

TCEQ DOCKET NO. 2016-0544-MIS-U

APPEAL OF THE USE DETERMINATION	§	BEFORE THE
ISSUED BY THE EXECUTIVE	§	
DIRECTOR REGARDING CAPITOL	§	TEXAS COMMISSION ON
CHEVROLET, USE DETERMINATION	§	
APPLICATION NO. 19881	§	
APPEAL OF THE USE DETERMINATION	§	ENVIRONMENTAL QUALITY

**TRAVIS CENTRAL APPRAISAL DISTRICT’S RESPONSE BRIEF TO CAPITOL
CHEVROLET’S APPEAL OF THE EXECUTIVE DIRECTOR’S NEGATIVE USE
DETERMINATION FOR THE QUALIFYING LAND ON APPLICATION NO. 19881**

TO THE HONORABLE COMMISSIONERS:

Travis Central Appraisal District (“TCAD”) files this Response Brief to the appeal of the Executive Director’s Negative Use Determination for the Water Quality Transition Zone on Application No. 19881, as submitted by Capitol Chevrolet, Inc. (the “Appellant”), which is located at 6200 S IH 35, Austin, Travis County, Texas 78745.

I. Background

On April 8, 2016, the Executive Director of the Texas Commission on Environmental Quality (hereinafter the “Director”) issued a Negative Use Determination for Use Determination Application No. 19881 concerning a 50,010 square foot water quality transition zone, (hereinafter the “Property”). Appellant appealed the determination arguing that Property lies within a critical water quality zone, arguing that the City of Austin (hereinafter “COA”) requires at least two acres in a water quality transition zone or uplands zone. The Negative Use Determination on Application 19881 was appealed April 14, 2016. On May 12, 2016, TCAD received a notice of the appeal, from the TCEQ. The notice advises that response briefs are due on or before 5:00pm on Wednesday, May 18, 2016 in the Commission’s Office of Chief Clerk.

II. Analysis of Property Tax Exemption Statutes

According to the Supreme Court of Texas "...exemptions from taxation are not favored by the law and will not be favorably construed."¹ The Court has further stated, "Statutory exemptions from taxation are subject to strict construction because they undermine equality and uniformity..."² That being the case, the Court has determined that "...the burden of proof of clearly showing that the organization falls within the statutory exemption is on the claimant."³ The exemption at issue, as many are, is found in § 11.31 of the Texas Property Tax Code. Based on the Texas Supreme Court's instructions outlined above, the Texas Commission on Environmental Equality, in its determination of this appeal, should strictly construe Section 11.31 against the granting of the exemption, unless the Appellant meets its burden. Appellant has not met its burden and the Negative Use Determination should stand.

III. Response to Appeal

The Executive Director correctly issued a negative use determination for the Property in determining that pursuant to § 11.31(a), Tax Code, the Property was not eligible. Appellant relies on Austin Code of Ordinances, §25-8-93 and §25-8-422, arguing that the Property is eligible because it lies within a critical water quality zone and makes up the requirement of least two acres be set aside as water quality transition zone or uplands zone. However, Appellant failed to provide supporting documentation.

¹ North Alamo Water Supply Corporation v. Willacy County Appraisal District, et al, 804 S.W. 2d 894, 899 (Tex. 1991).

² *Id.*

³ *Id.*

A. Subsection 11.31(a), Texas Property Tax Code

Subsection 11.31(a), Tax Code entitles a person an exemption from taxation all or part of real and personal property that the person owns and that is used wholly or partly as a *facility, device, or method for the control of air, water, or land pollution.*⁴ The italicized portion of the statute is defined in Subsection 11.31(b), Tax Code, as “...any structure, building, installation, excavation, machinery, equipment, or device ... that is used, constructed, acquired, or installed wholly or partly *to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, [Texas], or a political subdivision of [Texas]* for the prevention, monitoring, control, or reduction of air, water, or land pollution.”⁵ Therefore, for the Property to be considered pollution control property and entitled to the exemption, it must be “...used, constructed, acquired, or installed wholly or partly *to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, [Texas], or a political subdivision of [Texas]* for the prevention, monitoring, control, or reduction of air, water, or land pollution.”⁶ This prerequisite is mandatory and the Property does not meet the requirements.

The TCEQ, as required by Subsection 11.31(g), Tax Code, has established rules to govern the use determination process.⁷ These rules are found in the Texas Administrative Code (“TAC”).⁸ The Director must determine whether the proposed development is on a transition zone as described in the Application. On April 8, 2016, the Director issued a Negative Use

⁴ Tex. Prop. Tax Code § 11.31(a) (WESTLAW current through 2013) (emphasis added).

⁵ Tex. Prop. Tax Code § 11.31(b) (WESTLAW current through 2013) (emphasis added).

⁶ Id.

⁷ “The commission shall adopt rules to implement this section.” Tex. Prop. Tax Code § 11.31(g) (WESTLAW current through 2013).

Determination letter as to the Water Quality Transition Zone, and pursuant to 17.4 and 17.6, Texas Administrative Code, and Subsection 11.31(h), Texas Tax Code.

B. Section 17.4 Texas Administrative Code

- (a) To obtain a positive use determination, the pollution control property must be used, constructed, acquired, or installed wholly or partly to meet or exceed laws, rules, or regulations adopted by any environmental protection agency of the United States, Texas, or a political subdivision of Texas, for the prevention, monitoring, control or reduction of air, water, or land pollution....

Appellant rely on Austin Code of Ordinances § 25-93 and §25-8-422. However, Appellant failed to provide sufficient documentation to establish that the property is in a critical water zone, thereby triggering the requirement that at least two acres be set aside. The Director stated it best in identifying that the “mere fact that stormwater flows across a piece of land does not make that land pollution control property.” Likewise, the mere fact the Appellant calls an area a “water quality transition zone” does not make one. The Appellants have failed to provide proof, in its application or on appeal, that the Property is lies within a critical water quality zone, quality transition zone, or uplands zone, as contemplated by Austin Code of Ordinances, §25-8-93 and §25-8-422 and the negative use determination was properly issued and should stand.

C. Section 17.6(C) Texas Administrative Code

The Director correctly determined that the Property should not be exempt from taxation or entitled to a positive use determination because the Appellant has failed to establish that the

property is wholly or partly used, constructed, acquired or installed to meet or exceed law, rule, or regulation adopted by an environmental protection agency of the United States, Texas, or a political subdivision of Texas for the prevention, monitoring, control or reduction of air, water, or land pollution.

IV. Conclusion

Based on the foregoing and for the reasons stated herein, Travis Central Appraisal District respectfully requests that the Commission deny Capitol Chevrolet's appeal, and uphold the Executive Director's Negative Use Determination for Application No. 19881.

Respectfully submitted,

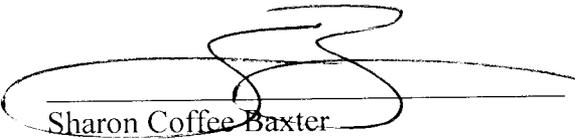
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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2016, an original of the Travis County Appraisal District's Response Brief was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, electronically at www.tceq.texas.gov/goto/eFilings, and that copies were also mailed to all other persons on the attached mailing list on the same day.


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