

TCEQ DOCKET NUMBER 2016-1129-DIS

PETITION FOR CREATION	§	BEFORE THE TEXAS
OF MEYER RANCH MUNICIPAL	§	COMMISSION ON
UTILITY DISTRICT OF COMAL	§	ENVIRONMENTAL
COUNTY	§	QUALITY

PETITIONERS' RESPONSE TO HEARING REQUEST

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Franklin Meyer, Dcloris Meyer, Terry Meyer, and Vicky Lynn Meyer Graves (Petitioners) file this Response to Hearing Requests with the Texas Commission on Environmental Quality (TCEQ) requesting the TCEQ to deny the Hearing Requests. There is but one request for a contested case hearing in this matter. The Requester, Mr. Corey Henderson, does not state a personal justiciable interest that describes how this Petition would affect him in a way not common to the general public.¹ Mr. Henderson does not allege any harm or concern to him or to his property.

OVERVIEW

Petitioners seek to create on Municipal Utility District on approximately 737 acres in Comal County. The planned development will have approximately 1,500 homes. The property is not within the Extraterritorial Jurisdiction of any municipality. This Commission previously granted a Texas Pollution Discharge Elimination System (TPDES) Permit to serve the development. In obtaining that permit, Permit WQ0015314001, the current owner of the property met with a large number of commenters, requesters and neighboring landowners who brought about a wide variety of issues. The sides were able to come to an amicable agreement and the TCEQ issued the permit without a contested case hearing.

RESPONSES TO HEARING REQUESTS

¹ The Notice of Application directs hearing requesters to include "a brief description of how you would be affected by the petition in a way not common to the general public".

MR. HENDERSON HAS NOT SHOWN A JUSTICIABLE INTEREST

30 TAC Section 55.251(c) sets out the requirements needed to be included for hearing requests. Of particular interest here is 30 TAC §55.251(c)(2) that requires a hearing requester to “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”. Mr. Henderson claims to own property that is adjacent to but is not included within the proposed District's boundaries. In making his hearing request, Mr. Henderson did not state a personal justiciable interest. Nowhere in his Hearing Request did he point out how or why he is impacted by this Petition. Instead, he merely alleged that certain elected officials expressed concern about the Petition.

Texas Water Code §54.021 contains the directive for the TCEQ to grant a petition to create a Municipal Utility District. That statute holds as follows:

Sec. 54.021. GRANTING OR REFUSING PETITION. (a) If the commission finds that the petition conforms to the requirements of Section 54.015 and that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.

(b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, 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.

(c) If the commission finds that not all of the land proposed to be included in the district will be

benefited by the creation of the district, the commission shall so find and exclude all land which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.

(d) If the commission finds that the petition does not conform to the requirements of Section 54.015 of this code or that the project is not feasible, practicable, necessary, or a benefit to the land in the district, the commission shall so find by its order and deny the petition.

(e) A copy of the order of the commission granting or denying a petition shall be mailed to each city having extraterritorial jurisdiction in the county or counties in which the district is located who requested a hearing under Section 49.011.

Mr. Henderson did not raise any of the issues contained in §54.021 nor did he cite a personal concern.² Mr. Henderson primarily bases his request on an earlier action by the Comal County Commissioner's Court in denying a Water Control and Improvement District application for this property. Supporting a County decision is not an interest peculiar to Mr. Henderson but more of an interest to the general public. It should be noted that Comal County did not request a contested case hearing nor did Comal County oppose this application.³ Mr. Henderson did provide a letter from one County Commissioner commenting on the application. That letter, however, was not a resolution from the Commissioners Court nor did it request a contested case hearing.

There are also differences between a County created Water Control and Improvement District (WCID) and a Municipal Utility District (MUD). Perhaps the greatest distinction is that a MUD has sewer powers. Having these powers, the MUD will be able to finance and to ensure compliance with the permit conditions. On the other hand, Comal County turned down the WCID application prior to TCEQ issuing the wastewater permit. This may explain why Comal County did not comment on this Application.

Senator Campbell's letter largely related to the TPDES permit where the property owner compromised and settled with her constituents. Her letter did not express opposition to this application nor did it request a contested case hearing. Rep. Miller, on the other hand, while

² It is significant that the property he claims to own will not be included in the proposed District.

³ As required by Texas Water Code and TCEQ rules, the TCEQ provided a notice of this application to Comal County Commissioners Court. As stated, the Comal County Commissioners Court did not comment, much less oppose, this Application.

expressing opposition to the Petition, did not request a contested case hearing nor did Rep. Miller comment on the merits of this application or on the findings of the Executive Director. Finally, both letters were written before the settlement with the neighboring landowners and issuance of the TPDES permit.

