

BRUCE E. SMITH LAW OFFICES, PLLC

201 SOUTH MAIN STREET
NICHOLASVILLE, KENTUCKY 40356
(859) 885-3393 + (859) 885-1152 FAX

BRUCE E. SMITH
bruce@smithlawoffice.net

May 2, 2012

VIA UPS OVERNIGHT DELIVERY

Mr. Jeff R. Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, Kentucky 40602

Re: Case No. 2011-00297
Response By Water District To
Forest Creek's Motion to Compel

RECEIVED


MAY 03 2012

PUBLIC SERVICE
COMMISSION

Dear Sir:

Enclosed is my client's Response as referenced above. Ten copies of the Reply are attached.

Sincerely,



Bruce E. Smith

Enclosures

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION **RECEIVED**

In the Matter of:

MAY 03 2012

FOREST CREEK, LLC)
COMPLAINANT)
VS.)
JESSAMINE SOUTH ELKHORN)
WATER DISTRICT)
DEFENDANT)

PUBLIC SERVICE
COMMISSION

CASE NO. 2011-00297

**RESPONSE BY WATER DISTRICT TO
FOREST CREEK’S MOTION TO COMPEL**

Comes the Jessamine-South Elkhorn Water District (“Water District”), by counsel, and for its Response¹ to Forest Creek, LLC’s (“Forest Creek”) Motion to Compel Jessamine-South Elkhorn Water District to Answer Requests for Information, states as follows:

INFORMATION REQUEST NO. 1

Forest Creek’s reasoning in support of its Motion as to the Water District’s refusal to respond to Request No. 1 exhibits confusion on Forest Creek’s part about the issue raised in its own Complaint. The nexus of the Forest Creek Complaint is the Water District’s refusal to permit Forest Creek to renege on its contractual obligation to proceed under Option II, as opposed to Option 1, with regard to constructing the water infrastructure.² Request No. 1 asks that the Water District’s rules be identified regarding the review, the denial and/or the approval

¹ This Response incorporates herein by reference, unless expressly stated otherwise, the basis and reasoning found in the Water District’s initial Responses to Forest Creek’s Requests for Information, filed April 13, 2012

² Forest Creek’s Complaint, ¶11.

of “an application for a water extension.”³

Forest Creek’s application for the extension of water service, dated April 27, 2007, was approved at the Water District’s May 2, 2007 meeting and the Water District evidenced its commitment to providing water service to Forest Creek by authorizing the execution of the Interim Water Service Agreement with Forest Creek and the signing of the Preliminary Plat certification which obligated the Water District to a third party regarding the provision of the service.⁴ The obligation to provide water service has been a fait accompli since May 2, 2007. This obligation was further memorialized by Forest Creek’s signing of the aforementioned Agreement on May 2, 2007, the Water District’s Chairman’s execution of same on June 6, 2007 and the Water District’s Chairman signing of the Certificate of Availability of Water Supply on August 1, 2007. This dispute is not about the acceptance or non-acceptance of Forest Creek’s application, it is about Forest Creek’s attempt at unilaterally changing its obligations under the contract which evidences the “acceptance of its application.”

Forest Creek’s confusion is further illustrated by two statements in its Motion: (1) “The Water District refused to answer this request on the basis that the information sought is irrelevant, and because Forest Creek’s **plans have finally been approved.**” (Emphasis added); and (2) “Furthermore, Forest Creek’s application for water line extension was submitted to the Water District on April 27, 2007, **and it was not approved until recently.**” (Emphasis added) These statements are misapprehensions of the facts in that Forest Creek apparently took the Water District’s approval of the path of the water main (from near the City of Wilmore, Kentucky to the development site) to either be an acceptance of its April 27, 2007 application or

³ To avoid confusion, Forest Creek’s Motion refers to the Request for Extension attached as Exhibit A to Requests for Information to Complainant from Defendant, filed March 30, 2012, as the “application”. The Water District will continue to refer to this document as the “application” consistent with Forest Creek’s terminology.

