

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

November 16, 2012

RECEIVED

NOV 16 2012

PUBLIC SERVICE  
COMMISSION

**VIA HAND DELIVERY**

Mr. Jeff R. Derouen  
Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
Frankfort, Kentucky 40602-0615

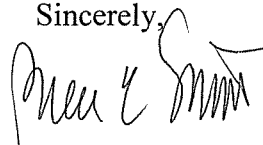
Re: Case No. 2012-00470

Dear Mr. Derouen:

Enclosed for filing is an original and 10 copies of my client's Response to Motion for Hearing in the above case. Please file same.

Thank you.

Sincerely,



Bruce E. Smith

Enclosure(s)

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

NOV 16 2012

APPLICATION OF JESSAMINE-SOUTH ELKHORN)  
WATER DISTRICT FOR A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND NECESSITY TO )  
CONSTRUCT AND FINANCE A WATERWORKS )  
IMPROVEMENTS PROJECT PURSUANT TO KRS )  
278.020 AND 278.300 )

PUBLIC SERVICE  
COMMISSION

CASE NO 2012-00470

RESPONSE TO MOTION FOR HEARING

Comes now the Applicant, Jessamine South Elkhorn Water District (“JSEWD” or “the Water District”), by counsel, and for its response to the Motion of Forest Hills Residents’ Association, Inc. (“Forest Hills” and William Bates (Mr. Bates”) (collectively the “Intervenors”) for a Hearing and the Establishment of a Procedural Schedule (“Motion”) states as follows:

1. General Comments

The Intervenors’ Motion is heavy on emotional appeals and bold blanket statements and light on support for those appeals and statements. The record establishes that the Intervenors are very upset about the siting of a new elevated water tank in proximity to their subdivision; that they offer no alternatives or suggestions about a solution to their concerns other than moving the tank; and that their complaints would be moot if JSEWD would merely move the proposed storage tank to some other – any other – site, at no cost to the Intervenors and regardless of the additional costs that would be imposed on JSEWD’s water customers.

JSEWD will of course comply with all applicable Commission rules and regulations, including all applicable safety regulations, as well as comply with any final Commission Order

as to the construction of this facility. However, JSEWD registers a strong objection to burdening its ratepayers with additional costs to meet or contest the siting concerns of a very small but vocal group of customers (such as speculations about alleged impacts on property values) that are not properly before the Commission.

**2. Basis for This Intervention**

The Intervenors apparently claim to have a right to a hearing on this matter, and indeed claim that their “due process rights” will be denied if they are not permitted to have an extensive proceeding and a formal hearing on this matter. The Intervenors have the right to move to intervene in this proceeding. They have done so. In moving to intervene, they stated that they had a special interest in this proceeding; or that their full intervention would likely present issues or develop facts that would assist the Commission in fully considering this matter; and that their intervention would not unduly complicate or disrupt the proceedings. See, 807 KAR 5:001(8)(b). While the Commission did allow intervention based on the issues that the Intervenors claimed that they wanted to raise, each of these claims that formed the basis for intervention need further scrutiny in light of the Intervenors’ avowed intentions, which will greatly complicate and disrupt these proceedings without any promise of assisting the Commission in fully considering this matter.

**a. Special Interest**

The only special interest that the Intervenors have in this proceeding is that the proposed water tank is proximate to (but not on or within the Forest Hills subdivision) property owned by one or more Forest Hills residents. Even assuming that all of the residents of Forest Hills join in this objection, there are only 27 properties within the subdivision. JSEWD serves 2,780 customers. Only a very small number of JSEWD customers, less than 0.9%, are involved in this

protest. Their “special interest” is, and has been since they first raised their concerns to JSEWD in 2010, that this tank be constructed somewhere – anywhere – else. This “special interest” could have just as easily been registered by public comment – the Commission is certainly also aware that even if the tank were moved, there might easily be a similar protest from another adjoining landowner or group of adjoining landowners who would assert a similar “special interest”. The Intervenors have made it very clear that they do not want this tank near them, and they don’t care if other ratepayers are burdened with unnecessary costs to move the site. The Intervenors’ “special interest” is easily summarized and in the record for whatever consideration might be relevant to this proceeding. On page four of their Motion, for instance, the Intervenors continually relate their claims to alleged problems with siting this tank on a lot abutting their subdivision. Even when claiming, without any reference to the record, that JSEWD’s application is “facially insufficient” to support a certificate application, the Intervenors cannot resist adding at the end of that sentence a qualifier limiting their real interest to the construction of the tank “at the chosen location.”

The Intervenors’s “special interest”, then, is fairly described as making sure that no tank is built on the site that has for many years been set aside, publicly identified and platted, fully revealed to the developer of the Forest Hills subdivision as the future site for a water tank, and clearly identified to Forest Hills’ purchasers had they done **any** due diligence prior to buying their lots. JSEWD would further have the Commission note that an extensive review of the history of siting this tank has already been incorporated into the record of this case as part of the record in Case No. 2011-00138<sup>1</sup>. If the Intervenors in fact have any claim that the long planned

---

<sup>1</sup> See, JSEWD’s Answer to Forest Hills’ Complaint, May 23, 2011, attached as Response Exhibit “A”. In the interest of brevity, Form SF-424, referenced in Horne’s letter dated August 5, 2010, that is part of Group Exhibit “E” to this Answer was not included in this attachment.

storage on this site “would damage them significantly”<sup>2</sup>, it would be against the developer of the subdivision or the real estate agents for nondisclosure. Any such claim, whatever its merits, is certainly not a proper claim before the Commission, which does not have jurisdiction over such damage claims.

It is certainly worthy of note that the Intervenors do not deny the numerous efforts by JSEWD to negotiate a solution to Forest Hills’ siting concerns prior to filing this certificate Application. JSEWD of course was interested in assuring first that any proposed alternative site was technically appropriate for the project, but the real reason that negotiations concerning possible alternative sites failed was that the Water District quite properly insisted that other ratepayers not pay additional costs to meet Forest Hills’ demands. Forest Hills, on the other hand, was intransigent in its demand that other ratepayers be saddled with the additional costs of siting the tank for no other reason than to meet Forest Hills’ desires. Forest Hills disingenuously describes these efforts as trying to make Forest Hills do the siting work for this storage facility, when in fact, Forest Hills was pursuing its primary – indeed only – interest with respect to this facility, which was and still is moving the facility regardless of the cost to all other rate payers of the Water District.

With respect to Forest Hills’ “special interest” in this proceeding, the Water District respectfully requests that the Commission find that the Intervenors’ special interest is noted, but that the scope of that special interest is clearly limited, for the purely private convenience of a small group of customers, and largely, if not completely, irrelevant to a certificate of public convenience and necessity proceeding.<sup>3</sup>

---

<sup>2</sup> Motion at page 4.

<sup>3</sup> This limitation on the Intervenors “special interest” is specifically admitted by the Intervenors at page 2 of their Motion to Intervene at paragraphs 4 and 5. Further, the Intervenors admit that only one lot in Forest Hills is in fact

b. **Claim to Assist the Commission** As part of their intervention Motion, the Intervenors claimed that their full intervention would likely present issues or develop facts that would assist the Commission in fully considering this matter. It is most apparent that the Intervenors have no interest in assisting in this manner, but intend to raise issues whose only purpose is to enable the Intervenors to exert pressure to move this proposed facility away from its proposed location to any other location – but not due to any legitimate concerns about the current site other than that it bothers them. The Commission is perfectly capable of resolving any real issues with this application without having to spend a significant amount of time addressing the purely private concerns of a very small group of customers. JSEWD values all of its customers, including the Forest Hills residents, and works very hard to provide quality water service to its customers. Part of this responsibility is to assure that decisions are made on a rational basis, and not merely to meet unreasonable demands of a few customers at the expense of the vast majority of them.

The only alternative proposed by the Intervenors to “assist” the Commission here is to move this facility, somewhere – anywhere – else, and to deny the need for this facility as a last resort to siting the facility at the clearly most appropriate and cost effective site. The Intervenors are not advocating for the public convenience, but rather a narrow private interest at the expense of the public convenience and necessity.

