

TCEQ DOCKET NO. NO. 2023-0575-DIS

APPLICATION FOR WILLIAMSON COUNTY MUNICIPAL UTILITY DISTRICT NO. 38	§ § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to the Hearing Request (Response) on the Petition by Vale Building Group LLC, a Texas limited liability company (Petitioner) for the creation of Williamson County Municipal Utility District No. 38. (District). The Office of the Chief Clerk received a hearing request from Alice Grace Liese Bulgerin, Dr. TJ Bulgerin, and Elaine Liese Sotello.

Attached for Commission consideration are the following:

Attachment A—Executive Director’s Satellite Map.

The Executive Director recommends that the Commission Deny the hearing requests for Alice Grace Liese Bulgerin and Dr. TJ Bulgerin and grant the hearing request for Elaine Liese Sotello.

I. DESCRIPTION OF DISTRICT

Vale Building Group LLC filed a petition for creation of Williamson County Municipal Utility District No. 38, The petition states that the Petitioner holds title to a majority in value of the land in the proposed District; there is one lienholder, BancorpSouth Bank, a Mississippi State Chartered Bank, on the property to be included in the proposed District and the aforementioned entity has consented to the petition; the proposed District will contain approximately 145.17 acres located within Williamson County, Texas; and none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city.

The petition further states that the general nature of the work proposed to be done by the District, as contemplated at the present time, is the design, construction, acquisition, improvement, extension, financing, and issuance of bonds: (i) for maintenance, operation, and conveyance of an adequate and efficient water works and sanitary sewer system for domestic and commercial purposes; (ii) for maintenance, operation, and conveyance of works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate, and amend local stormwaters or other harmful excesses of waters; (iii) for maintenance, operation, and conveyance of park and recreational facilities; (iv) for conveyance of roads and improvements in aid of roads; and (v) for maintenance, operation, and conveyance of such additional facilities, systems, plants, and enterprises as may be consistent with any or all of the purposes for which the District is created and permitted under state law.

In accordance with Local Government Code § 42.042 and Texas Water Code § 54.016, the Petitioner submitted a petition to the City, requesting the City’s consent to the creation of the District. After more than 90 days passed without receiving

consent, the Petitioner submitted a petition to the City to provide water and sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by the Texas Water Code § 54.016(c) expired, and information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to proceed to the TCEQ for inclusion of their Property into the District.

II. PROCEDURAL HISTORY

The TCEQ received the petition on May 31, 2022. The Application was declared administratively complete on June 2, 2022.

Proper notice of the application was published on September 14 and 21, 2022, in the *Williamson County Sun*, a newspaper regularly published or circulated in Williamson County, the county in which the district is proposed to be located. Proper notice of the application was also posted on September 15, 2022 at the Williamson County Courthouse, the place where legal notices in Williamson County are posted. The 30-day comment period ended October 21, 2022. Accordingly, the notice requirements of 30 TAC Section 293.12(b) have been satisfied.

The TCEQ received three hearing requests on this application from Alice Grace Liese Bulgerin, Dr. TJ Bulgerin, and Elaine Liese Sotello.

In accordance with Local Government Code § 42.042 and Texas Water Code § 54.016, the Petitioner submitted a petition for consent the City of Mansfield. After 90 days passed without receiving consent, the Petitioner submitted a petition to the City to provide water or sewer services to the District. The 120-day period for reaching a mutually agreeable contract as established by Texas Water Code § 54.016(c) expired without a contract for service being agreed to. Pursuant to Texas Water Code § 54.016(d), failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the land within the district.

III. CREATION OF MUNICIPAL UTILITY DISTRICTS

A municipal utility district (MUD) may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution. TEX. WATER CODE § 54.001. The District in this case is proposed to be created and organized according to the terms and provisions of Article XVI, Section 59, of the Texas Constitution, and Chapters 49 and 54 of the Texas Water Code.