In short, Mr. Henderson did not cite or show or allege any harm that might be done to him should the TCEQ create the Meyer Ranch Municipal Utility District of Comal County.

PROPERTY OWNERSHIP

Mr. Henderson indicates that he is a property owner and resident adjacent to the proposed project. His address shows to be 3311 South Crane Mills Road, New Braunfels, Texas 787132, which is adjacent to Petitioners property. However, Petitioners can find no record that Mr. Henderson's owns this property or any other property in Comal County.

The attached affidavit from Keith Wooley supports Petitioners' inability to confirm Mr. Henderson's property ownership. The records from Comal County Appraisal District show that Ms. Jacquelyn Couser is the property owner and not Mr. Henderson.

Of course, it is possible that Petitioners merely missed Mr. Henderson's property ownership or county records are not up to date. It appears that a company named Performance Automotive is located on Comal Appraisal District Tract 45132. In any event, the hearing request still did not provide sufficient information to determine his interest in this Petition and how is affected.

IF REFERRED TO SOAH, EXPECTED MAXIMUM DURATION SHOULD BE THREE MONTHS

Petitioners believe that this is a reasonable timeframe in which to hold a contested case hearing. There is only one protestant who does not appear to have concerns about his property, if he is in fact a property owner, but a concern about the development.

CONCLUSION

For the reasons discussed in the Response, Petitioners respectfully requests that the TCEQ deny Mr. Henderson's hearing request.

Respectfully submitted,

Andy Barrett & Associates, PLLC

By: Andrew Barrett

Andrew N. Barrett
State Bar No. 01808900
3300 Bee Cave Road, Suite 650 #189
Austin, Texas 78746
512-600-3800
512-330-0499 FAX

ATTORNEY FOR PETITIONERS

AFFIDAVIT OF KEITH WOOLEY

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF COMAL §

BEFORE ME, the undersigned authority, personally appeared Keith Wooley, who, being by me duly sworn, deposed as follows:

“My name is Keith Wooley, I am of sound mind, capable of making this affidavit, and I am a resident of Blanco County in the State of Texas. I have personal knowledge of the facts stated herein, and they are true and correct.

I am a Registered Professional Land Surveyor and my License No. is 5463. I am employed at Urban Civil, LLC. Our office is located at 2461 Loop 337, New Braunfels, Texas 78130.

I have been involved in real estate surveying for 33 years. I have been a Texas licensed surveyor since 2001. I performed surveying for the Petitioners of Meyer Ranch Municipal Utility District of Comal County. These duties required me to determine ownership of the properties adjacent to the Meyer Ranch, which is subject of this Petition. The survey we prepared references the adjoining owner as Jacquelyn Joy Henderson per volume 272 Page 53 of the Deed Records of Comal County, Texas.

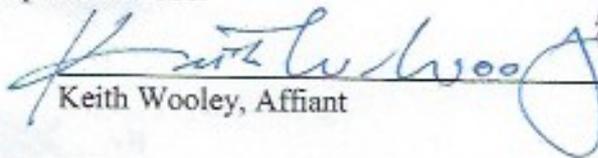
My review of the Comal County Appraisal District’s Web site indicates that the properties joining the Meyer Ranch Tract to the Northeast, Northwest and Southwest of the Northern Portion of the Meyer Ranch Property is Jacquelyn S. Couser. I found no specific listing for 3311 S. Cranes Mill Road in the Comal County Appraisal District records. However, Comal County Geographic Systems indicates that the property listed as 3311 South Cranes Mill Road is

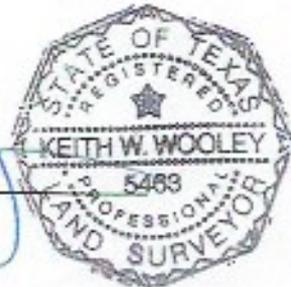
under the name Jacquelyn S. Couser.

Finally, I ran the name Henderson on the Comal County Appraisal districts Website and found no Henderson listed as owning property on Cranes Mill. While it is possible that Mr. Henderson owns property under another name, I could find no listing for Corey Henderson.

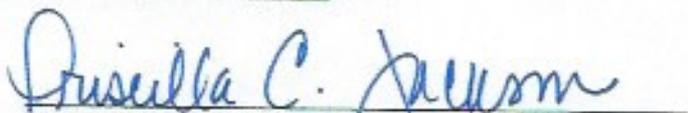
This affidavit is in support of Petitioners Response to Hearing Request of Corey Henderson.”

SIGNED on this 8th day of September 2016.


Keith Wooley, Affiant



SWORN TO and SUBSCRIBED TO BEFORE ME by Keith Wooley, the above identified affiant, on September 8th 2016.


Notary Public, State of TEXAS

