



Control Number: 50405



Item Number: 32

Addendum StartPage: 0

PUC DOCKET NO. 50405



PETITION BY THE SANCTUARY TEXAS, LLC,
FOR EXPEDITED RELEASE FROM WATER CCN NO. 13201 HELD BY AQUA TEXAS IN DENTON COUNTY

BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

THE SANCTUARY TEXAS, LLC’S EXCPETIONS TO PROPOSED ORDER AND MEMORANDUM

The Sanctuary Texas, LLC (“Petitioner” or “The Sanctuary”) files the following Exceptions to the Public Utility Commission of Texas (the ‘Commission’s) Proposed Order and Memorandum issued on September 16, 2020 and in support thereof respectfully shows as follows:

I. Exceptions

1. Petitioner Excepts to the Finding and Conclusion in the Proposed Order that the property that is the subject of this docket is receiving “service” from Aqua.

II. Argument and Authority

2. Petitioner’s request for expedited release from CCN No. 13201 meets the requirements of Texas Water Code Section 13.2541(b) and 16 Texas Administrative Code Section 24.245(l). The “Property,” as defined in the Petition, contains the approximately 70.146 acres of contiguous property, as shown by the filed mapping information. Fifty-nine (“59”) acres of the Property is located in Aqua’s CCN. The Property is, therefore, greater than twenty-five (25) acres, is located within a qualifying county. Further, the Property is not receiving water service as more fully set forth below.

3. The purported bases for Aqua’s provision of service to the Property are that:

- (i) there is a four-inch water line on the Property;

- (ii) there is a stand-by meter on the Property; and
- (iii) there are facilities adjacent to the Property.

These items are strikingly similar to those identified by Crystal Clear Water Supply Corporation in *Texas Gen. Land Office v. Crystal Clear Water Supply Corporation* in its unsuccessful attempt to prove it was providing “service” to decertified property. 449 S.W. 3d 130, 138 (Tex. App.—Austin 2014, pet.denied).

4. Service is defined as “any act performed, anything furnished or supplied, and any facilities or lines committed or used by the retail public utility in the performance of its duties.” TEX. WATER CODE § 13.2541. In *Crystal Clear*, the court further explained the factual inquiry that is necessary to determine if a tract is receiving “service.” *See id.* at 140.

The mere existence of water lines or facilities *on or near* a tract would not necessarily mean that tract was “receiving water service.” Rather ... such a determination is a fact-based inquiry requiring the Commission to consider whether the retail public utility has facilities or lines committed to providing water *to the particular tract* or has performed acts or supplied anything *to the particular tract* in furtherance of its obligation to provide water to that tract pursuant to its CCN. *Id.* (emphasis added).

Here, the single meter cited by Aqua is not active. Rather it is on “stand-by,” is attached to an uninhabited dwelling, and is not receiving bills. Moreover, the waterline and adjacent facilities do not amount to furtherance of Aqua’s obligation to provide water to the Property under its CCN. One vacant residence does not constitute the tract or the Property identified by Aqua for decertification. It is undisputed that Aqua is not *actively* supplying water to this dwelling or to the Property. Therefore, the question is whether the Property is receiving “service” in some manner other than by the present delivery of water to the Property. *See id.* at 141. Aqua has previously informed the Sanctuary that it does not have the capacity to serve the 265 residences planned for the Property. *See* Preliminary Plat Approval as Exhibit “A;” *see also* Affidavit of

Maron McMakin attached as Exhibit “B.” There is no evidence that Aqua has committed any facilities or lines to serving the Property, including the approved plat, and/or that the water supply dedicated to meeting the Property’s future demand is sufficient to deem it to be receiving “service.” *See id.*

5. While Aqua argues that there is an existing water line, inactive meter, and facilities adjacent to the Property, it has not shown the facilities are not committed to providing water to the Property, as required under *Crystal Clear*. Instead, Aqua has failed to demonstrate that its water line, meter, or adjacent facilities were installed for the purpose of providing water to the Property or that it has the capacity to serve the Property, including future development, under its CCN. As such, the Sanctuary LLC’s Petition for Streamlined Expedited Release should be granted.

