

**SOAH DOCKET NO. 582-23-16963
TCEQ DOCKET NO. 2022-1653-DIS**

APPLICATION FOR THE	§	BEFORE THE STATE OFFICE
CREATION OF LAMPASAS	§	
COUNTY MUNICIPAL UTILITY	§	OF
DISTRICT NO. 1	§	
	§	ADMINISTRATIVE HEARINGS

**THE ASSOCIATION OF CONCERNED LANDOWNERS OF
LAMPASAS COUNTY’S EXCEPTIONS TO ALJ’S PROPOSAL FOR DECISION**

TO THE HONORABLE CHAIRMAN NIERMANN AND COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Protestant Association of Concerned Landowners of Lampasas County (“CLLC” or “Protestant”) files these Exceptions to the Proposal for Decision (“PFD”) in the above-referenced matter.

I. INTRODUCTION

CLLC supports the ALJ’s recommendation of denial of the Petition for all of the reasons articulated in the PFD and in the Proposed Order. Pitt Creek Ranch, LLC (“Petitioner”) failed to meet its burden of proof to demonstrate a need for the proposed municipal utility district in light of the lack of demand for the proposed development and the inconsistency of the development with local development trends. Furthermore, the ALJ properly found that Petitioner had failed to meet its burden of proof to demonstrate that the District would be feasible in light of realistic construction costs and available financing. Even so, CLLC excepts to the ALJ’s recommendation that CLLC be assessed 20% of the transcript costs associated with consideration of Petitioner’s deficient Petition.

II. PETITIONER FAILED TO DEMONSTRATE A NEED FOR THE MUNICIPAL UTILITY DISTRICT.

As acknowledged by the ALJ, CLLC presented the testimony of Mr. Richard Petree, who previously served as Chief Appraiser for Lampasas County, and whom also has extensive experience in land evaluations across the State of Texas. Mr. Petree explained that Petitioner's Market Study was significantly flawed in concluding that a demand existed for property within the MUD in western Lampasas County to be used as small-lot homes from which residents would commute significant distances to Austin, San Antonio, Dallas, and Abilene.¹ He explained that properties in the area generally sell as medium to large ranches used as second homes or retirement homes.² He further explained that other developments offered comparable properties closer to metropolitan areas, and potential buyers would not pay higher prices for property within the MUD that was a less convenient location than other available properties.³ The ALJ properly found this testimony more credible than Petitioner's market study, which found unreasonably high anticipated property values based upon an unreasonable conclusion of demand.

Particularly considering that the ALJ's conclusion as to need was premised upon the ALJ's judgment as to the relative credibility of the witnesses, the Commission should not disturb the ALJ's conclusion on this issue. The administrative law judge is in the best position to evaluate the credibility of the witnesses, given that the administrative law judge carefully examined and considered the testimony and evidence presented, while also evaluating the credibility of the witnesses during their live testimony. As the Austin Court of Appeals has noted, "[t]he resolution of adjudicative facts often requires making credibility determinations, which an ALJ is better suited to do than an agency or board reviewing a PFD." *Hyundai Motor America v. New World*

¹ Ex. CLLC 7, pp. 3-4.

² Ex. CLLC 7, p. 4.

³ Ex. CLLC 7, pp. 4-5.

Car Nissan, Inc., 581 S.W.3d 831, 838 (Tex. App. – Austin 2019). The judgment of the ALJ in comparing the relative credibility of the Petitioner’s market study, in comparison to Mr. Petree’s well-informed opinions, should not be disturbed.

A. Feasibility

i. Petitioner’s Unreasonable Projected Construction Costs

The ALJ properly found that the most accurate cost estimates available at the time of the Commission’s decision on an application should be considered, and the ALJ properly found that in light of the most accurate information available, the Petitioner failed to meet its burden of proof to show that the projected construction costs are reasonable. The ALJ properly found that Water Code Sections 54.014 and 54.015(2) “address the content of the petition, not the probative value of that information.” In order to ensure the financial stability of a MUD, as the MUD creation petition process is intended to ensure, it is important that the Commission’s decision be premised upon the best information available. By considering the most current information available relating to anticipated construction costs, the ALJ has done so.

Regarding the analysis and applicability of *Galilee Partners*, CLLC would add that while the Petitioner attempts to distinguish the current case from *Galilee Partners*, in both cases, construction of the MUDs as proposed is not reasonable. In *Galilee Partners*, a severe downturn in the housing market caused economic unfeasibility. Here, the significant increase in construction prices alone will render the MUD unfeasible as proposed.

ii. Petitioner’s Unreasonable Projected Tax Rates

The ALJ further properly concluded that Petitioner’s projected tax rates were not reasonable in light of the reasonably anticipated interest rates for municipal bonds.⁴

⁴ PFD, p. 15.

Petitioner's reliance upon unreasonably low anticipated interest rates, in addition to Petitioner's tremendous over-estimation of property values, results in a woefully deficient estimation of anticipated tax revenues.

B. Transcript Costs

CLLC excepts to the ALJ's recommendation that CLLC pay 20% of the transcript costs in this matter. As a small group of local landowners, CLLC has already borne the cost of engaging legal counsel with expertise in the field, as well as engaging experts on the issues raised by the Petition. CLLC has no opportunity to recover such costs incurred to demonstrate the deeply flawed nature of the Petition. Considering that all costs of the proceeding were necessitated by Petitioner's pursuit of a fatally flawed Petition, all transcript costs should be borne by Petitioner.

III. CONCLUSION

For all these reasons, CLLC respectfully requests that the Commission deny the Petition for the creation of Lampasas County Municipal Utility District because the Petitioner has not met its burden and has not demonstrated that its Petition meets the applicable statutory and regulatory requirements. CLLC further requests such other and further relief to which it may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 29, 2024, a true and correct copy of the foregoing document was filed with SOAH and the Chief Clerk of the TCEQ, and a copy was served to all persons listed below.

/s/ Eric Allmon
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