

Town Council Meeting September 20, 2010

Natural Gas Drilling Permit Applications
and Setbacks

History of Oil and Gas Ordinance

- May 19, 2003: Town Council adopts ordinance amending Chapter 34 "Environment" of the Code of Ordinances and establishing Article VII entitled "Oil and Natural Gas Well Drilling and Operations"
- December 15, 2003: Ordinance amended to clarify floodplain definition and delineation
- March 7, 2005: Ordinance amended by including language relative to floodplain and Environmentally Sensitive Area variance requests, site plan criteria, and "outer boundary line" setback and "building used for human occupancy" clarification
- March 15, 2007: Ordinance amended following stakeholder group formation, meetings, and recommendation, and additional public input meetings, Town Council Work Sessions, and a Town Council Public Hearing

History of Oil and Gas Ordinance

- September 15, 2008: Ordinance amended to set new gas well permitting fees within Appendix A of the Code of Ordinances
- December 7, 2009: Ordinance amended to address seismic survey activity within Town ROW and Town property

2007 Amendment Timeline

- March-May of 2005: Stakeholder group identified
- June 8, 2005: Group's first meeting to identify issues; total of 8 meetings held to develop proposal
- June 29, 2006: First public comment meeting, dedicated email account created
- August 17, 2006: First Town Council Work Session
- November 2006: Two additional public comment meetings
- January 25, 2007: Second Town Council Work Session
- March 15, 2007: Town Council adopted amended regulations

2007 Ordinance Amendment Summary

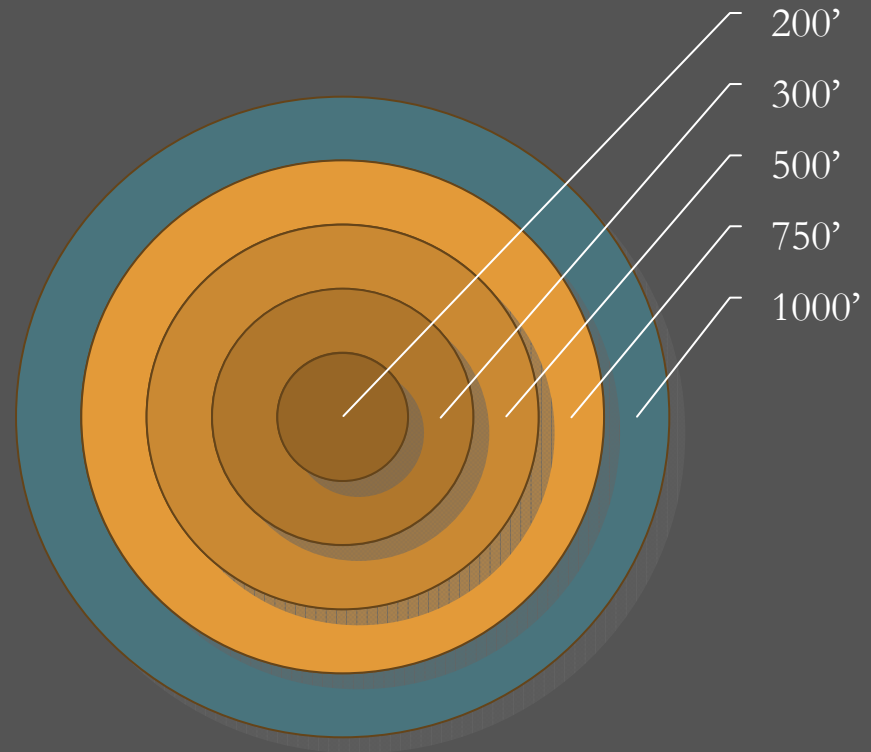
- January 25, 2007, and March 15, 2007, Town Council meetings
- Tank battery/well facility setback recommendations and discussion at public meetings resulted in well bore setback requirements matching the tank battery setback requirements
- Variance process for tank battery/well facility recommended and adopted; thus complying with the applicable well bore setback requirements

2007 Ordinance Amendment Summary

- Noise/Compressor Requirements
- Fees
- Public Information
- Screening/Fencing
- Appeal Process
- Setbacks

Setback Distance Comparison

- 1,000 feet = 72.12 acres
- 750 feet = 40.57 acres
- 500 feet = 18.03 acres
- 300 feet = 6.50 acres
- 200 feet = 2.88 acres



2007 Amendments Regarding Tank Battery Setback

January 25, 2007 Town Council Meeting

At page 5-5 of Agenda Item No. 5, the following information was included relative to proposed amendments to the Town's oil and gas ordinance:

Tank Batteries, Well Facilities, and Equipment

Staff recommends adopting the same regulation for a setback as for a residence and floodplain. At minimum, a variance process through the Oil and Gas Board of Appeals is recommended.

