



Control Number: 45848



Item Number: 30

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**PUC DOCKET NO. 45848
SOAH DOCKET NO. 473-16-5011.WS**

**CITY OF CELINA'S NOTICE OF
INTENT TO PROVIDE WATER AND
SEWER SERVICE TO AREA
DECERTIFIED FROM AQUA TEXAS,
INC. IN DENTON COUNTY**

**§ PUBLIC UTILITY COMMISSION
§
§ OF TEXAS
§
§**

**CROSS-REBUTTAL TESTIMONY
OF
PAUL HORNSBY
ON BEHALF OF
PETITIONER CITY OF CELINA**

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EXHIBITS SPONSORED BY PAUL HORNSBY:

- CEL104: Resume of Paul Hornsby**
CEL105: The Jurisdictional Exception Rule From Uniform Standards of Professional Appraisal Practice (2016-2017 Edition)
CEL106: Standards From Uniform Standards of Professional Appraisal Practice (2016-2017 Edition)
CEL107: Scope of Work Rule From Uniform Standards of Professional Appraisal Practice (2016-2017 Edition)

**EXHIBIT
CEL103**

**DIRECT TESTIMONY OF PAUL HORNSBY
ON BEHALF OF
PETITIONER CITY OF CELINA**

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30

1 INTRODUCTION

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.**

3 **A.** My name is Paul Hornsby, and my business address is 7600 N. Capital of Texas Highway
4 Building B, Suite 210 Austin, TX 78731.

5 **Q. WHAT SUBJECTS WERE YOU ASKED TO EVALUATE FOR THIS**
6 **PROCEEDING?**

7 **A.** I was asked to review and comment upon the testimony of Joshua M. Korman, dated
8 August 16, 2016 that was filed in this proceeding as that testimony addresses (1) Uniform
9 Standards of Professional Appraisal Practice; and (2) the question of lost economic
10 opportunity. The Uniform Standards of Professional Appraisal Practice is typically
11 referred to as USPAP.

12 QUALIFICATIONS

13 **Q. HOW ARE YOU CURRENTLY EMPLOYED?**

14 **A.** I am the owner of Paul Hornsby & Co. and ph Business Advisors, companies based in
15 Austin, Texas.

16 **Q. WHAT TYPE OF BUSINESS IS PAUL HORNSBY & CO.?**

17 **A.** Paul Hornsby & Co. is a full service valuation firm providing objective, independent and
18 defensible opinions. All appraisals prepared at Paul Hornsby & Co. are undertaken in
19 conformity with USPAP, and the ethics and standards of the Appraisal Institute.

20 **Q. WHAT PRACTICE AREAS ARE INCLUDED IN THE VALUATIONS**
21 **UNDERTAKEN BY PAUL HORNSBY & CO.?**

22 **A.** Predominant practice areas include: (1) Eminent Domain; (2) Ad Valorem Tax; (3)
23 Construction Defects; (4) Commercial/Industrial Valuation; (5) Counseling; (6)
24 Intangible Asset Valuation; (7) Land Planning; (8) Brokerage; and (9) Litigation Support.

25 **Q. WHAT TYPE OF BUSINESS IS ph BUSINESS ADVISORS?**

26 **A.** ph Business Advisors is a sister company of Paul Hornsby and Co, specializing in the
27 valuation of real estate-related intangible assets. Examples of such assets include:
28 partnerships, contracts, franchises, good will, permits, and licenses. The Company also
29 specializes in the allocation of tangible and intangible assets in a business combination.

1 **Q. DO YOU WORK IN ALL THESE PRACTICE AREAS?**

2 **A.** Yes.

3 **Q. PLEASE DESCRIBE YOUR EXPERIENCE IN APPRAISALS, VALUATIONS**
4 **AND RELATED MATTERS.**

5 **A.** Since 1980, I have been a practicing real estate appraiser with an office in Austin, Texas,
6 specializing in the valuation of complex properties and in support of litigation
7 proceedings. I also serve as an arbitrator in real estate disputes.

8

9 I often serve in the capacity of expert witness in cases involving eminent domain,
10 bankruptcy, general commercial litigation and ad valorem tax appeal. I am qualified as an
11 appraisal expert in numerous county courts, state district courts, Federal District Court,
12 U.S. Bankruptcy Court, and various commissioners' courts and appraisal district review
13 boards. I have testified over 700 times in depositions, special commissioner's hearings
14 and trials.

15

16 Land planning services are provided by our sister company, alterra design group and
17 brokerage services by Hornsby Realty.

