

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 31 2012

In the matter of:

FOREST CREEK, LLC

COMPLAINANT

vs.

JESSAMINE- SOUTH ELKHORN WATER DISTRICT

DEFENDANT

PUBLIC SERVICE
COMMISSION

Case No. 2011-00297

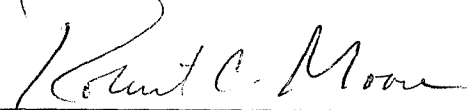
**PRE-FILED TESTIMONY OF JAMES KELLEY FILED
ON BEHALF OF FOREST CREEK, LLC**

Comes Forest Creek, LLC (“Forest Creek”), by counsel, and hereby submits the Pre-Filed Testimony of James Kelley, which testimony is to be introduced at the hearing to be held in this matter.

Forest Creek hereby reserves the right to amend its Pre-filed Testimony to respond to the answers of Jessamine-South Elkhorn Water District (“Water District”) to the Information Requests and Supplemental Information Requests that were served by Forest Creek upon the Water District. Forest Creek has served a Motion requesting the Commission to compel the Water District to provide full and complete answers to the Information Requests served upon it, and may have additional information to include in its Pre-Filed Testimony after reviewing the Water District’s full and complete answers to its Information Requests.

The Pre-Filed Testimony of James Kelley is attached hereto as Attachment A.

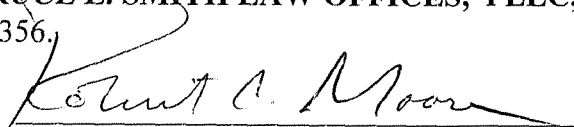
Respectfully submitted,



Robert C. Moore
Hazelrigg & Cox, LLP
415 West Main Street, 1st Floor
P. O. Box 676
Frankfort, KY 40602-0676
Counsel for Forest Creek, LLP

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served by first class mail, postage prepaid, this the 30th day of May, 2012, to, Hon. Bruce E. Smith, **BRUCE E. SMITH LAW OFFICES, PLLC**, 201 South Main Street, Nicholasville, Kentucky 40356.



Robert C. Moore

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DEFENDANT)
)

)Case No. 2011-00297

PRE-FILED TESTIMONY OF JAMES KELLEY

1. What is your name and business address?

Answer: My name is James Kelley and my business address is 207 Golf Club Drive, Nicholasville, Kentucky 40356.

2. What is your relationship to Forest Creek, LLC?

Answer: I am a Member of Forest Creek, LLC (hereinafter referred to as "Forest Creek").

3. Is Forest Creek developing a subdivision in Jessamine County, Kentucky?

Answer: Yes, Forest Creek owns approximately 458.60 acres located off of Murphy's Lane and Harrodsburg Road/US 68 in Jessamine County, Kentucky. Forest Creek is developing this property and plans to have a residential development containing 661 residential units and an eighteen (18) hole golf course (hereinafter referred to as the "Development").

4. Please identify the water district that is to provide water service to the Development and state the day that Forest Creek first applied for water service to the Development.

Answer: The Development is within the jurisdiction of the Jessamine - South Elkhorn Water District (hereinafter referred to as "Water District"), and the Development initially made its request for water service to the Water District on April 27, 2007.

5. Please state whether Forest Creek completed certain Water District forms that were provided to it by the Water District.

Answer: On April 27, 2007, Forest Creek completed the Request for Extension that was provided to it by the Water District in order to obtain potable water for its Development. The Water District advised Forest Creek that Option II was the appropriate option to select in order to obtain water service to the Development because it was Forest Creek's responsibility to design and build the water lines. The Water District did not explain Option I to Forest Creek and did not indicate that it was available for Forest Creek to use to obtain potable water for the Development.

6. Please state whether Forest Creek has worked to comply with the requirements of Option II in order to obtain potable water for the Development.

Answer: Since April 27, 2007, Forest Creek has worked diligently to comply with the requirements of Option II. It retained Jihad Hallany, an engineer with Vision Engineering, LLC, to prepare the required development plans. Mr. Hallany has submitted plans for the routing of the off-site water lines from the Development to the connection with the Water District on at least eight (8) different occasions. The Water District's engineer, John Horne with Horne Engineering, Inc., has rejected each of these plans and even denied Forest Creek's request to locate the water line within the right of way of county and state roads until March 27, 2012, when

it finally approved this routing. On March 27, 2012, the Water District issued its letter approving the location of the water line within the right of way of US 68 and Ky 29.

7. Please state whether Forest Creek has requested to obtain water service from the Water District using Option I set forth in the Request for Extension.

Answer: Because of the large number of problems and delay encountered in attempting to obtain water service from the Water District using Option II, Forest Creek made the decision to obtain water service from the Water District using Option I. In May of 2010, Forest Creek informed the Water District of its desire to obtain water service using Option I, and the Water District has denied Forest Creek that option.

8. Please state the manner in which the Water District has acted arbitrarily and capriciously in prohibiting Forest Creek from obtaining water service to the Development.

Answer: The Water District failed to indicate that Forest Creek could proceed to obtain the water line extension to its development using Option I instead of Option II. Forest Creek has submitted plans to the Water District for the construction of the water line extension to its development on multiple occasions, and the Water District, through the actions of its engineer, John Horne, has failed to timely review and approve said plans. Where the Water District did not approve the plans submitted on behalf of Forest Creek, it has failed to fully explain the basis of its refusal to approve the plans. At the request or direction of John Horne, the Water District delayed the review and approval of the on-site construction plans for the Development until the off-site construction plans were approved. Despite the fact that the Water District failed to approve Forest Creek's construction plans, it has required Forest Creek to pay exorbitant and burdensome legal and engineering fees to the Water District, and caused Forest Creek to incur

substantial expenses and losses due to the unnecessary delays. The Water District initially refused to allow Forest Creek to install its water lines in Transportation Cabinet right of way, when Forest Creek had presented the Water District with a letter from the Transportation Cabinet granting Forest Creek permission to place its lines in the Transportation Cabinet right of way. Forest Creek requested the Water District, during a joint meeting with Public Service Commission Staff, to inform Forest Creek where its off-site lines should be placed, at the expense of Forest Creek, and the Water District Chairman rejected this request. The Water District Chairman, Nick Strong, was then informed by Commission Staff that it was the Water District's job to provide the plan for the location of the water line, albeit at the expense of Forest Creek, and he still refused to do so. The Water District had previously rejected Forest Creek's request to allow the City of Wilmore's engineer (GRW) to review Forest Creek's off-site plans for approval approximately one (1) year prior to the meeting with Commission Staff. The Water District has failed to provide Forest Creek with written rules governing the construction of water line extensions. The Water District has failed to allow Forest Creek to obtain the needed water line extension using Option I. Additionally, the Water District's tariff does not indicate that an entity constructing a water line extension is prohibited from selecting Option I to construct its water line extension after initially selecting Option II, and the Water District's Request for Extension and the Interim Water Service Agreement have not been approved by the Public Service Commission, as required by 807 KAR 5:066. Additionally, Option I refers to 807 KAR 5:066E, which is no longer in effect.

9. Why did Forest Creek request the Water District to allow the City of Wilmore's engineer (GRW), to review Forest Creek's off-site water line construction plans.

Answer: Forest Creek made this request because it was aware that GRW was familiar with the project, had the necessary expertise to perform the work and would review the off-site construction plans on in a fair and unbiased manner. John Horne, the engineer used by the Water District to review Forest Creek's plans, had previously performed engineering work for Harrods Ridge Subdivision located in Jessamine County, Kentucky. Harrods Ridge Subdivision is a golf community and is in direct competition with Forest Creek's Development. Additionally, the owner of Harrods Ridge Subdivision owned interests in other subdivisions located in Jessamine County, Kentucky that were in competition with the Development. The delay in approving Forest Creek's off-site construction plans, along with the request to delay the review of the on-site construction plans until the off-site construction plans were completed, appeared to reflect a bias on the part of Mr. Horne.

10. When did Forest Creek first learn that Option I was a valid option for the construction of the water line extension to the Development.

Answer: Forest Creek first learned that Option I was a valid option for it with respect to the construction of a water line extension to serve the Development during discussions with Gerald Wuetcher, a representative of the Public Service Commission, in May of 2010. Mr. Wuetcher indicated that Option I was one of two (2) valid options to construct a water line extension to the Development.

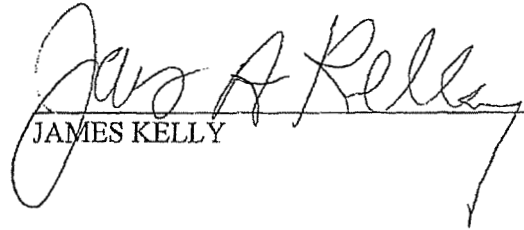
11. Please state the amount of fees that Forest Creek has been required to pay to the Water District to date.

Answer: Forest Creek has paid the amount of \$22,891.56 in engineering fees to the Water District to pay the bills of John Horne, and has paid the amount of \$8,375.00 in attorneys fees to

the Water District to pay the bills of Bruce Smith. To date, Forest Creek has only obtained approval of the location of its off-site water line.

12. Please state the financial impact caused to the Development by the Water District's arbitrary and capricious actions.

Answer: The Water District's unreasonable actions and delay in approving the off-site construction plans delayed the completion of the Development during a time when real estate development projects were extremely economically viable and successful. This delay has caused Forest Creek to suffer substantial economic harm because of the loss and/or delay in lot sales, the increase in fees associated with the development of the golf course, the loss of prospective investors, and increased legal and engineering expenses.

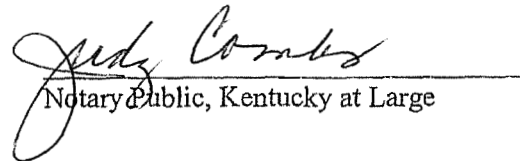

JAMES KELLY

STATE OF KENTUCKY

COUNTY OF FAYETTE

Subscribed and sworn to before me by James Kelley, a member of Forest Creek, LLC,
this 30th day of May, 2012.

My commission expires: August 11, 2015


Notary Public, Kentucky at Large