

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

XTO ENERGY INC.,

Plaintiff,

v.

TOWN OF ARGYLE,

Defendant.

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Civil Action No. _____

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE UNITED STATES DISTRICT COURT:

Plaintiff XTO Energy Inc. ("Plaintiff" or "XTO") files this Original Complaint against the Town of Argyle, Texas ("Defendant" or "Argyle"), and in support thereof respectfully shows the Court as follows:

PARTIES

1. Plaintiff XTO Energy Inc. is a Delaware corporation with its principal place of business in Tarrant County, Texas.
2. Defendant Argyle is a General Law Municipality located in Denton County, Texas and incorporated under the laws of the State of Texas. Argyle can be served with citation by serving either its Mayor Greg Landrum or its Town Secretary Codi Delcambre at 506 N. Hwy. 377, Argyle, Texas, or wherever else either of them may be found.

JURISDICTION

3. This Court has subject matter jurisdiction over the federal claims in this case pursuant to 28 U.S.C. § 1331 because those claims arise under the laws of the United States.

This Court has supplemental subject matter jurisdiction over the state claims in this case pursuant to 28 U.S.C. § 1367.

4. This Court has personal jurisdiction over Argyle because Argyle is a town incorporated under the laws of the State of Texas that is located in the Eastern District of Texas.

VENUE

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

FACTUAL BACKGROUND

A. XTO's operations in Bartonville, Texas and the use of Frenchtown Road.

6. Plaintiff XTO is a Fort Worth-based independent oil and gas producer that, among other things, has and operates oil and gas wells throughout the State of Texas and elsewhere. XTO has two "pad sites" – locations from which natural gas wells are drilled -- at two different locations in the Town of Bartonville, Texas ("Bartonville"). Bartonville is a Texas municipality that is directly south of, and adjacent to, Argyle. The first pad site location is referred to as the "Fuller Family Location," and the second pad site location is referred to as the "Lunt Unit Location." The Fuller Family Location is a pad site upon which XTO has drilled two wells, is currently drilling a third, and has plans to drill additional wells from this site in the future. Likewise, the Lunt Unit Location is a pad site upon which XTO has drilled two wells, and has plans to drill additional wells from this site in the future. These two locations (and the wells drilled thereupon) are referred to collectively as the "Bartonville Wells" and/or "Bartonville Pad Sites."

7. The Fuller Family Location is situated directly off Dyer Road, which is located entirely within Bartonville's corporate limits. Dyer Road intersects with and is located to the south of Frenchtown Road. Frenchtown Road is a two lane west/east thoroughfare that begins at U.S. Highway 377 to the west. Argyle claims that the northern half of Frenchtown Road is within Argyle's city limits, while the southern half is in the city limits of Bartonville. Pursuant to the Texas Public Information Act, and in an attempt to clarify whether Frenchtown Road is indeed partially within Argyle's corporate limits, XTO sent an open records request to Argyle seeking, among other records, maps setting out Argyle's corporate limits and Argyle's extra-territorial jurisdiction boundaries, specifically as they relate to Frenchtown Road. Argyle, however, failed to produce any records or otherwise respond to this request.

8. To access the Fuller Family Location on Dyer Road, XTO employees and/or contractors must travel east from Highway 377 on Frenchtown Road (i.e. on the southern/Bartonville side of the road) for approximately 1.64 miles. When vehicles are leaving this location, however, they must travel west on Frenchtown Road back to Highway 377. When doing so, XTO is driving on the portion of Frenchtown Road that Argyle claims is located in its corporate limits. Attached hereto as Exhibit "A" is a plat that depicts the orientation of the roads at issue and the Fuller Family Location.

9. Likewise, to access the Lunt Unit Location, XTO employees and/or contractors must travel east from Highway 377 on Frenchtown Road (i.e. on the southern/Bartonville side of the road) for approximately 200 feet. This location is virtually at the intersection of Highway 377 and Frenchtown Road. When vehicles are leaving this location, however, they must turn left onto Frenchtown Road to access Highway 377. When doing so, XTO may be driving on a small portion of Frenchtown Road that Argyle claims is located in its corporate limits. Attached hereto

as Exhibit "B" is a plat that depicts the orientation of the roads at issue and the Lunt Unit Location.

B. Argyle's attempted regulation of XTO's use of Frenchtown Road to Access the Fuller Family Location.

10. Based on its alleged jurisdiction over the northern part of Frenchtown Road, Argyle has attempted to regulate XTO's use of Frenchtown Road to access the Fuller Family Location. Initially, the Argyle police department ticketed XTO and its contractors for alleged violations of two Argyle Ordinances: (1) the amended version of Argyle's Gas Well Ordinance (the "Amended Gas Well Ordinance"), ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011(d) (2008); and (2) Argyle's Commercial Vehicle Ordinance (the "Commercial Vehicle Ordinance"), ARGYLE, TEX., CODE OF ORDINANCES § 12.04.001 (2008) *et seq.* Subsequently, Argyle forced XTO (under protest) to post a road bond and then to enter into a road repair agreement.

1. Argyle's Enforcement of its Amended Gas Well Ordinance as to the Fuller Family Location.

11. Argyle's Original Gas Well Ordinance, which is no longer in effect, provided that an oil or gas operator must submit a "road repair agreement" with a gas well permit, and that the agreement must obligate the operator to repair damage to public streets resulting from the performance of any activity authorized by or contemplated by the approved gas well permit. ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011(d) (2006). The Original Gas Well Ordinance further provided that a gas well operator could pay a "road remediation fee" in lieu of filing a road repair agreement. *Id.* Thus, under the Original Gas Well Ordinance, an oil or gas well operator was required to pay a road remediation fee and/or file a road repair agreement, but only in the event the operator obtained an oil or gas well permit from Argyle. Due to the fact that the

Bartonville Wells are located outside of Argyle's corporate limits, XTO was not required to obtain such a permit from Argyle.

12. On July 8, 2008, the Argyle Town Council amended the Gas Well Ordinance. The Amended Gas Well Ordinance, the specific requirements of which are vague and unclear, generally provides that an oil or gas operator is required to obtain a "road remediation permit" and pay an associated "road remediation fee" as part of obtaining an oil or gas well permit from Argyle. ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011(a)-(d) (2008). Unlike the Original Gas Well Ordinance, however, the requirement to obtain a road remediation permit and pay the associated road remediation fee applies even if the operator's oil or gas well is located outside of Argyle's corporate limits, so long as "Argyle's streets or roads" will be used to reach the well. *Id.* § 4.08.011(a), (c). The amount of the road remediation fee is not set out in the ordinance. Rather the Ordinance merely states that the fee "shall be set in accordance with the current adopted fee schedule, which shall be kept on file in the Town Secretary's Office." *Id.* § 4.08.011(d).

