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CITY OF MIDLOTHIAN'S NOTICE OF §
INTENT TO SERVE AREA §
DECERTIFIED FROM MOUNTAIN §
PEAK SPECIAL UTILITY DISTRICT IN §
ELLIS COUNTY §

BEFORE THE STATE OFFICE
OF

ADMINISTRATIVE HEARINGS

SOAH ORDER NO. 9
RULING ON OBJECTIONS AND MOTIONS TO STRIKE DIRECT TESTIMONY

On January 17, 2017, the City of Midlothian (City) and Mountain Peak Special Utility District (Mountain Peak) filed their respective direct testimony. On January 23, 2017, the City filed objections to portions of the testimony filed by Donald G. Rauschuber and Randel Kirk on behalf of Mountain Peak and Mountain Peak filed objections to the testimony of Michael Adams on behalf of the City. Both parties timely filed responses to the objections. This order rules on the objections.

I. MOUNTAIN PEAK'S OBJECTIONS TO TESTIMONY OF MICHAEL ADAMS

Mountain Peak objected to two portions of Michael Adams' testimony: (1) page 5, lines 16-19, and Exhibit MA-1 (which both deal with the Park Facilities Bond Program used to finance the acquisition and development of the park addition), and (2) page 8, lines 8-12 and 13-17 (which include Mr. Adams' opinion as to which property of Mountain Peak has been rendered useless or valueless as a result of the decertification). In its response to Mountain Peak's objections, the City withdrew page 8, lines 8-12 and 13-17. Therefore, the only active objection relates to page 5, lines 16-19, and Exhibit MA-1 of Mr. Adams' testimony.

Mountain Peak argues that in discovery, it asked for documents related to the Park Facilities Bond Program and that the request was met by an objection from the City that it was irrelevant to this proceeding. Moreover, the objection was sustained by the Administrative Law Judge (ALJ). For the City to now include testimony and a brochure regarding the Park Facilities Bond Program is violates the rule that testimony must be relevant.

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The City responds by stating that the challenged testimony and exhibit merely provide background information that shows when the City began considering the property as a potential park. The City also argues that the information should not be a surprise to Mountain Peak in that it was provided in the docket in which the decertification was ordered by the Commission and was incorporated by reference in discovery responses in this docket.

In discovery, the City challenged the request to produce this information on the grounds of relevance and won. It now seeks to have the information introduced because it claims it is relevant. The City cannot have it both ways. Mountain Peak's objection is sustained.

II. THE CITY'S OBJECTIONS TO TESTIMONY OF DONALD G. RAUSCHUBER

The City objected to portions of Mr. Rauschuber's testimony on the grounds of relevance and portions on the grounds of hearsay. These objections will be dealt with below.

A. Relevance Objections

The City objected to page 6, lines 10-11; page 10, lines 9-19; page 11, line 1, through page 14, line 2; page 19, lines 15-25; page 20, line 20, through page 21, line 3; page 21, lines 15-28; page 22, line 1, through page 23, line 15; and page 25, line 8, through page 26, line 17 of Mr. Rauschuber's testimony on the grounds of relevance. It added relevance objections to Exhibit DGR-5 to the extent that the exhibit includes testimony and opinions regarding costs or expenses incurred by Mountain Peak (but does not specify which pages and line numbers this objection applies to). The City argues that any testimony that implicates the amount of compensation that may be owed Mountain Peak as a result of the decertification is beyond the scope of this proceeding.

Mountain Peak responds, stating that the objected-to testimony does not deal with the amount of compensation but, rather, the property for which Mountain Peak must be compensated. As such, the testimony is relevant to the matters at issue in this proceeding.

The ALJ has reviewed the testimony objected to by the City. Almost all of the testimony attempts to describe the property that Mountain Peak considers to have been rendered useless or valueless by the decertification. As such, it is relevant to this proceeding. The only portions that do not meet the test of relevance are page 22, lines 6-8 (“As shown on Exhibit DGR-5, Childress Engineering costs associated with these projects totaled \$318,840.”) and 20-22 (“As shown on Exhibit DGR-5, the combined construction costs of these improvements totaled approximately \$2,293,670.”). These portions of the testimony go to the amount of compensation that may be owed, not whether the property is compensable and are, therefore, irrelevant.

Accordingly, except for the two portions of Mr. Rauschuber’s testimony found to be irrelevant above, the City’s relevance objections are overruled. As to the two portions deemed irrelevant, the relevance objections are sustained.

B. Hearsay Objections

The City objected to Exhibit DGR-2, a map prepared by Welch Engineering, Inc., and marked on by Childress Engineering, Inc., on the grounds that it constitutes hearsay and that it has not been authenticated.

Mountain Peak responds by stating that Mr. Rauschuber relied on the map in forming his expert opinions and personally confirmed the accuracy of the map. All of these facts render the City’s hearsay objections unsustainable. Additionally, Mountain Peak argues that maps are admissible into evidence if they are helpful to the trier of fact and are an accurate representation of that which they are claimed to represent.

The ALJ finds that the City’s hearsay objection and authentication objection are not well-founded. As an expert, Mr. Rauschuber is entitled to rely on the type of information included in the map in forming his opinion. He has personally verified the accuracy of the map. Finally, the map may prove helpful in reaching a decision in this proceeding. All of which lead to the conclusion that the objection should be overruled.


III. THE CITY'S OBJECTIONS TO TESTIMONY OF RANDEL KIRK

The City objected to page 4, lines 20-26; page 9, lines 17-22; page 10, lines 23-26; page 11, lines 7-10; and page 12, line 24, through page 14, line 17 of Mr. Kirk's testimony on the grounds of relevance. The City argues that any testimony that implicates its appeal of the decertification or the amount of compensation that may be owed Mountain Peak as a result of the decertification is beyond the scope of this proceeding.

Mountain Peak responds, stating that testimony regarding its appeal of the decertification is merely background, which is appropriate in almost any testimony, and that the objected-to testimony does not deal with the amount of compensation but, rather, the property for which Mountain Peak must be compensated. As such, the testimony is clearly relevant to the matters at issue in this proceeding.

As with the objections to Mr. Rauschuber's testimony, the City's objections here fall short as well. The testimony regarding the appeal of the decertification is background and is permissible. The other testimony attempts to describe the property that Mountain Peak considers to have been rendered useless or valueless by the decertification. As such, it is relevant to this proceeding. The City's objections are overruled.

SIGNED February 3, 2017.



STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS