

CAUSE NO. 236-342886-23

LIVEABLE ARLINGTON, JADE COOK, AND GIBRAN FARAH ESPARZA,	§	IN THE DISTRICT COURT
	§	
	§	
PLANTIFFS	§	
v.	§	
	§	_____ JUDICIAL DISTRICT
CITY OF ARLINGTON, RICHARD GERTSON, JIM ROSS, HELEN MOISE, RAUL H. GONZALES, NIKKIE HUNTER, ANDREW PIEL, REBECCA BOXALL, LONG PHAM, BOWIE HOGG, AND BARBARA ODOM- WESLEY,	§	
	§	
DEFENDANTS	§	TARRANT COUNTY, TEXAS

**PLAINTIFFS’ ORIGINAL PETITION AND VERIFIED APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

TO THE HONORABLE COURT:

Liveable Arlington, Jade Cook, and Gibran Farah Esparza, Plaintiffs, file this Original Petition; Request for Declaratory Relief; Request for Writ of Mandamus; and Request for Temporary and Permanent Injunctions against the **City of Arlington, Texas; Richard Gertson, AICP; Jim Ross; Helen Moise; Raul H. Gonzalez; Nikkie Hunter; Andrew Piel; Rebecca Boxall; Long Pham; Bowie Hogg; and Dr. Barbara Odom-Wesley**, Defendants, and respectfully show the Court the following:

I. DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.

II. STATEMENT OF THE CASE

2. Defendants have violated their duties under the Open Meetings Act (“OMA”) in connection with the consideration of the Total Energy gas wells (“Total Wells”) voted upon during the May 23, 2023 Arlington City Council Meeting (“Meeting”). Defendants have committed the following illegal acts:

- Failing to post adequate notice of the Total Wells permit application considered by Defendants during the Meeting;
- Failing to follow Arlington City ordinances relating to the Total Wells;
- Revising the Total Wells’ drill site during the Meeting in contravention of the OMA and city ordinances;
- Scheduling the second hearing on the Total Wells permits for consideration on June 13, 2023, despite these illegalities.

Because Defendants are violating their statutory duties, Plaintiffs have a probable right to relief on the merits of their claims, and because irreparable harm will occur if Defendants are not restrained from their actions, Plaintiffs now seek a temporary restraining order and temporary and permanent injunctive relief.

III. PARTIES

3. Plaintiff Jade Cook (“Cook”) is an owner and resident of the home located at [REDACTED] in Arlington, Texas. She was present at the Meeting.

4. Plaintiff Gibran Farah Esparza (“Esparza”) is an owner and resident of the home located at [REDACTED] in Arlington, Texas.

5. Plaintiff Liveable Arlington (“Liveable Arlington”) is a not-for-profit entity organized pursuant to U.S. Internal Revenue Code § 501 (c)(3) with its principal place of business in Arlington, Texas. Its mission is to advocate for clean air, clean water, and responsible stewardship of our environment for future generations. Individual members of Liveable Arlington live in

Arlington, Texas, enjoy the natural resources of the city, and are adversely affected by Defendants' conduct. Representatives of Liveable Arlington were present at and participated in the Meeting.

6. Defendant The City of Arlington ("City") is a municipal corporation located in and operating under the laws of the state of Texas, situated primarily in Tarrant County, Texas. Service of process may be made upon the City of Arlington by serving the Arlington City Secretary at 101 West Abram Street Arlington, TX 76010 pursuant to Texas Civil Practice and Remedies Code § 17.024 (b).

7. Defendant Richard Gertson, AICP, is Assistant Director of the Planning and Development Services department of the City of Arlington, TX, and has ministerial and other duties related to the permitting process for natural gas wells in the city. He is named here in his official capacity. Service of process may be made upon Assistant Director Richard Gertson, AICP, by serving the Arlington City Secretary at 101 West Abram Street Arlington, TX 76010.

8. Defendant Jim Ross is the current mayor of the City and has ministerial and other duties to uphold, enforce, and abide by the city's code of ordinances and to preside over and vote with the Arlington City Council ("Council"). He is named here in his official capacity. Service of process may be made upon Mayor Jim Ross by serving the Arlington City Secretary at 101 West Abram Street Arlington, TX 76010.

9. Defendant Helen Moise is the current elected representative for District 1 on the Council and has ministerial and other duties to uphold, enforce, and abide by the city's code of ordinances and to vote with the Arlington City Council. She is named here in her official capacity. Service of process may be made upon Councilperson Helen Moise by serving the Arlington City Secretary at 101 West Abram Street Arlington, TX 76010.

10. Defendant Raul H. Gonzalez is the current elected representative for District 2 on the Council and has ministerial and other duties to uphold, enforce, and abide by the city's code of ordinances and to vote with the Council. He is named here in his official capacity. Service of process may be made upon Councilperson Raul H. Gonzalez by serving the Arlington City Secretary at 101 West Abram Street Arlington, TX 76010.

11. Defendant Nikkie Hunter is the current elected representative for District 3 on the Council and has ministerial and other duties to uphold, enforce, and abide by the city's code of ordinances and to vote with the Council. She is named here in her official capacity. Service of process may be made upon Councilperson Nikkie Hunter by serving the Arlington City Secretary at 101 West Abram Street Arlington, TX 76010.

12. Defendant Andrew Piel is the current elected representative for District 4 on the Council and has ministerial and other duties to uphold, enforce, and abide by the city's code of ordinances and to vote with the Council. He is named here in his official capacity. Service of process may be made upon Councilperson Andrew Piel by serving the Arlington City Secretary at 101 West Abram Street Arlington, TX 76010.

13. Defendant Rebecca Boxall is the current elected representative for District 5 on the Council and has ministerial and other duties to uphold, enforce, and abide by the city's code of ordinances and to vote with the Council. She is named here in her official capacity. Service of process may be made upon Councilperson Rebecca Boxall by serving the Arlington City Secretary at 101 West Abram Street Arlington, TX 76010.

14. Defendant Long Pham is the current elected representative for District 6 on the Council and has ministerial and other duties to uphold, enforce, and abide by the city's code of ordinances and to vote with the Council. He is named here in his official capacity. Service of process may

be made upon Councilperson Long Pham by serving the Arlington City Secretary at 101 West Abram Street Arlington, TX 76010.

15. Defendant Bowie Hogg is the current elected representative for District 7 on the Council and has ministerial and other duties to uphold, enforce, and abide by the city's code of ordinances and to vote with the Council. He is named here in his official capacity. Service of process may be made upon Councilperson Bowie Hogg by serving the Arlington City Secretary at 101 West Abram Street Arlington, TX 76010.

16. Defendant Dr. Barbara Odom-Wesley is the current elected representative for District 8 on the Council and has ministerial and other duties to uphold, enforce, and abide by the city's code of ordinances and to vote with the Council. She is named here in her official capacity. Service of process may be made upon Councilperson Dr. Barbara Odom-Wesley by serving the Arlington City Secretary at 101 West Abram Street Arlington, TX 76010.

IV. VENUE AND JURISDICTION

17. Plaintiffs bring this suit for temporary and permanent injunctive relief, declaratory relief, and/or mandamus relief pursuant to the following provisions of Texas statutory and common law.

18. Venue is proper as to each Plaintiff and each Defendant under Texas Civil Practice and Remedies Code § 15.002(1) because all or a substantial part of the events or omissions giving rise to all claims herein occurred in Tarrant County, Texas.

19. This Court has jurisdiction over Plaintiffs' request for declaratory relief pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code.

20. This Court has jurisdiction over Plaintiffs' request for injunctive relief pursuant to Chapter 65 of the Texas Civil Practice and Remedies Code. As this cause complains of acts that violate city ordinances, those acts may be enjoined without a showing that a legal remedy is inadequate.

San Miguel v. City of Windcrest 40 S.W.3d 104 (Tex.App.—San Antonio 2000, no pet.). This court has jurisdiction to issue a writ of mandamus to compel city officials to perform ministerial acts. *Anderson v. City of Seven Points*, 806 S.W.2d 791 (Tex. 1991).

21. This Court has jurisdiction over Plaintiffs’ *ultra vires* claims against Defendants Richard Gertson, the mayor, and each city council member of the City, in their official capacities, under the common law as articulated by the Supreme Court of Texas in cases such as *City of El Paso v. Heinrich*, 284 S.W.3d 366 (Tex. 2009).

22. This Court has jurisdiction over Plaintiffs’ requests for mandamus and injunctive relief related to violations of the Texas Open Meetings Act pursuant to Chapter 551 of the Texas Government Code.

V. FACTS

The City’s Ordinance on Gas Drilling and Production (GDPO).

23. The City has developed a City Code of Ordinances which regulates certain activities within the city. This includes Ordinance No. 19-031, titled “Gas Drilling and Production” (GDPO). The GDPO was first established in 2003 and has been amended from time to time. The most recent amendments available via the city’s official website took effect on April 13, 2021. See [Ordinances Governing Gas Drilling and Production in the City of Arlington Texas](https://www.arlingtontx.gov/UserFiles/Servers/Server_14481062/File/City%20Hall/Depts/City%20Secretary/City_Code_of_Ordinances/GasDrilling-Chapter.pdf), at https://www.arlingtontx.gov/UserFiles/Servers/Server_14481062/File/City%20Hall/Depts/City%20Secretary/City_Code_of_Ordinances/GasDrilling-Chapter.pdf, referenced excerpts of which are attached hereto as Exhibit A¹.

¹ The document is too voluminous to attach in its entirety, at 264 pages.

24. Among other things, the GDPO lays out the process by which an entity may obtain a permit for drilling gas wells within the City. The Council is assigned the duty of ultimate approval or denial of a permit request.² Section 7.01 (B)(1)(a) prohibits any drilling within 600 feet of a protected use, known as a “setback distance.” “Protected Use” is defined by the GDPO at Section 2.01 as “[a] residence, religious institution, hospital building, medical and [sic] dental office, nursing home, personal care facility, supervised living facility, public or private school, day care, or public park.” The required setback distance may be reduced by the Council “upon the affirmative vote of not less than a super-majority of seven (7) members of the City Council.”

25. The setback distance, according to the GDPO, is to be measured “from the boundary of the drilling zone, in a straight line, without regard to intervening structures or objects, to the primary structure of the protected use or public park boundary.” “Drilling Zone” is defined in the GDPO (as amended on April 13, 2021) as “[t]he area approved by the City Council that encloses all the wells on the drill site.” “Drill Site” is defined by the ordinance as “[t]he premises used during the drilling, completion, or re-working of a well or wells located there or any associated operation.” “Gas well or well” is defined by the ordinance as “[a]ny well drilled, to be drilled, or used for the intended or actual production of natural gas or other hydrocarbons.”

26. Notably, the Drilling Zone includes both preexisting wells and proposed new wells on a particular drill site, regardless of whether there is any intention of reopening, redrilling, or otherwise disturbing the preexisting wells.

² Section 5.03 (Q) of the Ordinance provides “The City Council may accept, reject or modify the application in the interest of securing compliance with this Ordinance, the City Code and/or to protect the health, safety and welfare of the community.”

27. Drill Sites within the City are zoned by Specific Use Permits (SUPs). The ordinances require amendments to existing sites' SUP in order to expand drilling on the site, by requiring designation of a Drilling Zone within which all drilling must occur.

28. SUP amendments must first be proposed and considered at a public meeting of the Planning and Zoning Commission, which then votes whether to approve the proposed amendment for deliberation by the Council. The proposed amendment is then scheduled for a first reading at a public meeting of the Council. If the proposal is approved by a majority vote in that meeting, it is subsequently scheduled for a second reading at another Council meeting. If approved there, it becomes a final ordinance amendment, and drilling permit applications can be heard and approved administratively for new wells within the Drilling Zone.

The Council's consideration of the Total Wells SUP violated the Open Meetings Act.

29. On Friday, May 19, the City posted the agenda for the May 23 Council Meeting (attached as Exhibit B). The agenda included as item number 11.2 consideration of an amendment to Total Energy's SUP for the "Fulson Drill Site" referenced as SUP09-05R1 ("SUP Amendment"). The SUP Amendment sought "to establish the location of a drilling zone on an existing gas well site located at 5720 South Watson Road and 2453 East Sublett Road." See Ex. B.

30. Prior to the May 23, 2023 Council meeting, the matter of amendment was presented to the City's Planning and Zoning Commission at a meeting on April 19, 2023.³ At approximately minute marker 2:04:50 on the video of that meeting, a motion is made and seconded "to approve the SUP as outlined in the Staff Report." The Staff Report is attached hereto as Exhibit C.

³ Both the April 19 and May 23 meetings were recorded by audio and video, and the video and the agenda of the meetings, along with several documentary attachments, are publicly available through the City's official website.

31. The Staff Report includes a Specific Use Permit Analysis which contains the following language:

The Gas Drilling and Production Ordinance (GDPO) provides that drilling zones must maintain a setback of not less than 600 feet from all protected uses. When laying out the boundary of the drilling zone, **the GDPO requires the drilling zone to capture ALL existing wellheads**, in addition to the area proposed for future drilling.

Exhibit C, at 2 (emphasis added). Attached to the Staff Report are several plans and maps showing a rectangular proposed drilling zone which encompasses the three existing wellheads located at the Fulson site and appearing very near the 600-foot setback distance from the nearest residence.

32. Based upon information contained in the Staff Report and other documents related to the proposed SUP Amendment, Liveable Arlington was concerned with the proximity of the drilling zone to the nearest residence and with the lack of precision expressed in the setback measurement (“approximately 600.1 feet” according to the Staff Report). Liveable Arlington also received an electronically pasted copy of an email communication from Defendant Gertson to one of the Planning and Zoning commissioners admitting that the City’s own technicians had determined that the actual distance between the proposed Drilling Zone and the protected use at issue was 599.3 feet. Liveable Arlington sent a letter to Defendants expressing these concerns, among others, prior to the May 23, 2023 Council meeting and vote on the amendment to the SUP Amendment.