⁴ Jessamine-City of Wilmore Joint Planning Commission – see Group Exhibit “A” for the May 2, 2007 meeting minutes and a portion of the Preliminary Plat containing the Certification.

an approval of the plans for the water infrastructure. Neither statement is accurate. As clearly stated in the letter dated March 27, 2012,⁵ approval of the “location corridor” is part of the construction plans for the water infrastructure, not the application. This letter also evidences that Forest Creek has yet to submit a complete set of plans.

In conclusion, Forest Creek does not appear to understand the difference or distinguish between “acceptance” of its application with the “implementation” thereof. Any issue relative to the application process is moot and also beyond the scope of the Complaint.

INFORMATION REQUEST NO. 2

Once again, Forest Creek’s Request focuses on the identity of those who determine “whether an **application** for water line extension is approved or denied”. (Emphasis added) Forest Creek’s question is apparently aimed at the discovery of bias in the process of approving and denying applications. As fully discussed in the foregoing response, the Request confuses acceptance with implementation. The application was accepted in 2007. Since 2007, the Water District has been waiting on submission of a complete set of construction plans. The issue of bias in the application process is moot and beyond the scope of the Complaint.

INFORMATION REQUEST NO. 3

Forest Creek’s Motion relative to this Request is predicated upon a claim that Option I was not mentioned to Forest Creek as a feasible alternative available to it and that Option I was not explained to Forest Creek by Water District. First, Forest Creek’s Complaint makes no such claim against the Water District. Accordingly, discovery as to this issue is outside the scope of the proceeding. Second, Forest Creek’s Motion is based on the false claim that it had no knowledge of Option I which is belied by its admission of record that it executed the application for water service which clearly spelled out a choice of either Option I or Option II and contained

⁵ Appendix B to Water District’s Motion to Dismiss Complaint and Alternatively, Motion to Suspend Proceedings and Supplement the Record. See Exhibit “B” attached hereto.

the precise language of both Options as found in Water District's tariff. From the outset of Forest Creek's dealings with Water District, it has been represented by legal counsel, an engineer licensed in this Commonwealth and a land surveyor licensed in this Commonwealth, all of whom have experience in real estate development and the securing of utility services.⁶ Any claim by Forest Creek at this point in the proceeding, based on its failure to exercise due diligence, is baseless, irrelevant and beyond the scope of the Complaint.

INFORMATION REQUEST NO. 4

Forest Creek's Motion speculates that the Water District may have had more than one version of the subject Interim Water Service Agreement. First, Forest Creek's Complaint does not claim or even imply a claim based on this premise. Second, Forest Creek was represented by an experienced team of professionals, two of whose offices (Gullette and Moore)⁶ are located in Jessamine County, Kentucky, and all of whom have been involved in other projects in said County. The Water District refuses to participate in Forest Creek's speculative and irrelevant request which is outside the scope of its Complaint.

INFORMATION REQUEST NO. 16

Forest Creek is and has been fully aware that John G. Horne and L. Christopher Horne of Horne Engineering, Inc. are and have been for many years the consulting engineers for the Water District. As such, the Water District did not consider them as "third party" engineers, and the response to Forest Creek's Information Request No. 15 is consistent with that understanding. Likewise, Forest Creek's knowledge of Horne Engineering's status as such is confirmed by Forest Creek's question under Information Request No. 14. Accordingly, the Water District responded to Request for Information No. 16 by reference to its response to No. 15. Without

⁶ Robert L. Gullette, Jr., Esq.; Jihad Hallany, Vision Engineering; and Rick Moore, Moore Surveying Company.

retreating from its prior response to No. 16, Water District reserves the right to supplement its initial answer to Request No. 16 and/or the subject response herein.⁷

INFORMATION REQUEST NO. 23

Forest Creek's stated reasoning makes no sense within the context of this dispute. The Water District does not make water line extensions to governmental agencies (municipalities or otherwise) in conjunction with third parties or absent the involvement of third parties. The Water District currently has contracts with two governmental entities and a private company for the supply of water to its distribution system.⁸ All of these contracts are on file with the Kentucky Public Service Commission ("PSC"). The water supply for Forest Creek's project will be provided by the City of Wilmore ("Wilmore") through a water main connection and master meter located on KY 29. Wilmore and Water District have had an agreement in place since November 6, 2006 as to the supply of water to the District. The Request is irrelevant and asks for information beyond the scope of this proceeding.

