

Cause No. 13-03-21872

FILED
DISTRICT CLERK
WALLER COUNTY, TEXAS
2015 FEB 23 PM 12:47
BY [Signature]
DEPUTY

CITY OF HEMPSTEAD, TEXAS
Plaintiff,

IN THE DISTRICT COURT OF

and

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CITIZENS AGAINST THE LANDFILL
IN HEMPSTEAD

WALLER COUNTY, TEXAS

v.

WALLER COUNTY, TEXAS, ET. AL.
Defendants.

506TH JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

Before the Court is the above-styled and numbered cause of action. On December 1, 2014, the case was called for trial. Plaintiff City of Hempstead (“Hempstead”) appeared through its attorney of record and announced ready for trial. Plaintiff-Intervenor Citizens Against the Landfill in Hempstead (“CALH”) appeared through its attorney of record and announced ready for trial. Defendants, Waller County, Texas including the elected officials of the Waller County Commissioners Court, in their official capacities (collectively “Waller County”), appeared in person and by their attorney of record and announced not ready for trial. Defendant, Pintail Landfill, LLC, (“Pintail”) appeared in person and by its attorney of record and announced not ready for trial. After denying the Motions to Abate and Requests for Continuance, a jury, consisting of 12 qualified jurors having been previously demanded, was duly empanelled and the case proceeded to trial.

WALLER COUNTY
CIVIL MINUTES

The Court, after examining the record and the evidence and argument of counsel, finds that venue is proper in Waller County, that the Court has jurisdiction over the subject matter and the parties in this case, and that the Court has jurisdiction to enter a judgment in this case.

At the conclusion of the evidence, the Court submitted the questions of fact in the case to the jury. The charge of the Court and the verdict of the jury are incorporated for all purposes by reference, and attached hereto as Exhibit 1. The Parties also entered into certain Stipulations of Fact, which are incorporated for all purposes by reference, and attached hereto as Exhibit 2.

Following the verdict of the jury of December 18, 2014, Hempstead, CALH, Pintail Landfill and Waller County filed a Joint Motion for Entry of Agreed Final Judgment. In said Motion, the parties represent that they have reached a settlement agreement concerning the jury verdict and the remaining legal and factual issues pending before the Court and have agreed to the entry of final judgment.

Accordingly, the Court renders the following Agreed Final Judgment:

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Waller County Ordinance No. 2013-001 is void.

IT IS FURTHER ORDERED that the Host Agreement between Waller County, Texas, and Pintail Landfill, LLC is void.

IT IS FURTHER ORDERED that Plaintiff City of Hempstead have and recover from Waller County attorneys' fees in the amount of Two Hundred Forty-Five Thousand Dollars and no cents (\$245,000).

IT IS FURTHER ORDERED that Plaintiff-Intervenor Citizens Against the Landfill in Hempstead have and recover from Waller County attorneys' fees in the amount of Three Hundred Twenty-Five Thousand Dollars and no cents (\$325,000).

WALLER COUNTY
CIVIL MINUTES

13-03-21872

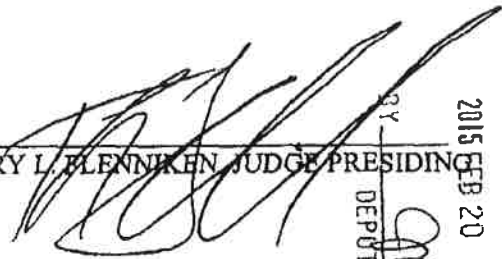
IT IS FURTHER ORDERED that the total amount of the judgment rendered will bear interest at a rate of Five Percent (5%) per annum from the date of this judgment until paid in full.

Pursuant to the terms of the parties' settlement agreement giving rise to this Agreed Final Judgment, the parties do not present to this Court for adjudication, and this Court does not adjudicate, any issue concerning any claim, defense, or assertion, whether one or more, that has been or may in the future be raised in any forum, regarding the validity of Waller County Ordinance No. 2011-001 and/or its applicability to (a) Texas Commission on Environmental Quality MSW Registration No. 40259 (Pintail Landfill Transfer Station), (b) Texas Commission on Environmental Quality MSW Permit Application No. 2377 (Pintail Landfill), and/or (c) all or any part of the 410.37 acre facility site described in such Registration and Permit Application.

All costs of court spent or incurred in this cause are to be borne by the party incurring same. All writs and processes for the enforcement and collection of this judgment may issue as necessary.

All other relief requested in the live pleadings of any party that is not specifically granted is DENIED. This is a final judgment that disposes of all claims and parties.

