

LAW OFFICES OF BRITTAN D. JOHNSON, PLLC

June 29, 2016

College Station ISD Board of Trustees  
c/o Mike Gentry  
West, Webb, Allbritton & Gentry  
1515 Emerald Plaza  
College Station, Texas 77845

*Via electronic mail to:*  
mike.gentry@westwebblaw.com

Re: Objection to Bid of DWS Development, Inc. for Approximately 23.707 acres of land located at the intersection of Holleman Drive and Deacon W. Drive.

Dear Sir or Madam:

I am writing today on behalf of Barracks Expansion LLC (the "Barracks" herein) regarding several concerns with a certain bid recently submitted to College Station ISD ("CSISD") in response to the Request For Bid on the above captioned land also referred to as the Haupt Tract. Specifically, DWS Development, Inc. ("DWS") submitted a defective bid by failing to complete the Conflict of Interest Questionnaire as mandated by Tex. Local Gov't Code § 176.006 despite objectively verifiable evidence of recent services rendered to CSISD pursuant to a Joint Development Agreement. DWS also failed to disclose ongoing business relationships with CSISD Vice-President of the Board of Trustees, Jeffrey C. Harris' employer, The Ellison Firm where Mr. Harris also serves as Vice-President.

As you know, the Texas Local Government Code codifies several requirements that must be followed in any sale of land owned by a local government entity to private parties in order to protect both government officials and private tax payers from improprieties in any sale or bid process. CSISD further expanded and adopted these statutory requirements "to afford bidders an equal opportunity to participate in [the] bid" by adding the following terms that appear on Page 2, No. 4 of the Request for Bid Packet:

4. All submitted bids made in response to this RFB shall be submitted on the included Bid Form, together with an executed Felony Conviction Notice form, Conflict of Interest Questionnaire, Affidavit of Non-Collusion, and the Bid Deposit set forth in paragraph 5.

**DWS' Business Relationship with CSISD.**

A quick google search reveals that DWS has a business relationship with CSISD as defined in Tex. Local Gov't. Code § 176.001 as recently as January 2016. *See CSISD / DWS DEVELOPMENT, Inc. Joint Development Agreement.*

**CSISD / DWS Development, Inc.  
Joint Development Agreement  
Agenda Item and Resolution**

**Agenda Item:**

Consider approval of the terms of and enter a joint development agreement between College Station Independent School District and DWS Development, Inc., to facilitate the construction of a sewer line serving District property located off of Holleman Drive in College Station, Texas.

**Motion and Resolution:**

On motion made and seconded, it is hereby resolved that:

WHEREAS, College Station Independent School District ("District") owns approximately twenty-seven (27) acres of real property located at the intersection of Holleman Drive and Deacon Drive in the City of College Station, Brazos County, Texas, as set forth in Exhibit A attached hereto and made a part hereof (the "District Tract"); and

WHEREAS, DWS Development, Inc. ("Developer") owns real property located in the City of College Station, Brazos County, Texas as set forth in Exhibit B attached hereto and made a part hereof (the "Developer Tract"); and

WHEREAS, Developer and the District (collectively, "Parties") have disclosed to one another the plans for development of their respective tracts; and

WHEREAS, Developer has requested that the District grant a twenty foot (20') easement upon the District Tract, encompassing approximately 0.502 acres of land, more or less (the "Easement"), as set forth in Exhibit C attached hereto and made a part hereof; and

Upon further inspection we believe that this Joint Development Agreement is not only a "business relationship" but in fact a business relationship concerning the same tract of land that DWS now seeks to purchase from CSISD. *See Joint Development Agreement Pg. 3.*

**EXHIBIT A**  
**District Tract**  
**27.017 ACRES**  
**OUT OF THE L. M. HAUPT, JR., ET UX**  
**CALLED 136.063 ACRE TRACT**  
**VOLUME 171, PAGE 392; CRAWFORD BURNETT LEAGUE, A-7**  
**COLLEGE STATION, BRAZOS COUNTY, TEXAS**  
**NOVEMBER 30, 2009**

The Agreement calls for completion on or before January 1, 2016. *See* Joint Development Agreement Pg. 12.

