

TCEQ DOCKET NO. 2024-0669-DIS

PETITION FOR THE CREATION OF WILLIAMSON COUNTY MUNICIPAL UTILITY DISTRICT NO. 48	§ § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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CORRECTED DEVELOPER’S RESPONSE TO HEARING REQUESTS

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Developer, Houston-Taylor Capital Investment, LLC, file this corrected response to the hearing request submitted by Williamson County in the above-captioned matter. For the reasons set forth below, Williamson County is not an “affected person” and the County’s hearing request should be denied.

I. Introduction and Procedural History

The proposed Williamson County Municipal Utility District No. 48 (the “District”), if approved for creation, will be developed by Houston-Taylor Capital Investment, LLC (“Developer”). The District contains 506.558 acres located in Williamson County (the “County”). The proposed District is located outside the corporate boundaries and extraterritorial jurisdiction of any municipality.

Applicants filed their petition for creation of the District on August 18, 2023. The petition was deemed administratively complete on August 23, 2023. Applicants published the Notice of District Petition in the *Austin Chronicle* on November 10 and 17, 2023, a newspaper generally circulated in the County. On October 31, 2024, notice of the Petition was posted at the County Courthouse. Subsequently, the Texas Commission on Environmental Quality (“TCEQ” or the “Commission”) received the County’s request for a contested case hearing. However, as more fully set forth below, a contested case hearing is not warranted in this matter because the County is not and “affected person.”

II. Argument and Authority

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, Chapters 49 and 54 of the Texas Water Code, and Commission rules. 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 id.* § 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 id.* § 54.015; 30 TEX. ADMIN. CODE § 293.11(a) and (d).

If all of the district is proposed to be located outside the corporate limits of a municipality, the commissioners court of the county in which the district is to be located may

review the petition and other evidence and information relating to the proposed district that the commissioners consider necessary. *See* TEX. WATER CODE § 54.0161(a). If the commissioners court votes to make a recommendation to the Commission, the commissioners court shall submit to the Commission at least ten (10) days before the date set for the hearing on the petition a written opinion stating whether or not the county would recommend the creation of the proposed district and stating any findings, conclusions, and other information that the commissioners court thinks would assist the Commission in making a final determination on the petition. *See id.* § 54.0161(b). The Commission shall consider the written opinion submitted by the county commissioners. *See id.* § 54.0161(c).

The Commission shall grant the petition to create a district if it conforms to the requirements of Texas Water Code § 54.015 and the project is feasible, practicable, necessary, and would be a benefit to the land to be included in the district. *See id.* § 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.

Id. § 54.021(b).

The applicant must publish notice of the petition to create a district once a week for two consecutive weeks in a newspaper regularly published or circulated in the county where the district is proposed to be located not later than the 30th day before the date of the Commission's decision on the application. *See id.* §§ 49.011(b); 54.018. Additionally, the applicant must post notice of the petition on the bulletin board used for posting legal notices in each county in which all or part of the proposed district is to be located. *See* 30 TEX. ADMIN. CODE § 293.12(b)(2). The Commission shall hold a public hearing if requested by the Commission, Executive Director, or an "affected person" under the factors in 30 Texas Administrative Code, Chapter 55 and Texas Water Code § 49.011(c).

A hearing requestor must make the request in writing within the time period specified in the notice and identify the requestor's personal justiciable interest affected by the application, specifically explaining 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." 30 TEX. ADMIN. CODE § 55.251(b)-(d).

An affected person is "one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest." *Id.* § 55.256(a). In addition, governmental entities with authority under state law over issues contemplated by the application *may* be considered affected persons. *See id.* § 55.256(b) (emphasis added).

The Commission shall grant a request for a contested case hearing if: (1) the request is made by the applicant or the ED; or (2) the request is made by an affected person, complies with

the requirements of 30 Texas Administrative Code § 55.251, is timely filed with the chief clerk, and is made pursuant to a right to hearing authorized by law. *See id.* § 55.255(b).

On December 6, 2023, the County requested a contested case hearing on its bare assertion that it is an affected person. The County must prove its status as an “affected person” to be granted a contested case hearing through a showing that it has statutory authority over or an interest in the issues relevant to the application. *See id.* § 55.256(c)(6).

However, in its hearing request, the County did not provide the basis for its assertion that it is an “affected person,” but rather has simply stated that it has jurisdiction over transportation, emergency services, animal control services, and health and safety. While the County may have statutory authority or an interest in such matters, these matters are irrelevant to the application itself and a determination of the District’s feasibility under applicable Texas Water Code provisions and Commission rules.

As such, the County failed to raise any issue within the scope of what the Commission may consider when reviewing the petition. *See* TEX. WATER CODE § 54.021(b). In addition, the County failed to articulate any way that it would be affected by the proposed District in having statutory authority over or an interest in the issues relevant to the application. *See* 30 TEX. ADMIN. CODE § 55.256(c)(6). Accordingly, the County’s hearing request should be denied.

III. Conclusion

The County’s request for contested case hearing does not identify any statutory authority over or an interest in the issues relevant to the application. Therefore, Williamson County is not an “affected person” and the County’s hearing request should be denied.

WHEREFORE, Developer requests that the County’s hearing request be denied and that Applicants’ petition be granted.

Respectfully submitted,

By:



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ATTORNEYS FOR DEVELOPER

TCEQ DOCKET NO. 2024-0669-DIS
CERTIFICATE OF SERVICE

I hereby certify that on June 3rd, 2024, the original of Corrected Developer's Response to Hearing Requests was filed with the Chief Clerk of the TECQ and a copy was served on all person listed on the attached mailing list either via hand delivery, facsimile transmission, electronic mail, and/or by deposit in the U.S. Mail.

A handwritten signature in black ink, reading "Natalie B. Scott". The signature is written in a cursive, flowing style. The "N" is large and loops around the "a". The "B" is also large and loops around the "S". The "S" is connected to the "c", which is connected to the "o", which is connected to the "t". The signature is written above a horizontal line.

Natalie B. Scott

MAILING LIST
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DOCKET NO. 2024-0669; INTERNAL CONTROL NO. D-08252023-052

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Respectfully submitted,

By:



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ATTORNEYS FOR APPLICANT

TCEQ DOCKET NO. 2024-0669-DIS
CERTIFICATE OF SERVICE

I hereby certify that on June 3rd, 2024, the original of Applicants Response to Hearing Requests was filed with the Chief Clerk of the TECQ and a copy was served on all person listed on the attached mailing list either via hand delivery, facsimile transmission, electronic mail, and/or by deposit in the U.S. Mail.

A handwritten signature in black ink, reading "Natalie B. Scott". The signature is written in a cursive style with a large, stylized "N" and "S".

Natalie B. Scott

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DOCKET NO. 2024-0669; INTERNAL CONTROL NO. D-08252023-052

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