



January 28, 2022

To the Fort Davis Community:

Jeff Davis County, and Fort Davis in particular, have always been a close-knit community. In the not so recent past, many school and county officials have, of sheer necessity, served in multiple roles in County, School and other offices, largely free of the regulation now placed upon them. Many agreements and deals were sealed by a simple handshake and a promise. Although we are all sorry to see these simpler times in our rear-view mirror, the current reality is that public entities have become much more legally controlled. The recent \$2,000,000.00 jury verdict against Presidio County (in a lawsuit filed by a former county official) is proof that rural officials take on risk when they take on public office. No matter how much we might like them to be, laws and regulations are not negotiable, and can sometimes make officials appear to be downright un-neighborly. Such is the case with the current disputes among the Fort Davis Independent School District, the Fort Davis Water Supply Corporation (FDWSC), and Jeff Davis County, specifically the ownership and use of the platted portion of Urquhart Avenue between Desert Willow and Emory Oak (the "Urquhart Property"), where the new FDWSC water well sits.

As the School District's attorney, and with the consent of my client, the Fort Davis ISD Board of Trustees, I would like to provide some information regarding the evolution of these disputes, and the duties and laws that each of the parties is struggling with. This property, after all, belongs to you, the taxpayer. It is not my intention to inflame the debate further, but to let the community know that, unfortunately, there is not a simple solution to resolving the issues among the Parties, and to assure the community that, while I cannot speak for the other Parties, the School District has been working in good faith to clear up these issues as quickly and economically as possible.

Actions taken by prior School District Board Members, County Commissioners and Water Company Directors (presumably in good faith at a time) are largely responsible for the current tangle. They worked together for the benefit of our community, which all organizations served, but sometimes without understanding the limits of their authority. This historical backdrop and the complexity of the issues are important to understand.

Issue #1. The first issue arose solely between the School District and the FDWSC and began its evolution in 1969, when there was only one primary water well serving the residents of Fort Davis. Water Well #1, located on the north end of the School District's football field was owned by the School District. At the time, a few of the School District's Board Members were also members of the FDWSC's Board. The School District sold Well #1 and the property surrounding it (for an unknown price, if any) to the FDWSC. It was later determined (in 1971) that Well #1 would not be able to meet the water needs of the community by itself. The community needed another water well to support the demand. Again, the School District stepped up and offered to allow the drilling of Well #2 on the southwest side of the football field. This time, however, the board decided to lease the Well #2 and its surrounding property to the FDWSC for a period of 60 years, with an understanding (and totally separate agreement) that the school district would pay discounted rates for water. The Lease recited that the FDWSC would be required to pay \$10.00

per year for the Lease. The first term of the Water Discount Agreement expired in 1981. The parties appear to have continued the discounts without a formal written extension until 1997, when for unknown reasons, the FDWSC unilaterally discontinued all discounts and started charging the School District market rate for the water it was pumping from under the School District's property. Fast forward to the 2020-2021 school year, a fiscal year when the School District paid approximately \$29,000 for water provided by the FDWSC, when it (theoretically at least) pays only \$10.00 per year for the water it pumps.

A review of the Lease and Water Discount Agreements caused the current School Board to question the legality of the arrangement, and to suggest to the FDWSC that an Amendment of the Lease Agreement be made to again provide discounted water rates for the School District. While the FDWSC stated that it believed an agreement worked could be worked out, no further action was ultimately taken to advance the discussion. This dispute is not being actively advanced at this time because of the more pressing issue that came to the attention of the School District about the same time. Instead, the School District drilled a water well next to the football field for the sole purpose of watering the football field, to at least address the ongoing costs. This new well will pay for itself in one year, with future savings of at least \$21,000 per year (the annual cost of watering the football field) thereafter to its taxpayers and the district.

Issue #2: The second issue involves the County's and the FDWSC's use of the Urquhart Property, most recently to drill a water well which could potentially pump 380 gallons per minute from under the Urquhart Property. This problem initially came to light as the result of a request by the FDWSC to the School District that it grant a Sanitary Control Easement over the School District's property. The easement was for the purposes of preventing unsanitary runoff from School District's adjacent property which might contaminate the water from the well and would prevent the School District from using the School District's property for certain purposes. For example, the School District would not be able to use its property for long term grazing by cattle on that area of its property, which is currently lies adjacent to the Jan and James Dyer Agriculture Building. The School District was prepared to grant the Easement, but was advised that aside from all else, the Texas Constitution prohibited the School District from granting this Easement over even a portion of its property without receiving fair market value as compensation from the FDWSC for the rights granted. All the school land belongs to its taxpayers and is held in trust by the School District. This one issue lies at the heart of the ongoing dispute. Every attempt to reach a solution with the FDWSC has effectively ground to a halt when the School District seeks to obtain an appraisal of property value.