In this regard, the Intervenors’ “alternatives” have always been only that this water tank not be built at the most appropriate and efficient site, because that site is near their subdivision. There is no hint from the Intervenors that they actually have a more appropriate or cost efficient siting proposal to make. There is no acknowledgement that alternative sites have been

---

adjacent to the property on which the proposed facility is to be located. Intervenor Mr. Bates is apparently not the owner of this lot.

considered, with their involvement, and rejected because the Intervenors simply do not care about imposing higher costs on other ratepayers. Further, the Intervenors have not made any demonstration that they have any useful knowledge or expertise as to any possible alternative that would not involve additional storage as proposed by JSEWD, or that as a small neighborhood association that they have any alternatives to suggest meeting this need. They instead hope to mischaracterize all of the siting discussions that have occurred, and engage in a fruitless round of speculation on theoretical siting alternatives. Such an intervention is not in any way likely to develop facts or raise issues that will assist the Commission in fully considering this matter. Further, Forest Hills is not in any way a proper representative of all of JSEWD's ratepayers' interests – they represent only a very narrow private special interest of doubtful relevance to the issues before the Commission.

**c. Unduly Complicating or Disrupting the Proceedings**

The Intervenors further stated in their Motion to Intervene that their intervention would not unduly disrupt or complicate this proceeding. JSEWD would respectfully suggest that Forest Hills' proposed extensive procedural schedule would in fact unduly disrupt and complicate this proceeding, merely to address the "Not in My Back Yard" position of this very small group of customers. In addition to being contrary to the Intervenors' claims in their Motion to Dismiss, their procedural proposal makes no reference whatsoever to the substantial amount of information that has already been provided to the Commission as part of this filing, instead referring without any merit or explanation to the filing as "facially insufficient". The Intervenors' proposal will unduly complicate this proceeding, and the Water District respectfully requests that the Commission reject the Intervenors' Motion and set an expeditious procedural process that is

limited to those steps that are in fact necessary and proper for full consideration of any relevant issues with this Application.

**3. Due Process Allegations**

The Intervenors make an unsupported assertion they will be deprived of due process if the Commission does not meet their procedural demands.<sup>4</sup> The Intervenors do not cite any authority for this assertion, or identify what due process rights they claim or the basis therefore. It is therefore necessary to briefly discuss what rights the Intervenors in fact have as intervening parties.

**a. Statutory Requirements**

Certificate proceedings such as this case are governed by KRS 278.020. While the Intervenors appear to believe that they have the right to a hearing in such applications, in fact they are not entitled to a hearing on their claims. A hearing is not required in such cases unless the Commission determines in its sound discretion that a public hearing should be held. It is therefore specifically contemplated by statute that no hearing is required. As noted above, the Intervenors are essentially making a protest that a proposed facility is located next to their property. Other than the protest itself, the Intervenors have made no showing that they have any useful or relevant information to add to this siting protest. The rights of intervenors are detailed in 807 KAR 5:001(8)(a) and (b). Such rights do not include the right to a hearing. The Intervenors have no right to a hearing, and have not presented any persuasive argument as to why a hearing would be useful for any reason other than delay or undue complication and a

---

<sup>4</sup> Motion at page 3.



repetition of the Intervenor's real interest – that by whatever means, the proposed facility should be built somewhere else.<sup>5</sup>

The Application herein also is filed under KRS 278.300, as it also requests approval of financing for this transaction. KRS 278.300 does not provide a right to a hearing either. Further, that statute requires that such financing applications be moved to the head of the Commission's docket and be disposed of promptly within 60 days after filed with the Commission, unless good cause is shown to continue the application for longer than sixty days. JSEWD respectfully suggests that the Intervenor's Motion does not state any good cause to delay this application beyond the sixty day statutory period for review.

In this regard, the Intervenor completely ignore the fact that approximately 40% of the cost of this proposed facility (\$1,000,000) will be financed by a Kentucky state grant (HB 608, 2008 Reg. Sess. (Ky. 2008)).<sup>6</sup> This funding is an important component of the reasonableness of this certificate application, and an important benefit for the ratepayers of JSEWD, including the residents of Forest Hills. In their zeal to force a siting change, the Intervenor completely ignore this very significant benefit for all ratepayers of the Water District.

**b. Alleged Due Process Rights**

While the Intervenor allege that some due process violation may occur if their extended procedural demands are not met, they cite no authority for this proposition. It is an accepted principal of regulation that customers do not have a property interest in utility rates and services, have no property interest in utility facilities or properties even if recovery of such costs is included in rates, and have no property interest in any particular utility rate or service. Without

---

<sup>5</sup> Lest an argument be raised that the legislature does not know how to require a hearing if it believes that a hearing is necessary, see KRS 278.020(8), which requires the Commission to hold a public hearing if requested in the case of a proposed high voltage transmission line.

<sup>6</sup> Application at page 3.

such a property interest in a particular matter, any intervenors' rights to a particular process are only those granted by statute. The Commission has previously discussed this principle in depth, including the distinction between utilities which have a statutory obligation to invest capital to serve the public, and ratepayers who are under no obligation to invest capital or purchase utility service.<sup>7</sup>

The Intervenor's procedural rights are set forth by statute and regulation. To the extent that they have statutory rights, these constitute the due process to which they are entitled. Unlike JSEWD, they have no obligation to provide service or invest capital to serve the public. JSEWD would respectfully state that they also have no right to require either JSEWD or other ratepayers to invest their money in a more expensive facility to meet their siting preference. Contrary to the Intervenor's apparent belief that a hearing is standard in an Application such as this, JSEWD is unaware of any statute, PSC regulation or PSC policy that makes scheduling a hearing a standard procedure, and the Intervenor does not cite any such authority. The due process claim is a red herring.

#### **4. Issues Raised by Motion to Intervene**

In their Motion to Intervene, the Intervenor detailed the issues that they would present in this proceeding.<sup>8</sup> All of these proposed issues involve the siting decision. None address any general issues about the need for the proposed storage tank. The Intervenor gave no notice in their Motion that they intended to argue that the facility was not needed at all. If the Intervenor are now claiming a broader interest and role in this proceeding, they provided no notice of their intention to pursue a broader role in this proceeding, and their Motion is defective in that failure to provide adequate notice of issues that they prepared to raise. As the Intervenor voluntarily

---

<sup>7</sup> For a discussion of this distinction, see Order of August 22, 1994, PSC Case no. 93-465, Re: Kentucky Utilities Application to assess an environmental surcharge. Copy of Order is attached hereto as Response Exhibit "B".

<sup>8</sup> Motion to Intervene at page 2, paragraph 6.

limited their intervention to the issues that they proposed in their Motion, they should not be permitted to expand the scope of their intervention to other issues, particularly as it is abundantly clear that any such “issues” would be raised only in service of the siting protest.

**5. Record from Complaint Proceeding**

JSEWD has no objection to consideration of the positions of JSEWD and Forest Hills from the complaint proceeding with respect to the history of the siting process for this facility. The incorporation by reference of the record in Case No. 2011-00138 should not be misconstrued as an agreement that any and all claims made or implied by the Intervenors in that complaint case are relevant to this proceeding. In particular, JSEWD has no objection to consideration of the detailed history of the siting for this proposed facility filed by JSEWD as part of that proceeding, which clearly establishes that JSEWD proceeded with care and consideration in the siting process, including extensive efforts to meet Forest Hills’ desires, as long as such a solution would not impose a financial burden on other ratepayers merely to meet Forest Hills’ private desires.<sup>9</sup> The conclusions drawn by Forest Hills with respect to those efforts, both as to the efforts themselves and the intentions behind them, are so clearly fallacious that they Commission should waste little time in rejecting such claims.

JSEWD respectfully requests that any claims by the Intervenors that go beyond the scope of their requested intervention not be considered by the Commission. JSEWD understands, of course, that the Commission will fully review this application per the statutory standards for such an application, and will fully cooperate to promptly provide whatever information is needed by the Commission for its review, as well as fully comply with all effective PSC Orders in order to assist in expeditiously reviewing and deciding on this application.

---

<sup>9</sup> See, JSEWD’s Answer to Forest Hills’ Complaint, May 23, 2011.

**6. Need for a Hearing**

As noted above, the Commission has the discretion to order a hearing in this proceeding if necessary. It also has the discretion to proceed to decision without a hearing. JSEWD respectfully suggests that the Intervenors have not demonstrated any need for a hearing in this matter. JSEWD does object to this small group conducting a massive fishing expedition to try to hook on to some justification for its desire to force a new site at the expense of other ratepayers. JSEWD has no suggestion for an alternative to a hearing, other than possibly an expeditious date by which the PSC sets an informal conference to address specific issues that are actually relevant to this application. By its response hereto, JSEWD does not waive its right to file any procedural motion of its own that might become necessary, but does not believe that scheduling a hearing is necessary at this juncture, absent an indication from the Commission that certain issues require a hearing for clarification.

