



Control Number: 45870



Item Number: 5

Addendum StartPage: 0

RECEIVED

COMPLAINT OF KER-SEVA LTD.
AGAINST THE CITY OF FRISCO

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§
§

PUBLIC UTILITY

2016 MAY 11 AM 9:48

COMMISSION OF TEXAS

UTILITY COMMISSION
FILING CLERK

**CITY OF FRISCO'S MOTION TO DISMISS FOR LACK OF JURISDICTION;
FAILURE TO STATE A CLAIM FOR RELIEF; GENERAL RESPONSE TO
COMPLAINT TO ORDER NO. 1 REQUIRING RESPONSES**

NOW COMES, the City of Frisco ("City"), and files this response to the complaint filed against it by Ker-Seva LTD ("Complainant") in the above referenced proceedings and for grounds therefore, provides the following:

I.

**Commission Lacks Jurisdiction Over the
Matters Raised in This Complaint**

1. City of Frisco is a home-rule city. It provides water and sewer service to its residents and those within the extraterritorial jurisdiction of the City. It also possesses a Certificate of Convenience and Necessity ("CCN") to provide water and sewer service in limited areas outside the City. The City does not contest that Lot 2, Block A, (9331 Westridge Boulevard) is within the City's CCN.

2. It is the City's position that the real issue in this matter is not whether the City will provide water and sewer service but who should pay to extend the water and sewer lines and obtain the utility easements to serve Complainant's property. The Public Utility Commission's substantive rules regarding Customer Service and Protection Regulations generally address obligations to extend service. These rules are not cited by Complainant because it is or should be aware those rules are limited to "water and sewer utilities".¹ The City's position is that its regulations regarding utility extensions control in this matter.

Chapter 24 of the Texas Administrative Code Subchapter E. "Customer Service and Protection", and the relief afforded thereunder is specifically limited to "water and sewer utilities". The City of Frisco is a municipal corporation and is specifically excluded from the statutory

¹ 16 TAC § 24.80.

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definition of a water and sewer utility, nor is it a water or service utility for the purpose of those rules.²

3. Rights, remedies and relief that may be afforded a customer under Texas Administrative Code Customer Service and Protection regulations are not available to Complainant against the City. Based upon a prior complaint by this same Complainant for extension of water and sewer service to Lot 2, the PUC staff dismissed that complaint for the lack of substantive rules that provide a remedy. See **Exhibit A**, attached hereto and incorporated herein by reference for all purposes.

4. As a separate ground for lack of jurisdiction, this matter should be dismissed because Complainant is not a qualified applicant for water and sewer service. In this case, there is no water or sewer infrastructure to serve Lot 2. As a condition precedent to any utility service, Complainant must first follow all development procedures for Lot 2. Complainant has failed to take any steps to begin development other than to file an application for water and sewer service. This action is akin to starting at the end and not the beginning of development. Because the Complainant is not a qualified applicant, the Complaint should be dismissed.

II.

Failure to State a Claim

Complainant's general allegation that the City has a duty as a CCN holder to provide continuous and adequate service to Lot 2 is incorrect and not supported by any authority. Complainant makes unsupported conclusionary statements and cites no authority that the City is obligated to extend water and sewer lines to serve Lot 2 at City expense. Complainant should be required to state with specificity the rule(s) that require the City to expend its monies and resources to extend lines to the Complainant's property.

III.

Procedural Error

The Complainant has filed for relief under the 16 TAC § 22.242. This rule applies to complaints against an electric utility or a telecommunication utility. The City is neither; therefore, that complaint procedure is not available to Complainant for its allegations.

² Texas Water Code, § 13.002(23); 16 TAC § 24.3 (73).

IV.
General Response to Complaint

Not waiving any of the above, by way of further response, the City offers the following:

1. Complainant alleges that City has refused to provide water and sewer service and attached an application for service in its complaint (Complainant's **Exhibit E.**). Complainant also refers to two (2) agreements in support of the obligation of the City to provide water and sewer service - an Annexation Agreement and a Development Agreement (Complainant's **Exhibits C and D**). Complainant's reference to the agreements for the City are, presumably, in support of its request that the City extend water and sewer lines to its property at City expense. Upon review, the Commission will concur that these agreements do not require the City to extend water and sewer service at City expense.

2. Complainant's property was never annexed and the Annexation Agreement referenced in the Complaint as **Exhibit C** expired in 2011. Notwithstanding the Annexation Agreement expired more than four (4) years ago, Complainant's characterization of the obligations to extend service is incorrect. The Annexation Agreement did not confer any rights or benefits with regard to extension of water and sewer service other than what is afforded to any developer. Paragraph 4 of that Agreement clearly provides that the sewer and water service would be provided in the same manner and in accordance to the same schedule as any retail development in the City. Paragraph 2 of that same Agreement includes the requirement that the development shall comply with a number of regulations including the City's Subdivision Regulations.