6. Of the three items described as providing “service” to the Property, Commission Staff was only persuaded that “the continuing presence of a water meter” could amount to water service because “the meter remains at the ready to provide service again.” *See* Commission Staff’s Recommendation on Final Disposition. As pointed out above, the mere presence of the water meter does not amount to active service nor bolster Aqua’s ability to provide service to future development under its CCN. Accordingly, the Petition meets the criteria for approval. However, the concern addressed by Commission Staff regarding the meter can be easily addressed by either disconnecting the water meter, or by excluding the dwelling from the definition of the Property.

WHEREFORE, Petitioner respectfully requests the Commission to enter and Order GRANTING the Petition with instructions to cure the defect presented by the “stand-by” water meter either through a request to Aqua to disconnect the meter or by excluding the residential meter location through a revised metes and bounds description of the Property.

Respectfully submitted,

COATS | ROSE

By: 

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**ATTORNEY FOR PETITIONER
THE SANCTUARY TEXAS, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2020, a true and correct copy of this document was served on all parties of record in this proceeding by electronic mail and by filing on the PUC Interchange System.

Counsel for Aqua Texas, Inc.

Geoffrey P. Kirshbaum
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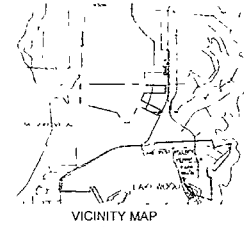
Creighton R. McMurray
PUC – Legal Division
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Natalie B. Scott

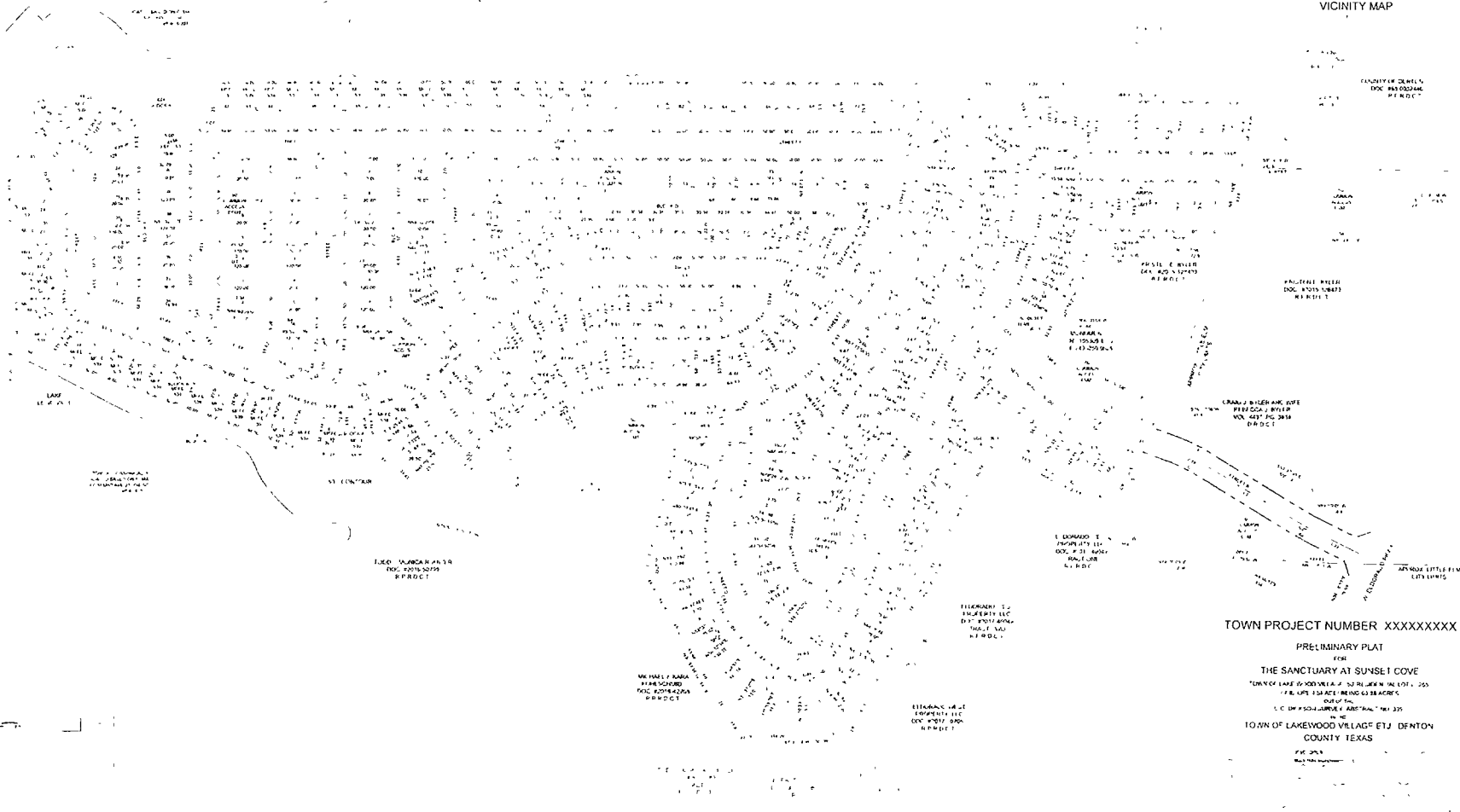
EXHIBIT “A”

