

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FOREST HILLS RESIDENTS ASSOCIATION, INC. AND WILLIAM BATES)	
)	
COMPLAINANTS)	
V.)	CASE NO. 2011-00138
)	
JESSAMINE SOUTH ELKHORN WATER DISTRICT)	
)	
DEFENDANT)	

ORDER TO SATISFY OR ANSWER

Jessamine South Elkhorn Water District ("Jessamine South") is hereby notified that it has been named as defendant in a formal complaint filed on April 15, 2011, a copy of which is attached hereto.

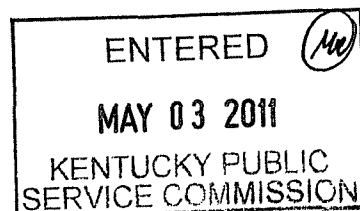
Pursuant to 807 KAR 5:001, Section 12, Jessamine South is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within ten days of the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

By the Commission

ATTEST:

Stephanie Bell for Jeff Densen
Executive Director



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APR 15 2011

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FOREST HILLS RESIDENTS')
ASSOCIATION, INC. and)
WILLIAM BATES)
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COMPLAINANTS)
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VS.)
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JESSAMINE SOUTH ELKHORN)
WATER DISTRICT)
)
DEFENDANT

CASE NO.
2011- 00139

COMPLAINT

Complainants, Forest Hills Residents' Association, Inc. and William Bates, respectfully file this Complaint against Defendant, Jessamine South Elkhorn Water District, pursuant to KRS 278.260 and KRS 278.280 and, in support thereof, state as follows:

1. Forest Hills Residents' Association, Inc. ("Forest Hills") is a Kentucky corporation with its address at 704 Chinkapin Drive, Nicholasville, Kentucky 40356. Forest Hills is an association of homeowners in the Forest Hills subdivision in Jessamine County, Kentucky. There are 29 one acre lots and two five acre lots in Forest Hills subdivision. Fifteen lots within the subdivision have occupied residences constructed on them.

2. William Bates (“Mr. Bates”) is the president of Forest Hills and owns a lot and home in Forest Hills subdivision. Mr. Bates’ home address is

3. Jessamine South Elkhorn Water District (the “Water District”) distributes water to or for the public for compensation and, pursuant to KRS 278.010(3)(d), is a utility subject to the jurisdiction of this Commission.

4. In the spring of 2010 residents of Forest Hills subdivision observed green water piping that had been delivered and stacked at the south end of Chinkapin Drive adjacent to the lot that is designated 733 Chinkapin Drive within the subdivision. Subsequently, Mr. Bates and other residents of Forest Hills subdivision learned that the Water District intended to construct an above-ground water storage tank at the location where the water pipe was stacked.

5. On April 7, 2010, Mr. Bates and other Forest Hills residents attended a meeting of the Board of Commissioners of the Water District at which they were advised by representatives of the Water District that engineering for the proposed water storage tank was in progress and that construction of the tank was expected to be completed by the end of 2010. They were further advised that the proposed water storage tank would have a capacity of one million gallons and would be 169 feet tall and 39 feet in diameter.

6. At the April 7, 2010, Board of Commissioners meeting, representatives of Forest Hills asked why there had been no public notification of the possible construction of the water storage tank. Representatives of the Water District advised them that the developer of Forest Hills was aware of the proposed construction and that it was his responsibility, not the Water District’s responsibility, to notify potential new homeowners

of the possibility that a one million gallon water storage tank would be located adjacent to the subdivision.

7. During the course of discussions between Forest Hills and the Water District, representatives of Forest Hills inquired about the possibility of constructing the tank on a different site on property known as the McMillen Farm. They were told by representatives of the Water District that the tank could be built on the McMillen Farm site if Forest Hills paid the Water District \$125,000 to relocate the tank.

8. Forest Hills continued efforts to persuade the Water District to consider relocating the tank through the summer and fall of 2010. The Water District consistently took the position that it would not absorb any cost in connection with constructing the tank on a site different than the one adjacent to Forest Hills subdivision.