33. At the May 23, 2023 Council meeting, Defendant Rebecca Boxall proposed a solution to avoid the Drilling Zone setback problem that legally doomed the SUP Amendment application for the Total Wells. She stated that the Council could simply alter the size of the Drilling Zone *during the Meeting* by moving its boundaries further from Protected Uses and then *approve it upon an oral amendment to the application*, even though doing so would create a Drilling Zone that fails to enclose all wells on the site in violation of both the GDPO and the Texas Open Meetings Act.

34. After the Meeting's period of public comment concluded, Ms. Boxall then asked Assistant City Attorney Galen Gatten to clarify the Council's ability to orally amend the application and create a Drilling Zone that does not include all wells on the drill site. Mr. Gatten erroneously advised that the City Council could draw its Drilling Zones however it sees fit without regard to the restrictive definition of that term. Members of the public had no opportunity to comment on Mr. Gatten's analysis solicited by Ms. Boxall, and the Council subsequently acted on that analysis by approving the SUP Amendment as altered during the Meeting.

35. Further, deliberation regarding any alteration of the Drilling Zone definition under the GDPO was not listed as an agenda item in the City's required notice of the public meeting, in violation of the Texas Open Meetings Act.

36. Ms. Boxall's proposal was based upon prior *ultra vires* acts by Defendant Gertson. In a previous council meeting on November 30, 2021 on another drill zone matter, Defendant Gertson told the Council about the 600-foot setback requirement; that the drill zone proposed by the applicant in that agenda item must include all wellheads at the site; that one of the existing wellheads (at the site at issue at that meeting) was only 507 feet from a protected use; and that a supermajority vote from the city council would be required to approve such a drill zone. All of this is consistent with the Ordinance. However, Defendant Gertson went on to tell the mayor and the councilpersons that "in the process of approving the SUP, the council may reshape the drill zone to encompass only the area outside 600 feet from protected uses." This was done at that time to avoid a supermajority vote requirement on the proposal at issue at that time.⁴

⁴ Defendant Gertson again articulated his theory of altering the Drilling Zone inconsistent with the Ordinance definition in his written communication in connection with the SUP Amendment in an email to one of the Planning and Zoning Commissioners. Plaintiff Liveable Arlington has seen evidence of this email but does not possess a copy.

37. The City recently posted its agenda for the upcoming June 13, 2023 Council Meeting on its official website.⁵ The agenda includes the second and final reading of the SUP Amendment as Consent Agenda item number 8.27. Item number 11.5 on the agenda is a resolution to authorize issuance of two gas well permits at the Fulson Drill Site. These agenda items indicate that the City is taking further action on the improper vote during the Meeting in violation of the Texas Open Meetings Act and the procedures outlined in the City's charter and ordinances.

The Total Wells violate the Texas Constitution because they are Allocation Wells.

38. Plaintiff Liveable Arlington also sent a separate letter to Defendants articulating the unsettled nature of the law of allocation wells in Texas. This matter is significant because the Total Wells proposed to be drilled on the Fulson site are allocation wells, and the necessary W-1 permits issued by the Texas Railroad Commission make clear that the Railroad Commission has no opinion as to the legality of such wells. The W1 permits are attached as Exhibit D. As Liveable Arlington stated in its objection to the SUP Amendment on this basis (attached as Exhibit E), the drilling of these wells could subject the City and others to costly litigation in the event of an unfavorable decision by the Austin Court of Appeals in a case filed directly against the Railroad Commission to declare allocation well permits null and void. The appeal seeks a determination that the Railroad Commission is permitting said wells in contravention of its duties under the Administrative Procedures Act and the Texas Constitution.

⁵ Available at:

https://arlingtontx.granicus.com/DocumentViewer.php?file=arlingtontx_7a327201d2d9702291f7207c7ce358e1.pdf&view=1

Texas Natural Resources Code § 81.0523 does not preempt the GDPO’s requirements or the Texas Constitution.

39. Also after the close of the public-comment period of the Meeting on May 23, 2023, Defendant Andrew Piel made a long recitation of his alleged belief that the City has no authority to deny any application for drilling permits and related SUP amendments due to what he refers to as “HB40.” He was referencing the statutory provisions of the Texas Natural Resources Code § 81.0523, which expressly allows municipalities such as Arlington the authority to “enact, amend, and enforce an ordinance or other measure that (1) regulates only aboveground activity related to an oil and gas operation...including...imposing notice or reasonable setback requirements.” Tex. Nat. Res. Code § 81.0523(c). The statute does not preempt such limitations as long as they are “commercially reasonable;” do not effectively prohibit all operations of a reasonably prudent operator; and are not otherwise preempted by other law. *Id.* The statute further states that “[a]n ordinance...is considered prima facie to be commercially reasonable if the ordinance...has been in effect for at least five years and has allowed the oil and gas operations at issue to continue during that period.” Tex. Nat. Res. Code § 81.0523(d).

40. As an attorney barred in the State of Texas, Defendant Piel has access to the law and the courts’ interpretation thereof. He stated that any denial of any proposed drilling in the state of Texas by any municipality for any reason would be in violation of “HB40” and that the City would be subject to a lawsuit which it would certainly lose, subjecting the taxpayers to the loss of exorbitant amounts of money.

41. In reality, as Defendant Piel is or should be aware, he was misstating that law and misleading his fellow councilmembers and the public. Assistant City Attorney Galen Gatten later weighed in on this preemption issue and agreed, erroneously, with Defendant Piel. All of these deliberations regarding the applicability of § 81.0523 to the proposed SUP Amendment were

beyond the scope of the agenda provided to the public pursuant to the Texas Open Meetings Act, were acted on by the Council and the mayor, and were not subject to any public comments or debate.

42. As Defendant Piel is or should be also aware, the ordinances at issue in this matter have been in effect for far more than five years, and the applicant for the SUP amendment at issue has been operating approximately 200 wells in Arlington and is in the process of actively drilling 17 more. Thus, the GDPO does not effectively prohibit operations of reasonably prudent operators and is prima facie commercially reasonable and therefore a valid exception to the preemption statute cited by Defendant Piel.

43. Defendant Piel knows or should know that Texas Courts have upheld municipalities' right to reasonably regulate gas drilling pursuant to the exception articulated above. *See e.g., City of Port Arthur v. Thomas*, 659 S.W.3d 96 (Tex. App.—Beaumont 2022, no pet. h.) (upholding a traffic regulation that impaired gas drilling operations); *Town of Flower Mound v. EagleRidge Operating, LLC*, No. 02-18-00392-CV, 2019 Tex. App. LEXIS 7561 (Tex. App.—Fort Worth Aug. 22, 2019, no pet.) (reversing lower court's grant of injunction against town's enforcement of an ordinance restricting hours of operation of drilling activities).⁶

44. Furthermore, Tex. Nat. Res. Code § 81.0523 does not regulate due process, nor does it preempt the Texas Constitution. Due process – in the form of the Open Meetings/Open Records Act – and the Texas Constitution – in the form of an illegal taking of real property in the form of

⁶ The same claims of preemption and inability to act were advanced by Defendant Piel at a prior Council meeting, on November 30, 2021, regarding a different SUP amendment to create a similar Drilling Zone on another site. Defendant Piel stated that if the Council blocked the drilling activities applied for, it would be sued by the operator; would lose that suit; and that it would cost the city exorbitant amounts of money. The Council ultimately rejected the amendment, thereby prohibiting expanded drilling on the site, and as Mr. Piel knows or ought to know, no such lawsuit against the city based upon this issue of preemption was filed.

mineral interests without authority through an allocation well – are both at issue in Total’s SUP application. Neither issue is preempted from the Council’s consideration by Tex. Nat. Res. Code § 81.0523, and the City was legally mandated to give due consideration to both of Plaintiffs’ complaints, on these grounds.

VI. STANDING

45. Approval of the illegally altered proposed Drilling Zone harms each Plaintiff in this case. The rights of Plaintiffs Cook and Esparza are infringed in part because their home is located in close proximity of the drill site at issue, and the drilling operations cause discomfort, annoyance, and health impacts on their family. Expanded drilling operations will exacerbate those issues they already experience. These Plaintiffs have young children living in the home, and Cook is currently pregnant with another child who will be brought into the home and subjected to the environmental contaminants introduced there by the Total Wells. Expanded drilling operations at the Fulson Drill Site would not have been approved and would be unlikely to be approved in the future if Defendants abided by their legal obligation to enforce the Ordinances’ requirements regarding the Drilling Zone and the setback distance.

46. The rights of Plaintiff Liveable Arlington are infringed by Defendants’ actions because those actions have caused the organization to divert resources to identify and counteract Defendants’ unlawful practices, and the challenged actions have frustrated the organization’s mission. Liveable Arlington has worked tirelessly for years advocating for changes in the City’s ordinances to protect citizens as much as possible from the negative consequences of drilling for gas within the city. The organization was instrumental in making changes to the GDPO including the supermajority vote required for Council to approve a Drilling Zone with a setback distance of less than 600 feet. The individual members of Liveable Arlington live within the City of Arlington

and have standing to sue; the interests at issue are germane to the organization's stated purpose; and the claims asserted and relief requested do not require individual participation in the lawsuit by the members.

VII. CAUSES OF ACTION

A. Texas Constitution—Due Process

47. Plaintiffs incorporate by reference all paragraphs above as if fully set forth herein.

48. By circumventing the process required by the GDPO, refusing to follow the prescribed setback of the GDPO, proceeding on the SUP Amendment based on oral modifications during the hearing, and other acts described herein, Defendants deprived each and all Plaintiffs of their due process rights in violation of Article I, Section 19, of the Texas Constitution.

49. Those injuries complained of herein that are not already suffered in the past are imminent in that the Council is scheduled to cast the final vote to approve the SUP Amendment and otherwise proceed on permitting the Total Wells on June 13, 2023.

50. Plaintiffs seek temporary and permanent injunctive relief to prevent further deprivation of their rights.

B. Texas Open Meetings Act

51. Plaintiffs incorporate by reference all paragraphs above as if fully set forth herein.

52. Under Tex. Gov't Code Chapter 551, Defendants were required to post notice of the SUP Amendment application, the Drill Zone to be considered, and all other matters pertinent to the consideration of the agenda item at the Meeting no later than three days prior.

53. As described above, Defendants violated their duties under the Open Meetings Act by failing to post the matters actually deliberated upon, amending the matters during the hearing, and failing to table any vote until such omissions and errors were cured.

54. Furthermore, Defendants have signaled their intent to proceed notwithstanding these violations by posting the SUP Amendment for a second reading on June 13, 2023.

55. By acting outside the scope of the GDPO and the Open Meetings Act, Defendants acted outside their powers under the law. This was an *ultra vires* act and an abuse of discretion by Defendants.

56. Upon information and belief, Defendant Gertson abused his discretion and acted *ultra vires* by influencing the City's Planning and Zoning Commission and Council to approve the proposed amendment despite setback concerns and by promoting illegal actions by Council. Upon information and belief, Defendant Gertson did so utilizing private deliberations in violation of the Texas Open Meetings Act. Tex. Gov't Code § 551.143.

57. The City Council's May 23, 2023 vote on the proposed SUP amendment as altered during the Meeting and subsequent to the close of the public-comment period was in violation of the Texas Open Meetings Act in that the vote was no longer associated with the Drilling Zone as proposed in the materials made part of the agenda provided to the public in pursuance of the Act. Thus, the vote and any subsequent related governmental acts are void and should be reversed. Tex. Gov't Code §§ 551.141, 551.142(a).

58. Defendant Gertson abused his discretion and acted without legal authority when he erroneously advised the city council regarding the required vote and the council's ability to legally circumvent the GPDO's definition of a drilling zone. Defendant Ross and the City Councilmember Defendants abused their discretion, acted without legal authority, and failed to perform purely ministerial acts when they redefined the Drilling Zone to exclude preexisting wells on the Drill Site. Scheduling the second reading and entertaining applications for well permits at the upcoming

June 13, 2023 meeting are further actions without legal authority, abuses of discretion, and failures to perform ministerial acts, and they are further violations of the Texas Open Meetings Act.

59. Defendant Andrew Piel acted without legal authority when he intentionally and knowingly misled the Mayor, the City Council, and the public regarding the implications of Texas Natural Resources Code § 81.0523 on the Council's ability to vote against the amended SUP. This *ultra vires* act harmed Plaintiffs by unlawfully influencing the vote of Council in favor of allowing expanded drilling on the Fulson site. Further, this deliberation occurred in violation of the Texas Open Meetings Act in that it was not included as an agenda item and took place without providing the public an opportunity to comment. Because the vote was influenced by these deliberations, each defendant who voted also did so in violation of the Open Meetings Act, and those votes are void and should be reversed. Tex. Gov't Code §§ 551.141, 551.142(a).

60. Plaintiffs request that this Court issue mandamus to correct the acts complained of, and that it enjoin Defendants from further conduct relating to the illegal actions described herein.

61. Related to their requests for mandamus and injunctive relief for violations of the Texas Open Meetings Act, Plaintiffs request the Court to find that the suit was brought in good faith and that the Defendants' conduct had no reasonable basis in law, and award to Plaintiffs costs of court and reasonable attorneys' fees pursuant to Texas Government Code § 551.142(b).

C. Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code Chapter 37

62. Plaintiffs incorporate by reference all paragraphs above as if fully set forth herein.

63. “[W]hile governmental immunity generally bars suits for retrospective monetary relief, it does not preclude prospective injunctive remedies in official-capacity suits against government actors who violate statutory or constitutional provisions.” *City of El Paso v. Heinrich*, 284 S.W.3d 366 (Tex. 2009).

64. "A person ...whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the ...statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder." Tex. Civ. Prac & Rem. Code § 37.004(a).

