

ACCEPTED
582-23-11658
3/28/2024 9:43:12 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
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FILED
582-23-11658
3/27/2024 5:04 PM
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SOAH DOCKET NO. 582-23-11658

TCEQ DOCKET NO. 2022-1157-DIS

APPLICATION BY GRBK EDGEWOOD,	§	
LLC FOR THE CREATION OF ELLIS	§	BEFORE THE STATE
RANCH MUNICIPAL UTILITY	§	
DISTRICT NO. 1	§	OFFICE OF
	§	ADMINISTRATIVE HEARINGS
	§	

**APPLICANT GRBK EDGEWOOD, LLC'S REPLY TO ELLIS COUNTY'S
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Applicant, GRBK Edgewood, LLC, submits its Reply to the Exceptions to the Proposal for Decision (PFD) filed by Protestant Ellis County in this case.

I. Protestant's attempt to impose improper burdens on Applicant should be rejected.

A. Reasonableness of projected water and sewer rates.

Protestant's exception to the ALJs analysis and recommendation that Applicant has met its burden on the issue of reasonableness of projected water and sewer rates because there are no comparable rates from other providers in the area is a feeble argument. Applicant is required to include its projected tax rate and water and wastewater rates in the Engineering Report. The District's projected debt service tax rate for water, wastewater and drainage facilities, and road improvements is \$0.9441 per \$100 of assessed value.¹ The Preliminary Engineering Report projects that customers within the District will have an average monthly water bill of \$75.50 based on a water use of 10,000 gallons per month and an average monthly wastewater bill of \$62.11 based on same usage.² Thus, Applicant has met the statutory requirements. Protestant's expert confirmed that the proposed rates are not at issue as "the tax rates are within the statutory

¹ GRBK Ex. 4 at GRBK 000560-64.

² GRBK Ex. 4 at GRBK000561.

limits.”³ Accordingly, Protestant’s requirement that the proposed district application should include a comparison to other local providers, which would be impossible to meet if there are no comparable water and wastewater services providers, should be rejected, as should its exceptions to proposed Findings of Fact Nos. 34 and 35 and Conclusion of Law No. 10.

B. Effect of District on natural run-off rates and drainage.

Protestant’s exception to the ALJs finding that Applicant has established that the District, its system, and the subsequent development within the District will not have an unreasonable effect on natural run-off rates and drainage again seeks to apply an improper standard of proof. Applicant has shown that the District’s drainage system will include street improvements based on existing natural grades which will be optimized to minimize excavation and maintain natural drainage patterns on the development.⁴ The Preliminary Engineering Report indicates that stormwater runoff will be conveyed into existing draws and creeks through overland flow and culvert connections with minimal excavation and disturbance to creek banks.⁵ And when necessary, stormwater runoff from the District will be collected into detention ponds before outfalling into Boyce Creek.⁶ The proposed District has allocated over \$16 million to address stormwater runoff issues and includes many stormwater controls to redirect stormwater, address runoff issues, soil erosion and storm drainage.⁷

The District also will maintain the small dam with an existing large pond on the southern portion of the district and add detention ponds with an outfall structure to slow down water runoff and maintain flows and elevations to not adversely impact downstream or upstream

³ *Lozano Pre-Filed Test.* at 7:10–11.

⁴ GRBK Ex. 4, *Engineering Report*, at 14; Bates GRBK000563.

⁵ GRBK Ex. 4, *Engineering Report*, at 7–8; Bates GRBK000556–57.

⁶ *Id.*

⁷ *Millsap Test.* Tr. at 51-52.

conditions.⁸ The District has the least amount of density and has the largest amount of grassy land areas for water absorption and stormwater control features of the three contiguous districts.⁹ Thus, Applicant has produced sufficient evidence to meet its burden of proof to show that the District will not have an unreasonable effect on natural run-off rates and drainage. Protestant, on the other hand, failed to introduce competent evidence to conclusively establish the District will have an unreasonable effect on natural run-off rates and drainage. Accordingly, Protestant's exception to the ALJs Proposed Findings of Fact Nos. 46 and 47 and Conclusion of Law No. 12 should be rejected.