18 **Q. PLEASE SUMMARIZE YOUR FORMAL EDUCATION.**

19 **A.** I received a B.B.A. Degree in Finance from the University of Texas at Austin in August
20 1977.

21 **Q. PLEASE DESCRIBE ANY ASSOCIATIONS TO WHICH YOU BELONG OR**
22 **ACTIVITIES YOU UNDERTAKE.**

23 **A.** My associations and activities are as follows:

- 24 (1) Board Member, Foundation Appraisers Coalition of Texas;
25 (2) Mentor, Texas Appraiser Licensing and Certification Board;
26 (3) Arbitrator in real estate disputes;
27 (4) Member, International Right of Way Association;
28 (5) Affiliate Member, Texas Association of Appraisal Districts;

(6) Instructor, Appraisal Institute - Uniform Standards of Professional Appraisal Practice and Business Practices and Ethics;

(7) Appraisal Qualifications Board (AQB) Certified USPAP Instructor; and

(8) REALTOR - National Association of Realtors

Q. PLEASE IDENTIFY LECTURES YOU HAVE GIVEN OR PUBLICATIONS YOU HAVE AUTHORED.

A. (1) Fee (It Really Is) Simple; Texas Association of Appraisal Districts Conference, 2015;

(2) Separating Tangible & Intangible Asset Values in a Texas Refinery: A Case Study; Appraisal Institute, 2014;

(3) Transmission Lines: Acquisition, Valuation and Condemnation, Austin Chapter of the Appraisal Institute and IRWA Chapter 74, 2012;

(4) Responding to Daubert Challenges, Eminent Domain Conference, CLE® International, 2011;

(5) Equality and Uniformity-Commercial Properties, Appraisal Review Board, Travis Central Appraisal District, May 2009;

(6) Appraisal Values in an Unsettled Economy, Graves Dougherty Hearon & Moody - Banking & Real Estate Clients, October, 2008;

(7) Fee Simple Estate - How Many Sticks in the Bundle?, 22nd Annual Legal Seminar on Ad Valorem Taxation in San Antonio, 2008;

(8) Real Estate Appraisal Issues and Ethics, Eminent Domain for Attorneys in Texas, 2007;

(9) Contemporary Appraisal Issues, Central Texas Commercial Property Exchange, 2007;

(10) Capitalization Theory & Techniques, Chartered Financial Analysts, 2007;

(11) Material and Substantial Impairment of Access, CLE® International, 2003;

(12) Fee Simple Versus Leased Fee Valuation: A Study of Appraisal Models, Downtown Austin Alliance, Institute of Real Estate Management, 2001;

(13) Regulatory Takings, International Right of Way Association, 2000

(14) The Schmidt Opinion From the Appraiser's Perspective, Office of the Attorney General, State of Texas, 1993;

1 (15) Asbestos Abatement and Lead Paint: Effects on Real Estate Value, Texas
2 Association of Appraisal Districts, 1992.

3 (16) The Endangered Species Act and Its Impact on Property Value, Texas Savings and
4 Loan League, 1989; and

5 (17) Valuation Theory, Real Estate Symposium, University of Texas, 1984.

6 **Q. HAVE YOU APPRAISED BOTH REAL AND PERSONAL PROPERTY?**

7 **A.** Yes.

8 **Q. ARE YOU A LICENSED TEXAS APPRAISER?**

9 **A.** Yes.

10 **Q. ARE YOU A LICENSED REAL ESTATE BROKER?**

11 **A.** Yes.

12 **Q. ARE YOUR TEXAS APPRAISER AND REAL ESTATE BROKER LICENSES**
13 **CURRENT AND OTHERWISE IN GOOD STANDING?**

14 **A.** Yes.

15 **Q. I AM SHOWING YOU WHAT HAS BEEN MARKED AS EXHIBIT CEL104.**
16 **[RESUME]. WHAT IS THIS DOCUMENT?**

17 **A.** It is my resume describing my background and experience..

18 **Q. DID YOU PREPARE THIS EXHIBIT?**

19 **A.** Yes.

20 **Q. WHEN?**

21 **A.** August, 2016.

22 **Q. IS THE INFORMATION ON YOUR RESUME TRUE AND CORRECT?**

23 **A.** Yes.

24

25 **THE CITY OF CELINA OFFERS CEL104 [RESUME] INTO EVIDENCE.**

26

27 **Q. IN WHAT AREAS DO YOU CONSIDER YOURSELF TO BE AN EXPERT**
28 **QUALIFIED TO GIVE AN OPINION IN THIS CASE.**

1 **A.** Based on the experience and education I have already testified about, and my
2 professional concentration for the past 36 years has been as a practicing real estate
3 appraiser, I consider myself an expert appraiser, and expert regarding USPAP, and an
4 expert related to valuation of all types of property, both tangible and intangible.

