

TCEQ DOCKET NO. 2010-0994-DIS

APPLICATION OF GREEN VALLEY § BEFORE THE TEXAS  
SPECIAL UTILITY DISTRICT FOR § COMMISSION ON  
APPROVAL OF IMPACT FEES § ENVIRONMENTAL QUALITY

**GREEN VALLEY SPECIAL UTILITY DISTRICT'S RESPONSE TO  
CONTESTED HEARING REQUESTS**

COMES NOW, Green Valley Special Utility District (GVSUD) and files its response to the contested hearing requests of the City of New Braunfels and Mr. Rick Shumake.

**NEW BRAUNFELS REQUEST:**

Mr. Michael Morrison, City Manager of the City of New Braunfels, filed a letter requesting a contested hearing on GVSUD's impact fee application dated May 26, 2010. GVSUD does not dispute that Mr. Morrison's statement in that letter that New Braunfels's extraterritorial jurisdiction (ETJ) extends into a small portion of the District's service area where the proposed impact fee will be levied. GVSUD does dispute that Mr. Morrison's assertion that the City of New Braunfels is affected by this application and thus entitled to a contested hearing under TCEQ rules.

Mr. Morrison has presented two complaints which he says justifies giving the City a hearing. They are:

1. the assessment of impact fees on single-family connections for water facilities will have an adverse impact on residential development within the City's ETJ served by GVSUD, and
2. the assessment of impact fees on single-family connections for water facilities will impact the growth of the City.

Under Local Government Code Chapter 395 and 30 TAC §293(N), an impact fee is a statutory means of funding capital improvements to the water system of a political subdivision when those improvements are part of an approved plan. The only issues to be decided are the reasonableness and necessity for the elements of the plan, their cost and the calculation of a fee that equitably apportions those costs among persons/entities that will benefit from the improvements. There are no provisions which allow the TCEQ to consider the impact on residential development or growth within a city's ETJ.

Mr. Morrison has not shown that New Braunfels has any unique justiciable interest in this application that would give it standing under the TCEQ's rules. Since GVSUD is a Water Code Chapter 65 district, New Braunfels has no ratemaking or other regulatory authority over the District that is relevant to this application.

This application should not be referred to SOAH on the basis of Mr. Morrison's letter.

## **RICK SHUMAKE REQUEST:**

Mr. Rick Shumake, Managing Member of Zipp Meadows, LLC, filed a contested hearing request by letter received by the TCEQ Chief Clerk on May 24, 2010. GVSUD does not dispute that Mr. Shumake is an authorized spokesman for a development inside the impact fee boundaries affected by the application. However, the mere existence of property inside the proposed impact fee boundaries does not establish a judicial interest and standing under the TCEQ's procedural rules. To decide if Mr. Shumake is entitled to any relief in this docket, the TCEQ must examine what his claimed interests and his requested relief. GVSUD disputes that Mr. Shumake has demonstrated that he is eligible to receive any relief that the TCEQ may grant on this application.

Mr. Shumake has presented two complaints which he says give him grounds for relief. They are:

1. a request that the TCEQ grant him water to his parcel under terms acceptable to him. He has complained that GVSUD would not give him development terms acceptable to him even before the impact fee application was filed.
2. a complaint that GVSUD has "attempted to escalate fees to the point that will cause our development as well as others in the area to fail."

GVSUD's extension and non-standard service policies are set out in Board-approved policies applicable to all landowners in the District. They have been

evenly applied to Mr. Shumake and he has been denied the “special deal” he wants. Mr. Shumake’s complaint is nothing more than an untimely appeal of the District’s extension policies. Mr. Shumake did not file a petition of appeal of the policies within the statutory 90 day filing period. His complaint is barred from consideration by operation of law.

Mr. Shumake assumes that his preferred plan for the development of his property is protected by law. It is not. Texas law imposes many burdens on property proposed for development. The provision of water service under policies set by the District and the TCEQ is only one of them. It may be true that Mr. Shumake’s current development plan is not financially feasible for any number of reasons, the least of which could be GVSUD’s impact fees. This still does not give him standing under the TCEQ’s rules because there is no relief the TCEQ may grant him under the law that addresses his complaint.

Under Local Government Code Chapter 395 and 30 TAC §293(N), an impact fee is a statutory means of funding capital improvements to the water system of a political subdivision when those improvements are part of an approved plan. The only issues to be decided are the reasonableness and necessity for the elements of the plan, their cost and the calculation of a fee that equitably apportions those costs among persons/entities that will benefit from the improvements. There are no provisions which allow the TCEQ to consider the economic impact on proposed development projects or any other individual landowner. Mr. Shumake

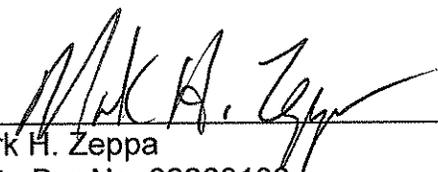
has submitted a complaint based upon the financial effect of a TCEQ-approved impact fee will have on his business. This is not a criteria that the TCEQ can consider in impact fee applications under Local Government Code Chapter 395 and 30 TAC §293(N).

This application should not be referred to SOAH on the basis of Mr. Shumake's letter.

**SUMMARY:**

For the reasons set forth above, the TCEQ must deny the contested hearing requests of the City of New Braunfels and Mr. Rick Shumake. GVSUD's impact fee application should be approved as applied for and as recommended by the Executive Director.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mark H. Zeppa, certify that true and correct copies of the foregoing pleadings were served on the person identified below by efileing, email, and 1<sup>st</sup> class USPS mail on February 14, 2011.

  
Mark H. Zeppa

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