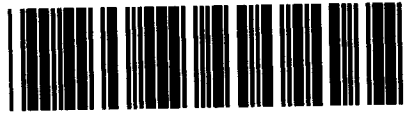




Control Number: 43965



Item Number: 26

Addendum StartPage: 0

# LAW OFFICES OF MARK H. ZEPPA

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Austin, Texas 78759-8436  
(512) 346-4011 Fax (512) 346-6847  
mhzeppa@attglobal.net

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October 30, 2003

Ms. Maria Sanchez  
Law Offices of Davidson & Trolie, PC  
919 Congress Ave, Suite 810  
Austin, Texas 78701

Re: Purported Settlement Offer of the Prosper Independent School District in SOAH Docket No. 582-03-2282; TCEQ Docket No. 2003-0033-UCR Application of Denton County Fresh Water Supply District No. 10 to Amend Water And Sewer CCNs In Denton (Application Nos. 34068-C/34069-C)

Dear Ms. Sanchez:

I am responding to your letters of October 28, 2003 and October 30, 2003 to Binary Investments, Inc. containing a purported settlement offer in the water and sewer utility certification application of Denton County Fresh Water Supply District No. 10 (District #10). In the first letter, your client, Prosper Independent School District (PISD) threatens to condemn a school site "in the middle of the proposed subdivision" if Binary Investments does not accept a previous offer from PISD. Today, by fax, you rescinded your first threat and sent me a replacement letter. In PISD's October 30th extortion attempt, you have demanded that Binary Investments accede to PISD's demands or PISD will condemn two school sites (10 to 15 acres each) "in the most favorable location found in the middle of the proposed subdivision."

For the record, PISD's proposal was that the landowner/developers (of which Binary Investments, Inc. is not one) must sell PISD two school sites at a price of \$60,000 each. Each site has a fair market value in excess of \$250,000. The interior lots PISD are now threatening to condemn have a higher value. Your letters recognize this fact since PISD now chooses to abandon the thoroughfares that would give access to a school(s) in order to take the most valuable land the Huffines Development Group has. [District #10 was also to provide PISD with free utility infrastructure and waive all impact and other associated fees. District #10 refused October 16th.]

It has been apparent since the first time PISD Superintendent Drew Watkins made his an appearance in this certification docket that PISD had no real interest in District #10's public utility service within the proposed 400-acre service area. All of the testimony and argument PISD presented was directed at the development and the effects of the development might have on PISD. None of that is relevant to this utility certification application. However, if PISD is willing to spend \$30-50,000 of its taxpayers' money trying to prove that it is relevant to Chapter 13 of the Texas Water Code, the PISD Board Members can justify this to their electorate next year. These are the decisions they were chosen to make, even when they are wrong. PISD will never get an opportunity to recover any of this money from an outside source.

My clients invite the PISD to go forward with their threatened condemnation suit if they think so highly of it. While your letters may be privileged and inadmissible in the utility certification case under TRE 408, they are not privileged for purposes of proving real estate value in PISD's condemnation case. Huffines Development Group sincerely thanks you for handing us the

Ms. Maria Sanchez  
October 30, 2003  
Page 2

"Smoking Gun." Two bullets through your client's brain in the form of the October 30th letter could not have been sweeter.

PISD may file the condemnation proceeding whenever it wants. Your letters constitute notice of hostile treat of condemnation, which will provide the landowner/developers the tax breaks they richly desire. Again, we extend our thanks to PISD. The school district will not be obtaining any bargain basement school sites. They will have to pay fair market value. You have already announced in writing the PISD's intent to take the most valuable land. I can assure you that my clients will vigorously litigate to obtain top dollar for that land. PISD will ultimately have the honor of picking up that check as well since it is part of a condemnation award under the Texas Property Code. Thanks to the testimony you presented at SOAH, we have sworn testimony from PISD that the school district has the funds to pay full value for any sites it wishes to condemn so any claims of poverty will fall on deaf ears. Lack of funds is not relevant under the Property Code. If you are big enough to want to bite it off, you had better be big enough to pay for it.

If Prosper Independent School District is serious about it threats, please b our guest and proceed. If not, do not make idle threats. Get out of District #10's CCN case and stop wasting everyone's time and money. PISD is not going to get any free school sites or utility hook ups.

Sincerely yours,

  
Mark H. Zeppa

Encl. (2 – letters of 10-28 and 10-30)

cc: Phillip Huffines  
Clay Crawford  
Lara Nehman

JOHN W. DAVIDSON  
ARTHUR TROILO  
TERRY TOPHAM  
CHEREE TULL KINZIE  
R. GAINES GRIFFIN  
RICHARD E. HETTINGER  
PATRICK W. LINDNER  
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J. MARK CRAUN  
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LISA M. GONZALES

FRANK J. GARZA  
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October 28, 2003

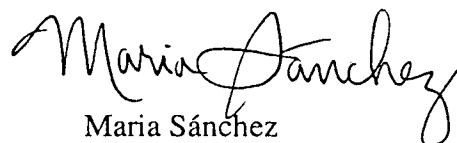
Law Offices of Mark H. Zeppa, P.C.  
Mark H. Zeppa  
4833 Spicewood Springs Rd. #202  
Austin, Texas 78759-8436

Re: Offer to Binary Investments, Inc.

Dear Mr. Zeppa:

Prosper Independent School District ("PISD") has authorized me to make one final attempt to settle this matter. PISD's previous good faith offer remains available to Binary Investments, Inc. If Binary Investments, Inc. chooses to reject PISD's offer, PISD has no choice but to commence condemnation proceeding to condemn a school site. PISD would seek to condemn a school site in the middle of the proposed subdivision. Please advise me if Binary Investments, Inc. accepts PISD's previous offer. Thank you for your attention to this matter.

Sincerely,

  
Maria Sánchez

cc: Drew Watkins

JOHN W. DAVIDSON  
ARTHUR TROILO  
TERRY TOPHAM  
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R. GAINES GRIFFIN  
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October 30, 2003

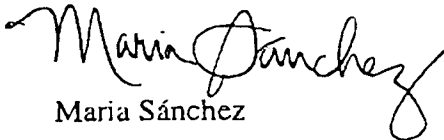
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