

TCEQ DOCKET NO. 2023-1666-DIS

APPLICATION FOR THE	§	BEFORE THE TEXAS
CREATION OF THEON RANCHES	§	
MUNICIPAL UTILITY DISTRICT	§	COMMISSION ON
NO. 3 IN WILLIAMSON COUNTY,	§	
TEXAS	§	ENVIRONMENTAL QUALITY

APPLICANT’S RESPONSE TO HEARING REQUESTS

Theon Ranches, LP, Daniel Voss and Kathryn Voss (collectively, “Applicant”) respectfully submits this Response to Hearing Request in the above-referenced matter.

I. APPLICABLE LAW

A municipal utility district (“MUD” or “district”) may be created under and subject to the authority, of Article XVI, Section 59, of the Texas Constitution and Chapters 49 and 54 of the Texas Water Code, and the Commission’s administrative authority. A district 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.

TEX. WATER CODE § 54.012.

To create a MUD, a petition requesting creation shall be filed with the Commission. See TEX. WATER CODE § 54.014. The petition shall be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district. See *id.* The petition shall: (1) describe the boundaries of the proposed district by metes and bounds or by lot and block number; (2) state the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition; and (3) include a name of the district which shall be generally descriptive of the locale of the district. See TEX. WATER CODE § 54.015, 30 TEX. ADMIN. CODE § 293.11(a) and (d).

The Commission shall grant the petition if it conforms to the requirements of section 54.015 and the project is feasible, practicable, necessary, and further, would be a benefit to the land to be included in the district. TEX. WATER CODE § 54.021(a). In determining if the project is feasible, practicable, necessary, and beneficial 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.

TEX. WATER CODE § 54.021(b).

Finally, relevant to this case, the Commission may not refer a matter for a hearing if the issues involve only pure legal questions. 30 TEX. ADMIN. CODE § 50.115(c).

II. THE HEARING REQUEST DOES NOT IDENTIFY ANY RELEVANT AND MATERIAL ISSUE

The Commission is prohibited from referring any of the issues raised by County because the County failed to identify any relevant and material issue to be referred. 30 TEX. ADMIN. CODE § 50.115(c)(3).

A. The County Seeks to Have the Commission Become the Legislature.

The County asserts in its letter that “all MUDs created within the County should have the same or similar provisions regardless of whether it is created by the Legislature or created by the TCEQ.” County Hearing Request at 4. The County continues to assert that “the provisions required in either the legislation or Consent and Development Agreements should also be included in a TCEQ created MUD, thus allowing all County residents, especially those living in MUDs, to be treated fairly and equally.” *Id.* at 4-5. The County is therefore, asking TCEQ to administratively impose requirements that have either been mandated by the legislature for legislatively created MUDs or willingly agreed to by MUDs once they have been created. In point of fact, these requirements have not even been uniformly imposed by the legislature; the legislature created at least two districts within Williamson County in the 88th regular session that were not party to the template agreement the County seeks to impose- Williamson and Bell Counties MUD #1 (HB 5279), and Liberty Hill MUD (HB 5357).

The County’s recourse in this regard is to the legislature, not the Commission’s creation process. The County’s desire to have the Commission impose legislative requirements that do not

apply to administratively created MUDs is not within the Commission's jurisdiction and does not form a valid basis for a hearing request. 30 TEX. ADMIN. CODE § 50.115(c)(3).

With respect to Consent and Development Agreements, these are within the purview of the County, not the Commission. The County seeks to have the Commission force MUD's to enter into Consent and Development Agreements, and further seeks to have the Commission dictate the terms of such Agreements. This is not within the Commission's jurisdiction and does not form a valid basis for a hearing request. 30 TEX. ADMIN. CODE § 50.115(c)(3).

B. The Specific Items the County Seeks to be Reviewed are Outside the Commission's Jurisdiction.

In its hearing Request, the County seeks to have the Commission impose standard terms from its Consent and Development Agreements as a condition of creation of MUDs¹. Specifically, the County seeks for the Commission to impose requirements relating to: (1) roads, (2) law enforcement, (3) fire and EMS services, and (4) animal control services. The County, in other words, seeks to have the Commission obligate MUDs to perform and/or directly fund the County's statutory functions.

