



EARTHWORKS

June 4, 2020

Earthworks Letter of Opposition Re: Specific Use Permit SUP09-21R1 (AC360 Drill Site – 2000 South Watson Road)

Dear Ms. Carbajal:

Thank you for the opportunity to express our concerns with the City of Arlington's ("City") consideration of the Special Use Permit ("SUP") 09-21R1 amendment sought by Total E&P Barnett USA, LLC's ("Total") reducing the company's minimum drilling setback from 600-ft to 300-ft.

This letter expresses recommendations to the City in order to ensure the public's health, safety, and welfare. We acknowledge the ongoing public health crisis generated by the COVID-19 pandemic and the resulting demand shock for fossil fuels. During this crisis, the City should not act to permit any special uses that further the climate crisis nor endanger public health.

The City Should Repeal Total's Setback Waiver in SUP09-21R1

Under § 10.4.6(A)(2) of the City's Unified Development Code (UDC), the City Council "may grant, *repeal*, and amend" SUPs. [emphasis added]. The City Council should exercise this repeal power for several reasons. First, the direct, indirect, and cumulative effects of the existing and proposed AC360 facilities adversely impacts the health, safety, and welfare of Arlington's residents. The adverse health effects, in particular, disproportionately impact underprivileged communities already reeling from the COVID-19 pandemic. The City should not allow one public health crisis to fuel another. Arlington's Gas Drilling and Production (GD&P) ordinance §7.01(B)(1)(a)(2) expressly provides the City authority to protect these

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interests when considering a setback waiver.¹ But for the waiver, the Total's plan otherwise violates the City's required 600-ft setback from residential homes and protected uses.²

The circumstances surrounding this SUP do not justify a setback reduction, especially in light of the community's opposition. Total's AC360 proximity map illustrates many protected uses nearby. Just outside the 600-ft setback is Mother Heart's Learning Center, a day care center serving children from 6 weeks to 12 years old. In addition, Johns Elementary School, Adams Elementary School, and Bob Cooke Park are approximately within .5 miles of the AC360 drill site. This proximity to protected uses should weigh heavily in favor of the City Council repealing Total's setback waiver.

The City should also consider impacts to residents' health, welfare, and safety (including noise pollution) from both the existing and proposed facilities.³ During the February 5th, 2020 Planning and Zoning Commission's public meeting, a resident, who lives just outside the 600-ft setback, testified to property damages she suffered around her home attributed to Total's drilling activities at this site.⁴ These impacts included shifting in her property, a large bulge in the ground next to her home, and a tree sinking in her yard. Because of these concerns, the City Council should deny Total's proposed SUP amendment and instead repeal their setback waiver.

The City Should Require Total to Renotify Residents and Host Another Public Hearing

¹ See Staff Report – Specific Use Permit SUP09-21R1 (AC360 Drill Site) https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/538211/SUP09-21R1_Staff_Report_CCI.pdf (Showing the City Council approved Total's SUP09-21 via majority vote).

² See SUP09-21R1 Proximity Map https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/536147/SUP09-21R1_Proximity_Map.pdf (showing the 600-ft setback intruding into the neighboring residential neighborhood).

³ See SUP-09-21R1 Location Map https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/520052/iii_SUP09-21R1_Location_Map.pdf (showing the locations of existing and proposed drill sites).

⁴ See Arlington Planning and Zoning Meeting recording starting around Video 2:05:00 (speaking publicly at the meeting about noticeable property damage).



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Total’s public hearing on January 22, 2020, was a failure. No one from the community attended. This is most likely because Total provided inadequate or improper notice. The community has demonstrated interest in this SUP repeatedly through their attendance and participation in City Council and Planning and Zoning Commission hearings, and Letters of Opposition. Residents deserve to know both what the City and Total plan. Given the controversy surrounding this proposed SUP amendment, actively receiving and responding to community input will deliver a better result. Therefore, the City should require Total renotify residents and hold a new public hearing when it is once again safe to gather.

