

**SOAH DOCKET NO. 582-12-5103
TECQ DOCKET NO. 2011-1786-DIS**

PETITION FOR THE	§	BEFORE THE STATE
	§	
CREATION OF SOUTH	§	
	§	OFFICE OF
PORT ALTO MUNICIPAL	§	
	§	
UTILITY DISTRICT	§	ADMINISTRATIVE HEARINGS

SOUTH PORT ALTO MUNICIPAL UTILITY DISTRICT'S EXCEPTIONS

Comes Now South Port Alto Municipal Utility District (District) and respectfully files its exceptions to this Honorable Court's Proposal for Decision.

In general, District would except to the denial of its Petition on the grounds that it is incongruous for this Court to have found a Conclusion of Law stating that the Petition for the creation of the South Port Alto Municipal Utility District was sufficient, i.e. thereby in compliance with, the Texas Water Code and the Texas Administrative Code, and other Conclusions of Law that the creation of the District is not feasible, practicable, necessary or a benefit to all of the land in the District. Clearly Texas Administrative Code § 293.11 states:

Creation applications for TWC, Chapter 54, Municipal Utility Districts, shall contain items listed in subsection (a) of this section and the following:

complete justification for creation of the district supported by evidence that the project is feasible, practicable, necessary, and will benefit all of the land to be included in the district;(emphasis added)

Thus, to conclude on one point that the proposed District met all the requirements of Tex. Admin. Code § 293.11 and then to conclude the exact opposite is contradictory and not a sustainable position. District would respectfully contend that the conclusion that the District met the necessary requirements of Tex. Admin. Code § 293.11 prevents the denial of creation.

As to the specific points addressed by this Honorable Court in its Proposal for Decision, District would except as follows:

Project

The Court concludes that because comparable water service is available for Enchanted Harbor Utility and wastewater service is available to some extent from Sunilandings and otherwise from septic systems, thus making the District not necessary, ignores the evidence that the majority of the lots in the District are less than a half-acre in size. (See Exhibit 7, Response to Second Notice of Deficiencies introduced at Transcript Page 115.) It also ignores the fact that at present, Enchanted Harbor Utility is in violation of TCEQ regulations (See District's Response to Request for Production No. 1: G&W Engineers, Inc.'s letter dated February 11, 2011 to TCEQ) and has also entered in to a Letter of Intent to Sell (See District's Response to Second Notice of Deficiencies, Exhibit 17). Even if the water service was to continue under Enchanted Harbor, the majority of the lots still do not meet State requirements of at least a half-acre to install a septic system.

Tax Rates

This Court concludes that the tax rate is not feasible, but yet the only evidence in the record is that \$1.00 per \$100 makes the District feasible and that this rate could not by law be over \$1.00 per \$100, thus by the Commission's regulations the District's tax rate is feasible. (See pages 164-165 of Transcript) The only conflicting evidence as to the feasibility of this tax rate came from Participating Protestants who basically argued that they are on fixed incomes and an increased tax would diminish their home values and prevent resale, clearly these are not appropriate considerations for the creation of a district.

Is all land proposed to be included in the District benefited by its creation

While one could argue that the Participating Protestants would not benefit at the present by the creation of the District, there is no evidence that the Non-Participating Protestants would not. Respectfully, District would point out that this Court has entirely ignored the 140 signatures supporting the creation of the District. Of the 140 signatures, only 4 people withdrew their signatures. (See Exhibits ED-A and ED-B). Ms. Polcyn testified that statutorily a municipal utility district must be a benefit to the community as a whole rather than to a single land owner. (See Transcript pages 162-163). Since the Texas Water Code promotes regionalization of wastewater and water service, District contends that this Court inappropriately considered "all land" in the creation of the District. TWC § 26.081 et seq.

Regionalization

District would argue that if the majority of the lots in the District cannot support a septic system under prevailing regulations with or without a water supply, how could it not possibly be a benefit to the region to create the District. Again, District would direct this Court's attention to the testimony of Expert Witness Weaver. (See Transcript, Page 88 and Exhibit 7, Response to Second Notice of Deficiencies introduced at Transcript Page 115) Additionally, District would point out to the Court that of the 96 homes, presuming at least two adults in each home, 140 signed the petition for creation of the District.

For the foregoing reasons, District respectfully requests this Honorable Court to reconsider its Proposal for Decision and recommend the creation of the District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing document was served to all persons listed below by VIA E-MAIL, FACSIMILE OR U.S. MAIL, in accordance with the Texas Rules of Civil Procedure on January 28, 2013.



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