



Control Number: 46120



Item Number: 70

Addendum StartPage: 0

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CITY OF MIDLOTHIAN NOTICE OF §
INTENT TO PROVIDE WATER §
SERVICE TO LAND DECERTIFIED §
FROM MOUNTAIN PEAK SPECIAL §
UTILITY DISTRICT §

BEFORE THE STATE OFFICE
PUBLIC UTILITY COMMISSION
OF FILING CLERK
ADMINISTRATIVE HEARINGS

CITY OF MIDLOTHIAN'S RESPONSES TO MOUNTAIN PEAKS' OBJECTIONS AND
MOTION TO STRIKE DIRECT TESTIMONY OF MIKE ADAMS

TO THE ADMINISTRATIVE LAW JUDGE:

NOW COMES, City of Midlothian ("Midlothian") and serves its Responses to Objections and Motion to Strike Direct Testimony of Mike Adams. These responses are filed by the deadline established in the procedural schedule, and are therefore timely.

I. MIDLOTHIAN'S RESPONSES TO MOUNTAIN PEAK'S OBJECTIONS

A. Page 5, Line 16-19 and Exhibit MA-1.

Mountain Peak has objected to the following testimony as being irrelevant to the present proceedings:

"Attached as Exhibit MA-1 is a true and correct copy of the information pamphlet on the bond measures set for voter consideration on May 13, 2006, including Proposition No. Three, funding the Park Facilities Bond Program."

Midlothian believes that this testimony and Exhibit is relevant as it sets out the history of City's involvement with the subject property. "Relevant evidence" is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."¹ One of the facts of consequence of this Docket is at what point the property at issue went from being a planned (but never platted) residential development, to a park. This document and the testimony above may aid in that determination as it marks a clear point in time of when fact the City began considering the development of a regional park in a then-unknown location became public knowledge.

Despite Mountain Peak's contrary assertion, Midlothian does not believe it argued that everything related to the Bond Program was irrelevant in the previous discovery disputes in this

¹ Tex. R. Evid. 401

70

Docket, only the broad scope of the previously propounded requests. Midlothian objected to the following requests as being irrelevant, and those objections were sustained:²

RFI No. 2-2: Please produce all communications, Memoranda, evaluations, assessments, or reports evaluating the need for any bonds, loans, or other funds *related to the provision of water to, the Subject Tract or related to the acquisition of the Subject Tract.*

RFI No. 2-3: Please produce all resolutions of the City Council of the City of Midlothian, or any subcommittee of the City Council of the City of Midlothian, approving the decision to set the Park Facilities Bond Program for voter approval.

RFI No. 2-4: Please produce all documents related to the Park Facilities Bond Program *which also relate to the provision of water to the Subject Tract.*

RFI No. 2-6: Please identify the amount of any outstanding loans or bonds *related to the provision of water to the Subject Tract.*

RFI No. 2-7: Please identify the total amount of public funds expended by Midlothian to date *to provide water to the Subject Tract.*

RFI No. 2-8: Please identify the individual expenditures of public funds by Midlothian to date to provide water to the Subject Tract and the purpose of each such expenditure.

Midlothian also objected that RFI 2-2, 2-4, 2-7 and 2-8 were unduly burdensome, and those objections were sustained.³ The above referenced discovery requests sought information and documents related to decisions leading up to the bond election and actions taken and decisions and actions *after* Decertification, which we continue to contend are irrelevant. The testimony and exhibit in the Mike Adam's Direct Testimony is much more limited than that, showing only the date and substance of the bond election and the various matters to be considered by voters, including the Park Facilities Bond Program.

Regardless, Mountain Peak should not have been surprised or prejudiced by this production. This document was produced in PUC Docket No. 44394,⁴ and was previously

² SOAH Order No. 7 at 4.

³ SOAH Order No. 7 at 5.

⁴ See PUC Docket No. 44394, *City of Midlothian's Response to Order No. 2, Attachment A* (Supplemental Affidavit of Michael G. Adams, P.E.) (Mar. 11, 2015). Mr. Adams describes how the purchase of the Park was "the planned result of a voter-approved Park Facilities Bond Program in 2006, which included the concept for a 'Multi-Use Community Park' of roughly 125 acres, more or less." ¶9. He also included, as Exhibit G, the same pages that are in Exhibit MA-1 in this docket.

produced in several responses to discovery in the current Docket.⁵ Furthermore, Midlothian admitted that bonds were used to purchase the property.⁶

For the above reasons, Midlothian respectfully requests that the Objections and Motion to Strike Page 5, Line 16-19 and Exhibit MA-1 should be overruled.

B. Page 8, Line 8-12, 13-17.

Mountain Peak has objected to the testimony in the above referenced selection as being either: 1) expert testimony from a non-disclosed expert witness; or 2) lay testimony that is not based on facts which he personally observed.

Mountain Peak is correct that Mike Adams has not been designated as an expert. Although it is unclear how Mountain Peak would be prejudiced by any late designation of Mike Adams, due to his long-standing involvement with current and prior Dockets related to this case, Midlothian will retract the above-referenced lines from Mike Adams' direct testimony.

III. CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Midlothian respectfully requests the Administrative Law Judge to overrule these objections.

Respectfully submitted,

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⁵ See City of Midlothian's Responses to RFI No. 22: "Please see documents submitted by or pertaining to Mountain Peak, or its predecessor in interest, Mountain Peak Water Supply Corporation, as filed in PUC Docket No. 44394, available on the PUC Interchange, as filed in the appeal to state district court in Cause No. D-1-GN-15-002843, Mountain Peak Special Utility District v. Public Utility Commission of Texas, pending in the 200th Judicial District Court, Travis County, Texas, and, as filed in TNRCC Docket No. 96-1192- UCR, Amending the Certificate of Convenience and Necessity (CCN No. 10908) issued to Mountain Peak Water Supply Corporation."

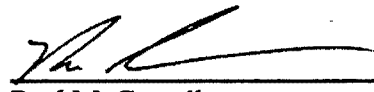
⁶ See City of Midlothian's Responses to Mountain Peak SUD's RFA No 2-2.

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ATTORNEYS FOR CITY OF MIDLOTHIAN

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this document was served on all parties of record in this proceeding on January 27, 2017, in the following manner: by e-mail.



Paul M. González
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