3. The Development Agreement that Complainant includes in support of its request for relief does not create any obligations for the City to extend service to Lot 2. The Development Agreement did not contractually commit the City to extend services to Lot 2; all utility improvements were limited to Lot 1. The Development Agreement does not require the City to pay for or construct the improvements for Lot 2 as Complainant has alleged.

4. Extension of water and sewer service is governed by the City's Subdivision Regulations. The Subdivision Regulations of the City require the developer to pay the costs to extend utilities. **Exhibit B**, attached hereto and incorporated herein by reference for all purposes. The applicable provisions are set out in Article V of this response. These regulations apply to all development of property for which the City provides service. To provide Complainant the requested relief is to disregard the City's regulations and provide Complainant a greater benefit

and service than what is provided to any other person or entity developing property in and outside the City.

5. The Complainant's obligation is to provide the necessary extension of utilities to serve its property. Upon completion of that extension, the City will provide water and sewer service.

V.

Applicable Statutes, rules, order and/or tariff provisions

1. The City is a home-rule city and has adopted regulations in the regular course of its business regarding the extension of water and sewer service for customers both inside and outside the City. The City's Subdivision Ordinance requires that the extension of water and sewer lines is at the expense of the developer.³ In order to receive water and sewer service, Complainant must extend those utilities at its expense. City has previously notified Complainant of this obligation. **Exhibit C**, attached hereto and incorporated herein by reference for all purposes.

2. Water and sewer service will be provided to Lot 2 if Complainant complies with all applicable regulations including dedication of property necessary for utilities and to construct or cause to be constructed the improvements necessary to serve Lot 2. The construction of these improvements is a condition precedent to any delivery of water or sewer service to Lot 2.

PRAYER

City respectfully requests that the Commission dismiss the Complaint against the City of Frisco and to order any other and further relief to which it may be entitled.

[Signature page to follow.]

³ Frisco Subdivision Regulations, Section 8, §§ 8.02 (d)(3) &(4) and (e) (3) & (4).

Respectfully submitted,

By: 

Diane Callander Wetherbee

State Bar No. 03653500

Richard M. Abernathy

State Bar No.00809500

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ATTORNEYS FOR THE CITY OF FRISCO

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served on all parties on this 10 day of May, 2016 by facsimile transmission.

Mallory Beck

Leonard Dougal

Jackson Walker, LLP

100 Congress, Ste. 1100

Austin, Texas 78701

Telephone: (512) 236-2233

Facsimile: (512) 391-2112

ATTORNEYS FOR COMPLAINANT, KER-SEVA, LTD.

Sam Chang

Attorney – Legal Division

Public Utility Commission of Texas

1701 N. Congress Ave.

Austin, Texas 78711-3326

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ATTORNEYS FOR PUBLIC UTILITY COMMISSION OF TEXAS

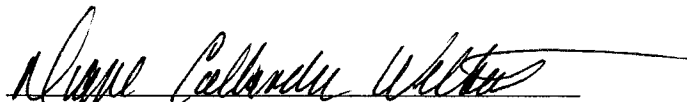

Diane Callander Wetherbee

EXHIBIT "A"

Donna L. Nelson
Chairman

Kenneth W. Anderson, Jr.
Commissioner

Brandy Marty Marquez
Commissioner

Brian H. Lloyd
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas

1/27/2016

Mr Jasinder Jawanda
Ker-Seva Ltd.
10247 Warren Parkway
Frisco TX 75035

RE: Complaint # CP2016010328

Dear Mr Jawanda:

Our office has received the response from City of Frisco concerning your complaint regarding the refusal of service you have experienced with the city. The Customer Protection Division has reviewed the documentation presented by both you and the City of Frisco in order to ensure the city has acted consistently with applicable Substantive Rules; however the Substantive Rules generally apply to companies other than municipalities who are governed by their own regulations which the PUC does not mandate or approve.

The City of Frisco is aware that a CCN obligates the City to provide water service for your premise; however the company has advised the PUC you must provide the connection to your property from the last point on the City's main line nearest the property. The City has recommended you contact the City of Frisco Development Services to determine what actions need to be taken before the City can commence with the work necessary to initiate service. The PUC was advised to reference specific Chapters for the City's subdivision regulations, but there was no clarification as to what actions the City has already taken in compliance with said Chapters. The City's position at this time is that they are willing to provide service pending specific actions on your part. The PUC cannot mandate the City to provide service if further action is required based on the City's regulations.