With this explanation in mind, it appears that Forest Creek is once again attempting to gather information which it intends to use in Jessamine Circuit Court Civil Action No. 12-CI-00081, styled: *Forest Creek, LLC v. Harold Eugene Snowden, Jr., et al.*, which was the lawsuit addressed in Forest Creek's *ex parte* email to Gerald E. Wuetcher, Esq., more fully addressed in the Water District's recently filed Motion to Dismiss.⁹ It is already apparent that Forest Creek's attorney in that lawsuit, Constance Gullette Grayson, Esq., is providing records to Forest Creek's counsel in this proceeding and vice versa. Such records were obtained by Grayson in an Open Records Request to the Water District after the aforementioned Jessamine Circuit Court action

⁷ The Water District is concerned that the Commission may rule on Forest Creek's Motion to Compel before it has a chance to file this Response and wants to avoid such a circumstance. Accordingly, it makes the above reservation while it searches its records for the past 12 years.

⁸ Kentucky American Water Company, City of Nicholasville, Kentucky and City of Wilmore, Kentucky.

⁹ Filed April 26, 2012.

was filed.¹⁰ The “tell” to this exchange of information is based upon the filing of paper documents herein by Forest Creek as part of Attachment B to its Answers of Forest Creek, LLC to Jessamine South Elkhorn’s Requests for Information, some of which have been Bates - stamped.¹¹ Corroboration of this exchange can be found in a filing in the Jessamine Circuit Court action which is attached as Exhibit D.

Based on the foregoing, Water District’s refusal to respond to this Request stands.

ADDITIONAL GENERAL OBJECTION

The Water District objects to responding to any information requests made by Forest Creek, or any requests made at all with respect to any issue not within the scope of Forest Creek’s complaint. It is increasingly evident that Forest Creek is using this proceeding to gather information for use in its pending civil action in the Jessamine Circuit Court. The Commission is not bound by the technical rules of legal evidence. KRS 278.310. Forest Creek’s overbroad and voluminous requests have little or nothing to do with the scope of the complaint before the Commission. However, responses being filed by the Water District are then quickly made a part of the record in Forest Creek’s pending Jessamine Circuit Court case, Case No. 12-CI-00081¹². Indeed, the Jessamine Circuit Court did not even dismiss Forest Creek’s counterclaim in Case No. 10-CI-01394, so that case is still pending as well.

Forest Creek currently has pending its counterclaim in the Jessamine Circuit Court (10-CI-01394); its Complaint before this Commission; and another complaint in Jessamine Circuit Court in which discovery from this complaint case is being used to try to support a conspiracy claim against named and unnamed individuals (12-CI-00081). The Commission has had the

¹⁰ See Open Records request attached hereto as Exhibit “C” which was filed in the record of the Jessamine Circuit Court action.

¹¹ Filed April 23, 2012. Some, but not all of the documents have been Bates-stamped by Grayson for use in the circuit action.

¹² For more on this proceeding, see the Water District’s pending Motion to Dismiss or Supplement, and the Water District’s Reply to Forest Creek’s Memorandum in Opposition dated May 1, 2012.

Water District's declaratory judgment action against Forest Creek dismissed, due to the Commission's claim that it has exclusive jurisdiction over all aspects of the extension of water facilities to Forest Creek's proposed development. However, Forest Creek is litigating the same issue in three separate cases, and using what it apparently perceives to be the liberal discovery permitted in Commission proceedings to gather information to be used in all of its pending proceedings. The Water District objects to this use of the Commission complaint procedure, and asserts this objection to all requests being made by Forest Creek in this Commission proceeding.

