

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

CASE NO. 2011-00297

RECEIVED

APR 25 2012

PUBLIC SERVICE COMMISSION

MOTION TO DISMISS COMPLAINT AND ALTERNATIVELY, MOTION TO SUSPEND PROCEEDINGS AND SUPPLEMENT THE RECORD

Comes now the Jessamine – South Elkhorn Water District (“Water District”), by counsel, and moves the Kentucky Public Service Commission (“Commission” or “PSC”) to dismiss the Complaint filed by Forest Creek LLC (“Forest Creek”) that initiated this proceeding, or in the alternative to suspend all proceedings in this case to allow the Commission to supplement the record with a complete history of all contacts between Forest Creek¹ and any member or employee of the Commission that in any way refer to either this complaint case, or any other action in any forum (including specifically the Jessamine Circuit Court in which the development or water service agreement that is the subject matter of this Complaint is either directly or indirectly an issue). In support of these alternative Motions, the Water District states as follows:

¹ Reference to Forest Creek here includes, without limitation, all members, managers, agents, and representatives thereof and any person who directly or indirectly supported or sought to support the interests of Forest Creek, whether or not formally associated with Forest Creek.

History of Controversy

In order to place these Motions in proper context, it is necessary to briefly state the history of this controversy. Forest Creek applied to the Water District for an extension of service to a proposed development in April of 2007.² The application for Option II under the Water District's tariff was accepted, an Interim Water Service Agreement was executed by both parties³, Forest Creek was fully advised of the actions that would be required to complete the extension process and the Water District's Chairman signed the certification on Forest Creek's plat committing the Water District to providing water service which allowed Forest Creek to proceed with its project development plans before the Jessamine County-City of Wilmore Joint Planning Commission. Over the course of the next few years, Forest Creek made some efforts to submit plans to meet its obligations for the extension, all of which were incomplete and had defects that required corrections. From the outset of its dealings with the Water District, Forest Creek has been advised by separate counsel.⁴ On September 17, 2009, representatives from the Water District and Forest Creek met with Commission Staff to discuss Forest Creek's disagreement with the Water District's requirement that the water main be installed completely within easements over private property along KY 29 as opposed to construction totally within road right of way as proposed by Forest Creek. There was **no** mention at this meeting by Forest Creek of a switch from Option II to Option I. Long periods of inactivity in this development also

² The Application executed by Forest Creek contains extensive information about the two options for extension, although Forest Creek inexplicably claims not to have known about Option I until some three years later.

³ The Agreement executed by Forest Creek specifically refers to Option II.

⁴ Robert L. Gullette, Jr., Esq.

occurred from 2007 to 2010.⁵ These delays were the result of litigation and the general downturn in the economy. This was admitted by one of Forest Creek's counsel⁶ in an interview with the *Jessamine Journal* dated August 10, 2011⁷:

The Forest Brook project has been held up by litigation since it began and is currently involved in five legal actions, Gullette said. The attorney blamed the project's delays on litigation and a bad housing market, both of which he said were "not our fault". [Article dated August 10, 2011, attached hereto as Appendix A.]⁸

Thereafter, unnamed representatives of Forest Creek contacted Mr. Gerald E. Wuetcher, a senior member of the Commission's Staff, by telephone on multiple occasions in May, 2010. The alleged topic of these calls was "the availability of Option I to construct a water line extension to its [Forest Creek's] development".⁹ Apparently as part of these conversations, Mr. Wuetcher sent two emails to James Kelley, a member of Forest Creek LLC, on May 12, 2010.¹⁰ In late 2010, Forest Creek asserted that it had the right to renege on its previously executed Interim Water Service Agreement, and to proceed under Option I, an alternative that can be chosen at the time of an application for extension of water service. In response to this claim, Water District representatives met with Mr. Wuetcher on November 30, 2010, to discuss Forest

⁵ Forest Creek alleges in its Complaint that the Water District was responsible for the delays. The Water District denies these allegations. The delays were caused by Forest Creek's failure to submit a full set of construction plans implementing the project, as well as by delays in any activity by Forest Creek presumably due to the downturn in the economy and other litigation over the development.

⁶ Robert L. Gullette, Jr., Esq.

⁷ The Forest Creek Development has also been known as the Forest Brook project

⁸ Even assuming that Mr. Gullette was referring to the then-pending declaratory judgment action in Jessamine Circuit Court as one of the five current legal actions, the declaratory judgment action was not filed until December, 2010, and would not be accurately described as litigation that would have held up the project "since it began".

⁹ Answers 5(a) and 5(b) to the Water District's First Requests for Information.

¹⁰ See Attachment "A" (two pages) to Answers of Forest Creek, LLC to Jessamine South Elkhorn's Request for Information filed April 19, 2012. The copies of these email transmissions that are attached are blank as to the content of the communication, and do not include any attachments that may have been sent with the emails.

Creek's claim.¹¹ In a letter dated December 1, 2010, Forest Creek by counsel also threatened to bring an action in Jessamine Circuit Court to force the Water District to provide service under Option I if it was not permitted to choose Option I despite its previously executed agreement to proceed under Option II.¹² After due consideration of this demand, the Water District refused to permit Forest Creek to proceed under Option I, and in December, 2010, filed an action in the Jessamine Circuit Court, Case No. 10-CI-001394 seeking a declaration of its rights under the Interim Water Service Agreement.¹³ In January, 2011, Forest Creek filed an answer and counterclaim. Forest Creek made no claim that the Court lacked jurisdiction over the Water District's complaint. Included in Forest Creek's counterclaim was a statement that Forest Creek had first learned about Option I "through discussions with representatives of the Kentucky Public Service Commission".¹⁴

After the passage of almost five (5) months, the PSC filed a motion to intervene and a motion to dismiss in the Jessamine Circuit Court proceeding on June 23, 2011. It is unknown to the Water District whether or when conversations between Forest Creek and representatives of the Commission may have occurred during the intervening period. Prior to the Court ruling on

¹¹ At this time, there was no pending action involving the Interim Water Service Agreement either in the Jessamine Circuit Court or at the PSC. The Water District has had no further contact with the Commission from that date other than legitimate procedural inquiries or contacts which also included Forest Creek.

¹² The Interim Water Service Agreement specifically provides that the Agreement will "not be changed or supplemented unless done in writing signed by both parties". The Agreement specifically references Option II.

¹³ As noted in the Water District's pending Motion for Rehearing/Reconsideration, the PSC has previously held that it lacks jurisdiction to hear a complaint filed by a regulated utility against a customer or developer.

¹⁴ Case No. 10-CI-01394, Forest Creek's counterclaim at page 7, paragraph 6. The dates and content of these discussions are unknown to the Water District, although as noted above Forest Creek's recent Response to the Water District's Requests for Information alleges that all contacts on this subject occurred in May, 2010. Forest Creek's claim to have had no knowledge of Option I until this time is directly contradicted by the information that Forest Creek has admitted it received as part of the Application for Service which Forest Creek executed on April 27, 2007, as noted above. It is, of course, unknown to the Water District whether Forest Creek made any mention of the Application or Agreement or their content, as these contacts were made on an *ex parte* basis.

the PSC's Motion to Intervene, Forest Creek filed its Complaint that initiated PSC Case No. 2011-00297 on August 5, 2011. Forest Creek took no action to withdraw or dismiss any of its counterclaims in Jessamine Circuit Court. On August 17, 2011, the PSC ordered JSEWD to satisfy or answer Forest Creek's Complaint, despite its knowledge that the same matter was pending before the Jessamine Circuit Court. It was not until August 24, 2011 that the Jessamine Circuit Court dismissed the action there based on lack of subject matter jurisdiction. It is unknown to the Water District what conversations may have occurred between Forest Creek and representatives of the Commission during these activities, although during at least part of this period an active case was pending at the Public Service Commission as well as in Jessamine Circuit Court.

On September 16, 2011, the Water District filed a timely appeal from the Jessamine Circuit Court to the Court of Appeals. Pursuant to a briefing schedule established without objection by either Forest Creek or the PSC, the Water District filed its initial brief on March 12, 2012, in the Court of Appeals proceeding. Despite the pending proceeding at the Court of Appeals and the fact that a brief had already been filed, on March 16, 2012, the PSC refused to dismiss Forest Creek's PSC Complaint, or hold all or part of the proceeding in abeyance pending resolution of the appeal of the Jessamine Circuit Court order.

In early 2012, Forest Creek filed another action in Jessamine Circuit Court, Case No. 12-CI-00081, in which it alleged a conspiracy on the part of Harold Eugene Snowden, Jr. and Clay M. Corman to delay its proposed residential development. Less than two (2) months later, Forest Creek filed an Amended Verified Complaint which did not formally name the Water District or any of its officials as defendants, but made allegations of either improper conduct or solicitations for improper conduct from the Water District and its officials in connection with Forest Creek's

proposed development and the alleged conspiracy. The named defendants in that proceeding filed a joint motion to dismiss this amended complaint. The argument has been set for April 26, 2012. It was this argument in this case that was the subject of James Kelley's email to Gerald E. Wuetcher of the Commission staff.

Nonetheless, the Water District has continued to work with Forest Creek by meeting with Forest Creek's representatives twice in November of 2011 to work out the location of the path of the water main which resulted in the Water District advising Forest Creek's engineer by letter of March 27, 2012, that the path within the District's territory was approved and that the District awaited a submission of complete construction plans.¹⁵

I. Motion to Dismiss

On April 11, 2012, counsel for the Water District received the attached email string¹⁶ from Gerald E. Wuetcher, Executive Advisor/Attorney for the Commission. It is clear from the string that James Kelley, an executive with Forest Creek, contacted Mr. Wuetcher and attempted to provide *ex parte* information relating to the substance of Forest Creek's recent circuit court claims. Mr. Kelley further attempted to persuade Mr. Wuetcher to argue Forest Creek's position on related issues in Forest Creek's 2012 action before the Jessamine Circuit Court. Nobody associated with the Water District was aware of this contact prior to Mr. Wuetcher's email, and Forest Creek made no effort to advise the Water District of its attempt to influence the Commission staff. The Water District is very appreciative of the fact that Mr. Wuetcher immediately informed counsel for Forest Creek and the Water District's counsel about this wholly inappropriate contact, and that he did not intend to read the lengthy materials provided by

¹⁵ See Appendix B for correspondence evidencing this assertion.

¹⁶ The email string is attached as Appendix C.

Mr. Kelley.¹⁷ However, the emails also raise significant questions about Forest Creek's conduct with the Commission that are not resolved by Mr. Wuetcher's response to this particular contact.

Other than Forest Creek's admission in its counterclaim in the 2010 Jessamine Circuit Court action, the recently disclosed email communications between James Kelley and Mr. Wuetcher of May 12, 2010 and the email contact discussed by Mr. Wuetcher in his email of April 11, 2012, the Water District has been kept in the dark as to what meetings or discussions have occurred between Forest Creek and representatives of the Commission while all of these actions were being taken. Obviously Forest Creek felt no concern at all about contacting the Commission staff on April 11, 2012, both to present pleadings which contain substantive argument related to the matter currently before the Commission, and to attempt to have a PSC staff lawyer argue Forest Creek's position at a hearing in Jessamine Circuit Court. Further, Mr. Kelly's email strongly implies that this was not the first communication on this matter. It states that the pleadings provided are the "latest" response in Forest Creek's "complaint to the Jessamine Circuit Judge". These statements certainly make no sense if the matter had not been previously discussed with someone at the PSC. While Forest Creek has chosen to keep the Water District in the dark about these contacts¹⁸, it is apparent that even with Forest Creek's complaint pending before the PSC, substantive information has likely been provided on an *ex parte* basis to PSC representatives about matters pending before the PSC or for which PSC action in Jessamine Circuit Court has been demanded that is adverse to the Water District.

¹⁷ Motion to Dismiss the Amended Complaint, a Memorandum in support thereof and a Motion to Strike a portion of the Amended Complaint

¹⁸ Forest Creek's answers to the Water District's Requests for Information, partially filed April 20, 2012, with Attachment B thereto filed April 23, 2012, disclose **only** two (2) emails, dated May 12, 2010, both from Gerald E. Wuetcher to James Kelley. Forest Creek has been silent about the substance or tangible evidence of the communications from Kelley to Wuetcher which prompted Wuetcher's email responses, other than to state generally that the conversations were about "the availability of Option I to construct a water line extension to its development". Forest Creek Answer to the Water District's First Request, Request No. 5(b).

The Water District moves to dismiss Forest Creek's Complaint due to the actions of Forest Creek in so tainting this proceeding that Forest Creek should not be permitted to seek relief on its claim against the District. Forest Creek has admitted in its Jessamine Circuit Court counterclaim that it concocted its claim about still having Option I as an alternative based on conversations with PSC representatives to which the Water District was not a party. The emails just disclosed by Forest Creek between Kelley and Mr. Wuetcher on May 12, 2010, although blank, evidence another contact. These (and perhaps additional) conversations occurred prior to the PSC's decision to intervene in a pending case in Jessamine Circuit Court (now on appeal) in order to dismiss the proceeding without any public request by any party to do so or any order of the court requesting the PSC's presence. Forest Creek presented no argument about the PSC's Motion; the argument was carried by the PSC, just as requested by Kelley now in the pending 2012 Jessamine Circuit Court action. Despite the fact that that its own counterclaim was still pending before the Jessamine Circuit Court, Forest Creek filed its own complaint at the PSC, presumably having gleaned from previous conversations with PSC representatives that it had the right to have the PSC override the Initial Water Service Agreement which it had long previously executed.

Even with only the tip of the iceberg showing here, it is clear that there has been significant contact between Forest Creek and the Commission which Forest Creek has not disclosed. This conduct has so tainted this proceeding as to cast in serious doubt the Water District's ability to receive a fair hearing on the Agreement that Forest Creek signed. The Commission has finally had to advise Forest Creek that it is not the developer's lawyer. This situation is particularly troubling in light of the Commission in this proceeding now being the

judge, jury, judge's clerk, and advocate of Forest Creek's interests, as well as a party adverse to the interests of the Water District in the active pending action in the Court of Appeals.

The Court of Appeals¹⁹ has previously and emphatically stated that the courts in Kentucky will not tolerate *ex parte* communications with a "knowing wink". The contact need not be with the agency decision maker, if that person has a significant or substantial impact or role in the decision making process. If an improper *ex parte* contact has been made, it will void an agency decision where the decision was tainted so as to make it unfair either to the innocent party or the public interest the agency is mandated to protect. Failure to disclose such contacts is an important factor to be considered.

In this matter, the PSC has apparently been urged by one party to a dispute to take actions that have prejudiced the Water District, including: (1) affirmatively moving to deprive the Water District of the proper forum for its declaratory judgment action; (2) at the same time processing a complaint under claim of its own jurisdiction and requiring action by the Water District on a proceeding involving the same subject matter; (3) refusing to hold its own proceeding in abeyance until the pending proceeding in the Court of Appeals was resolved (even though an initial brief had already been filed); (4) and apparently receiving further communications and requests for assistance on another Circuit Court proceeding until it finally told Forest Creek to stop on April 11, 2012. Forest Creek is not a naïve or inexperienced litigant, nor does it lack the resources to assert its positions in a proper manner. It is involved in numerous bouts of litigation, and is and has been represented by experienced counsel continuously since April of 2007.

While the Water District asserts that Forest Creek's claims are without merit, it is unfair and unreasonable for the Water District to have to defend these claims after Forest Creek has engaged in a practice of "discussion" with PSC representatives, which according to the only

¹⁹ *Louisville Gas and Electric v. Commonwealth of Kentucky, et al.* , 867 S.W.2d 897 (Ky. App. 1993)

discussions actually revealed, includes at least one clearly impermissible *ex parte* communication. The only reasonable remedy for the PSC at this point is to dismiss Forest Creek's Complaint, and to limit any further proceedings to a general review of the adequacy of the Water District's filed tariffs and policies on a prospective basis.

The Water District therefore moves that the Commission dismiss Forest Creek's Complaint with prejudice as it relates to the Interim Water Service Agreement, and further Order that any future proceeding will be limited to reviewing the Water District's filed tariffs and policies to assure that they are adequate, and if not to direct that any modifications be prospectively made and followed.

II. Alternative Motion to Supplement the Record with a Statement of All *Ex Parte* Contacts and Suspend All Proceedings Pending Review of Such Contacts

Whether or not the Commission grants the Water District's Motion to Dismiss, the Water District respectfully moves that the Commission to supplement the record in this proceeding with a record of all contacts between Forest Creek (including any person who directly or indirectly supported or sought to support the interests of Forest Creek, whether or not formally associated with Forest Creek) and representatives of the Commission that relate in any way to the extension of water service to Forest Creek's development that is the subject of this proceeding. This should include at a minimum all contacts about the availability of Option I; all conversations referenced in Forest Creek's counterclaim in the 2010 declaratory judgment action; all contacts concerning the PSC's participation in the 2010 declaratory judgment action in Jessamine Circuit Court; all contacts concerning Forest Creek's decision to file its own Complaint at the Commission and any issues concerning Forest Creek's complaint; all contacts concerning Forest Creek's Case No. 12-CI-00081 in Jessamine Circuit Court that have not been previously revealed; and any and all

other contacts that are relevant to this proceeding or any of the proceedings that have been discussed above.

The Water District moves that this supplementation include the dates of all such contacts; the participants to the contacts; the subject matter of the contacts; and a specific statement of matters discussed. If either a contact or a response was in writing (including electronic communications), the Water District moves that a copy of any such writing be provided as well. Further, the Water District moves that Mr. Wuetcher's email of April 11, 2012, be made a part of the record in this proceeding, including the string of emails that led to Mr. Wuetcher's response (attached as Appendix C).

The Water District further moves (should its Motion to Dismiss not be granted) that the Commission suspend all proceedings in Case No. 2011-00297 until such time as the Water District has had a reasonable opportunity to examine the supplemental information requested and to be provided, and to further respond to such information with further argument or requests for supplemental information as required. Such a suspension will also allow a reasoned discussion of the inherent conflict between the Commission's role as an adverse party in at least one proceeding while reviewing as an independent agency the same matter as an impartial fact finder and decision maker, and whether such a role can be compatible with the Commission taking action (even in developing a record) with respect to the Interim Water Service Agreement prior to final resolution of the pending Court of Appeals proceeding that directly involves the question of the proper forum in which said Agreement is to be reviewed. In the meantime, the Water District will continue to cooperate with Forest Creek in the furtherance of its project as it has demonstrated by working with Forest Creek during this proceeding to resolve the differences

regarding the path of the water main. At this point in time, the Water District awaits the submission of a full set of construction plans by Forest Creek.

WHEREFORE, the Jessamine – South Elkhorn Water District respectfully moves that the Commission dismiss Forest Creek’s Complaint in Case No. 2011-0097; alternatively, that the Commission supplement the record with the information about *ex parte* contacts that is described above and issue an Order suspending all further activity in Case No. 2011-00297 until such time as the Water District has a reasonable opportunity to review the supplemental information and until all issues with respect to such information and the Commission’s proper role in this controversy can be fully resolved.

Respectfully Submitted,



BRUCE E. SMITH
BRUCE E. SMITH LAW OFFICES, PLLC
201 SOUTH MAIN STREET
NICHOLASVILLE, KY 40356
(859) 885-3393
Fax: (859) 885-1152
bruce@smithlawoffice.net
ATTORNEY FOR WATER DISTRICT

CERTIFICATE OF SERVICE:

The undersigned hereby certifies that a true copy of the foregoing Motions was served on the following by U.S. Mail, first class, postage prepaid, on April 25, 2012:

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



Bruce E. Smith

APPENDIX

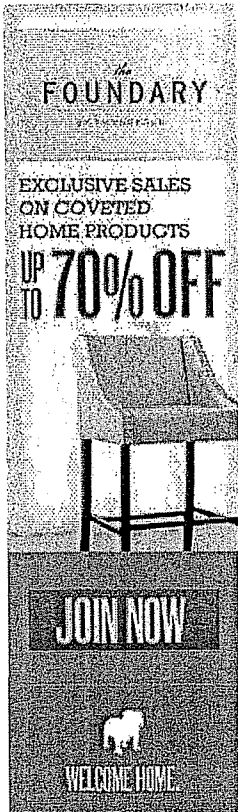
A

Advertisement

CENTRAL KENTUCKY NEWS ARTICLE COLLECTIONS FROM The Advocate Messenger, The Interior Journal, The Jessamine Journal and The Winchester Sun

YOU ARE HERE: Central Kentucky Home → Collections

Ads by Google



Forest Brook developers challenge new extension regulations

Commission to consider issue at September meeting

August 10, 2011 | By Jonathan Kleppinger | jkleppinger@jessaminejournal.com

A new regulation regarding extensions of subdivision plans is "profoundly unjust," an attorney told planners Tuesday night.

Recommend

The Jessamine County-City of Wilmore Joint Planning Commission added language to its subdivision regulations in June that requires applicants to pay the original "standard fee" when requesting an extension for a preliminary plat application.

Nicholasville attorney Robert Gullette, who represents the proposed Forest Brook development off Harrodsburg Road, told the commission he was unaware of the new rule and was shocked to hear what it would cost the developers.

"I received a call from my client indicating that in order to file a reapplication, we were going to need a check for \$15,483," Gullette said. "... I almost ran off the road."

Ads by Google

Advertisement

Job Openings

Search For Job Openings. Apply For a Position Today!

www.findtherightjob.com



FEATURED ARTICLES

Forest Creek development gets more time

September 14, 2011

Forest Brook postponed again

May 9, 2007

Nicholasville planners nominate 2012 officers

January 25, 2012

The standard fees for plat applications are determined based on the estimated worth of the projects, commission chairman Pete Beaty said. The fee for a Forest Brook extension had not been paid Tuesday.

Gullette said he had appeared before the commission many times over the past 30 years and never before Tuesday felt a client had been treated unfairly. He said he believed the large fee for a Forest Brook extension was an "unintended consequence" of the new regulation.

Commission member Dave Carlstedt said he believed the regulation had been enacted because there were "multiple recurring requests for extentions" and no fee involved.

"I think the intent was to make sure that we covered our costs and that it slowed down the process some to let them give more thought to the consequences of not doing what they had or asking for an extension," he said.

The proposed Forest Brook development consists of more than 400 acres; it would include more than 650 housing units and a Jack Nicklaus signature golf course.

Planner Jim McKinney said he thought a large fee was appropriate for a large project.

"It's big money, but it's not big money considering the multimillion-dollar task," he said.

But Gullette took offense to the idea that the fee helped "cover costs" and said the commission didn't have "one-tenth" of the \$15,000 in actual costs. He suggested the planners were looking for income from the pockets of Bill Robinson, the primary partner in Forest Creek, LLC, who lives in London, Ky.

"Your all's costs are no different for a multimillion-dollar, 661-unit development than if this was 5-acre tracts on 20

acres — absolutely no different,” Gullette said. “... You’re either trying to recover costs, or you’re trying to gouge some rich guy in London for \$15,000 because he can afford it; it’s not fair.”

Beaty said he believed the commission worked from a desire to treat applicants fairly.

“We certainly don’t want to gouge rich people, but nor do we want to give them a pass or give them special treatment,” he said. “I think we try to treat everyone equally; we’re not about gouging rich people, nor are we about taking advantage of poor people.”

The Forest Brook project has been held up by litigation since it began and is currently involved in five legal actions, Gullette said. The attorney blamed the project’s delays on litigation and a bad housing market, both of which he said were “not our fault.”

The planners granted a one-year extension on the preliminary plat in August 2010 when Gullette appeared before them and made similar arguments.

The new regulation also limits developers to only one two-year extension for a preliminary plat application.

Ads by Google

Million Dollar Rooms

See Some Of The Worlds Most Lavish Rooms Tuesday, April 24 8:30/7:30c
HGTV.com

Gullette said he was unaware of the new restriction on how many extensions could be granted and that it was inconceivable that the project would be ready for a final plat in two years.

