



## Hidalgo County Planning Department

Raul E. Sesin, PE, CFM  
Planning Administrator

### Main Office

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## MEMORANDUM

**To:** The Honorable Judge Ramon Garcia, Hidalgo County  
The Honorable Commissioner Joel Quintanilla, HCP No. 1  
The Honorable Commissioner Hector "Tito" Palacios, HCP No. 2  
The Honorable Commissioner Joe M. Flores, HCP No. 3  
The Honorable Commissioner Joseph Palacios, HCP No. 4

**From:** Raul E. Sesin, P.E., C.F.M., Planning Administrator

**Date:** May 15, 2012

**Via:** Agenda Item

**Re:** Utility Certificate Policy on Large Platted Lots (Between 5 and 10 acres)

**C:** T.J. Arredondo, Planning Supervisor  
Josephine Ramirez Solis, Assistant Criminal District Attorney  
Steve Crain, Atlas & Hall  
Valde Guerra, Commissioners' Court Executive Officer

*Handwritten signature and date:*  
R. Sesin  
05/16/12

The following information is related to a request from the Planning Department to the Court to establish a policy that would enable our department to make decisions on issuance of utility clearances on large platted properties (between 5 and 10 acres) that lack water and sewer. We have had a "moratorium" on the issuance of electrical clearances on certain lots such as these that were sold without water and sewer and that do not have access to a waterline system.

The law basically leaves it to the County to establish whether a lot is residential in character when it is between (5) and (10) acres in size. This leaves the potential for the proliferation of colonias in these areas that lack access to waterlines if the County were to "clear" electric meters without considering water/sewer facilities. In essence, an individual on a large lot would be able to live with electricity but without water and sewer in turn creating a "colonia" situation.

### **Precedence and Definitions for Policy on Utility Clearances**

*The Planning Department is in the position of determining whether a lot that is greater than 5 acres and less than 10 acres is intended for residential use. The following instances and facts have reinforced our stance:*

- *County approval of Los Venados Subdivision-a subdivision of lots ranging from 5 acres to 10 acres in which the developer provided for water and wastewater recorded in 2003.*
- *County approval of Sendero Trails Subdivision- a subdivision of lots and tracts ranging from 5 acres to 10 acres in which the developer provided for water and wastewater recorded in 2006.*



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- **Language in the Texas Constitution Article 8 Section 1-d that defines "agricultural use" as: the raising of livestock or growing of crops, fruit, flowers, and other products of the soil under natural conditions as a business venture for profit, which business is the primary occupation and source of income of the owner. We do not believe that tracts that are less than ten acres fit the aforementioned "agricultural use" definition and exemption.**

### Summary

The provisions in the Local Government Code Section 232.038 allows a person who purchased a lot for residential use that lacks water and wastewater after September 1, 1995 to bring suit in a district court to declare the sale void or enjoin the violation or potential violation of Section 232.032. In addition, Local Government Code Section 232.040 states that "a lot in a subdivision may not be sold if the lot lacks water and sewer services as required by this subchapter unless the lot is platted or re-platted as required by this subchapter".

It has been our experience that the majority of individuals who purchase lots between 5 and 10 acres use them primarily for residential use. Requiring potable water and sewer to those tracts by the developer/seller will minimize the opportunity for the development of colonias which are defined as properties that lack public access, storm drainage, water and sanitary sewer service.

Due to the aforementioned statutes, definitions and experience it is recommended that the County adopt the following Policy:

**The following Policy will apply to issuance of utility clearances on large properties (between 5 and 10 acres) that lack water and sewer:**

**The County will require any pre-existing lot that was platted prior to Sept 1, 1999 that is less than 10 acres but more than five acres in size either be sold with or contain a restrictive covenant acceptable to County prohibiting residential use, or be sold with water and wastewater facilities. Facilities for this purpose are defined as waterlines, water meters, water wells with water fit for human consumption and sanitary sewer line connections or On-Site Sewage Facilities. Any request for electricity in a lot less than 10 acres but greater than 5 acres that has not been furnished with water and wastewater shall be denied electrical service until the seller or owner has either placed a restrictive covenant acceptable to County on the lot that restricts residential use or has paid for those services. The adoption of this policy does not change or waive any statutory requirements set out in Texas Local Government Code Chapter 232 for tracts greater than 5 acres but less than 10 acres that are being "created" and would require a subdivision plat to be prepared and approved by Hidalgo County.**

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