

AGENDA ITEM # 20February 10, 1998*

Discuss and take appropriate action on joining with other counties to review claim against tobacco companies regarding The State of Texas vs. American Tobacco Company, et al.

No action taken on agenda item at this time.

AGENDA ITEM # 21February 10, 1998*

Discuss and take appropriate action on awarding remount on 3rd ambulances to second lowest bidder.

Moved: Commissioner Heiligenstein

Seconded: Judge Doerfler

Motion: To approve awarding remount on 3rd ambulance to second lowest bidder being San Antonio Ambulance Sales.

Vote: Motion carried 4 - 0 With Commissioner Mehevec absent from the dais.

AGENDA ITEM # 22February 10, 1998*

Discuss and take appropriate action regarding lease agreement with Cedar Park Chamber of Commerce in new annex.

No action taken on agenda item at this time.

AGENDA ITEM # 23February 10, 1998*

Consider appointing someone to represent Williamson County in the matter pertaining to the application by Kelly Lane Utility Co. and Windemere Utility Co. for C.C.N. # 20542, 20678, 20720 and 3178-C.

Moved: Judge Doerfler

Seconded: Commissioner Boatright

Motion: To appoint Commissioner Jerry Mehevec to represent Williamson County in the matter pertaining to the application by Kelly Lane Utility Co. and Windemere Utility co. for C.C.N. # 20542, 20678, 20720 and 3178-C.

Vote: Motion carried 5 - 0

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Barry R. McBee, *Chairman*
 R. B. "Ralph" Marquez, *Commissioner*
 John M. Baker, *Commissioner*
 Dan Pearson, *Executive Director*



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

January 29, 1998

To: Potential ADR Participants

Re: Applications by Kelly Lane Utility Co. and Windermere Utility Co.;
 For CCN Nos. 20542, 20678, 20720, and 3178-C.

I am a mediator in the Texas Natural Resource Conservation Commission's (Commission) Alternative Dispute Resolution Office (ADR or mediation). Although you may already be familiar with mediation, please allow me to explain the Commission's mediation program and how it affects the application and hearing process.

Historically, the Commission's contested hearings, such as this case, have become longer and more costly to try. As the cost to participate in Commission hearing skyrockets, it becomes more difficult for the average citizen to participate and effectively be heard. As a result, the Commission has adopted ADR as a program for informal resolution of its contested cases. In doing so, the Commission has shortened the time it takes to participate in the application process, thus, cutting participation costs for the protestants, for the applicants, and for the state as well, in many of its cases.

The ADR procedure which the Commission routinely uses is mediation. If the dispute is settled through mediation and negotiation by the ADR participants, there may be no need for those persons to incur the expense of hiring expert witnesses and/or attorneys, or of conducting expensive discovery in preparing for trial in a contested public hearing. If the dispute is not resolved through mediation, the dispute is then tried before an administrative law judge in a public hearing. Commission contested public hearings are formal evidentiary, legal proceedings which follow the rules of procedure of both the Commission and the State Office of Administrative Hearings, as well as the Texas Rules of Civil Procedure and the Texas Rules of Civil Evidence as those rules apply in non-jury civil trials, and the Administrative Procedure Act. Upon unanimous agreement of the participants to ADR, or other forms of ADR may be used.

Decisions which result from court trials or from contested public hearings, such as in this case, are win-lose situations. Usually someone wins it all and someone loses it all. However, because the resolution of disputes through mediation results from negotiations, mediation has been described as a win-win situation.

The person who directs the mediation process is a third-party neutral called a mediator. The mediator has no opinion or interest in the dispute or its outcome. The mediator's role is to be impartial.

(512) 239-4010 FAX (512) 239-4015

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and to determine, through talking to the affected persons, what their true concerns are and to guide those persons to a resolution of the dispute which addresses their concerns. It is not the mediator's role to discourage protests, to pressure people into settling, or to talk people out of a trial/hearing. The mediator's role is to persuade the ADR participants to talk to one another and to settle their dispute, if at all possible, without the need for a hearing. Furthermore, the mediator does not determine the solution. That is the responsibility of all the parties during negotiations. The mediator also serves as a facilitator of information and conveyor of messages between the ADR participants. In an effort to encourage people to negotiate in earnest and to talk to the mediator openly, the mediator is prohibited by law from disclosing any information or statements given in confidence to the mediator by any ADR participant.

Although the Commission has a mediator available for this case, the ADR participants do not have to use the agency-appointed mediator. Upon unanimous agreement of the mediation participants, a private mediator may be hired but the ADR participants, other than the Commission's Executive Director (E.D.) And Public Interest Counsel, would have to pay for the services of the private mediator. Regulations prohibit the E.D. and Public Interest Counsel from paying for the services of a private mediator in contested cases. If the parties elect to use a private mediator, this office can assist the parties in selecting a private mediator who is knowledgeable in the subject matter of this case.

I hope that this letter adequately explains mediation and the mediator's role. The Commission's mediation process is designed not to delay the application or hearing process; therefore, I will call you all within a couple of days to discuss whether you all want to attempt to mediate this dispute first instead of proceeding through further litigation. . Because mediation is voluntary and requires negotiations, all participants must agree to the mediation efforts. In addition, all participants, or their representatives, must attend with the proper authorization to negotiate a binding agreement.

Please note that a mediation meeting is the place to try to settle the dispute and allow everyone to avoid the time and expense of going to hearing. The success of the negotiations depends on the *flexibility* and the *good-faith efforts* of the ADR participants. If a single potential party to the hearing does not want to attempt to negotiate a resolution of the dispute, but prefers to try the application in a hearing, no mediation efforts will be attempted by the Commission.

Please feel free to call me at (512) 239-4010 if you have any questions.

Sincerely yours,



Elisa Fontenot, Mediator
Alternative Dispute Resolution Office
Mail Code 222

cc: Attached Mailing List
Stan Oestrick, Office of the Chief Clerk
Jeannie Umbs, Office of the Chief Clerk

**Windermere Utility Co. & Kelly Lane Utility Co.
CCN Nos. 20678, 20720, 20542, & 31780-C**

ADR Mailing List

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and For Commerce Properties, Inc.:**

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For the Williamson County Precinct #4:

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For the Executive Director:

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AGENDA ITEM # 24February 10, 1998*

Consider making the necessary appointments and or re-appointment to the Williamson County Emergency Services District #1.

Moved: Commissioner Boatright

Seconded: Judge Doerfler

Motion: To appoint Jim Ward of Anderson Mill to the Williamson County Emergency Services District #1 and re-appoint John Hagen for a two year term to the Williamson County Emergency Services District #1.

Vote: Motion carried 4 - 0 With Commissioner Mehevec absent from the dais.

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