Although the circumstances which have prompted you to file a complaint are unfortunate, there are currently no Substantive Rules which specifically address your concerns with the City of Frisco. Should you wish to pursue this matter further you have the option of filing a formal complaint with the PUC against the City of Frisco; however the PUC does recommend you contact the City of Frisco first to ensure you have complied with all the necessary requirements mandated by the City.



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1701 N. Congress Avenue PO Box 13326 Austin, TX 78711 512/936-7000 Fax: 512/936-7003 web site: www.puc.state.tx.us

Thank you for the opportunity to address your concerns. If we can assist you with future utility concerns, please contact us toll free through our Customer Assistance Call Center at 1-888-782-8477.

Sincerely,

Customer Protection Division
Public Utility Commission of Texas

cc: City of Frisco

EXHIBIT "B"

FINNEY Subdivision Ordinance

SECTION 8.02 WATER & WASTEWATER REQUIREMENTS

(a) Water and Wastewater Basic Policy.

(1) Construction Requirements.

- a. All public water and wastewater mains shall be located in the frontage of the property along streets, or in easements adjacent to the development in order to provide service to adjacent property.
- b. Public water and/or wastewater mains shall not be located within a private street, drive or access easement unless a public utility easement is provided.
- c. The minimum easement width for water or wastewater mains shall be fifteen (15) feet, or as determined by the Director of Engineering Services. Where it is necessary for water and wastewater facilities to be located within the same easement, the easement shall be a minimum of twenty (20) feet in width, or as determined by the Director of Engineering Services.
- d. No portion of a structure (including, but not limited to, walls, foundations, porches/patios and porch/patio covers, canopies, roof extensions/overhangs, chimneys, fire flues, etc.) shall encroach over or into any easement, except that wall-attached window awnings, "bay" style windows, and roof eaves shall be allowed to encroach into an easement a maximum of twenty-four inches (24") upon approval of the Director of Engineering Services.
- e. A water or wastewater easement between two lots must fall entirely on a single lot.
- f. Easements shall be dedicated for exclusive use for water and wastewater facilities and shall be shown on the Final Plat for the specific purpose intended. When it is necessary for additional utilities to be placed within an easement, additional width shall be provided and the easement shall be labeled for its intended purpose on the Final Plat.
- g. When it is necessary to relocate or replace an existing water or sewer facility to accommodate a proposed subdivision, the developer is responsible for all costs associated with the relocation, except as agreed to by City Council for oversize participation.

- (2) Construction Plans. Plans for construction of all water and wastewater facilities required by these regulations shall be prepared in accordance with the requirements and specifications contained in the *Engineering Standards*, the regulations of the Texas Commission on Environmental Quality (TCEQ), National Sanitation Foundations (NSF), Texas Department of Insurance, Insurance Services Office, and the City's current adopted Fire Code, which are incorporated by reference and made a part hereof. Plans for the improvements must be prepared by a licensed engineer and accepted by the Director of Engineering Services.

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the roadway or pavement. When replacement is determined to be necessary by the Director of Engineering Services, the City shall assume the responsibility for replacement of that portion under the pavement.

- c. The title to all water mains and water meters constructed, and installed, including the title to service connections, shall be vested in the City or the applicable utility provider.
- (3) The City makes no guarantee that water supply or wastewater capacity will be available at any particular time or place.
- (4) Water or wastewater service lines shall not cross any adjacent lot. The public main shall be extended so as not to require the service to extend across another lot. Water and wastewater service lines shall be maintained by the property owner.
- (5) Public water and wastewater mains adjacent to federal, state, or county roadways shall be constructed outside the right-of-way in a separate easement unless otherwise agreed by those agencies and the City.

(d) **Water.**

(1) **Design & Construction.**

- a. **Installation of Water Facilities.** Where water is to be provided through the City system, the property owner shall install adequate water facilities, including fire hydrants, in accordance with the City's *Engineering Standards*, the adopted Fire Code, the current Rules and Regulations for Public Water Systems of the Texas Commission of Environmental Quality (TCEQ), and the firefighting standards of the Texas Board of Insurance. If any such requirements conflict, the most stringent requirement shall apply.
- b. **Facilities for Health and Safety Emergencies; Alternative Water Sources.** All water facilities connected to the City's water system shall be capable of providing water for health and emergency purposes, including fire protection and suppression. Water supply facilities shall be in accordance with the *Engineering Standards*. The design and construction of water system improvements and alternative water sources shall also comply with the following standards:
 - 1. Design and construction of a water source on the site shall be in accordance with applicable regulations of the Texas Commission of Environmental Quality (TCEQ).
 - 2. Design and construction of water service from the City shall be in accordance with the standards in the City's *Engineering Standards*.
 - 3. Design and construction of a fire protection and suppression system shall be in accordance with the standards in the *Engineering Standards*, and in accordance with the City's Fire Department and adopted Fire Code.

statement on the Preliminary and Final Plat. The property owner must submit with the Preliminary and Final Plat applications a certificate from a professional engineer who is registered, or a geoscientist who is licensed, to practice in the State of Texas verifying the adequacy of the proposed well water supply and potability prior to Preliminary Plat and Construction Plans approvals.