CONCLUSION

Forest Creek continues its efforts to expand the scope of this dispute beyond the claim posed in its Complaint. Regardless of how innocuous the Water District's responses would be to Forest Creek's irrelevant inquiries, the Water District will not cooperate in this exercise because it establishes a precedent for irrelevant and "beyond the scope" requests and to Forest Creek strategy of clouding this dispute and/or gathering information for the unrelated 2012 Jessamine Circuit Court lawsuit, the litigation in which Forest Creek has, through *ex parte* contact with a PSC representative, attempted to involve the PSC.

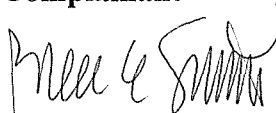


BRUCE E. SMITH
201 SOUTH MAIN STREET
NICHOLASVILLE, KY 40356
(859) 885-3393
(859) 885-1152 (Fax)
ATTORNEY FOR WATER DISTRICT

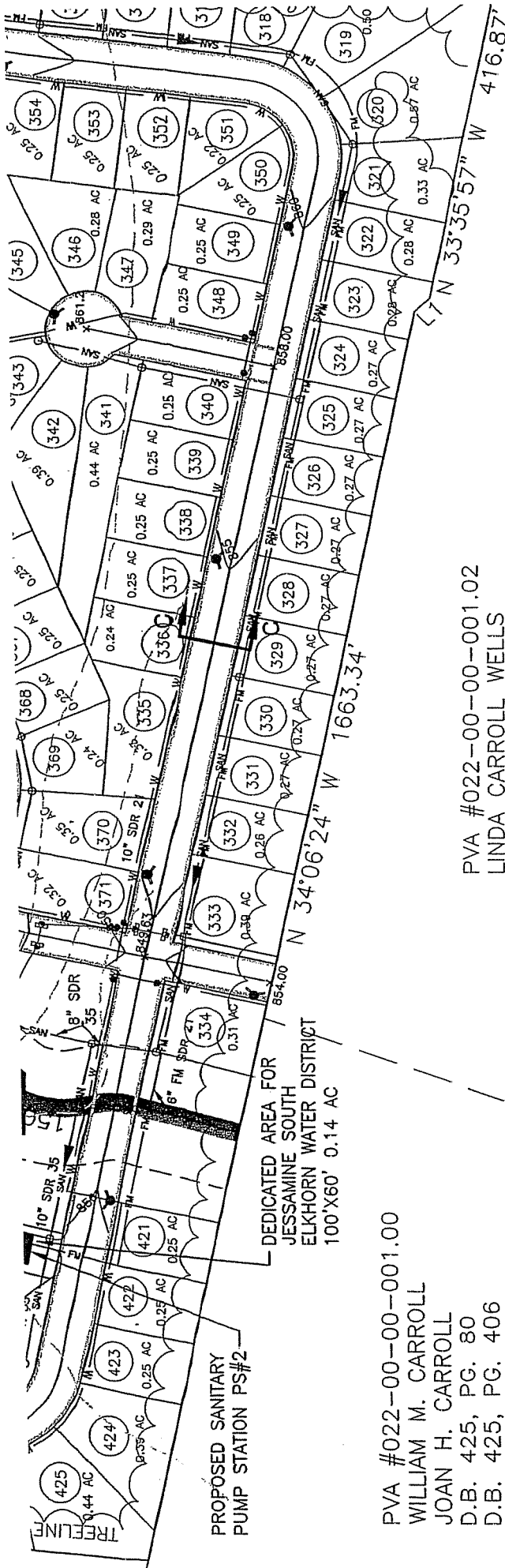
CERTIFICATE OF SERVICE:

The undersigned hereby certifies that a true copy of the foregoing Response by Defendant to Forest Creek's Motion to Compel was served on the following by U.S. Mail, first class, postage prepaid, on May 2, 2012:

Robert C. Moore, Esq.
P.O. Box 676
Frankfort, Kentucky 40602-0676
Counsel for Complainant



