

OPPONENTS' DUE PROCESS ARGUMENTS AT HEARING

At the onset of the hearing on the first day, before any testimony was given, and at various stages throughout, one of the Other Parties,, Mr. Taylor Moore, on his own behalf and on behalf of all other Opponents, argued a motion for a continuance. (I use the term Opponents because counsel for the City of Sunland Park, although stating at different times that he was not joining in the motion, complained that he too found himself with little time to prepare for the hearing). Mr. Moore had in his possession, a 9-page motion that he had not filed or distributed to counsel. After affording all counsel the time and opportunity to read the contents of the motion, I allowed Mr. Moore sufficient time to argue it. The written motion has been made a part of the record. See Vol. 1, pps. 24-36.

Essentially, although the written motion was for a continuance, Mr. Moore argued throughout the hearing that the Opponents were being denied their due process rights because they were not given the opportunity to prepare for and to fully present their case. He contended that because the Opponents had received copies of the administrative record only a few weeks before the starting date of the hearing, it was a denial of due process to proceed with the hearing without giving all the Other Parties the time and opportunity to prepare and to present their case in opposition to granting the permit.

Once again, I should point out that counsel for the City of Sunland Park, although he had not filed any formal pre-hearing motion, and did not join in Mr. Moore's motion, argued that although he would do his best to participate in the hearing, he found it taxing that he had not been given more time to prepare. See

Vol. 1, p. 36-41. He too indicated he believed it was a denial of due process to proceed with the hearing. For these reasons, I deem the motion as one on behalf of all Opponents, so my ruling applies equally to the City of Sunland Park.

I denied the motion. See Vol. 1 pps. 47-49. I should add that at various times later in the hearing, Mr. Moore continued to renew his motion, as well as reargue his due process arguments.

In summary, I gave the following reasons for denial of the motion: It was not filed timely, although Mr. Moore had ample opportunity to do so; believing that all parties had ample time to review the record and exhibits to prepare for the hearing, I did not see any violation of due process, either substantively or procedurally; it would be prejudicial to all parties and the public to delay or continue the hearing for any period of time, considering the length of time the case had been pending; finally, based on my experience, I did not feel that Mr. Moore and the Opponents would be any better prepared at a later date than they were on the first day of the hearing, considering the nature of the issues. The case was what it was; it would be the same in January or at some later date.

Throughout the hearing, at such times as Mr. Moore renewed his motion, I gave the same and other, additional reasons for my denial, but I believe that essentially, the fact that I considered the motion untimely and the prejudice to the parties and the public, were a sufficient basis for denial.