

05

Cause No. 2012-20396

1620 HAWTHORNE LTD.,
Plaintiff

v.

MONTROSE MANAGEMENT DISTRICT,
Defendant

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

333rd JUDICIAL DISTRICT

AFFIDAVIT OF DAVID HAWES

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared David Hawes, being by me duly sworn, deposed as follows:

1. My name is David Hawes. I am of sound mind, have never been convicted of a felony, am capable of making this Affidavit, and by virtue of my position with Hawes Hill Calderon, LLP, Administrator of the Montrose Management District ("District"), and my prior service as the District's executive director, I have personal knowledge of the facts stated herein, and such facts are all true and correct.

2. District Background: The District is the result of the consolidation of two management districts created by the Texas Legislature, following public discussion and support from members of the Montrose business community. The first district, earlier referred to as the East Montrose Management District, was created in 2005. TEX. SPECIAL DISTRICT LOCAL LAWS CODE §3843.001 *et seq.*. The second district, earlier referred to as the West Montrose Management District, was created in 2009. *Id.* §3878.001. *et seq.* On February 15, 2011, following the requisite public notice, hearing and adoption of the required resolutions and orders, the East Montrose Management District and the West Montrose Management District were consolidated into the District.

The Texas Legislature created the District "to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety and the public welfare in the area of the district."¹ The Texas Legislature has made express findings that: (a) the District has been created to serve a public use and benefit under the powers conferred by TEX. CONST. art. III, §§52 and 52-1 and art. XVI, §59, as well as the other powers granted under the enabling statute; (b) each improvement project or service authorized by the legislation is essential to carry out a public purpose; (c) the creation of the District is in the public interest and essential to: further the public purposes of developing and diversifying the state economy; eliminate unemployment and underemployment; and develop or expand transportation and commerce; and (d) the District will: promote the health, safety, and general welfare of residents, employers employees, visitors, and consumers in the district, and of the public; provide needed funding for the District to preserve, maintain, and enhance the economic health and vitality of the area as a community and business center; promote the health, safety, welfare, and enjoyment of the public by providing public art and pedestrian ways and by landscaping and developing certain areas in the District, which are necessary for the restoration, preservation, and enhancement of scenic and aesthetic beauty; promote and benefit commercial development and commercial areas in the district; and promote and

¹ TEX. SPECIAL DISTRICT LOCAL LAWS CODE §3843.003(b); *id.* §3878.003(b).

develop public transportation and pedestrian facilities using new and alternative means that are attractive, safe, and convenient, including securing expanded and improved transportation and pedestrian facilities and systems to address the problem of traffic congestion in the District, the need to control traffic and improve pedestrian safety, and the limited availability of money and benefit the land and other property in the district and the residents, employers, employees, visitors and consumers in the district and the public.²

The Legislature granted the District “all powers necessary to accomplish the purposes for which the district was created,” “the rights, powers, privileges, authority, and functions of a district created under Chapter 375, Local Government Code,” “the powers, duties, and contracting authority specified by Subchapters H and I, Chapter 49, Water Code,” “the powers given to a corporation under Chapter 505, Local Government Code,” and “the powers of a housing finance corporation created under Chapter 394, Local Government Code.”³

Notwithstanding the fact that the Legislature empowered the District to exercise the authority of a district created under Chapter 375 of the Local Government Code, and the Legislature has incorporated by reference certain of the procedures contained in Chapter 375, the District was *not* created under or pursuant to that Chapter; the Legislature created the District through special legislation.⁴

The District is governed by a volunteer board of directors appointed by the governing body, including the mayor, of the City of Houston.⁵ The District conducts public meetings, following public notice, in accordance with all applicable legal requirements. The District has four citizens committees that meet monthly, which include: (a) the Business & Economic Development Committee; (b) the Security and Public Safety Committee; (c) the Visual Improvement/Transportation Committee; and (d) the Recycling Committee.⁶

3. Adoption of Assessment Orders: The District may not impose an assessment on property in the District until after receipt of a written petition requesting improvements and services, public notice, public hearing, and a vote of the board at a duly-called public meeting.⁷ The District adopted assessment orders and approved service plans after receipt of the requisite petitions from property owners, provision of the required public notices, conduct of public hearings, and adoption of orders in full compliance with all applicable legal requirements.⁸

² *Id.* §§3843.004, 3878.004.

³ *Id.* §§3843.101, 3878.101.

⁴ *See* note 1 *supra*.