BRUCE E. SMITH



PROPOSED SANITARY
PUMP STATION PS#2

DEDICATED AREA FOR
JESSAMINE SOUTH
ELKHORN WATER DISTRICT
100'X60' 0.14 AC

PVA #022-00-00-001.00
WILLIAM M. CARROLL
JOAN H. CARROLL
D.B. 425, PG. 80
D.B. 425, PG. 406
P.C. #8, SL. 561
TRACT #B2
ZONE: A-1

PVA #022-00-00-001.02
LINDA CARROLL WELLS
D.B. 425, PG. 83
P.C. #8, SL. 561
TRACT #B1
ZONE: A-1

CERTIFICATE OF A

I HEREBY CERTIFY THAT
SHALL SUPPLY THE FOREST
SEWAGE DISPOSAL OF SAID
AGENCY AND ALL OTHER R

[Signature]
SIGNATURE

CERTIFICATE OF AVAILABILITY OF WATER SUPPLY

I HEREBY CERTIFY THAT JESSAMINE SOUTH ELKHORN WATER DISTRICT
SHALL SUPPLY THE FOREST BROOK GOLF COURSE WITH SERVICES AND THAT THE WATER
DISTRIBUTION SYSTEM OF SAID SUBDIVISION MEETS THE REQUIREMENTS OF THIS
AGENCY AND ALL OTHER REQUIREMENTS FOR THE PROPER DISTRIBUTION OF WATER.

[Signature]
SIGNATURE

8-1-07

tabbles

EXHIBIT

GROUP "A"

May 2, 2007

The Board of Commissioners of the Jessamine South Elkhorn Water District met on May 2, 2007, with the following Commissioners present: Nick Strong, George Dale Robinson, Jerry Haws, and J F Hall. Bruce Smith, John Horne, Christopher Horne and Tom Smith were also present.

Mike Besten, auditor, addressed the Board to review the 2006 Audit. A meeting was scheduled for May 15th to discuss the depreciation schedule.

Charles Howell, Francis Asbury Society, addressed the Board with a request for service to a proposed office building on the corner of Drake Lane. It was discussed to provide the potable water from the 4" line and connect the fire protection system to the proposed 10" line after it is installed. Another option would be the installation of a pump system by the owner. The owner is to evaluate and advise the District.

Jihad Hallany, Bobby Gullette, Rick Moore, and James Kelley, Forest Brook, addressed the Board to request signing of the water certificates. There was a discussion on several items concerning this extension. A motion to authorize the signing of the Interim Agreement and the water certificate on the Preliminary Plat was made by Mr. Hall, seconded by Mr. Haws - approved.

Mr. Strong reported that a contract for the purchase price of \$462,000 had been signed for the purchase of the Farmers Bank in Edgewood for the District's permanent office. The building should be available late 2007.

Mr. Smith reported on the Connection Fee Tariff. There was a discussion on setting the amounts and submitting the tariff.

There was a discussion on the Keene Reconstruction Project. A motion to authorize the signing of the loan application and authorize the bid advertisement was made by Mr. Robinson, seconded by Mr. Hall - approved.

A motion to accept the conveyance of Cave Run was made by Mr. Hall, seconded by Mr. Haws - approved.

A motion to authorize the bid advertisement for the Unserved Rural Water Project was made by Mr. Hall, seconded by Mr. Haws - approved.

A motion to approve the engineering contract with Horne Engineering Inc for the waterline relocation on the US 68 Reconstruction Project was made by Mr. Haws, seconded by Mr. Robinson - approved.

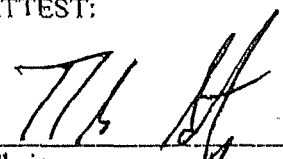
A motion to approve the minutes of the April meeting was made by Mr. Hall, seconded by Mr. Haws - approved.

A motion to approve the April bills and pre-approve the contractual payables was made by Mr. Haws, seconded by Mr. Hall - approved.