5 **Q. HOW IS IT THAT YOU CONSIDER YOURSELF TO BE AN EXPERT**
6 **REGARDING USPAP?**

7 **A.** All appraisals prepared at the company I own and operate, Paul Hornsby & Co., are
8 undertaken in conformity with the Uniform Standards of Professional Appraisal Practice,
9 and the ethics and standards of the Appraisal Institute. Although I have been an appraiser
10 longer than USPAP has been in existence, it has been an integral part of my professional
11 life for over 25 years. I am one of 37 AQB Certified USPAP Instructors in Texas. In
12 addition, because of the extensive litigation support I provide, I frequently need to
13 consult with and opine on matters related to USPAP.

14 **Q. HOW IS IT THAT YOU CONSIDER YOURSELF TO BE AN EXPERT**
15 **APPRIASER AND AN EXPERT IN VALUATION OF ALL TYPES OF**
16 **PROPERTY, BOTH TANGIBLE AND INTANGIBLE?**

17 **A.** My 36 years of experience as an appraiser as well as the other matters I already
18 discussed, qualifies me as an expert appraiser. While much of my 36 years has been
19 spent dealing with real property assets, I also provide counseling services and separation
20 of real estate, tangible personal property, and intangible assets. I am the owner of ph
21 Business Advisors, a business valuation firm specializing in the appraisal of business
22 enterprises, partnership interests, and the allocation of tangible and intangible assets. I
23 have had extensive experience valuing all types of property – both tangible and
24 intangible.

25
26 **THE CITY OF CELINA TENDERS MR. PAUL HORNSBY AS AN EXPERT WITNESS.**

27
28 **Q. BASED UPON YOUR WORK FOR THE CITY OF CELINA AND YOUR**
29 **EDUCATION, EXPERIENCE, AND EXPERTISE, HAVE YOU FORMED**

1 **OPINIONS WITH REGARD TO ANYTHING EXPRESSED BY MR. JOSHUA M.**
2 **KORMAN IN HIS TESTIMONY DATED AUGUST 16, 2016 THAT WAS FILED**
3 **IN THIS PROCEEDING?**

4 **A.** Yes. My opinions are summarized below and they are explained through the remainder
5 of my testimony.

6 **Q. WHAT DOCUMENTS DID YOU RELY UPON TO REACH YOUR**
7 **CONCLUSIONS IN THIS MATTER?**

8 **A.** My conclusions were reached by reviewing:

- 9 1. Section 13.254 of the Texas Water Code;
- 10 2. 16 Tex. Admin. Code §24.113;
- 11 3. The Direct Testimony of Mr. Joshua Korman dated August 16, 2016 that was filed in
- 12 this proceeding;
- 13 4. The Direct Testimony of Jason S. Jones, P.E., labeled Exhibit CEL-100 that was filed
- 14 in this proceeding;
- 15 5. Uniform Standards of Professional Appraisal Practice (2016-2017 Edition).

16 **Q. PLEASE SUMMARIZE YOUR OPINIONS.**

17 **A.** In summary, I have the following opinions:

- 18 1. I do not believe that lost economic opportunity is a compensable property right; and
- 19 2. I disagree with Mr. Korman's testimony that suggests that USPAP has essentially
- 20 been voided in this matter as I do not believe any part of USPAP is void in this case.
- 21 Any intangible asset, as purported to be appraised by Mr. Korman, can be appraised
- 22 under Standards 9 and 10 of USPAP, and there is no need for a Jurisdictional Exception.

23 **Q. WHY DO YOU BELIEVE THAT LOST ECONOMIC OPPORTUNITY IS NOT A**
24 **COMPENSABLE PROPERTY RIGHT?**

25 **A.** For the Judge's convenience, I am referring to Mr. Korman's description that lost
26 economic opportunity is a type of property interest that should be considered in an
27 appraisal in this matter. Mr. Korman's testimony comes to that conclusion at Page 11,
28 Line 5 and discussed in more detail on Page 12, Line 14 through Page 13, Line 2.

DIRECT TESTIMONY OF PAUL HORNSBY
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1 First, I cannot see how an opportunity for future revenue can be defined as property and
2 thereby compensable. While I am aware that this is not an eminent domain case, lost
3 economic opportunity is not recoverable under traditional notions of eminent domain. In
4 Texas, profitability can be considered in the market value of property taken under
5 eminent domain, but I have never seen a case in all my years of experience where lost
6 economic opportunity was awarded for property that did not actually have existing
7 facilities or an ongoing business on the property that was taken.

