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SOAH DOCKET NO. 473-16-5739.WS
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APPLICATION OF THE CITY OF SCHERTZ TO AMEND A SEWER CERTIFICATE OF CONVENIENCE AND NECESSITY UNDER WATER CODE SECTION 13.255 AND TO DECERTIFY A PORTION OF GREEN VALLEY SPECIAL UTILITY DISTRICT'S CERTIFICATE RIGHTS IN BEXAR COUNTY	§	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

COMMISSION STAFF'S OBJECTIONS TO AND MOTION TO STRIKE PORTIONS OF THE CITY OF SCHERTZ'S DIRECT TESTIMONY AND EXHIBITS

COMES NOW, the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files these Objections to and Motions to Strike Portions of the City of Schertz's Direct Testimony and Exhibits. In support thereof, Staff would show the following:

I. SUMMARY OF OBJECTIONS AND MOTION TO STRIKE

Staff requests that portions of the City of Schertz's (Schertz) Direct Testimony and Exhibits regarding testimony outside the scope of Mr. Adams' expert knowledge be stricken. With regards to the appraisal, Mr. Adams was not the creator of the appraisal, nor was he involved in the creation of the appraisal. Seeking admission of this document as evidence without limitation is unwarranted without the proper foundation in this case. Staff therefore seeks to strike Exhibit C, or in the alternative admit it for the narrow purpose of a basis of Mr. Adams' expert opinions and not for the truth of any matter asserted within. Staff also objects to Mr. Adams' opinion on the value of land bought by Green Valley Special Utility District (GVSUD), as Mr. Adams' expert qualifications on the subject of land valuation has not been supported.

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II. TESTIMONY TO BE STRICKEN

Objection	Testimony to be Stricken	Subject Matter	Basis to strike
1	P12, lines 17-23 P13, lines 1-8 "I am showing you...into evidence"	Admitting Exhibit C into evidence – Schertz's appraisal	Lacking foundation to admit – the witness was not the creator of the appraisal or involved in its creation. Expert Testimony TRE 701, 702 Hearsay TRE 801
2	Page 15, lines 21-22 "...which notes... useless or valueless." Page 38, line 2 "and the...opinion"	Paraphrasing of appraisal	Lacking foundation to admit – the witness was not the creator of the appraisal or involved in its creation. Expert Testimony TRE 701, 702 Hearsay TRE 801
3	Page 33, lines 11-16 " based upon my personal knowledge...in whole or in part"	land value estimation	Speculation

III. ARGUMENT

Exhibit C to Mr. Adams' testimony, the appraisal of Schertz, is inadmissible as to evidence of the proof of the matter asserted within. The Texas Rules of Evidence (TRE)[1] list no exceptions to hearsay that would allow this document to be admitted through this witness. Because this

[1] Tex. R. Evid. 702. The Commission's procedural rules incorporate the evidentiary standards in the Texas Rules of Evidence in contested cases such as transmission line cases. *See* 16 Tex. Admin. Code § 22.221(a) ("The Texas Rules of Civil Evidence as applied in nonjury civil cases in the courts of Texas shall be followed in contested cases."); 16 Tex. Admin. Code § 22.2(16)(defining contested case).

document is not properly admitted at this time, any representation of what the document says also must be stricken. Mr. Adams paraphrases the document twice in his testimony, as identified above.

In addition, Mr. Adams has not been proven to be an expert witness in land valuation. While he may have personal knowledge of the development of Schertz, this does not qualify him as an expert on that development and what effects it may have on the value of land around the city. TRE Rule 702 states that an expert may be qualified by "knowledge, skill, experience, training, or education," however Mr. Adams has not demonstrated the relevant background to show his expert qualifications in this area. His opinion on the subject, therefore, should be treated as that of a lay witness and not as expert testimony.

IV. CONCLUSION

Staff requests that the portions of Schertz's Direct Testimony identified in these Objections and Motion to Strike should be stricken, or given the appropriate amount of weight to which they are justified.

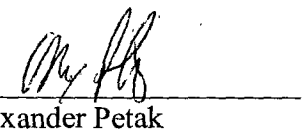
Dated: December 9, 2016

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Margaret Uhlig Pemberton
Division Director

Karen S. Hubbard
Managing Attorney



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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on December 9, 2016 in accordance with 16 TAC § 22.74.

Alexander Petak