

**SOAH DOCKET NO. 582-23-26772
TCEQ DOCKET NO. 2023-0566-DIS**

APPLICATION FOR THE CREATION OF SHANKLE ROAD MUNICIPAL UTILITY DISTRICT OF ELLIS COUNTY	§ § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**CITIZENS AGAINST ELLIS COUNTY MUDS, INC.’S REPLY TO EXCEPTIONS TO
THE PROPOSAL FOR DECISION**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Protestant Citizens Against Ellis County MUDs, Inc. (“CAECM”) (herein, “Protestant”) files this Reply to Applicant Steve Selinger’s Exceptions and Executive Director’s Exceptions to the Proposal for Decision and urge the Commission to deny Steve Selinger’s (the “Applicant” or “Petitioner”) Petition for the Creation of Shankle Road Municipal Utility District of Ellis County (the “Petition”). For support, Protestant offers the following:

I. INTRODUCTION

Neither the Petitioner nor the ED raise any new or helpful arguments in their exceptions to the PFD regarding the reasonableness of projected construction costs that were not already raised either in their closing arguments or replies to closing arguments or that explain how the outcome under these new arguments would be different. As such, the Petitioner and the ED have presented no good, justifiable, legal reason for having the ALJs reexamine the same arguments already considered and addressed in the PFD.

II. REPLY TO THE EXCEPTIONS BY PETITIONER AND THE EXECUTIVE DIRECTOR

A. Reasonableness of Projected Construction Costs

As a threshold matter, Petitioner erroneously asserts that costs “are not an independent basis for denying MUD creation.”¹ However, if the Applicant’s Petition fails to satisfy *any* of the requirements under Tex. Water Code § 54.016(d), the Commission “shall” deny the Petition. The Commission recently denied a MUD petition in the *Lakeview MUDs* case described below on the *sole basis* that construction costs were unreasonable. Similarly, the ALJs in this case found that Petitioner has failed to demonstrate by preponderance of the evidence that the proposed construction costs were reasonable and recommended denial of the petition. This finding should not be disturbed.

The Applicant and ED also attempt to characterize the difference between the construction cost estimates provided by the Petitioner and Protestants as trivial “discrepancies.” In the Final Order for *Petitions for Creation of Lakeview Municipal Utility District Nos. 2, 1 and 3*, the Commission recently held that the discrepancy in construction costs for an element of the necessary infrastructure (in that case, the wastewater treatment plant) rendered the evidence insufficient to establish that the requested districts were feasible, practicable, necessary, and will benefit the land within the district.² The Commission found that “Applicant’s cost estimate for the wastewater treatment plant did not account for the higher capacity needed and higher construction costs,” and that

¹ App.’s Exceptions at 6.

² Final Order, *Petitions for Creation of Lakeview Municipal Utility District Nos. 2, 1, and 3*, TCEQ Docket Nos. 2021-0571-DIS, 2021-0572-DIS, and 2021-0573-DIS, at 4 (Finding of Fact 42), pp. 5 (Conclusion of Law 12).

“[i]nsufficient evidence was presented to establish that Applicant’s projected construction costs are reasonable.”³

As in the *Lakeview MUDs* case, the discrepancies between the construction cost estimates provided by Mr. Hendricks—who the ALJs found most credible—and the estimates provided by Mr. Farah are fatal to the Petition. While the Commission in *Lakeview MUDs* based its denial of the Petition solely on the discrepancy between the estimated costs of the *wastewater treatment plant*, Mr. Farah severely underestimated the costs of the *water distribution system, wastewater treatment plant, and storm drainage system*. When combined, Mr. Hendricks’ total construction estimates are *more than double* the estimates provided by Mr. Farah.⁴

In an attempt to frame Protestants’ construction cost estimates as a mere difference of opinion, both the Applicant and ED cite the Final Order in the *Petition for Creation of Ellis Ranch Municipal Utility District No. 1*.⁵ In *Ellis Ranch MUD*, the Commission held that the “determination that the estimated costs are similar to other districts’ costs in the area can serve as one way to establish reasonableness at the time the application is filed.”⁶ The Commission further held that “[e]vidence in the record established that the projected costs are based on estimated construction costs in the area and the estimated costs for the

³ *Id.*

⁴ See PFD at 46, FN 168 (Subtracting \$3,676,374.36 (Mr. Farah’s total estimated cost of a water distribution system) from \$11,766,376.00 (Mr. Hendricks’s estimate) = \$8,090,001.64), FN 169 (Subtracting \$1.25 million (Mr. Farah’s estimated cost for a wastewater treatment plant) from \$7.2 million (Mr. Hendricks’s estimate) = \$5.95 million), FN 170 (Subtracting \$6,104,297.20 (Mr. Farah’s estimate for a storm drainage system) from \$8,260,000 (Mr. Hendrick’s estimate) = \$2,155,702.80).

⁵ Final Order, *Petition for Creation of Ellis Ranch Municipal Utility District No. 1*, TCEQ Docket No. 2022 1157-DIS (hereinafter Final Order, *Ellis Ranch MUD*).

⁶ *Id.* at 8 (Explanation of Law 1).

wastewater treatment facility were determined by working directly with the contractor to confirm pricing.”⁷ The present case is distinguishable for several reasons.