13. Under the terms of the Amended Gas Well Ordinance, even though the Bartonville Wells are located outside of Argyle's corporate limits, and therefore not subject to Argyle's permitting requirements, Argyle claims its Amended Oil & Gas Well Ordinance requires XTO to obtain a road remediation permit, and pay the associated road remediation fee, before using Frenchtown Road. As discussed below, however, the specific requirements of this ordinance are unconstitutionally vague.

14. The Amended Gas Well Ordinance also allows an oil or gas well operator to propose an alternative means of road remediation, which may be submitted to Argyle's town administrator for approval. ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011(e) (2008). If the

town administrator finds the alternative road remediation method “to be equal to or more effective” than the road remediation fee, the town administrator may accept the alternative method of road remediation, including, a road repair agreement. *Id.* Such an agreement must obligate the operator to repair damage to public streets caused by the operator. *Id.* § 4.08.011(g). Once again, the option of obtaining a road repair agreement applies to operators whose oil or gas wells are not located in Argyle, so long as the operator is using “Argyle roads or streets.”

15. In February 2008, XTO contacted Argyle about the use of Frenchtown Road in connection with the Fuller Family Location, and Argyle provided XTO with a road remediation permit application and told XTO that a \$250 (total) fee would be required to obtain the permit. Although the Fuller Family Location is in Bartonville, XTO nevertheless completed and proffered the application for a permit with Argyle and paid the application fee. However, by June 2008, and despite XTO’s repeated inquiries on the status of the permit, Argyle had not issued the road remediation permit. Instead, on July 11, 2008, after Argyle passed the Amended Gas Well Ordinance, Argyle faxed a new road remediation permit form to XTO. This permit form was extremely broad, incorporating, among other things, requirements for insurance and indemnities and a \$150 *per vehicle fee* for a sticker to identify trucks operating under the permit. Because XTO, or its contractors, operate approximately 300 vehicles on Frenchtown Road, if XTO were to purchase stickers for all vehicles, XTO would be required to pay \$45,000 just for stickers to prove that XTO had the “right” to operate its vehicles on Frenchtown Road. Additionally, the “remediation” fees that XTO was required to pay under the new road remediation permit were vague, unclear and grossly disproportionate to the use of Frenchtown Road contemplated by XTO. Indeed, when Argyle informed XTO as to the amount due under

the permit, it had miscalculated the fees owed to be 100 times the amount that would be due under Argyle's own fee schedule!

16. At some point following the enactment of the July 8 amendment, the Argyle police department began to ticket XTO and/or its contractors after they exited the Fuller Family Location and turned onto the westbound side of Frenchtown Road because XTO had not signed Argyle's road remediation agreement under the amended ordinance. The ticketing continued until approximately August 4, 2008, when XTO, under protest, completed and filed the new road remediation permit with Argyle and paid a road remediation fee. XTO has subsequently, under protest, signed an additional road remediation agreement for another well at the Fuller Family Location and, again paid a road remediation fee – also under protest. Due to the vague nature of the ordinance, and Argyle's ensuing gross miscalculation of fees, XTO was forced to pay Argyle the egregious sum of \$272,233.50–\$270,000 more than required by Argyle's own fee schedule-- simply to traverse one side of a 1.64 mile stretch of Frenchtown Road.

2. Argyle's Enforcement of its Commercial Vehicle Ordinance as to the Fuller Family Location.

17. Prior to the enactment of the Amended Gas Well Ordinance, Argyle sought to impose upon XTO its Commercial Vehicle Ordinance in connection with XTO's use of Frenchtown Road to access the Fuller Family Location. Until XTO, under protest, succumbed to Argyle's demand, XTO or its contractors also were issued tickets for alleged violations of the Commercial Vehicle Ordinance.

18. Article 12.04 of Argyle's code, entitled "Commercial Vehicles; Truck Routes" applies to, among other things, "commercial motor vehicles," which are broadly defined as "[a]ny motor vehicle designed or used for the transportation of property, not including a passenger bus, passenger automobile, motorcycle, panel delivery truck or pickup truck."

ARGYLE, TEX., CODE OF ORDINANCES § 12.04.001 (2008). The specific requirements of this ordinance are vague, and it is not clear as to whom or what this ordinance applies.

19. The specific requirements for obtaining a permit under the Commercial Vehicle Ordinance similarly are unclear, but generally it appears the applicant must: (1) make a written permit application; (2) file with Argyle a bond not to exceed \$20,000 per vehicle (the purpose of which may or may not cover actual damages to Argyle's roads, it is unclear); (3) agree to pay Argyle a sum of money necessary to repair any damage to the public streets that the operation of the vehicles may cause; and (4) pay a fee accompanying the permit application. *Id.* § 12.04.006(e).

20. Pursuant to this code provision, XTO, under protest, delivered more than \$600,000 in bonds to Argyle to obtain an Off-Route Truck Bond Permit in order to stop the ticketing of its, and those of its contractors, drivers. Following the amendment of the gas well ordinance in July 8, Argyle ceased its enforcement of its commercial vehicle ordinance and advised XTO that it will refund the \$600,000 bonds. As of the date of this Complaint, the bonds have not been returned.

C. Argyle's Attempted Regulation of XTO's use of Frenchtown Road to Access the Lunt Unit Location.

21. In August and September of 2008, XTO began producing natural gas from two wells that were previously drilled on the Lunt Unit Location. As is common, during the initial production phase of natural gas wells in the Barnett Shale, each well has back-flowed, and continues to back-flow water that was used to hydraulically fracture stimulate the wells. This requires that XTO remove the water from the water tanks that are installed on the Lunt Unit Location using water hauling trucks. As with the Fuller Family Location, when the water trucks

exit the Lunt Unit Location, they must travel on the westbound, north side of Frenchtown Road to access Highway 377.

22. Because trucks exiting the Lunt Unit Location have to travel the 200 feet from the access point to Highway 377 by using Frenchtown Road, the Argyle Police Department has recently been issuing a ticket to each truck as it has traveled westbound on Frenchtown Road. As to this location, XTO has not signed a road remediation agreement under the Amended Gas Well Ordinance. Likewise, XTO did not post any bonds in connection with this location. Prior to the recent ticketing spree by Argyle, the city did not claim its ordinances applied to the Lunt Unit Location and did not take any action to enforce its ordinances as to the Lunt Unit Location.

CAUSES OF ACTION

COUNT 1: DECLARATORY JUDGMENT—THE AMENDED GAS WELL ORDINANCE IS UNCONSTITUTIONALLY VAGUE

23. XTO incorporates by reference the preceding paragraphs as if fully set forth herein.

24. The Amended Gas Well Ordinance is unconstitutionally vague and violates XTO's Federal and Texas constitutional due process and due course rights. The requirements and prohibitions of the Amended Gas Well Ordinance are not clearly defined, do not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited by the ordinance, and do not provide definite and explicit standards to those charged with applying the ordinance to avoid arbitrary applications. XTO is compelled to guess at the ordinance's meaning and applicability, and therefore, is exposed to Argyle's issuing of tickets and taking other enforcement action without giving XTO fair warning of the prohibited conduct under the ordinance.