65. Plaintiffs reassert all claims hereinabove regarding *ultra vires* acts by Defendants in their official capacities and seek declaratory relief in accordance with the Declaratory Judgment Act in addition to other available remedies.

66. Plaintiffs and City disagree on the applicability of Texas Natural Resources Code § 81.0523 to the issues presented by Total's Wells and the SUP Amendment.

67. Plaintiffs contend that the Texas Open Meetings Act and its notice requirements, with a footing in due process, supersede the scope of Texas Natural Resources Code § 81.0523. Plaintiffs further contend that Texas Natural Resources Code § 81.0523 does not supersede questions of the illegality of allocation wells under the Texas Constitution and whether such wells could be permitted by the Railroad Commission under Texas law. Plaintiffs also contend that the City must consider all matters falling within the scope of the GDPO, which is not preempted by the Texas Natural Resources Code.

68. The City disagrees with Plaintiffs' positions. Because the parties differ in their interpretation of Texas Natural Resources Code § 81.0523, a live controversy now exists. Under Chapter 37 of the Texas Civil Practice & Remedies Code, Plaintiffs thus seek a judgment declaring that the City must comply with its duties under the Open Meetings/Open Records Acts and consider Plaintiffs' objections to the Total wells, notwithstanding the existence of Texas Natural Resources Code § 81.0523.

69. Plaintiffs further ask the Court to award their reasonable and necessary attorneys' fees for having to pursue the declaratory relief requested. TEX. CIV. PRAC. & REM. CODE § 37.009.

VII. APPLICATION FOR TEMPORARY RESTRAINING ORDER

70. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

71. Plaintiffs' application for a temporary restraining order (TRO) and temporary injunction is authorized by chapters 65 and 134A of the Texas Civil Practice and Remedies Code.

72. Plaintiffs are entitled to entry of a TRO under § 134A.003 without a showing of irreparable harm because all or a part of the relief requested requires restraint of acts that are prejudicial to them. *See* Tex. Civ. Prac. & Rem. Code § 65.011(1). However, Liveable Arlington has also shown imminent threat of irreparable harm as set forth above and herein.

73. Plaintiffs seek a TRO requiring that Defendants and those acting in concert with them be prohibited from the following acts:

- Treating the May 23, 2023 City Council vote as sufficient approval for the Agenda Item SUP09-05R1 ("SUP Amendment") concerning the Fulson drill site located at 5720 South Watson Road and 2453 East Sublett Road in Arlington, Texas ("Fulson Drillsite")
- Considering, deliberating, voting or otherwise taking further action on the SUP Amendment, or the subject matter thereof, including without limitation, the following:
 - Approving the SUP Amendment by active vote or consent agenda
 - Conferring any drilling permits or other rights to Total Energy or others on the Fulson Drillsite
 - Conducting the second reading of the SUP Amendment
- Failing to follow and apply the Gas Drilling and Production Ordinance (GDPO) as duly enacted by the City Council
- Modifying the Drilling Zone or Drill Site relating to Agenda Item SUP09-05R1 except in conformance with the GDPO as duly enacted by the City Council
- Violating Tex. Gov't Code chapter 551 relating to Agenda Item SUP09-05R1

The form of TRO requested is submitted with this Application.

74. If Plaintiffs' application for TRO is not granted, irreparable harm to Plaintiffs is imminent because their constitutional rights to due process and protections of the Open Meetings Act will be thwarted and incapable of being restored. In addition, if not enjoined, it is probable that Defendants will continue to operate illegally regarding these matters, causing further irreparable damage to Liveable Arlington.

75. The TRO is necessary to prevent Defendants from taking further action on the SUP Amendment and the Total Wells permits in contravention of law.

76. Additionally, Plaintiffs have no adequate remedy at law because Defendants' actions violate the Texas Constitution and Open Meetings Act and no monetary damages will remedy the deprivation of their rights under those authorities.

77. Plaintiffs have shown a probable right to relief against Defendants as established by the verified facts in the Petition and the causes of action plead herein.

78. The need to stop the threatened and imminent harm to Plaintiffs outweighs any possible damage to Defendants because the requested injunction simply requires Defendants to stop acts that are already illegal.

79. Plaintiffs ask the Court to set the application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Defendants.

80. Plaintiffs stand willing to post bond.

VIII. REQUEST FOR JURY TRIAL

81. Plaintiffs respectfully request a trial by jury on all issues so triable.

IX. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray for temporary and permanent injunctive relief, declaratory judgment, attorney's fees and costs as set forth herein. Plaintiffs ask

that the Court award them all other relief, general or special, at law or in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

/s/ Jayla Wilkerson

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Ordinances Governing
GAS DRILLING AND PRODUCTION

in the
CITY OF ARLINGTON
TEXAS

Ordinance No. 21-012
(April 13, 2021)

(Chapter Designator: GAS DRILLING AND PRODUCTION)

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
03-120	11/25/03	Establishment of a Gas Drilling and Production Chapter relative to the management of drilling and production of gas within the city limits.
05-113	12/20/05	Amend the Gas Drilling and Production Chapter in its entirety to include additional duties of the inspector, additional documents to be submitted when applying for a gas well permit, and revision to language pertaining to the cost of applying for a permit (which will result in an elimination of the cap on the fee amount).
07-074	10/23/07	Amend the Gas Drilling and Production Chapter in its entirety.
08-088	09/30/08	Amend Article V , <u>Gas Well Permits</u> , Section 5.02 , <u>Gas Well Permit Application and Filing Fees</u> , Subsection (B) , related to applications for and annual administration of gas well permits; and Section 5.03 , <u>Gas Well Permit Review Procedure</u> , Subsection (G) , related to notification signs prior to public hearings on gas well permit applications.
10-012	01/12/10	Amend Article V , <u>Gas Well Permits</u> , Section 5.02 , <u>Gas Well Permit Application and Filing Fees</u> , by the addition of Subsection (D) ; amend Article VI , <u>Insurance, Bond and Indemnity</u> , Section 6.01 , <u>Bond, Letters of Credit, Indemnity, Insurance</u> , by the addition of Subsection (F) ; amend Article VII , <u>On Site and Technical Regulations</u> , Section 7.01 , <u>Technical Regulations</u> , Subsections (A)(8) and (A)(19) , the addition of Subsection (K)(4) , and the amendment of Subsection (L)(2) , relative to a requirement that final plans or other documents that will be archived must be submitted in electronic format; amend Article X , <u>Penalty</u> , Section 10.01 , <u>Penalty</u> , relative to updated penalty provisions.

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
11-068	12/06/11	Amend the Gas Drilling and Production Chapter in its entirety.
19-008	03/19/19	Amend Articles II, V, and VII ; relative to requiring additional notice, and mitigating adverse noise and traffic related nuisances; updating all references from the Department of Community Development and Planning to the Department of Planning and Development Services; and updating all references from the Zoning Chapter to the Unified Development Code.
19-031	05/21/19	Amend Article VII , relative to external setback requirements.
21-012	04/13/21	Amend Article II, <u>Definitions</u>, Section 2.01, <u>Definitions</u> , by the addition of the definition of "Daycare" and the amendment of the definition of "Drilling Zone"; and Article VII, <u>On Site and Technical Regulations</u>, Section 7.01, <u>Technical Regulations</u>, Subsection (B)(1)(a) , relative to external setback requirements.

ARTICLE II

DEFINITIONS

Section 2.01 Definitions

All technical industry words or phrases related to the drilling and production of gas wells not specifically defined in this Ordinance shall have the meanings customarily attributable thereto by prudent and reasonable gas industry Operators. The following words, terms, and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandonment. “Plugging” as defined by the RRC and includes the plugging of the well, abandoned or otherwise, and the restoration of any drill site(s) as required by this Ordinance.

Ambient noise level. The all encompassing noise level associated with a given environment, being a composite of sounds from all sources at the location, constituting the normal or existing level of environmental noise at a given location.

API. American Petroleum Institute.

Building. Any structure. The structure may serve for the support, shelter, or enclosure or partial enclosure of persons, animals, chattels, or movable property of any kind including pools.

Building Official. The officer or other designated authority charged with administration and enforcement of this Chapter, or the Building Official’s duly authorized representative.

Church. A facility or area for people to gather together for public worship, religious training, or other religious activities including a temple, mosque, synagogue, convent, monastery, or other structure, together with its accessory structures, including a parsonage or rectory. This use does not include home meetings or other religious activities conducted in a privately occupied residence.

City. The City of Arlington.

City Code. The Code of the City.

City Attorney. The City Attorney of the City.

City Manager. The City Manager of the City or his/her designee.

Closed Loop Mud System. A series of above-ground tanks used to store, process, and recycle drilling mud, cuttings, and other fluids. This system is used in place of the traditional earthen pits at a drilling operation.

Completion. The process or stage of finishing a well so that it is ready to produce natural gas.

Day Care. A facility licensed by the state and the city that provides care, training, education, custody, treatment or supervision for more than six children under 14 years of age, and for less than 24 hours per day, with a city-issued Certificate of Occupancy. (Amend Ord 21-012, 4/13/21)

Daytime. The period from 7:00 a.m. to 6:00 p.m. Central Standard Time and 7 a.m. to 8 p.m. Central Daylight Saving Time.

Decibel (dB). A unit of measurement of noise intensity. The measurements are based on the energy of the sound waves, and the units are logarithmic.

Drilling. Digging or boring a new well for the purpose of exploring for, developing or producing gas or other hydrocarbons, or for the purpose of injecting gas, water, or any other fluid or substance into the earth.

Drilling Equipment. The derrick, together with all parts of and appurtenances to such structure, every piece of apparatus, machinery or equipment used or erected or maintained for use in connection with drilling.

Drill site. The premises used during the drilling, completion, or re-working of a well or wells located there or any associated operation.

Drilling Zone. The area approved by the City Council that encloses all the wells on the drill site. In the existing drill sites that do not yet have a Drilling Zone approved by Council, any regulation in this code requiring a distance measurement from a protected use to a drilling zone shall instead be measured from a protected use to the closest existing gas wellhead. (Amend Ord 21-012, 4/13/21)

Exploration. Geologic or geophysical activities, including seismic surveys, related to the search for gas or other subsurface hydrocarbons.

EPA. Environmental Protection Agency.

FEMA. Federal Emergency Management Agency.

Fire Chief. The Chief of the Fire Department of the City.

Fire Department. The Fire Department of the City.

Fire Code. The International Fire Code as amended by the City of Arlington Fire Chapter to the extent not in direct conflict with current or future federal and state law or regulations including the Texas Railroad Commission, Texas Commission on Environmental Quality or successor entities.

Fire Inspector. A Fire Prevention and Life Safety Inspector of the Fire Department, or other designee of the Fire Chief that enforces this Chapter or the Fire Code.

FIRM. Flood Insurance Rate Map.

Flowback. The process of allowing fluids to flow from the well following a treatment, either in preparation for a subsequent phase of treatment or in preparation for cleanup and returning the well to production.

Fracture Stimulate (Frac). To inject water, steam, gas, or other substances into a well to improve hydrocarbon recovery.

Gas. Any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions and/or the gaseous components or vapors occurring in or derived from petroleum or natural gas.

Gas well or well. Any well drilled, to be drilled, or used for the intended or actual production of natural gas or other hydrocarbons.

Hospital. A facility or area for providing health services primarily for human in-patient medical or surgical care for the sick or injured and including related facilities such as laboratories, out-patient departments, training facilities, central services facilities, and staff offices that are an integral part of the facilities.

Inspector. The Gas Well Inspector, Building Official designee, Gas Well Coordinator, Fire Chief designee, or other designee of the City Manager of the City that enforces this Chapter.

NFPA. National Fire Protection Association.

Nighttime. The period between 6:00 p.m. and 7:00 a.m. Central Standard Time and 8 p.m. to 7 a.m. Central Daylight Saving Time.

Operator. For each well, the person listed on the appropriate City application forms for a gas well that is, or will be, actually in charge and in control of drilling, maintaining, completing, operating, pumping or controlling any well, including, without limitation, a unit Operator. If the Operator, as herein defined, is not the lessee under a gas lease of any premises affected by the provisions of this Ordinance, then such lessee shall also be deemed to be an Operator. In the event that there is no gas lease relating to any premises affected by this Ordinance, the owner of the fee mineral estate in the premises shall be deemed an Operator.

P&DS. Planning and Development Services Department. (Amend Ord 19-008, 3/19/19)

Person. An individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes a trustee, receiver, assignee, administrator, executor, guardian, or other representative.

Persons. Every person, firm, co-partnership, association, partnership, corporation or society; and includes both singular and plural and the masculine shall include the feminine gender.

Protected Use. A residence, religious institution, hospital building, medical and dental office, nursing home, personal care facility, supervised living facility, public or private school, day care, or public park.

Public Parks, Playground, or Golf Course. A facility or area for recreational, cultural or aesthetic use owned or operated by a public agency and available to the general public. This definition may include, but is not limited to, lawns, decorative planting, walkways, active and passive recreation areas, playgrounds, fountains, swimming pools, wooded areas, and water courses.

Public or Private School. An educational institution, attendance at which satisfies the compulsory education laws of the State or a facility or area for pre-kindergartens, kindergartens, elementary, or secondary education supported by a public, church, or private organization. This definition may include after public or private school and summer programs that coincide with the age brackets for public or private schools.

RRC. The Railroad Commission of Texas or successor entity.

Re-drill. Re-completion of an existing well by deepening or sidetrack operations extending more than one hundred fifty (150) feet from the existing well bore.

Residence. A house, duplex, apartment, townhouse, condominium, mobile home, or other building intended for dwelling purposes, whether occupied or not, including those for which a building permit has been issued prior to the date an application for a Gas Well Permit is filed with the Inspector.

