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BEFORE THE

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 §

PUBLIC UTILITY COMMISSION
OF TEXAS

**PORTER MUNICIPAL UTILITY DISTRICT'S MOTION TO INTERVENE AND
INITIAL BRIEF**

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**PORTER MUNICIPAL UTILITY DISTRICT'S MOTION TO INTERVENE AND
INITIAL BRIEF**

COMES NOW, Porter Municipal Utility District ("Porter MUD") and files this Motion to Intervene and Initial Brief pursuant to Texas Administrative Code §§ 22.103 and 22.104. In support thereof, Porter MUD respectfully shows as follows:

I. BACKGROUND

On August 30, 2019, Maple Heights Development LLC ("Maple Heights") filed a petition for expedited release of approximately 211.094 acres of land within the boundaries of Porter MUD's sewer certificate of convenience and necessity number (CCN) No. 20573 in Montgomery County, under Texas Water Code § 13.254(a-5)¹ and 16 Texas Administrative Code (TAC) § 24.245(1).

II. MOTION TO INTERVENE

Porter MUD respectfully requests to intervene as a party in the above-captioned proceeding. Porter MUD's motion to intervene is timely filed pursuant to Order No. 1 and PUC Procedural Rule 22.104. Porter MUD has the right to intervene under PUC Procedural Rule 22.103(b) because, as the holder of the subject water and sewer CCNs, it is a key party with

¹ Statutory requirements and procedures regarding streamlined expedited release, previously under Texas Water Code § 13.254(a-5), currently resides in Texas Water Code § 13.2541 as amended by Act of June 10, 2019, 86th Leg., R.S., ch 688, (S.B. 2272) 2019 Tex. Gen. Laws., effective September 1, 2019.

justiciable interests which may be adversely affected by the outcome of this proceeding. Porter MUD has an interest in maintaining its CCN areas and in protecting its investments in its infrastructure. Therefore, Porter MUD should be granted party status.

A. Porter MUD is a Necessary Party

Porter MUD is a retail public utility, the holder of the sewer CCN at issue in this proceeding, and, therefore, as a respondent, is a necessary party to the proceeding.² Respondents, as defined by Public Utility Commission (“Commission”) rules, are necessary parties to proceedings that have been initiated against them, and need not file a motion to intervene to participate as parties in Commission proceedings.³ Therefore, Porter MUD need not file a motion to intervene in order to participate in this proceeding.

B. Porter MUD has a Right to Intervene and Intervention should be granted.

1. Porter MUD has a Right to Intervene and Protect its Justiciable Interest.

If intervention is required, Porter MUD has the right to intervene under Texas Administrative Code § 22.103(b) because it has justiciable interests which may be adversely affected by the outcome of this proceeding. Porter MUD has a justiciable interest in maintaining its CCN areas and in protecting its investments in its infrastructure.

2. Porter MUD's Response should be Deemed a Timely Request to Intervene.

Porter MUD’s response, filed less than 45 days after the Petition was filed, should be deemed a timely request to intervene. Under Texas Administrative Code § 22.104(b), a party has 45 days in which to file a motion to intervene. Although the Honorable Administrative Law Judge set September 30, 2019, as the deadline for intervention, Maple Heights’s Petition has not yet been

² See TEX. ADMIN. CODE § 22.2(41)

³ TEX. ADMIN. CODE § 22.104(a)

deemed administratively complete. The statutory deadline for granting a petition for streamlined expedited release is the 60th day after the date the “landowner” files the petition. However, the Commission has held that the 60-day statutory deadline to grant or deny a petition for streamlined expedited release under § 13.254(a-5) of the Texas Water Code does not begin until the petition is declared administratively complete.⁴ Therefore, Porter MUD’s intervention will not prevent the Commission from complying with the statutory deadline.

Furthermore, the original deadline for intervention was based on the prior understanding that Maple Heights was the landowner of the property for which it has petitioned to de-certificate from Porter MUD’s sewer CCN. Under § 13.254(a-5) of the Texas Water Code, being a landowner of the property subject to the decertification is a prerequisite to filing a petition for expedited release.⁵ Whether Maple Heights is the landowner is not a fact that has been established. Therefore, the initially ordered deadline for interventions should not be applied to prejudice Porter MUD.

