

**SOAH DOCKET NO. 582-25-02903  
TCEQ DOCKET NO. 2024-1401-DIS**

<b>APPLICATION OF GRAYSON</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COUNTY MUNICIPAL UTILITY</b>	§	<b>OF</b>
<b>DISTRICT NO. 6A</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**SOAH DOCKET NO. 582-25-02903  
TCEQ DOCKET NO. 2024-1406-DIS**

<b>APPLICATION OF GRAYSON</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COUNTY MUNICIPAL UTILITY</b>	§	<b>OF</b>
<b>DISTRICT NO. 6B</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROTESTANT CITY OF VAN ALSTYNE’S EXCEPTIONS TO  
PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW Protestant the City of Van Alstyne (“Protestant”) and files this, its Exceptions to the Proposal for Decision (“PFD”), and in support thereof would show the following:

**I. INTRODUCTION**

Protestant excepts to the Administrative Law Judge’s (“ALJ”) recommended actions, proposed Findings of Fact, and proposed Conclusions of Law. Protestant disagrees with the ALJ’s recommendation that the proposed Petitions for the Creation of Grayson County Municipal Utility District Nos. 6A and 6B (“the Districts”) should be granted. Applicant Treasure Island Laguna Azure, LLC (“Applicant”) has failed to meet its burden of proving that the proposed Districts meet all applicable state law requirements under Section 54.021 of the Texas Water Code.

The Applicant has failed to demonstrate that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the proposed Districts. Specifically, the Applicant has failed to show that (1) the projected construction costs and sewer rates are reasonable; and (2) the proposed Districts and subsequent development will not have an

unreasonable effect on groundwater level within the region and natural run-off rates and drainage. Accordingly, the Applicant's Petitions should be denied.

## **II. EXCEPTIONS TO THE PFD**

### **A. Exceptions to the PFD's Analysis and Recommendations Regarding the Availability of Comparable Service from the City. (Tex. Wat. Code § 54.021(b)(1)).**

Protestant excepts to the conclusions of the ALJ that the negotiations between the parties have ended, and accordingly, neither water nor sewer service is available from Protestant. As asserted in Protestant's Response to Applicant's Closing Arguments, the statement that service is "unavailable" from the City is not based upon any statute, rule, or evidence, but rather, is based only upon the subjective, opinion testimony of the Applicant's witnesses, Mr. Ipour and Mr. Wiegert. (Protestant's Response to Applicant's Closing Arguments, p. 2). Similarly, the ALJ concluded that the conditions upon which Protestant would provide water and wastewater service "would not be consistent with the needs for the Development," based only upon the subjective testimony of Mr. Ipour that such conditions "were inconsistent with Applicant's goals." (*See* PFD, p. 8). The ALJ accepted both Mr. Ipour's and Mr. Wiegert's opinion testimony as fact, while ignoring any evidence or testimony by Protestant on this issue. The ALJ also went on to make several findings of fact regarding unavailability of service that are unsupported by the testimony cited within the PFD or that conflict with Protestant's testimony about availability of service, including, but not limited to, the finding that negotiations between the parties have ended.

Accordingly, Protestant excepts to and recommends the amendment of Findings of Fact Nos. 38, 42-43, and 74 as follows:

- ~~"38. City would only provide water or sewer service, or both, if Applicant had agreed to annexation and other conditions which were unacceptable to Applicant and would not be consistent with the needs for the Development."~~

~~“42. Negotiations for the development agreement and for water and sewer service, or both, to be provided by the City have ended.”~~

~~“43. With negotiations for service ended, neither water nor sewer service is available from the City.”~~

~~“74. Neither water nor sewer service are available from another provider.”~~

Protestant also excepts to and recommends the amendment of Conclusion of Law No. 6 as follows:

“6. Applicant investigated and evaluated the availability of comparable service from other systems and provided insufficient evidence that comparable service is not available for the Districts. Tex. Water Code § 54.021(b)(1); 30 Tex. Admin. Code § 293.11(d)(5)(G).”