SIGNED this 20 day of Feb, 2015.


TERRY L. FLENNIKEN, JUDGE PRESIDING
DEPUTY
2015 FEB 20 AM 10:24
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DISTRICT CLERK
WALLER COUNTY TEXAS

WALLER COUNTY
CIVIL MINUTES

AGREED AS TO FORM AND SUBSTANCE:

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ATTORNEYS FOR PINTAIL LANDFILL, LLC

By: 

WALLER COUNTY
CIVIL MINUTES

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes, unless you choose to keep them. When you are released from jury duty, the bailiff will promptly destroy your notes, unless you have retained them, so that no one can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

10. The answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, it will be juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers to pay for another trial. If a juror breaks any of these rules, tell that person to stop, and if such juror fails to do so, report it to the Court.

DEFINITIONS & INSTRUCTIONS

In answering the questions below, please follow these definitions and instructions.

1. The term "Waller County" includes the Waller County Commissioners Court, Judge Glenn Beckendorff and Waller County Commissioners Frank Pokluda, Stan Kitzman, Jeron Barnett, and John Amsler.
2. Waller County is a governmental body.
3. All questions for the Jury relate to the time period on or before February 13, 2013.

DEFINITIONS AND INSTRUCTIONS FOR QUESTION NUMBERS 1, 2, 3, AND 4

1. A governmental body may consult with its attorney in executive session to discuss the legal issues raised in connection with a proposed contract or a proposed ordinance, but it may not discuss non-legal matters.

- a. "Non-legal matters" include but are not limited to: (1) merits of enacting an ordinance; (2) merits of a proposed contract; (3) financial considerations of a proposed contract; or (4) matters of public policy; or (5) merits of an application.
- b. Legal issues include advice given to Waller County regarding the legal ramifications of facts and information and the legality of a proposed contract or proposed ordinance.

2. "Deliberation" means a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.

3. "Meeting" means:

- a. A deliberation between a quorum of a governmental body or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action, or
- b. A gathering:
 - i. That is conducted by the governmental body;
 - ii. At which a quorum of members of the governmental body is present;
 - iii. That has been called by the governmental body, and;
 - iv. At which the members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about the public business or public policy over which the governmental body has supervision or control.

4. "Closed Meeting" means a meeting to which the public does not have access.

5. "Quorum" means a majority of a governmental body.

6. A "walking quorum" occurs when members of a governmental body gather in numbers that do not physically constitute a quorum at any one time but who, through successive gatherings, secretly, and intentionally, discuss a public matter with a quorum of that body at a place other than a posted meeting.

WALLER COUNTY
CIVIL MINUTES

QUESTION NUMBER 1

Do you find that the Waller County Commissioner's Court deliberated non-legal matters relating to Ordinance 2013-001 in a closed meeting?

Answer: Yes ("Yes" or "No")

QUESTION NUMBER 2

Do you find that the Waller County Commissioner's Court deliberated non-legal matters relating to the Host Agreement in a closed meeting?

Answer: yes ("Yes" or "No")

QUESTION NUMBER 3

Do you find that at least three (3) members of the Waller County Commissioners Court engaged in a walking quorum related to the following items below?

(a) Host Agreement Answer: yes ("Yes" or "No")

(b) Ordinance 2013-001 Answer: yes ("Yes" or "No")

QUESTION NUMBER 4

"Negotiate" means to try to reach an agreement or compromise by discussion with others.

Do you find that one or more members of the Waller County Commissioners Court acted as a committee, authorized by at least three (3) members of the Commissioners Court, to negotiate the terms of the following items before presentation to the Waller County Commissioners Court for a vote?

Answer "Yes" or "No" for each of the following.

- (a) Host Agreement Answer: yes ("Yes" or "No")
- (b) Ordinance 2013-001 Answer: yes ("Yes" or "No")

If you answered "yes" to Question Number 4(a) or 4(b), answer Question Number 5, otherwise, do not answer Question Number 5.

QUESTION NUMBER 5

Do you find that there were any committee meetings held that were not open to the public relating to the following?

- (a) Host Agreement Answer: yes ("Yes" or "No")
- (b) Ordinance 2013-001 Answer: yes ("Yes" or "No")

If you answered "yes" to Question Number 4(a) or 4(b), answer Question Number 6, otherwise, do not answer Question Number 6 and proceed to Question Number 7.

INSTRUCTION FOR QUESTION NUMBER 6

A "rubber stamp" occurs when a committee's recommendations are approved without meaningful discussion.

