

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

SOAH DOCKET NO. 582-06-2663
TCEQ DOCKET NO. 2006-0631-UCR

2009 APR -6 AM 8:33

CHIEF CLERKS OFFICE

APPLICATION OF THE CITY OF
MCKINNEY TO AMEND SEWER
CERTIFICATE OF CONVENIENCE
AND NECESSITY NO. 20071
IN COLLIN COUNTY, TEXAS
APPLICATION NO. 35035-C

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

THE LANDOWNERS' EXCEPTIONS AND BRIEFS

The Landowners submit the following in the above-captioned matter and would respectfully show the following:

Whereas there are incidences of error in the capturing of the arguments put forth by the landowners in the final judgment this document will not provide an itemized accounting and correction of most of the errors since they have already been provided, usually multiple times in correct form in the Landowners filings and the correct versions can be obtained from review of those documents, including the correct history of the Landowners' efforts to "work" with the City of McKinney on its Comprehensive Plan – where their input was shut out of the process in the 2004 update. However, there are a few major elements that the Landowners feel must be brought forth.

The Landowners have put forward in multiple filed documents aspects of Texas law that have not been met by the City of McKinney. In some cases, there is no room for misinterpretation since the law clearly states "must" and "shall" with very clear requirements, such as 30 TAC 291.104(b), 30 TAC 291.105, 30 TAC 291.106 (f), and Texas Water Code 13.244(d). Other areas where the City of McKinney failed to follow Texas law were no less clear on requirements to be met. It was only the exact form of the specific submissions that could vary. However, since the City of McKinney failed to provide any specifics, Texas law was also

April 6, 2009

2009 APR -8 PM 2:46

CHIEF CLERKS OFFICE

US mail

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk – MC 105
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, TX 78753

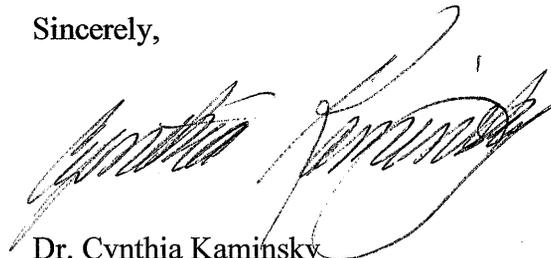
RE: *Application of the City of McKinney to Amend Certificate of Convenience and Necessity
No. 20071 in Collin County, SOAH Docket No. 582-06-2663, TCEQ Docket No. 2006-
0631-UCR*

Dear Ms. Castañuela,

Enclosed please find: The Landowners' Exceptions and Briefs. Copies will be sent to all parties.

Should you have any questions, you can reach me via (972) 898-3910.

Sincerely,



Dr. Cynthia Kaminsky
Counsel Pro Se for Landowners

Enclosure

Cc: All parties on service list

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

April 6, 2009

2009 APR -8 PM 2:46

CHIEF CLERKS OFFICE

Via US mail and email

The Honorable Lilo Pomerleau, ALJ
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78711-3025

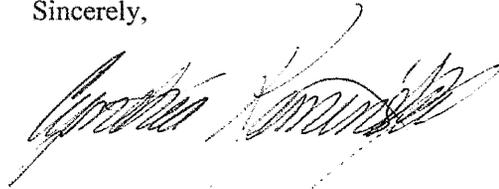
RE: *Application of the City of McKinney to Amend Certificate of Convenience and Necessity
No. 20071 in Collin County, SOAH Docket No. 582-06-2663, TCEQ Docket No. 2006-
0631-UCR*

Dear Judge Pomerleau:

Enclosed please find: The Landowners' Exceptions and Briefs. A copy is being filed with the TCEQ and copies will be sent to all parties.

Should you have any questions, you can reach me via (972) 898-3910.