**B. Exceptions to the PFD’s Analysis and Recommendations Regarding the Reasonableness of Projected Construction Costs, Tax Rates, and Water and Sewer Rates (Tex. Wat. Code § 54.021(b)(2)).**

**1. Construction Costs**

Protestant excepts to the conclusion of the ALJ that the Applicant’s estimated construction costs are reasonable. As provided in Protestant’s Closing Argument, it is the *Applicant’s* burden to prove that each element of Section 54.021 is met. (Protestant’s Closing Argument, p. 3). As also stated in Protestant’s Closing Argument, for the Applicant to carry its burden under § 54.021(b)(1) of the Water Code, the estimated construction costs contained in the Applicant’s Preliminary Engineering Report must be reasonable for projected construction costs in 2022, given that the Report was prepared in February of 2022. (Protestant’s Closing Argument, pp. 2-3). This is acknowledged by the Applicant’s witness, Mr. Weigert, who testified that “the relevant inquiry is based on reasonableness at the time the Applications were filed with TCEQ in March 2022.” (Applicant’s Exh. APP-00147; Protestant’s Closing Argument, p. 3).

However, Mr. Weigert testified that he never conducted a cost comparison related to costs at the time that the Application was presented. (CCH Transcript, pp. 23:25-24:2). Instead, he only

compared present-day costs with the costs contained in the Preliminary Engineering Report and came up with a percentage difference. (CCH Transcript, pp. 23:9-24; Applicant's Exh. 00146; Protestant's Closing Argument p. 3). Although the ALJ believes that Protestant has "incorrectly and narrowly interpreted" Mr. Weigert's testimony (PFD, p. 10), a reading of his testimony clearly shows that it states what Protestant has claimed, which is that the Applicant's witness conducted a flawed analysis. In fact, when directly asked on cross-examination whether he completed a comparison related to the costs at the time the Application was presented, Mr. Weigert specifically stated, "I did not." (CCH Transcript, pp. 23:25-24:2).

The ALJ also erroneously refused to consider any evidence provided by Protestant with respect to cost comparisons between the Applicant's estimated construction costs and the costs to connect to Protestant's water and wastewater services, stating that this information is "not relevant." (PFD, p. 11). However, as Protestant asserted in its Response to Applicant's Closing Argument, even if water and wastewater service from Protestant is considered "unavailable," neither Texas Water Code Section 54.016 nor Section 54.021 expressly prohibits the consideration of estimated costs to connect to existing infrastructure when a mutually agreeable contract has not been reached. (*See* TEX. WAT. CODE §§ 54.016; 54.021; Protestant's Response to Applicant's Closing Arguments, p. 2).

In that regard, the Applicant has estimated that the cost to provide a self-reliant water supply system would be approximately \$45 million, and the cost to provide a self-reliant wastewater treatment system would be approximately \$42 million. (Van Alstyne Exh. 1, p. 5:16-17; Applicant's Exh. APP-00352-53; Protestant's Closing Argument, p. 4). Any costs related to these systems would solely be borne by the landowners in the proposed Districts. (*See* Van Alstyne Exh. 1 at p. 5:15-16; Protestant's Closing Argument, pp. 4-5).

Water and sewer service is available from Protestant at a significantly lower cost than the costs proposed by the Applicant. Specifically, Protestant's expert witness, Mr. McManus, has estimated that the cost for Protestant to provide water service to the proposed Districts would be \$6.2 million, and the cost to provide wastewater service would be \$7.2 million. (Van Alstyne Exh. 1 at p. 5:20-22; Protestant's Closing Argument, p. 5). These costs would consist of the installation of pipelines and a pump station for the provision of service to the Districts. (Van Alstyne Exh. 1 at p. 5:22-23; Protestant's Closing Argument, p. 5). In this instance, any future operation and maintenance costs related to these systems would be borne by both Protestant's water and sewer customers and the landowners in the proposed Districts. (Van Alstyne Exh. 1 at pp. 5:23-6:3; Protestant's Closing Argument, p. 5).

## **2. Sewer Rates**

Protestant also excepts to the conclusion of the ALJ that the Applicant's sewer rates are reasonable. The ALJ's entire analysis regarding the reasonableness of the Applicant's proposed water and sewer rates consists merely of a few sentences. (PFD, p. 15). The ALJ, in concluding that "the water and sewer rates proposed by the Applicant are comparable to those in City" (*Id.*), completely ignores the testimony of Protestant's expert, Mr. McManus, regarding the deficiencies in the Applicant's proposed sewer rates. As noted in Protestant's Closing Argument, Mr. McManus testified that current agency norms for sewer rates are between \$3.00 -\$7.00 per 1,000 gallons. (Van Alstyne Exh. 1, p. 8:2-3; Protestant's Closing Argument, p. 5). However, the Applicant proposes much lower residential sewer rates that range from \$1.50-\$2.00 per 1,000 gallons. (See Applicant's Exh. APP-00345; Protestant's Closing Argument, p. 5).