SITE LEGEND



TYPICAL STREET SECTION 31' B-B

TYPICAL STREET SECTION 37' B-B



TOWN PROJECT NUMBER XXXXXXXX

PRELIMINARY PLAT

FOR THE SANCTUARY AT SUNSET COVE

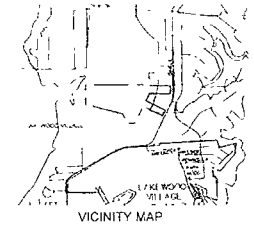
OWNER OF LAKE WOODVILLE, A 52.91 ACRES IN LOT 1, 255

7.8 ACRES 13 ACRES BEING 63.88 ACRES

TO THE

TOWN OF LAKEWOOD VILLAGES ETJ DENTON

COUNTY TEXAS



LINE	START	END	LENGTH	BEARING	AREA
1	0+00	0+10	10.00	N 100° 00' 00" E	100.00
2	0+10	0+20	10.00	N 100° 00' 00" E	100.00
3	0+20	0+30	10.00	N 100° 00' 00" E	100.00
4	0+30	0+40	10.00	N 100° 00' 00" E	100.00
5	0+40	0+50	10.00	N 100° 00' 00" E	100.00
6	0+50	0+60	10.00	N 100° 00' 00" E	100.00
7	0+60	0+70	10.00	N 100° 00' 00" E	100.00
8	0+70	0+80	10.00	N 100° 00' 00" E	100.00
9	0+80	0+90	10.00	N 100° 00' 00" E	100.00
10	0+90	1+00	10.00	N 100° 00' 00" E	100.00

LINE	START	END	LENGTH	BEARING	AREA
11	1+00	1+10	10.00	N 100° 00' 00" E	100.00
12	1+10	1+20	10.00	N 100° 00' 00" E	100.00
13	1+20	1+30	10.00	N 100° 00' 00" E	100.00
14	1+30	1+40	10.00	N 100° 00' 00" E	100.00
15	1+40	1+50	10.00	N 100° 00' 00" E	100.00
16	1+50	1+60	10.00	N 100° 00' 00" E	100.00
17	1+60	1+70	10.00	N 100° 00' 00" E	100.00
18	1+70	1+80	10.00	N 100° 00' 00" E	100.00
19	1+80	1+90	10.00	N 100° 00' 00" E	100.00
20	1+90	2+00	10.00	N 100° 00' 00" E	100.00

LINE	START	END	LENGTH	BEARING	AREA
21	2+00	2+10	10.00	N 100° 00' 00" E	100.00
22	2+10	2+20	10.00	N 100° 00' 00" E	100.00
23	2+20	2+30	10.00	N 100° 00' 00" E	100.00
24	2+30	2+40	10.00	N 100° 00' 00" E	100.00
25	2+40	2+50	10.00	N 100° 00' 00" E	100.00
26	2+50	2+60	10.00	N 100° 00' 00" E	100.00
27	2+60	2+70	10.00	N 100° 00' 00" E	100.00
28	2+70	2+80	10.00	N 100° 00' 00" E	100.00
29	2+80	2+90	10.00	N 100° 00' 00" E	100.00
30	2+90	3+00	10.00	N 100° 00' 00" E	100.00

