



PLANNING DEPARTMENT

County Of Hidalgo

Raul E. Segin, P.E., CFM
PLANNING ADMINISTRATOR

MEMORANDUM

To: Judge Juan D. Salinas III
County Commissioner's Court

From: Raul E. Segin, P.E., Planning Administrator 

Date: September 2, 2009

Re: Proposed Rancho Los Papalotes 2

We received a request from Mr. Alfonso Quintanilla on behalf of Mr. Martin Almanza and Mrs. Irasema Salinas to present proposed Rancho Los Papalotes No. 2 Subdivision located on the North side of Hinojosa Road and 1.5 of a mile West of US 281. The following is an account of the events that have led up to the County's concern regarding the processing of the above mentioned subdivision:

1. Developer of Rancho Los Papalotes No. 2 began construction of said proposed subdivision without Hidalgo County approval.
2. Original water distribution plans called for water service from the City of Edinburg as per letter of approval from the City Planning and Zoning Department dated February 13, 2008.
3. On March 4, 2008 our department was notified by Quintanilla, Headley, and Associates that the developer was considering the use of water wells as a means of water service for the lots.
4. In response to the water well proposal the County Planning Department requested an engineered report as to the compliance with 30 TAC 290.104, 290.106, 290.108, and 290.109, either: (1) without any treatment to the water; or (2) with treatment by an identified and commercially available water treatment system. 31 TAC 364.32(b). In addition, the water source must have shown the capacity to serve the lots in the subdivision with a quality source of water for an uninterrupted period of thirty years (30).
5. On October 31, 2008 the County Planning Department received a letter from Mr. Armando Vela, General Manager of the Red Sands Groundwater Conservation District, that made our department aware of the required permits for water wells by Red Sands G.C.D. and the amount of water available to each lot (55 gallons).
6. On March 18, 2009, the County Planning Department received a letter from Mr. Joe Reynolds, Attorney, Texas Water Development Board, that stated "If the District requires permits before the wells can be drilled, then the subdivision developer must obtain the permits in order for the County to be assured that adequate water service will be provided and comply with Sections 232.023 and 232.031 of the Local Government Code". The District as stated by Mr. Reynolds is the Red Sands G.C.D

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7. The County is utilizing the Wastewater Usage Rates in Chapter 285 out of Title 30 Texas Administrative Code which calls for 240 gallons per day for a typical 3 bedroom single family dwelling to establish the amount of water need for the above mentioned proposed subdivision. As stated in Section 232.030, Loc. Government Code and echoed by Joe Reynolds of the Texas Water Development Board it is the County's responsibility to set forth requirements for potable water sufficient in quality and quantity.
8. Given the County's policy of a minimum of 240 gallons per day allocation per lot and the amount that Red Sands G.C.D. is willing to allow per lot (55 gallons per day), we may not allow for the processing of such subdivision as proposed currently.

Attached please find a copy of a letter from Mr. Armando Vela, General Manager of the Red Sands Groundwater Conservation District and copy of a letter from Mr. Joe Reynolds, Attorney, Texas Water Development Board.

*** * * END OF MEMORANDUM * * ***

To: Mr. Raul Sasin - County Planner
1304 S. 25th St.
Edinburg, Tx. 78542

From: Armando Vela
Red Sands Co. C.D.

Re: Los Papalotes #2

Sir:

The following is in reference to our conversation on above referenced subdivision and water permits and availability -

I have provided you with a copy of certificate from Texas Water Board on completion of and approval of water plan we are trying to implement. This in reference to Chapman Engineers Study for Los Papalotes where they state we do not have state approval.

A copy of our District Management Plan was provided for Mr. Quintanilla as requested by Mr. Chapman. This was approved by the state in 2007. In this study the allowed water use is 1200 Acre Feet per year of which the state has reserved for "exempt use" by state Law 450 Acre Feet per year. This leaves us with 750 Acre Ft. for all other uses.

