

TCEQ DOCKET NO. 2025-0374-MWD

APPLICATION BY	§	BEFORE THE
TCCI MONTGOMERY GARDENS, LLC	§	TEXAS COMMISSION ON
FOR TPDES PERMIT NO.	§	ENVIRONMENTAL QUALITY
WQ0016354001	§	

APPLICANT’S RESPONSE TO REQUESTS FOR HEARING

TCCI Montgomery Gardens, LLC (“Applicant”) files this Response to Requests for Hearing pursuant to 30 Tex. Admin. Code § 55.209 and the Agenda Setting letter dated March 12, 2025 in the above-captioned matter.

I. INTRODUCTION

The Office of the Chief Clerk received two (2) requests for a contested case hearing in this matter, filed by Tom Wallis Airhart (“Mr. Airhart”) and the North Texas Municipal Water District (the District”). On June 12, 2024, following a settlement between Applicant and the District, the District formally withdrew its protest and hearing request. Accordingly, Mr. Airhart is the sole remaining requestor in this proceeding. For the reasons stated herein, Applicant asserts that the Commission should deny Mr. Airhart’s hearing request.

II. PROCEDURAL BACKGROUND

On June 13, 2023, Applicant filed its application for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016354001 (the “Application”), for authorization to discharge treated domestic wastewater from Applicant’s wastewater treatment facility (the “Facility”) at a daily average flow not to exceed 0.15 million gallons per day. The Facility will be located approximately 1.0 miles southeast of the intersection of Farm-to-Market Road 549 and Texas State Highway 78 near Copeville, in Collin County Texas, 75442 and will serve a proposed subdivision.

On August 7, 2023, the Texas Commission on Environmental Quality (the “Commission”) declared the Application administratively complete. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (“NORI”) in English on August 13, 2023, in the *McKinney Courier Gazette* and in Spanish on August 22, 2023, in *La Prensa Comunitad*. After completing a technical review of the Application, on January 4, 2024, the Executive Director issued a preliminary decision in support of the permit application and prepared a draft permit. The Applicant published the combined NORI and Notice of Application and Preliminary Decision (NAPD) in English on February 11, 2024, in the *McKinney Courier Gazette*, and in Spanish on April 4, 2024, in *La Prensa Comunitad*. The public comment period ended on April 4, 2024.

On August 29, 2024, the Executive Director issued its Final Decision Letter in favor of the Application, finding that the Application met all statutory and regulatory requirements. The deadline for filing requests for a contested case hearing and requests for reconsideration of the Executive Director’s decision was September 30, 2024. The Office of the Chief Clerk received a hearing request in this matter from Mr. Airhart on February 10, 2024. As such, Applicant now files this response to requests for hearing on the Application.

III. REVIEW STANDARD

For the Commission to grant a contested case hearing, the Commission must determine that a requestor is an affected person. 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.¹ An interest common to members of the general public does not qualify as a personal justiciable interest.²

¹ 30 TAC § 55.203(a)

² *Id.*

In determining whether a person is an affected person, the Commission is to consider all factors, including, but not limited to, 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) whether the requester timely submitted comments on the application which were not withdrawn.³

Further, a request for a contested case hearing by an affected person must be in writing and filed with the chief clerk within the time provided.⁴ The request must also substantially comply with the following:

- (1) give the name, address, daytime telephone number, and where possible, fax number of the person who files the request;
- (2) identify the person's 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 facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely

³ 30 TAC § 55.203(c).

⁴ 30 TAC 55.201(d).

affected by the facility or activity in a manner not common to members of the general public;

- (3) request a contested case hearing; and
- (4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request.⁵

IV. EVALUATION OF REQUEST

The Commission a single hearing request on the Application, and no requests for reconsideration. Applicant has evaluated the request and recommends denial of the request for the reasons set forth below.

A. The Airharts

Mr. Airhart submitted a request for a contested case hearing on behalf of his parents Tom and JoAnn Airhart (the “Airharts”) on February 10, 2024. The hearing request submitted by Mr. Airhart should be denied because the Airharts are not affected persons under 30 TAC § 55.203(a), as no reasonable relationship exists between the interests claimed and the activity regulated.

