

TCEQ DOCKET NUMBER 2006-0391-DIS

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APPLICATION FOR THE CREATION
OF ELLIS COUNTY MUNICIPAL
UTILITY DISTRICT NO. 1

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

I. INTRODUCTION

The Executive Director of the Texas Commission on Environmental Quality ("TCEQ" or "Commission") files this Response to Hearing Request on the application by the City of Ferris for the creation of Ellis County Municipal Utility District No.1 ("District"). A copy of the application and the Executive Director's technical summary have been filed separately with the Office of the Chief Clerk for Commission consideration.

Mac McCoy ("the Petitioner") filed a petition for the creation of Ellis County Municipal Utility District No. 1 of Ellis County with the Executive Director of the Texas Commission on Environmental Quality pursuant to Article XVI, Section 59 of the Texas Constitution and Texas Water Code, Chapters 49 and 54. According to the petition, the Petitioner represents that there are no lienholders on the land in the proposed District.

The proposed District contains one tract of land totaling 446.26 acres, located in Ellis County. The proposed District is located approximately 1 mile west of downtown Ferris, Texas and is bordered by F.M. 664 to the north and F.M. 983 to the south. Application material indicates that the proposed District is located within the extraterritorial jurisdiction (ETJ) of the City of Ferris, Texas, though a small porting is outside the City's ETJ. By Ordinance No. 482, effective January 20, 2004, the City of Ferris, Texas, gave its consent to the creation of the proposed District. The application asserts that the general nature of the District's work will include the provision of water, wastewater treatment, and drainage services within the District's boundaries.

II. PROCEDURAL HISTORY

The Petitioner filed an application for the creation of the District on February 21, 2006, which was declared administratively complete on February 27, 2006. The Petitioner published the Notice Of District Petition in the *Midlothian Mirror*, a newspaper generally circulated in Ellis County, on March 22, 2006 and March 29, 2006; on March 21, 2006, notice of the application was posted on the bulletin board used for posting legal notices in Ellis County, Texas, which is the county in which the proposed District is to be located. On March 24, 2006, TCEQ received a

letter of protest from the City of Ferris protesting the creation of the district. The period to request a contested case hearing ended April 28, 2006. On July 14, 2006, TCEQ received a second letter from the City of Ferris reaffirming its protest of the creation of the district. The Office of the Chief Clerk sent notice of the agenda setting for the Commission's consideration of the hearing requests on January 31, 2007.

III. THE CREATION OF MUNICIPAL UTILITY DISTRICTS

A. District Purpose

The District is proposed to be created and organized as a Municipal Utility District (MUD) according to the terms and provisions of Article XVI, Section 59, of the Texas Constitution, and Chapters 49 and 54 of the Texas Water Code. A MUD may be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and
- (8) the preservation of all natural resources of the state.

TEX. WATER CODE § 54.012. MUDs have been created mainly to develop and provide water service, wastewater service and stormwater drainage to developing areas.

B. Required Findings

In order to grant an application, the Commission must find that organization of the district as requested is feasible and practicable and is necessary and would be a benefit to the land to be included in the district. TEX WATER CODE § 54.021(a). Section 54.021 of the Texas Water Code provides, that in making the above determination, the commission shall consider:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following: (A) land elevation; (B) subsidence; (C) groundwater level within the region; (D) recharge capability of a groundwater source; (E) natural run-off rates and drainage; (F) water quality; and (G) total tax assessments on all land located within a district.

TEX WATER CODE § 54.021(b). If the commission fails to make these findings, it shall refuse to grant the petition. TEX. WATER CODE § 54.021(d). TCEQ's regulations incorporate the procedures established by the Texas Water Code. Title 30, Section 293.13 of the Texas Administrative Code requires the Commission to grant a district creation application upon finding that the project meets applicable statutory requirements. 30 TEX. ADMIN. CODE § 293.13(b)(1). The Commission, however, must exclude the areas that it finds would not be benefited by the creation of the district and must redefine the boundaries of the proposed district according to its findings. 30 TEX. ADMIN. CODE § 293.13(b)(2); TEX. WATER CODE § 54.021(c).

C. City Consent

TCEQ regulations require all district creation applications to contain "a certified copy of the action of the governing body of any municipality in whose extraterritorial jurisdiction the proposed district is located, consenting to the creation of the proposed district, under Local Government Code, § 42.042." 30 TEX. ADMIN. CODE § 293.11(a)(2). Commission Rules further state that "[i]f the governing body of any such municipality fails or refuses to grant consent, the petitioners must show that the provisions of Local Government Code, § 42.042, have been followed." *Id.*

Municipal Utility Districts are also subject to the city consent requirements of Texas Water Code, Section 54.016, which states that "[n]o land within the corporate limits of a city or within the extraterritorial jurisdiction of a city, shall be included in a district unless the city grants its written consent, by resolution or ordinance, to the inclusion of the land within the district in accordance with Section 42.042, Local Government Code, and this section." TEX. WATER CODE 54.016(a); LOC. GOVT. CODE § 42.042(a). If the city fails or refuses to give consent within 90 days after receipt of a written request, the land owners in the area "may petition the governing body of the city and request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district." TEX. WATER CODE § 54.016(b); LOC. GOVT. CODE, § 42.042(b). If the landowners and the city then fail to execute a "mutually agreeable contract" for the provisions of the requested services within 120 days after receipt of the petition, "the failure shall constitute authorization for the inclusion of the land in the district under the

provisions of this section.” TEX. WATER CODE § 54.016(c); LOC. GOVT. CODE § 42.042(c). The Texas Water Code goes on to state that:

If the city fails or refuses to grant permission for the inclusion of land in a district or to execute a mutually agreeable contract providing for the water or sanitary sewer service requested within the time limits contained within Subsection (b) or (c) of this section, the applicant may petition the commission for creation of the district or inclusion of the land in a district. The commission shall allow creation or inclusion of the land in a proposed district upon a finding that the city either does not have the reasonable ability to serve or has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner. The commitment shall provide that construction of the facilities necessary to serve the land shall be commenced within two years, and shall be substantially complete within four and one-half years from the date the petition was filed with the city.

TEX. WATER CODE § 54.016(d).