3. Good Cause Exists to Allow Porter MUD to Intervene.

Even if Porter MUD's first responsive pleading is not considered a timely request to intervene, good cause exists now to allow Porter MUD to intervene, and Porter MUD respectfully requests leave to do so.

Under Texas Administrative Code 22.104(d)(1), a motion to intervene which is not timely filed may still be granted based on the consideration of several factors. The Commission should permit Porter MUD to intervene upon consideration of the factors under Texas Administrative Code 22.104(d)(1)(a)-(e).

⁴ See Open Meeting Tr. at 114:14-20 (Mar. 26, 2015).

⁵ Statutory requirements and procedures regarding streamlined expedited release, previously under Texas Water Code § 13.254(a-5), currently resides in Texas Water Code § 13.2541 as amended by Act of June 10, 2019, 86th Leg., R.S., ch 688, (S.B. 2272) 2019 Tex. Gen. Laws., effective September 1, 2019. Therefore, *see also* TEX. WATER CODE ANN. § 13.2541(c); *and*, TEX. WATER CODE ANN. § 13.2541(f)

First, no objections have been filed. Second, Maple Heights will not suffer any additional prejudice or burdens as a result of Porter MUD's intervention. Indeed, Commission staff has already issued a recommendation in which it finds Maple Heights's Petition to be administratively incomplete for the very reasons listed in this motion to intervene.⁶ Third, Porter MUD's intervention will not result in any disruptions because the Honorable Administrative Law Judge has already found that the Petition is administratively incomplete.⁷ The PUC staff recommends that Maple Heights be ordered to cure the deficiencies identified in Mr. Pokhrel's memorandum by October 30, 2019, and that Staff be given a deadline of November 29, 2019, to file a supplemental recommendation on the administrative completeness of the application. Lastly, Porter MUD's public interests will not be represented in this proceeding if its motion to intervene is denied. Given the opportunity of party status in this proceeding, the Porter MUD's public interest concerning its current wastewater CCN in Montgomery County, will be represented.

III. INITIAL BRIEF ON DEFECTS OF MAPLE HEIGHTS DEVELOPMENT LLC'S PETITION FOR EXPEDITED RELEASE

Porter MUD files this initial brief to raise several concerns regarding the Maple Heights Petition. First, the property which is the subject of the Petition is not properly described and the mapping is insufficient. Second, it is not clear from the records provided and the Petition, that the Petitioner, Maple Heights Development LLC, owns the land that it seeks to remove from Porter MUD's retail wastewater CCN. Finally, Porter MUD is a regional wastewater provider in Montgomery County and the granting of this Petition would work against the PUC's policy of encouraging the regionalization of wastewater services.

⁶ *Petition of Maple Heights Development LLC to Amend Porter MUD's Sewer CCN*, Docket No. 49924, Recommendation on Administrative Completeness and Proposed Notice (Sept. 30, 2019)

⁷ *Petition of Maple Heights Development LLC to Amend Porter MUD's Sewer CCN*, Docket No. 49924, Order No. 2 (Sept. 30, 2019)

A. The Maps Provided by Maple Heights Development LLC with its Petition are Insufficient to Identify the Area it seeks to Remove from Porter MUD's CCN by Expedited Release.

As indicated by Roshan Pokhrel, Engineering Specialist with the Commission's Infrastructure Division, the acreage listed in the application is approximately 211 acres, while that of the digital data is approximately 203 acres. Additionally, the Petition is consistent with the Montgomery County Appraisal District's record for the property, which shows a different property boundary for the southwest portion of the requested area. Since the Petition and maps submitted by Maple Heights fail to adequately identify property it seeks to remove from Porter MUD's CCN, the Petition should be denied.

B. The Petition does not indicate that Petitioner, Maple Heights Development LLC, is the Landowner of the Property it seeks to Remove from Porter MUD's CCN by Expedited Release.

