

**SOAH DOCKET NO. 582-24-19086
TCEQ DOCKET NO. 2024-0671-DIS**

PETITION FOR CREATION OF ELLIS COUNTY MUNICIPAL UTILITY DISTRICT FM 984	§ § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**PROTESTANTS ELLIS COUNTY AND THE CITY OF ENNIS’S REPLY TO
APPLICANT’S EXCEPTIONS TO PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COME NOW Protestants Ellis County and the City of Ennis (collectively “Protestants”) and file this, their Reply to Applicant Steven Selinger’s (“Applicant”) Exceptions to the Proposal for Decision (“PFD”), and in support thereof would show the following:

I. REPLY TO APPLICANT’S EXCEPTIONS TO PFD

The ALJ properly recommended that the Applicant’s Petition should be denied because the Applicant did not meet his burden of proving that the proposed District’s construction costs are reasonable and that the project and the proposed District are feasible, practicable, and necessary and would be a benefit to the land included in the District as required by Section 54.021 of the Texas Water Code. The Applicant excepts to the PFD by raising three “mistakes” he claims were made by the ALJ. However, rather than identifying issues with the PFD, the Applicant is again flagging the increasing number of discrepancies that the Applicant has created in this contested case hearing process between the construction costs and facilities submitted with the original Petition and what Applicant is now claiming are the anticipated proposed project facilities and costs. The Applicant has either excluded from the Preliminary Engineering Report or drastically underestimated costs relating to groundwater facilities, water storage facilities, and the required wastewater treatment facilities, while at the same time has proposed lot counts that have both changed from the original Petition and are not feasible with the setbacks required by the TCEQ.

Thus, there are no mistakes in the PFD, and none of the exceptions raised by the Applicant should be given any weight in assessing whether any changes should be made to the PFD.

A. Applicant's Alleged First Mistake.

The Applicant's argument on this issue misrepresents the evidence that was actually presented in this matter and the basis for the ALJ's conclusions. The Applicant completely ignores the fact that the Preliminary Engineering Report, which he submitted as part of his Petition, included at Table 4 a "Summary of Construction Cost" which identified a "Grand Total District Cost" of \$45,756,856.01. (See PFD, p. 9; ED's Exh. ED-JT-4, Bates No. 0045). The Applicant's own expert, Mr. Middleton, similarly testified that, relying on Table 4, the cost estimate for capital improvements for the Applicant's proposed District was \$45,756,856. (Applicant's Exh. 1, p. 9:8-9). As noted by the ALJ, Mr. Middleton's testimony then adds another \$8.5 million to this cost estimate for water wells, water storage, and the wastewater treatment plant, for a total of \$54,256,856 – facilities that were not included in the Preliminary Engineering Report and that are based on estimates that were not submitted with the Applicant's original Petition. (See PFD, p. 9; ED's Exh. ED-JT-1, p. 6:5-16).¹ Specifically, the Executive Director's ("ED") witness, Mr. Taack, testified that the addition of the \$8.5 million for water infrastructure "does not appear consistent with the final engineering report and was not considered as part [of] the ED's technical review." (ED's Exh. ED-JT-1, p. 6:5-9). Further, there is no confidence even in these unsupported additional cost amounts as there is "no consensus" from the Applicant as to how many groundwater wells are even needed for the proposed development. (ED's Closing Arguments, p. 3).

¹ The Applicant now attempts to introduce a third cost estimate of \$57,775,000, however, this amount differs from the testimony and evidence presented by the Applicant throughout the course of this proceeding. A reading of the Applicant's Preliminary Engineering Report indicates that the \$57,775,000 actually pertains to the principal amount of bonds the District expects to issue, including the full costs to issue such bonds, and are not direct construction costs. (See ED's Exh. ED-JT-4, Bates No. 0035).

Contrary to the Applicant's assertions, the PFD is not "demonstrably wrong in stating that the Applicant's prefiled testimony included significant changes from the Petition and exceeded those in the Petition." (Applicant's Exceptions, p. 1). There is no question that, based on the evidence and testimony presented in this case, discrepancies exist between the information originally submitted with the Applicant's original Petition and the information submitted by the Applicant throughout the course of the contested case hearing process regarding the calculations of and support for the Applicant's estimated total construction costs, including the addition of \$8.5 million in water infrastructure costs. With each filing made by the Applicant, the number of discrepancies increases between what was proposed in the original Petition and what might actually be needed to support this development. These obvious discrepancies have been recognized not only by Protestants, but also by the ED and the ALJ. Accordingly, no changes should be made to the ALJ's Findings of Fact or Conclusions of Law in this regard.

B. Applicant's Alleged Second Mistake.

Although the Applicant insists that the ALJ should have made a "necessary and very easy" ruling on the interpretation relating to sanitary sewer easements and groundwater wells, there is no indication that the ALJ erred in determining that no additional Conclusion of Law is needed regarding this issue. The fact is that the Applicant and his own experts provided conflicting information regarding the number of lots to be included in the proposed District. The Applicant's Preliminary Engineering Report stated that the District would have approximately 1,517 homes, while Mr. Middleton's subsequent prefiled testimony stated that there would be approximately 1,522 homes. (PFD, p. 12). The ED's technical review assessed feasibility based on a lot count of 1,517 homes. (*See id.*). It is clear from the PFD that the ALJ was most concerned with the discrepancies in Project cost calculations between the Applicant's original Petition and the

testimony of the Applicant and his experts in their prefiled testimony and at the contested case hearing. As the ALJ noted, “the discrepancy in the number of lots only exacerbates the confusion about what the project entails.” (*Id.* at p. 13). Accordingly, it was not necessary, as the Applicant contends, for the ALJ to issue any decision regarding the provisions of 30 TAC 290.41(c)(F).

C. Applicant’s Alleged Third Mistake.

The Applicant continues to argue that revenue from the proposed project should be considered regarding project feasibility. However, the standard to review whether MUDs are feasible is not focused on whether the developer will make a profit. Section 54.021(b) of the Water Code lists the items that the TCEQ “shall” consider when analyzing whether a proposed district is feasible, practicable, necessary, and would be a benefit to the land included in the district. The Applicant, however, argues that the ALJ should have considered sales revenue to the Applicant instead to determine whether the proposed District is feasible. In doing so, the Applicant attempts to create a new criterion for MUD feasibility assessments, which is not recognized under the provisions of any statute. Sales revenue is not an element that the TCEQ is required to consider in its review of the proposed District. Protestants have shown, and the ALJ has agreed, that in assessing the actual elements that are provided for in Section 54.021, the Applicant has failed to meet his burden of proof. Therefore, the Applicant’s exceptions on this issue should be disregarded.

II. CONCLUSION

Protestants respectfully request that the TCEQ deny any exceptions proposed by the Applicant. Protestants further request that the TCEQ grant their exceptions and amend the PFD with the corrections as set out in their Exceptions to the PFD. Protestants respectfully request any other relief to which they are entitled.

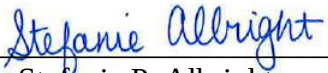
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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2025, a copy of the foregoing document was served on all persons listed below either via hand delivery, facsimile transmission, electronic mail, and/or by deposit in the U.S. Mail.

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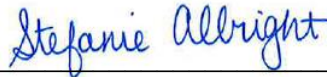
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