**7. Additional Costs to Ratepayers**

As stated by JSEWD in the conference call of November 8, 2012, the contractor bid for this project is set to expire on December 1, 2012. As a result of concerns raised during that call, JSEWD has contacted the contractor to see whether an extension of this bid past that date without additional cost is possible. Based on that contact, JSEWD's current understanding is that the contractor is willing to extend the bid price for an additional thirty (30) days or by no later than January 2, 2013, but any delay beyond that point would result in an increase in the bid cost. JSEWD is also concerned that interest rates on the financing for which approval is sought may increase as well if this Application is not expeditiously approved. In addition, as noted in the Application, \$1,000,000 of the cost of this project will be paid as a result of HB 608. While JSEWD does not currently believe that this contribution would be in jeopardy if a substantial

delay occurred, it would nevertheless not be prudent in JSEWD's view to allow unnecessary delay to create any issues with this funding.

JSEWD is very concerned that allowing the Intervenor to resite this project for their own private interests might well affect any or all of the above, as well as increase costs to all ratepayers for the cost of resiting a facility that is already sited on the best available location.

**CONCLUSION**

JSEWD respectfully requests that the Commission deny the Intervenor's Motion for a Hearing and an extensive procedural schedule merely to assist the Intervenor's siting protest. JSEWD requests that the Commission take such procedural steps as are necessary to facilitate the Commission's review of this Application, and to adequately resolve any actually relevant issues that may arise from the Application.

W. Randall Jones, Esq.  
Rubin & Hays  
450 South Third Street  
Louisville, KY 40202  
(502) 569-7534  
wrjones@rubinhays.com

**and**

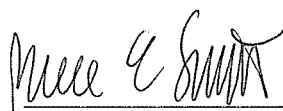
Bruce E. Smith  
Bruce E. Smith Law Offices, PLLC  
201 South Main Street  
Nicholasville, KY 40356  
(859) 885-3393  
Fax: (859) 885-1152  
bruce@smithlawoffice.net

  
\_\_\_\_\_  
**CO-COUNSEL FOR JSEWD**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing has been served on the following by e-mail and U.S. Mail, First Class on November 16, 2012.

Robert M. Watt, III, Esq.  
Stoll Keenon Ogden, PLLC  
300 West Vine Street, Ste. 2100  
Lexington, KY 40507-1801  
(859) 253-1093  
robert.watt@skofirm.com

  
\_\_\_\_\_  
Bruce E. Smith

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
MAY 23 2011  
PUBLIC SERVICE  
COMMISSION

In the Matter of:

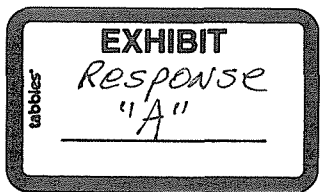
FOREST HILLS RESIDENTS' )  
ASSOCIATION, INC., and )  
WILIAM BATES )  
 )  
COMPLAINANTS )  
 )  
VS. )  
 )  
JESSAMINE SOUTH ELKHORN )  
WATER DISTRICT )  
 )  
DEFENDANT )

CASE NO. 2011-00138

ANSWER

The above-named Defendant, Jessamine-South Elkhorn Water District ("District"), for its response to the Complaint, respectfully states:

1. The Public Service Commission ("PSC") is without jurisdiction under KRS 278.260 to consider the Complaint.
2. Alternatively and without waiving the foregoing, the Complainants have no standing to bring the Complaint before the PSC.
3. Alternatively and without waiving the foregoing, the PSC's consideration of the Complaint would be premature.
4. Alternatively and without waiving the foregoing, the relief requested in the Complaint is contrary to 807 KAR 5.066 §4(4).
5. Alternatively and without waiving the foregoing, the factual allegations of the Complaint are incomplete and inaccurate, thereby distorting the basis of the Complainants' objections, for example:



a. UNMENTIONED PROJECT HISTORY BY COMPLAINANTS

The District serves the northwest area of Jessamine County which has experienced rapid residential growth over the past 10-20 years. In response to this growth and the increased water usage and in view of the requirements of 807 KAR 5:066 §4(4), the District began exploring its territory for a site on which to construct a new, aboveground water storage tank (“tank”)<sup>1</sup>. The site’s location could not be selected at random since it had to have an elevation of at least 950 feet. The first mention of the search for a tank site can be found in the District’s meeting minutes of February 7, 2001, where two possible locations were discussed. On April 11, 2001, the District was approached by R.J. Corman who offered to donate a tank site to the District on his property in return for certain considerations. The District initiated an investigation of the Corman property and surveyed a parcel of his land for the site. Before the District’s attorney could draft an agreement memorializing the transaction, Corman unexplainably withdrew his offer sometime after January of 2002.

The District continued its search for a new site and the September 3, 2003 minutes reflect there were several suitable sites under consideration.<sup>2</sup> The owners of these properties were approached and in November of 2003, Sue Switzer agreed to consider selling the District a one-acre parcel (“Switzer site”) for \$40,000.00 from the interior of her farm located off Catnip Hill Road.<sup>3</sup> For an aerial photograph of this property and other points of interest addressed later in the Answer, see **Exhibit “A”** attached hereto. Sometime in January of 2004, Switzer finally signed a written sale

---

<sup>1</sup> Currently, the District has two, existing tanks in the area with storage of 550,000 gallons, but the average amount of water used each day by the District’s customers exceeds 760,000 gallons.

<sup>2</sup> Cave Springs Farm, Henry Knight Farm, Ramsey Farm and the Sue Switzer property.

<sup>3</sup> Switzer already has a tank located on the opposite end of her farm. Exhibit “A”.



contract with the District for the one-acre parcel. (**Exhibit “A”**) Thereafter, The District approved a geotechnical exploration of the Switzer site by QORE Property Sciences at a cost of \$4,625.00. Upon receiving a positive report from QORE, the District proceeded with surveying and platting the Switzer site and applied for an encroachment permit with the Transportation Cabinet for an access point to it from Catnip Hill Road. During this same time period, the District directed its engineer, Horne Engineering, Inc. (“Horne”) to conduct a capital improvement plan system storage study in preparation for requesting such a system development charge from the PSC for funds to construct the tank. The District’s Board also authorized hiring Caryn Lee of Kentucky Rural Water Association to advise the District with regard to the system development charge request. Sue Switzer finally conveyed the one-acre parcel and a water line easement from the watermain on Catnip Hill Road to the District by deed dated May 10, 2004. The system development charge study continued.

During 2005 and in order to broaden its construction funding options for the new tank, the District’s Board approved submission of a loan application to the United States Department of Agriculture – Rural Development (“USDA-RD”) at the April 20, 2005 meeting. In the summer of 2005, the District also became aware that a developer, Barry Mangold<sup>4</sup>, was planning a residential subdivision known as Forest Hills on a farm adjoining the farm of Sue Switzer and the District’s Switzer site. **Exhibit “A”**. Prior to finalization of the plans for this subdivision, Horne notified Mangold in writing, by letter dated November 11, 2005 (**Exhibit “B”**), that the District was planning to construct a tank on the adjoining Switzer site. The letter also contained an admonition to Mangold

---

<sup>4</sup> Barry Mangold conducted business during the development of Forest Hills under several limited liability companies, including Forest Hills Development, LLC, Forest Hills, LLC and Forest Hills of Kentucky, LLC. Barry Mangold and these other entities will be referred to collectively as “Mangold”.

that he should place potential purchasers of lots in Forest Hills on notice of the tank's future construction. Presumably in response to the letter, Mangold appeared at the December 7, 2005 meeting of the District and formally offered to donate a tank site to the District within Forest Hills. As part of the offer, Mangold also offered to reimburse the District for the costs it had already spent in investigating the Switzer site. The District's staff took the Mangold proposal under consideration as reflected in the January 3, 2006 Memorandum to the District's Board from Horne. (**Exhibit "C"**) Thereafter, Mangold not only surveyed a suitably elevated site within Forest Hills, but he also commissioned a geotechnical investigation of this site ("Forest Hills site") **Exhibit "A"**. Discussions with Mangold continued and at the March 29, 2006 meeting, an express understanding was reached whereby Mangold would donate the Forest Hills site to the District and reimburse the District for the costs it had previously expended on vetting the Switzer site. In return, the District would agree not to construct a tank on the Switzer site for a period of 30 years. In conjunction with and as required by USDA-RD, procurement of an engineer to design the new tank was completed by the District at the April 11, 2006 meeting. The May 3, 2006 meeting minutes noted that Mangold had not yet returned the written agreement tendered by the District confirming the contemplated transfer of the Forest Hills site. Although Horne advised in a letter dated July 28, 2006 (**Exhibit "D"**), that Mangold was refusing to complete the transaction with the District, the August 2, 2006 meeting minutes reflect the District's Chairman was going to make a last-ditch effort to save the deal. Unfortunately, the effort failed. The August minutes also note that the PSC denied the District's request for the assessment of a system development charge to finance construction of the tank.<sup>5</sup>

---

<sup>5</sup> Case No. 2006-00156.