A MUD may be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;

- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and
- (8) the preservation of all natural resources of the state. § 54.012. the commission has jurisdiction to hear this case and create the district.¹

The Commission must grant or deny a MUD creation application in accordance with Section 54.021 of the Texas Water Code. In order to grant an application, the Commission must find that organization of the district as requested is feasible and practicable and is necessary and would be a benefit to the land to be included in the district.² If the commission fails to make these findings, it shall refuse to grant the petition.³

In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider:

- (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
- (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
- (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;
 - (F) water quality; and
 - (G) total tax assessments on all land located within a district.⁴

The Commission, however, must exclude the areas that it finds would not be benefited by the creation of the district and must redefine the boundaries of the proposed district according to its findings.⁵

IV. THE EVALUATION PROCESS FOR HEARING REQUESTS

As the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Title 30, Chapter 55, Subchapter G, Sections 55.250-55.256 of the Texas Administrative Code. The Commission, the Executive Director, the applicant, or affected persons may request a contested case hearing on this application.⁶ The Commission must evaluate the hearing requests and may take on of the following actions:

¹ Tex. Water Code § 54.014.

² Tex. Water Code § 54.021(a); 30 Tex. Admin. Code § 293.13(b)(1).

³ Tex. Water Code § 54.021(d); 30 Tex. Admin. Code § 293.13(a).

⁴ Tex. Water Code § 54.021(b).

⁵ 30 Tex. Admin. Code § 293.13(b)(2); Tex. Water Code § 54.021(c).

⁶ 30 Tex. Admin. Code § 55.251(a).

- (1) determine that the hearing requests do not meet the rule requirements and act on the application;
- (2) determine that the hearing requests do not meet the rule requirements and refer the application to a public meeting to develop public comment before acting on the application;
- (3) determine that the hearing requests meet the rule requirements and refer the application to the State Office of Administrative Hearings (“SOAH”) for a hearing; or
- (4) refer the hearing request to SOAH for a hearing on whether the hearing requests meet the rule requirements.⁷

The regulations provide that a hearing request made by an affected person must be in writing and must be filed with the Office of the Chief Clerk within the time provided in the Notice of District Petition.⁸ These two requirements are mandatory. The affected person’s hearing request must also substantially comply with the following:

- (1) give the name, address, and daytime telephone number of the person who files the request.
- (2) identify the person’s personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor’s location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- (3) request a contested case hearing; and
- (4) provide any other information specified in the public notice of application.⁹

An affected person’s personal justiciable interest must be related to a legal right, duty, privilege, power, or economic interest affected by the application belonging to the requestor and not an interest common to members of the general public.¹⁰ The regulations give the Commission flexibility to determine affected person status by considering any relevant factor, including the following:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.¹¹

⁷ 30 Tex. Admin. Code § 55.255(a).

⁸ 30 Tex. Admin. Code § 55.251(b) and (d).

⁹ 30 Tex. Admin. Code § 55.251(c).

¹⁰ 30 Tex. Admin. Code § 55.256(a).

¹¹ 30 Tex. Admin. Code § 55.256(c).

Government entities, including local governments, may be affected persons if they have authority under state law over issues contemplated by the application.¹²

V. THE HEARING REQUESTS

A. Analysis of Alice Grace Liese Bulgerin’s Hearing Request.

1. Whether Ms. Bulgerin Complied with 30 TEX. ADMIN. CODE § 55.251(c)

Ms. Bulgerin submitted a timely request which contained her name, address, and phone number pursuant to 30 TAC § 55.251(c)(1). According to the address she provided, her property is located 0.05 miles from the boundary of the proposed District. She requested a contested case hearing on the MUD creation pursuant to 30 TAC § 55.251(c)(3), and they also provided the internal control number as required in the notice and pursuant to 30 TAC § 55.251(c)(4).

2. Whether Ms. Bulgerin is an Affected Person

In her request, Ms. Bulgerin provided comments stating her concerns about what she described as “the proposed waste water project.” Her concerns focused on pollutants, environmental hazards, and a specific emphasis on wastewater treatment plants. The only justiciable interest she raised was potential contamination of her property. However, her hearing request is largely focused on impacts from a discharge permit rather than the activities of the district. According to the information included in the creation petition for this district, the applicant intends to construct onsite sewage facilities instead of constructing a wastewater treatment plant. Under TCEQ’s rules, Ms. Bulgerin was required to identify justiciable interests that could be affected by the district that are protected by the law under which the application will be considered . Her request does not identify with any specificity how she could be affected except from a discharge permit which is not being pursued by the applicant.