The majority of landowners, including Los Papalotes, have not registered their wells as required by state law. Los Papalotes was

sent forms on 9/13/08. So far those that registered wells, that don't qualify for exemption, are using water nearly equal to our allocatable figure of 750 Acre Feet. By the time all wells are registered we likely have usage and requests two or three times over available water. Most of the major users have a history of 20-50 years of use. Los Papalotes has none.

The study done by Chapman Engineers states there is an abundance of water but did not anywhere disagree with the 1200 Acre Feet of available water for all of the District. We are bound by our study to allocate on this basis. The proposed lots range in size from 1.5 to 4.48 Acres and are not exempt under state law. We will have to then have to issue them a permit, if they apply, for their pro rata share of the 750 Acre Ft. This would be equal to 33.52 gallons of water per acre per day with a meter.

The study indicates a minimal drop in water levels. I have a well $\frac{1}{2}$ mile to N.W. of this property, which when pumping for the lake or elsewhere takes place, drops 25' from 25 to 50 ft below the surface. My Neighbor Noe Garza, west of my land, had to drill another well to supply his cattle with water. Previously his well jet was set at 50 Feet. My Joel Peña has a well about 300 Ft east of Los Papalotes which drops 35 ft. to below 60 ft. below the surface. This well in state records had water at 13 Ft. below surface. Good water is rarely found below 90 Feet. This is not addressed in the study.

Both the Peña well and a destroy well next to my well are cited in the study. Peña's is the Arturo Garza well and mine is the Carlos Hinojosa well.

Another issue not addressed in the study is possible salt water incursion in a well that was cited in the study. The Taylor-Latham well is no longer used because it has "salted out". With massive water use at Los Pepelotes this salt water will likely be drawn in.

You can see in the study the Garza well (H-6) dropped 12 ft. from 1982 to the present without Los Pepelotes. What will happen now? This is the well that drops to below 60 ft.

The study map shows numerous ponds (one per lot?). They also mention the 'lake' or large pond. The small ponds have windmills. According to Mr. Arturo Ybarra, U.S.D.A. Soil and Water Conservation Service, a windmill pumping water 24/7 will average about 3 gallons per minute. This equals 4.84 Acre Feet a year per pond. If all 49 lots get a pond that is 237 acre ft.

James McAllen, a prominent Rancher uses a figure of 3 to 4 gallons per minute. The average would be 277 Acre Ft. The lake could possibly use another 250 Acre Ft. We can only wait for their registration forms.

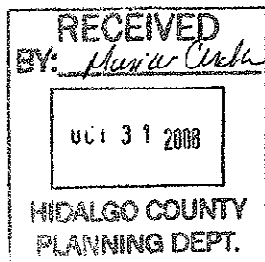
When you add up home use, ponds & lakes that equals over $\frac{2}{3}$ of our non exempt water. The study does not touch on this. Claims on their study are only for home use. Their ADS in the

local "Town Creek" and their Internet show both ponds and lake.

The Chapman study also implies that $\frac{3}{8}$ of the water used will be filtered by local soil and go back into the water source. This study was done on the most permeable soil of this subdivision. This is found on page 40 of Soil Survey of Hidalgo County. This soil type according to their study covers less than $\frac{1}{3}$ of site. About $\frac{2}{3}$ of the soils are Delmita or Delmita Ransado, soils known for "Cemented Pan" of Caliche. This is not very permeable.

Since we are a viable Water District and have the responsibility for permitting wells I can say they have no permits. If issued they will not be enough for homes. This has been conveyed to Mr. Quintanilla their Engineer.

Armando Vela





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March 18, 2009

Raul E. Sesin, P.E., CFM
Planning Administrator
Planning Department
County of Hidalgo
1304 South 25th Street
Edinburg, Texas 78539

via facsimile (956) 318-2844 and U.S. Postal Service

Re: Rancho Los Papalotes Phase 2 Subdivision

Dear Mr. Sesin:

In your letter of February 27, 2009, you raise two issues that prompt your question of whether Hidalgo County (the County) can approve plats for the Rancho Los Papalotes Phase 2 Subdivision (the Subdivision). The first issue relates to the method proposed for treating drinking water supplied to the houses in the Subdivision. The second issue concerns the issuance of permits by the Red Sands Groundwater Conservation District (the District) for the individual water wells.