The District again turned its attention towards construction of the tank on the Switzer site. In June of 2007, the District's attorney was authorized to contact Bob Damron, the State Representative for Jessamine County, regarding construction funding for the tank. This contact led to the passage of Kentucky House Bill 608 in April of 2008 which awarded grant funds of \$1,000,000.00 that would partially fund the approximate \$2,500,000.00 project cost. The District continued to pursue other funding sources for the additional monies needed to construct the tank, including USDA-RD and the Kentucky State Legislature. The Blue Grass Area Development District ("BGADD") was also asked to make a proposal as project administrator for the grant funds already obtained. BGADD submitted a proposal to administer the grant at the November 5, 2008 meeting, but it was decided at the March 4, 2009 meeting to designate Horne as the project administrator.

In November of 2009 and after completion of the relocation of water mains due to the widening of U.S. 68, the District took possession of an excess quantity of 12" pipe left from this project and decided to use the pipe to connect the Switzer site to the watermain on Catnip Hill Road.

Over eight (8) years after the District began the search for a tank site in September of 2001 and almost six (6) years after the Switzer site was purchased by the District in May of 2004, a resident of Forest Hills Subdivision, William Bates, appeared at the April, 2010 meeting to inquire what use the District intended for the Switzer site. He was advised that the District was going to construct an aboveground storage tank on the parcel and that the developer of Forest Hills had been fully advised of that use. Mr.

Bates returned with several other residents <sup>6</sup> of Forest Hills to the District's meeting on June 9, 2010, to express their objections to the tank's location on property adjoining their subdivision. The objections were primarily aesthetic in nature and they alleged that there would be a diminution in property values in Forest Hills if the tank was constructed on the Switzer site.<sup>7</sup> Notwithstanding that the District had already completed its due diligence on the Switzer site; substantially completed the tank's design for that site; had acquired partial funding of \$1,000,000.00 for the project cost; and was actively pursuing the remaining funds needed for construction; the District's Board agreed to discuss and consider an alternative tank site proposed by Bates on the McMillen farm adjoining Forest Hills to the east. **Exhibit "A"** These residents, including Bates, were warned at this meeting that they would have to proceed in a "timely manner" to acquire an alternative site and that the added expense in securing another site would have to be reimbursed by them and not borne by the District's customers. Bates and the other residents' indicated that they understood the District's position with regard to moving quickly and to reimbursing the expenses. Importantly, Bates and the other residents voiced no objection to the District's conditions. Another resident of Forest Hills, T. Logan Davis, accompanied Bates to the July, 2010 meeting. They were again advised that the District would expect reimbursement of monies already spent on the investigation of the Switzer site and that the costs of a subsurface investigation, survey and legal work for an alternative site would have to be borne by them and not the District's customers. No objection was heard from Davis or Bates.

---

<sup>6</sup> The Forest Hills Residents' Association, Inc. was not formed until October 14, 2010.

<sup>7</sup> It should be mentioned here that the District's, existing 500,000 gallon tank stands to the west of and across U.S. 68 from Forest Hills in Heritage Estates which is very similar to Forest Hills and which was developed in plain view of this already constructed tank without apparent concern of the developer or present homeowners for damage to property values.

The District continued its effort at finding the added funding for the tank's construction as illustrated by the letters written by Horne attached as **Group Exhibit "E"**. At the same time, the District, through Horne, generated an estimate of the additional cost of relocating the tank site to the suggested site on the McMillen Farm. **Exhibit "F"** Bates, Davis and McMillen Farm owner, Lloyd McMillen, appeared at the August, 2010 meeting. The District's estimated relocation costs of the tank site to the McMillen farm were shared with this group. Once again, the District mentioned reimbursement of added costs and, once again, no objection was forthcoming as to this condition. A meeting between the District's representatives and the residents of Forest Hills was scheduled for August 17, 2010, but the residents cancelled the meeting. Surprisingly, the District did not hear from the Forest Hills residents for the next 2 ½ months. Bates then appeared at the November, 2010 regular meeting to discuss possible alternative sites to the McMillen farm. Bates and McMillen reappeared at the December, 2010 District meeting to discuss another location on the Switzer farm other than the already acquired Switzer site and a location within Forest Hills next to an existing District tank immediately off Old US 68. On January 5, 2011, the District received a letter from Bates with an attached letter of intent from Ronald W. Brown (**Group Exhibit "G"**) expressing an offer to sell a site off Old US 68 ("Brown site") next to the District's existing tank. **Exhibit "A"** Through its staff, the District studied the Brown site and found that it offered a significant "added cost" reduction as compared to the McMillen site, but it was otherwise flawed with serious legal deficiencies and too small in size to accommodate the tank the District had to build. See **Group Exhibit "H"** for a series of three (3) letters from the District's engineer and counsel which illustrate the

depth of the District's investigation of the Brown site. Faced with the unsuitability of the Brown site and the prospect of further, lengthy delays in proceeding with the tank project, the District decided in February of 2010 to construct the tank on the Switzer site. Counsel for the District advised Forest Hills' counsel of this decision by letter Dated February 24, 2011. **(Exhibit "I")**

In response to District counsel's letter, Bates and Davis appeared at the March 2, 2011 District meeting to discuss the matter further. Although the District's Board reaffirmed its decision to go forward with construction on the Switzer site, Davis approached the District's Chairman immediately after the March meeting with a proposal for a tank site on another spot on the McMillen Farm. To encourage the District to rescind its decision to construct on the Switzer site, Davis offered, on behalf of the Forest Hills Residents' Association, Inc. ("Association"), to immediately post a \$250,000.00 letter of credit as security for the added costs to the District of investigating and relocating to the new McMillen farm location. After polling the District's other commissioners by telephone, the District's Chairman instructed District counsel to draft a memorandum of understanding, incorporating the terms of the Association's offer, and send it to Davis for execution. Counsel did so on March 11, 2011. **(Exhibit "J")** The District was never contacted by the Association or Bates after transmittal of this letter. The Association reneged on its offer and one (1) month later, it and Bates filed their Complaint with the Commission.

**b. INACCURATE ALLEGATIONS BY COMPLAINANTS**

The Complainants's portrayal of their advance knowledge of the project and the District's actions in pursuing selection of the site, consideration of alternate sites and

acquisition of funding is grossly inaccurate. The District will address these misstatements under the following headings.

- **THE COMPLAINANTS' IMPLICATION THAT THEY HAD NO KNOWLEDGE OF THE DISTRICT'S INTENTION TO CONSTRUCT A WATER STORAGE TANK ON THE SWITZER SITE PRIOR TO THE SPRING OF 2010 IS DISINGENUOUS.**

Recorded plats for Forest Hills Subdivision clearly give notice that there was a site adjoining this subdivision that was owned by the District and which had the potential to be used as the site for a tank. Attached as **Group Exhibit "K"** are copies of the plats (with appended enlargements of particular portions) from the Jessamine County Clerk's office, recorded as early as January 19, 2006, and as late as October 1, 2008. These plats show one of the District's existing water storage tanks located on a lot adjoining the southwest corner of Forest Hills. Furthermore, within Forest Hills Subdivision and on the lot in the subdivision at its southeast corner immediately adjacent to the Switzer site, there is depicted a 30-foot access easement to the Switzer site and reference is made to this adjoining parcel owned by the District. Taken together, these plat notations give any potential purchaser of a lot in Forest Hills due cause to ask questions about the future use of the Switzer site. The failure of any realtor representing a purchaser of a lot to inquire and investigate the future use of the Switzer site would constitute negligence.