IV. OUTLINE OF THE EVALUATION PROCESS FOR HEARING REQUESTS

The Commission may act on a district creation application if no public hearing is requested within 30 days of the final publication of notice that the petitioners were required to publish. 30 TEX. ADMIN. CODE § 293.12(c). As the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Title 30, Chapter 55, Subchapter G, Sections 55.250-55.256 of the Texas Administrative Code. The Commission, the Executive Director, the applicant or affected persons may request a contested case hearing on this application. 30 TEX. ADMIN. CODE § 55.251(a). The Commission must evaluate the hearing requests and may take one of the following actions:

- (1) determine that the hearing requests do not meet the rule requirements and act on the application;
- (2) determine that the hearing requests do not meet the rule requirements and refer the application to a public meeting to develop public comment before acting on the application;
- (3) determine that the hearing requests meet the rule requirements and refer the application to the State Office of Administrative Hearings (“SOAH”) for a hearing; or
- (4) refer the hearing requests to SOAH for a hearing on whether the hearing requests meet the rule requirements.

30 TEX. ADMIN. CODE § 55.255(a).

The regulations provide that a hearing request made by an affected person must be in writing and must be filed with the Office of the Chief Clerk within the time provided in the Notice Of District Petition. 30 TEX. ADMIN. CODE § 55.251(b) and (d). These two requirements are mandatory. The affected person's hearing request must also substantially comply with the following:

- (1) give the name, address, and daytime telephone number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.

30 TEX. ADMIN. CODE § 55.251(c).

An affected person's personal justiciable interest must be related to a legal right, duty, privilege, power, or economic interest affected by the application belonging to the requestor and not an interest common to members of the general public. 30 TEX. ADMIN. CODE § 55.256(a). The regulations give the Commission flexibility to determine affected person status by considering any relevant factor, including the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person; and
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person.
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TEX. ADMIN. CODE § 55.256(a).

V. ANALYSIS OF THE HEARING REQUEST

The Executive Director recommends that the Commission refer the City of Ferris' hearing request to SOAH for a contested case hearing.

A. Whether the Requestor Complied With 30 TAC §§ 55.251 (c)

TCEQ received one hearing request and protest on the application for the creation of the proposed District from the City of Ferris. The City of Ferris, through its City Manager, Gus Pappas, filed a letter dated March 21, 2006, protesting the application. The letter was filed with the Office of the Chief Clerk within the time limitation for requesting a hearing on this application. The letter does not request a contested case hearing; however, it substantially complies with 30 TEX. ADMIN. CODE § 55.251(c), in that it provides contact information, identifies the City's justiciable interested affected by that application, and expresses an interest in participating in any hearings on the matter. The Executive Director has also received additional correspondence from the parties that will be discussed below.

B. Whether the City of Ferris is an Affected Person

Because it is undisputed that the proposed District lies within the City of Ferris's ETJ, the Executive Director recommends finding that the City of Ferris is an affected person: the issue of city consent is an interest that is protected by the law under which the application will be considered, and the issue of city consent contains a reasonable relationship between the interest claimed and the activity regulated. 30 TEX. ADMIN. CODE § 55.256(a)(1) and (3).

C. The City of Ferris Withdraws its Consent

The March 21, 2006, letter states that on March 20, 2006, the City Council of the City of Ferris approved an ordinance which repealed both an earlier ordinance and a resolution in which the City consented to the creation of the proposed District. The letter further states that the City of Ferris does not support, encourage, condone or desire that a new purpose political subdivision be created in its ETJ; that the City will resist the district's creation with all possible means at its disposal; that the City has sponsored two improvement districts for the extension of services to the area of the proposed District; and that the City officially opposes the creation of the district, stating that the district is immediately adjacent to its City limits on the western border, and over 80-percent within the City's ETJ. The letter concludes by stating that the City will be present at any public meeting where the creation of the district is discussed. Attached to the letter is City of Ferris' Ordinance No. 0-06-619, which rescinds Ordinance No. 482 and Resolution No. 01/20/04 (the original consent).

D. Petitioning the City for Service

Without city consent, landowners can pursue creation under the provisions of Texas Water Code, Section 54.016, subsections (b), (c) and (d). Under the Texas Water Code, if the city fails or refuses to grant permission within 90 days after receipt of a written request, the landowners in the area may petition the city to provide the land with the water and sewer services contemplated to be provided by the district. TEX. WATER CODE § 54.016(b); LOC. GOVT. CODE § 42.042(b). The requirements for making such a petition are set out in Local Government Code, Section 42.043(c). Under that section, before the petition can be circulated among voters and landowners, notice must be provided by posting a copy of the petition for 10 days in three public places in the area to be serviced and by publishing the notice once, in a newspaper of general circulation serving the area, before the 15th day before the date the petition is first circulated. LOC. GOVT. CODE § 42.043(c).

According to the Applicant, before the petition was circulated for execution, notice of the petition was given by (i) posting, on May 3, 2006, a copy of the petition for 10 days in three public places in the area to be served, and by (ii) publishing, on May 10, 2006, the notice in a newspaper of general circulation serving the area. See Attachments A, B and C. Following posting and publication, the Applicant submitted the Petition for Water and Sanitary Sewer Service to the City on or about June 7, 2006. See Attachments A and D. Receipt of this Petition was acknowledged by the City of Ferris in a letter to TCEQ, dated July 14, 2006. See Attachment F.

Under Section 54.016(b), the ability of the landowners to petition the city for water and sanitary sewer services is triggered "if" the city fails or refuses to give its consent "within 90 days" after receiving the request for consent. In the present case, the City gave consent on January 20, 2004, and then withdrew that consent on March 20, 2006. See Attachment E. Accordingly, there was no "failure or refusal" to consent "within 90 days" after the request. However, given that the statute does not contemplate the granting of consent within 90 days of request, and then withdrawal of that consent, the Executive Director recommends allowing the applicant to proceed as if the city has refused to grant its consent within 90 day of the request for consent.

E. Authorization for Creation by Failing to Execute a Contract

Under the Texas Water Code, if the landowners and the city then fail to execute a "mutually agreeable contract" for the provisions of the requested services within 120 days after receipt of the petition, "the failure shall constitute authorization for the inclusion of the land in the district under the provisions of this section." TEX. WATER CODE § 54.016(c); LOC. GOVT. CODE § 42.042(c).

The July 14, 2006, letter from the City of Ferris included a second resolution (Resolution No. R-06-22), whereby the City once again denied permission for the creation of the district. See

Attachment E. The letter states that this resolution comes as a result of a new Petition for Water and Sanitary Sewer Service. The letter asserts that the City has the ability to provide water and sewer services to the "subject property when/if it develops."¹ See Attachment F.