Sincerely,



Dr. Cynthia Kaminsky
Counsel Pro Se for Landowners

Enclosure

Cc: All parties on service list

**SOAH DOCKET NO. 582-06-2663
TCEQ DOCKET NO. 2006-0631-UCR**

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MCKINNEY TO AMEND SEWER
CERTIFICATE OF CONVENIENCE
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**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

CHIEF CLERKS OFFICE

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The Landowners submit the following in the above-captioned matter and would respectfully show the following:

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1. The Landowners have put forward in multiple filed documents aspects of Texas law that have not been met by the City of McKinney. In some cases, there is no room for misinterpretation since the law clearly states "must" and "shall" with very clear requirements, such as 30 TAC 291.104(b), 30 TAC 291.105, 30 TAC 291.106 (f), and Texas Water Code 13.244(d). Other areas where the City of McKinney failed to follow Texas law were no less clear on requirements to be met, it was only the exact form of the specific submissions that could vary. However, since the City of McKinney failed to provide any specifics, Texas law was also

violated under: 30 TAC 291.102(d)(1), V.T.C.A. Water Code Section 13.246(c)(1), 30 TAC 291.102(d)(2), V.T.C.A. Water Code Section 13.246(c)(2), 30 TAC §291.102(d)(3), V.T.C.A. Water Code Section 13.246(c)(3), 30 TAC 291.102(d)(4), V.T.C.A. Water Code Section 13.246(c)(4), 30 TAC 291.102(d)(5), V.T.C.A. Water Code Section 13.246(c)(5), 30 TAC 291.102(d)(6) V.T.C.A. Water Code Section 13.246(c)(6), 30 TAC 291.102(d)(7), V.T.C.A. Water Code Section 13.246(c)(7), 30 TAC 291.102(d)(8), V.T.C.A. Water Code Section 13.246(c)(8), 30 TAC 291.102(a), V.T.C.A. Water Code Section 13.246(c)(9), 30 TAC 291.102(d)(9). Violations in any one of the above areas is enough to refuse granting of the CCN amendment, however, the violations in all areas, as reported in the Landowners' filings, seem to have been ignored. Some legal requirements deal with acceptance of the McKinney request from the TCEQ, others deal with the requirements placed on the TCEQ under law.

2. The judgment appears to approve of hand waving as opposed to substantive process and methodological submission in the area of environmental integrity. The City of McKinney provided no evidence of ever having performed environmental studies nor of ever requiring any in the future as required under law for this CCN expansion. As the Landowners related in their arguments, the City of McKinney has failed numerous times to perform the required environmental studies even though it swears under oath that it will. Case in point, during the month of March 2009, the City of McKinney allowed dumping of contaminated soil into the Wilson Creek floodplain in the identified area. Having no requirements to perform environmental studies via the TCEQ, the City of McKinney appears to believe that it is exempt from all such legal requirements. The soil was found by John Powell Sr. to be from a point source that was identified by professionals as being contaminated with heavy metals. The dumped soil came from a location next to Encore Wire on McKinney's east side and was

discriminatory since the City of McKinney allows property developers with over 25 acres to remove their property from consideration.

5. The TCEQ expert admitted in testimony that the TCEQ had no facts to support its claim that sewer was better for the environment than septic systems. The City of McKinney provided no facts that its claims that sewer was better for the environment than septic were true and scientifically valid. The Landowners did provide formal documentation of scientific finding from the EPA stating that there was no environmental advantage to sewer over septic and in fact, for the land developed as the identified area is developed, septic use is actually better for the environment than sewer systems. This finding of scientific and engineering fact is easily found in today's academic, scientific, and environmental journals as well as is a common topic for radio and TV programming presenting factual evidence pertaining to this topic. For instance, within the past month, NPR had a panel of environmental experts on air who all stated that sewer is actually harmful to the environment, it does not treat the wastewater to safe levels as is advertised in PR propaganda, and the US's methods of treating wastewater with sewer must be upgraded if it is to become environmentally preferable over septic use in large lot applications and for treatment of drinking water in general. A recording of this program may be found online on the NPR website. Scientific fact and findings on this topic supporting the Landowners' supported position are easily found if some due diligence is performed, which the TCEQ obviously did not do nor does it seem to intend to do in sewer cases. Unfortunately, the judgment attempts to validate the claims made by McKinney and the TCEQ with no factual data support, not the factual claims supported by EPA documentation provided by the Landowners.

Texas law, 291.102 (c) , clearly states the CCN amendment could “only” be approved based on finding of necessity. The City of McKinney only filed want – no necessity was ever established.