Re-work. To restore production when it has fallen off substantially or ceased altogether through clean out, re-completion, or re-entry of an existing well, or the replacement of well liners, tubing, or casing.

Right-of-way (ROW). Any area of land within the City that is acquired by, dedicated to, or claimed by the City in fee simple, by easement, by prescriptive right, or other interest and that is expressly or impliedly accepted or used in fact or by operation of law as a public roadway, sidewalk, alley, utility, drainage, or public access easement or used for the provision of governmental services or functions. The term includes the area on, below, and above the surface of the public ROW. The term applies regardless of whether the public ROW is paved or unpaved.

Salt Water Disposal Well. A well used for the purpose of injecting produced or flowback water back into the ground.

Seismic Survey. An exploration method in which low frequency sound waves are generated on the surface to find subsurface rock structures that may contain hydrocarbons. Interpretation of the survey record can reveal possible hydrocarbon-bearing formations.

State. The State of Texas.

Street. Any public thoroughfare dedicated to the public use and not designated as an alley or private access easement.

Tank. A container, covered or uncovered, used in conjunction with the drilling or production of gas or other hydrocarbons for holding or storing fluids.

TCEQ. Texas Commission on Environmental Quality.

Technical advisor. Such person(s) familiar with and educated in the gas industry or the law as it relates to gas matters that may be retained from time to time by the City.

Well servicing rig. Equipment and machinery assembled primarily for the purpose of any well work involving pulling or running tubulars or sucker rods, to include but not be limited to redrilling, completing, recompleting, workover, and abandoning operations. (Amend Ord 19-008, 3/19/19)

- b. The cellar shall be filled or closed.
- c. The Bradenhead shall be piped to the surface and have an observable and adequate pressure gauge with operable test valve.

B. Well setbacks.

1. External Setbacks.

- a. It shall be unlawful to drill any well outside a drilling zone approved by the City Council that, at the surface of the ground, is located within six hundred (600) feet from a park or within six hundred (600) feet from a protected use for which a building permit has been issued on or before the date of the application for a drilling permit. The distance shall be calculated from the boundary of the drilling zone, in a straight line, without regard to intervening structures or objects, to: (i) the boundary of the public park; (ii) the primary structure of a day care or the boundary of the area designated by the day care for use as a playground, whichever is closest; and (iii) the primary structure of all other protected uses.
 - (1) This setback distance may be reduced by the City Council to not less than three hundred (300) feet upon the affirmative vote of not less than a super-majority of seven (7) members of the City Council. Petitions in support or opposition to the setback distance reduction must be submitted to the City at least one (1) business day prior to the date of the City Council public hearing. In the event the public hearing is continued, additional petitions may be submitted until one (1) business day prior to the date at which the hearing is continued.
 - (2) For protection of the public health, safety and welfare, the City Council may impose additional requirements for a reduction of such distance, and take into account the presence of natural or man-made barriers. (Amend Ord 21-012, 4/13/21)
- b. It shall be unlawful to drill any well that, at the surface of the ground, is located within six hundred (600) feet from Lake Arlington reservoir area, as defined by the Lake Arlington chapter of the City Code. The distance shall be calculated from the boundary of the drilling zone, in a straight line, without regard to intervening structures or objects to the boundary of the reservoir area.



Agenda

**Arlington City Council
Regular Meeting**

**City Hall Council Chamber
101 W. Abram Street**

**Tuesday, May 23, 2023
6:30 PM**

- I. **CALL TO ORDER**
- II. **INVOCATION AND PLEDGE OF ALLEGIANCE TO U.S. AND TEXAS FLAGS**
- III. **SPECIAL PRESENTATIONS**
- IV. **SPEAKER GUIDELINES AND GENERAL DECORUM**
- V. **APPOINTMENTS TO BOARDS AND COMMISSIONS**
- VI. **CONSIDERATION OF ITEMS FROM EXECUTIVE SESSION**

The consideration of the use of eminent domain to condemn property:

6.1. Debbie Lane (City Limits to SH360) – SDI #5906 – Arlington TX, LLC; Racetrac Petroleum, Inc.; Project No. PWST20001

A resolution amending and replacing a portion of Resolution No. 23-063 to authorize condemnation of a 421 square foot street right-of-way easement, together with 1439 (tract 1) and 65 (tract 2) square feet temporary construction easements upon Lot 4R-1 of the J.H. Hughes Addition to the City of Arlington, Tarrant County, Texas according to the plat filed in Cabinet A, Slide 12175 of the Plat Records of Tarrant County, Texas (P.R.T.C.T.), otherwise known as 1400 Debbie Lane, Arlington, Texas; and to authorize condemnation of a 2,248 square foot street right-of-way easement, together with 609 and 1,558 square feet temporary construction easements upon Lot 3 of the J.H. Hughes Addition to the City of Arlington, Tarrant County, Texas according to the plat filed in Cabinet A, Slide 12378 of the Plat Records of Tarrant County, Texas (P.R.T.C.T.), otherwise known as 1350 Debbie Lane, Arlington, Texas; all of the foregoing for the public use of street improvements for the Debbie Lane (City Limits to SH360) street improvement project.

VII. CONSIDERATION OF MINUTES

7.1. May 9, 2023, Afternoon Meeting

May 9, 2023, Evening Meeting
May 16, 2023 Evening Meeting
[05-09-23 Afternoon Meeting Minutes.pdf](#)
[05-09-23 Evening Meeting Minutes.pdf](#)
[05-16-23 Evening Meeting Minutes.pdf](#)

VIII. CONSIDERATION OF CONSENT AGENDA

Approval of the Consent Agenda authorizes the City Manager to implement each item in accordance with staff recommendations and all votes on the final reading will be recorded as reflected on first reading unless otherwise indicated.

CONSENT AGENDA - MINUTE ORDERS

8.1. Renewal and Amendment of Annual Requirements Contract for Street Reclamation Program, Project No. PWSM22002

Authorize the City Manager or his designee to exercise the first of two, one-year renewal options and amend the annual requirements contract for the street reclamation program with Reynolds Asphalt and Construction Company, of Euless, Texas, in the estimated amount of \$3,656,204.32. Funds are budgeted in Sales Tax Fund Account No. CC728501-PJPWSM22002-SC0614.

[Staff Report - Renewal and Amendment of Contract for Street Reclamation Program, Project No. PWSM22002](#)

[Attachment A - Project No. PWSM22002](#)

8.2. Engineering Services Contract for CC-2 Channel & Susan Drive Bridge Replacement, Project No. PWDR19008

Authorize the City Manager or his designee to execute an engineering services contract for CC-2 Channel & Susan Drive Bridge Replacement with Westwood Professional Services, Inc., of Minnetonka, Minnesota, in an amount not to exceed \$528,725. Funding is available in the Stormwater Utility Fund Account No. CC308501-PJPWDR19008-SC0574.

[Staff Report - Engineering Services Contract for CC-2 Channel & Susan Drive Bridge Replacement, Project No. PWDR19008](#)

[Contract - Project No. PWDR19008](#)

[Location Map - Project No. PWDR19008](#)

8.3. Contract Modification No. 1 to the Engineering Services Contract for the John F. Kubala Water Treatment Plant Backwash Modification, Project No. WUTR18002

Authorizing the City Manager or his designee to execute Contract Modification No. 1 to the engineering services contract with Arcadis U.S., Inc., of Dallas, Texas, for the construction management services during the construction phase for the John F. Kubala Water Treatment Plant Backwash Modification in the amount not to exceed \$235,003. Funding is available in Water Bond Account No. CC658502-PJWUTR18002-SC0574.

[Staff Report - John F. Kubala Water Treatment Plant Backwash Modification](#)

[Contract - John F. Kubala Water Treatment Plant Backwash Modification](#)

8.4. Contract Modification No. 4 to the Engineering Services Contract for John F.

Kubala Water Treatment Plant Backwash Modification, Project No. WUTR18002

Authorizing the City Manager or his designee to execute Contract Modification No. 4 to the engineering services contract with CDM Smith, Inc., of Fort Worth, Texas, for John F. Kubala Water Treatment Plant Backwash Modification in the amount not to exceed \$109,145. Funding is available in Water Bond Account No. CC658502-PJWUTR18002-SC0574.

[Staff Report - John F. Kubala Water Treatment Plant Backwash Modification](#)
[Contract - John F. Kubala Water Treatment Plant Backwash Modification](#)

8.5. Contract Modification No. 1 to the Engineering Services Contract for the John F. Kubala Water Treatment Plant West High Service Pump Station Pump 4 and 5 Addition, Project No. WUTR19020

Authorizing the City Manager or his designee to execute Contract Modification No. 1 to the engineering services contract with Arcadis U.S., Inc., of Dallas, Texas, for the John F. Kubala Water Treatment Plant West High Service Pump Station Pumps 4 and 5 Addition in the amount not to exceed \$96,842. Funding is available in Water Bond Account No. CC658502-PJWUWS19020-SC0574.

[Staff Report - John F. Kubala Water Treatment Plant West High Service Pump Station Pump 4 and 5 Addition](#)
[Contract - John F. Kubala Water Treatment Plant West High Service Pump Station Pump 4 and 5 Addition](#)

8.6. Modification No. 5 to the Agreement for Structural, Mechanical, and Plumbing Assessment Services, Project 21-0145

Authorize the City Manager or his designee to execute Modification No. 5 to the professional services agreement for structural, mechanical, and plumbing assessment services at the City Office Tower with R.L. Woods & Associates, LLC, of Arlington, Texas, in an amount not to exceed \$75,097. Funds are budgeted in Municipal Facilities Capital Project Account No. CC768501-FD4045-SC0574.

[Staff Report - Modification No. 5 to the Agreement for Structural, Mechanical, and Plumbing Assessment Services](#)
[Attachment - Proposal for Modification No. 5 to the Agreement for Structural, Mechanical, and Plumbing Assessment Services](#)

8.7. Construction Contract for Improvements to the Northeast Branch Library, Project No. PJ000107

Authorize the City Manager or his designee to execute a construction contract for building improvements at the Northeast Branch Library located at 1905 Brown Boulevard, with CMP Commercial Construction, Inc., of Fort Worth, Texas, through the State of Texas Cooperative Purchasing Program in an amount not to exceed \$519,859. Funds are budgeted in Municipal Facilities Capital Project Account No. CC768501-FD4045-SC0678 [\$460,043] and in Library Administration Account No. CC960101-FD1000-SC0678 [\$59,816].

[Staff Report - Construction Contract for Improvements to the Northeast Branch Library](#)
[Attachment - Proposal for Construction Contract for Improvements to the Northeast Branch Library](#)

- 8.8. Bureau of Justice Assistance FY 23 Smart Policing Initiative Grant Program**
Authorize the City Manager or his designee to approve the application for and acceptance of a grant from the United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA), for funding in an amount not to exceed \$800,000 over a three-year period through the FY23 Smart Policing Initiative Grant Program and authorizing the necessary execution of documents relative to the grant application and award acceptance.
[Staff Report - FY2023 BJA FY23 Smart Policing Initiative Grant Program](#)

CONSENT AGENDA - ORDINANCES FINAL READING

- 8.9. Municipal Setting Designation 23-1 for 630 106th Street**
Final reading of an ordinance prohibiting the use of and contact with designated groundwater from beneath certain property known as 630 106th Street within the City of Arlington, Texas, to facilitate certification of a Municipal Setting Designation of the property by the Texas Commission on Environmental Quality pursuant to the Texas Health and Safety Code.
[Staff Report - Municipal Setting Designation 23-1 for 630 106th Street](#)
[Ordinance - Municipal Setting Designation 23-1 for 630 106th Street](#)
[Location Map - Municipal Setting Designation 23-1 for 630 106th Street](#)
- 8.10. Amendment of the Municipal Court Chapter**
Final reading of an ordinance amending the "Municipal Court" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article II, Municipal Judges, relative to alignment with current state law.
[Staff Report - Municipal Court Chapter](#)
[Ordinance - Municipal Court Chapter](#)
- 8.11. Alternate Sign Plan ASP23-1 (2100 Southeast Parkway/ Tarrant County College - Southeast Campus)**
Final reading of an ordinance adopting Alternate Sign Plan, ASP23-1, for a certain portion of property known as Lots 1 and 2, Block H of the Timberlake Addition, tracts 2, 2C and 2D of the BBB and C RY Survey, generally located south of Southeast Parkway and west of State Highway 360 and addressed as 2100 Southeast Parkway, 6600 South Watson Road, 6700 South Watson Road, and 6800 South Watson Road; zoned Residential Single-family 7.2 (RS-7.2) and General Commercial (GC).
[Staff Report - Alternate Sign Plan ASP23-1 \(2100 Southeast Parkway/ Tarrant County College - Southeast Campus\)](#)
[Ordinance with Exhibit A and B - Alternate Sign Plan ASP23-1 \(2100 Southeast Parkway/ Tarrant County College - Southeast Campus\)](#)
[Alternate Sign Plan - Alternate Sign Plan ASP23-1 \(2100 Southeast Parkway/ Tarrant County College - Southeast Campus\)](#)
[Photos - Alternate Sign Plan ASP23-1 \(2100 Southeast Parkway/ Tarrant County College - Southeast Campus\)](#)
- 8.12. Unified Development Code (UDC) Amendments: Flex Hybrid Zoning District**
Final reading of an ordinance amending the "Unified Development Code" Chapter of the

Code of the City of Arlington, Texas, 1987, through the amendment of Article 2, Zoning Districts; Article 3, Use Standards; Article 5, Design and Development Standards; Article 10, Review Procedures; and Article 12, Definitions; related to creating a new zoning district to be known as “Flex Hybrid (FH)” and establishing applicable use standards; creating a new use type to be known as “Manufacturing and Assembly, Small-Scale”.