25. The ordinance provides that if a gas well is located outside of Argyle, "...but *Argyle streets and roads* are to be used, a road remediation permit shall be obtained before *Argyle streets or roads are used in connection with oil and gas production.*" ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011(a) (2008) (emphasis added). The terms "Argyle streets and roads" are not defined under the ordinance. It is unclear whether this means streets and roads that Argyle owns, streets and roads over which Argyle exercises control, or whether it also includes, for example, county roads that are located within Argyle's extraterritorial jurisdiction. In addition, it is unclear under the ordinance whether XTO is required to obtain a permit for the use of streets and roads solely within Argyle's corporate limits, or whether XTO is required to obtain a permit for the use of streets and roads partially within Argyle's corporate limits and partially within another jurisdiction. Moreover, the phrase "used in connection with oil or gas production" is not defined under the ordinance and is likewise vague. For example, it is unclear whether the mere act of traveling to the Bartonville Pad Sites in an automobile brings the XTO employee or contractor within the purview of this ordinance, or whether application of the ordinance depends upon what activities are performed at the Bartonville Pad Sites. Thus, it is unclear whether all XTO-related vehicles traveling to and from the Bartonville Pad Sites on Frenchtown Road must obtain a permit—regardless of their purpose for going to the locations— or whether there are circumstances in which XTO-related vehicles would not be required to obtain a permit for certain vehicles traveling to the Bartonville Pad Sites.

26. In addition, the ordinance requires the payment of a "road remediation fee" to obtain a required "road remediation permit." ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011(c) (2008). The amount of the fee under this section is not set forth on the face of the ordinance, and the basis for the amount of the fee is unclear. It is also unclear from the

ordinance why the fee is imposed. For example, it is not clear whether the fee is imposed as a deposit toward any potential damages that occur as the result of the use of Argyle's roads, whether the fee covers all potential damages that may occur, or whether the fee is imposed as a non-refundable payment that an applicant must make for the privilege of using Argyle's roads. Thus, XTO does not know whether Argyle will claim that XTO will be liable for additional fees or costs for any alleged actual damages that occur as the result of the use of Argyle's roads, whether XTO could be required to pay another road remediation fee to cover any alleged actual damage to the road, or whether XTO will be entitled to a refund of all or part of the fee if there is no unusual wear to the road.

27. The ordinance also provides that "[t]he road remediation fee will be assessed for each operation site. If the operation site is outside of town limits, the fee will be assessed *for each operation site* where production of *that well* will require use of Argyle streets or roads." ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011(c) (2008) (emphasis added). The meaning of "that well" is unclear, as there is no mention of any well in the preceding phrases. At the Bartonville Pad Sites, there are multiple wells, and XTO intends to have more wells installed in the near future. Thus, it is unclear as to whether XTO is required to pay a fee for each well at the Bartonville Pad Sites that requires the use of Frenchtown Road, or whether XTO can pay one fee for the entire Bartonville Pad Sites, regardless of the number of wells.

28. The ordinance further requires that "[e]very person operating a motor vehicle *in connection with gas or oil production* shall keep a copy of the road remediation permit in their possession and shall produce it upon request of a town official or town employee, including, but not limited to police officers." ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011(f) (2008) (emphasis added). Once again, the phrase "in connection with oil or gas production" is vague,

and it is unclear whether every person traveling to and from the Bartonville Pad Sites, regardless of the purpose for going to the Bartonville Pad Sites, must carry the required road remediation permit. Moreover, on its face, this section requires a permit for every vehicle, regardless of vehicle weight or size, and regardless of whether the vehicle could ever cause damage to the road.

29. There is an actual controversy between XTO and Argyle concerning the interpretation of the Amended Gas Well Ordinance and whether the ordinance is unconstitutionally vague in violation of XTO's federal and state due process and due course rights. Accordingly, pursuant to 28 U.S.C. § 2201, XTO requests that the Court enter a declaration that:

(a) the Amended Gas Well Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011 (2008), is unconstitutionally vague in violation of XTO's federal due process rights, and therefore, is void;

(b) the Amended Gas Well Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011 (2008), is unconstitutionally vague in violation of XTO's Texas due process and due course rights, and therefore, is void; and

(c) XTO is not subject to the provisions of the Amended Gas Well Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011 (2008).

**COUNT 2: DECLARATORY JUDGMENT—THE COMMERCIAL
VEHICLE ORDINANCE IS UNCONSTITUTIONALLY VAGUE**

30. XTO incorporates by reference the preceding paragraphs as if fully set forth herein.

31. The Commercial Vehicle Ordinance is likewise unconstitutionally vague and violates XTO's Federal and Texas constitutional due process and due course rights. The

requirements and prohibitions of the Commercial Vehicle Ordinance are not clearly defined, it does not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, and it does not provide definite and explicit standards to those charged with applying the ordinance to avoid arbitrary applications. XTO is compelled to guess at the ordinance's meaning and applicability, and therefore, is exposed to detriment without being given fair warning of the prohibited conduct under the ordinance.

32. The Commercial Vehicle Ordinance provides that “[n]o person shall operate...any *commercial motor vehicle...through the town in intercity travel, with [sic?—without?] a local designation [sic?—destination?] or point of origin*, except upon such streets as are designated as truck routes by this article.” ARGYLE, TEX., CODE OF ORDINANCES § 12.04.002 (2008) (emphasis added). First, the phrase “...in intercity travel, with [sic?] a local designation [sic?] or point of origin...” either has no applicability to XTO or, if it is riddled with mistake, is incomprehensible and therefore impermissibly vague and unclear. Moreover, “commercial motor vehicle” under this section is defined as “[a]ny motor vehicle designed or used for the transportation of *property*, not including a passenger bus, passenger automobile, motorcycle, panel delivery truck or pickup truck,” and “motor vehicle” is defined as “[e]very vehicle, as herein defined, which is self-propelled.” *Id.* § 12.04.002 (emphasis added). The term “property” is not defined. Thus, under the terms of the ordinance, every commercial motor vehicle transporting any type of property—regardless of the size or type of property and regardless of whether the property is for commercial use—must use a designated “truck route.” On the other hand, a pickup truck hauling a large load of property for commercial use would not be subject to the ordinance. Such a reading of the ordinance cannot be intended, further demonstrating that the ordinance is vague and unclear.