The Commissioners were given the following reports for review: Income Statement, Balance Sheet, contractual payables for pre-approval, Water Loss, and Customer Accounts summary.

There being no further business to come before the Board, meeting adjourned.

ATTEST:


Chairman

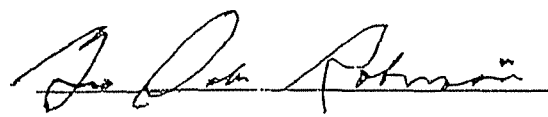


EXHIBIT
GROUP "A"

Jessamine-South Elkhorn Water District

802 South Main Street, P.O. Box 731

Nicholasville, Kentucky 40356

Phone: (859) 881-0589 Fax: (859) 881-5080

March 27, 2012

Jihad A. Hallany, PE
Vision Engineering
3399 Tates Creek Rd., Suite 250
Lexington, KY 40503

FILE COPY

Subject: Location Corridor, Offsite Utilities, Forest Brook Subdivision.


Dear Mr. Hallany:

The Committee has reviewed your plans showing the location corridor for the proposed offsite utilities for Forest Brook Subdivision and has found the proposed position located within our service territory to be acceptable. It is our assumption that your omission of sheets 13 thru 16 is because that portion falls within the City of Wilmore, and we concur that location acceptance is the purview of the City of Wilmore .

However, I would again point out to you that final approval of the construction plans is predicated on the fact that the plans must be complete. That is, continuity of service from beginning to end, and specific construction details and specifications for all components including, telemetry, pumps, master meter, etc.

We have instructed our consulting engineers to be available to meet with you and assist in whatever manner possible. Please contact them at your convenience.

Sincerely,
JESSAMINE-SOUTH ELKHORN WATER DISTRICT


L. Nicholas Strong, Chairman

LNS/jt

cc: James Kelley
David Carlstedt
Home Engineering, Inc.
Engr 3803/3719
Engr 3978
LNS

EXHIBIT

"B"

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File "

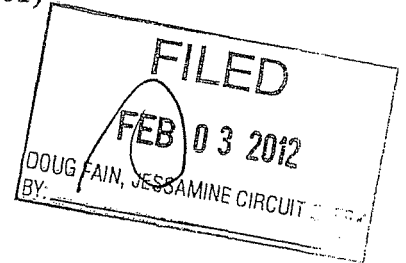
CI-12-81

COMMONWEALTH OF KENTUCKY
DEPARTMENT FOR LOCAL GOVERNMENT

REQUEST TO INSPECT PUBLIC RECORDS (KRS Ch. 61)

TO: JESSAMINE-SOUTH ELKHORN WATER DISTRICT

FROM: Constance Grayson
Gullette & Grayson, PSC
125 S. Main Street
Nicholasville, KY 40356
(859) 885-5536 telephone
(859) 885-0285 fax
Constance@GulletteLaw.com

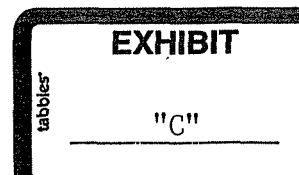


DATE: January 31, 2012

DELIVERY: Hand-delivered by J. C. Bowen - Jessamine County Constable 633
February 1, 2012 To - DIANE CLARK - manager

I request to inspect the obtain copies of the following documents:

1. Any and all documents regarding the Forest Creek Development, Forest Creek, LLC, Kelley Properties, LLC for the period of January 2, 2004 through the present; such documents to include, but not be limited to, minutes or notes of meetings held, any site drawings, water and sewer plans, or other development maps or plans, all correspondence from the Jessamine-South Elkhorn Water District to any other person or entity concerning the provision of water and sewer service and/or a water and sewer agreement concerning the Forest Creek Development, copies of any invoices from any engineering firm or attorney pertaining, in any way, to the Forest Creek Development.
2. Any and all documents regarding the Brannon Crossing Development, and/or any entity known to you to have been owned or controlled by James A. Hughes, including but not limited to, JAH Nicholasville Rd, LLC; JAH Nicholasville Rd No. 2, LLC; JAH Nicholasville Rd. No. 3, LLC; JAH Nicholasville Rd. No. 6, LLC: and JAH Nicholasville Rd. No. 7, LLC for the period of January 2, 2004 through the present; such documents to include, but not be limited to, minutes or notes of meetings held, any site drawings, water plans, or other development maps or plans, all correspondence from the Jessamine-South Elkhorn Water District to any other person or entity concerning the provision of water and sewer service and/or a water and sewer agreement concerning the Brannon Crossing Development and copies of any invoices or billing statements from any engineering firm or attorney pertaining, in any way, to the Brannon Crossing Development.