With the July 14, 2006, letter the City attached a letter of correspondence between the City's attorney, David Dodd, and the Applicant stating that "[t]he city currently has water and sewer services available to the areas that you are requesting. In order to prepare a mutually agreeable contract for providing the water and sanitary sewer service to the area requested, we need the specific information about the quantity of service and specific locations of the services you need." See Attachment F. In a second letter, dated August 29, 2006, the City, through its attorney, informed the Applicant of its progress in developing the capacity that would allow it to serve the area of the proposed District. See Attachment H.

To gain authorization for the inclusion of the land in the district without City consent, the City must "fail to execute a mutually agreeable contract providing for the water or sanitary sewer service requested within 120 days after receipt of the petition . . ." TEX. WATER CODE, § 54.016(c). According to the Applicant, the petition was filed with the City on or about June 7, 2006. See Attachment A and D. Assuming this to be true, the 120 day period in which to execute a mutually agreeable contract would have ended on or about November 10, 2006.

If, as it appears, City failed to enter a mutually agreeable contract during the 120 day time period, then the proposed District would have authorization "to initiate proceedings to include the land within the district as otherwise provided by this Act." TEX. WATER CODE § 54.016(c). By filing its application for the creation of Ellis County Municipal Utility District No. 1 with the TCEQ, on February 21, 2006, the Applicant has initiated proceedings to include the land within the district as otherwise provided by Section 54.016, even if the application was submitted before the 120 day period had begun.

F. If the Commission finds that the Applicant complied with Section 54.016(b) and (c), then it must make one of the following findings:

- a) does the City have the reasonable ability to serve the proposed development at a reasonable cost to the landowner; or
- b) has the City failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner.

¹ The letter states that the resolution was passed on July 3, 2006; however, the attached resolution states that it was passed on June 3, 2006.

Under Texas Water Code, Section 54.016(d), if the City neither gives its consent nor executes a "mutually agreeable contract" to provide service to the area, "the applicant may petition the commission for creation of the district or inclusion of the land in a district." TEX. WATER CODE § 54.016(d).

Subsection (d) goes on to state that "[t]he commission shall allow creation or inclusion of the land in a proposed district upon a finding that the city either does not have the reasonable ability to serve or has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner." TEX. WATER CODE § 54.016(d). Under this provision, the Commission is required to grant the creation of the district if it makes one of two findings: a) the city does not have the reasonable ability to serve the proposed development at a reasonable cost to the landowner; or b) has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner.

With respect to the first of these findings, the City has suggested that it has the ability to serve the area. See Attachment F. However, the Executive Director's Technical Memorandum, dated October 18, 2006, states on page 5 that the proposed district is "mostly within the certified service area of Rockett SUD." A map supplied by the Applicant supports this contention. See Attachment G. Because the City may be unable to serve water within the certificated area of Rockett SUD, there is a fact question of its ability to serve the proposed development at a reasonable price to the landowner.

Similarly, the Executive Director is without any evidence as to whether the City has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner. Making such a finding would require developing the factual record.

As proceeding with the creation of the proposed District under Subsection (d) of Texas Water Code, Section 54.016, requires making the above findings, the Executive Director recommends referring this case to the State Office of Administrative Hearings for a contested case hearing.

VI. DURATION FOR THE CONTESTED CASE HEARING

The Executive Director recommends that the projected duration for any contested case hearing between preliminary hearing on the matter and presentation of a proposal for decision before the Commission, should be **four (4)** months.

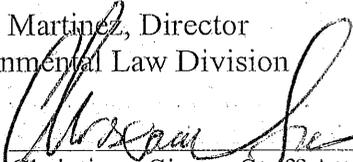
VII. EXECUTIVE DIRECTOR'S RECOMMENDATION

The ED recommends referral to SOAH, under Title 30, Tex. Admin. Code, Section 55.255(a)(3), for a contested case hearing on whether, under Texas Water Code, § 54.016(d), the city has the reasonable ability to serve the proposed development at a reasonable cost to the landowner, or has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
Glenn Shankle, Executive Director

Robert Martinez, Director
Environmental Law Division

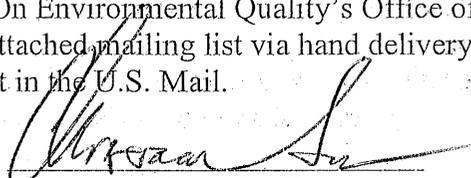
By: 
Christian Siano, Staff Attorney
Environmental Law Division
Texas State Bar No. 24051335

P.O. Box 13087, MC-173
Austin, Texas 78711-3087
(512) 239-6743
(512) 239-0606 (Fax)

ATTORNEYS FOR
THE EXECUTIVE DIRECTOR

CERTIFICATE OF SERVICE

I hereby certify that on this 12 day of February, 2007, the original of "Executive Director's Response To Hearing Request" relating to application for the creation of Ellis County MUD No. 1 was filed with the Texas Commission On Environmental Quality's Office of the Chief Clerk and served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or deposit in the U.S. Mail.


Christiaan Siano, Staff Attorney
Environmental Law Division
Texas State Bar No. 24051335

MAILING LIST

ELLIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 1

DOCKET NO. 2006-0391-DIS INTERNAL CONTROL NO. 02212006-D04

FOR THE APPLICANT:

Timothy G. Green
Coats, Rose, PC
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Houston, Texas 77046-0307
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Fax: (713) 890-3932

Keith Hamilton
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Hurst, Texas 76054-3161

FOR THE EXECUTIVE DIRECTOR:

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Texas Commission on Environmental Quality
Environmental Law Division, MC-173
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FOR PUBLIC INTEREST COUNSEL:

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Fax: (512) 239-6377

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Jody Henneke, Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE
RESOLUTION:

Mr. Todd Burkey
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTOR:

Mr. Gus H. Pappas, City Manager
City of Ferris
100 Town Plaza
Ferris, Texas 75125

ATTACHMENT A

COATS | ROSE

JOSH J. KAHN

jkahn@coatsrose.com
DIRECT DIAL
(713) 653-7339

February 5, 2007

Mr. Christian Siano
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Ellis County Municipal Utility District No. 1
Petition to City of Ferris for Water and Sanitary Sewer Service

Dear Mr. Siano:

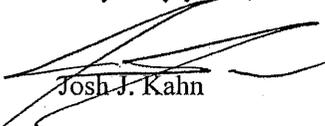
On March 21, 2006, our office received a letter from the City of Ferris, Texas (the "City") stating that, at its meeting on March 20, 2006, the City Council approved an ordinance which repealed the City's consent to the creation of Ellis County Municipal Utility District No. 1 (the "District"). A copy of the letter from the City and the associated Ordinance are attached hereto. Following receipt of such letter and pursuant to the provisions of Texas Water Code, Section 54.016(b) and (c) and Texas Local Government Code, Section 42.043, our client petitioned the City for water and sanitary sewer service. As required by Texas Local Government Code, Section 42.043(c), before the petition was circulated for execution, notice of the petition was given by (i) posting, on May 3, 2006, a copy of the petition for 10 days in three public places in the area to be serviced, and (ii) publishing, on May 10, 2006, the notice in a newspaper of general circulation serving the area. Copies of the Posting Affidavit and Publisher's Affidavit are attached hereto. Following posting and publication, our client submitted the Petition for Water and Sanitary Sewer Service (the "Petition") to the City on or about June 7, 2006. A copy of the Petition is attached hereto. We are working on obtaining evidence that the Petition was filed on June 7, 2006, however, in the letter referenced below, dated July 14, 2006, the City acknowledges that they recently received the Petition.

On July 14, 2006, our office received another letter from the City with another Ordinance denying permission for the creation of the District. A copy of such letter and the Ordinance are attached hereto. On August 29, 2006, our office received additional correspondence from the attorney for the City regarding water and sewer service to the area encompassing the District. A copy of such letter is attached hereto.

Our client and the City failed to execute a mutually agreeable contract providing for the water and sanitary sewer service requested in the Petition within 120 days after receipt of the Petition by the City. Therefore, pursuant to the provisions of Texas Water Code, Section 54.016(d), we request that the Texas Commission on Environmental Quality allow creation of Ellis County Municipal Utility District No. 1.

Thank you for your attention to this matter and please direct any requests for additional documents or information to the undersigned at (713) 653-7339.

Very truly yours,


Josh J. Kahn

Enclosures

COATS | ROSE | YALE | RYMAN | LEE
A Professional Corporation

3 Greenway Plaza, Suite 2000 Houston, Texas 77046

Phone: 713-651-0111 Fax: 713-651-0220

005432.000001903170.1 JKAHN

Web: www.coatsrose.com

ATTACHMENT B

POSTING AFFIDAVIT

THE STATE OF TEXAS §

COUNTY OF ELLIS §

BEFORE ME, the undersigned authority, on this day personally appeared Mac McCoy, whom, being first duly sworn by me, upon his/her oath stated:

1. My name is Mac McCoy.

2. On May 3, 2006, I posted a copy of the Notice of Petition to City of Ferris, Texas for Water and Sanitary Sewer Service and the Petition for Water and Sanitary Sewer Service to the City of Ferris, Texas attached hereto in the following places convenient to the public within the boundaries of the proposed Ellis County Municipal Utility District No. 1 ("District"):
 - (i) On a Metal T-post on the south side of FM 664 approximately 2000 feet east of the intersection of FM 664 and Long Branch Creek;

 - (ii) On a Metal T-post on the west side of FM 983 approximately 25 feet south of the Donna Shaw home located at 891 FM 983; and

 - (iii) On a Metal T-post on the west side of FM 983 approximately 1000 feet south of the Donna Shaw home located at 891 FM 983.

3. As of this date, there are only no qualified voters residing within said 435.969 acres of land encompassing the proposed District.

WITNESS MY HAND this 3 day of May, 2006.

By: Mac McCoy
Mac McCoy

**NOTICE OF PETITION TO CITY OF FERRIS, TEXAS
FOR WATER AND SANITARY SEWER SERVICE**

THE STATE OF TEXAS

§

COUNTY OF ELLIS

§

§

TO THE OWNERS OF PROPERTY AND VOTERS WITHIN THE REAL PROPERTY DESCRIBED BELOW AND ALL OTHER PERSONS INTERESTED IN THE PETITION FOR WATER AND SANITARY SEWER SERVICE TO BE SUBMITTED TO THE CITY OF FERRIS FOR SUCH PROPERTY:

Notice is hereby given that a Petition for Water and Sanitary Sewer Service (the "Petition") will be submitted to the City of Ferris (the "City") requesting that the City make available the water and sanitary sewer service contemplated to be provided by the proposed Ellis County Municipal Utility District No. 1 to following property:

435.969 acres of land in Ellis County, Texas located within the extraterritorial jurisdiction of the City and south of F.M. 664 (which fronts approximately 2,500 feet of the property to the north) and north of F.M. 983 (which fronts approximately 4,800 feet of the property to the south), approximately 1 mile west of downtown Ferris, Texas.

The full text of the Petition may be obtained at the offices of Coats, Rose, Yale, Ryman & Lee, P.C., Two Lincoln Center, 5400 LBJ Freeway, Suite 1300, Dallas, Texas 75240.

ATTACHMENT C

PUBLISHER'S AFFIDAVIT

**STATE OF TEXAS
COUNTY OF ELLIS**

Before me, the undersigned authority in and for said State and County, on this day personally appeared Robin Goodman to me known, who, after being by me first duly sworn, on oath, says: that she is Clerk of the Midlothian Mirror which is a newspaper of general circulation, published in the City of Midlothian, in Ellis County, Texas, and which has been continuously and regularly published therein for a period of more than one year next before the first publication of the attached writ and notice; that the said writ and notice was printed and published in said newspaper once each consecutive week for the period of time required, and on the following dates:

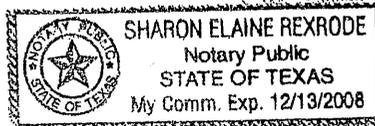
5-10, 2006 as appeared from a copy thereof attached.

Witness my hand this 1st day of June 2006
[Signature]

Robin Goodman

Subscribed and sworn to before me this 1st day of June 2006
[Signature]
Notary Public in and for Ellis County, Texas

Printer's Fee \$ _____



972-937-1139

@waxahachiedaily.com

TX 76065

ce Hours: 9:00 A.M.-5:00 P.M.

IN-COLUMN & CAMERA

EDITION

Wednesday

Early deadlines do apply for some holidays

Days and times will be published

prior to early deadline days

READY DISPLAY

2 p.m. on Monday

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Published 1 time in The Midlothian Mirror, Wednesday, May 10, 2006.