9. Representatives of Forest Hills attended a December 1, 2010, meeting of the Water District Board of Commissioners during which they were advised that the cost that Forest Hills would have to pay the Water District to construct the tank on the McMillen Farm had increased to \$279,400. A discussion occurred about a different site on which the tank could be constructed on Old Harrodsburg Road.

10. On January 5, 2011, representatives of Forest Hills attended a Water District Board of Commissioners meeting. They advised the Water District that Forest Hills obtained an agreement to purchase a one acre lot adjacent to an existing water tank site on Old Harrodsburg road for \$65,000 and that Forest Hills was willing to exchange that lot for the one adjacent to the Forest Hills subdivision. The Water District informed Forest Hills that if the Water District agreed to the Forest Hills proposal, a new geophysical study would have to be completed as well as an environmental study, new

engineering plans and possible additional tasks. The Water District said that Forest Hills would be required to pay all the foregoing costs in addition to the cost to purchase the lot. Forest Hills agreed to attempt to get the exchange accomplished.

11. On January 24, 2011, Forest Hills received a letter from the engineering firm retained by the Water District, Horne Engineering, Inc., in which the cost Forest Hills would be required to pay for the Water District to construct the tank on the Old Harrodsburg site would be \$32,925, in addition to the cost to purchase the lot.

12. On February 28, 2011, Forest Hills received a letter dated February 24, 2011, from counsel for the Water District advising that the Water District had rejected the Old Harrodsburg Road proposal and had decided to construct the tank on the original site adjacent to the Forest Hills subdivision.

13. On March 1, 2011, representatives of Forest Hills attended a meeting of the Water District Board and asked why the Water District had decided not to proceed with the construction of the tank on Old Harrodsburg Road. They were advised that title problems on the Old Harrodsburg Road lot could not be cleared up on a schedule suitable to the Water District. Forest Hills pleaded with the Water District to give it more time to find a suitable alternative site for the tank.

14. On March 3, 2011, Forest Hills representatives spoke with a representative of the Water District about utilizing the McMillen Farm as an alternative site for the tank. A representative of the Water District gave Forest Hills ten days to two weeks to raise the funds necessary to satisfy the Water District, presumably the \$279,400 amount set forth in paragraph 9 above. On March 24, 2011, counsel for the Water District sent a proposed letter agreement to T. Logan Davis, a representative of Forest Hills, setting forth the

terms on which the Water District was willing to discuss relocating the tank to the McMillen Farm. A copy of the letter is attached hereto as Exhibit A. The terms included Forest Hills' purchase of a lot on the McMillen Farm and the exchange of that lot with the Water District, the posting of a \$250,000 letter of credit no later than twelve days hence on March 23, 2011, "to guarantee payment by [Forest Hills] of the additional expenses which will be incurred by the [Water] District in the investigation of and possible change in tank sites," submission of binding contracts for the purchase of the lot for the tank site as well as "necessary" easements for the water main and access road to the site "with the path of the watermain [sic] and the road to be determined by the [Water] District in its sole and unfettered discretion" and receipt by the Water District within 60 days of a satisfactory geo-physical report on the McMillen Farm tank site. Forest Hills would be liable for all costs in connection with the investigation of the McMillen Farm site whether or not the tank is actually constructed there. Forest Hills would be required to prepare for recording all plats, instruments and other documents for the transaction. The final term was a release of all claims that Forest Hills may have against the Water District in connection with the siting of the tank.

15. Forest Hills did not execute the proposed letter agreement. On information and belief, the Water District currently intends to construct the water storage tank on the site adjacent to the Forest Hills subdivision.

16. The Water District has a duty to conduct a reasonable site selection process before proceeding with the construction of a one million gallon water storage tank. The Water District has not conducted any sort of site selection evaluation to determine if its proposed water storage tank site adjacent to Forest Hills subdivision is a

reasonable site for such tank. Instead, Forest Hills attempted to identify reasonable alternative sites, an effort that should have been undertaken by the Water District. The Water District summarily rejected all efforts by Forest Hills to persuade the Water District to consider alternative sites or imposed unduly onerous terms on the one agreement to consider an alternative site.