As demonstrated by the District's engineer's letter to the developer of the Forest Hills (**Exhibit "B"**), there was no effort to hide the future construction of a tank on the Switzer site. Mangold was aware of the future tank's location before he submitted the final design of the subdivision and he could have located residential lots in Forest Hills

away from the tank site. Mangold even continued to negotiate with the District about relocating the tank site after the first plat was recorded and he could have changed the residential lot locations by recording an amended plat. He chose not to do so and withdrew from the negotiation with the District. The current residents of Forest Hills are seeking to hold the District responsible for and burden the District's customer base with the additional expense of relocating the site either because they, or their agents, failed in their due diligence before purchase. The District's customers should not be held accountable for Mangold's failure to disclose to purchasers or their agent, if that, in fact, occurred.

- **THE COMPLAINANTS' CHARGE THAT THE DISTRICT'S SITE SELECTION PROCESS WAS UNREASONABLE IS BASELESS.**

As demonstrated by the foregoing project history, the District conducted an exhaustive search over a period of three (3) years for a tank site with an elevation of at least 950 feet. Sites with that minimum elevation are not plentiful in the District's territory. In order to comply with 807 KAR 5:066 §4 (4), the District had to take advantage of the opportunity to purchase the Switzer site when it did. It should be noted that Forest Hills Subdivision was not a finally approved development for a period of over one and one-half (1½) years after the District purchased the Switzer site and the lot layout could have been changed before the sale of the first lot. The District reviewed at least six (6) other potential sites before it purchased the Switzer site and discussed relocating the site with Mangold over four (4) years before being approached by several of the Forest Hills residents. The only reason the District had not constructed the tank prior to there being homeowners in Forest Hills was the lack of full funding for the project.



Notwithstanding the passage of almost six (6) years from the acquisition of a suitable site (Switzer site) and the expenditure of substantial funds investigating this site, the District was still willing to discuss the matter of relocation with the Complainants in April of 2010. The discussion with these residents then dragged for almost one (1) year before the District determined that it had to move forward. For the Complainants to charge the District with “summarily” rejecting their efforts at finding an alternative site is an outright distortion of the events which occurred. The Complainants proposed three (3) sites to the District. The District thoroughly investigated two (2) of the sites and the Complainants’ refusal to follow through on its offer to the District regarding the third site caused it to be removed from consideration. **Group Exhibit “H”** illustrates the depth of the District’s investigation of the Brown site. This Exhibit outlines the serious problems with the Brown site and supports the District’s due consideration and studied decision to move forward with property already owned and approved for a tank.

- **THE COMPLAINANTS’ STATEMENTS THAT THE DISTRICT ATTEMPTED TO IMPOSE “UNDULY ONEROUS” CONDITIONS IN THE CONSIDERATION OF THE THIRD SITE THEY PROPOSED ARE FALSE.**

After William Bates first approached the District about the use of the Switzer site in April of 2001, he and several other residents returned to the June 2010 meeting with Lloyd McMillen, the owner of a farm adjoining Forest Hills Subdivision to the east. **Exhibit “A”** A discussion ensued with McMillen about the District swapping the Switzer site for a site on his farm. The McMillen site was investigated by the District and the District’s Engineer estimated an additional, approximate cost of \$300,000.00 to the

District's customers to relocate to this site.<sup>8</sup> Presumably due to this increased cost, the Complainants decided to investigate other locations which led to the proposed Brown site. After the Brown site was rejected by the District, the Complainants pursued another site on the McMillen Farm. Notwithstanding the District's Board's decision at its March 2, 2011 meeting to terminate discussion with the Complainants and proceed with the Switzer location, the Association (through Davis) informally approached the District's Chairman days later and stated that it was willing to post a \$250,000.00 letter of credit to encourage the District to change its mind and investigate the third site. The letter from District's counsel (**Exhibit "J"**) was not the District's proposal, but a restatement of Davis's discussion with the Chairman and reciting the \$250,000.00 letter of credit that Davis represented the Association would post in order to persuade the District to alter its course. The District's counsel drafted the March 11, 2011 memorandum of understanding for execution by the Association and transmitted it to Davis. Surprisingly, the District was not contacted by the Association or Bates after the letter was tendered.

• **THE DISTRICT CONSISTENTLY TOOK THE POSITION WITH ALL WHO PROPOSED RELOCATING THE TANK SITE, INCLUDING THE COMPLAINANTS, THAT THE DISTRICT'S CUSTOMERS WOULD NOT ASSUME THE ADDITIONAL COST OF CHANGING THE LOCATION FROM THE SWITZER SITE.**

As with Mangold, the District made it clear to the Complainants from the outset and repeated that the District's customer base would not bear the added cost of relocating the tank site. The Complainants have now changed their tune about being willing to assume the added cost of relocation and want the District's other customers to suffer

---

<sup>8</sup> Most of this cost was caused by the increased distance of the McMillen site from the Switzer site.

solely for the benefit of a few. When presented with the substantial cost (\$300,000.00) of switching to the first McMillen site in August of 2010, they decided to investigate other, potentially less expensive sites. They approached Sue Switzer about moving the site to a different location on her farm. Apparently, this negotiation failed and the Brown site was proposed at the substantially cheaper cost of \$32,925.00. Unfortunately, the Brown site was seriously flawed from a legal standpoint and was too small. Then the Complainants dangled the offer of a \$250,000.00 letter of credit before the District to encourage reconsideration of another McMillen site. When presented with a memorandum of understanding incorporating the letter of credit amount (**Exhibit “J”**), the Complainants resorted to calling public officials and finally to filing this Complaint before the PSC. Not once did the Complainants attempt to discuss the other terms of the memorandum with the District after it was tendered.

• **THE COMPLAINANTS’ ALLEGATIONS ARE UNINFORMED AND “UNREASONABLE”.**

The Complainants allege (Complaint, ¶19) that the District acted unreasonably on April 7, 2010 when it advised them that engineering on the tank was in progress; that the District had no grant; and that the District had made no application for an additional loan to fund the project. The engineer had been procured in 2006 (**Exhibit “L”**) and engineering for the tank was 90% complete by August of 2010 (**Exhibit “F”**). The \$1,000,000.00 grant from the Kentucky State Legislature was awarded in 2008. See District minutes excerpt, dated October 1, 2008, and the *Jessamine Journal* article of March 20, 2008 attached as **Group Exhibit “M”**. The District began pursuing a loan

with USDA-RD five (5) years earlier in 2005. See District minutes excerpt, dated April 20, 2005, attached as **Exhibit “N”**.

The Complainants further allege (Complaint, ¶20) that it was “an unreasonable practice” for the District to execute a grant agreement with the Kentucky Infrastructure Authority (“KIA”) on November 8, 2010, to finance construction of the tank while site selection issues were pending. The overall weakness of the Complaint is perhaps no better illustrated than by this allegation. First, how could it be “unreasonable” for the District to accept funds given to it which do not have to be repaid? Second, the KIA agreement signed in 2010 was merely another step in securing the gift from the Kentucky State Legislature awarded in 2008. KIA is merely the organization that will disburse the 2008 grant. Third, the District’s quest for construction funding of the tank has little to do with the site location issues raised by Complainants. Regardless of the eventual spot where the tank will be constructed, additional funds will be needed to build it. Complainants’ charge that securing the added construction funds for the tank is unreasonable demonstrates the hollowness of their claims and reveals their strategy to delay the District’s progress at complying with Commission regulations.

• **THE DISTRICT IS NOT MOVING FORWARD WITH THE ACQUISITION OF ADDITIONAL FUNDING AND THE DELAY WILL COST THE DISTRICT’S CUSTOMERS MORE MONEY.**

The District is now pursuing additional funding with the Kentucky Rural Water Association (“KRWA”). The District decided to pursue funding through the sale of bonds by KRWA rather than a loan from USDA-RD because it would be less expensive to the District’s customers to do so in the long-term. As a result of the Complainants’ filing

of this action before the PSC, the funding process with KRWA has been placed on hold. Unfortunately for the District's customer base, the interest rates in the bond market have increased thereby making the project more expensive once the process becomes active again.

6. The District denies substantially all of the allegations found in the Complaint.

**WHEREFORE**, the District asks for immediate dismissal of the Complaint; approval of the Switzer site as the location for the tank; and all other relief to which it may appear entitled.