8
9 Second, TWC §13.254(g) provides factors on which to base compensation for personal
10 property. The Texas Legislature seemed to have addressed the issue of lost future
11 revenues by including that as a factor but limited compensation to loss of future revenue
12 from existing customers.

13
14 Third, I cannot tell from Mr. Korman's testimony on what he bases his opinion that lost
15 economic opportunity is a property right. It appears that he merely claims it is a right but
16 does not explain how or why.

17 **Q. MR. HORNSBY, DO YOU HAVE MUCH EXPERIENCE WITH VALUING**
18 **WATER AND/OR SEWER UTILITIES?**

19 **A.** No, I do not. I have valued one water treatment plant and one wastewater plant.

20 **Q. ARE YOU OFFERING AN OPINION ON THE VALUE THAT SHOULD BE**
21 **PAID TO AQUA TEXAS, INC.?**

22 **A.** No, I am not. My testimony is limited, at this point, to my opinion that lost economic
23 opportunity is not a property right.

24 **Q. IF LOST ECONOMIC OPPORTUNITY IS NOT A PROPERTY RIGHT, THEN**
25 **WHY MIGHT THE LEGISLATURE HAVE INCLUDED "LOST FUTURE**
26 **REVENUES FROM EXISTING CUSTOMERS" AS A COMPENSATION**
27 **FACTOR FOR PERSONAL PROPERTY?**

28 **A.** I don't know what their specific intent was but the fact that lost revenues from future
29 customers is consistent with my earlier testimony because, for there to be existing

1 customers, there would have to be water or sewer lines and other pieces of personal
2 property in place serving the existing customers. If no property to provide service exists,
3 then there are no customers. It appears the Texas Legislature desired to allow a utility to
4 be compensated from this lost revenue from existing customers like profit can sometimes
5 be considered in an eminent domain case in determining market value.

6 **Q. DO YOU HAVE AN OPINION AS TO HOW AN APPRAISER WOULD FORM**
7 **AN OPINION AS TO WHETHER LOST ECONOMIC OPPORTUNITY SHOULD**
8 **BE INCLUDED AS PROPERTY IN THIS MATTER?**

9 **A.** Just based on my review of this matter, it seems that the PUC would have to make an
10 official determination that somehow lost economic opportunity is property. Then, there
11 would have to be a decision made about how far in the future this opportunity goes.

12 **Q. DESCRIBE WHAT USPAP IS.**

13 **A.** USPAP is a set of national Standards that is applicable for most U.S. appraisals. USPAP
14 is developed by the Appraisal Standards Board (ASB) of the Appraisal Foundation. I
15 generally agree with Mr. Korman's testimony at Page 9, Lines 1-7 where he describes
16 USPAP.

17
18 I would further elaborate and say that USPAP contains (1) Definitions; (2) Preamble, (3)
19 Rules, (4) Standards (which includes Standards Rules); and (5) Statements on Appraisal
20 Standards, although the current version of the USPAP does not have any active
21 Statements.

22
23 The Rules include (1) The Ethics Rule, (2) The Recordkeeping Rule, (3) the Competency
24 Rule, (4) the Scope of Work Rule, and (5) the Jurisdictional Exception Rule.

25
26 The Standards include the following:

27
28 Standards 1 and 2 establish requirements for the development and reporting of a real
29 property appraisal.

Standard 3 establishes requirements for development and reporting of an appraisal review assignment involving a real property or personal property appraisal.

Standard 4-5 were retired effective January 1, 2014.

Standard 6 establishes requirements for the development and reporting of mass appraisals.

Standards 7 and 8 establish requirements for the development and reporting of personal property appraisals.

Standards 9 and 10 establish requirements for the development and reporting of business or intangible asset appraisals.

Each of these Standards includes rules that are applicable to those Standards.

Q. WHAT IS THE JURISDICTIONAL EXCEPTION RULE?

A. The Jurisdictional Exception Rule is intended to address assignment conditions in which there is a conflict between USPAP requirements and the requirements of federal, state or local jurisdictions. Such conflicts would allow appraisers not to comply with those conflicted parts of USPAP.

The Jurisdictional Exception Rule Provides that:

“If any applicable law or regulation precludes compliance with any part of USPAP, only that part of USPAP becomes void for the assignment.”