17. The Water District has a duty to select a reasonable site for the construction of a one million gallon water storage tank. The location of the proposed water storage tank on the site adjacent to Forest Hills subdivision is not, in fact, a reasonable site for the tank because of its negative impact on the built environment in close proximity to the proposed tank, to-wit: the Forest Hills subdivision and the homes constructed therein.

18. It was unreasonable for the Water District to attempt to require Forest Hills to pay the unreasonable costs set forth above to construct the water storage tank on a reasonable site as opposed to the unreasonable site the Water District has selected.

19. The Water District acted in an unreasonable manner when it advised Forest Hills on April 7, 2010, that engineering for the tank was in progress, the tank construction would go to bid within 60 days and completion of the construction was expected by the end of 2010 when, in fact, the Water District had no agreement for a grant for the construction until November 8, 2010, and still has made no application for a loan to fund the project.

20. The execution by the Water District of a grant agreement with the Kentucky Infrastructure Authority on November 8, 2010, to finance part of the cost of

construction of the tank with knowledge of the site selection issues raised by Forest Hills is an unreasonable practice by the Water District.

21. The practices of the Water District in connection with the selection of the site for its proposed water storage tank and its dealings with Forest Hills and the Kentucky Infrastructure Authority constitute unreasonable practices of a utility and, pursuant to KRS 278.280(1), this Commission should conduct a hearing, determine the just, reasonable and proper practices to be followed by the Water District in the selection of a site for the water storage tank and in dealing with Forest Hills and the Kentucky Infrastructure Authority and fix the same by order. The order should direct that the proposed water storage tank not be constructed on the site adjacent to Forest Hills subdivision and direct the Water District to undertake a reasonable site selection evaluation and seek the Commission's approval of an alternative site.

22. The Commission should also order the Water District to cease all activities related to the construction of the water storage tank and the financing thereof pending the conclusion of this proceeding.

WHEREFORE, Complainants, Forest Hills Residents' Association, Inc. and William Bates, respectfully prays for the following relief against the Defendant, Jessamine South Elkhorn Water District:

(a) The entry of an order directing the Water District to cease all activities related to the construction of the water storage tank and the financing thereof pending the conclusion of this proceeding;

(b) The scheduling and conducting of a hearing to determine the just, reasonable and proper practices to be followed by the Water District in the selection of a

site for the water storage tank and in dealing with Forest Hills and the Kentucky Infrastructure Authority;

(c) The entry of an order directing that the proposed water storage tank not be constructed on the site adjacent to Forest Hills subdivision and direct the Water District to undertake a reasonable site selection evaluation and seek the Commission's approval of an alternative site; and

(d) For any and all other relief to which the Complainants may appear entitled.

Respectfully submitted,

Robert M. Watt, III
Monica H. Braun
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507
8598-231-3000
robert.watt@skofirm.com
monica.braun@skofirm.com

By: Robert Watt
Counsel for Complainants

CERTIFICATE OF SERVICE

This is to certify that the foregoing Complaint has been served by e-mailing and mailing a copy of same, postage prepaid, to the following person on this 15th day of April 2011:

Bruce E. Smith, Esq.
Bruce E. Smith Law Offices, PLLC
201 South Main Street
Nicholasville, Kentucky 40356
bruce@smithlawoffice.net

Robert Watt
Counsel for Complainants

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

March 11, 2011

VIA E-MAIL: LOGAN.DAVIS@WELLSFARGOADVISORS.COM
AND FIRST CLASS MAIL

Mr. T. Logan Davis
c/o Wells Fargo Advisors
333 East Main Street, Suite 120
Lexington, KY 40507

Re: Forest Hills Residents' Association, Inc. ("Association") Proposal
Jessamine South-Elkhorn Water District ("District")

Dear Mr. Davis:

I represent the District. The District's Chairman, Nick Strong, has directed me to confirm in writing with you, as the Association's representative, a new proposal made by the Association relative to a new above-ground water storage tank site on the McMillen Farm to be exchanged for the District's present tank site ("Switzer site") adjoining Forest Hills Subdivision ("Forest Hills").