**NOTICE OF PETITION TO CITY OF FERRIS, TEXAS
FOR WATER AND SANITARY SEWER SERVICE**

THE STATE OF TEXAS §
COUNTY OF ELLIS §

TO THE OWNERS OF PROPERTY AND VOTERS WITHIN THE REAL PROPERTY DESCRIBED BELOW AND ALL OTHER PERSONS INTERESTED IN THE PETITION FOR WATER AND SANITARY SEWER SERVICE TO BE SUBMITTED TO THE CITY OF FERRIS FOR SUCH PROPERTY.

Notice is hereby given that a Petition for Water and Sanitary Sewer Service (the "Petition") will be submitted to the City of Ferris (the "City") requesting that the City make available the water and sanitary sewer service contemplated to be provided by the proposed Ellis County Municipal Utility District No. 1 to following property:

435.969 acres of land in Ellis County, Texas located within the extraterritorial jurisdiction of the City and south of F.M. 664 (which fronts approximately 2,500 feet of the property to the north) and north of F.M. 983 (which fronts approximately 4,800 feet of the property to the south), approximately 1 mile west of downtown Ferris, Texas.

The full text of the Petition may be obtained at the offices of Coats, Rose, Yale, Ryman & Lee, P.C., Two Lincoln Center, 5420 LBJ Freeway, Suite 1300, Dallas, Texas 75240.

me in The Midlothian Mirror, Wednesday, May 10, 2006.

**NOTICE OF RECEIPT OF APPLICATION AND INTENT TO OBTAIN
AIR QUALITY STANDARD PERMIT REGISTRATION**

PROPOSED AIR QUALITY REGISTRATION NO. 74115L006

ON Potter Concrete, Ltd., has applied to the Texas Commission on Environmental Quality (TCEQ) for an standard Permit, Registration No. 74115L006, which would authorize construction of a Concrete Batch Plant the east side of U.S. Highway 67 approximately 0.33 miles north of U.S. Highway 287, Midlothian, Ellis

The proposed facility will emit the following air contaminants: particulate matter including (but not regate, cement, road dust and particulate matter less than 10 microns in diameter.

n was submitted to the TCEQ on April 26, 2006. The application is available for viewing and copying at ral office, the TCEQ Dallas/Fort Worth regional office, and the Ellis County Courthouse, 117 West Franklin chie, Texas. The facility,s compliance file, if any exists, is available for public review in the Dallas/Fort office of the TCEQ.

cutive director has determined the application is administratively complete and will conduct a application

ATTACHMENT D

**PETITION FOR WATER
AND SANITARY SEWER SERVICE**

THE STATE OF TEXAS §
 §
COUNTY OF ELLIS §

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF FERRIS, TEXAS:

The undersigned Mac McCoy (“Petitioner”), acting pursuant to Section 54.016, Texas Water Code, as amended, and Section 42.042, Texas Local Government Code, as amended, respectfully petitions this Honorable Mayor and City Council of the City of Ferris, Texas (the “City”) for water and sanitary sewer service to serve the land described below and located within the City’s extraterritorial jurisdiction.

I.

Petitioner submitted to the City, a Petition for Consent to Creation of Ellis County Municipal Utility District No. 1, dated June 9, 2003, and an Amended Petition for Consent to Creation of Ellis County Municipal Utility District No. 1, dated January 20, 2004 (the “Amended Petition”), requesting the City’s consent to the creation of Ellis County Municipal Utility District No. 1 (the “District”) encompassing 448.389 acres of land.

II.

The City has granted its consent by Resolution No. 482 and has claimed to have withdrawn such consent by Resolution No. O-06-619. Nothing herein shall be taken to represent that Petitioner agrees with the ability of the City to withdraw its consent to the creation of the District.

III.

Inasmuch as the City now alleges to have withdrawn its consent to the creation of the District, Petitioner requests that the City make water and sanitary sewer service available to the Land referenced in Exhibit "A" and as also depicted in Exhibit "B" attached hereto.

IV.

There are no qualified voters residing on the Land.

V.

Petitioner hereby petitions the Honorable Mayor and City Council of the City and requests that the City make available to the Land the water and sanitary sewer service contemplated to be provided by the District by entering into a mutually agreeable contract with the undersigned to provide for the requested water and sanitary sewer service as provided under Section 54.016(b) and (c), Texas Water Code, as amended, and Section 42.042(b) and (c), Texas Local Government Code, as amended.

RESPECTFULLY SUBMITTED this 7th day of June, 2006.

"Petitioner"

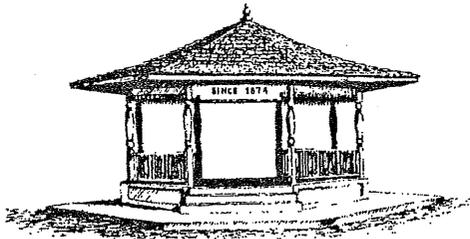
Petitioner owns approximately
434.969 acres of the Land
described in Exhibit "A".

Mac McCoy
Mac McCoy

Executed on May 30, 2006.

ATTACHMENT E

City of Ferris



"A Texas Main Street City"

March 21, 2006

Mr. Josh J. Kahn
Coats Rose Vale Ryman & Lee, PC
3 Greenway Plaza – Suite 2000
Houston, Texas 77046

Subject: City of Ferris – Ellis County Municipal Utility District No. 1
(TCEQ Internal Control No. 02212006-D04)

Dear Mr. Josh J. Kahn,

On the evening of the 20th of March this year, the City Council of the City of Ferris, Texas approved an ordinance which repealed both an earlier ordinance and a resolution that was requested by the principles involved in the creation of what they refer to as the "Ellis County Municipal Utility District No. 1" (TCEQ internal control number 02212006-D04). The City Council found this action necessary when it was recently informed by the administrative processes of the Texas Commission on Environmental Quality that the process of creating the district was ongoing. The City of Ferris wishes it to be understood by all interested parties and regulatory agencies that the City of Ferris DOES NOT support, encourage, condone or desire that a new single purpose political subdivision be created in its extraterritorial jurisdiction. Further, we will resist its creation with all possible means at our disposal.

The principles of this district approached the City approximately three years ago. At that time they expressed an interest in developing the subject property. The City of Ferris without professional management and with no growth experience or reasonable capability of extending water and sewer services felt that it could not reasonably serve the property at that time. Therefore, the City reluctantly gave permission for the creation of the district. Enticed by the notion that growth would finally occur near its community and that growth might encourage additional growth outside the subject district. It seemed to Ferris that there was no other practical way to begin the growth cycle.