Therefore, the Executive Director recommends that the Commission find that Ms. Bulgerin is not an affected person pursuant to 30 TAC § 55.256 as well as deny her hearing request.

B. Analysis Dr. TJ Bulgerin’s Hearing Request.

1. Whether Dr. Bulgerin Complied with 30 TEX. ADMIN. CODE § 55.251(c)

Dr. Bulgerin submitted a timely request which contained his name, address, and phone number pursuant to 30 TAC § 55.251(c)(1). According to the address he provided, his property is located 0.05 miles from the boundary of the proposed District. He requested a contested case hearing on the MUD creation pursuant to 30 TAC § 55.251(c)(3), and he also provided the internal control number as required in the notice and pursuant to 30 TAC § 55.251(c)(4).

2. Whether Ms. Bulgerin is an Affected Person

In his request, Dr. Bulgerin stated that he requested a hearing due to the negative impacts that he believes result from a wastewater treatment plant. These

¹² 30 Tex. Admin. Code § 55.256(b).

include unpleasant smells, decreasing water tables, unpleasant aesthetics, and decreased property values. However, Dr. Bulgerin failed to articulate how he would uniquely be affected from the district's creation. Based on the language of his request, his concerns are directly related to a waste treatment plant instead of the district. These are not interests protected by the law under which the application will be considered. As noted above, the creation petition states that the district does not intend to pursue a wastewater discharge permit.

Therefore, the Executive Director should recommend that the Commission find that Dr. Bulgerin is not an affected person pursuant to 30 TAC § 55.256 as well as deny his hearing request.

C. Analysis Elaine Liese Sotello's Hearing Request.

1. Whether Ms. Sotello Complied with 30 TEX. ADMIN. CODE § 55.251(c)

Ms. Sotello submitted a timely request which contained her name, address, and phone number pursuant to 30 TAC § 55.251(c)(1). According to the address she provided, her property is located 0.08 miles from the boundary of the proposed District. She requested a contested case hearing on the MUD creation pursuant to 30 TAC § 55.251(c)(3), and they also provided the internal control number as required in the notice and pursuant to 30 TAC § 55.251(c)(4).

2. Whether Ms. Sotello is an Affected Person

In her hearing request, Ms. Sotello outlined her concerns about what she has described as a wastewater management project. These include impacts to the environment, wildlife, livestock, and traffic. These issues are outside the scope of the TCEQ's review process as outlined in TWC § 54.021. However, Ms. Sotello did describe concerns she had over the impacts to the water table as she uses well water. Under TWC § 54.021(b)(3)(D), the commission is required to review the creation of the district and consider whether there will be an unreasonable impact on recharge capability of a groundwater source.

Therefore, because Ms. Sotello has described a justiciable interest in which she is uniquely affected while also raising an issue that is both material and relevant to a district creation, and is protected by the law under which the application will be considered, the Executive Director recommends that the Commission find that Ms. Sotello is an affected person pursuant to 30 TAC § 55.256 and grant her hearing request.

VI. RECOMMENDATION

The Executive Director recommends that the Commission grant the hearing requests Ms. Sotello while denying the requests for Ms. Bulgerin and Dr. Bulgerin.

If the Commission chooses to deny the hearing requests, then the Executive Director recommends that the creation petition be granted.

Respectfully submitted,

Texas Commission on Environmental Quality

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CERTIFICATE OF SERVICE

I certify that on October 2, 2023, the “Executive Director’s Response to Hearing Requests” for the was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Harrison Cole Malley Staff Attorney
Environmental Law Division

MAILING LIST
Williamson County Municipal Utility District No. 38
Docket No. 2023-0575-DIS; Internal Control No. D-05312022-043