3. **Any and all documents regarding the Toyota on Nicholasville development for the period of January 2, 2004 through the present; such documents to include, but not be limited to, minutes or notes of meetings held, any site drawings, water plans, or other development maps or plans, all correspondence from the Jessamine-South Elkhorn Water to any other person or entity concerning the provision of water and sewer service and/or a water and sewer agreement concerning the Toyota on Nicholasville development and copies of any invoices or billing statements from any engineering firm or attorney pertaining, in any way, to the Toyota on Nicholasville development.**
4. **Any and all documents regarding the Wildcat Ford development for the period of January 2, 2004 through the present; such documents to include, but not be limited to, minutes or notes of meetings held, any site drawings, water plans, or other development maps or plans, all correspondence from the Jessamine-South Elkhorn Water to any other person or entity concerning the provision of water and sewer service and/or a water and sewer agreement concerning the Wildcat Ford development and copies of any invoices or billing statements from any engineering firm or attorney pertaining, in any way, to the Wildcat Ford development.**

This request is not for a commercial purpose as same is defined by KRS 61.870(4). Please provide my office with the costs to be incurred in providing such copies and a check will be delivered to your office.

Thank you for your assistance in this matter.

COMMONWEALTH OF KENTUCKY
JESSAMINE CIRCUIT COURT
CIVIL DIVISION
CASE NO: 12-CI-81



FOREST CREEK, LLC

PLAINTIFF

vs.

NOTICE OF FILING

HAROLD EUGENE SNOWDEN, JR.,
CLAY M. CORMAN And POSSIBLE
UNKNOWN DEFENDANTS

DEFENDANTS

* * * * *

Plaintiff, Forest Creek, LLC, hereby gives notice that it has filed copies of the following documents for inclusion in the record of the case at bar for all appropriate and allowable purposes:

Preliminary Plat for Keene Manor Subdivision from official
Records of Jessamine Joint Planning Commission

Application for Harrods Ridge development from official
Records of Jessamine Joint Planning Commission

Jessamine-South Elkhorn Water District responses to First
Information Requests in Public Service Commission
Case No: 2011-00297

Respectfully submitted,

A handwritten signature in cursive script that reads "Constance Grayson".

Constance G. Grayson
Gullette & Grayson, PSC
125 S. Main St.
Nicholasville, KY 40356
(859) 885-5536
(859) 885-0285 fax
Constance@GulletteLaw.com

EXHIBIT

"D"

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Certificate of Service

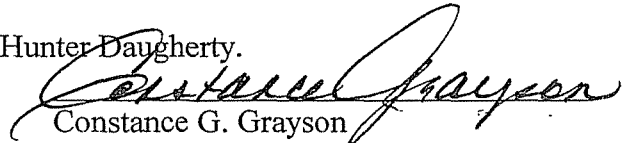
I hereby certify that a true and correct copy of the foregoing was served this 25th day of April 2012 to the following:

David R. Marshall, Esq. via hand-delivery
109 Court Row
Nicholasville, KY 40356

Mason Miller, Esq. via email
Miller + Wells, PLLC
300 E. Main St.; Suite 360
Lexington, KY 40507

Adam Zeroogian, Esq. via hand-delivery
114 N. Main St.
Nicholasville, KY 40356

with a courtesy copy hand-delivered to Hon. C. Hunter Daugherty.


Constance G. Grayson