As a preliminary comment, the responsibility for enforcing the Model Subdivision Rules adopted by the Texas Water Development Board (the Board) and colonia laws rests with the county and city. Local governments have the duty to ensure residential subdivision developments provide adequate water and wastewater services.

The Board assists cities and counties with the process of adopting subdivision rules or ordinances. Board staff will review local rules to assess consistency with Model Rules. In addition, the Board will review plats approved by a city or county to determine whether the local government's platting process is consistent with the requirements of the model rules. But the TWDB does not enforce the Model Rules. We will try to clarify the meaning of the Model Rules and the statutes under which they were created. But we do not decide issues of fact or "rule" on how the law should be applied in a specific case. Where the law is ambiguous or obscure and where there appear to be conflicts between laws, we—like local governments—look to the Attorney General for interpretation. Consequently, I encourage you to consult with your legal counsel to address questions specific to your local community regarding the application of Hidalgo County's subdivision rules.

Our Mission

To provide leadership, planning, financial assistance, information, and education for the conservation and responsible development of water for Texas.

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1. *Drinking Water Treatment in the Subdivision*

Regarding your first question, you state that the Subdivision is expecting to use individual wells as the drinking water source. You note that the 30 year water availability study prepared for the Subdivision by Chapman Engineering reported the water produced from test wells does not meet minimum drinking standards based on elevated secondary maximum contaminant levels established by the Texas Commission on Environmental Quality. Therefore, the Subdivision developer proposes to escrow funds with the County to secure a 30 gallon reverse osmosis system for each lot that will treat the water at the point of use in the kitchen. This proposal will bring that point of use into compliance with minimum drinking water standards; but other point of use locations throughout the house will be left untreated.

The Model Rules provision to which you refer states that: "Where individual wells . . . are proposed for the supply of drinking water . . . The water quality of the water produced from the test well must meet the standards of water quality required for community water systems as set forth in 30 TAC §§290.104, 290.106, 290.108, and 290.109, either: (1) without any treatment to the water; or (2) with treatment by an identified and commercially available water treatment system." 31 TAC 364.32(b).

Subchapter F, Chapter 290, Title 30 of the Texas Administrative Code sets out the drinking water standards governing public drinking water quality. The Model Rules refer to the following rules in Subchapter F:

290.104	Maximum Contaminant Levels, Maximum Residual Disinfectant Levels, Treatment Techniques, and Action Levels.
290.106	Inorganic Contaminants
290.108	Radionuclides Other than Radon
290.109	Microbial Contaminants

The fact that Sections 290.104, 290.106, 290.108, and 290.109 are expressly mentioned in the Model Rules as required standards for nonpublic drinking water systems under the Model Rules and Sections 290.105 and 290.118 are not listed suggests that the secondary constituent levels determined by the engineering study are not considered a factor in determining whether the water from a test well meets the water quality standards for purposes of the Model Rules.

2. *Permitting of Individual Water Wells*

The second situation that you describe involves the permitting requirements of the Red Sands Groundwater Conservation District. Whether permits from the District are required for the individual wells in the Subdivision is an issue the Subdivision developer and the County must work out with the District.

Section 232.023, Local Government Code, requires a subdivider of land to have a plat of the subdivision prepared that contains a description of the water and sewer facilities that will be

Mr. Raul Sesin
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constructed or installed to service the subdivision. Section 232.031 states that a subdivider may not sell or lease land in a subdivision unless the subdivision plat is approved by the commissioners court. If the District requires permits before the wells can be drilled, then the Subdivision developer must obtain the permits in order for the County to be assured that adequate water service will be provided and comply with Sections 232.023 and 232.031 of the Local Government Code.

The resolution of these questions is a matter for the Subdivision developer, the District, and the County as it involves interpretations of law and fact that are beyond the jurisdiction of the Board.

Sincerely,



Joe P. Reynolds
Attorney

cc: Mr. Martin Almazan
Rancho Los Papalotes Subdivision

via facsimile (956) 381-1433