential Impacts on Land Use and cited the Broomfield Comprehensive Plan which establishes the preferred development patters through designation of land use categories for specific geographical locations. They also referenced the impact of the proposed setbacks.

“Implementation of reverse setbacks will impact the available land able to be utilized for land uses prohibited from locating within the specified distance of an oil and gas facility. Depending on the scale of the setback, it may be appropriate to re-evaluate areas for future development. Although residential land uses are not a revenue generator for Broomfield, if reverse setback implementation results in reduced residential dwelling units, this could impact Broomfield’s ability to support the planned density of commercial and employment uses. Staff will provide additional analysis regarding potential impacts based on the direction of the City Council.”

Erie Considerations: Like Broomfield and the other communities that have been referenced, any change to the setbacks currently found in the Erie UDC will have a potential effect on future land development options, depending on the setbacks recommended and the current stage of development. Staff have prepared maps of various Oil and Gas well sites both within town limits and outside of the town limits but within our Comprehensive Planning Area. These setbacks are 350-ft, 500-ft, and 1,000-ft from active or shut-in oil and gas wells sites, and 150,

250 and 500 ft from plugged and abandoned wells. Development related setbacks would be applied to any future land development applications since Chapter 12 of the UDC will be applied to any future oil and gas operations and not the traditional land development process.

As noted in the Broomfield Memorandum, “Staff is not aware of any direct studies or reports that identify what particular distance is necessary and appropriate to maintain between residences and producing oil and gas wells or between residences and plugged and abandoned wells.” Staff provided the information above as a reference for what other communities in the area have adopted or are considering with respect to land development activities in proximity to various oil and gas facilities.

As a summary to the information previously provided, Section 10-6-14 of the UDC currently require the following setbacks for the types of activities listed:

- 1) Existing oil and gas wells and production facilities
 - Residential lots and nonresidential buildings, community parks, neighborhood parks and pocket parks, shall be setback a minimum of 350 ft.
 - Street rights-of-way and trails shall be setback a minimum of 150 feet.
- 2) Oil and gas well pipelines
 - Shall not be located on Residential Lots
 - Streets to be platted so a pipeline crosses at substantially right angle to the street
 - Final plat to show easements for pipelines that are a minimum of 30-ft wide
- 3) Abandoned oil and gas wells and production facilities
 - A nonresidential lot may contain an abandoned wellhead, and must have a building setback of 25-ft
 - Residential lots which are One Acre or larger may have an abandoned well on the lot but must have a minimum setback of 25-ft.
 - Cannot be located on a Single Family resident lot of less than One Acre.
 - Cannot be located on any Multi-family lot
 - Cannot be located on a lot containing a Park
 - Must be located on a separate “Tract” or Residential lot greater than One Acre

Setback Options:

- 1) Keep the existing setbacks as noted in Section 10-6-14 and require a “Notice to be recorded against Title” for any platted lots that are within 2,000-feet of: 1) Existing Oil and Gas wells, 2) Oil and Gas Pipelines and 3) Abandoned Oil and Gas wells.
- 2) Require “Notice to be recorded against Title” for proposed platted lots that are within 2,000–feet and increase the setbacks in Section 10-6-14 for each of the three types of activities as follows:

a. Existing oil and gas wells and production facilities

- Residential lots and nonresidential buildings, community parks, neighborhood parks and pocket parks, shall be setback a minimum of **500 feet**.
 - For Residential Lots Greater than One Acre is size – Setback to be measured to the Residential Structure

- Street rights-of-way and trails shall be setback a minimum of 150 feet. (No Change)

b. Oil and gas well pipelines (No Change to Existing Requirements)

c. Abandoned oil and gas wells and production facilities

- Increase setback to any residential platted lot less than One Acre in size from 25-feet to 150-feet
 - A nonresidential lot may contain an abandoned wellhead, and must have a building setback of 25-ft
 - Residential lots which are One Acre or larger may have an abandoned well on the lot but must have a minimum setback of 150-ft. to Residential Structure.
 - Cannot be located on a Single Family resident lot of less than One Acre.
 - Cannot be located on any Multi-family lot
 - Cannot be located on a lot designated as a “Park”
 - Must have proper Monument per COGCC
- 3) Increase setbacks additional distances understanding that will either reduce the land available for development or make it more expensive for developers to negotiate agreements to plug and abandon existing wells.

Summary:

We have provided maps describing those areas to which any new Oil and Gas setbacks will apply.

Since a recommendation for a specific amendment to the Town of Erie Oil and Gas setback regulations has not been made as yet, staff have not engaged the development community in the review and comment on a specific recommendation. Staff did make the development community, including the Denver Homebuilders Association (HBA) aware of the City of Broomfield study session agenda and provided a copy of the March 30, 2021 Memorandum as a means of soliciting feedback from the development community.

Next Steps:

1. Staff will draft a proposed Ordinance reflecting Board direction on desired amendments to the existing setbacks.
2. Staff recommends a review and comment period on any proposed Ordinance change prior to scheduling for consideration by the Planning Commission and Board of Trustees.
3. After comment period, schedule for Planning Commission and Board of Trustees action

Attachments:

- 1) Oil and Gas facility setback maps
- 2) March 30, 2021 Broomfield City Council Study Session Memorandum
- 3) April 29, 2021 Broomfield City Council Study Session Memorandum