As the District understands it, the McMillen Farm is located to the east of and adjoins Forest Hills. Unlike, the previously proposed tank site by the Association, located on old US 68, the McMillen Farm tank site should not cause as many timing problems. Additionally, the District also understands that the Association is now willing to post a letter of credit which will insure that the District's customer base will not sustain any additional costs in changing sites.

Based on the foregoing understandings and keeping in mind that this project is still time-sensitive for other reasons stated in my letter to the Association's attorney, dated February 24, 2011, the District is willing to re-examine its prior decision not to abandon the Switzer site, so long as the following conditions are met:

(1) The Association shall post a \$250,000.00 irrevocable, one-year letter of credit (subject to partial draws and in a form otherwise acceptable to the District), with the District as beneficiary, from a reputable bank by no later than the close of business on March 23, 2011. The purpose of this letter will be to guarantee payment by the Association of the

Exhibit A

Mr. T. Logan Davis
March 11, 2011
Page Two

additional expenses which will be incurred by the District in the investigation of and possible change in tank sites;

(2) Submission to me within 30 days of the date of this letter of a binding purchase contract for the new tank site on the McMillen Farm with the location and dimensions of this new tank site to be determined by the District in its sole and unfettered discretion;

(3) Submission to me within 30 days of the date of this letter of a binding contract for the conveyance of the necessary easements for the path of the watermain and access road to the McMillen Farm tank site with the path of the watermain and the road to be determined by the District in its sole and unfettered discretion; and

(4) The receipt by the District within 60 days of the date of this letter of a satisfactory geo-physical report on the McMillen Farm tank site which confirms its suitability for the construction of the tank.¹

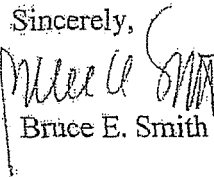
In the event any one of the foregoing conditions is not satisfied, then and in such event, there will be no further discussions or negotiations with the Association and the District will return its attention towards obtaining the necessary additional financing and constructing the tank on the Switzer site adjoining Forest Hills. Furthermore, the Association shall be obligated to reimburse the District for all expenses, including but not limited to engineering, legal and administrative costs, incurred in the investigation of the McMillen Farm tank site as a condition of the District not calling the letter of credit to the extent of its expenses. Lastly, the Association shall execute a release of all claims that it believes it may now or in the future have against the District based on the failed exchange of these or prior sites.

In the event that all of the foregoing conditions are met, the Association shall have a plat prepared for recording in the Jessamine County Clerk's office which reflects the McMillen Farm tank site, the easements for the path of the watermain and access road to the site and the consolidation of the Switzer site to the McMillen Farm; shall cause to be prepared the necessary instruments for the exchange of the McMillen Farm site for the Switzer site and the conveyance of the easements; shall fully reimburse the District for all of its out-of-pocket expense incurred in the investigation and exchange of these sites; and shall execute a release of all claims that it believes it may have against the District now or in the future based on the failed exchange of prior sites.

If the Association agrees to the foregoing, please sign this letter at the space provided on the next page of this letter and attach the minutes of the meeting wherein the Association authorized the signing of this letter.

¹ The District agrees to pursue with all reasonable dispatch the acquisition of such a report after the posting of the letter of credit by the Association.

T. Logan Davis
March 11, 2011
Page Three

Sincerely,

Bruce E. Smith

The Association agrees to the foregoing conditions and obligations.

ITS _____ Date

cc: Commissioners

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Diana Clark
Office Manager
Jessamine-South Elkhorn Water District (Water
P. O. Box 731
Nicholasville, KY 40340-0731

Honorable Robert M Watt, III
Attorney At Law
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Lexington, KENTUCKY 40507-1801