Since that time, the City has undergone substantial dynamic change. There has been a significant change in the elected leadership and they have made a decision to acquire professional management of their municipal operation. Those decisions have precipitated the development of at least two City sponsored improvement districts. Those districts will extend services to the areas under discussion with those areas being required to only repay a fee which is equivalent to their pro-rata share of the cost of such extensions. This proposal and method of supplying extensions of already available local services to the subject areas has been thoroughly discussed with the principals on numerous occasions.

March 21, 2006

Page 2

At face to face meetings between the principles and representatives of the City of Ferris, those principles have expressed their pleasure at the proposed solution. They have commented, "It would not have been necessary to pursue the creation of the MUD if these options had been available at the time we first approached the City." Believing that the developers/principles were earnest in their comments, the City of Ferris proceeded with its planning and has spent considerable sums on engineering and has issued debt to begin the physical work on the districts. Having done all this, imagine our surprise when we learned that the developers/principles, having failed in a legislative attempt to create the district, were continuing to seek the creation of the district through the approval process of TCEQ.

The City felt it had no recourse but to officially rescind the earlier approvals so that the developer/principles could no longer assert that the City of Ferris had "No Objection." In addition, we wish to formally take the position that the City of Ferris opposes the creation of such a district. The property in question is immediately adjacent to our City limits on the western border. The property, which is quite large, is over 80-percent within the ETJ; only a small portion is outside of our current extraterritorial jurisdiction.

The City of Ferris believes that the creation of a utility district this close to our boundaries and within the proposed boundaries of our utility improvement district would jeopardize the future rational growth of our community and the planned expansion of the water and sewer system to this property and beyond. The removal of such a large portion of property from the improvement districts would jeopardize their financial solvency. The financial success of the district is based upon that area remaining outside of the City so that it may pay property tax equivalents to reimburse the developers for infrastructure improvements. That important provision would keep the population of that community from being part of the City of Ferris and would confuse the City's ability to provide services to that area or to extend its boundaries beyond that property. Such a situation would not serve the citizens of that property well and we believe does not operate in either the City or their best interest.

Please consider these comments in all future references to this request. The City is available for comment and questions at any time and will be present at any public meeting where the creation of the district is discussed or considered.

Sincerely,


Gus H. Pappas
City Manager

Enclosures

THE CITY OF FERRIS

ORDINANCE NO. O-06-619

AN ORDINANCE OF THE CITY OF FERRIS, TEXAS; AMENDING THE CITY OF FERRIS CODE OF ORDINANCES, BY REPEALING ORDINANCE NO. 482, AND FURTHER REPEALING RESOLUTION NO. 01/20/04 IN THEIR ENTIRETY. PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The City Council of the City of Ferris initially responded to the request of land developers on this subject property who wanted to develop the property for residential use but had no reasonable means of acquiring water for sewer services for that development without large off-site infrastructure cost; and,

WHEREAS, The City granted the requested ordinance so that the subject developers could pursue the creation of a Municipal Utility District to assist in defraying those costs to the subsequent property owners; and,

WHEREAS, The City of Ferris experienced significant changes in its political and managerial hierarchy which led to the development of City created utility improvement districts to serve the area in question; and,

WHEREAS, The developers participated in discussions with the City concerning the creation, location, boundaries, services to be provided, estimated fees, and timing for the project; and,

WHEREAS, Those conversations between the City of Ferris and the subject's developers led the City to believe that the developers were satisfied with this new local proposal and that it met their financial requirements for minimizing the off-site infrastructure cost associated with the development and therefore no longer proceeding with their attempts to create a Municipal Utility District; and,

WHEREAS, The attempt by the developers by the Developers to create a municipal utility district through the legislative mode failed; and,

WHEREAS, The City recently received notification from the Texas Commission on Environmental Quality that in fact, the Developer continues to seek the creation of a Municipal Utility District; and,

WHEREAS, The City of Ferris sees no alternative but to officially rescind all documents which may lead anyone to assume that the City of Ferris supports the creation of said Municipal Utility District for its creation would undermine the financial solvency of the City created utility improvement district as they evolve to serve the same problem without the creation of another layer of local government; Now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FERRIS, TEXAS:

Section 1. That Ordinance No. 482, and Resolution No. 01/20/04 are hereby repealed in their entirety.

Section 2. All provisions of the ordinances of the City of Ferris in conflict with the provisions of this ordinance be, and the same or hereby, repealed, and all other provisions of the ordinances of the City of Ferris not in conflict with the provisions of this ordinance shall remain in full force and affect.

Section 3. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

Section 4. That this ordinance shall take effect immediately from and after its passage and publication of the caption of said ordinance as the law in such case provides.

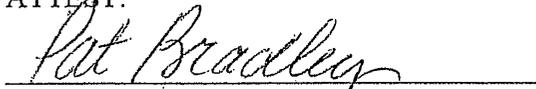
DULY PASSED AND APPROVED by the City Council of the City of Ferris, Texas this 20 th day of March, 200.

APPROVED:



Scott T. Born, Mayor

ATTEST:

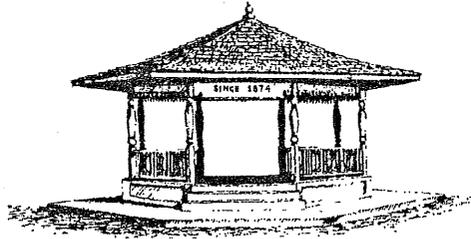

Pat Bradley, City Secretary

APPROVED AS TO FORM:

David Dodd, City Attorney

ATTACHMENT F

City of Ferris



July 14, 2006

"A Texas Main Street City"

Mr. Josh J. Kahn, Attorney at Law
Coats Rose Yale Ryman & Lee, PC
3 Greenway Plaza – Suite 2000
Houston, Texas 77046

Subject: Ellis County Municipal Utility District No. 1
(TCEQ Internal Control No. 02212006-D04)
City of Ferris – Resolution No. R-06-22

Dear Mr. Kahn,

Please find enclosed a copy of the City of Ferris, Texas, Resolution No. R-06-22. Once again, denying permission for the creation of a Municipal Utility District within the city limits and ETJ of the City of Ferris. This Resolution comes a result of a new "Petition for Water and Sanitary Sewer Service" recently received from a "Petitioner" (Mr. Mac McCoy) concerning a subject tract of land in the amount of 434.969 acres, of which Mr. McCoy is the sole property owner. The petition was submitted with the assistance of the Coats Rose Law firm representing the, to be formed Ellis County Municipal Water District No 1. By action of this resolution the City of Ferris, once again, reconfirms it's denial of permission, to create such a district, as well as the position that the City of Ferris can provide water and sewer services to the subject property when/if it develops. This resolution passed unanimously by the City Council on evening of July 3, 2006.