While the Parties awaited the required appraisal, the Water District began working with the County to find a way to satisfy the requirements of the Texas Commission on Environmental Quality ("TCEQ"). Meanwhile, research related to the easement revealed a reference in the County Commissioner's Court Minutes from July of 2006, stating that the FDWSC had been granted permission by the County to locate a Water Storage Tank "*on the closed portion of Urquhart Avenue at Desert Willow and Emory Oak*". A search of the Commissioner's Court Minutes (and an Open Records request) for confirmation as to when Urquhart Avenue had been closed revealed that no record of actual closure existed.

When landowners purchase property abutting a platted roadway, they automatically obtain ownership of one-half of the roadway property, between their property and the center line of the roadway. An easement interest (like you see for power lines or pipelines) essentially acts like

a “blanket” overlaying the underlying property. In this case, the overlaying “blanket” allows the County to use the underlying property, but only for roadway purposes. The property underlying the easement “blanket” continues to belong to the landowners on either side of the platted roadway (one-half to each).

The County only has the limited rights granted to it by the legislature related to their jurisdiction over roadways. None of those rights include closing it off (unless they intend to abandon the easement) or drilling wells. It is the position of the School District that the County Commissioners never had the authority to use or permit use of the Urquhart Property for anything other than roadway purposes. The County, on the other hand, continues to assert that it owns the platted Urquhart Property in its entirety, and had the right to use the roadway for any public purpose, so long as it took no formal action to close Urquhart Avenue as permitted by the statute. In the meantime, the FDWSC (assisted by the County) has continued to push forward to secure regulatory approval of the well, no matter the obstacles. The well sits on property owned by the School District. The roadway easement gave the County no authority to use the easement, or gift it to FDWSC, for a water well.

The County and FDWSC are aware of the School District’s objections, as the superintendent has appeared repeatedly at Commissioner Court meetings to voice the District’s concerns. His position has not endeared him to the County, or indeed the public, but it has been as a representative of, and with the approval of, the School Board of Trustees, which seeks only to protect the property owned by its taxpayers.

It is not surprising to me that the Fort Davis community has expressed frustration over the failure of the parties to settle these disputes, given their many moving parts. Part of the reason for the delay is that the government bodies involved in this issue act as trustees when they hold taxpayer property and are required to use that property for their entity’s specified public purpose. The School District, for instance, is required by the Texas Constitution to use the property it owns only for school and educational purposes. None of these public entity parties have the ability (or right) to simply deed the property over to another public entity for less than fair market value and be done with it. Having said that, however, the entities also have a duty to attempt to settle disputes in good faith and in the most economical way possible considering the risks and circumstances.

Unfortunately, in this case, the County’s actions outside its authority, including paying for the drilling of a public water system well (now known as FDWSC Well #4) on the School District’s property have created a problem to which there is no easy answer. The only solutions are for either: (1) the County or the FDWSC to purchase the School District’s interest in the Urquhart Property for fair market value, or (2) for all the equipment, including the water well, the pumping system, the power generator and three storage tanks currently in place on the Urquhart Property to be removed, and the property returned to its prior state. I believe none of the parties think is a practical solution.

There was at least one formal attempt to find a solution to the Well #4 issues. In July of 2020 representatives of each of the parties came together in person to discuss options for settling the case and spent the better part of a day discussing solutions. At the end of the discussion there was a tentative agreement that included (1) the County and/or the Water Corporation coming up with sufficient funds or other valuable consideration to purchase the School District’s one-half

of the Urquhart Property for fair market value (discounted by the potential costs of time and litigation), and (2) the attorneys working toward cleaning up the Commissioner's Court records and County Property Records as to the closure of Urquhart Avenue between Desert Willow and Emory Oak. The tragic death of Judge Kerith Sproul-Hurley soon after this meeting resulted in further actions being delayed for some time. In October of 2020, however, an agenda item was posted by the Commissioner's Court purportedly providing notice that they would be taking action to approve the grant of a Sanitary Control and Access Easement to the FDWSC. This was contrary to everything the Parties had discussed in their July meeting. The County Attorney represented that the action was urgent because the state grant that the County had obtained to fund the drilling of Well #4 was at risk of being recalled if Well #4 was not immediately placed into service. This was contradicted by a representative from this state agency, who came to the meeting and stated that the State continued to be open to working with the County and FDWSC and to allowing more time to get the well into service.

After the County's fast-tracking approval of a Sanitary Control Easement and Access Easement without any meaningful communication with the School District, negotiations with the School District the County and the FDWSC essentially ceased. A dialogue between the parties in connection with Well #4 did not resume until August of 2021, when a new attorney representing the County Commissioners, (provided through the Texas Association of Counties), made an appearance, and proposed a formal mediation of the dispute. I am in the process of working with this attorney, in the hopes that progress can be made.

The FDISD wants the community to understand the issues involved, and the actions the District can and cannot take. The District is taking its responsibility to its taxpayers very seriously, and continues to try to avoid the significantly more costly path of filing a lawsuit against either the County or the FDWSC. However, if neither the County nor the FDWSC agree to negotiate a settlement to the dispute over the Urquhart Property, that path may become the only option left to the School District to recover its property. You can rest assured that the action to file a lawsuit will be taken only after due business consideration of the cost and all other avenues are reasonably exhausted.

Winifred Dominguez
Attorney for Fort Davis ISD