The Jurisdictional Exception Rule provides a saving or severability clause to preserve the balance of USPAP if compliance with one or more of its parts is precluded by the law or

1 regulation of a jurisdiction. When an appraiser properly follows this Rule in disregarding
2 a part of USPAP, there is no violation of USPAP.

3

4 If the Jurisdictional Exception Rule is employed, the appraiser must, among other things,
5 clearly and conspicuously disclose in the report the part of USPAP that is voided by the
6 law or regulation.

7 **Q. I AM SHOWING YOU WHAT HAS BEEN MARKED AS EXHIBIT CEL-105.**
8 **CAN YOU TELL ME WHAT THAT IS?**

9 **A.** Yes, it is a true and correct copy of the Jurisdictional Exception Rule from the most
10 current version of USPAP.

11

12 **THE CITY OF CELINA OFFERS CEL-105 INTO EVIDENCE.**

13

14 **Q. HAVE YOU REVIEWED MR. KORMAN'S TESTIMONY REGARDING THE**
15 **JURISDICTIONAL EXCEPTION RULE?**

16 **A.** Yes.

17 **Q. HAVE YOU FORMED ANY OPINION ABOUT MR. KORMAN'S TESTIMONY**
18 **REGARDING THE JURISDICTIONAL EXCEPTION RULE?**

19 **A.** Yes.

20 **Q. WHAT IS THAT OPINION?**

21 **A.** I disagree with the impression at Page 9, Lines 13-17 of Mr. Korman's testimony that
22 Standard Rules 1-10 were voided by the law and that the Jurisdictional Exception Rule is
23 invoked in this case. Just because the PUC establishes standards of compensation doesn't
24 mean that all of Standards 1-10 are voided. In fact, the PUC identifying factors for
25 compensation does not, in my mind, void a single Standard. The factors for
26 compensation identified in Mr. Korman's testimony are perfectly compatible with the
27 Standards in USPAP. The Standards address valuation of all property – real and
28 personal, tangible and intangible. The Standard Rules at SR 1-2, 3-2, 6-2, 7-2, and 9-2
29 assist in defining the scope of work but certainly do not define specific property that is or

1 is not to be included in an appraisal. Nothing in the factors for compensation set forth in
2 TWC §13.254 and P.U.C SUBST. R. § 24.113 are inconsistent with the Standards. In
3 sum, I do not agree that any law voided any of the Standards in this case, and therefore, I
4 cannot agree that the Jurisdictional Exception Rule should have had any impact on the
5 methodology for preparing an appraisal in terms of identifying the property at issue, as
6 suggested at Page 9, Line 19 through Page 10, Line 6 of Mr. Korman's testimony.

7 **Q. I AM SHOWING YOU WHAT HAS BEEN MARKED AS EXHIBIT CEL-106.**
8 **CAN YOU TELL ME WHAT THAT IS?**

9 **A.** Yes, it is a true and correct copy of the Standards from the most current version of
10 USPAP.
11

12 **THE CITY OF CELINA OFFERS CEL-106 INTO EVIDENCE.**
13

14 **Q. IS THERE ANYTHING IN USPAP THAT DICTATES WHAT PROPERTY**
15 **SHOULD BE CONSIDERED FOR AN APPRAISAL?**

16 **A.** The Scope of Work Rule addresses the scope of work of an appraisal. That Rule states
17 that for each appraisal and appraisal review assignment, an appraiser must, among other
18 things "identify the problem to be solved." The scope of work includes the extent to
19 which the property is identified. The Scope of Work Rule requires the appraiser to gather
20 and analyze information about assignment elements to properly identify the appraisal or
21 appraisal problem to be solved. The Scope of Work Rule provides that communication
22 with the client is required to establish the information necessary for problem
23 identification. Significantly, the Rule provides that "the identification of relevant
24 characteristics is a judgment made by the appraiser that requires competency in that type
25 of assignment." Therefore it is useful to have expertise in the substantive area of the
26 appraisal. Furthermore, statutes and administrative rules are conditions that "affect the
27 scope of work." Therefore, sometimes a legal opinion must be rendered to determine
28 what type of property is subject to an appraisal.
29

1 **Q. I AM SHOWING YOU WHAT HAS BEEN MARKED AS EXHIBIT CEL-107.**
2 **CAN YOU TELL ME WHAT THAT IS?**

3 **A. Yes, it is a true and correct copy of the Scope of Work Rule from the most current**
4 **version of USPAP.**

5
6 **THE CITY OF CELINA OFFERS CEL-107 INTO EVIDENCE.**

7
8 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

9 **A. Yes, but I reserve the right to amend my testimony if additional information becomes**
10 **available.**