The Airhart’s listed address is 15762 FM 1778, Nevada, Texas 75173. Although the Airhart’s property line borders Applicant’s property to the west, and their residence is located 0.5 miles from Applicant’s proposed Facility, Mr. Airhart’s hearing request fails to raise a personal justiciable interest and lacks any sort of demonstration of any likelihood that the Airhart’s would be affected by the Application due to their proximity to the Applicant’s Facility in a way not common to members of the general public. In fact, the hearing request submitted by Mr. Airhart makes no correlation between the adjacency of the Airhart’s residence to the Facility, and Mr. Airhart’s stated concerns. Rather, Mr. Airhart’s hearing request raises concerns only about the

⁵ *Id.*

potential impacts that the discharged effluent from Applicant's proposed Facility will have on the Airhart's property and water quality. Mr. Airhart notes in his hearing request that "[t]he effluent disposal is planned to be just a few feet away from the [Airhart's] property line."⁶ However, as clearly indicated by the Application, the Airhart's property is not located along the discharge route. As included the Application and further shown in Exhibit A attached hereto, the point of discharge is located in the southwest corner of the Applicant's subject tract, and 100 feet east of the Airhart's property line. Additionally, it is clear that the discharge runs from the point of discharge located on Applicant's subject tract and continues south solely within Applicant's property, before exiting and running south of the subject tract.⁷ Therefore, it is impossible for the Airhart's property—which borders the subject tract to the west—to be located along the discharge route, when the discharge is contained entirely within Applicant's subject tract and flows south of the subject tract.

Regarding discharge, the primary concern raised by Mr. Airhart in his hearing request is that the specifications for effluent included in the application allow for Type II reclaimed water to be discharged from the proposed Facility, and that Type II effluent can not [*sic*] be allowed to flow into food crops that we grow on the adjacent farm. If it does, the crop will have to be destroyed."⁸ Again, however, Mr. Airhart's argument holds no water because the Airheart's property, which borders Applicant's subject tract to the west, is in no way located along the proposed discharge route, and thus, there can be no impact to the quality of water or crop on the Airhart's property. As such, Mr. Airhart's request for hearing has failed to demonstrate that the Airhart's are affected persons under 30 TAC § 55.203(a) because no reasonable relationship exists between the interests claimed and the activity regulated.

⁶ Hearing Request of Tom Airhart, filed February 10, 2024.

⁷ Exhibit B.

⁸ Hearing Request of Tom Airhart, filed February 10, 2024.

Lastly, to the extent the Commission considers Mr. Airhart's concerns regarding nuisance odors, which were not addressed in his hearing request but addressed subsequently in his request for public comment filed on February 22, 2024, such concerns also have no significance. As previously noted, Applicant's Facility, which is surrounded by trees, will be located 0.5 miles from the Airhart's residence. The trees provide natural screening to the Facility. Additionally, the proposed Facility will be further concealed by fencing. Furthermore, as explained in detail in the Application, the proposed Facility will be a membrane wastewater treatment plant, which is significantly smaller than a standard wastewater treatment plant and will not include the various tanks or larger equipment often encompassed in a standard plant. Thus, there is no possibility that Airhart's property will be impacted by nuisance odors from Applicant's well secured Facility.

Accordingly, because Mr. Airhart's hearing request fails to state a reason why he believes the Airhart's residence, due to its proximity to Applicant's Facility, will be adversely affected in a manner not common to members of the general public in accordance with 30 TAC § 55.201(d), his request should be denied.

V. CONCLUSION

For the reasons stated, the Applicant respectfully requests that the Commission take the following actions:

1. Applicant recommends the Commission deny the request for a contested case hearing filed by Mr. Airhart on behalf of Tom and JoAnn Airhart.
2. If the Commission decides to refer this case to SOAH, then the Applicant recommends that the maximum duration of the hearing be 150 days.

Respectfully submitted,

Gregg Law PC



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ATTORNEY FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2025, a true and correct copy of the foregoing document has been served on all parties and their respective counsel of record in accordance with the Texas Rules of Civil Procedure.