The City’s GD&P ordinance requires Total to provide notice and a public hearing. The ordinance specifically states that Total shall, no more than 30 days prior to the date of the City Council’s public hearing hold its own public meeting with “*property owners, residents and neighborhood associations*.”⁵ [emphasis added] The purpose of this meeting is to provide property owners, residents, and neighborhood associations the opportunity to review information related to the gas drilling permit request and to ask questions about the project.” Total is responsible for providing adequate notice of the public meeting, arranging for a meeting place, and conducting the meeting.⁶ The law requires mailing physical notices to surface owners and neighborhood associations within 600-ft of the approved SUP boundary and within 1-mile of the SUP boundary respectively.⁷

The absence of any resident attending Total’s public meeting on January 22, 2020, suggests notice was inadequate. According to the City’s Case Information sheet, 111 property owners live within the areas indicated as receiving notice.⁸ However, this Case Information lacks any indication whether Total notified owners or neighborhood associations by mail, as required. Instead, the Case Information reveals Total provided notice via Nextdoor.com, which reaches “2604 registered residents in 23 neighborhoods within 1-mile of the subject property.”⁹

⁵ City of Arlington’s GD&P Ordinance § 5.03(H).

⁶ *Id.*

⁷ *Id.*

⁸ See Case Information, i-2 https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/522460/i_SUP09-21R1_Case_Information.pdf

⁹ See *Id.* at i-1 (stating how Total notified neighborhoods).



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(emphasis added) Posting to a website is not notice by mail. Nor is it clear whether “registered residents” to a website satisfies the ordinance’s notice requirement to surface owners who presumably already register with the City’s municipal tax role. Due to an apparent failure to lawfully notify, Arlington’s City Council should require Total to provide proper notification and host a new public hearing when it is once again safe to gather.

The City Council Should Consider Better Gas Emission Control Measures at Total’s Proposed Drill Site.

The City should require Total to direct its gas emissions to a sales line rather than allow Total to vent (or flare) its gas emissions. Under Texas law, the City maintains the right to enact commercially reasonable regulations for the surface activities of oil and gas operators.¹⁰ Further, under § 5.03(O) of the GD&P, the City may require:

[A]n increase in the distance the well is set back from any protected use or require *any change* in operation, plan, design, layout, or *any change* in the on-site and technical regulations in Section 7.01 of this Ordinance, including fencing, screening, lighting, delivery times, noise levels, tank height, or *any other matters reasonably required by public interest*. [emphasis added]

Requiring Total to direct its gas emissions to a sales line is a reasonable regulation in the public interest considering the close proximity of Total’s drilling platform to residential homes and protected uses. Upon information and belief, Total has allowed venting from the existing facilities at the AC360 site. Venting gas releases methane, a super pollutant, 86x more potent warming potential than CO₂. Methane often brings with it deadly H₂S and volatile organic compounds (VOCs) like benzene.¹¹ Directing the methane and VOCs to a sales line at Total’s drilling site may result in better health outcomes for those living nearby the well platform. Intense emissions from the gas buster can also cause serious health issues. These emissions

¹⁰ See Texas Rail Road Commission, House Bill 40 FAQ, <https://www.rrc.state.tx.us/about-us/resource-center/faqs/oil-gas-faqs/house-bill-40-faq/>.

¹¹ Sharon Wilson, *Hydrocarbon Odors During Oil and Gas Drilling* (Oct. 7, 2019) <http://www.texassharon.com/2019/10/07/hydrocarbon-odors-during-oil-and-gas-drilling/>



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from the gas buster have already created severe hydrocarbon odors and nausea according to complaints lodged by local residents.¹² The COVID-19 virus can exacerbate these health impacts, particularly for vulnerable populations already exposed to higher VOC emissions and who suffer from chronic respiratory conditions.

The better way to manage these emissions would be for Total to direct gases, that otherwise may be vented or flared, to a sales line in order to better protect the City's public health, safety, and welfare. This would also help address residential concerns regarding the odor and health concerns stemming from the emissions.

Conclusion

The City of Arlington has substantial power to stand up for the health, safety, and welfare of its residents. The proposed SUP amendment will harm those interests and exacerbate an ongoing public health crisis. Therefore, Arlington should repeal this SUP, or in the alternative, deny the setback waiver.

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¹² See *Id*; See also SUP09-21R1 Letters of Opposition https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/537919/SUP09-21R1_Letters_of_Opposition.pdf