C. District's effect on water quality

Protestant's exception to the ALJs analysis and recommendation that Applicant met its burden on whether the systems and subsequent development within the proposed District will not have an unreasonable effect on water quality is wrongheaded. Protestant argues that Applicant is required to show the proposed development will result in "the typical impacts from a residential development due to the particular water bodied located downstream" and that the TCEQ should evaluate the impact on water quality using some ill-defined standard when there are no water quality controls on a local level for the proposed development. With respect to the latter grounds, Protestant essentially argues that because it has not adopted any water quality regulations, no application for creation of a municipal utility district should be approved in any area within its county that is outside of a city's boundaries or ETJ. This is not the standard promulgated by the Texas Legislature or the Commission.

Applicant's Preliminary Engineering Report states that the following:

All construction within the District will include erosion control measures which comply with the Storm Water Pollution Prevention Plans (SWPPP) overseen by

⁸ *Millsap Test.* Tr. at 54-55.

⁹ GRBK Exhibit 4-C

TCEQ. Also, all wastewater will be collected and treated in a wastewater treatment facility that is permitted and approved by TCEQ, which should minimize the effects on surface water quality. Therefore, the proposed District should have minimal effect on water quality.¹⁰

In its Technical Memorandum, TCEQ approved Applicant's water quality review.¹¹ Applicant's engineering experts also testified that, because "treatment and disposal of wastewater from the MUDs will be done in accordance with the terms of a wastewater discharge permit being obtained from the TCEQ," no adverse effect on water quality is expected as a result of the development.¹² It is undisputed that Applicant sought and obtained a stringent wastewater discharge permit that requires treated water to be cleaner before discharged into the creeks than the bare minimum standard permitted.¹³

To require the TCEQ to review and apply the design criteria of local jurisdictions, or create regulations where none exist, is not practical and would shift the responsibility for such future approvals away from the appropriate parties. No one disputes that the District will be in compliance with all applicable regulations and ordinances if constructed as planned. Therefore, Protestant's exception to proposed Findings of Fact Nos. 49, 50 and 51 and Conclusion of Law 12, and its attempt to create a new standard for approving MUD applications, should be rejected.

II. Conclusion.

Protestant's exceptions and argument to deny the creation of the proposed District is in essence a request to change the standard for approval by heightening the burden of proof from reasonableness of tentative cost estimates and projected rates and an evaluation of effect of proposed district on water and the environment, to an evaluation of the reasonableness of the

¹⁰ GRBK Ex. 1 at GRBK000563.

¹¹ *Id.* at GRBK 000339; *see* ED-AP-1, *ED Pre-Filed Test.*, at 0011 ("I do not anticipate any adverse effects on water quality. The application at hand does not give the MUD the right to discharge treated wastewater; therefore, the Petitioner has to obtain a separate TPDES permit to do so.").

¹² GRBK Ex. 2, *Heroy Pre-Filed Test.*, at 14–15; GRBK Ex. 6, *Millsap Pre-Filed Test.*, at 14–15.

¹³ *Lozano Test. Tr.* at 85-86.

post-completion costs and effect of the district, rates and effect on water and the environment. Such a standard is not only well-beyond the legal requirements for approval of an application, but places an applicant in a dubious position. The post-completion evaluation of a proposed district sought by Ellis County by its very nature could only be adequately performed after the construction of all of the improvements of the district have been completed. At this stage, plans, cost estimates and projections are preliminary and Applicant will be subject to regulations from various governing bodies throughout the development process. The statute does not require an applicant to first build the development then seek to create a municipal utility district. Applicant has satisfied the statutory requirements for approval of its application and respectfully requests that its application for the creation of Ellis Ranch Municipal Utility District No. 1 be granted, and that it be awarded such other and further relief to which it may be entitled.

Respectfully submitted,

/s/ James G. Ruiz

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Status as of 3/28/2024 9:43 AM CST

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