

SOAH DOCKET NO. 582-22-0259 – LEAD DOCKET
SOAH DOCKET NO. 582-22-0260
SOAH DOCKET NO. 582-0261
TCEQ DOCKET NOS. 2021-0571-DIS, 2021-0572-DIS AND 2021-0573-DIS

APPLICATIONS FOR THE CREATION	§	BEFORE THE STATE OFFICE
OF LAKEVIEW MUNICIPAL UTILITY	§	OF
DISTRICT NOS. 2, 1 AND 3 OF ELLIS	§	ADMINISTRATIVE HEARINGS
COUNTY	§	

APPLICANTS’ REPLY BRIEF

Applicants Brian Finch and Finch FP, Ltd. (“Applicants”) submit their reply brief to Protestants Exceptions to the Proposal for Decision (“PFD”), and in support of creation of Lakeview Municipal Utility Districts (“MUDs”) Nos. 1, 2, and 3 (the “Districts”) respectfully show as follows:

- I. **The Districts should be approved because Applicants’ construction cost estimates were reasonable at the time they were submitted, and Texas Commission on Environmental Quality (“TCEQ”) Executive Director (“ED”) supports the Districts’ creation.**

Under Texas Water Code section 54.021(a), the Commission *shall* grant a petition for the creation of a MUD if the Commission determines that the petition conforms to the requirements of Texas Water Code section 54.015 and the District is feasible, practicable, necessary and would be a benefit to the land to be included in the district. TEX. WATER CODE §§ 54.021(a), 54.015. Here, Applicants have met their burden in demonstrating that the petitions to create the Districts satisfy these requirements and, therefore, that they shall be approved.

Applicants strongly concur with the points raised by the ED in its Exceptions to the PFD. Specifically, the ED successfully argues that Applicants’ estimated wastewater treatment plant costs were reasonable at the time the petition was submitted and there is “no evidence in the record that the proposed construction costs contained in [the Applicant’s Preliminary Engineering Report] are unreasonable.” *See* ED’s Exceptions to the PFD at pp. 2-4. Applicants’

projected construction costs for the wastewater treatment plant are subject to change over time and Applicants are merely required to provide a *preliminary* estimate. *See id.* at pg. 4. In addition, a discrepancy between Applicants' estimated costs and the Protestants' estimated costs "does not render the applicant's construction costs unreasonable." *Id.* at pg. 2. The ED also properly notes that "the final costs for the wastewater treatment plant will be decided in another process altogether." *See id.* at pg. 3. As such, it is not a proper consideration on the merits of this matter.

Applicants further agree with the ED's concern that the PFD's recommendation in the alternative "appears to create a new factor for MUD creations that would require applicants to provide updated cost estimates throughout the creation process," and that the Districts should be approved regardless. *See id.* at pg. 4. Nevertheless, Applicants addressed the PFD's recommendation and provided additional information regarding the reasonableness of its estimated wastewater treatment plant costs. *See Applicants' Exceptions to PFD at III.* Accordingly, and even in the alternative as recommended by the PFD, the Districts should be approved.

II. Contrary to the Individual Protestants' Exceptions to the PFD, Applicant has shown that the Districts are feasible.

The Individual Protestants raised concerns regarding the Districts' feasibility in their Exceptions to the PFD, including with respect to the Districts' surrounding roadways - particularly FM 664. *See Individual Protestants' Exceptions to the PFD at pp. 3-4.* Specifically, the Individual Protestants complain that no evaluation was conducted relating to the capacity of nearby existing roads to handle traffic created by the Districts and further claim that "[t]he roads in their current state are woefully inadequate to handle additional traffic" and "[a]ccess to MUD No. 1 depends on an expanded FM 664 and an expanded Black Champ Road." *See id.* However, testimony at the hearing on the merits (the "Hearing") indicated that the capacity of nearby roads

was not evaluated because MUD creation matters merely require a *preliminary* engineering report. *See e.g.* Thompson Cross-Examination, Tr. Transcript (Dec. 7, 2022) at pp. 159-160. Moreover, the Individual Protestants do not point to any statutory or rule-based requirement that surrounding road traffic information be analyzed because no such requirement exists for MUD creation.

In any event, Hearing testimony revealed that the Texas Department of Transportation is in the process of acquiring land to widen FM 664. *See* Tryon Cross-Examination, Tr. Transcript (Dec. 6, 2022) at pp. 117-119. Rather than focusing on the feasibility of actually expanding surrounding roadways to accommodate increases in traffic, complaints raised at the Hearing instead focused on general dissatisfaction with the Districts' creation. *See id.* at pp. 119:5-17. The issues raised by Individual Protestants relating to feasibility of road access are wholly irrelevant to whether a Petition to create a MUD shall be approved by the TCEQ, and the record clearly shows that surrounding roadway can be expanded if needed.

III. Conclusion and Prayer

Pursuant to Texas Water Code Applicant has met its burden in establishing that the to the TCEQ *shall* allow creation of the Districts. *See* TEX. WATER CODE SECTION 54.016(d).

WHEREFORE, based on the above reasons, the Applicants requests that the creation of Lakeview MUD Nos. 1, 2 and 3 be approved.

Respectfully submitted,

COATS | ROSE

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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2023, a copy of the foregoing Pleading was served on all person listed either via hand delivery, facsimile transmission, electronic mail, and/or by deposit in the U.S. Mail.

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