⁵ *Id.* §§3843.051(d)(applying TEX. LOC. GOV'T CODE §375.061-.072 to the extent not inconsistent with Subchapter B of the statute), 3878.051(a). The initial board of the West Montrose Management District was appointed by the Legislature. *Id.* §3878.057.

⁶ *See* <http://montrosedistrict.org/committees>.

⁷ *Id.* §3843.204, 3878.201; Tex. Loc. Gov't Code §§375.115-124.

⁸ True and correct copies of the April 16, 2008 Order of the East Montrose Management District Board and the January 10, 2011 Order of the West Management District Board are attached (without exhibits) to the District's Plea to the Jurisdiction (“District Plea”) as Exhibits C and D. True and correct copies

4. The Allegations in Paragraph 16 of the Amended Petition - I have read and am familiar with the allegations contained in Paragraph 16 of Plaintiff's First Amended Petition and Suit for Declaratory and Injunctive Relief, which contend that assessments by the West Montrose Management District are void and illegal, based upon the claim that District was not empowered to levy an assessment without first receiving a petition of "at least 25 owners of real property in the district that will be subject to the assessment" and that "not all of the owners who signed the petition [authorizing assessments] were eligible to do so." More specifically, Plaintiff claims that petitioners Bailey Moore ("Moore"), the Mitchmore Living Trust ("Mitchmore") and Michael Carter ("Carter") were not owners of real property subject to assessment in the district and, based upon that accusation, Plaintiff claims that the assessment by the West Montrose Management District "was void and illegal in the first place."

The allegations in Paragraph 16 are incorrect.

I was personally involved in the process of receiving and reviewing the petition submitted by real property owners in the West Montrose Management District at the time the public hearing was conducted to consider the petition submitted requesting the provision of certain services and improvements and the levy of an assessment. At that time, the District had received a petition signed by 26 owners of real property in the district that was subject to the proposed assessment. Therefore, even if one of the signatories to the petition was ineligible to sign the petition, which was not the case, the District still would have received a petition signed by the requisite number of property owners subject to assessment.

Here are the facts concerning the Moore, Mitchmore and Carter properties:

a. The Moore Property - The Moore property is and was a commercial property subject to assessment at the time the petition was submitted to the District Board. At the time the Moore signature to the assessment petition was submitted, the owner stated that he was an owner of assessable property within the District and that statement was correct. The owner of the Moore property has been assessed and has paid assessments for both 2010 and 2011. In the past, the Moore property was misclassified by the Harris County Appraisal District ("HCAD") as if it were residential property, which was not correct, that administrative classification was corrected, and the records of the Harris County Appraisal District ("HCAD") correctly reflect that it is a commercial property and therefore subject to assessment by the District. In summary, the Moore property was subject to assessment at the time the owner signed the petition that was submitted to the Board, that property has been assessed, and the owner has paid assessments to the District.

b. The Mitchmore Property - The Mitchmore property contains both commercial and residential uses. By virtue of its commercial use, the Mitchmore property is and was a commercial property subject to assessment at the time the petition was submitted to the District Board. At the time the Mitchmore signature to the assessment petition was submitted, the owner stated that it was an owner of assessable property within the District and the property was listed on the HCAD rolls as a commercial property. The owner of the Mitchmore property has been assessed and paid assessments for both 2010 and 2011. In summary, the Mitchmore property was subject to assessment at the time the owner signed the petition that was submitted to the Board, that property has been assessed, and the owner has paid assessments to the District.

of the transcripts of the public hearings conducted by the East Montrose Management District on March 19, 2008 and by the West Montrose Management District on October 21, 2010, are attached as Exhibits E and F to the District Plea.

c. The Carter Property - The Carter property contains both commercial and residential uses. By virtue of its commercial use, the Carter is and was a commercial property subject to assessment at the time the petition was submitted to the District Board. At the time the Carter signature to the assessment petition was submitted, the owner stated that he was an owner of assessable property within the District, the property was listed on the HCAD rolls as a commercial property and that statement was correct. The owner of the Carter property has been assessed and paid assessments for both 2010 and 2011. In summary, the Carter property was subject to assessment at the time the owner signed the petition that was submitted to the Board, that property has been assessed, and the owner has paid assessments to the District.

5. Neither Plaintiff Nor Any Other Property Owner Appealed its Assessment – A property owner has a statutory right to appeal an assessment levied on its property, but any such appeal must be made to the board no later than thirty (30) days after the assessment is adopted.⁹ A property owner who has timely appealed its assessment to the board may appeal an adverse board decision to a court of competent jurisdiction, but any such appeal must be filed no later than thirty (30) days after the board's final decision with respect to the assessment.¹⁰ The failure timely to file either of the appellate notices provided in Section 375.123 of the Local Government Code "results in the loss of the right to appeal the assessment."¹¹ Neither Plaintiff nor any other District property owner has ever appealed any assessment levied on their property, much less done so timely.