Petitioner incorrectly states in his Exceptions that “[t]he Commission standard requires consideration of estimates that are similar to other districts costs.”⁸ As an initial matter, Commission rules require cost estimates demonstrating that project is feasible and practicable. TCEQ rules make no mention of whether costs are similar to that of other districts. Furthermore, *such evidence does not exist in the record for this case*. In fact, the ALJs correctly found that “there is no indication that Applicant or Mr. Farah has solicited bids, consulted with engineers, spoken with other developers, researched other developments, or otherwise undertaken any effort to make grounded cost predictions,” and “[f]rom this record, it appears that Mr. Farah pulled his cost estimates out of thin air.”⁹

Petitioners claim that the ALJs’ finding is inaccurate, but the evidentiary record contains no evidence to support that contention. Mr. Farah himself characterized his estimates of the proposed construction costs of the District’s water supply plan as “imaginary numbers.”¹⁰ Furthermore, a technical reviewer for the ED “relies on the engineer’s representations” and is not required to conduct an independent review, as acknowledged by the ED in its Exceptions.¹¹ ED reviewer James Walker relied on “imaginary numbers” in his own review of this Petition.

⁷ *Id.*

⁸ App.’s Exceptions to the PFD at 2.

⁹ PFD at 44-45.

¹⁰ HOM Tr. at 84:17.

¹¹ ED’s Exceptions at 7.

The present case can also be differentiated from *Ellis Ranch MUD* because Mr. Hendricks has extensive experience estimating construction costs of residential developments in Ellis County.¹² In *Ellis Ranch MUD*, “Protestant’s witness acknowledged that he has never done any work in Ellis County and is not familiar with what contractors charge in Ellis County, and he did not analyze the costs of other MUDs situated in Ellis County or close to where the District will be located.”¹³ In stark contrast, Protestants in the present case relied on robust, site-specific evidence from Mr. Hendricks.

Furthermore, the Petitioner continues to deflect the construction cost issue by repeating his argument that the project’s revenue is expected to exceed costs. The ALJs addressed this issue in the PFD, finding that the reasonableness of cost estimates is a statutorily required, separate issue apart from the question of whether the proposed tax rate will support the development.¹⁴

Therefore, the ALJs accurately found that the Petitioner failed to meet his burden to show that construction costs for Shankle Road MUD are reasonable. This finding should not be disturbed.

III. REVISIONS TO THE PROPOSED ORDER

For all these reasons stated above, Protestant opposes all proposed findings, proposed conclusions, and other revisions to the proposed order offered by the Petitioner as either unnecessary or erroneous. The ED does not provide specific proposed revisions

¹² Ellis Co. Ex. No. 4 at 7:1-9.

¹³ Final Order, *Ellis Ranch MUD* at 8-9 (Explanation of Changes 1).

¹⁴ PFD at 47.

but instead generally recommends that the Commission grant the Petition, and Protestant responded to the ED's arguments in the above analysis.

IV. CONCLUSION

For all these reasons, Protestant respectfully requests that the Commission deny the Petition because the Petitioner has not met his burden and has not demonstrated that his Petition meets the applicable statutory and regulatory requirements. Protestant further requests such other and further relief to which it may be justly entitled.

Respectfully submitted,

/s/ Eric Allmon

Eric Allmon

State Bar No. 24031819

eallmon@txenvirolaw.com

Lauren Alexander

State Bar No. 24138403

laalexander@txenvirolaw.com

PERALES, ALLMON & ICE, P.C.

1206 San Antonio St.

Austin, Texas 78701

(512) 469-6000 (t) | (512) 482-9346 (f)

Counsel for CAECM

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing document has been served via electronic service to the parties of record below, on October 4, 2024.

/s/ Eric Allmon

Eric Allmon

For the Applicant:

Natalie B. Scott
Kevin R. Bartz
Coats | Rose, P.C. Austin
2700 Via Fortuna, Ste. 350
Austin, Texas 78746
nscott@coatsrose.com
kbartz@coatsrose.com

Tim Green
Mindy Koehne
Coats | Rose, P.C. Dallas
16000 North Dallas Parkway, Ste. 350
Dallas, Texas 75248
tgreen@coatsrose.com
mkoehne@coatsrose.com

For Ellis County:

Emily Rogers
Stefanie Albright
Joshua Katz
Bickerstaff Heath Delgado Acosta LLP
Two Barton Skyway
1601 S. Mopac Expy., Suite C400
Austin, Texas 78746
(512) 472-5021 (t)
(512) 320-5638 (f)
erogers@bickerstaff.com
salbright@bickerstaff.com
jkatz@bickerstaff.com

For the Executive Director:

Kayla Murray
Fernando Salazar Martinez
TCEQ Environmental Law Division
P.O. Box 13087, MC-173
Austin, Texas 78711-3087
(512) 239-4761 (Murray)
(512) 239-6635 (Martinez)
kayla.murray@tceq.texas.gov
fernando.martinez@tceq.texas.gov

For the Office of Public Interest Counsel:

Jennifer Jamison
TCEQ Office of Public Interest Counsel
P.O. Box 13087, MC-103
Austin, Texas 78711-3087
(512) 239-3974 (t)
(512) 239-6377 (f)
jennifer.jamison@tceq.texas.gov