LINE	START	END	LENGTH	BEARING	AREA
31	3+00	3+10	10.00	N 100° 00' 00" E	100.00
32	3+10	3+20	10.00	N 100° 00' 00" E	100.00
33	3+20	3+30	10.00	N 100° 00' 00" E	100.00
34	3+30	3+40	10.00	N 100° 00' 00" E	100.00
35	3+40	3+50	10.00	N 100° 00' 00" E	100.00
36	3+50	3+60	10.00	N 100° 00' 00" E	100.00
37	3+60	3+70	10.00	N 100° 00' 00" E	100.00
38	3+70	3+80	10.00	N 100° 00' 00" E	100.00
39	3+80	3+90	10.00	N 100° 00' 00" E	100.00
40	3+90	4+00	10.00	N 100° 00' 00" E	100.00

LINE	START	END	LENGTH	BEARING	AREA
41	4+00	4+10	10.00	N 100° 00' 00" E	100.00
42	4+10	4+20	10.00	N 100° 00' 00" E	100.00
43	4+20	4+30	10.00	N 100° 00' 00" E	100.00
44	4+30	4+40	10.00	N 100° 00' 00" E	100.00
45	4+40	4+50	10.00	N 100° 00' 00" E	100.00
46	4+50	4+60	10.00	N 100° 00' 00" E	100.00
47	4+60	4+70	10.00	N 100° 00' 00" E	100.00
48	4+70	4+80	10.00	N 100° 00' 00" E	100.00
49	4+80	4+90	10.00	N 100° 00' 00" E	100.00
50	4+90	5+00	10.00	N 100° 00' 00" E	100.00

LINE	START	END	LENGTH	BEARING	AREA
51	5+00	5+10	10.00	N 100° 00' 00" E	100.00
52	5+10	5+20	10.00	N 100° 00' 00" E	100.00
53	5+20	5+30	10.00	N 100° 00' 00" E	100.00
54	5+30	5+40	10.00	N 100° 00' 00" E	100.00
55	5+40	5+50	10.00	N 100° 00' 00" E	100.00
56	5+50	5+60	10.00	N 100° 00' 00" E	100.00
57	5+60	5+70	10.00	N 100° 00' 00" E	100.00
58	5+70	5+80	10.00	N 100° 00' 00" E	100.00
59	5+80	5+90	10.00	N 100° 00' 00" E	100.00
60	5+90	6+00	10.00	N 100° 00' 00" E	100.00

LINE	START	END	LENGTH	BEARING	AREA
61	6+00	6+10	10.00	N 100° 00' 00" E	100.00
62	6+10	6+20	10.00	N 100° 00' 00" E	100.00
63	6+20	6+30	10.00	N 100° 00' 00" E	100.00
64	6+30	6+40	10.00	N 100° 00' 00" E	100.00
65	6+40	6+50	10.00	N 100° 00' 00" E	100.00
66	6+50	6+60	10.00	N 100° 00' 00" E	100.00
67	6+60	6+70	10.00	N 100° 00' 00" E	100.00
68	6+70	6+80	10.00	N 100° 00' 00" E	100.00
69	6+80	6+90	10.00	N 100° 00' 00" E	100.00
70	6+90	7+00	10.00	N 100° 00' 00" E	100.00

LINE	START	END	LENGTH	BEARING	AREA
71	7+00	7+10	10.00	N 100° 00' 00" E	100.00
72	7+10	7+20	10.00	N 100° 00' 00" E	100.00
73	7+20	7+30	10.00	N 100° 00' 00" E	100.00
74	7+30	7+40	10.00	N 100° 00' 00" E	100.00
75	7+40	7+50	10.00	N 100° 00' 00" E	100.00
76	7+50	7+60	10.00	N 100° 00' 00" E	100.00
77	7+60	7+70	10.00	N 100° 00' 00" E	100.00
78	7+70	7+80	10.00	N 100° 00' 00" E	100.00
79	7+80	7+90	10.00	N 100° 00' 00" E	100.00
80	7+90	8+00	10.00	N 100° 00' 00" E	100.00

LINE	START	END	LENGTH	BEARING	AREA
81	8+00	8+10	10.00	N 100° 00' 00" E	100.00
82	8+10	8+20	10.00	N 100° 00' 00" E	100.00
83	8+20	8+30	10.00	N 100° 00' 00" E	100.00
84	8+30	8+40	10.00	N 100° 00' 00" E	100.00
85	8+40	8+50	10.00	N 100° 00' 00" E	100.00
86	8+50	8+60	10.00	N 100° 00' 00" E	100.00
87	8+60	8+70	10.00	N 100° 00' 00" E	100.00
88	8+70	8+80	10.00	N 100° 00' 00" E	100.00
89	8+80	8+90	10.00	N 100° 00' 00" E	100.00
90	8+90	9+00	10.00	N 100° 00' 00" E	100.00