None of these four matters are relevant to whether the application conforms to the requirements of section 54.015, or whether the project is feasible, practicable, or necessary under section 54.021(b). None of the issues raised by the County question whether the MUD would be a benefit to the land to be included in the district. Therefore, the Commission must grant the petition pursuant to TEX. WATER CODE § 54.021(a).

The County does complain that creation of the MUD may impose higher taxes outside of the MUD boundaries. This, however, is not an issue within the jurisdiction of the Commission.

¹ County consent to creation of a municipal utility district is not required by applicable law, yet the County purports to enter into "consent agreements."

TEX. WATER CODE § 54.021(b)(3)(G) does require the Commission to consider whether, as part of the feasibility question, the MUD will have an unreasonable effect on “(G) the total tax assessments on all land located within a district.” (emphasis added). The County’s concern, however, is not whether the creation of the MUD will have an adverse effect on land within the District, but on land outside of the District. The concerns raised, therefore, are not within the Commission’s jurisdiction.

Additionally, the County’s proposed imposition of the County’s statutory functions onto a MUD would *increase* taxes and costs on lands within a district. The question before the Commission is not what should or should not be passed along to the taxpayers, but rather whether the tax assessments imposed by the District would be unreasonable. The question is not whether the District should assume more obligations and impose more taxes. In other words, the Commission is charged with assuring feasibility or unreasonable effect by looking at what taxes are proposed by the District, not what taxes the County seeks to have added to the District or what effect the District might have on taxes outside of the District. The County’s desire to have TCEQ interfere in these matters are outside of the Commission’s jurisdiction.

Moreover, the specific mechanisms sought by the County would serve to tax property owners within the proposed district with no mechanism for ensuring that said property owners receive any improved level of service in return for their additional tax obligations. As an example, the County proposes for the MUD and the Commissioner’s court to enter into an agreement relating to the Sheriff’s Office provision of additional law enforcement services. Several problems are immediately apparent with this arrangement. First, the Williamson County Sheriff is an elected official over whom the Commissioner’s Court holds no authority, so there would be no assurance that the District would receive any service in return for the higher level of taxation within the

District. Second, and more importantly, the County seeks to obligate the District to enter into a single-source, no-bid contract for law enforcement services as a condition of the District's creation, which would have a clear and certain deleterious impact on the level of taxation within the District. This same analysis applies to each and every matter that the County raises in its Hearing Request.

III. THE HEARING REQUEST RAISES ONLY QUESTIONS OF LAW

The Commission may not refer a matter for a hearing if the issues involve only pure legal questions. 30 TEX. ADMIN. CODE § 50.115(c). The County, however, raises only pure legal questions.

The County's Hearing Request generally states that in response to legislation that limits the authority of counties to increase county ad valorem property taxes,² the County seeks to transfer costs for the following county services in new developments to municipal utility districts: (i) road maintenance; (ii) law enforcement; (iii) fire and EMS services; and (iv) animal control services. The County also seeks to obligate landowners in municipal utility districts to dedicate right of way to the County, without compensation, for County road improvements included in the County's long range transportation plan. Similarly, the County proposes to obligate landowners to dedicate, without compensation, land for fire and EMS sites. Finally, the correspondence provides that "the County no longer accepts roads from newly created MUDs into the County's maintenance system without a corresponding obligation of the MUD to maintain the road after a specified time period."

Whether the County has the authority to shift these burdens as set forth in the Hearing Request are pure questions of law to be resolved by an Attorney General Opinion or in a civil

² The City's rationale fails to reference that similar tax rate restrictions apply to municipal utility districts, and the tax burden of new municipal utility districts typically far exceeds the county's tax burden even without these additional obligations. Further, the County still proposes to levy and collect its ad valorem tax on the lands.

court. The Commission is prohibited from litigating these purely legal questions through its hearing process. 30 TEX. ADMIN. CODE § 50.115(c). The Hearing Request, therefore, should be denied.

IV. CONCLUSION

Ultimately the County seeks to have the Commission transfer the responsibilities of the County to MUDs and require landowners in MUDs to dedicate lands to the County. That is not the Commission's job, nor is it within the jurisdiction of the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following parties as shown below on this 4th day of March 2024 as follows:

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