33. The Commercial Vehicle Ordinance further provides that “...no person shall operate...*upon any public street within the corporate limits of the town* any commercial motor vehicle...except on such street or streets *as are designated as either truck routes or commercial delivery another such point [sic]* without returning to a truck route or commercial delivery route by the article [sic]; such vehicles shall be operated on a truck route wherever *reasonably practicable*; they shall be operated on a commercial delivery route only when it is *not reasonably practicable* to use a truck route *to fulfill the purpose for which such vehicle is then being operated.*” ARGYLE, TEX., CODE OF ORDINANCES § 12.04.003 (2008).

34. This section is unconstitutionally vague for a number of reasons. First, and once again, it is unclear whether this section applies to Frenchtown Road, because the phrase “any public street within the corporate limits of the town” is not defined, and it is unclear whether such phrase encompasses streets that—at best—are only partially within the corporate limits of Argyle. In addition, the phrase “as are designated as either truck routes or commercial delivery another such point...” is incomprehensible. Moreover, the terms “reasonably practicable” and “not reasonably practicable” are not defined under the ordinance, and the ordinance provides no guidance as to how those terms will be interpreted, or who will interpret the terms. Finally, and similarly, the phrase “to fulfill the purpose for which such vehicle is then being operated” is not defined under the ordinance, and the ordinance provides no guidance as to how this phrase will be interpreted, or who will interpret this phrase.

35. The Commercial Vehicle Ordinance further provides that commercial vehicles that exceed certain width, height, length, or weight requirements (all of which are set out in the ordinance) cannot operate “...on any public street within the corporate limits of the town....” ARGYLE, TEX., CODE OF ORDINANCES § 12.04.006(a)-(c) (2008). Once again, it is unclear as to

whether Frenchtown Road is a “public street within the corporate limits of the town,” as Frenchtown Road is not located entirely within Argyle (if any portion of that road is even in Argyle).

36. The ordinance further provides that the size restrictions do not apply if “[u]pon written application *timely made* by any person or corporation which desires to operate...overweight or oversize equipment...the police department shall issue a permit for the operation of such equipment...for a specified period of time, over a route or routes to be designated by the town, *if such routes can be determined at the time application for the permit is made.*” ARGYLE, TEX., CODE OF ORDINANCES § 12.04.006(e) (2008) (emphasis added). “Timely made” is not defined under this ordinance, and thus, XTO is not put on notice of when XTO must make an application for the permit described in this section. Moreover, the phrase “...if such routes can be determined at the time application for the permit is made...” is unconstitutionally vague and unclear. XTO is not provided with notice of who makes the determination of whether the routes can be determined, what happens if the routes cannot be determined, or whether XTO is still subject to the size restrictions if XTO “timely makes” the application, but a route cannot be determined.

37. To obtain the required permit, the ordinance provides that the applicant must file with Argyle a bond in an amount not to exceed \$20,000 per vehicle and that “...said bond shall be payable to the town and conditioned that the applicant will pay to the town the sum of money necessary to repair any damage which might be occasioned to any public street or publicly owned fixture appurtenant to such street by virtue of operation of any commercial vehicle under said permit.” ARGYLE, TEX., CODE OF ORDINANCES § 12.04.006(e) (2008). The ordinance also provides that “...[a] proper fee shall accompany each application for permit...” *Id.* It is unclear,

then, whether the bond is required to pay for alleged damages caused by the oversized vehicle, whether the fee is required to pay of such alleged damages, whether XTO could be charged more than the bond or the fee for alleged damages caused by XTO's oversized vehicles, or whether XTO could be required to pay another bond or fee at some point in the future. Accordingly, this section is likewise unconstitutionally vague.

38. There is an actual controversy between XTO and Argyle concerning the interpretation of the Commercial Vehicle Ordinance and whether the ordinance is unconstitutionally vague in violation of XTO's federal and state due process and due course rights. Accordingly, pursuant to 28 U.S.C. § 2201, XTO requests that the Court enter a declaration that:

(a) the Commercial Vehicle Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 12.01.001, *et seq.* (2008), is unconstitutionally vague in violation of federal due process rights, and therefore, is void;

(b) the Commercial Vehicle Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 12.01.001, *et seq.* (2008), is unconstitutionally vague in violation of Texas due process and due course rights, and therefore, is void; and

(c) XTO is not subject to the provisions of the Commercial Vehicle Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 12.01.001, *et seq.* (2008).

**COUNT 3: VIOLATIONS OF CONSTITUTIONAL
DUE PROCESS RIGHTS (42 U.S.C. § 1983)**

39. XTO incorporates by reference the preceding paragraphs as if fully set forth herein.

40. By virtue of the actions described herein, Argyle is liable to XTO for violations of XTO's constitutional due process rights pursuant to 42 U.S.C. § 1983 because Argyle has deprived XTO of its constitutional due process rights under the color of state law.

**COUNT 4: DECLARATORY JUDGMENT—ARGYLE
IS CALCULATING THE ROAD REMEDIATION FEE IMPROPERLY
UNDER THE AMENDED GAS WELL ORDINANCE**

41. XTO incorporates by reference the preceding paragraphs as if fully set forth herein.

42. As set forth above, Argyle over-charged XTO for the road remediation fee under the Amended Gas Well Ordinance. Thus, if the Amended Gas Well Ordinance is held to be constitutional and enforceable against XTO, there is an actual controversy between XTO and Argyle concerning whether Argyle is calculating the road remediation fee incorrectly and improperly under the terms of the Amended Gas Well Ordinance. Specifically, there is an actual controversy as to whether Argyle is failing to add two decimal places to its formula in calculating the road remediation fee. Accordingly, pursuant to 28 U.S.C. § 2201, XTO requests that the Court enter a declaration that:

- (a.) Argyle is calculating a road remediation fee, pursuant to the Amended Gas Well Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011 (2008), using an incorrect number of decimal places;
- (b.) Argyle is calculating the road remediation fee incorrectly and improperly under the Amended Gas Well Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011 (2008);
- (c.) Due to Argyle incorrectly and improperly calculating XTO's road remediation fee, XTO was required to pay to Argyle 100 times more than the road

remediation fee actually required by the Amended Gas Well Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011 (2008); and

(d.) XTO is entitled to a refund for XTO's over-payment of the road remediation fee charged by Argyle under the Amended Gas Well Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011 (2008).

COUNT 5: MONEY HAD AND RECEIVED

43. XTO incorporates by reference the preceding paragraphs as if fully set forth herein.

44. Argyle charged XTO, and XTO paid, \$272,233.50 for a road remediation fee under the Amended Gas Well Ordinance. Pursuant to the Amended Gas Well Ordinance, Argyle should have charged XTO \$2,722.34 for this fee. Additionally, Argyle has charged XTO \$600,000 in bonds under the commercial vehicle ordinance which it is no longer enforcing. Therefore, XTO was required to pay to Argyle 100 times more than the road remediation fee actually required and has provided bonds under an ordinance not applicable to XTO. As a result, Argyle obtained and holds money that rightfully and in equity and good conscience belongs to XTO. Thus, to prevent unjust enrichment to Argyle, XTO seeks recovery of \$270,000 from Argyle and a return of XTO's bonds.