2007 Amendments Regarding Tank Battery Setback

January 25, 2007 Town Council Meeting

Power point presentation confirmed this
understanding:

Setbacks

Tank Batteries, Well Facilities, and Equipment

- ❑ **Current Regulation:** 1,000 feet from any public park, residence, church, public building, hospital, school, or human occupied building; 500 feet from public right-of-way or property line; 500 feet from the fully developed 100 year floodplain; No variance process available.
- ❑ **Stakeholder Proposal:**
 - ❑ Require facilities to be placed on pad site
 - ❑ Centralized facilities will comply with well bore setback requirements

Setbacks

Tank Batteries, Well Facilities, and Equipment

□ **Staff Recommendation:**

- Change setback to match recommended setbacks for:
 - Residence – 1,000 feet, 500 feet, never less than 300 feet
 - Floodplain – 300 feet
 - Human Occupied Building – 500 feet, never less than 300 feet
- Centralized facilities shall comply with the well bore requirements.
- Allow for a variance process from the OGBOA.

2007 Amendments Regarding Tank Battery Setback

January 25, 2007 Town Council Meeting

Minutes from Meeting regarding tank battery setbacks:

Staff Recommendation:

- Change setback to **match** recommended setbacks for:
 - o Residence – 1,000 feet, 500 feet, never less than 300 feet
 - o Floodplain – 300 feet
 - o Human Occupied Building – 500 feet, never less than 300 feet
- Centralized facilities shall comply with the well bore requirements.
- Allow for a variance process from the OGBOA.

The Council concurred with staff's recommendation.

2007 Amendments Regarding Tank Battery Setback

March 15, 2007, Council Public Hearing

At page 16-4 of Agenda Item No. 16:

Tank Batteries, Well Facilities, and Equipment

The proposed ordinance adopts the same regulation for a tank battery, well facility, and equipment setback as for the proposed residence and floodplain setback changes.

Compression facilities, centralized tank batteries, and associated facilities are included in the setbacks. . . .

2007 Amendments Regarding Tank Battery Setback

March 15, 2007, Council Public Hearing

Power point presentation at this meeting confirmed that the tank battery setback matched the residence and floodplain setbacks as proposed:

Proposed amendment was to “change setback to match recommended setbacks for: Residence— 1,000 feet, 500 feet, never less than 300 feet. . . Centralized facilities shall comply with the well bore requirements.”

2007 Amendments Regarding Tank Battery Setback

March 15, 2007 Council Public Hearing

Minutes from that meeting:

Ms. Hattan referred to the setback requirements for compressor stations. She asked if the compressor facilities were meeting the noise requirements why was the Town requiring the facilities to meet the same setbacks as wells.

Mr. Compton stated typically the compressor stations were associated with the gas well activity, so it was considered a type of production equipment. Variances to the setbacks were available through the Board.

2007 Amendments Regarding Tank Battery Setback

Oil & Gas Drilling Ordinance Comparison Chart

For Tank Battery Setback, the Comparison Chart presented at the March 15, 2007, public hearing:

1,000 foot setback from public park, church, public building, hospital and school; Residence owner with mineral interest: 500 foot setback with a possible variance from the OGBOA down to 300 feet, Mineral and residence owner not the same: 1,000 foot setback with a possible variance from the OGBOA down to 500 feet; Change setback to 300 feet from the floodplain; measured from the tank batteries, well facilities, or equipment. Centralized facilities shall comply with the well bore requirements Allow variance process from the OGBOA.

2007 Amendments Regarding Tank Battery Setback

Oil & Gas Drilling Ordinance Comparison Chart

For Tank Battery Setback, the pre-August 2010 on-line Comparison Chart contained an error, as noted:

1,000 foot setback from public park, church, public building, hospital and school – variance down to 500 feet;
1,000 foot setback from residence whose owner is without mineral interest in the application – variance down to 500 feet; 1,000 foot setback from residence whose owner is with mineral interest in the application – variance down to 300 feet; 500 foot setback from human occupied building – variance down to 300 feet; All measured from nearest tank, facility, equipment, etc.

2007 Amendments Regarding Tank Battery Setback

Oil & Gas Drilling Ordinance Comparison Chart

For Tank Battery Setback, the current on-line Comparison Chart was corrected to comply with the 2007 version and the adopted 2007 amendments, as noted:

1,000 foot setback from public park, church, public building, hospital and school – variance down to 500 feet; 1,000 foot setback from residence whose owner **does not have** mineral interest in the application – variance down to 500 feet; 500 foot setback from residence whose owner **does have** mineral interest in the application – variance down to 300 feet; 500 foot setback from human occupied building – variance down to 300 feet; All measured from nearest tank, facility, equipment, etc.

