



## I.

### ORIGINAL ANSWER SUBJECT TO PLEA TO JURISDICTION

1. The Public Official Defendants generally deny Plaintiff's allegations under Rule 92 of the Texas Rules of Civil Procedure and demand that it prove its allegations by a preponderance of the credible evidence as is required by the Constitution and the laws of the State of Texas.

2 Because Plaintiff has purported to challenge the constitutionality of various state statutes, it is required to serve the Attorney General with "a copy of the proceeding." TEX. CIV. PRAC. & REM. CODE §37.006(b). If Plaintiff fails to do so within a reasonable time, this Court must dismiss the proceeding. *Gatesco Q.M., Ltd. v. City of Houston*, 333 S.W.3d 338, 351-52 (Tex. App.–Houston [14<sup>th</sup> Dist.] 2010, no pet.).

3. The Court lacks subject matter jurisdiction over Plaintiff's claims against the District because:

- The Public Official Defendants are immune from suit, except where Plaintiff can demonstrate an express waiver of that immunity. Plaintiff has failed to plead and it cannot establish the existence of any waiver of immunity. No such waiver of immunity exists here;
- Although Plaintiff has purported to invoke the Texas Declaratory Judgment Act ("DJA"), TEX. CIV. PRAC. & REM. CODE §37.001 *et seq.*, the DJA does not bestow jurisdiction on a court where none exists to begin with. *Tex. Natural Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002). The DJA "is merely a procedural device for deciding cases *already within* a court's jurisdiction." *State v. Morales*, 869 S.W.2d 941, 947 (Tex. 1994) (emphasis added);
- No waiver of immunity exists for Plaintiff's complaint about the District Board's application of TEX. LOC. GOV'T CODE §375.262(1). *Tex. Dept. of Transp. v. Sefzik*, 355 S.W.3d 618, 622 (Tex. 2011);

- No waiver of immunity exists for Plaintiff's challenge to the constitutionality of TEX. LOC. GOV'T CODE §375.262(1) or Chapter 375 of the Texas Local Government Code, because Plaintiff has not negated the existence of a rational basis for those statutes and, as a matter of law, a rational basis exists for both;
- No waiver of immunity exists for Plaintiff's challenge to the assessments levied by the East or West Montrose Management Districts because Plaintiff failed to exhaust its state administrative and judicial remedies as required by TEX. LOC. GOV'T CODE §375.123. *Caspary v. Corpus Christi Downtown Management District*, 942 S.W.2d 223, 226-27 (Tex. App.—Corpus Christi 1997, writ denied);
- No waiver of immunity exists for Plaintiff's request to obtain retrospective financial relief. *City of El Paso v. Heinrich*, 284 S.W.3d 366 (Tex. 2009);
- Plaintiff lacks standing to obtain relief for any other District property owner, all of whom, like Plaintiff, failed to exhaust the available statutory procedure for contesting the District's assessment. *See City of Houston v. Guthrie*, 332 S.W.3d 578, 598 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2009, pet. denied)(plaintiffs lacked standing to assert claims on behalf of other property owners and district court lacked subject matter jurisdiction over those claims);
- No waiver of immunity exists for Plaintiff's complaint about the formation of the District because Plaintiff's assertions are inaccurate and unsupportable, Plaintiff failed to exhaust its statutory and judicial remedies as required by TEX. LOC. GOV'T CODE §375.123, the actions complained about are conclusively presumed valid by TEX. WATER CODE §49.235, Section 375.201 is irrelevant to Plaintiff's complaint, and Section 375.021 is inapplicable to the District; and
- The District's Executive Director, is not a proper party to Plaintiff's *ultra vires* allegations.

4. Plaintiff has not stated a claim for denial of due process or denial of any right

to due course of law.

5. Plaintiff has not stated a claim for denial of equal protection.

6. The District and its Board properly interpreted and applied the provisions of

TEX. LOC. GOV'T CODE §375.262(1).

7. The District's and Public Official Defendants' actions had a rational basis and comply with all applicable statutory and constitutional provisions.

8. Plaintiff has not stated any claim for attorney's fees that is not otherwise barred by governmental immunity.

9. The Public Official Defendants expressly reserve their right to amend to plead such other and further defenses as may be either necessary or appropriate.

Accordingly, subject to their Plea to Jurisdiction, the Public Official Defendants respectfully request that the Court dismiss Plaintiff's claims, order that Plaintiff take nothing and that they be granted such other and further relief, whether legal or equitable, to which they may show themselves to be justly and equitably entitled.

Respectfully submitted,

BLANK ROME LLP

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ATTORNEYS FOR DEFENDANTS  
MONTROSE MANAGEMENT DISTRICT AND PUBLIC  
OFFICIAL DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on July 30, 2012, I served a true and correct copy of the foregoing instrument on counsel of record, at the address and in the manner indicated below:

**By Certified Mail, Return Receipt Requested**

Mr. Andy Taylor  
ANDY TAYLOR & ASSOCIATES, P.C.  
2668 Highway 36S, #288  
Brenham, Texas 77833

  
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Barry Abrams

Unofficial Copy Office of Chris Daniel District Clerk