The ALJ even acknowledges the low nature of these proposed rates by stating that they are "lower than in both the nearby Mustang SUD and the City of Howe by two-to-three times." (PFD,

p. 15). Yet, there is no indication in the Applicant's Preliminary Engineering Report as to how these rates were derived (Protestant's Closing Argument, p. 5), nor does the ALJ question these low rates provided by the Applicant.

Accordingly, Protestant excepts to and recommends the amendment of Findings of Fact Nos. 65, 75, and 77 as follows:

- "65. The evidence does not reflects that Applicant's projected construction costs are reasonable."
- "75. The proposed water and sewer rates are not comparable to City's rates, and lower than rates from other nearby providers."
- "77. There is insufficient evidence that ~~t~~The proposed water and sewer rates are reasonable."

Protestant also excepts to and recommends the amendment of Conclusion of Law No. 7 as follows:

- "7. Applicant provided insufficient evidence to establish the reasonableness of its projected construction costs. Tex. Water Code § 54.021(b)(2)."
- C. Exceptions to the PFD's Analysis and Recommendations Regarding Whether the Proposed Districts Will Have an Unreasonable Effect on Groundwater Levels and Recharge Within the Region (Tex. Wat. Code § 54.021(b)(3)(C), (D)).**

Protestant excepts to the conclusion of the ALJ that the Proposed Districts and their systems and subsequent developments will not have an unreasonable effect on groundwater levels and recharge within the region. Again, it is the Applicant's burden under the Water Code to prove that the elements of Section 54.021 are met. As asserted in Protestant's Closing Argument, although the Applicant is proposing 13 groundwater wells to serve the Districts, the Applicant failed to provide any meaningful analysis regarding the impact that the proposed Districts' groundwater production will have, or enough information to accurately assess these potential impacts. (Protestant's Closing Argument, p. 6).

Additionally, although Protestant pointed out in its Closing Argument that the purpose of the Collier Consulting study, upon which the Applicant relied, was to confirm whether there would be enough groundwater to supply the proposed Districts (not the potential effect on water levels), the ALJ inexplicably disregarded Protestant's argument. Instead, the ALJ construed as fact the conclusory, opinion testimony of the Applicant's expert, Mr. Wiegert, that (1) "impervious cover from the development [...] will not have any greater effect on groundwater levels or recharge capacity [...] than any other single-family development in the area; and (2) "the development within the MUDs should not change topographical drainage patterns or the aquifers' ability to recharge." (PFD, pp. 16-17).

Accordingly, Protestant excepts to and recommends the amendment of Findings of Fact Nos. 89-90 as follows:

- "89. ~~The impervious cover from the Development of mostly single-family residential lots will not have any greater effect on groundwater levels or recharge capacity of groundwater in the region than any other similar single-family development in the area."~~
- "90. ~~The Development will not significantly change current drainage patterns for runoff, whether it be from open space or houses and streets, which would not be expected to impact the recharge capability of any groundwater source."~~
- "91. There is insufficient evidence that tThe Districts, their systems, and subsequent development will not have an unreasonable effect on subsidence, the groundwater levels within the region, or recharge capability of a groundwater source."

Protestant also excepts to and recommends the amendment of Conclusion of Law No. 8 as follows:

- "8. There is insufficient evidence that tThe Districts and their systems and subsequent developments will not have an unreasonable effect on: land elevation; subsidence, groundwater levels and recharge within the region; natural run-off rates and drainage; water quality; or total tax assessments on all land located within the district. Tex. Wat. Code § 54.021(b)(3)."

