



Control Number: 49924



Item Number: 12

Addendum StartPage: 0

DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director



Greg Abbott
Governor

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Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner
Shelly Botkin, Commissioner

All Parties of Record

FROM: Hunter Burkhalter *HB*
Administrative Law Judge

RE: **Open Meeting of March 12, 2020**
Docket No. 49924 – *Petition of Maple Heights Development LLC to Amend Porter Municipal Utility District's Sewer Certificate of Convenience and Necessity in Montgomery County by Expedited Release*

DATE: February 14, 2020

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Thursday, March 12, 2020, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before Tuesday, March 3, 2020.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 49924

PETITION OF MAPLE HEIGHTS	§	PUBLIC UTILITY COMMISSION
DEVELOPMENT LLC TO AMEND	§	
PORTER MUNICIPAL UTILITY	§	OF TEXAS
DISTRICT'S SEWER CERTIFICATE	§	
OF CONVENIENCE AND NECESSITY	§	
IN MONTGOMERY COUNTY BY	§	
EXPEDITED RELEASE	§	

PROPOSED ORDER

This Order addresses the petition of Maple Heights Development LLC, filed on August 30, 2019, requesting the streamlined expedited release of approximately 204 acres of land located within the boundaries of Porter Municipal Utility District's sewer certificate of convenience and necessity (CCN) number 20573 in Montgomery County. The Commission approves the streamlined expedited release of the requested area, as set forth in this Order.

I. Background

On August 30, 2019, Maple Heights filed its petition under Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.235(l), for streamlined expedited release of the 204-acre portion of its tract that lies within Porter MUD's sewer CCN number 20573 in Montgomery County. The petition includes a special warranty deed confirming that Maple Heights owns an approximately 211-acre tract of land in Montgomery County. Approximately 204 acres of that tract lie within Porter MUD's sewer CCN. The petition also includes an affidavit from Itiel Kaplan, Maple Heights' authorized representative, certifying, among other things, that the tract is not receiving sewer service from Porter MUD or any other sewer service provider, that Maple Heights has never requested such sewer service, and there are no billing records or other documents indicating an existing sewer account for the tract.

Porter MUD filed a motion to intervene on October 11, 2019. The motion was granted in Order No. 3 filed on October 23, 2019. In its response to the petition, Porter MUD argues that the petition should be denied because: (1) Maple Heights failed to properly describe and map the tract; (2) Maple Heights failed to prove its ownership of the tract; (3) Maple Heights failed to prove that the affiant on the application, Mr. Kaplan, is authorized to speak on Maple Heights' behalf; and

(4) granting streamlined expedited release would run counter to the Commission's policy of encouraging regionalization of sewer services. Porter MUD did not contend that it is providing service to the tract, nor that decertification of the tract would render any of Porter MUD's property useless or valueless. Porter MUD did not provide an affidavit or other evidence in its response to the petition.

Although the initial petition filed by Maple Heights contained mapping deficiencies identified by Commission Staff, the petitioner supplemented its petition on October 24 and November 15, 2019, providing more detailed mapping information thereby curing the deficiencies identified by Commission Staff, and further explaining Mr. Kaplan's authority to speak on Maple Heights' behalf.

Commission Staff filed its final recommendation on December 2, 2019, recommending that Maple Heights' petition be approved for release of 204 acres of the 211-acre tract, and that Porter MUD is not entitled to compensation.

Based on the facts summarized above, the Commission finds: (1) Porter MUD's arguments lack merit; (2) Maple Heights has established that it is entitled to have its petition granted as to 204 acres, including proving that the tract is not receiving sewer service under the standards of TWC §§ 13.002(21) and 13.254 (a-5) and 16 TAC § 24.245(l) as interpreted in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*¹; and (3) Porter MUD failed to prove that any of its property will be rendered useless or valueless by the decertification under the standards of TWC § 13.254(a-6) and (d), and 16 TAC § 24.245(l) and (n).

II. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. Maple Heights is a domestic limited liability company registered with the Texas secretary of state under filing number 803335344.

¹ 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).

2. Maple Heights owns approximately 211 contiguous acres of land in Montgomery County, approximately 204 acres of which lie within the boundaries of Porter MUD's sewer CCN number 20573.

Petition

3. On August 30, 2019, Maple Heights filed a petition for streamlined expedited release of the 204-acre portion of the tract from the sewer service area of Porter MUD's CCN.
4. Maple Heights supplemented the petition on October 24 and November 15, 2019.
5. Maple Heights provided deeds confirming its ownership of the tract and maps confirming the tract's location.
6. The petition includes an affidavit of Itiel Kaplan, Maple Heights' authorized representative, certifying that the tract is not receiving sewer service from Porter MUD, is owned by Maple Heights, is more than 25 acres, is partially within the boundaries of CCN number 20573, and is located in Montgomery County.
7. In Order No. 4 filed on December 3, 2019, the administrative law judge (ALJ) found the petition administratively complete.

Notice

8. Maple Heights sent a true and correct copy of the petition, via certified mail, to Porter MUD on the day the petition was filed with the Commission, August 30, 2019.
9. In Order No. 4 filed on December 3, 2019, the ALJ found the notice sufficient.

Intervention

10. On October 11, 2019, Porter MUD filed a motion to intervene in this proceeding.
11. In Order No. 3 filed on October 23, 2019, the ALJ granted the motion to intervene.

Response to Petition

12. Porter MUD asserted that the petition should be denied because: (1) Maple Heights failed to properly describe and map the tract; (2) Maple Heights failed to prove its ownership of the tract; (3) Maple Heights failed to prove that the affiant on the application, Mr. Kaplan, is authorized to speak on Maple Heights' behalf; and (4) granting streamlined expedited

release would run counter to the Commission's policy of encouraging regionalization of sewer services.