COUNT 6: WRIT OF MANDAMUS COMPELLING COMPLIANCE WITH THE TEXAS PUBLIC INFORMATION ACT

45. XTO incorporates by reference the preceding paragraphs as if fully set forth herein.

46. Pursuant to the Texas Public Information Act (the "Act"), Texas Government Code Chapter 552, XTO sent an open records request to Argyle on August 22, 2008 seeking, among other records, maps setting out Argyle's corporate limits and Argyle's extra-territorial

jurisdiction boundaries. Pursuant to the Act, Argyle was required to produce or make available the information “promptly”—as soon as possible and within a reasonable time. If Argyle could not produce the information within 10 business days after August 22, 2008, Argyle was required to certify that fact in writing to XTO and set a date and hour within a reasonable time when the information would be available.

47. Argyle failed to produce any records in response to this request, failed to certify to XTO that it could not produce the information within 10 days after the date it was requested, and failed to respond in any way to this request. Therefore, Argyle has violated its duties and obligations under the Act. Pursuant to TEX. GOV'T CODE § 552.321, XTO seeks a writ of mandamus compelling Argyle to comply with the Act and to produce or make available for inspection the information requested in XTO's open records request.

COUNT 7: ATTORNEYS' FEES

48. XTO incorporates by reference the preceding paragraphs as if fully set forth herein.

49. XTO is entitled to its attorneys' fees under 42 U.S.C. § 1988. Moreover, and pursuant to TEX. GOV'T CODE § 552.323, XTO is entitled to its attorneys' fees in connection with seeking a writ of mandamus compelling Argyle to comply with the Texas Public Information Act. Thus, XTO also seeks judgment against Argyle for XTO's reasonable and necessary attorneys' fees incurred in connection with this lawsuit.

WHEREFORE, XTO requests that this Court enter judgment in its favor and award the following relief against the Town of Argyle:

- a. A declaration that:

(i.) the Amended Gas Well Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011 (2008), is unconstitutionally vague in violation of federal due process rights, and therefore, is void;

(ii.) the Amended Gas Well Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011 (2008), is unconstitutionally vague in violation of Texas due process and due course rights, and therefore, is void; and

(iii.) XTO is not subject to the provisions of the Amended Gas Well Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011 (2008).

b. A declaration that:

(i.) the Commercial Vehicle Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 12.01.001, *et seq.* (2008), is unconstitutionally vague in violation of federal due process rights, and therefore, is void;

(ii.) the Commercial Vehicle Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 12.01.001, *et seq.* (2008), is unconstitutionally vague in violation of Texas due process and due course rights, and therefore, is void; and

(iii.) XTO is not subject to the provisions of the Commercial Vehicle Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 12.01.001, *et seq.* (2008).

c. A declaration that:

(i.) Argyle is calculating a road remediation fee, pursuant to the Amended Gas Well Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011 (2008), using an incorrect number of decimal places;

(ii.) Argyle is calculating the road remediation fee incorrectly and improperly under the Amended Gas Well Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011 (2008);

(iii.) Due to Argyle incorrectly and improperly calculating XTO's road remediation fee, XTO was required to pay to Argyle 100 times more than the road remediation fee actually required by the Amended Gas Well Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011 (2008); and

(iv.) XTO is entitled to a refund for XTO's over-payment of the road remediation fee charged by Argyle under the Amended Gas Well Ordinance, ARGYLE, TEX., CODE OF ORDINANCES § 4.08.011 (2008).

- d. Actual damages, including compensatory and consequential damages;
- e. A writ of mandamus compelling Argyle to comply with the Texas Public Information Act, Texas Government Code Chapter 552, and compelling Argyle to produce or make available for inspection the information requested in XTO's open records request to Argyle;
- f. Attorneys' fees;
- g. Pre-judgment and post-judgment interest at the maximum rate(s) permitted by law;
- h. Costs of court; and
- i. All other appropriate relief to which XTO shows itself entitled.

Respectfully submitted,



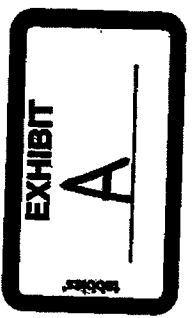
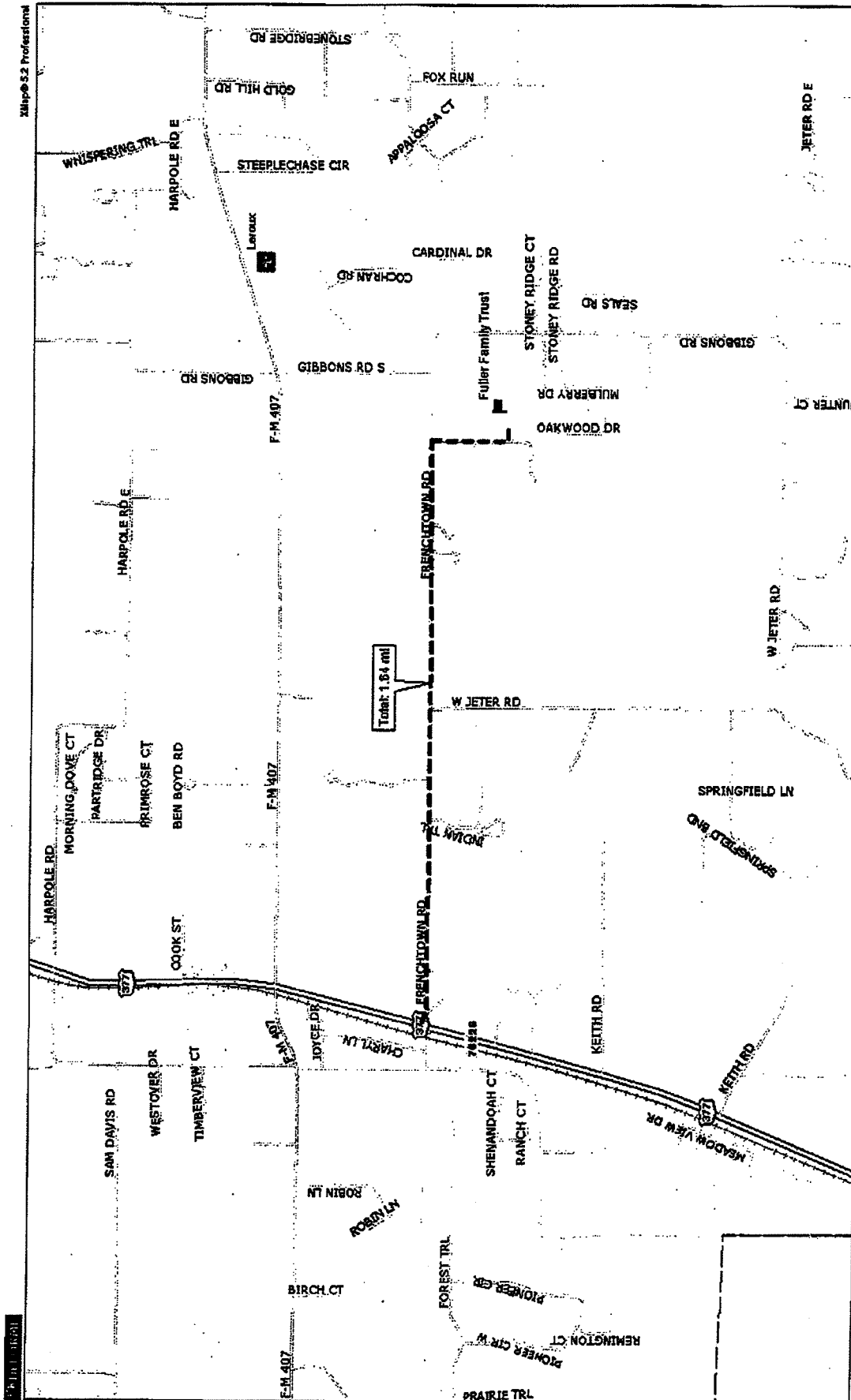
R. Matthew Molash
State Bar No. 14255300
Blake Edwards
State Bar No. 24050553