The agenda for Tuesday included the request for an extension but no discussion of changing a subdivision regulation; commission member Don Colliver suggested the planners needed more time to consider the issue before making a decision.

“I did not perceive or know that this was even part of the agenda tonight, and it’s not something I think that we need to be doing in a spur-of-the-moment type of thought,” he said.

The commission voted to continue discussion to the September meeting and advertise that the subdivision regulation would be discussed. Included in the motion was a caveat that any decision would be retroactive to the date of the August meeting; the Forest Brook preliminary plat was set to expire Wednesday.

Bethany Road tower

The commission approved a request from AT&T Mobility to build a cell-phone tower at 1095 Bethany Road. A similar request had been denied in March because of problems with the application; Dal Harper of the Bluegrass Area Development District called the application submitted Tuesday “approvable” and “complete.”

The request was approved by a 6-1 vote; Colliver dissented after expressing concerns that the applicant had not done enough to demonstrate a need for the tower.

Ads by Google

Interior Photography

Looking For interior design photographer? Find It Nearby At Local.com!
Local.com

APPENDIX

B

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

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

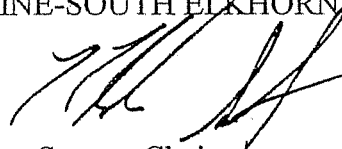
Dear Mr. Hallany:

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
Horne Engineering, Inc.

APPENDIX

C

Bruce Smith

From: Wuetcher, Jerry (PSC) [JWuetcher@ky.gov]
Sent: Wednesday, April 11, 2012 8:32 AM
To: rmoore@hazelcox.com
Cc: Bruce Smith; Bruce Smith
Subject: FW: Forest Creek, LLC v. Snowden et al. - Case No. 12-CI-81

Mr. Moore:

I have not reviewed nor do I intend to review these documents. Please advise your client that all communications to the PSC should come through counsel. If he intends to contact any member of Commission Staff directly, he should copy all parties of record.

Respectfully,

Gerald E. Wuetcher
Executive Advisor/Attorney
Public Service Commission of Kentucky
gerald.wuetcher@ky.gov
Office: (502) 564-3940 x259
Cell: (502) 229-6500

From: James Kelley [mailto:james@vomhausekelleman.com]
Sent: Tuesday, April 10, 2012 11:39 PM
To: Wuetcher, Jerry (PSC); 'Robert Moore'
Subject: FW: Forest Creek, LLC v. Snowden et al. - Case No. 12-CI-81

Jerry, this is the latest response to our complaint to the Jessamine Circuit Judge. They now feel they have a "right" to manipulate the water district under the Norr - Pennington "reasoning. I have sent this to Robert Moore. Can you argue this in front of the judge on the 28th. ? There is no way this is accurate. The concept is a farce and nobody ever appeared at the meetings with the water co in opposition, not that it should matter. Thanks, James

From: Constance Grayson [mailto:cgraysonlaw@yahoo.com]
Sent: Tuesday, April 10, 2012 3:38 AM
To: James Kelley
Subject: Fw: Forest Creek, LLC v. Snowden et al. - Case No. 12-CI-81

Just received these. Have not had opportunity to read or analyze but wanted to send them to you asap. I am in Venice, Italy and will not get these printed out for a couple of days. The hearing is on April 26 so we have plenty of time.

Constance G. Grayson
Gullette and Grayson
125 S. Main Street
Nicholasville, KY 40356

(859) 885-5536

----- Forwarded Message -----

From: Adam Spease <aspease@millerwells.com>

To: constance@gullettelaw.com; david@marshalloakleylaw.com

Cc: Mason Miller <mmiller@millerwells.com>

Sent: Monday, April 9, 2012 3:54 PM

Subject: Forest Creek, LLC v. Snowden et al. - Case No. 12-CI-81

Counsel,

Please find attached Defendants' Joint Motion to Dismiss Plaintiff's Amended Complaint, a Memorandum in Support, and Defendants' Joint Motion to Strike Paragraph 25 of the Amended Complaint, each filed today in the above-referenced matter.

Adam Spease