13. The arguments raised by Porter MUD lack merit.

Sewer Service

14. Porter MUD has not committed facilities or lines providing sewer service to the tract.
15. Porter MUD has not performed acts or supplied anything to the tract.
16. The tract is not receiving sewer service from Porter MUD.

Determination of Useless or Valueless Property

17. No property of Porter MUD is rendered useless or valueless by the decertification.
18. Because no property of Porter MUD is rendered valueless or useless by the decertification, compensation is not necessary.
19. Porter MUD's existing sewer facilities can still be used and useful to provide service in the remainder of its sewer CCN service area.

III. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this petition under Texas Water Code (TWC) § 13.254(a-5).
2. Because this proceeding was commenced before September 1, 2019, by the physical filing of the petition and the assignment of a docket number, the petition is governed by the law in effect prior to that date, and all cites to the TWC are to the versions of the statutes in effect prior to September 1, 2019, in accordance with Act of May 26, 2019, 86th Leg., R.S., S.B. 2272, §§ 6, 7.
3. Notice of the petition was provided in compliance with 16 Texas Administrative Code (TAC) §§ 22.55 and 24.245(l).
4. No opportunity for a hearing on a petition for streamlined expedited release is provided under TWC § 13.254(a-5) and (a-6) or 16 TAC § 24.245(l).

5. Petitions for streamlined expedited release filed under TWC § 13.254(a-5) and 16 TAC § 24.245(l) are not contested cases.
6. Landowners seeking streamlined expedited release under 16 TAC § 24.245(l) are required to submit a verified petition through a notarized affidavit and the CCN holder may submit a response to the petition.
7. To obtain release under TWC § 13.254(a-5), a landowner must demonstrate that the landowner owns a tract of land that is at least 25 acres, is located in a qualifying county, and is not receiving service of the type that the CCN holder is authorized to provide under the applicable CCN.
8. Montgomery County is a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.245(l).
9. The tract is not receiving sewer service under the standards of TWC §§ 13.002(21) and 13.254(a-5), and 16 TAC § 24.245(l), as interpreted in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
10. Maple Heights has satisfied the requirements of TWC § 13.254(a-5) and 16 TAC § 24.245(l) by adequately demonstrating ownership of a tract that is at least 25 acres, is located in a qualifying county, and is not receiving sewer service.
11. Porter MUD failed to prove that any of its property will be rendered useless or valueless by the decertification under the standards of TWC § 13.254(a-6) and (d), and 16 TAC § 24.245(l) and (n); therefore, under TWC § 13.254(d) through (g) and 16 TAC § 24.245(n)(3), no compensation is owed to Porter MUD.
12. Because no compensation is owed under TWC § 13.254(d) through (g), a retail public utility may render retail sewer service directly or indirectly to the public in the decertified area without providing compensation to Porter MUD.
13. The Commission processed the petition in accordance with the TWC, the Administrative Procedure Act,² and Commission rules.

² Tex. Gov't Code ch. 2001.

14. Under TWC § 13.257(r) and (s), Porter MUD is required to record a certified copy of the approved certificate and map, along with a boundary description of the service area, in the real property records of each county in which the service area or a portion of the service area is located, and submit to the Commission evidence of the recording.

IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission grants the petition and removes the 204 acres owned by Maple Heights from Porter MUD's sewer CCN number 20573.
2. The Commission amends Porter MUD's sewer CCN number 20573 in accordance with this Order.
3. The Commission's official service area boundary maps for Porter MUD's CCN will reflect this change as shown on the attached map.
4. The Commission grants the certificate attached to this Order.
5. Porter MUD must comply with the recording requirements of TWC § 13.257(r) and (s) for the area in Montgomery County affected by the petition and submit to the Commission evidence of the recording no later than 31 days after receipt of this Order.
6. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the _____ day of _____ 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER

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The map displays the Maple Heights Development, LLC Property, which is outlined by a red dashed line. The property is situated in a region with various surrounding areas and roads. Key features include:

- Area Released:** A large, irregularly shaped area within the property boundary, outlined by a red dashed line.
- Maple Heights Development, LLC Property:** The entire area enclosed by the red dashed line.
- Surrounding Areas:**
 - Northland:** Located to the north of the property.
 - Creek:** Located to the west of the property.
 - Wood:** Located to the west of the property.
 - Country:** Located to the west of the property.
 - Porter:** Located to the east of the property.
 - Bobby:** Located to the east of the property.
 - Alexander:** Located to the east of the property.
 - Deutser:** Located to the east of the property.
 - Hecht:** Located to the east of the property.
 - Moss:** Located to the east of the property.
 - Bay:** Located to the west of the property.
 - Dogwood:** Located to the west of the property.
 - Pinewood:** Located to the west of the property.
 - Holly:** Located to the west of the property.
 - Lakeside:** Located to the west of the property.
 - Youdon:** Located to the west of the property.
- Roads:**
 - SH 99:** A road running horizontally across the bottom of the map.
 - Northfork:** A road running diagonally from the top left to the bottom left.
- CCN Numbers:**
 - CCN 20906:** Located in the top right corner of the map.
 - CCN 20573:** Located in the middle left of the map.





Public Utility Commission of Texas

By These Presents Be It Known To All That

Porter Municipal Utility District

having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Porter Municipal Utility District is entitled to this

Certificate of Convenience and Necessity No. 20573

to provide continuous and adequate sewer utility service to that service area or those service areas in Montgomery County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 49924 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Porter Municipal Utility District to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____ day of _____ 2020.