of K&L GATES LLP
1717 Main Street, Suite 2800
Dallas, Texas 75201
Telephone: 214-939-5500
Facsimile: 214-939-5849

Jeffrey C. King
State Bar No. 11449280

of K&L GATES LLP
D.R. Horton Tower
301 Commerce, Suite 3000
Fort Worth, Texas 76102
Telephone: 817-347-5270
Facsimile: 817-347-5299

ATTORNEYS FOR XTO ENERGY INC.



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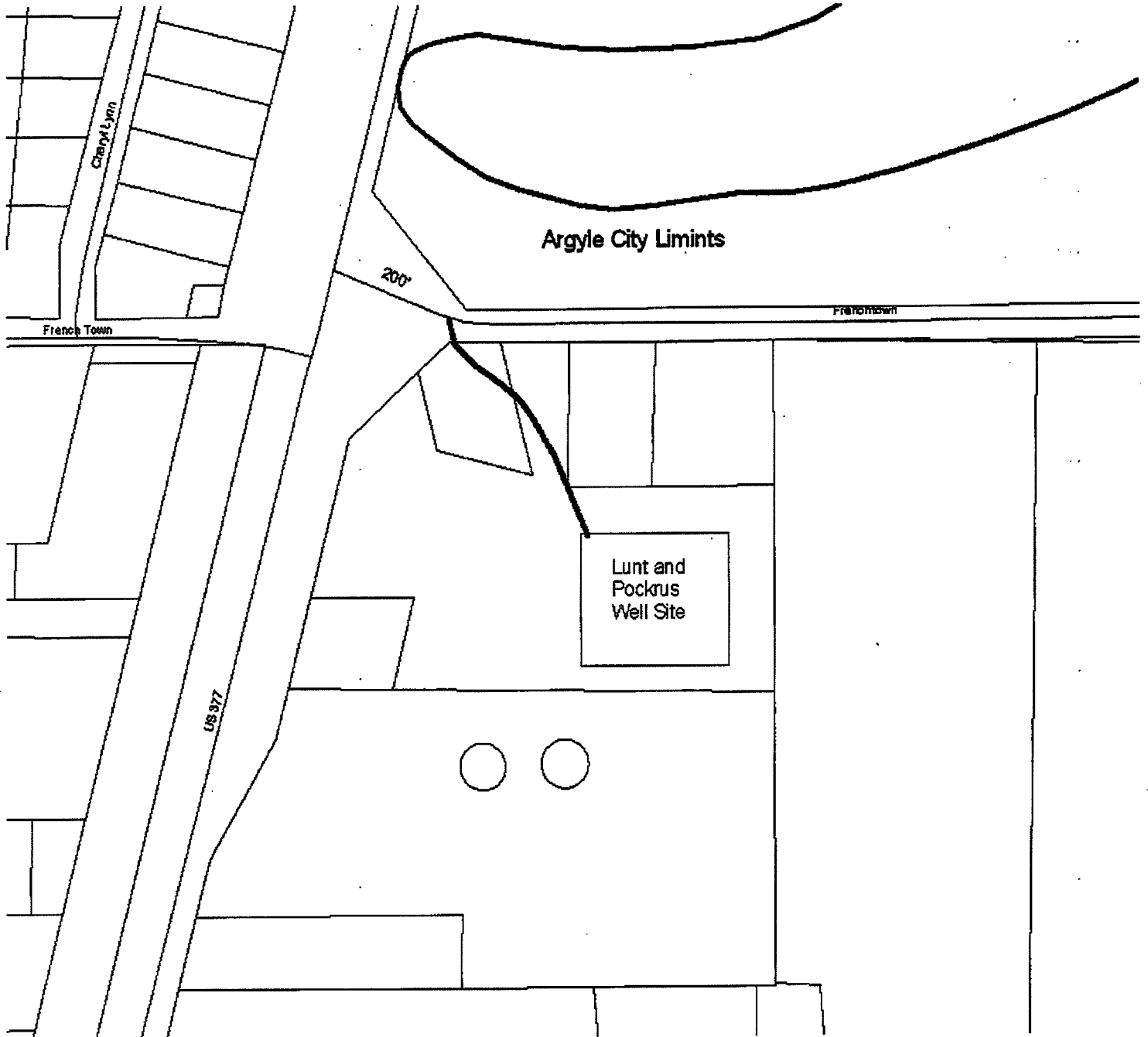


EXHIBIT
B

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

XTO ENERGY, INC.,

Plaintiff,

v.

TOWN OF ARGYLE,

Defendant.

§
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§

CIVIL ACTION NO. 4:08-CV-00372

**DEFENDANT'S ANSWER TO
PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE UNITED STATES DISTRICT COURT:

NOW COMES the Town of Argyle, Texas ("Argyle"), Defendant in the above styled and numbered cause, and files this its Answer to Plaintiff's ("XTO") Original Complaint and would respectfully show the Court as follows:

1.

ADMISSIONS AND DENIALS

Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, Argyle pleads as follows concerning the averments in Plaintiff's Original Complaint:

PARTIES

1. Argyle admits the allegations in this paragraph.
2. Argyle admits the allegations in this paragraph.

JURISDICTION

3. Argyle admits the allegations in this paragraph, but denies that any of XTO's claims have a legitimate legal basis for seeking redress.

4. Argyle admits the allegations in this paragraph, but denies that any of XTO's claims have a legitimate legal basis for seeking redress.