[Staff Report - Unified Development Code \(UDC\) Amendments: Flex Hybrid Zoning District](#)

[Prior Board or Council Action - Unified Development Code \(UDC\) Amendments: Flex Hybrid Zoning District](#)

[Ordinance - Unified Development Code \(UDC\) Amendments: Flex Hybrid Zoning District Redline of Proposed UDC Changes - Unified Development Code \(UDC\) Amendments: Flex Hybrid Zoning District](#)

CONSENT AGENDA - RESOLUTIONS

8.13. Amending the Capital Budget for the City of Arlington for Fiscal Year 2023

A resolution amending the Capital Budget for the City of Arlington for Fiscal Year 2023, beginning October 1, 2022, and ending September 30, 2023.

[Staff Report - Capital Budget Amendment 5-23-23.docx](#)

[Resolution - CIP FY23 Amendment.pdf](#)

8.14. Resolution Expressing Intent to Reimburse Certain Capital Budget Expenditures

A resolution expressing intent to finance expenditures to be incurred.

[Staff Report - Reimbursement Resolution 5-23-23.docx](#)

[Reimbursement Resolution - FY2023 Amendment 5-23-23.pdf](#)

8.15. Contract Amendment to Incorporate Paratransit Software Services and a Vietnamese Language Smart Phone Application, Project 22-0031

A resolution authorizing the execution of an Amendment #1 to the On-Demand Rideshare Contract with River North Transit, LLC., of New York, New York ("Via") in an amount not to exceed \$164,984, to include paratransit software services and creation of a Vietnamese language smart phone application.

[Staff Report - Contract Amendment to Incorporate Paratransit Software Services.docx](#)

[Resolution - Contract Amendment to Incorporate Paratransit Software Services.pdf](#)

[Redacted Contract - Amendment to Incorporate Paratransit Software Services.pdf](#)

8.16. North Texas Anti-Gang Center - Regional Asset Transfer Addendum

A resolution authorizing the execution of a Regional Asset Transfer Addendum to the Local Administrative Agreement with the Constituent Agencies of the Texas Anti-Gang Center – North Texas.

[Staff Report - North Texas Anti-Gang Center Interlocal Agreement](#)

[Resolution - North Texas Anti-Gang Center Interlocal Agreement](#)

[Agreement - North Texas Anti-Gang Center - Regional Asset Transfer Addendum](#)

8.17. Commercial Recycling Permit Fee

A resolution authorizing and approving the Commercial Recycling Permit fee in accordance with the “Health and Sanitation” Chapter of the Code of the City of Arlington,

Texas, 1987.

[Staff Report - Commercial Recycling Permit Fee](#)

[Resolution - Commercial Recycling Permit Fee](#)

8.18. Bureau of Justice Assistance Grant: FY 24: Community Court

A resolution authorizing the application for and acceptance of a grant, if awarded, from the United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, for funding assistance in an amount not to exceed \$900,000 for community court, and authorizing the execution of documents relative to the application for and acceptance of such a grant.

[Staff Report - Bureau of Justice Assistance Grant: FY 24: Community Court](#)

[Resolution - Bureau of Justice Assistance Grant: FY 24: Community Court](#)

IX. ITEMS TO BE WITHDRAWN FROM THE CONSENT AGENDA

X. CONSIDER AND VOTE ON WITHDRAWN ITEMS

XI. PUBLIC HEARINGS: CONSIDERATION OF ORDINANCES FIRST READING AND RESOLUTIONS

PUBLIC HEARING - ORDINANCES FIRST READING

11.1. Zoning Case PD22-33 (2201 Avenue J Street)

Following the public hearing, consider Zoning Case PD22-33 for Community Commercial (CC) and a Planned Development for Residential Multi-Family-22 (PD-RMF-22) uses, with a Development Plan. First reading of an ordinance changing the zoning classification on certain property known as 2201 Avenue J Street to Community Commercial (CC) and Planned Development for Multi-Family-22 (PD-RMF-22) uses with a Development Plan; amending the Zoning District Map accordingly.

ORDINANCE FIRST READING

An ordinance changing the zoning classification on certain property known as 2201 Avenue J Street to Community Commercial (CC) and Planned Development for Multi-Family-22 (PD-RMF-22) uses with a Development Plan; amending the Zoning District Map accordingly.

[Staff Report - Zoning Case PD22-33 \(2201 Avenue J Street\)](#)

[Ordinance with Exhibits A and B - Zoning Case PD22-33 \(2201 Avenue J Street\)](#)

[\(att-ii\) Case Information with P&Z Summary.pdf](#)

[Applicant Narrative - Zoning Case PD22-33 \(2201 Avenue J Street\)](#)

[Development Plan - Zoning Case PD22-33 \(2201 Avenue J Street\)](#)

[Recent Multi-Family Information - Zoning Case PD22-33 \(2201 Avenue J Street\)](#)

[Petitions of Support and Opposition - Zoning Case PD22-33 \(2201 Avenue J Street\)](#)

11.2. Specific Use Permit SUP09-05R1 (Fulson Drill Site)

Following the public hearing, consider an amendment to Specific Use Permit SUP09-05R to establish the location of a drilling zone on an existing well site located at 5720 South Watson Road and 2453 East Sublett Road. First reading of an ordinance establishing a

gas well drill zone on certain property known as 5720 South Watson Road and 2453 East Sublett Road by adopting an amended Specific Use Permit for gas well drilling (SUP09-05R1); amending the Zoning District Map accordingly.

ORDINANCE FIRST READING

An ordinance establishing a gas well drill zone on certain property known as 5720 South Watson Road and 2453 East Sublett Road by adopting an amended Specific Use Permit for gas well drilling (SUP09-05R1); amending the Zoning District Map accordingly.

[Staff Report - Specific Use Permit SUP09-05R1 \(Fulson Drill Site\)](#)

[Ordinance with Exhibits A and B - Specific Use Permit SUP09-05R1 \(Fulson Drill Site\)](#)

[Case Information with P&Z Summary - Specific Use Permit SUP09-05R1 \(Fulson Drill Site\)](#)

[SUP09-05R1 Plans - Specific Use Permit SUP09-05R1 \(Fulson Drill Site\)](#)

[Letters of Support - Specific Use Permit SUP09-05R1 \(Fulson Drill Site\)](#)

[Letters of Opposition - Specific Use Permit SUP09-05R1 \(Fulson Drill Site\)](#)

[Petition Maps - Specific Use Permit SUP09-05R1](#)

- 11.3. Zoning Case PD22-32 (601, 603, 605, 607, 705, and 707 South Center Street; 101 and 108 East Third Street; 102, 106, 110, 202 and 204 East Third Street; 704 and 706 Glenn Crossett Court; 201, 203, 205, 207 East Fourth Street - Atlantic Student Housing)**

APPLICANT HAS REQUESTED A CONTINUANCE TO 6/13/2023 MEETING

Following the public hearing, consider Zoning Case PD22-32 for a Planned Development (PD) for Residential Multi-Family 22 (RMF-22), with Development Plan. First reading of an ordinance changing the zoning classification on certain property known as 601, 603, 605, 607, 705, and 707 South Center Street; 101 and 108 East Third Street; 102, 106, 110, 202 and 204 East Third Street; 704 and 706 Glenn Crossett Court; 201, 203, 205, 207 East Fourth Street to Planned Development (PD) for Residential Multi-Family (RMF-22) uses, with a Development Plan; amending the Zoning District Map accordingly.

ORDINANCE FIRST READING

First reading of an ordinance changing the zoning classification on certain property known as 601, 603, 605, 607, 705, and 707 South Center Street; 101 and 108 East Third Street; 102, 106, 110, 202 and 204 East Third Street; 704 and 706 Glenn Crossett Court; 201, 203, 205, 207 East Fourth Street to Planned Development (PD) for Residential Multi-Family (RMF-22) uses, with a Development Plan; amending the Zoning District Map accordingly.

[Staff Report - Zoning Case PD22-32 \(Atlantic Student Housing\)](#)

[Location Map - Zoning Case PD22-32 \(Atlantic Student Housing\)](#)

[Continuance Request - Zoning Case PD22-32 \(Atlantic Student Housing\)](#)

PUBLIC HEARING - RESOLUTIONS

- 11.4. Underground Easement and Right-of-Way Agreement – Timberlake Park – 1310 Great Southwest Parkway**

Following the public hearing, consider a resolution finding justification under the Texas Parks and Wildlife Code for the use in a public project of public land used as a park and

authorizing the City Manager or his designee to convey, dedicate, set apart, and reserve approximately 0.145 acre of underground easement and right-of-way rights for a gas pipeline in, under, over, through, across, and along property located at 1310 Great Southwest Parkway and otherwise known as Timberlake Park, in the City of Grand Prairie, Tarrant County, Texas.

RESOLUTION

A resolution finding justification under the Texas Parks and Wildlife Code for the use in a public project of public land used as a park and authorizing the City Manager or his designee to convey, dedicate, set apart, and reserve approximately 0.145 acre of underground easement and right-of-way rights for a gas pipeline in, under, over, through, across, and along property located at 1310 Great Southwest Parkway and otherwise known as Timberlake Park, in the City of Grand Prairie, Tarrant County, Texas.

[Staff Report - Underground Easement and Right-of-Way Agreement - Timberlake Park - 1310 Great Southwest Parkway](#)

[Resolution - Underground Easement and Right-of-Way Agreement - Timberlake Park - 1310 Great Southwest Parkway](#)

[Attachment - Underground Easement and Right of Way Agreement - Timberlake Park - 1310 Great Southwest Parkway](#)

11.5. Extension of Historic Stay on Demolition Permit (207 N. Oak Street)

Following the public hearing, consider a resolution authorizing an additional extension of the stay imposed by the Landmark Preservation Commission on a demolition permit for a structure located at 207 N. Oak Street.

RESOLUTION

A resolution authorizing an additional extension of the stay imposed by the Landmark Preservation Commission on a demolition permit for a structure located at 207 N. Oak Street.

[Staff Report - LPC Recommendation to Extend Historic Stay on 207 N. Oak.docx](#)

[Resolution - Demolition Stay for 207 N Oak Street.pdf](#)

[Presentation - Request for Historic Stay Extension at 207 N Oak St.pdf](#)

XII. CONSIDERATION OF ORDINANCES - FIRST AND FINAL READING

12.1. Issuance and Sale of the City of Arlington, Texas, Permanent Improvement and Refunding Bonds, Series 2023

First and final reading of an ordinance authorizing the issuance from time to time of City of Arlington, Texas, Permanent Improvement Bonds, Permanent Improvement Refunding Bonds and Permanent Improvement and Refunding Bonds in the aggregate principal amount not to exceed \$94,110,000; providing for the award of the sale thereof in accordance with specified parameters; levying a tax in payment thereof; authorizing the execution and delivery of a paying agent/registrar agreement, an escrow agreement and a purchase agreement; approving the official statement; and enacting provisions incident and relating to the subject and purposes of this ordinance.

[Bond Ordinance GO & Refunding 2023.doc](#)

XIII. CONSIDERATION OF RESOLUTIONS

13.1. Update to City of Arlington Policy Statement for Chapter 380 Economic Development Program Policy

A resolution approving amendments to the City of Arlington’s Chapter 380 Economic Development Program Policies and Procedures relative to the Commercial Signage Incentive Program.

[Staff Report - Update to City of Arlington Policy Statement for Chapter 380 Economic Development Program Policy](#)

[Resolution - Update to Arlington Policy Statement for Chapter 380 Economic Development Program Policy.pdf](#)

XIV. CITIZEN PARTICIPATION

Recognition of visitors with items of business not on the agenda.

Persons who intend to speak during the Citizen Participation portion of an open meeting shall pre-register not later than 5:00 p.m. on the day of the meeting. Persons may pre-register [online](#), by calling the City Secretary's Office (817-459-6186), or by completing a registration card at the City Secretary's Office. During the pre-registration process, speakers must provide the following information:

- a. the speaker's name and city of residence;
- b. the name of the person or organization that the speaker is representing, if any;
- c. the topic on which the speaker plans to speak;
- d. an indication whether the speaker will be speaking through a translator;
- e. any other information requested by City staff.

The City Manager may direct a member of City staff to contact an individual who has pre-registered to speak in an attempt to resolve any issue or concern. Contact by a member of City staff should in no way suggest that the individual should not appear and address the City Council.

XV. ANNOUNCEMENTS

NOTICE

- The Arlington City Hall is wheelchair accessible. For accommodations or sign interpretive services, please call 817-459-6100 no later than 24 hours in advance.
- Council meetings are broadcast live on Arlington's Government Channel and rebroadcast throughout the week at the following times:

	Afternoon Meetings	Evening Meetings
Sunday	1:00 p.m.	6:00 p.m.
Wednesday	1:30 p.m.	6:30 a.m.
Saturday	6:00 p.m.	6:30 a.m.

- The Council agenda can be viewed on the City's website at www.Arlingtontx.gov
- For a complete Arlington Government Channel program schedule, please visit www.Arlingtontx.gov/broadcast

Staff Report



Specific Use Permit SUP09-05R1 (Fulson Drill Site)	
Planning and Zoning meeting date: 4-19-2023	Document Being Considered: Ordinance

RECOMMENDATION

Following the public hearing, consider an amendment to Specific Use Permit SUP09-05R to establish the location of a drilling zone on an existing well site located at 5720 South Watson Road and 2453 East Sublett Road.