In addition, you will find an official response letter to the Ellis County Municipal Water District No. 1, responding to the specific request and confirming that the City can provide water and sewer service to the subject property.

We thank you for your attention in this matter.

Sincerely,


Gus H. Pappas
City Manager

Enclosure: City of Ferris, Texas – Resolution No. R -06-22
Copy of Response Letter to Ellis County Municipal Water District No. 1

NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P.

J. David Dodd, III
e-mail: ddodd@njdhs.com

Attorneys & Counselors at Law
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201
(214) 965-9900
Fax (214) 965-0010
E-mail NJDHS@NJDHS.com

ROBERT L. DILLARD, JR. (1913-2000)
H. LOUIS NICHOLS
LAWRENCE W. JACKSON
OF COUNSEL

July 10, 2006

Via CMRRR 7005-1160-0001-9538-5748

Ellis County Municipal Water

District No. 1

E. W. Shelcan L.P.

400 South Aston

Sunnyvale, Texas 75182

*Re: Ellis County Municipal Water District No. 1 Petition to the City of
Ferris for water and sanitary sewer service*

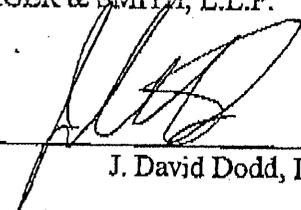
Dear Mr. Shelcan,

As city attorneys for the City of Ferris, we are writing to you regarding the above-referenced matter. The city currently has water and sewer services available to the areas that you are requesting. In order to prepare a mutually agreeable contract for providing the water and sanitary sewer service to the area requested, we need the specific information about the quantity of service and specific locations of the services you need.

Thank you for your attention to this matter, please feel free to contact us if you have any questions.

Sincerely,

NICHOLS, JACKSON, DILLARD,
HAGER & SMITH, L.L.P.

By: 

J. David Dodd, III

JDD/als

cc: Gus Pappas, (via facsimile)

CITY OF FERRIS, TEXAS

RESOLUTION NO. R - 06 - 22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FERRIS, TEXAS; DENYING PERMISSION FOR THE INCLUSION OF LAND IN THE EXTRATERRITORIAL JURISDICTION TO BE INCLUDED IN THE ELLIS COUNTY MUNICIPAL DISTRICT NO. 1; PROVIDING FOR A REPEALING CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, The City of Ferris, Texas, initially responded to the request of land developers on this subject property who wanted to develop the property for residential use, but had no reasonable means of acquiring water for sewer services for that development without large off-site infrastructure cost; and

WHEREAS, The City of Ferris, Texas, granted the requested ordinance so that the subject developers could pursue the creation of a Municipal Utility District to assist in defraying those costs to the subsequent property owners; and,

WHEREAS, The City of Ferris, Texas, experienced significant changes in its political and managerial hierarchy, which led to the development of City created utility improvement districts to serve the area in question; and,

WHEREAS, The Developers participated in discussions with the City of Ferris, Texas, concerning the creation, location, boundaries, services to be provided, estimated fees, and timing for the project; and,

WHEREAS, Those conversations between the City of Ferris, Texas, and the subject's Developers led the City of Ferris, Texas, to believe that the Developers were satisfied with this new local proposal, and that it met their financial requirements for minimizing the off-site infrastructure cost associated with the development, and therefore no longer proceeding with their attempts to create a Municipal Utility District; and,

WHEREAS, The attempt by the developers to create a Municipal Utility District through the legislative mode failed; and,

WHEREAS, The City of Ferris, Texas, recently received notification from the Texas Commission on Environmental Quality that in fact, the Developer continues to seek the creation of a Municipal Utility District; and,

WHEREAS, The City of Ferris, Texas, has repealed Ordinance No. 482 and Resolution No. 01-20-04 by the action of Ordinance No. O-06-619; and,

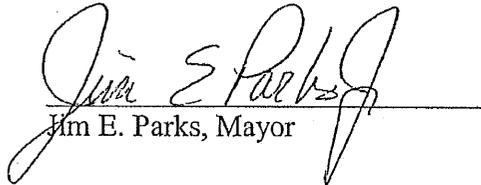
WHEREAS, The City of Ferris, Texas, can provide water and sanitary sewer services to the property in question at the current level of need;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FERRIS, TEXAS:

- Section 1.** That the Petition for the property described in Exhibit 1 of this Resolution to be included in Ellis County Municipal Water District No. 1, be denied.
- Section 2.** That all provisions of any resolution of the City Council of the City of Ferris, Texas, in conflict with the provisions of this resolution be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this resolution shall remain in full force and effect.
- Section 3.** That this resolution shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED, by the City Council of the City of Ferris, Texas, this 3rd day of June 2006.

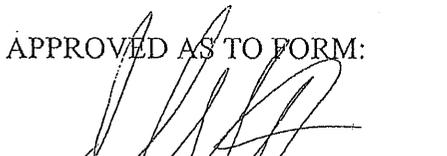
APPROVED:


Jim E. Parks, Mayor

ATTEST:

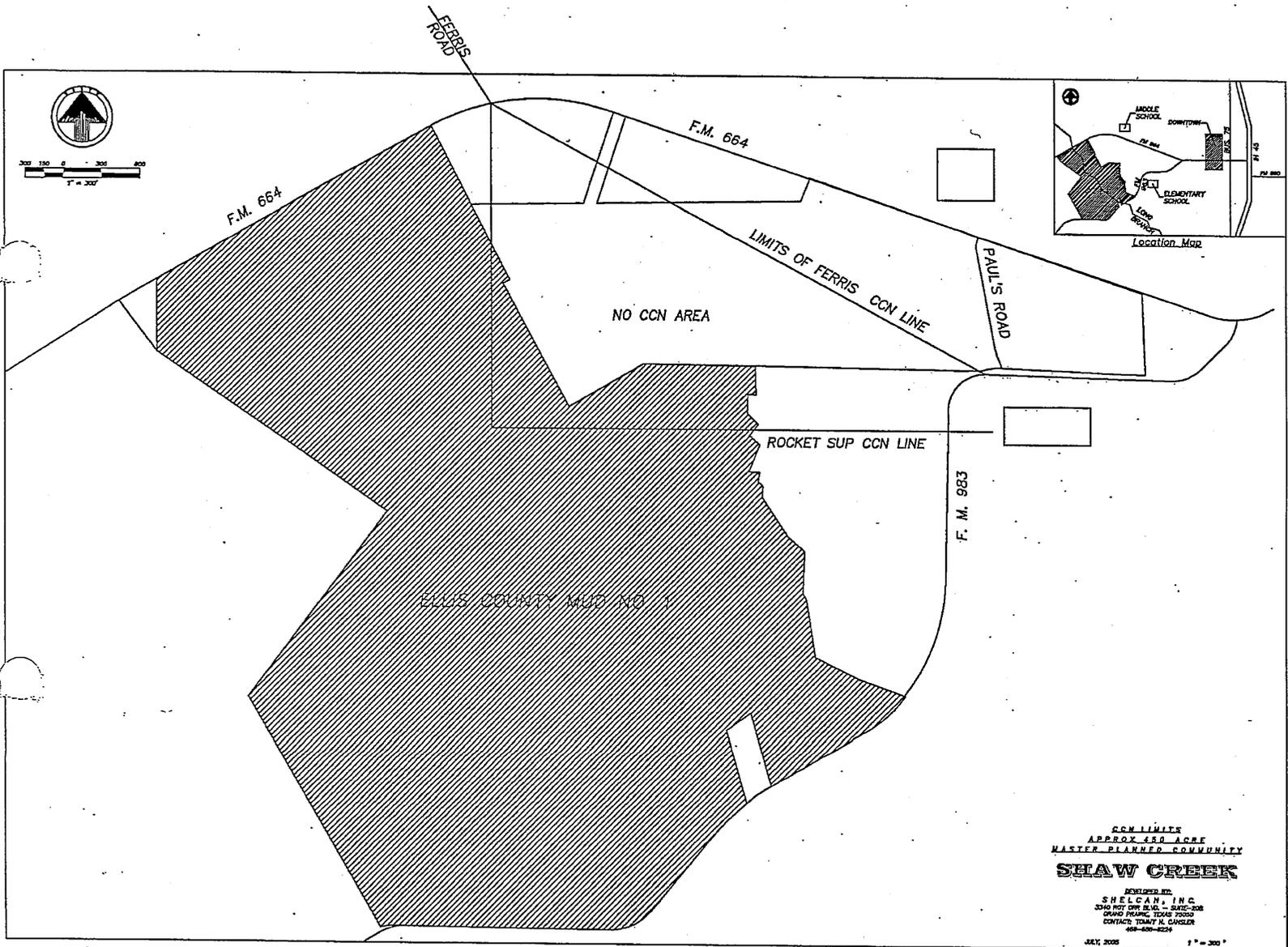
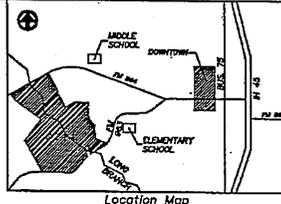
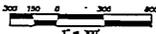

Pat Bradley, City Secretary

APPROVED AS TO FORM:


J. David Dodd, III, City Attorney

ATTACHMENT G

ATTACHMENT G



SHAW CREEK - FERRIS, TEXAS

CCN LINES
APPROX 450 ACRES
MASTER PLANNED COMMUNITY
SHAW CREEK

DEVELOPED BY
SHELKAN, INC.
3340 HWY 290 S.W. - SUITE 208
GRAND PRairie, TEXAS 75050
CONTACT: TIMMY H. CUSLER
409-666-4224

JULY 2005 1" = 300'

ATTACHMENT H

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P.

J. David Dodd, III
e-mail: ddodd@njdhs.com

Attorneys & Counselors at Law
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500 North Akard
Dallas, Texas 75201
(214) 965-9900
Fax (214) 965-0010
E-mail NJDHS@NJDHS.com

ROBERT L. DILLARD, JR. (1913-2000)
H. LOUIS NICHOLS
LAWRENCE W. JACKSON
OF COUNSEL

August 29, 2006

Via CMRRR 7005-1160-0001-9591-7932

Mr. Timothy Green.
Coats Rose
3 East Greenway Plaza
Suite 2000
Houston, Texas 77046

Re: Water and sewage services

Dear Mr. Green,

The City of Ferris is currently conducting the engineering and legal processes necessary to establish an internal improvement district to provide water and sewer services to your client's property. Your client's property is part of a large drainage basin in which the City of Ferris intends to extend water services, and sanitary services adequate for modest density development at and above 4.5 units per acre. The district will provide those services through the assessment of a fee, which is designed to be the pro-rata share of the entire cost of installing those improvements within the district without any additional surcharges. Your client will specifically be asked to provide dedicated easements for the installation of collection and distribution lines along the creek beds and deep ravines that are within his properties boundaries. It is in those locations that water mains and gravity sewer mains will be available for connection to your client as he develops his property.

Currently, the City is in the design phase of the installation of a lift station within a ravine on the northeast side of your client's property. That lift station will collect sewage from the current development of Shaw Creek, and could serve the initial phase of your client's property with sewer services. In addition, there are adequate water mains owned and operated by the City of Ferris within a reasonable distance, or adjacent to your client's property from which, initial access could be provided. The City is also constructing a new 250,000-gallon elevated storage tank to meet the requirement for service in your area. The construction of that tank has already begun.

August 29, 2006
Mr. Green
Page 2

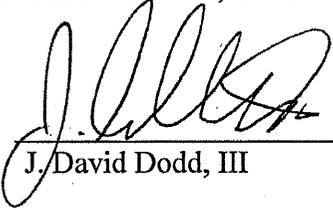
We would remind both you and your client that if they intend to meet their own imposed deadline of 200 homes completed by April 30, 2007, there are certain platting, zoning, and annexation requirements that must be met in order for construction to begin on this proposed project.

The City is prepared to sign a facilities agreement with your client once a plat has been presented and reviewed so that the City may determine if the construction criteria to be used conforms to its regulations.

Sincerely,

NICHOLS, JACKSON, DILLARD,
HAGER & SMITH, L.L.P.

By:



J. David Dodd, III

JDD/als

cc: Gus Pappas, *via facsimile*