VENUE

5. Argyle admits the allegations in this paragraph, but denies that any of XTO's claims have a legitimate legal basis for seeking redress.

FACTUAL BACKGROUND

A. XTO's operations in Bartonville, Texas and the use of Frenchtown Road.

6. Argyle admits the allegations in this paragraph.

7. Argyle admits the first three sentences in this paragraph. Argyle also admits it claims that the northern half of Frenchtown Road is in its city limits, but is without knowledge or information sufficient to form a belief as to whether the southern half, in its entirety, is in the city limits of Bartonville. Argyle is also without knowledge or information sufficient to form a belief as to XTO's motives for sending it a public information request. Argyle admits XTO sent it an open records request seeking, among other records, "the most current . . . map" setting out Argyle's boundaries and "the most current . . . map" setting out its extraterritorial jurisdiction, specifically as they relate to Frenchtown Road. Argyle denies the remaining allegations in this paragraph.

8. Argyle admits the allegations in this paragraph, except that Argyle is without knowledge or information sufficient to form a belief as to whether Frenchtown Road is absolutely the only way to access the Fuller Family Location and again, whether the southern half of the road,

in its entirety, is in the city limits of Bartonville. Argyle is also without knowledge or information sufficient to form a belief as to whether Exhibit "A" accurately depicts the orientation of roads at issue and the Fuller Family Location (the copy in Argyle's possession is illegible) or that Exhibit "A" is accurately described as a "plat."

9. Argyle admits that it claims a portion of Frenchtown Road is within Argyle's city limits, but is without knowledge or information sufficient to form a belief as to the rest XTO's allegations in this paragraph.

B. Argyle's attempted regulation of XTO's use of Frenchtown Road to Access the Fuller Family Location.

10. Argyle admits to ticketing XTO's trucks and XTO's contractors' trucks for violations of Argyle city ordinances and having XTO post a road bond and enter into a road repair agreement, but denies all other allegations in this paragraph.

1. Argyle's Enforcement of its Amended Gas Well Ordinance as to the Fuller Family Location.

11. Argyle admits the allegations in this paragraph.

12. Argyle admits to the allegations in this paragraph, but denies that the specific requirements of the Amended Gas Well Ordinance are vague and unclear.

13. Argyle admits that it claims the Amended Gas Well Ordinance requires XTO to obtain a road remediation permit, and pay the associated road remediation fee if it uses Frenchtown road within the Argyle's corporate limits, but denies all other allegations in this paragraph.

14. Argyle admits the allegations in this paragraph.

15. Argyle admits the allegation in the first and second sentences of this paragraph.

Argyle further admits that it never issued a road remediation permit under the old ordinance and that

on July 11, 2008, it passed the Amended Gas Well Ordinance which has requirements for insurance, indemnity and a \$150.00 per vehicle fee for a sticker to identify trucks operating under the road remediation permit. Argyle admits it told XTO the amount due to Argyle under the permit pursuant to the Amended Gas Well Ordinance. Argyle denies all other allegations in this paragraph.

16. Argyle admits its police officers ticketed XTO and its contractors when they traveled on Frenchtown Road within the Argyle city limits and that the ticketing continued until approximately August 4, 2008. Argyle also admits that XTO completed and filed a new road remediation permit with Argyle and paid the road remediation fee. Argyle further admits that XTO subsequently signed an additional road remediation permit and paid an additional fee for additional wells. Argyle denies all other allegations in this paragraph.

2. Argyle's Enforcement of its Commercial Vehicle Ordinance as to the Fuller Family Location.

17. Argyle admits to issuing tickets to XTO and its contractors for violations of Argyle's Commercial Vehicle Ordinance, but denies all other allegations in this paragraph.

18. Argyle admits the allegation in this paragraph, but denies the allegations that the definition of "commercial motor vehicle" is over broad, that the specific requirements of this ordinance are vague and that it is not clear as to whom or what this ordinance applies.

19. Argyle admits the allegations in this paragraph, but denies that the specific requirements for obtaining a permit under the Commercial Vehicle Ordinance are unclear, that the purpose of filing a bond is unclear.

20. Argyle admits XTO delivered more than \$600,000 in bonds to Argyle to obtain an Off-Route Truck Bond Permit, and that, after the July 8, 2008 amendment to the gas well ordinance,

advised XTO it would refund the \$600,000 bonds. Argyle denies all other allegations in this paragraph.

C. Argyle's Attempted Regulation of XTO's use of Frenchtown Road to Access the Lunt Unit Location.

21. Argyle is without knowledge or information sufficient to form a belief as to XTO's allegations in this paragraph.

22. Argyle admits the allegations in the first sentence of this paragraph, but is without knowledge or information sufficient to form a belief as to whether these trucks were all the trucks that have exited the Lunt Unit Location. Argyle admits the allegations in the second and third sentences of this paragraph, but denies the remaining allegations in this paragraph.

CAUSES OF ACTION

COUNT 1: DECLARATORY JUDGMENT – THE AMENDED GAS WELL ORDINANCE IS UNCONSTITUTIONALLY VAGUE

23. Argyle responds to the allegations XTO incorporates into this paragraph in the same manner they are responded to in the foregoing, corresponding paragraphs of this Answer as if incorporated into this paragraph by reference.

24. Argyle denies the allegations in this paragraph.

25. Argyle admits the first sentence of this paragraph and that the terms "Argyle streets and roads" and that the phrase "used in connection with oil or gas production" are not defined under the ordinance. Argyle denies the remaining allegations in this paragraph.

26. Argyle admits that the Amended Gas Well Ordinance requires the payment of a "road remediation fee" to obtain a required "road remediation permit," and that the amount of said fee is not set forth on the face of the ordinance, but denies all other allegations in this paragraph.

27. Argyle admits the first two textual sentences in this paragraph. Argyle is without knowledge or information sufficient to form a belief as to the number of current or prospective additional wells intended for the Bartonville Pad Sites. Argyle denies all other allegations in this paragraph.

28. Argyle admits the first textual sentence in this paragraph, but denies all other allegations in this paragraph.

29. Argyle admits that there is an actual controversy between itself and XTO concerning the interpretation of the Amended Gas Well Ordinance and whether the ordinance is unconstitutionally vague in violation of XTO's federal and state due process and due course rights, and that XTO is seeking declaratory relief. Argyle denies all other allegations in this paragraph and that any of XTO's claims are legitimate or that it has a legitimate legal basis for seeking redress.

**COUNT 2: DECLARATORY JUDGMENT – THE COMMERCIAL
VEHICLE ORDINANCE IS UNCONSTITUTIONAL VAGUE**

30. Argyle responds to the allegations XTO incorporates into this paragraph in the same manner they are responded to in the foregoing, corresponding paragraphs of this Answer as if incorporated into this paragraph by reference.

