



ARAPAHOE COUNTY
COLORADO'S FIRST

BOARD SUMMARY REPORT

Date: January 22, 2020

To: Board of County Commissioners

Through: Bryan Weimer, Department Director

From: Diane Kocis, Energy Specialist

Subject: **Study Session on Oil & Gas Online Survey Results and Process Improvements Recommendations**

Request and Recommendation

The purpose of this BSR and Study Session is to provide a status update to BoCC regarding the on-going process to develop new oil and gas land use/siting regulations in accordance with SB19-181. This update will present the results of an online Oil and Gas Survey that concludes on January 31, 2020. Staff will also update the BoCC on input received from the Oil & Gas Regulations Public Workshops on January 23rd and January 28th and staff will present recommendations for Process Improvements toward revision of the Energy Facilities portion of the Land Development Code.

Background

With the enactment of SB19-181, State preemption over oil and gas development was removed and local governments now have local land-use authority to develop regulations to govern site approval for oil and gas wells and facilities. Arapahoe County Public Works and Development staff commenced the stakeholder input process toward drafting new oil and gas rules in September 2019 and that will continue through April of 2020.

Staff has been directed to adopt a balanced approach for new oil and gas rules where both operators and citizens would benefit from new rules. Process Improvements is one category for new rules where this is especially true. Some of staff recommendations are based on staff input, some on citizen input and some are based on operator input. Some of staff's recommendations outlined below have already been adopted by other jurisdictions.

Staff is considering adopting new process rules for:

- Neighborhood meetings
- Notification of application to area residents within a ¼ mile
- Notification of the commencement of all phases (construction, drilling, fracking and abandonment) to area residents within a ¼ mile
- County issuance of an actual Oil & Gas Permit for each well proposed

- Expiration of plans/permits either 2 or 3 years after approval
- Recordation of permits with the Clerk and Recorder's Office
- Incentivizing pipelines with an administrative process

Links to Align Arapahoe

This matter links to the Align Arapahoe goal for Quality of Life for Arapahoe County citizens who will be impacted by neighboring large-scale oil and gas facilities and to the goal of Fiscal Responsibility for a balanced approach that will allow the industry to thrive-

Discussion

In response to SB19-181, Staff is proposing to amend the Land Development Code for oil and gas land use applications and is in the process of seeking input and suggestions from citizen and industry stakeholders. Staff is also continuing to look at other jurisdictions' oil and gas rules or Operator Agreements as relates to Process Improvements. Staff has identified seven topics that would improve how we process oil and gas applications:

- Neighborhood meetings: Neighborhood meetings would be required for any application where a facility is proposed within 1,200 feet of an existing residential unit, within 100 feet of a floodplain.
- Notification of application: Operators would provide notice of application to all landowners of record within ¼ mile of a proposed facility. Currently notice is only required to landowners of adjacent parcels. Stakeholder input indicates that some of the temporary impacts, namely increased traffic, noise and light, affect more residents than just the adjacent landowners.
- Notifications for all phases of oil and gas development: Operators would be required to notify all landowners of record within ¼ mile of an existing facility of the estimated start of pad construction, drilling, fracking and well abandonment. Because the start of construction, drilling or fracking is often years after facility approval was granted, residents may be taken by surprise and further inconvenienced when construction, drilling and fracking commence and temporary impacts are the greatest.
- County issuance of an actual oil and gas facility permit for each well planned on an approved pad: An actual permit would be easy to record and could reference other requirements, such as GESC permits, access road permits, oversize/overweight permits and building permits. Historically some operators have not applied for all the associated permits in a timely fashion, which has affected their construction schedules. Issuing a permit for each well is appropriate because the activities associated with each well are tied to the period of time of the temporary impacts.
- Expiration of Permits: Permits would expire in 3 years. Other types of development in an area could change drastically between the time a permit is approved and the time oil and gas development commences. Staff has arrived at a suggested 3 year valid permit period in acknowledgment of operators' upfront planning. It is also important to note that Conditions of Approval could be outdated by the time the operator starts to develop a site.
- Recordation of permits with the Clerk and Recorder's Office: If oil and gas permits were recorded, a title search would allow a potential developer or homebuyer to determine if oil and gas development was planned and approved for a specific parcel or vicinity. Staff was

made aware of an instance where a parcel was sold and the new owner erected a home on a portion of a parcel that was planned for an oil and gas pad. The new owner was not aware of the oil and gas facility approval because no development was indicated in the title search

- Incentivize pipelines with an administrative process: Staff feels that pipeline applications should be encouraged because pipelines reduce traffic, wear and tear on County roads and the amount of truck air emissions. A processing decision would be made by staff following a presubmittal meeting as to whether a pipeline application could be processed administratively. Staff is considering an administrative process for pipelines up to 5 miles in length, if sensitive environmental areas would not be impacted significantly or if the impacts could be mitigated and if the fire district deems the proposed pipeline would not impact their resources. Processing pipeline applications administratively would eliminate two public hearings and decrease the application approval time by at least 3 months. Pipeline application approvals could be elevated to the BoCC if staff deems the proposed pipeline to have significant environmental or safety impacts.

It is important to note that staff will continue to use the evaluation criteria already presented at previous study sessions for any draft rules:

- Impact on the Public
- Alignment with State Rules
- Best Management Practices
- Industry Impact
- Impact to County Resources

Steps taken since last Study Session

Staff launched the project website, the online Oil & Gas Survey and conducted two Oil & Gas Rules Workshops in January, with a goal of completing the Land Development Code revision process in May of 2020 with BOCC adoption of updated codes. Staff continues to review regulations drafted and adopted in other jurisdictions. The attached schedule defines the schedule and approach going forward over the next months.

At this and the three remaining February Study Sessions the Board will deliberate on specific items to incorporate in the land development code revisions. Staff will also address the other topic areas of Quality of Life and Health and Safety at the remaining study sessions.

Alternatives

The purpose of this study session is to update the BoCC on the results of the oil & gas online survey, input received from the Oil & Gas Public Workshops and present staff's recommendations for process improvement. Therefore, staff is requesting feedback and direction from the Board on the information presented.

Specific Alternatives:

- 1- Require neighborhood meetings in some cases?
- 2- Require written notification?
- 3- Require notification at each project milestone? (start of pad construction, start of drilling, start of fracking, and well abandonment)

- 4- Require a county permit?
- 5- Include permit expirations?
- 6- Require recording of approvals?
- 7- Allow administrative process for some pipelines?

Fiscal Impact

Depending on the specific changes adopted, it is likely a minimal financial impact will occur for the County. However, this will be explored further when the updated code is drafted and an associated fee schedule is developed based on the costs of service necessary to implement the code.

Concurrence

PWD Staff are in support of continuing this process with additional study sessions and continued public outreach. The County Attorney's Office has reviewed this BSR and the staff evaluation.

Attachment

Project Schedule

Oil & Gas Online Survey Results Report to be sent after the survey closes.

cc:

Jan Yeckes

Jason Reynolds

Chuck Haskins

Robert Hill

Bryan Weimer

Todd Weaver

John Christofferson

Ron Carl