2007 Amendments Regarding Tank Battery Setback

To conclude that the Titan/Hilliard permit should not have been administratively approved because a variance was needed for tank batteries located within 1,000 feet of residences, one would be required to overlook:

- the express words used in Section 34-422(d)(2) of the Code of Ordinances and completely ignore the last sentence of that section;
- the Town Council's consideration in 2007 of amendments to the oil and gas ordinance specifically addressed this issue and the Town Council, at its January 25, 2007, meeting specifically "concurred with staff's recommendation"

- the agenda packet at the January 25, 2007, Town Council meeting specifically supported the Town's interpretation of "matching" tank battery setbacks with residential applicable setbacks
- the staff presentation at the January 25, 2007, Town Council meeting specifically supported the Town's interpretation of "matching" tank battery setbacks with applicable residential setbacks
- the Town Council, at its March 15, 2007, meeting, approved the tank battery setback amendment that previously was approved by the Town Council
- the agenda packet at the March 15, 2007, Town Council meeting specifically supported the Town's interpretation of "matching" tank battery setbacks with residential applicable setbacks

- the legislative history and legislative intent behind Section 34-422(d)(2) are clear
- basic tenets of statutory construction support the Town's interpretation of its ordinance
- the Texas Code Construction Act, and specific principles contained therein, support the Town's interpretation
- entire amendments to ordinances and statutes are intended to be effective, and accepting some residents' interpretation of the tank battery setback would result in the last sentence of that section being of no import and surplus language with no meaning
- administrative construction of a legislative enactment by the administrative agency charged with its enforcement is given great weight

- the Town has consistently applied the tank battery setback at other locations in the Town, and the treatment of the Titan/Hilliard site was no different
- at no time at any public hearing before the OGBOA has any applicant, any member of the public, the Town Council or the OGBOA suggested the Town's interpretation of Section 34-422(d)(2) was incorrect relative to tank battery setbacks
- practical reasons support such interpretation since, if some residents' contention is correct, well bores could be 500 feet from residences but tank batteries and related equipment would have to be 1,000 feet away, thus leading to larger pad sites
- to the best of the Town's knowledge, such an interpretation is not an accepted drilling practice nor has any other local government in the area adopted such an interpretation

“There is a record of correspondence between town attorneys and council members that directly contradicts [the Town’s interpretation of Section 34-422(d)(2)]”

- The only correspondence between my office and council that has been released directly supports the Town’s interpretation of Section 34-422(d)(2)—the August 26 legal memo on-line
- While uncertain how a private individual would have obtained any confidential attorney/client privilege documentation, I reviewed correspondence between my office and councilmembers
- A March 17, 2007, memo to one councilmember again confirms the Town’s interpretation of Section 34-422(d)(2)

Tank Batteries, Compression Facilities, Well Facilities and Equipment

Former ordinance: 1,000 feet from any public park, residence, religious institution, public building, hospital building or school, or any other building used, or designed and intended to be used, for human occupancy (could not be reduced less than this amount with a variance)

Amended ordinance: 1,000 feet from any public park, residence, religious institution, public building, hospital building or school and with a variance, to the minimum distance allowed for well bores

500 feet from any building used, or designed and intended to be used, for human occupancy with a variance to the minimum distance allowed for well bores

Centralized tank batteries, compression facilities and associated facilities comply with well bore setbacks

Recent Applications – Tank Batteries

- McDowell Pad – variance requested for tanks to residence
- Armstrong-Huggins Pad – variance requested from tanks to residence
- Cummings C-West Pad – tank setbacks applied; no variance due to mineral ownership
- Bob Smith Pad A – tank setbacks applied; no variance due to mineral ownership

Armstrong-Huggins Pad Site

- March 12, 2008 – OGBOA
- 1,000 and 500 foot setback distances applied to the permit application
- Tank battery/well facilities and gas well setback variance to residences requested
- Tank battery/well facility setbacks comply with the well bore setback requirements and variance process; 1,000 to 500 feet without mineral interest and 500 to 300 feet with mineral interest





Hilliard 1H Permit Application

- Questions raised about the required tank battery setback to a residence
- Initial submittal and subsequent preliminary review and comments for the application resulted in estimated variances
- Initial review and comments are a snapshot of the process
- Staff submitted comments identifying the need for the applicant to note the location of the tank battery and the 500 and 1,000 foot buffers

Hilliard 1H Permit Application

- Preliminary setbacks for storage tanks were identified for wells and **surface equipment**
- Comments included the need for more details before all variances can be accounted for
- The applicant's second submittal addressed many of the outstanding items

Model Pad Site Expansion for Tank Battery Setback

