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April 14, 2015

Allen L. Fugate, Esq.
210 North Jeffers St., Ste 100
PO Box 82
North Platte, NE 69103-0082

RE: *File No. 15-R-114; Nebraska Public Power District; Petitioner Allen Fugate
o/b/o Hanging H Real Estate Co.*

Dear Mr. Fugate:

This letter is in response to your correspondence received by us on March 30, 2015, in which you requested our assistance in obtaining certain public records belonging to the Nebraska Public Power District ("NPPD")¹. As is our normal practice with such requests, we forwarded a copy of your complaint to the party against whom the complaint was made, in this case NPPD's Vice President and General Counsel, John C. McClure, and requested a response. On April 7, 2015, we received Mr. McClure's response on behalf of NPPD. We have now considered your petition for access to records under Neb. Rev. Stat. § 84-712.03 (the "Petition"), as well as Mr. McClure's response under the Nebraska Public Record Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (Reissue 2014) (hereinafter sometimes referred to as "NPRS"). Our findings in this matter are set forth below.

FACTS

Our understanding of the facts here is based on your Petition, on behalf of Hanging H Real Estate Co. ("Hanging H") and Mr. McClure's response. We have also reviewed and considered the documentation included in your petition of March 30,

¹ You wrote us on behalf of your client, which you identified in your initial letter to us as "Hansen Real Estate Co., LLC," however, the documentation included with your letter identifies the entity which made the public records request as "Hanging H Real Estate, Co." We contacted you regarding this, and you indicated that Hanging H Real Estate Co. is the entity on whose behalf you wrote to us and "Hansen Real Estate" was a typographical error. You clarified this in a letter to us dated April 8, 2015, which we also shared with NPPD. Therefore, we will consider your initial correspondence to have been written on behalf of "Hanging H Real Estate Co."

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2015. Your public records petition relates to records of landowners along NPPD's "R-Project," a new transmission line project. NPPD has published the final route for the transmission lines, along with two new substation sites. Hanging H was identified as an owner of property along the final line route or substation site, in a letter from NPPD dated January 20, 2015, and given preliminary information regarding right-of-way agreements that NPPD would be seeking.

On or about January 30, 2015, you requested, on behalf of Hanging H, "the names and address of all other landowners that own property located along the final line route or substation site of the "R project." NPPD denied your request on February 3, 2015 under Neb. Rev. Stat. § 84-712.05 (6) of the NPRS. Your petition to this office followed. In his response to us, Mr. McClure reiterates NPPD's position that it may lawfully withhold the documents you seek under the exception set out in Neb. Rev. Stat. § 84-712.05 (6).

ANALYSIS

Generally speaking, the Nebraska Public Records Statutes allow interested persons the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those public records, and to obtain copies of public records in certain circumstances. However, while the NPRS provide for access to and copies of public records, it does not require public officials to answer questions, or to create records which do not otherwise exist. Additionally, even though the Nebraska Public Records Statutes do provide for access to public documents, they are not absolute, and they also provide for exceptions to disclosure by express and special provisions. *Orr v. Knowles*, 215 Neb. 49, 337 N.W.2d 699 (1983).

Neb. Rev. Stat. § 84-712.05 is comprised of eighteen categories of documents which may be kept confidential from the public at the discretion of the agency involved. In particular, as relevant here, § 84-712.05 (6) provides:

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

* * *

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

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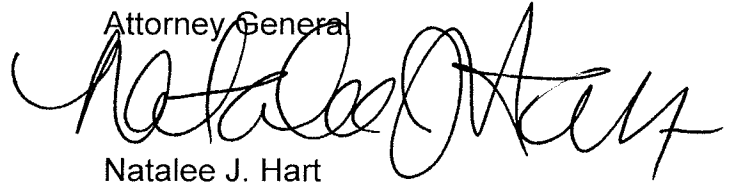
NPPD has withheld the documents you requested as "negotiation records concerning the purchase" of real property, prior to completion of the sale. NPPD has defined the route for its transmission line project and has identified each of the interested landowners along that line. We believe that, under the circumstances here, when a final route has been identified and a public body has a discrete list of interested landowners, that the list of those landowners qualifies as a "negotiation record." While the negotiations may be in the earliest of stages, the first task of any public body is to identify with whom they will be negotiating. While those negotiations are ongoing, we agree with NPPD that they may withhold the names and addresses of the interested landowners along the transmission line under Neb. Rev. Stat. § 84-712.05 (6) of the NPRS until such time as negotiations are complete.

CONCLUSION

We do not believe Hanging H has been improperly denied access to public records. If you disagree with our legal analysis set out herein, you may wish to consult with your client to discuss what additional remedies, if any, are available to Hanging H under the Nebraska Public Records Statutes.

Sincerely,

DOUG PETERSON
Attorney General



Natalee J. Hart
Assistant Attorney General

cc: John C. McClure

02-488-29