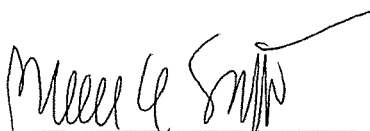
---

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 Defendant**

**CERTIFICATE OF SERVICE:**

The undersigned hereby certifies that a true copy of the foregoing Answer was served on the following by U.S. Mail, first class, postage prepaid, and e-mailing same on May 23, 2011, to:

Robert M. Watt, III  
Monica H. Braun  
300 West Vine Street, Suite 2100  
Lexington, KY 40507  
robert.watt@skofirm.com  
monica.braun@skofirm.com



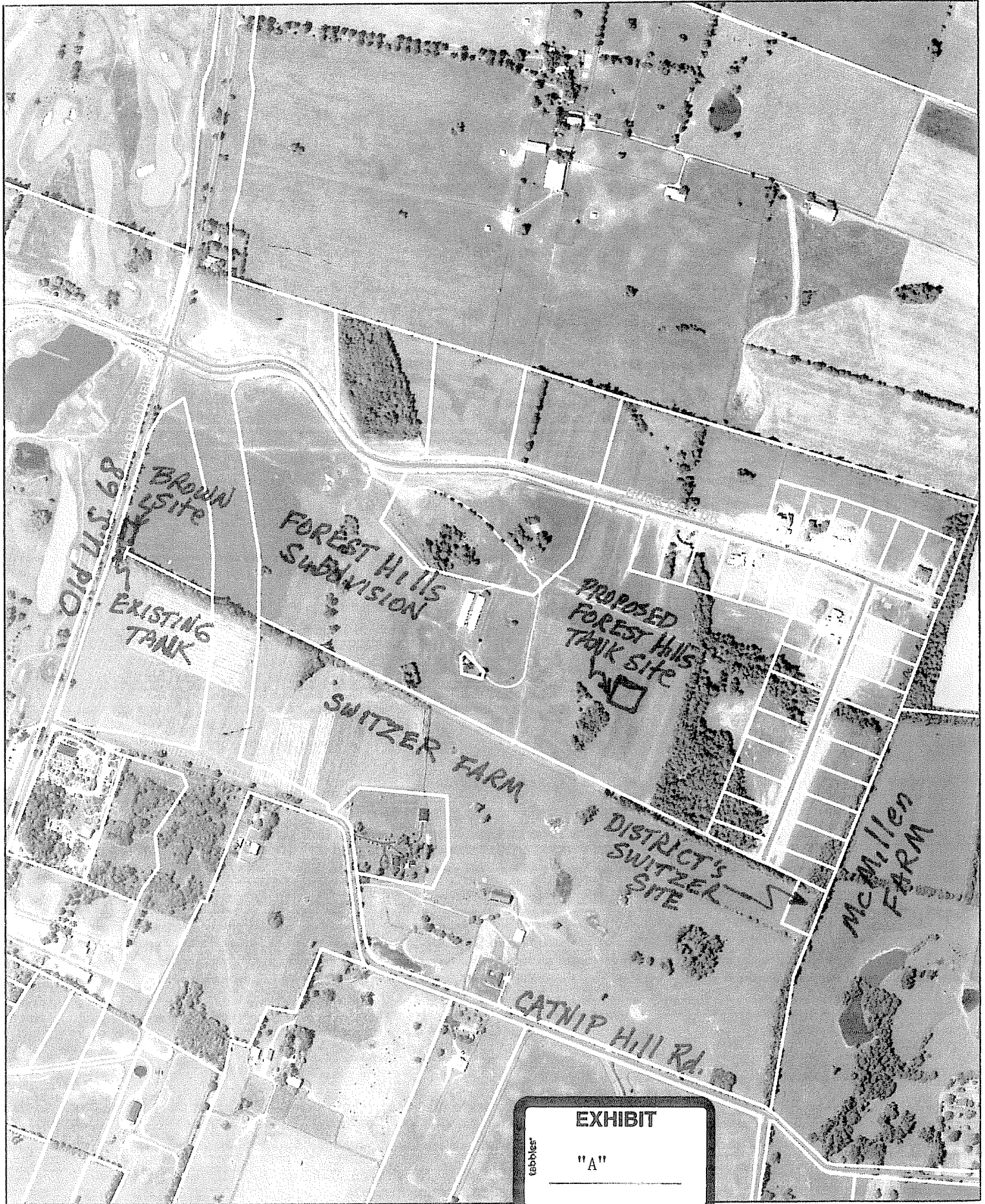
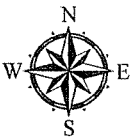
---

Bruce E. Smith

Print Date: 5/23/2011  
1 inch = 630 feet

Jessamine County PVA  
16 N Main Street, Suite 1  
Nicholasville, KY 40356

Maps are to be used  
identification only, NOT  
for conveyance



# Horne Engineering, Inc.

216 SOUTH MAIN STREET • NICHOLASVILLE, KENTUCKY 40356 • (859)885-9441 • FAX (859)885-5160

ENGINEERS • LAND SURVEYORS • PLANNERS  
*email@homeeng.com*

November 11, 2005

Barry Mangold  
Forest Hills Development, LLC  
555 West Fourth Street  
Lexington, KY 40508

Re: Forest Hills Subdivision  
Harrodsburg Road  
Jessamine South Elkhorn Water District

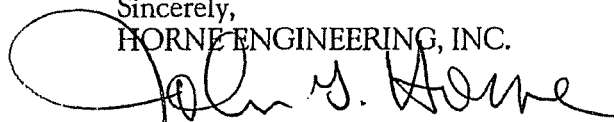
Dear Mr. Mangold:

In the process of reviewing the construction plans for the water distribution system for your subdivision, it came to light that perhaps you were unaware of the Jessamine South Elkhorn Water District plan for construction of an elevated storage tank on adjacent properties. I base this assumption on the fact that the initial submittal of your construction plans did not show the Jessamine South Elkhorn Water District as an adjacent property owner. In fact, the District presently owns an acre of property immediately adjacent to the southeasterly corner of your development.

In the process of your engineer completing the submittals of the construction plans, they have shown the location of this property. My purpose in bringing this to your attention is to alert you to the fact that the District has plans to complete construction of a 1.0 million gallon elevated storage tank on this property in the year of 2006. Consequently, you should apprise all purchasers of these lots that this is planned and will happen. This should help to mitigate the later complaints of the property owners that they were unaware that such was going to occur. The fact that you will be required to show the adjoining property owner on your final plat, and since the property is owned by the Jessamine South Elkhorn Water District, one would assume that any person of normal intelligence would be put on notice that this property would be utilized most likely for an elevated storage tank. However, you probably would want to reinforce this by ample notification in your purchase contracts.

In the meantime, if you have any questions or wish to discuss this matter, please contact me at (859) 885-9441.

Sincerely,  
HORNE ENGINEERING, INC.

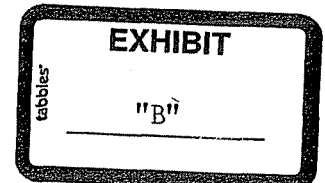


John G. Horne, PE, PLS  
President

JGH/jt

cc: Board of Commissioners  
Bruce E. Smith  
Glenn T. Smith  
Engr/3683  
Engr/3625  
Corr.

Q:\ProjectDir\sewd\WO3683\Mangold\SEWDStorageTank.ltr



*John*

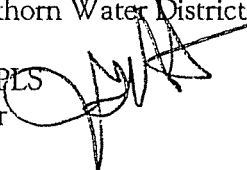
# Horne Engineering, Inc.

216 SOUTH MAIN STREET • NICHOLASVILLE, KENTUCKY 40356 • (859)885-9441 • FAX (859)885-5160

ENGINEERS • LAND SURVEYORS • PLANNERS  
*email@horneeng.com*

## MEMORANDUM

To: Board of Commissioners  
Jessamine South Elkhorn Water District

From: John G. Horne PE, PLS  
Consulting Engineer 

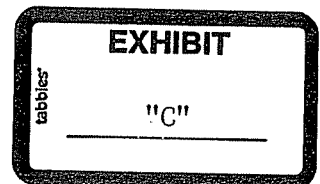
Date: January 3, 2006

Subject: Proposed Relocation of 1 Million Gallon Storage, Requested by Barry Mangold/Forest Hills Development

Subsequent to the December meeting wherein Mr. Mangold requested the consideration of the District as to relocation of the proposed 1 million gallon elevated storage tank on the Switzer property, I have met on several occasions with Mr. Mangold to discuss his request. Subsequent to those meetings, I have obtained a copy of the topographic map of the residual areas of the Forest Hills development on which I have indicated a comparable 1-acre tract that meets the dimensional requirements and the elevation requirements of that of the Switzer tract. Mr. Mangold's engineer/surveyor has staked the location of this tract as well as the footprint of the tank, and Mr. Mangold has visited this layout and has verbally confirmed to me that he is in agreement with the location of the tract.

I relayed to Mr. Mangold that it was my opinion that the Commissioner would not be receptive to a relocation of this tank unless they were presented with a proposition that would assure them of a no net cost. I stated to Mr. Mangold that it was my initial calculation that the District had incurred a cost of approximately \$15,000, for engineering, subsurface exploration, surveying and platting, legal and administrative costs for the current Switzer tract. Consequently, I felt that before they could consider accepting a gift of a 1-acre tract that they would also have to be assured of reimbursement of these costs. Mr. Mangold stated to me that he was in agreement with this and he would be willing to reimburse the District for the total cost that they had incurred.

Additionally, I conveyed to Mr. Mangold that I felt the Commission would want to be assured that the tract was usable as an elevated tank location site and consequently that subsurface exploration would have to be done for confirmation. I suggest that since Qore Engineering was his engineer for the Forest Hills project and that they had completed the subsurface work on the Switzer tract that perhaps he would want to retain Qore Engineering to conduct this subsurface exploration on behalf of the District. Mr. Mangold concurred in this suggestion.





In conclusion, I suggested that since he had indicated his complete agreement to affect the transfer of the construction the elevated tank to a donated site on the residual area of the Forest Hills Subdivision, and since Mr. Mangold indicated that he would be unable to attend the January meeting due to being out of the country, that if the Commission was in favor of this situation that they instruct their attorney to draw up an agreement which could be executed and presented at the February meeting. Mr. Mangold requested that should the Commission concur in this matter that he would be happy to execute the agreement and be present at the February meeting for confirmation.

JGH/jt

cc: Barry Mangold  
Bruce E. Smith  
Glenn T. Smith  
Engr/3569  
Engr/3683  
Engr/3710  
Cort.

Q:\ProjectDir\sewd\WO3569\SEWDCommRelocateMangold.mem

Brice

# Horne Engineering, Inc.

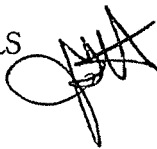
216 SOUTH MAIN STREET • NICHOLASVILLE, KENTUCKY 40356 • (859)885-9441 • FAX (859)885-5160

ENGINEERS • LAND SURVEYORS • PLANNERS  
email@horneeng.com

## MEMORANDUM

To: Board of Commissioners  
Jessamine South Elkhorn Water District

From: John G. Horne PE, PLS  
Consulting Engineer



Date: July 28, 2006

Subject: Agenda Items, August 2, 2006 WATER MEETING

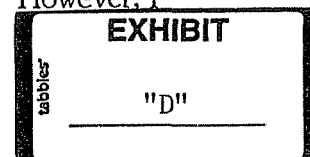
I assume fortunately for you, as well as myself, I will not be able to attend the August 2, 2006 meeting of the Jessamine South Elkhorn Water District. However, there are some issues that relate to our participation and I thought perhaps that it would be prudent and helpful if I were to reduce some comments to writing and furnish those to you before the meeting date. Therefore, following are some comments and discussion regarding some of the agenda items on the Water portion of the meeting.

### Old Business, #2 - Barry Mangold

I spoke with Barry Mangold a couple of weeks ago and informed him that the Commission was of the opinion that he needed to finalize and make a decision as to how he intends to proceed on his request to relocate the area for the water storage tank. Mr. Mangold responded that he had taken back the lots in question and had resold the lots at a reduced price. I read between the lines that he was suggesting that JSEWD was to blame because of his failure to originally inform the first buyer that there was existing land owned by JSEWD. He further stated that at this time, he had no intention of proceeding with the exchange of the property. I informed him that he needed to be at the meeting to discuss this with the Commission and that it was the Commission's position that even if he deferred not to go through with the land exchange, that the Commission still expected a reimbursement of their full expense up to this point.

Mr. Mangold pointed out that he was not aware that an access easement was placed on the final plat, which provide Jessamine South Elkhorn Water District to access their tract from the county road which he was constructing. Be that as it may, he signed the plat and it is a plat of record. My recommendation and position is that it is a Plat of Record and for him to remove that easement would require the consent of and approval of the Jessamine South Elkhorn Water District. However, I do not recommend that you agree to this release.

However, if you do consider that, please be advised that access to the property could still be gained by obtaining an easement from Sue Switzer to extend from the terminus of the county road that stubs into her property to the Jessamine South Elkhorn Water District property. However, I



would caution you not to consider this avenue in view of the problems that we have had in the past of getting appropriate agreements with Ms. Switzer.

#### **New Business, #1 - Water Meter vs. Electric Transformer Tariff**

I had forwarded a letter to Bruce Smith with a suggestion of wording for him to include in the tariff that all water meters be installed on a lot line opposite of where the electric transformer was installed.

#### **New Business, #2 - BGADD Subcommittee Fayette vs. Garrard**

Enclosed with this explanation is a proposed draft of a letter from our Chairman, addressed to Don Hassall of BGADD regarding the subcommittees which he proposes to install. Based on my explanation of the 409 Management Council meeting you would recall that there was a request by Mr. Hassall to include subcommittees for the purposes of planning future water projects. The subcommittee that he proposed would put us in with a grouping of Fayette, Madison, Scott and other areas north of here. I earnestly believe that it would be in our best interest to be grouped with our neighbors to the south, which I believe would give us a greater say in the conclusions of that particular subcommittee that we were assigned to. For that reason, I would ask your consideration and a possible motion of approval to direct Chairman Strong to sign the letter and forward same to Mr. Hassall at BGADD.

#### **New Business, #3 - Amend Southeast Contract for Surveying Extra**

In your packet, you received a request from Horne Engineering, Inc. to amend the existing contract to include additional surveying services which are required to define and delineate cross-country easements that are required to serve certain portions of the project area. We have found in our initial design of these areas that there are certain areas of the remaining service area that are extremely difficult to access and provide service. However, we believe that the most efficient way to approach this is through cross-country connections that do not follow the existing roadways that traverse over the palisades of the Kentucky River area.

But in order to do this, it requires that we hub out and physically survey each foot of this proposed route. Not only to provide an accurate legal description in order to acquire the easement, but also to flag up and identify on the ground for the purposes of the bidding contractors as to where the lines will be located. The reference memorandum outlines the areas requiring this additional service and the cost involved in same.

#### **DEBBIE DUNN REQUEST**

Not included on your agenda because I was not certain whether or not Ms. Dunn would be at the meeting or not, is a verbal request from Ms. Debbie Dunn who is building a home in Crosswoods, Unit 3 and requests connection of her residential sewer system to the sewer system proposed to be constructed by Tom Kelley and the Clays Crossing project. Ms. Dunn has a lot that backs up to the western edge of the proposed Clays Crossing project and she is currently in the process of

constructing her residence. I explained to Ms. Dunn the process by which connection could be approved under the emergency provision of the Interlocal Agreement. This is not unlike that which was approved for the residents on the corner of Keats Drive and Windhaven Drive, in Windhaven Subdivision.

However, I did point out to her that because of the timing of the construction and acceptance of the sewer system that Mr. Kelley proposes and based on her projected schedule, it may require that for some period of time she may be required to utilize her septic tank as a holding tank and pump the effluent. This could conceivably be as long as a year. Also, I cannot visualize any physical method that would work in this type of connection with the exception of pumping the septic tank effluent to a connection point in a manhole. This, in itself, will require some means of a separate agreement between her and the District as to he indemnifying the District regarding maintaining that discharge line from her property across the adjoining properties.

Regardless, although there are a number of problems associated with this, it is the type of problem that I believe the District is going to be faced with and is the type of problems that the Judge and the Health Department would expect the District to absorb and solve.

JGH/jt

cc: Bruce E. Smith  
Glenn T. Smith  
Engr/3710  
Corr.