31. Argyle denies the allegations in this paragraph.

32. Argyle denies the allegations in this paragraph concerning what the Commercial Vehicle Ordinance provided as of the date of Plaintiff's Original Complaint and this Answer. Argyle amended the text of the Commercial Vehicle Ordinance, including Section 12.04.002, on September 9, 2008 by Ordinance No. 2008-20.

33. Argyle denies the allegations in this paragraph. Under the amended Commercial Vehicle Ordinance, Section 12.04.003 is now reserved for future expansion.

34. Argyle denies the allegations in this paragraph.

35. Argyle admits the allegations in the first sentence of this paragraph. Argyle also admits that not all of Frenchtown Road is located within the city limits of Argyle. Argyle denies all other allegations in this paragraph.

36. Argyle admits the allegations in the first sentence of this paragraph except that under the current ordinance, the town administrator issues the permit, not the police department. Argyle also admits that "timely made" is not defined in the Commercial Vehicle Ordinance. Argyle denies all other allegations in this paragraph.

37. Argyle admits the allegations in the first two textual sentences of this paragraph (excluding the citations). Argyle denies all other allegations in this paragraph.

38. Argyle admits that there is an actual controversy between itself and XTO concerning the interpretation of the Commercial Vehicle Ordinance and whether the ordinance is unconstitutionally vague in violation of XTO's federal and state due process and due course rights, and that XTO is seeking declaratory relief. Argyle denies all other allegations in this paragraph and that any of XTO's claims are legitimate or that it has a legitimate legal basis for seeking redress.

**COUNT 3: VIOLATIONS OF CONSTITUTIONAL
DUE PROCESS RIGHTS (42 U.S.C. § 1983)**

39. Argyle responds to the allegations XTO incorporates into this paragraph in the same manner they are responded to in the foregoing corresponding paragraphs of this Answer as if incorporated into this paragraph by reference.

40. Argyle denies the allegations in this paragraph.

**COUNT NO. 4: DECLARATORY JUDGMENT – ARGYLE
IS CALCULATING THE ROAD REMEDIATION FEE IMPROPERLY
UNDER THE AMENDED GAS WELL ORDINANCE**

41. Argyle responds to the allegations XTO incorporates into this paragraph in the same manner they are responded to in the foregoing, corresponding paragraphs of this Answer as if incorporated into this paragraph by reference.

42. Argyle admits that if the Amended Gas Well Ordinance is held constitutional and enforceable against XTO, that an actual controversy will still exist between itself and XTO concerning the proper calculation of the road remediation fee and that, the amount of the fee is reasonable, regardless of the method used to calculate it. Argyle denies all other allegations in this paragraph, and denies that any of XTO's claims have a legitimate legal basis for seeking redress.

COUNT NO. 5: MONEY HAD AND RECEIVED

43. Argyle responds to the allegations XTO incorporates into this paragraph in the same manner they are responded to in the foregoing corresponding paragraphs of this Answer as if incorporated into this paragraph by reference.

44. Argyle admits that XTO paid it a total of \$272,233.50 in road remediation fees under the Amended Gas Well Ordinance. Argyle denies all other allegations in this paragraph and denies that any of XTO's claims have a legitimate legal basis for seeking redress.

**COUNT NO. 6: WRIT OF MANDAMUS COMPELLING COMPLIANCE WITH THE
TEXAS PUBLIC INFORMATION ACT**

45. Argyle responds to the allegations XTO incorporates into this paragraph in the same

manner they are responded to in the foregoing, corresponding paragraphs of this Answer as if incorporated into this paragraph by reference.

46. Argyle admits the allegations in this paragraph.

47. Argyle denies the allegations in this paragraph.

COUNT NO. 7: ATTORNEY'S FEES

48. Argyle responds to the allegations XTO incorporates into this paragraph in the same manner they are responded to in the foregoing, corresponding paragraphs of this Answer as if incorporated into this paragraph by reference.

49. Argyle admits that XTO is seeking declaratory relief and attorneys fees, but denies all other allegations in this paragraph and denies that any of XTO's claims have a legitimate legal basis for seeking redress or that it will be a prevailing party to be entitled to these attorneys fees.

Argyle denies that XTO is entitled to any of the relief requested in its prayer for relief.

2.

AFFIRMATIVE DEFENSES

2.01. Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, Argyle asserts and affirmatively pleads that it is absolutely immune from suit and liability to XTO under the common law doctrine of sovereign or governmental immunity, as modified by the Texas Tort Claims Act, to the extent applicable.

2.02. Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, Argyle asserts and affirmatively pleads that to the extent this suit arises from a Town official or employee performing discretionary duties within the course and scope of their authority as Town officials or employees, their actions were objectively and subjectively reasonable and performed in good faith and they

would be entitled to and plead official immunity as to XTO's claims under state law. To the extent these Town officials or employees would enjoy official immunity, Argyle enjoys derivative immunity.

2.03. Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, Argyle asserts and affirmatively pleads that XTO's claims are barred, in whole or in part, by the doctrines of waiver and estoppel.

2.04. Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, Argyle asserts and affirmatively pleads that XTO is not entitled to costs or attorneys fees under Section 552.323 of the Texas Government Code because the Town, even if it violated the Texas Public Information Act, acted in reasonable reliance on the published opinion of an appellate court or a written decision of the Texas Attorney General.

3.

ATTORNEYS FEES

3.01. Argyle pleads that it has been required to retain the services of an attorney to represent its interests in this matter and to defend the claim brought against it. XTO has invoked the attorneys fees provisions of the Civil Rights Act. An award of attorneys fees and costs pursuant to the Act is not limited to plaintiffs, but may be awarded, at the Court's discretion, to any prevailing party. 42 U.S.C. § 1988(b). Accordingly, Argyle seeks to recover, to the extent it is a prevailing party, attorneys fees it incurs defending itself in this case from XTO.

4.

REQUEST FOR RELIEF

4.01. For the reasons stated, Argyle requests that this suit be dismissed, that XTO take

nothing by its suit, and that it recover all costs, and attorneys fees, together with such other and further relief to which they may be justly entitled.

Respectfully submitted,

/s/ Wayne K. Olson

Wayne Olson
Texas Bar No. 15276900
wolson@toase.com

Fredrick "Fritz" Quast
Texas Bar No. 24032974
fquast@toase.com

Members of the Firm of:

Taylor, Olson, Adkins, Sralla, & Elam, LLP.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-3654
Telephone: 817.332.2580
Facsimile: 817.332.4740

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2008 I electronically filed the foregoing document with the clerk of the court for the U. S. District Court, Eastern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

R. Matthew Molash
Blake Edwards
K&L Gates, L.L.P.
1717 Main St., Suite 2800
Dallas, Texas 75201

Jeffrey C. King
K&L Gates, L.L.P.
301 Commerce St., Suite 3000
Fort Worth, Texas 76102

/s/ Wayne K. Olson
WAYNE K. OLSON