Under § 13.254(a-5) of the Texas Water Code, being a landowner of the property subject to the decertification is a prerequisite to filing a petition for expedited release.⁸ Here, the petitioner, "Maple Heights Development, LLC," has not proven that it owns the land that it seeks to decertify under the Petition. As Mr. Pokhrel has pointed out, the ownership documents provided by Itiel Kaplan, 3 Points Realty Partners representing Maple Heights, cause some confusion as to who owns the property in question.⁹ According to Commission staff, the landowner's name is North Houston Airport, LLC, and the Deed of Trust attached to the application fails to link Maple Heights and North Houston Airport, LLC.¹⁰

⁸ See TEX. WATER CODE ANN. § 13.2541(c); *see also*, TEX. WATER CODE ANN. § 13.2541(f)

⁹ *Petition of Maple Heights Development LLC to Amend Porter MUD's Sewer CCN*, Docket No. 49924, Recommendation on Administrative Completeness and Proposed Notice (Sept. 30, 2019)

¹⁰ *Id.*

C. Even if Maple Heights is the owner, no Evidence has been Provided that Maple Heights Authorized the Affiant or 3 Points Realty Partners to file the Petition.

Even if Maple Heights is the owner, its Petition is deficient and cannot be declared administratively complete because there is no evidence that Maple Heights—the alleged owner of the tract of land in question—authorized and approved the Petition. The Chief Executive Officer of New Development for 3 Points Realty Partners signed an affidavit purporting to be the representative of Maple Heights Development, LLC, and addressing the technical requirements of Section 13.254 (a-5). However, the affiant, Itiel Kaplan, makes no mention of any action taken by the Maple Heights to authorize or approve the filing of the Petition, or to authorize the affiant to represent Maple Heights in the removal of the property at issue from Porter MUD’s CCN.

Owning the land that one is seeking to remove from an existing CCN is a prerequisite to qualifying for expedited release under Section 13.254 (a-5) of the Texas Water Code.¹¹ The affiant does not claim to be the owner. Nor does the affiant claim that 3 Points Realty Partners is the owner. That notwithstanding, the affiant—an employee of 3 Points Realty Partners—filed the petition and purports to address the technical aspects of Section 13.254 (a-5), not Maple Heights. Since there is no evidence that supports the affiant’s claim that Maple Heights has authorized the affiant and 3 Points Realty to represent Maple Heights in this proceeding, the requirement that the petitioner also be the landowner under Section 13.254 (a-5) of the Texas Water Code has not been met.

D. Porter MUD is a Regional Provider of Wastewater Services in Montgomery County with a Record of Working with Real Estate Developers.

Porter MUD is a regional wastewater service provider in Montgomery County that has

¹¹ TEX. WATER CODE ANN. § 13.254 (a-5), re-designated as TEX. WATER CODE ANN. § 13.2541 (b) and amended by Act of June 10, 2019, 86th Leg., ch. 688 (S.B. 2272)

provided wastewater services since 1982. Porter MUD has developed expertise and institutional knowledge of the best and most efficient methods of providing wastewater services in Montgomery County from both its years of experience and its significant investment of time and financial resources in the provision of wastewater services and the planning of facilities and infrastructure to provide those services. The PUC's rules clearly demonstrate a substantial interest by the PUC in the regionalization of utility services based on the language of Texas Administrative Code § 24.227 (b) and (d) which provide that the applicant for a new CCN or an amendment to a CCN or the PUC must take into consideration whether regionalization is possible and feasible. Porter MUD has shown a willingness to work with real estate developers who want to develop property within Porter MUD's wastewater CCN to establish high quality wastewater services and Porter MUD would welcome that opportunity with the developers of the property at issue.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Porter Municipal Utility District respectfully requests that it be declared a party to this proceeding, that Porter MUD's Initial Brief be accepted, and that Maple Heights Development, LLC's Petition be denied, or rejected as defective, as failing to meet the requirements of Tex. Water Code § 13.254(a-5).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by fax, hand-delivery, and/or regular, first class mail on this the 11th day of October, 2019 to the parties of record, in accordance with 16 Tex. Admin. Code § 22.74.

/s/ Ty H. Embrey

Ty H. Embrey