- b. Compliance with Other Regulations. Installation, operations and maintenance of individual wells shall comply with City standards, regulations of the Texas Commission on Environmental Quality (TCEQ), and any other applicable County or State rules and regulations. In the event of conflict among these regulations, whichever is the most stringent shall apply.

(e) Wastewater.

- (1) Extension of and Connection to the City's Wastewater Collection System. Extension of, and connection to, the City's sanitary sewer system shall be required for all new developments within the City's limits. Extension of, and connection to, the municipal sewer system shall also be required for new developments within the City's ETJ for any proposed development, lot, tract or parcel that is less than one (1) acre in size. The City is not in any way obligated to allow extension of municipal sewers outside the City's limits. The required extension of, and connection to, the municipal sewer system may be waived as a Minor Waiver, in accordance with Section 9.01, by the Director of Engineering Services if the Director of Engineering Services determines that such extension would require unreasonable expenditures and that an on-site wastewater disposal system (see Section 8.02(e)(5)) will function properly and safely.
- (2) Design & Construction. It is the policy of the City to require all wastewater collection lines to have gravity flow. The use of lift stations and force mains is prohibited unless a gravity design is impractical, as determined by the Director of Engineering Services. The location, design and sizing of all wastewater improvements shall be shown on the Construction Plans and are subject to approval by the Director of Engineering Services.
- (3) Cost of Installation. The cost of installing all wastewater improvements to be made by the developer, including off-site improvements, shall be included in the performance guarantees and Improvement Agreement, if applicable (refer to Section 5.04).
- (4) Extension.
 - a. Cost. Where the City's wastewater system is not planned to be extended in time to serve a proposed new development, all necessary wastewater facilities to serve such development shall be provided by and at the expense of the developer. If oversizing of a wastewater facility is deemed necessary by the Director of Engineering Services for future developments, then the City may participate in such oversizing costs as part of a Development Agreement.
 - b. Future Extensions. Pipe stub-outs shall be located in manholes to facilitate the future extension of wastewater lines. The Director of Engineering Services will determine the location and size of the stub-outs.

EXHIBIT "C"



February 16, 2016

Mr. Jastinder Jawanda
Ker-Seva Ltd.
10247 Warren Parkway
Frisco, TX 75035

RE: PUC Complaint #CP2016010328; Response to February 2, 2016 correspondence

Dear Mr. Jawanda:

This letter is in response to your February 2, 2016 letter requesting that the City of Frisco provide water and sewer service to the property at 9331 Westridge, and for copies of specific regulations that pertain to those obligations. Attached are Sections 7 and 8 of the City of Frisco Subdivision Regulations that address that issue. These regulations apply to all property in the City and the City's Extraterritorial Jurisdiction in order to receive water and sewer service.

The City will provide water and sewer service upon your compliance with the regulations for extension and connection as mentioned above, including meeting all other regulations applicable for the development. At this time, City does not have a development permit for your property in order to properly analyze it to determine what other regulations may be applicable. Therefore, my response is not inclusive of all regulations as those are determined in the development process when an application is reviewed.

In your letter, you indicated you entered into a development agreement with Frisco and constructed two oversized water lines and one oversized sewer connection to serve 9331 Westridge. Please note, our records do not show you as a party to that agreement. That agreement related to improvements to Lot 1 Block A of the Westridge Addition (9421 Westridge), where a daycare was constructed. There was no oversizing of water and sewer lines; the lines were built to the minimum required standards to serve Lot 1 Block A. Contrary to the statement in your letter; there is also no reference in that agreement that the work was also for 9331 Westridge property, which is Lot 2.

Enclosures: Sections 7 and 8 Frisco Subdivision Regulations; Development Agreement for 9421 Westridge.

Sincerely,

John Lettelleir, AICP
Director
Development Services
City of Frisco

DEVELOPMENT SERVICES

CITY OF FRISCO • GEORGE A. PURNEY MUNICIPAL CENTER

6101 FRISCO SQUARE BLVD • 1RD FLOOR • FRISCO, TX 75034 • 972.331.6881 • FAX 972.332.5311 • WWW.FRISCOTEXAS.GOV

Cc: Isabel Ford, Public Utility Commission Consumer Protection Division
Diane Wetherbee, Abernathy, Roeder, Boyd & Joplin, P.C. Law Firm
Amy Mathews, CITY OF FRISCO; Planning Manager