QUESTION NUMBER 6

Do you find that the Commissioners' vote at the February 13, 2013 open meeting was a rubber stamp of the following items?

- | | | |
|-----|--------------------|------------------------------------|
| (a) | Host Agreement | Answer: <u>Yes</u> ("Yes" or "No") |
| (b) | Ordinance 2013-001 | Answer: <u>Yes</u> ("Yes" or "No") |

INSTRUCTION FOR QUESTION NUMBERS 7 THROUGH 9

Public information means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business. Public Information includes all documents, regardless of physical form or characteristics, created or received by Waller County in the transaction of public business. Public information includes, but is not limited to, e-mails, text messages, and other electronic recordings.

Waller County is required to preserve and manage its Public Information in accordance with applicable rules and laws governing the destruction and other disposition of state and local government records or Public Information.

Each Waller County Commissioner and the Waller County Judge is the officer for public information and the custodian of the information created or received by that county commissioners' office. Waller County or the elected county officer for information of that elective county office may determine a time for which information that is not currently in use will be preserved, subject to any applicable rule or law governing the destruction and other disposition of state and local government records or public information.

As an officer for public information, each Waller County Commissioner or County Judge is responsible for the release of public information. Each is required to: (1) make public information available for public inspection and copying; (2) carefully protect public information from deterioration, alteration, mutilation, loss, or unlawful removal; and (3) repair, renovate, or rebind public information as necessary to maintain it properly.

Each officer for public information is required to prominently display a sign containing basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information. The officer shall display the sign at one or more places in the administrative offices of the governmental body where it is plainly visible to members of the public and employees of the governmental body whose duties include receiving or responding to requests under this chapter.

As officers for public information, Waller County Commissioners and the Waller County Judge must promptly produce public information for inspection, duplication, or both upon request by any person for public information. "Promptly" means as soon as possible under the circumstances, that is, within a reasonable time, without delay. If an officer for public information cannot produce public information for inspection or duplication within 10 business days after the date the information is requested, the officer must certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

QUESTION NUMBER 7

Do you find that County Judge Glenn Beckendorff failed to comply with any of the following?

- (a) Protecting public information from deterioration, alteration, mutilation, loss, or unlawful removal;
- (b) Displaying a sign containing basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information at one or more places in the administrative offices of the governmental body where it is plainly visible to members of the public and employees of the governmental body;
- (c) Promptly producing public information for inspection, duplication, or both upon request by any person for public information;
- (d) Certifying in writing to the requestor within 10 business days after the date the information was requested, that public information requested could not be produced for inspection or duplication;
- (e) Notifying the requestor within 10 business days after the request of a date and hour within a reasonable time when the information would be available for inspection or duplication to the requestor.

Answer: yes ("Yes" or "No")

QUESTION NUMBER 8

Do you find that Waller County Precinct Two Commissioner Frank Pokluda failed to comply with any of the following?

- (a) Protecting public information from deterioration, alteration, mutilation, loss, or unlawful removal;
- (b) Displaying a sign containing basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information at one or more places in the administrative offices of the governmental body where it is plainly visible to members of the public and employees of the governmental body;
- (c) Promptly producing public information for inspection, duplication, or both upon request by any person for public information;
- (d) Certifying in writing to the requestor within 10 business days after the date the information was requested, that public information requested could not be produced for inspection or duplication;
- (e) Notifying the requestor within 10 business days after the request of a date and hour within a reasonable time when the information would be available for inspection or duplication to the requestor.

Answer: Yes ("Yes" or "No")

QUESTION NUMBER 9

Do you find that Waller County Precinct Four Commissioner Stan Kitzman failed to comply with any of the following?

- (a) Protecting public information from deterioration, alteration, mutilation, loss, or unlawful removal;
- (b) Displaying a sign containing basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information at one or more places in the administrative offices of the governmental body where it is plainly visible to members of the public and employees of the governmental body;
- (c) Promptly producing public information for inspection, duplication, or both upon request by any person for public information;
- (d) Certifying in writing to the requestor within 10 business days after the date the information was requested, that public information requested could not be produced for inspection or duplication;
- (e) Notifying the requestor within 10 business days after the request of a date and hour within a reasonable time when the information would be available for inspection or duplication to the requestor.