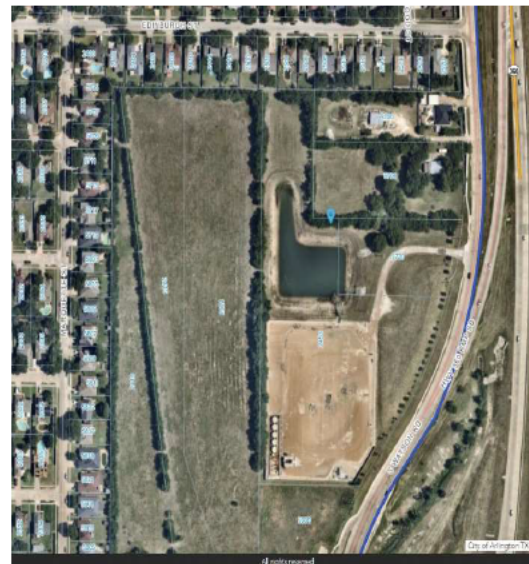
PRIOR BOARD OR COUNCIL ACTION

On August 18, 2009, City Council approved Zoning Case SUP09-5 for the Fulson Drill Site by a vote of 7-1-1.

1. Landscaping shall be installed to screen the site from East Sublett Road and State Highway 360, prior to commencement of the drilling operations.

On October 27, 2009, City Council approved Resolution Number 09-333 for Gas Well Permits GW09-32 (Fulson 1H) and GW09-33 (West Wing 1H) by a vote of 6-1-1.

On January 29, 2010, City Council approved Resolution Number 10-034 for Gas Well Permits GW09-51, GW09-52, and GW09-53, Fulson 5H, West Wing 5H and 6H by vote of 8-0-1.



REQUEST

The applicant, Total E&P Barnett USA, LLC, (hereinafter, Total) requests to amend the existing Specific Use Permit by establishing the location of a drilling zone for gas drilling on a 5.426-acre tract of land addressed at 5720 South Watson Road and 2453 East Sublett Road, generally located west of Watson Road and north of East Sublett Road.

Current zoning: Zoned as Community Commercial (CC) with a Specific Use Permit (SUP) for gas drilling.

Requested zoning: CC, with an amended SUP for gas drilling operations to establish a drilling zone.

General Information

History and Existing Site Conditions

This site was approved for gas well drilling in August 2009. City Council approved two gas well permits in October 2009; both wells were drilled. City Council approved three additional gas well permits in January 2010. One of three wells was drilled. Today, the site includes three wellheads (Fulson 1H, Westwing 1H, and Forks 1H) with supporting equipment (three separators and five storage tanks). A frac pond is located north of the drill site. The site is enclosed by a 6-foot chain link fence and shrubs. The existing wellheads are located more than 600-feet from the nearest protected use.



Fulson drill site and frac pond from South Watson Road.

The Fulson Drill Site is located within two miles of five identified gas well sites. The attached location map illustrates the location of these sites.

Adjacent Land Uses

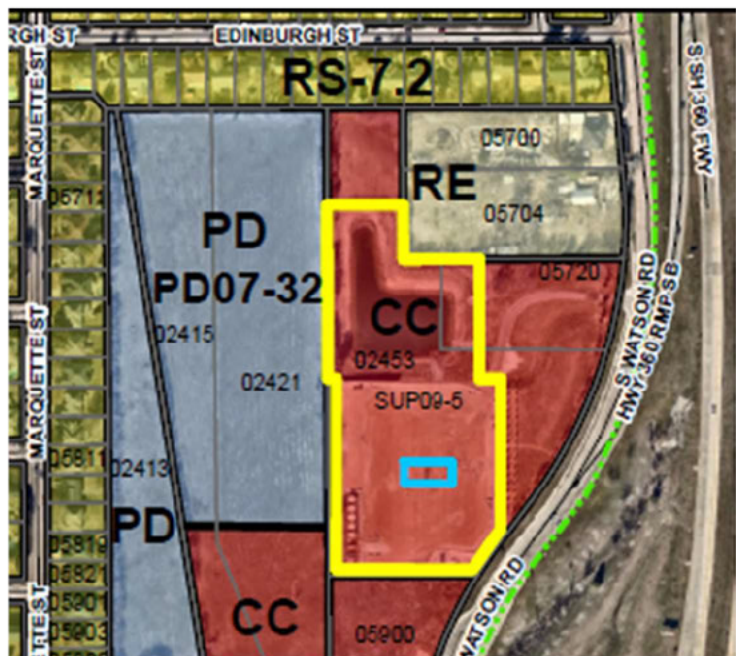
Property to the North
Community Commercial (CC)
Undeveloped

Property to the Northeast
Residential Estate (RE)
Developed with Single Family detached home

Property to the East
Community Commercial (CC)
Undeveloped

Property to the South
Community Commercial (CC)
Undeveloped

Property to the West
Planned Development for
Community Commercial (CC) Uses
with exclusions.
Undeveloped



SPECIFIC USE PERMIT ANALYSIS

The Gas Drilling and Production Ordinance (GDPO) provides that drilling zones must maintain a setback of not less than 600 feet from all protected uses¹. When laying out the boundary of the drilling zone, the GDPO requires the drilling zone to capture ALL existing wellheads, in addition to the area proposed for future drilling. The submitted site plan illustrates the proposed drilling zone is at least 600 feet from all known protected uses.

The closest residential structure is approximately 600.1 feet northeast of the proposed drilling zone. The closest school (Barnett Intermediate) is located approximately 2,053 feet west and the nearest park (Fish Creek Neighborhood) is approximately 2,500 feet northwest of the proposed drilling zone.

¹ A "protected use" is defined as a residence, religious institution, hospital building, medical and dental office, nursing home, personal care facility, supervised living facility, public or private school, day care (and its playground), or public park. GDPO §2.01.

Total intends to drill two more wells on the site if the proposed drilling zone is approved. Total's estimated drilling and completion time frame is approximately six months, to begin in late 2023 or early 2024. Approval of this drilling zone application does NOT approve the drilling permits.

Rules of Decision for the SUP

In reviewing the SUP, the Planning Commission and City Council shall base a decision on their findings of the extent to which the proposed use:

1. Complies with the general criteria of Unified Development Code (UDC) Section 10.3.8. This is achieved when the application:
 - a. Is consistent with prior plan or plat approvals.
Comment: The current site is in substantial compliance with the terms of Ordinance No. 09-039 (the original SUP).
 - b. Is consistent with the Comprehensive Plan and other applicable plans. The Commission and Council may consider whether the proposal provides a public benefit even if the development is contrary to some of the goals, policies, or strategies in the Comprehensive Plan.
 - c. Complies with use and development standards of UDC Articles 2 through 7.
Comment: The current well site was approved prior to the UDC. It complies with the Zoning Ordinance that was in effect in 2009, to the extent it was made applicable.
 - d. Complies with other applicable local, state, or federal regulations.
Comment: According to the City's 2023 annual inspection report, the site currently complies with all other applicable regulations.²
 - e. Minimizes adverse environmental impacts. If the proposed drilling activity has any environmental impacts, the operator must minimize negative impacts and shall not cause significant adverse impacts on the environment.
 - f. Minimizes adverse impacts on surrounding property. The proposed activity shall not cause significant adverse impacts on surrounding properties.
 - g. Minimizes adverse fiscal impacts. *(None noted)*
 - h. Provides adequate road systems.
Comment: No changes are proposed to the previously approved transportation route.
 - i. Provides adequate public services and facilities.
Comment: Total proposes to purchase water from the City of Arlington to serve as the site's water source for drilling and hydraulic fracturing operations. A description of the water source and estimate of water volume needed will be reviewed during the gas well permit stage.
2. Compliments or is compatible with the surrounding uses and community facilities; and
3. Contributes to, enhances, or promotes the welfare of the area and adjacent properties.

An ordinance approving a specific use permit may impose development standards and safeguards over and above those contained in the UDC. The Commission may, in the interest of the public welfare and to ensure compliance with the UDC, establish reasonable conditions on the operation, location, arrangement, type, and manner of construction of any use for which a permit is authorized.

² See page 5, Compliance with the Gas Drilling and Production Ordinance, for site history.

Transitional Buffers and Other Elements of the Site Plan

Ordinance No. 09-039 approving the original SUP required transitional and landscape buffers around the well site. The GDPO was amended in 2011 to include more robust standards for buffers for both the well site and the frac pond. With this application, Total proposes to increase the size of the east transitional buffer and meet or maintain compliance with some of the applicable Tier 1 requirements. The west and south buffers are fixed and cannot be expanded. The landscaping and perimeter fencing is required to be installed within 30 days after commencing drilling of the first well.

Tier 1	Landscaping and Perimeter Fencing	Proposed
Well Site	40-foot transitional buffer	40-ft on east side 13-ft on south side 17½ -ft on west side
	Landscaping in the buffer shall meet UDC requirements. On May 4, 2021, the trees per area ratio was changed to one tree for each 300 square feet. Gross buffer area is 28,972 sf / 300 = 97 trees	104 new and existing trees
	8-foot-tall masonry wall with 75 percent opacity around perimeter with gate	8-ft wall on all sides of drill site with gate
	10-foot-wide streetscape setback with street trees	20-ft
Fracture Stimulation Earthen Pit	6-foot-tall black vinyl-coated chain link fence around pond	Existing pond to the north is already enclosed by chain link fence.
	Informal planting of shrubs around pond	73 new and existing shrubs
	One street tree for every 30 feet of frontage along ROW (741 linear feet/30=25 trees)	37 trees

The owner/operator shall be responsible for the installation, preservation, and maintenance of all landscaping and physical features shown on this site plan.

Community Outreach

A community meeting was held on April 4, 2023, at the Beacon Recreation Center located at 1100 Mansfield Webb Road, with approximately 10 residents attending. The applicant mailed out the notice of the meeting to all surface owners within 600 feet of the proposed SUP boundary as required by the UDC. Notice was also posted on Nextdoor as required.

Support and Opposition

As of this writing, staff has received the following:

	Support	Opposition
Online Registry	0	45
Emailed or mailed	7	5
TOTAL	7	50
Above w/n 1/4-mile buffer	6	21

Staff may receive additional comments from citizens and interested parties for the duration of this case. All comments will be forwarded to the Commission for consideration.

Water Source

The applicant is proposing to purchase water from the City of Arlington to serve as the site's

water source for drilling and hydraulic fracturing operations. A description of the water source and estimate of the total water volume needed will be reviewed during the gas well permit stage. There is a fracturing pond established on the northern portion of the subject site.

Transportation Route

The transportation route to the site will travel east on Interstate Highway 20 (IH20), south on State Highway 360 (SH360) to Green Oaks Boulevard, exit Green Oaks Boulevard and continue the SH360 service road to the site entrance. The site entrance is located west of the service road. Traffic exiting the site will travel south on the SH360 service road, to East Sublett Road, travel east on East Sublett Road, then travel north on SH360. There shall be no traffic during the peak hours of 7:00-9:00 a.m. and 5:00-7:00 p.m.

Pipeline Route

The pipeline connection is to the existing DFW Midstream lateral located north of the site.

Compliance with the Gas Drilling and Production Ordinance

On September 7, 2010, TCEQ issued a Notice of Violation for odor to Chesapeake as a result of an incident occurring April 20-21, 2010. The violation was resolved.

On August 15, 2011, the City of Arlington issued a citation for violating the approved water plan. Chesapeake was found transporting City water from the Fulson site to a frac tank in Grand Prairie.

Conclusion

The site is currently an operating drill site. The request for a drilling zone is to establish the boundary of where wells are to be drilled, as outlined in the GDPO. Additional permits for gas drilling will require a Gas Well Permit, which must also comply with the standards outlined in the GDPO.

ADDITIONAL INFORMATION

Attached:

- i. Case Information
- ii. Itemized Allowable Uses
- iii. Location Map
- iv. Photos
- v. Site Plan
- vi. Transportation Route
- vii. Landscape Plan
- viii. Water Source Plan
- ix. Dust Mitigation Plan
- x. Letters of Support
- xi. Letters of Opposition

Under separate cover:

None

Available in the City Secretary's office:

None

CITY COUNCIL DATE

May 23, 2023

STAFF CONTACT(S)

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EXHIBIT D

Oil & Gas Data Query

Query Menu Help

Form W-1

Return

To Print Direct onal or Horizontal Wellbore Information use (View W-1D or W-1H) links.

Status #: 876346 - 98 API #: 439-37262	Operator: 842986 - TEP BARNETT USA, LLC Issued: 08/11/2022, Filed: Online	Lease Name: FULSON COLBY Well #: 2H, District: 05, County: TARRANT	Filing Purpose: New Drill Wellbore Profiles: Horizontal
Problems identified w th this permit are resolved. (08/11/2022 09:17:54 AM)			

Status: Approved [View Current W-1](#) [View Current W-1H](#) [View Current Perm t](#) [View SWR 13 Formations](#)

General / Location Information

Basic Information:

Filing Purpose	Wellbore Profiles	Lease Name	Well #	SWR	Total Depth	Horizontal Wellbore	Stacked Lateral Parent Well DP #
New Drill	Horizontal	FULSON COLBY	2H	SWR 37 Interior LeaseLine, SWR 37 Lease Line	9000	Allocation	

Surface Location Information:

API #	Distance from Nearest Town	Direction from Nearest Town	Nearest Town	Surface Location Type
439-37262	1.35 miles	NE	Webb	Land

GPS Coordinates - Datum: NAD 27
X = 2134339 Y = 358120 State Plane Zone: North Central

Survey/Legal Location Information:

Section	Block	Survey	Abstract #	County
		BALCH, J	83	TARRANT

Township	League	Labor	Porcion	Share	Tract	Lot

Perpendicular surface location from two nearest designated lines:

Perpendiculars	Distance	Direction	Distance	Direction
Survey Perpendiculars	540.0 feet	E	752.0 feet	S

Permit Restrictions:

Code	Description
29	This well must comply to the new SWR 3.13 requirements concerning the isolation of any potential flow zones and zones w th corrosive format on fluids. See approved permit for those formations that have been identified for the county in which you are drilling the well in.