LINE	START	END	LENGTH	BEARING	AREA
91	9+00	9+10	10.00	N 100° 00' 00" E	100.00
92	9+10	9+20	10.00	N 100° 00' 00" E	100.00
93	9+20	9+30	10.00	N 100° 00' 00" E	100.00
94	9+30	9+40	10.00	N 100° 00' 00" E	100.00
95	9+40	9+50	10.00	N 100° 00' 00" E	100.00
96	9+50	9+60	10.00	N 100° 00' 00" E	100.00
97	9+60	9+70	10.00	N 100° 00' 00" E	100.00
98	9+70	9+80	10.00	N 100° 00' 00" E	100.00
99	9+80	9+90	10.00	N 100° 00' 00" E	100.00
100	9+90	10+00	10.00	N 100° 00' 00" E	100.00

TOWN PROJECT NUMBER XXXXXXXX

PRELIMINARY PLAN

THE SANCTUARY AT SUNSET COVE

TOWN OF LAKEWOOD VILLAGE, TEXAS

TOWN OF LAKEWOOD VILLAGE, TEXAS

EXHIBIT “B”

PETITION BY THE SANCTUARY	§	BEFORE THE
TEXAS, LLC,	§	
FOR EXPEDITED RELEASE FROM	§	
WATER CCN NO. 13201 HELD BY	§	PUBLIC UTILITY COMMISSION
BY AQUA TEXAS IN	§	
DENTON COUNTY	§	OF TEXAS

AFFIDAVIT OF MARLON MCMAKIN

STATE OF TEXAS §

COUNTY OF DENTON §

BEFORE ME, the undersigned notary, personally appeared Marlon McMakin, the affiant, a person who is known to me. After administering an oath, the affiant testified that:

1. “My name is Marlon McMakin. I am over the age of eighteen years, of sound mind, and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I am the Managing Member of The Sanctuary Texas, LLC, the Petitioner in the above-captioned matter.

3. I have met with Aqua Texas (“Aqua”) General Manager, Mr. Darryl G. Waldcock, regarding Aqua’s obligation and ability to provide water to the approximately 70.146 acre property (the “Property”) described in this matter on more than one occasion.

4. In our meetings, I informed Aqua that the Sanctuary intends to develop approximately 265 single-family residence lots on the Property, as evidenced by the preliminary plat approval, attached as Exhibit “A”.

5. Aqua informed me that they do not have the current capacity to serve The Sanctuary’s planned development.

6. Based on Aqua’s representations in our meetings as well as its representations in this Docket that the facilities committed to serving the Property amount to only: (1) a four-inch water line on the Property; (2) a stand-by meter on an uninhabited dwelling; (3) and facilities adjacent to the Property, it is clear that Aqua has not committed lines or facilities to the Property that will serve its future demand or meet its CCN obligations.

7. Attached hereto, as Exhibit “A” are the Preliminary Plat records for The Sanctuary At Sunset Cove, Town of Lake Wood Village.


8 These said pages of records are kept by The Sanctuary in the regular course of business

9 It is the regular practice of said business for an employee or representative with knowledge of the act, event, incident, order, transaction, invoice, condition, photo, video recording, audio recording, opinion, or diagnosis, to make the record, or to transmit information thereof to be included in such record

10. Exhibit "~~A-1~~ and ~~A-2~~" attached hereto are the originals or exact duplicates of the originals

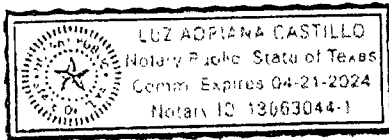
11. I request that the Public Utility Commission of Texas release the Property from water CCN No. 13201,"

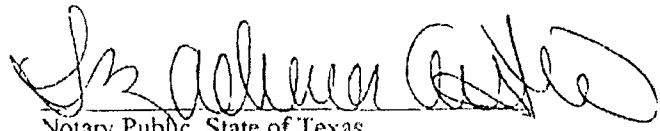
FURTHER AFFIANT SAYETH NOT.


Marlon McMakin

August 3rd, 2020

SWORN TO AND SUBSCRIBED TO BEFORE ME by Marlon McMakin on ~~July 31, 2020~~.




Notary Public, State of Texas