The legislators for the State of Texas have created and issued legal requirements to protect the citizens of Texas and their quality of life, Texas private property, and the Texas environment. It is egregious that the agencies created to uphold those laws do not.

Respectfully submitted,



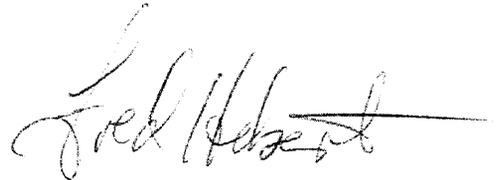
Cynthia Kaminsky
Counsel Pro Se for the Landowners
2782 Briar Trail
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(972) 898-3910



John Powell Sr.
1392 Old Mill Road
McKinney, Tx 75069



Robert Finch
2410 FM 546, McKinney
McKinney, Tx 75069



Fred Hebert
3104 Almeta Ln
McKinney, Tx 75069

CERTIFICATE OF SERVICE

I hereby certify, by my signature below, that a true and correct copy of the above and foregoing was forwarded via First Class Mail, email, or facsimile on April 6, 2009 to the following parties of record:

The Honorable Lilo Pomerleau
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701-1649
(512) 475-4993
(512) 475-4994 (Fax)

Blas Coy, Jr., Attorney
Scott Humphrey, Attorney
Texas Commission on Environmental Quality
P.O. Box 13087
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(512) 239-6377 (Fax)

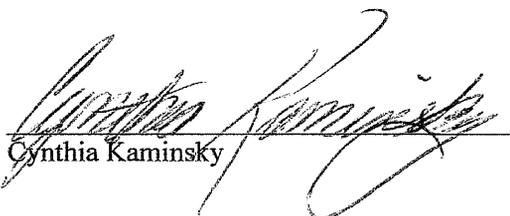
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Office of Public Interest Counsel

Executive Director of the TCEQ


Cynthia Kaminsky

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2009 APR - 8 PM 2: 47
CHIEF CLERKS OFFICE

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Despite \$5.1M gap, McKinney stays optimistic

Continued from Page 1B

meet expectations. If those trends continue, the city would face a \$5.1 million deficit by the fiscal year's end.

Council members say the budget was reasonable based on what they knew at the time and considering McKinney's ongoing growth.

"You do the best you can to forecast, and there's nothing wrong with coming back and making adjustments," council member GERALYN KEVER said.

Emergency spending cuts, including a hiring freeze, delays for some consultant work, and overtime and travel reductions, should close the gap, Ragan said. He does not anticipate laying off employees.

"We've got three-quarters of our year in front of us," he said. "This is not the time to panic."

But if conditions fail to improve or get worse, McKinney officials would face tough choices when drafting next year's budget.

For several years, McKinney has budgeted more expenses than revenues in its general fund and depended on excess reserve funds to cover the difference. This year it used \$7.2 million from its savings account to balance the budget, leaving a \$4.6 million cushion above the city's required reserve balance.

Assuming they add no new expenses next year, officials would still need to make up a multimillion-dollar gap

Budget woes loom

McKinney is looking to close an expected \$5.1 million gap in the current year's budget, and if conditions do not improve, the situation could get worse:

McKinney 2008-09 general fund at a glance

- Budgeted revenues: \$89.4 million
- Budgeted expenses: \$96.6 million
- Gap (covered by excess reserves): \$7.2 million
- Anticipated revenue shortfall: \$5.1 million
- Planned expense cuts: \$5.1 million
- Anticipated excess reserves at fiscal year's end: \$4.6 million

SOURCE: City of McKinney

Traditionally cities could count on their property tax base to grow and provide new revenue. But growth has slowed, even in burgeoning McKinney, and appraisers speculate that existing home values could fall this year.

Ragan refuses to speculate about future conditions. He wants to see another month's revenues before directing his staff on budget decisions for next year.

But he admits that fee increases and services cuts could be on the table if economic conditions worsen. He failed to mention a third budget-balancing option: a tax increase.

"This is manageable for us," he said. "We've got a lot more flexibility than you might imagine going forward."

Exhibit 1