Fields

District	Field Name	Field #	Completion Depth	Lease Name	Well #	Well Type	Acres	Distance to nearest well	Distance to nearest Lease Line from Surface Location	SWR	Off-lease Surface Location	Off-lease Penetration Point	Pooled/Unitized	Horizontal Ownership Interval
09	NEWARK, EAST (BARNETT SHALE) Primary Field	65280200	7216	FULSON COLBY	2H	Oil or Gas Well	578.28	345.0 feet	274 feet	SWR 37 Interior LeaseLine, SWR 37 Lease Line	N	N	Y	

Perpendiculars	Distance	Direction	Distance	Direction
Surface Lease Lines	274.0 feet	SE	415.0 feet	SW

Nearest Distance from Any Take Point to a Lease Line: 1 feet
Section: Block: Survey: BALCH, J
Abstract #: 83 County: TARRANT

Name	Profile	Distance	Direction	Distance	Direction	
TH1	Terminus Point	Lease	27.0 feet	from the SW line and	2996.0 feet	from the SE line
		Survey	542.0 feet	from the N line and	2691.0 feet	from the W line
	Penetration Point	Lease	641.0 feet	from the SW line and	545.0 feet	from the E line

Exceptions

Field	Exception	Case Docket Number	Resolution
NEWARK, EAST (BARNETT SHALE)	SWR 37 Lease Line	0335945	
NEWARK, EAST (BARNETT SHALE)	SWR 37 Interior LeaseLine	0335945	

Comments

Remark	Date Entered	Entered By
Commission Staff expresses no opinion as to whether a 100% ownership interest in each of the leases alone or in combinat on with a "production sharing agreement" confers the right to drill across lease/unit lines or whether a pooling agreement is also required. However, until that issue is directly addressed and ruled upon by a Texas court of competent jurisdic on it appears that a 100% interest in each of the leases and a product on sharing agreement constitute a sufficient colorable claim to the right to drill a horizontal well as proposed to authorize the removal of the regulatory bar and the issuance of a drilling permit by the Commission, assuming the proposed well is in compliance with all other relevant Commiss on requirements. Issuance of the perm t is not an endorsement or approval of the applicant's stated method of allocating product on proceeds among component leases or units. All production must be reported to the Commiss on as production from the lease or pooled unit on wh ch the wellhead is located and reported product on volume must be determined by actual measurement of hydrocarbon volumes pr or to leaving that tract and may not be based on allocation or estimat on. Payment of royalties is a contractual matter between the lessor and lessee. Interpreting the leases and determining whether the proposed proceeds allocation comports with the relevant leases is not a matter within Commission jurisd ction but a matter for the parties to the lease and, if necessary, a Texas court of competent jurisdiction. The foregoing statements are not, and should not be construed as, a final opin on or decis on of the Railroad Commission.	07/12/2022 04:08:22 PM	
Amended to Allocation well, Publication	07/12/2022 04:18:30 PM	FILER
There have been problems identified with this perm t (see problem letter attachment). Notif cat on sent.	08/05/2022 10:02:30 AM	RRC STAFF
Problems identified w th this permit are resolved.	08/11/2022 09:17:54 AM	RRC STAFF

Attachments

Attachment Type	File Path	Associated Fields and/or Plats
PLAT #1 (Paper Size: LGL)	Fulson Colby #2H Plat.pdf	NEWARK, EAST (BARNETT SHALE)
P-16	Fulson Colby #2H P16.pdf	
P-12	Colby Unit P12.pdf	Fulson Colby #2H Plat.pdf
P-12	Fulson Un t P12.pdf	Fulson Colby #2H Plat.pdf
Due Diligence Letter	Fulson Colby #2H Due Dilegence Letter.pdf	
Serv ce List	Fulson Colby #2H Serv List.csv	
As Submitted W-1	AsSubmittedW1-7-12-2022.pdf	
Notice of Application	NOA-0335945-PUB-ORG-655.pdf	
Publishing Instructions	PUBLISH-INSTRCTS-0335945-152.pdf	
NOA Certified Service Lis	0335945.pdf	
Permit Problem Letter	problem letter 8-5-2022.pdf	
Affidavit of Publication	Fulson Colby #2H Pub Aff.pdf	
As Approved W-1	AsApprovedW1-8-11-2022.pdf	
As Approved Permit	AsApprovedPermit-8-11-2022.pdf	

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API No. 42-439-37262 Drilling Permit # 876346 SWR Exception Case/Docket No. 0335945 (R37)	RAILROAD COMMISSION OF TEXAS OIL & GAS DIVISION APPLICATION FOR PERMIT TO DRILL, RECOMPLETE, OR RE-ENTER <i>This facsimile W-1 was generated electronically from data submitted to the RRC.</i> <i>A certification of the automated data is available in the RRC's Austin office.</i>	FORM W-1 Permit Status: Approved
--	--	---

1. RRC Operator No. 842986 2. Operator's Name (as shown on form P-5, Organization Report) TEP BARNETT USA, LLC 3. Operator Address (include street, city, state, zip) PO BOX 17209 FORT WORTH, TX 76102	5. Well No. 2H
---	-----------------------

GENERAL INFORMATION	
6. Purpose of filing (mark ALL appropriate boxes): <input checked="" type="checkbox"/> New Drill <input type="checkbox"/> Reclass <input type="checkbox"/> Field Transfer <input type="checkbox"/> Re-Enter <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Amended as Drilled (BHL)(Also File Form W-1D)	
7. Wellbore Profile (mark ALL appropriate boxes): <input type="checkbox"/> Vertical <input checked="" type="checkbox"/> Horizontal (Also File Form W-1H) <input type="checkbox"/> Directional (Also File Form W-1D) <input type="checkbox"/> Sidetrack	
8. Total 9000 9. Do you have the right to minerals under any right-of-ways? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No 10. Is this well subject to Statewide Rule 36 (hydrogen sulfide) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

SURFACE LOCATION AND ACREAGE INFORMATION	
11. RRC District No. 05 12. County TARRANT 13. Surface Location <input checked="" type="checkbox"/> Land <input type="checkbox"/> Bay/Estuary <input type="checkbox"/> Inland Waterway <input type="checkbox"/> Offshore	14. This well is to be located 1.35 miles in a NE direction from Webb which is the nearest town in the county of the well site.
15. Section 16 Block 05 Survey BALCH, J 18. Abstract No. 83 19. Distance to nearest lease line: ft. 20. Number of contiguous acres in lease, pooled unit, or unitized tract: 578.28	
21. Lease Perpendiculars: 274.0 ft. from the SE line and 415.0 ft. from the SW line. 22. Survey Perpendiculars: 540.0 ft. from the E line and 752.0 ft. from the S line.	
23. Is this a pooled unit? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No 24. Unitization Docket No: _____ 25. Are you applying for Substandard Acreage Field? <input type="checkbox"/> Yes (attach Form W-1A) <input checked="" type="checkbox"/> No	

FIELD INFORMATION	
List all fields of anticipated completion including Wildcat. List one zone per line.	
26. RRC District No. 09 27. Field No. 65280200 28. Field Name (exactly as shown in RRC records) NEWARK, EAST (BARNETT SHALE) 29. Well Type Oil or Gas Well 30. Completion Depth 7216 31. Distance to Nearest Well in this Reservoir 345.0 32. Number of Wells on this lease in this Reservoir 2	

BOTTOMHOLE LOCATION INFORMATION is required for DIRECTIONAL, HORIZONTAL, AND AMENDED AS DRILLED PERMIT APPLICATIONS	
Remarks See attached	Certificate: I certify that information stated in this application is true and complete, to the best of my knowledge RRC User 07/12/2022 Name of filer _____ Date Submitted _____ Phone _____ Email Address(OPTIONAL) _____
RRC Use Only Date Validation Time Stamp: Sun, 11 Jun 2023 21:01:42	

**RAILROAD COMMISSION OF TEXAS
OIL & GAS DIVISION**

FORM W-1 Comments

APPLICATION FOR PERMIT TO DRILL, RECOMPLETE, OR RE-ENTER

*This facsimile W-1 was generated electronically from data submitted to the RRC.
A certification of the automated data is available in the RRC's Austin office.*

Permit Status: Approved

Permit # 876346

Approved Date: 08/11/2022

[07/12/2022 04:08:22 PM]: Commission Staff expresses no opinion as to whether a 100% ownership interest in each of the leases alone or in combination with a "production sharing agreement" confers the right to drill across lease/unit lines or whether a pooling agreement is also required. However, until that issue is directly addressed and ruled upon by a Texas court of competent jurisdiction it appears that a 100% interest in each of the leases and a production sharing agreement constitute a sufficient colorable claim to the right to drill a horizontal well as proposed to authorize the removal of the regulatory bar and the issuance of a drilling permit by the Commission, assuming the proposed well is in compliance with all other relevant Commission requirements. Issuance of the permit is not an endorsement or approval of the applicant's stated method of allocating production proceeds among component leases or units. All production must be reported to the Commission as production from the lease or pooled unit on which the wellhead is located and reported production volume must be determined by actual measurement of hydrocarbon volumes prior to leaving that tract and may not be based on allocation or estimation. Payment of royalties is a contractual matter between the lessor and lessee. Interpreting the leases and determining whether the proposed proceeds allocation comports with the relevant leases is not a matter within Commission jurisdiction but a matter for the parties to the lease and, if necessary, a Texas court of competent jurisdiction. The foregoing statements are not, and should not be construed as, a final opinion or decision of the Railroad Commission.; [FILER 07/12/2022 04:18:30 PM]; Amended to Allocation well, Publication; [RRC STAFF 08/05/2022 10:02:30 AM]; There have been problems identified with this permit (see problem letter attachment). Notification sent.; [RRC STAFF 08/11/2022 09:17:54 AM]: Problems identified with this permit are



Oil & Gas Data Query

Query Menu Help

Form W-1

Return

To Print Direct onal or Horizontal Wellbore Information use (View W-1D or W-1H) links.

Status #: 876347 - 98 API #: 439-37264	Operator: 842986 - TEP BARNETT USA, LLC Issued: 08/09/2022, Filed: Online	Lease Name: FULSON COLBY Well #: 3H, District: 05, County: TARRANT	Filing Purpose: New Drill Wellbore Profiles: Horizontal
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This well has a city level permit already filed. Due to the lease name on the city level permit showing Fulson Colby, this W-1 will need to carry that same name. Filer is aware that all allocat on wells will require unique lease names, even if gas only, and will file future wells accordingly. (07/14/2022 02:25:16 PM)

Status: Approved [View Current W-1](#) [View Current W-1H](#) [View Current Perm t](#) [View SWR 13 Formations](#)

General / Location Information

Basic Information:

Filing Purpose	Wellbore Profiles	Lease Name	Well #	SWR	Total Depth	Horizontal Wellbore	Stacked Lateral Parent Well DP #
New Drill	Horizontal	FULSON COLBY	3H	SWR 37 Interior LeaseLine, SWR 37 Lease Line	9000	Allocation	

Surface Location Information:

API #	Distance from Nearest Town	Direction from Nearest Town	Nearest Town	Surface Location Type
439-37264	1.35 miles	NE	Webb	Land

GPS Coordinates - Datum: NAD 27
X = 2134339 **Y =** 358105 **State Plane Zone:** North Central

Survey/Legal Location Information:

Section	Block	Survey	Abstract #	County
		BALCH, J	83	TARRANT

Township	League	Labor	Porcion	Share	Tract	Lot

Perpendicular surface location from two nearest designated lines:

Perpendiculars	Distance	Direction	Distance	Direction
Survey Perpendiculars	540.0 feet	E	737.0 feet	S

Permit Restrictions:

Code	Description
29	This well must comply to the new SWR 3.13 requirements concerning the isolat on of any potential flow zones and zones w th corrosive format on fluids. See approved permit for those formations that have been identified for the county in which you are drilling the well in.

Fields

District	Field Name	Field #	Completion Depth	Lease Name	Well #	Well Type	Acres	Distance to nearest well	Distance to nearest Lease Line from Surface Location	SWR	Off-lease Surface Location	Off-lease Penetration Point	Pooled/Unitized	Horizontal Ownership Interval
09	NEWARK, EAST (BARNETT SHALE) Primary Field	65280200	7216	FULSON COLBY	3H	Gas Well	578.28	1334.0 feet	266 feet	SWR 37 Interior LeaseLine, SWR 37 Lease Line	N	N	Y	

Perpendiculars	Distance	Direction	Distance	Direction
Surface Lease Lines	266.0 feet	SE	407.0 feet	SW

Nearest Distance from Any Take Point to a Lease Line: 1 feet
Section: **Block:** **Survey:**BALCH, J
Abstract #: 83 **County:** TARRANT

Name	Profile	Distance	Direction	Distance	Direction
TH1	Terminus Point	Lease 63.0 feet	from the N line and	1550.0 feet	from the SW line
		Survey 36.0 feet	from the N line and	3126.0 feet	from the E line
	Penetration Point	Lease 1346.0 feet	from the N line and	380.0 feet	from the E line

Exceptions

Field	Exception	Case Docket Number	Resolution
NEWARK, EAST (BARNETT SHALE)	SWR 37 Lease Line	0335953	
NEWARK, EAST (BARNETT SHALE)	SWR 37 Interior LeaseLine	0335953	