**(a) Sewer Line.**

1. **Deadline.** Developer shall cause the construction and installation of the Sewer Line to be completed no later than January 1, 2016.
2. **Payment.** Developer shall be responsible for all costs of designing and constructing the Sewer Line. Further, Developer shall reimburse the District for all legal and engineering fees and expenses associated with this Agreement and the construction of the Sewer Line, in an amount not to exceed \$3,500.00.
3. **Other.** The District shall grant the Easement as necessary for the construction and installation of the Sewer Line. The instrument granting the Easement shall be in a form reasonably acceptable to the Parties.

This readily accessible information at a minimum permits the reasonable implication that DWS had a business relationship with CSISD as defined by Tex. Local Gov't. Code § 176.001 within the preceding twelve months. CSISD stood to benefit from the installation of a sewer line to the Haupt Tract (then planned to become a school) at virtually no cost to CSISD and DWS received a necessary sewer line to continue development. DWS' failure to disclose this information to CSISD in the bid packet is a material omission and renders DWS' bid deficient and misleading to CSISD, other bidders and taxpayers.

**DWS' Business Relationship with The Ellison Firm was not properly disclosed.**

DWS was represented by The Ellison Firm in the Joint Development Agreement with CSISD. *See* Joint Development Agreement Pg. 14.

**DEVELOPER:**

DWS Development, Inc.  
P. O. BOX 4508  
BRYAN, TEXAS 77805  
Attn: David Scarmardo  
Email: david@dwsdevelopment.com

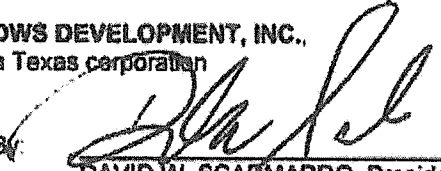
With a copy to:

The Ellison Firm  
302 Holleman Drive East, Suite 76  
College Station, TX 77840-7000  
Attn: Charles A. Ellison  
Fax No: 979-694-8000  
Email: [Chuck@Ellisonlaw.com](mailto:Chuck@Ellisonlaw.com)

As previously mentioned, Mr. Jeffrey C. Harris is Vice-President of The Ellison Firm and Vice-President of the CSISD Board of Trustees. As recently as May 2016 DWS, utilized The Ellison Firm to prepare real estate documents for various business deals. *See Mechanics' Lien.*

**OWNER:**

**DWS DEVELOPMENT, INC.,**  
a Texas corporation

By:   
DAVID W. SCARMARDO, President

**CONTRACTOR:**

**SAHARA REALTY GROUP, LTD.,**  
a Texas limited partnership

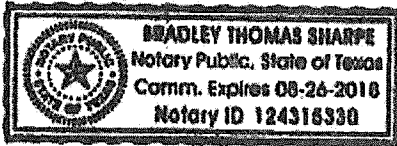
By: Capital Realty Management, LLC  
Its general partner  
By:   
David Scarmardo, Manager

THE STATE OF TEXAS §

(ACKNOWLEDGMENT)

COUNTY OF BRAZOS §

This instrument was acknowledged before me on the 12<sup>th</sup> day of May, 2016, by DAVID W. SCARMARDO, President of DWS DEVELOPMENT, INC., a Texas corporation, on behalf of said corporation.

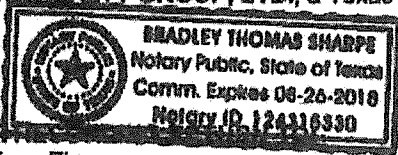



  
Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

This instrument was acknowledged before, a Notary Public, me on this the 12<sup>th</sup> day of May, 2016, by David Scarmardo, the Manager of Capital Realty Management, LLC, the general partner of SAHARA REALTY GROUP, LTD., a Texas limited partnership, on behalf of said limited partnership.




  
Notary Public, State of Texas

AFTER RECORDED  
The Ellison Firm  
P. O. Box 10103  
College Station, Texas 77842  
File No. 4695.127

While it is certainly not unusual for members of the community, especially a respected attorney such as Mr. Harris to serve on an elected board, that service may require certain disclosures pursuant to Tex. Local Gov't. Code § 176.003. I would also implore CSISD to examine its own policies as they relate to Board Member participation in consideration of any transaction with a Vendor as defined in the Code that may result in income to a Board Member. Irrespective of those statutory requirements, it is my Client's position that DWS should have disclosed the relationship with Mr. Harris' firm pursuant to Tex. Local Gov't. Code § 176.006 on the basis that Mr. Harris is an officer of The Ellison Firm and DWS utilized The Ellison Firm in a previous deal with CSISD.

### TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

*To be filed by Corporations and Limited Liability Companies (LLC) and Financial Institutions*  
 This report **MUST** be signed and filed to satisfy franchise tax requirements



05-102  
 (9-09/29)  
 Tcode 13196

You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.

Taxpayer number: **3 2 0 0 1 4 3 1 0 0 9**       Report year: **2 0 1 5**

Taxpayer name: **Charles A. Ellison PC**

Mailing address: **PO Box 10103**      Secretary of State file number or Comptroller file number

City: **College Station**      State: **TX**      ZIP Code: **77842**      Plus 4

Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office: **PO Box 10103, College Station, TX, 77842**

Principal place of business: **PO Box 10103, College Station, TX, 77842**

*Please sign below!*      Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.

**SECTION A** Name, title and mailing address of each officer, director or member.

Name	Title	Director	Term expiration	3200143100915
<b>Jeffrey C Harris</b>	<b>Vice-President</b>	<input type="radio"/> YES	m m d d y y	
Mailing address: <b>5202 Cascades Drive</b>	City: <b>College Station</b>	State: <b>TX</b>	ZIP code: <b>77845</b>	
<b>Gerry M Brown</b>		<input type="radio"/> YES	m m d d y y	
Mailing address: <b>1102 Royal Alelade</b>	City: <b>College Station</b>	State: <b>TX</b>	ZIP code: <b>77840</b>	
Name	Title	Director	Term expiration	
		<input type="radio"/> YES	m m d d y y	
Mailing address	City	State	ZIP code	

**SECTION B** Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

**SECTION C** Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

Registered agent and registered office currently on file. (See instructions if you need to make changes)  
 Agent: **Charles A. Ellison**       Blacken circle if you need forms to change the registered agent or registered office information.

Office: **PO Box 10103**      City: **College Station**      State: **TX**      ZIP Code: **77842**



The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

Sign here	<b>Charles A Ellison</b>	Title	President	Date	03/13/2015	Area code and phone number	( 979 ) 696 - 9889
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**Texas Comptroller Official Use Only**

VE/DE	<input type="radio"/>	PIR IND	<input type="radio"/>
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**DWS' Failure to Disclose Business Relationship Leaves Open Possibility of Impropriety.**

On or about May 2, 2016, BCS Rock Prairie LP entered into an unimproved property contract with Mike Gentry or assigns for 18.74 acres at the the northwest corner of Rock Prairie Road and Holleman Drive (the "Replacement Tract"). By the terms of the contract for the Replacement Tract, Mr. Gentry could assign the contract to CSISD and CSISD would close on the Replacement Tract contingent on the sale of the Haupt Tract.

The contract for sale of the Replacement Tract was not generally available to the public nor was it subject to disclosure under the Texas Public Information Act since the contract was in the name of Mr. Gentry. DWS' bid, if accepted, results in net proceeds to CSISD that is within approximately four percent (4%) of CSISD's contract price for the Replacement Tract. While the similarity in price could be coincidental, the foregoing coupled with DWS' business relationship with CSISD warrants full disclosure to the public and other bidders at a minimum and possibly disqualification of the bid.

**DWS' Bid is Deficient and Should Be Rejected by CSISD.**

DWS failed to disclose business relationships with CSISD and a CSISD Officer as mandated by statute and the terms of the bid packet and the bid should be disqualified on the basis that it leaves open the possibility of impropriety. CSISD set out to conduct a bidding process that gave each bidder a fair opportunity. However, DWS' failure to disclose two key business relationships violate both the spirit and letter of the entire process.

The Barracks now makes formal request that CSISD refrain from execution of any documents or contracts with DWS until such time as CSISD completes a formal inquiry into the bid process and DWS' relationship with CSISD. My office will continue to investigate this matter and my Client does not by this letter waive any rights under Texas law, including rights to seek rescission of any contract between DWS and CSISD or to seek an injunction and ruling on any possible improprieties arising out of this bid process. Please advise me at your earliest convenience on CSISD's findings as it relates to this matter and CSISD's plan to proceed.

Very truly yours,

**LAW OFFICES OF BRITTAN D. JOHNSON, PLLC**



Brittan D. Johnson

CC: Alex S. Valdes  
Winstead, P.C.  
401 Congress Avenue, Suite 2100  
Austin, Texas 78701

*via electronic mail to: avaldes@winstead.com*