6. Certain Property Exempt From Assessment - The Legislature has provided that certain of the real property located within the boundaries of the District is exempt from assessment, even though it constitutes a portion of the assessed value of the real property located in the District. The statutory exemptions from assessment include: (a) property of municipalities, counties and other political subdivisions; (b) property owned by organizations of purely public charity and organizations exempt from tax under Section 501(c)(3) of the Internal Revenue Code; (c) single-family detached residential property, duplexes, triplexes, quadraplexes and condominiums; (d) property, equipment or facilities of a public utility; (e) property owned by a church or by a strictly religious society which yields no

⁹TEX. LOCAL GOV'T CODE §375.123 provides:

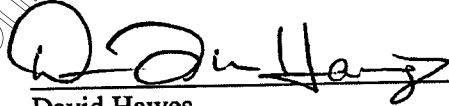
- (a) After determination of an assessment, a property owner may appeal the assessment to the board. The property owner must file a notice of appeal with the board not later than the 30th day after the date that the assessment is adopted. The board shall set a date to hear the appeal.
- (b) The property owner may appeal the board's decision on the assessment to a court of competent jurisdiction. The property owner must file notice of the appeal with the court of competent jurisdiction not later than the 30th day after the date of the board's final decision with respect to the assessment.
- (c) Failure to file either of the notices in the time required by this section results in a loss of the right to appeal the assessment.
- (d) If an assessment against a parcel of land is set aside by a court of competent jurisdiction, found excessive by the board, or determined to be invalid by the board, the board may make a reassessment or new assessment of the parcel.

¹⁰ *Id.* §375.123(b).

¹¹ *Id.* §375.123(c).

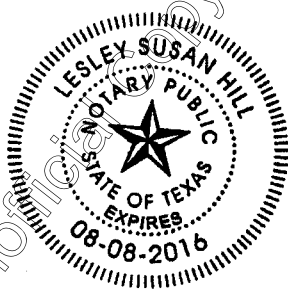
revenue whatsoever to such church or religious society and which is used as an actual place of worship or as a dwelling place for the ministry of such church or religious society; (f) property owned by an association engaged in promoting the religious, educational and physical development of children or young men or young women operating under a state or national organization of like character and used exclusively and necessarily for such purpose; or (g) vacant properties designated as residential on the tax rolls of the Harris County Appraisal District.

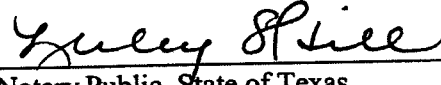
7. The District's Evaluation of the September 29, 2011 Petition - On September 29, 2011, the District Board received a petition requesting that the Board dissolve the District pursuant to Section 375.262, Subchapter M of the Local Government Code and the District's enabling acts. On October 14, 2011, at a duly-called public meeting, the District Board adopted protocols and procedures to review the petition, including verifying the legal authority for the petition, validating the signature authority of the signers of the petition, and responding to and implementing the request of the petition.¹² On November 14, 2011, at a duly-called public meeting, the District Board received public comments on the dissolution petition, received a report regarding a review of the petition, and adopted an order finding and concluding that the petition was insufficient to meet the statutory requirement for dissolution of the District.¹³ On February 13, 2012, at a duly-called public meeting, the District Board amended and restated the Order Responding to Petition to Dissolve Montrose Management District, to include findings and conclusions regarding the fact that the petition was insufficient to encompass either the required percentage of assessed value of the District or the required percentage of the surface area of the District that would require its dissolution.¹⁴



David Hawes

SUBSCRIBED AND SWORN to before me on the 27th day of July, 2012, to certify which witness my hand and official seal.





Notary Public, State of Texas

Lesley S. Hill

Printed Name of Notary

My Commission Expires: 8-8-16

¹² A true and correct copy of the Resolution Establishing Protocols and Procedures for the Administration of Dissolution Petitions is attached as Exhibit K to the District Plea.

¹³ A true and correct copy of the Minutes of the Meeting of the Montrose Management District dated November 14, 2011 is attached as Exhibit L to the District Plea.

¹⁴ A true and correct copy of the Order Amending the Order Responding to Petition to Dissolve Montrose Management District is attached as Exhibit M to the District Plea.