**D. Exceptions to the PFD's Analysis and Recommendations Regarding Whether the Proposed Districts Will Have an Unreasonable Effect on Natural Run-Off Rates and Drainage (Tex. Wat. Code § 54.021(b)(3)(E)).**

Protestant excepts to the conclusion of the ALJ that the Proposed Districts and their systems and subsequent developments will not have an unreasonable effect on natural run-off rates and drainage. Protestant raised two primary concerns regarding this issue in its Closing Argument: (1) that the Applicant failed to provide sufficient justification for its assignment of only 10% of the total land area for detention and open space, given the presence of two FEMA floodplains; and (2) that the Applicant failed to properly consider or provide sufficient safety or engineering analysis regarding two dams located upstream of the proposed Districts. (Protestant's Closing Argument, pp. 6-7). The Applicant's expert, Mr. Weigert, acknowledged that these two existing dams could impact the Districts in the event of a failure or flows from the spillways. (Applicant's Exh. APP-00144; *see also* CCH Transcript, p. 26:3-6).

Yet, the ALJ dismissed both of Protestant's concerns, stating that: (1) the Applicant "must only show that flooding issues have been evaluated and overall plans are in place, which can be adjusted to local requirements;" and (2) "Section 7 of the Preliminary Engineering Report [...] addresses dam safety and critical infrastructure." (PFD, p. 19).

The Applicant's Preliminary Engineering Report, however, does not sufficiently show "that flooding issues have been evaluated and that overall plans are in place." The Report merely notes the existence of the FEMA floodplains, stating only that "there is a 100-year floodplain within the extents of this District." (ED's Exh. ED-JT-5, Bates No. 0048; ED-JT-6, Bates No. 0146). And, although Section 7 of the Report references dam safety, this section provides no analysis whatsoever regarding the safety of the residents or of the structures in the proposed Districts downstream of the dams. In fact, this section notes only that a "flood study and drainage impact analysis [...] is underway and will evaluate the impact of a possible failure of either of



these dams or flows from the spillways.” (ED’s Exh. ED-JT-5, Bates No. 0054; Exh. ED-JT-6, Bates No. 0152). Nothing further has been provided by the Applicant with respect to results of this analysis or to otherwise account for these above-noted issues. As Protestant has asserted in its Closing Argument, it is still unknown what effect flooding from a dam failure would have on the proposed Districts and whether the Applicant’s proposed drainage plan would be capable of handling the increased run-off flow the in the event of a dam failure upstream. (Protestant’s Closing Argument, pp. 7-8).

Accordingly, Protestant excepts to and recommends the amendment of Findings of Fact Nos. 95 and 102 as follows:

- “95. ~~Although development generally increases runoff and drainage, compared to natural conditions, detention improvements will prevent significant problems.”~~
- “102. There is insufficient evidence that tThe proposed Districts, the systems, and subsequent development within the proposed Districts will not have an unreasonable effect on natural run-off rates and drainage.”

Protestant also excepts to and recommends the amendment of Conclusion of Law No. 8 as follows:

- “8. There is insufficient evidence that tThe Districts and their systems and subsequent developments will not have an unreasonable effect on: land elevation; subsidence, groundwater levels and recharge within the region; natural run-off rates and drainage; water quality; or total tax assessments on all land located within the district. Tex. Wat. Code § 54.021(b)(3).”

**E. Exceptions to the PFD’s Analysis and Recommendations Regarding Whether the Project is Feasible, Practicable, and Necessary, and Would Be a Benefit to the Land Included in the Districts.**

For all of the reasons identified in the above sections, which are incorporated herein by reference, Protestant excepts to the conclusions of the ALJ that the Project is feasible, practicable, and necessary and would be a benefit to the land included in the Proposed Districts and that the Applicant’s Petitions should be granted.

Accordingly, Protestant excepts to and recommends the amendment of Finding of Fact No. 113 as follows:

“113. ~~Ins~~Sufficient evidence was presented to establish the Districts are feasible, practicable, necessary and will benefit all of the land included in the Districts.”

Protestant also excepts to and recommends the amendment of Conclusions of Law Nos. 12 and 18 as follows:

“12. ~~Ins~~Sufficient evidence was presented to establish that the project is feasible, practicable, and necessary and would be a benefit to the land included in the Districts. Tex. Water Code § 54.021.”

“18. Applicant’s Petitions should ~~not~~ be granted.”

### **III. CONCLUSION AND PRAYER**

WHEREFORE, Protestant respectfully requests that the TCEQ grant its exceptions and amend the PFD with the corrections set out above. Protestant respectfully requests any other relief to which it is entitled.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that on September 3, 2025, a copy of the foregoing document was served on all persons listed via electronic mail.

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