Answer: Yes ("Yes" or "No")

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

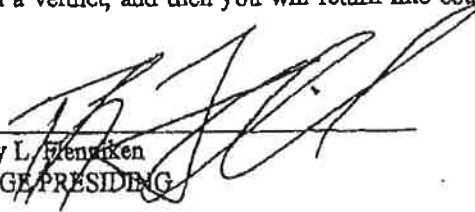
It is the duty of the presiding juror---

1. to preside during your deliberations,
2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge,
3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge,
4. to vote on the questions,
5. to write your answers to the questions in the spaces provided, and
6. to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

If you have a question, you must submit such question in writing to the Court. The Presiding Juror must write out the question, sign same and hand the note to the Bailiff, who will present it to the Court. Do not discuss the question with the Bailiff.

When you have answered all the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.


Terry L. Henniken
JUDGE PRESIDING

Filed 934
12.18.14
WALLER COUNTY Judge Presiding
CIVIL PROTECTS

Certificate

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

(To be signed by the presiding juror if the ~~jury~~ ^{verdict} is unanimous.)

PRESIDING JUROR

Printed Name of Presiding Juror

(To be signed by those rendering the verdict if the ~~jury~~ ^{verdict} is not unanimous.)

Jurors' Signatures

[Signature]
[Signature]
Joyce Bean
[Signature]
Joyce Callaway
Lilliana Salinas
Scott McKenzie
Robert L. Derrick
[Signature]
Nancy Willers
Trisha Smith

Jurors' Printed Names

Charles D. Steinmetz
MICHAEL A. LANNON
Joyce Bean
Randy Thier
Joyce Callaway
Lilliana Salinas
SCOTT McKENZIE JR
Robert L. Derrick
Juan Aguilar
Nancy Willers
Trisha Smith

CAUSE NO. 13-03-21872

CITY OF HEMPSTEAD, Texas,
Plaintiff

And

CITIZENS AGAINST THE LANDFILL IN
HEMPSTAD,
Plaintiff Intervenor

v.

WALLER COUNTY, TEXAS, COUNTY
JUDGE BLENN BECKENDORFF,
COMMISSIONER FRANK POKLUDA,
COMMISSIONER STAN KITZMAN,
COMMISSIONER JERON BARNET,
COMMISSIONER JOHN AMSLER, and
PINTAIL LANDFILL, L.L.C.
Defendants.

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IN THE DISTRICT COURT OF

WALLER COUNTY, TEXAS

506th JUDICIAL DISTRICT

AGREED STIPULATIONS OF FACT

COMES NOW Plaintiff City of Hempstead, Plaintiff Intervenor Citizens Against the Landfill in Hempstead, and Defendants Waller County, Texas, County Judge Glenn Beckendorff, Commissioner Frank Pokluda, Commissioner Stan Kitzman, Commissioner Jeron Barnett, Commissioner John Amsler, and Pintall Landfill, LLC and presents these Agreed Stipulations of Fact to the Court. The Parties agree that the existence of such stipulations shall not be published to the Jury or mentioned in argument before the jury.

I. Agreed Stipulations of Fact Regarding Contract Exception to Open Meetings Act, Texas Government Code § 551.0725.

Waller County Commissioners Court did not invoke Texas Government Code § 551.0725 (relating to Deliberation Regarding Contract Being Negotiated) to enter executive session or closed meeting on February 13, 2013, January 2, 2013, or December

Received and filed. 12.17.14
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TERRY FLENNIKEN
Judge Presiding

AGREED STIPULATIONS OF FACT
WALLER COUNTY
CIVIL MINUTES



19, 2012. The Waller County agenda notices and minutes for these meetings do not claim Texas Government Code § 551.0725 as authority for entering executive session.

Further, Waller County Commissioners Court did not meet any of the requirements to deliberate business or financial issues relating to a contract being negotiated, which are enumerated in Texas Government Code § 551.0725. Specifically, (1) the Waller County Commissioners Court did not vote unanimously that deliberation would have a detrimental effect on the position of the Commissioners Court in negotiating with a third person before conducting the closed meeting; (2) the attorney advising the Waller County Commissioners Court did not issue a written determination that deliberation in an open meeting would have a detrimental effect on the position of the Commissioners Court in negotiating with a third person before conducting the closed meeting; and (3) the Waller County Commissioners Court did not make a tape recording of the closed meeting.

II. Agreed Stipulation of Fact Regarding Extraterritorial Jurisdiction of City of Hempstead.

The Ordinance 2013-001 authorizes and allows disposal of solid waste within certain areas of the City of Hempstead's extraterritorial jurisdiction ("ETJ"). Those certain areas consist of the areas described in Exhibit A of Ordinance 2013-001 that are within one mile of the city limits of the City of Hempstead.

III. Agreed Stipulation of Fact that the Host Agreement is a Contract.

The Host Agreement is a contract.

Agreed:

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