Comments

Remark	Date Entered	Entered By
Commission Staff expresses no opinion as to whether a 100% ownership interest in each of the leases alone or in combinat on with a "production sharing agreement" confers the right to drill across lease/unit lines or whether a pooling agreement is also required. However, until that issue is directly addressed and ruled upon by a Texas court of competent jurisdic on it appears that a 100% interest in each of the leases and a product on sharing agreement constitute a sufficient colorable claim to the right to drill a horizontal well as proposed to authorize the removal of the regulatory bar and the issuance of a drilling permit by the Commission, assuming the proposed well is in compliance with all other relevant Commiss on requirements. Issuance of the perm t is not an endorsement or approval of the applicant's stated method of allocating product on proceeds among component leases or units. All production must be reported to the Commiss on as production from the lease or pooled unit on wh ch the wellhead is located and reported product on volume must be determined by actual measurement of hydrocarbon volumes pr or to leaving that tract and may not be based on allocation or estimat on. Payment of royalties is a contractual matter between the lessor and lessee. Interpreting the leases and determining whether the proposed proceeds allocation comports with the relevant leases is not a matter within Commission jurisd ction but a matter for the parties to the lease and, if necessary, a Texas court of competent jurisdiction. The foregoing statements are not, and should not be construed as, a final opin on or decis on of the Railroad Commission.	07/12/2022 04:30:12 PM	
Amended to Allocation, Publ cat on	07/12/2022 04:36:01 PM	FILER
There have been problems identified with this perm t (see problem letter attachment). Notif cat on sent.	07/13/2022 10:01:10 AM	RRC STAFF
Problems identified w th this permit are resolved.	07/14/2022 02:23:38 PM	RRC STAFF
This well has a city level permit already filed. Due to the lease name on the city level permit showing Fulson Colby, this W-1 will need to carry that same name. Filer is aware that all allocat on wells will require un que lease names, even if gas only, and will file future wells accordingly.	07/14/2022 02:25:16 PM	RRC STAFF

Attachments

Attachment Type	File Path	Associated Fields and/or Plats
PLAT #1 (Paper Size: LGL)	Fulson Colby #3H Plat.pdf	NEWARK, EAST (BARNETT SHALE)
P-16	Fulson Colby #3H P16.pdf	
P-12	Colby Unit P12.pdf	Fulson Colby #3H Plat.pdf
P-12	Fulson Un t P12.pdf	Fulson Colby #3H Plat.pdf
Due Diligence Letter	Fulson Colby #3H Due Diligence Letter.pdf	
Serv ce List	Fulson Colby #3H Serv List.csv	
As Submitted W-1	AsSubmittedW1-7-12-2022.pdf	
Permit Problem Letter	problem letter 7-13-2022.pdf	
Notice of Application	NOA-0335953-PUB-ORG-212.pdf	
Publishing Instructions	PUBLISH-INSTRUCTS-0335953--14.pdf	
NOA Certified Service Lis	0335953.pdf	
Affidavit of Publication	Fulson Colby #3H Pub Aff.pdf	
As Approved W-1	AsApprovedW1-8-9-2022.pdf	
As Approved Permit	AsApprovedPermit-8-9-2022.pdf	

Return

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API No. **42-439-37264** **RAILROAD COMMISSION OF TEXAS** **FORM W-1**
 Drilling Permit # **876347** **OIL & GAS DIVISION**
 SWR Exception Case/Docket No. **0335953 (R37)** **APPLICATION FOR PERMIT TO DRILL, RECOMPLETE, OR RE-ENTER**
This facsimile W-1 was generated electronically from data submitted to the RRC. A certification of the automated data is available in the RRC's Austin office.

1. RRC Operator No. **842986** 2. Operator's Name (as shown on form P-5, Organization Report) **TEP BARNETT USA, LLC**
 3. Operator Address (include street, city, state, zip)
PO BOX 17209
FORT WORTH, TX 76102

4. Lease Name **FULSON COLBY** 5. Well No. **3H**

GENERAL INFORMATION

6. Purpose of filing (mark ALL appropriate boxes):
 New Drill Reclass Field Transfer Re-Enter
 Amended Amended as Drilled (BHL)(Also File Form W-1D)

7. Wellbore Profile (mark ALL appropriate boxes):
 Vertical Horizontal (Also File Form W-1H) Directional (Also File Form W-1D) Sidetrack

8. Total **9000** 9. Do you have the right to minerals under any right-of-way? Yes No 10. Is this well subject to Statewide Rule 36 (hydrogen sulfide)? Yes No

SURFACE LOCATION AND ACREAGE INFORMATION

11. RRC District No. **05** 12. County **TARRANT** 13. Surface Location Land Bay/Estuary Inland Waterway Offshore

14. This well is to be located **1.35** miles in a **NE** direction from **Webb** which is the nearest town in the county of the well site.

15. Section **16** Block **05** 17. Survey **BALCH, J** 18. Abstract No. **83** 19. Distance to nearest lease line: **ft.** 20. Number of contiguous acres in lease, pooled unit, or unitized tract: **578.28**

21. Lease Perpendiculars: **266.0** ft. from the **SE** line and **407.0** ft. from the **SW** line.
 22. Survey Perpendiculars: **540.0** ft. from the **E** line and **737.0** ft. from the **S** line.

23. Is this a pooled unit? Yes No 24. Unitization Docket No: **25. Are you applying for Substandard Acreage Field?** Yes (attach Form W-1A) No

FIELD INFORMATION List all fields of anticipated completion including Wildcat. List one zone per line.

26. RRC District No.	27. Field No.	28. Field Name (exactly as shown in RRC records)	29. Well Type	30. Completion Depth	31. Distance to Nearest Well in this Reservoir	32. Number of Wells on this lease in this Reservoir
09	65280200	NEWARK, EAST (BARNETT SHALE)	Gas Well	7216	1334.0	9

BOTTOMHOLE LOCATION INFORMATION is required for DIRECTIONAL, HORIZONTAL, AND AMENDED AS DRILLED PERMIT APPLICATIONS

Remarks
See attached

Certificate:
 I certify that information stated in this application is true and complete, to the best of my knowledge
 RRC User **07/12/2022**
 Name of filer _____ Date Submitted
 Phone _____ Email Address(OPTIONAL)

RRC Use Only Date Validation Time Stamp: **Sun, 11 Jun 2023 21:03:53**

**RAILROAD COMMISSION OF TEXAS
OIL & GAS DIVISION**

FORM W-1 Comments

APPLICATION FOR PERMIT TO DRILL, RECOMPLETE, OR RE-ENTER

*This facsimile W-1 was generated electronically from data submitted to the RRC.
A certification of the automated data is available in the RRC's Austin office.*

Permit Status: Approved

Permit # 876347

Approved Date: 08/09/2022

[07/12/2022 04:30:12 PM]: Commission Staff expresses no opinion as to whether a 100% ownership interest in each of the leases alone or in combination with a "production sharing agreement" confers the right to drill across lease/unit lines or whether a pooling agreement is also required. However, until that issue is directly addressed and ruled upon by a Texas court of competent jurisdiction it appears that a 100% interest in each of the leases and a production sharing agreement constitute a sufficient colorable claim to the right to drill a horizontal well as proposed to authorize the removal of the regulatory bar and the issuance of a drilling permit by the Commission, assuming the proposed well is in compliance with all other relevant Commission requirements. Issuance of the permit is not an endorsement or approval of the applicant's stated method of allocating production proceeds among component leases or units. All production must be reported to the Commission as production from the lease or pooled unit on which the wellhead is located and reported production volume must be determined by actual measurement of hydrocarbon volumes prior to leaving that tract and may not be based on allocation or estimation. Payment of royalties is a contractual matter between the lessor and lessee. Interpreting the leases and determining whether the proposed proceeds allocation comports with the relevant leases is not a matter within Commission jurisdiction but a matter for the parties to the lease and, if necessary, a Texas court of competent jurisdiction. The foregoing statements are not, and should not be construed as, a final opinion or decision of the Railroad Commission.; [FILER 07/12/2022 04:36:01 PM]; Amended to Allocation, Publication; [RRC STAFF 07/13/2022 10:01:10 AM]; There have been problems identified with this permit (see problem letter attachment). Notification sent.; [RRC STAFF 07/14/2022 02:23:38 PM]; Problems identified with this permit are resolved.;

May 17, 2023
BY FEDEX

City Secretary
City of Arlington
Arlington City Hall
101 W. Abram Street
Arlington, Texas 76010



Re: Total Energy Wells on May 23, 2023 Arlington Council Agenda
Fulson Colby Proposed Wells 2H and 3H
SUP09-05R1 Fulson Drill Site

To the City Council of Arlington:

This firm represents Liveable Arlington. I write to request that the Council postpone its consideration of Total Energy's wells Fulson Colby 2H and 3H (the "Wells"), currently scheduled for the May 23, 2023 meeting, for the reasons set forth below.

First, the Wells are allocation wells, and they lack the consent of all mineral owners whose tracts are affected by the proposed drilling. Whether allocation wells are permitted by Texas law without such consent is the subject of litigation pending in the Austin Court of Appeals. *Opiela v. Texas Railroad Commission*, No. 03-21-00258-CV (Tex. App. – Austin). The Court of Appeals is considering whether the Railroad Commission's practice of issuing drilling permits without full consent violates the Texas Administrative Procedures Act, as the trial court found when it struck down the Railroad Commission's decision to issue the permit without all interest owners joining a production sharing agreement or pooling agreement. The appellate decision is expected sometime this summer.

As the Council is aware, every well in Texas requires a valid Railroad Commission W-1 permit in order for the operator to commence drilling. If the Austin Court of Appeals affirms the trial court's judgment in the *Opiela* case, the industry anticipates that previously issued allocation well permits will be contested for failure to comply with existing Texas law. This would include the permits at issue.

Second, the permits issued for these specific Wells are clearly conditioned upon the *Opiela* case and are not final. As the Texas Railroad Commission expressly stated in the permits:

Commission Staff expresses no opinion as to whether a 100% ownership interest in each of the leases alone or in combination with a "production sharing agreement" confers the right to drill across lease/unit lines or whether a pooling agreement is also required. However, until that issue is directly addressed and ruled upon by a Texas court of competent jurisdiction it appears that a 100% interest in each of the leases and a production sharing agreement

constitute a sufficient colorable claim to the right to drill a horizontal well as proposed to authorize the removal of the regulatory bar and the issuance of a drilling permit by the Commission, assuming the proposed well is in compliance with all other relevant Commission requirements. Issuance of the permit is not an endorsement or approval of the applicant's stated method of allocating production proceeds among component leases or units. All production must be reported to the Commission as production from the lease or pooled unit on which the wellhead is located and reported production volume must be determined by actual measurement of hydrocarbon volumes prior to leaving that tract and may not be based on allocation or estimation. Payment of royalties is a contractual matter between the lessor and lessee. Interpreting the leases and determining whether the proposed proceeds allocation comports with the relevant leases is not a matter within Commission jurisdiction but a matter for the parties to the lease and, if necessary, a Texas court of competent jurisdiction. **The foregoing statements are not, and should not be construed as, a final opinion or decision of the Railroad Commission.**

It is important to note that for these Wells, Total Energy purports to combine two existing pooled units, the Fulson and the Colby, which have no combined production sharing agreement. Moreover, there is less than 100 percent participation in each of those units. The permits are subject to attack on these grounds as well.

Third, the City of Arlington is a mineral owner in these wells. The City clearly has an interest in making certain that any division order for the production revenue is correct before such a division order is signed. Signing a division order – even when it is incorrect as to the revenue interest – has been held to estop the owner from claiming underpaid royalties. Similarly, acceptance of payment has been held to estop the mineral owner from contesting the basis upon which royalty is settled. Until the issue of whether and how allocation wells may be properly permitted, and whether it is even legally possible to pool two units that lack a production sharing agreement as is contemplated by the proposed Wells, the City's proportionate ownership in the resulting production from the Wells is uncertain. The City may be estopped from claiming the share to which it is legally entitled by Total's erroneous assessment of the ownership upon which allocation is based. It would be financially imprudent for the City to prematurely accept any conclusions about production ownership under the current legal scenario relating to allocation wells.

Fourth, the permit application fails to establish compliance with the City ordinance requiring a 600' setback from protected uses and structures. I note the comments of attorney Jayla Wilkerson in her letter of May 17, 2023, setting forth additional details regarding this insufficiency. Suffice it to say, this particular permit application is rife with potential litigation issues that should be carefully examined and rectified before the City issues any permit.

For the foregoing reasons, Liveable Arlington requests that the Council postpone its consideration of the Wells until such time as the legality of the permits issued by the Railroad

May 17, 2023

Page 3

Commission has been clarified by the pending opinion of the Austin Court of Appeals and such further litigation as may ensue.

Finally, please place a copy of this letter in the public record relating to this docket and make it available to the public in advance of the May 23, 2023 Council meeting.

Sincerely,



Chrysta Castaneda
The Castañeda Firm

Cc via email:

Mayor Jim Ross: jim.ross@arlingtonx.gov

Council Member Barbara Odom-Wesley: barbara.odom-wesley@arlingtonx.gov

Council Member Bowie Hogg: Bowie.Hogg@arlingtonx.gov

Council Member Long Pham: long.pham@arlingtonx.gov

D1 Council Member Helen Moise: Helen.Moise@arlingtonx.gov

D2 Council Member Raul Gonzalez: Raul.Gonzalez@arlingtonx.gov

D3 Council Member Nikkie Hunter: nikkie.hunter@arlingtonx.gov

D4 Council Member Andrew Piel: andrew.piel@arlingtonx.gov

D5 Council Member Rebecca Boxall: rebecca.boxall@arlingtonx.gov

Development Coordinator Maria Carbajal: maria.carbajal@arlingtonx.gov

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared RANJANA BHANDARI, who being by me duly sworn, upon her oath did state:

“My name is Ranjana Bhandari. I represent the organization Liveable Arlington as its Executive Director. I am over the age of 18 and am of sound mind and capable of making this affidavit.

On behalf of Liveable Arlington, I have read and reviewed Plaintiff’s Original Petition and Verified Application for Temporary Restraining Order. The facts stated within the FACTS section of that document are true and correct based on personal knowledge and the public record.”

Ranjana Bhandari
LIVEABLE ARLINGTON, Plaintiff
By Ranjana Bhandari, Executive Director

TO BE COMPLETED BY THE NOTARY:

SIGNED under oath before me on June 10th, 2023

[Signature]
Notary Public, State of Texas

My commission expires: 3/19/2026