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Attachment A

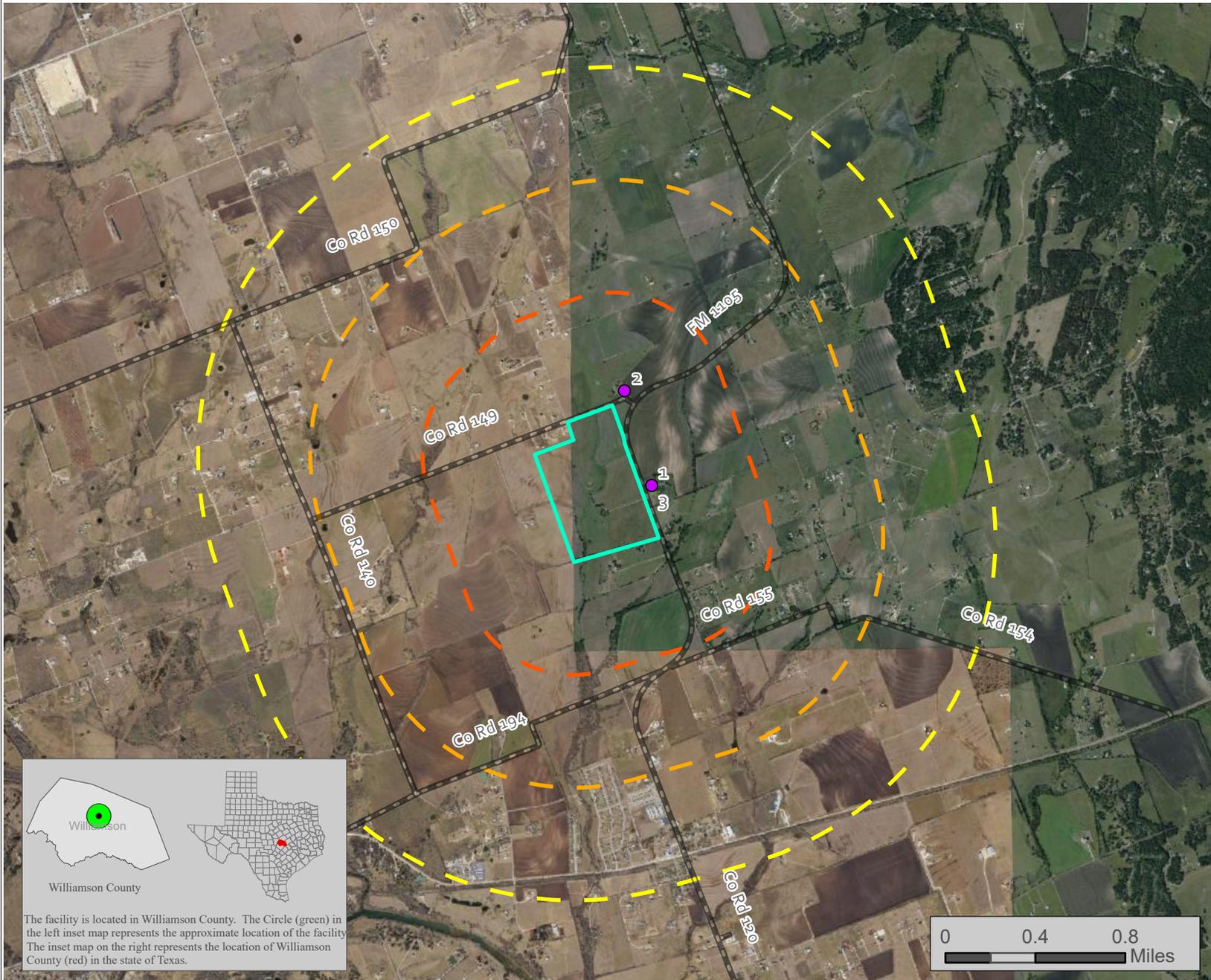
The Creation of Williamson County Municipal Utility District. No. 38

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



Protecting Texas by
Reducing and
Preventing Pollution

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 9/14/2023
CRF 0094466
Cartographer: jbartlin



- Requestors
- ▭ MUD Boundary
- - - 0.5 Mile Radius
- - - 1.0 Mile Radius
- - - 1.5 Mile Radius

The distance from the MUD boundary to TJ Bulgerin (1) and Alice Grace Liese Bulgerin (3) is 0.05 miles.

The distance from the MUD boundary to Elaine Liese Sotello (2) is 0.08 miles.



The facility is located in Williamson County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Williamson County (red) in the state of Texas.



Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.