Peter T. Gregg

EXHIBIT A



TCCI MONTGOMERY GARDENS
TPDES PERMIT APPLICATION
COLLIN COUNTY, TEXAS

ORIGINAL PHOTOS
Attachment E

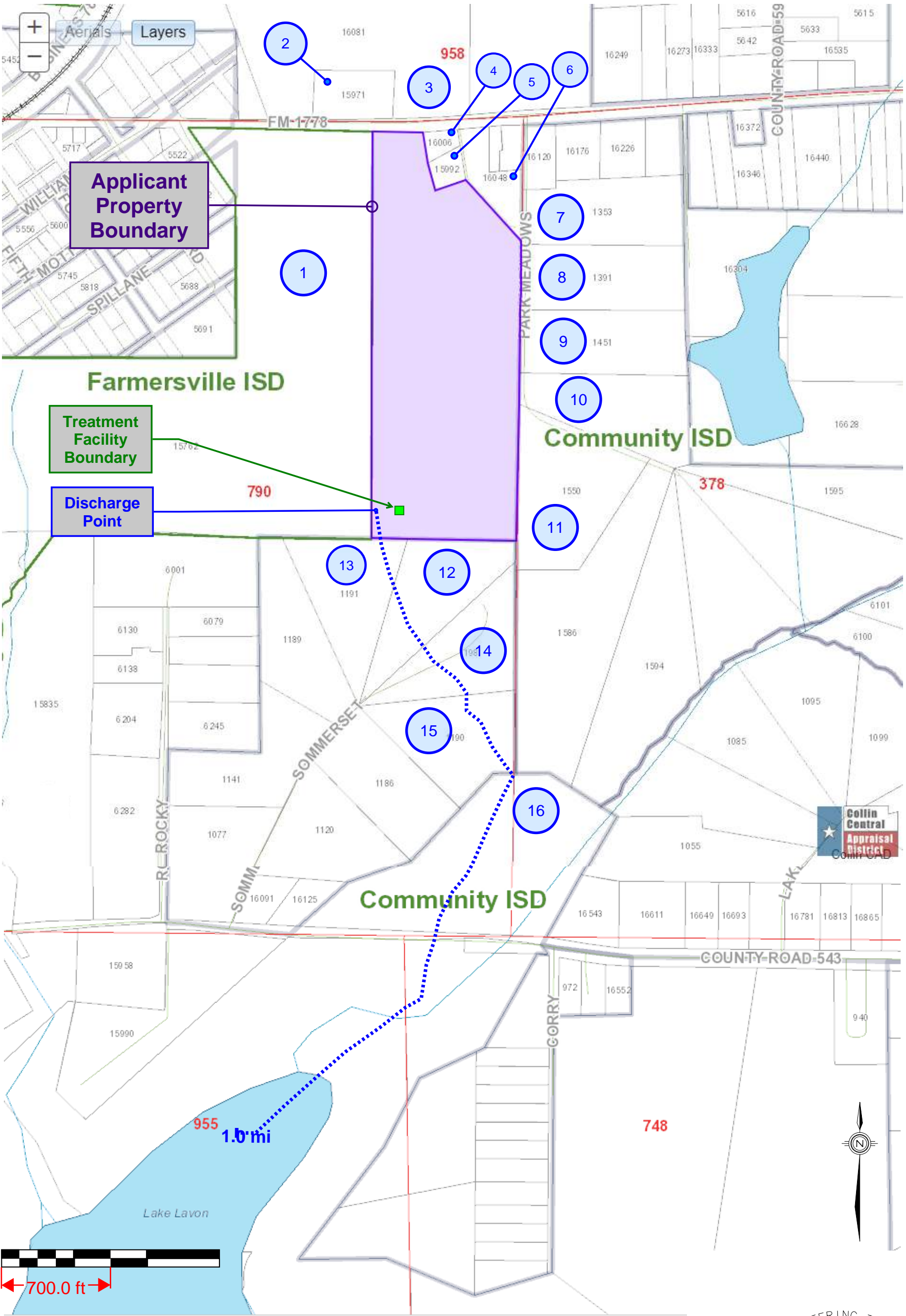
reUse
ENGINEERING

4411 SIH 35, Suite 100
Georgetown, TX 78626
TX Firm No. 21880

- 1-mi Discharge Route
- Applicant Property Boundary

REUSE ENGINEERING TBPE F-21880
STATE OF TEXAS
LAUREN B. WAHL
141050
PROFESSIONAL ENGINEER
07 JUN 2023

EXHIBIT B



<https://map.collincad.org/?prop=2798841>

TCCI MONTGOMERY GARDENS
TPDES PERMIT APPLICATION
COLLIN COUNTY, TEXAS

LANDOWNERS MAP
Attachment D

reUse
ENGINEERING
4411 SIH 35, Suite 100
Georgetown, TX 78626
TX Firm No. 21880

Landowner's Cross Reference
List provided on next page
Information compiled on
28 FEB 2023