## Jessamine South Elkhorn Water District

107 South Main Street, P.O. Box 731

Nicholasville, Kentucky 40356

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

July 26, 2006

Don R. Hassall  
Bluegrass Area Development  
Assistant Executive Director  
699 Perimeter Drive  
Lexington, KY 40517

Dear Mr. Hassall:

The Board of Commissioners of the Jessamine South Elkhorn Water District have reviewed and considered your recommendation of the planning subgroups proposed at the July 14, 2006 - 409 Council meeting, wherein you proposed that Jessamine County be grouped with Fayette, Scott, Clark and Madison.

After considerable study and reflection, we believe that our socioeconomic characteristics and infrastructure needs are more closely and similarly aligned with our neighbors to the south, Boyle, Garrard and Lincoln, and do hereby respectfully request that Jessamine County be transferred to this group.

We are, by copy of this letter, expressing our position to Wm. Neal Cassity, our County Judge/Executive.

Sincerely,  
JESSAMINE SOUTH ELKHORN WATER DISTRICT

L. Nick Strong, Chairman

LNS/jt

cc. Hon. Wm. Neal Cassity

B.Smith

# Horne Engineering, Inc.

216 SOUTH MAIN STREET • NICHOLASVILLE, KENTUCKY 40356 • (859)885-9441 • FAX (859)885-5160

ENGINEERS • LAND SURVEYORS • PLANNERS  
email@horneeng.com

## MEMORANDUM

To: Board of Commissioners  
Jessamine South Elkhorn Water District

From: John G. Horne, PE, PLS  
Consulting Engineer

Date: August 5, 2010

Subject: Financing Sources, 1.0 MG Elevated Storage Tank, Catnip Hill Road, WX 21113016

Due to the fact that Jessamine-South Elkhorn Water District is a mature and stable organization, this opens up numerous other sources of financing which would not be available to young start-up organizations. Presently, I am getting more detailed information on some of these sources and will have them ready for distribution at the Wednesday meeting.

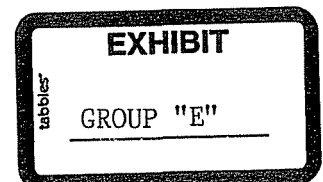
The sources that are loans, require that sales revenues be pledged for the loan repayment. The current practice of co-mingling sewer and water funds and records is rapidly becoming a deterrent to District expansion.

Following is a listing of several of these sources along with a brief explanation and description of funds.

**LEGISLATIVE GRANTS** - The current funding of one-million dollars is from a legislative grant. These grants can only be given by action of adoption of a State Budget. Which occurred this past spring and did not include any grants. There is a possibility that the interim legislative session which will occur in January 2011 can act to amend the budget and include these grants. As said, this is possible but political, and with the current timbre, it might be difficult.

**KENTUCKY RURAL WATER FINANCE CORPORATION (KRWFC)** - This is an arm of the Kentucky Rural Water Association, of which Jessamine-South Elkhorn Water District is a member, that is organized and empowered to package together and sell issues on the commercial bond market. The interest rate is dependent on the market and is now running at about 4%. The needed \$1.5 million will qualify for an individual issue and we are informed that timing of application to available funds could be 60-120 days.

**RURAL DEVELOPMENT (RD)** - I have been informed by John Johnson that due to the age of the District's application and recent RD procedural changes, that the district will have to reapply if they wish to pursue this source of financing. As with all bond issues, the interest is market driven and currently is around 4%. However, there is no variability on length which is set at 40 years. Approval and availability of funds are dependent on the Federal Budget (which is currently in limbo) and



funding cycle which begins October 1, 2010. Application for funds should be in prior to this date. He indicated that the current request for funds will probably meet or exceed availability.

**ROFF SINCLAIRE & ASSOCIATES** - This is a commercial bonding company that has established two (2) methods of bonding that are applicable to Water Districts. They are (A) CADD Program, and (B) Kentucky Local Government Pool Program. The issues can be individually driven and rated. Consequently, the interest rate will be determined by the fiscal health of the agency receiving the funds. A more detailed explanation is given by furnished material under separate cover.

**KENTUCKY INFRASTRUCTURE AUTHORITY (KIA)** - The primary source of revenue from this agency is through the State Revolving Fund (SRF) which is the same fund that is financing the Keene project. This fund has three (3) available interest rates, 1%, 2% and 3%. Unfortunately, the District would probably only qualify for the 3% which is less than market. However, approval for these funds are dependent on statewide prioritization that only occurs once annually in May. The call for projects is forthcoming. Therefore, possible funds under this program would be 16 - 24 months away.

**FEDERAL EARMARK** - The District is familiar with this, insofar as, this was the basic funding grant that initiated the North Jessamine Trailer Park project. These grant funds are generated by a specific line item in the Federal Budget that is entered by a Congressman or Senator. There are two strong shortfalls to the method. One, there is no federal budget, and it may be another year before there is one. And two, these earmarks are usually requested and vetted by the annual Washington, D.C. Fly-In that occurs before fall recess. Also, requests are arrived at by consensus of the Central Kentucky area. This may be something for the future, but probably not now.

**TOWN SQUARE BANK** - There is always the route of private lending institutions such as community banks. In the past, there have been some government-backed, private bank loans, but currently those programs are not available. The current method would not be unlike a "car loan," that is repayment with something held as collateral. Mr. Cobb reports that preliminary positioning indicates that a loan for 15-years at and an interest rate of 5 ½% might be possible. Although the terms are not commensurate with public agencies, it does offer the possibility of expedited and local service.

In conclusion, there are a number of sources of funds availability and it appears that the District's selection would rest on that one that best meets their program and timeline. Because of the uncertain situation pertaining to legislative grants, it is probably wise to elect a parallel track if legislative grants is selected.

It is becoming more apparent from preliminary discussions with funding agencies representatives, that the sewer and water should be separated into standalone and completely independent forums. I suspect this will become more apparent when application is made to PSC for a rate increase.

JGH/jt

cc: Glenn T. Smith  
Bruce E. Smith  
Engr/3569  
Engr/3891  
Corr.

Q:\ProjectDir\sewd\WO3569\SEWD-BOC,FundingSources.mem

# Horne Engineering, Inc.

216 SOUTH MAIN STREET • NICHOLASVILLE, KENTUCKY 40356 • (859)885-9441 • FAX (859)885-5160

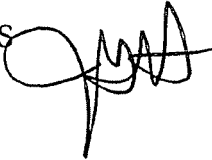
---

ENGINEERS • LAND SURVEYORS • PLANNERS  
*email@horneeng.com*

## MEMORANDUM

To: Board of Commissioners  
Jessamine South Elkhorn Water District

From: John G. Horne, PE, PLS  
Consulting Engineer



Date: August 5, 2010

Subject: Application Process and Funding Specifications for Kentucky Rural Water Finance Corporation (KRWFC)

---

Enclosed please find some support materials furnished by KRWFC and correspondence from Ms. Kristen Millard of Morgan Keegan & Co., Inc., who are the program administrator and underwriter. This information is forwarded for your review with the hope that it will afford you a greater understanding of the upcoming required process.

From the apparent simplicity of the application process, it appears to be the fastest and simplest method of funding. It does not, however, give the protection of mandatory PSC approval as is associated with RD projects. However, historically PSC has usually expedited the Certificate of Convenience (COC) and rate increases associated with any type of "bond" project, be it RD or otherwise.

JGH/jt  
enc.

cc: Glenn T. Smith  
Bruce E. Smith  
Engr/3891  
Engr/3893  
Corr.



**Thacker, Judith**

---

**From:** Millard, Kristen [kristen.millard@morgankeegan.com]  
**Sent:** Tuesday, July 13, 2010 4:32 PM  
**To:** john@horneeng.com  
**Cc:** Lange Andy  
**Subject:** KY Rural Water's lending program  
**Attachments:** Flex term flyer.pdf; Jessamine SE Summary.xlsx; Jessamine SE WD 15.XLS; Jessamine SE WD 20 Year.XLS; Jessamine SE WD 25 Year.XLS; Kristen Millard (kristen.millard@morgankeegan.com).vcf

Hi John,

I left you a message on Friday, but wanted to follow up by email as well. Andy Lange at the Kentucky Rural Water Association asked me to give you a call about the long term lending program that he spoke with you about on Friday. We have another bond issue coming up in mid-August, which is scheduled to close in mid-September. However, it is taking about 45 days or so for PSC approval (they have to approve the financing as well as the project).

I've attached some financial schedules for what a loan through KY Rural Water's Flex Term Program might look like at various terms (15, 20 & 25 years) as well as a summary of the important comparables between the three (if you'd like to see a shorter or longer term, just let me know). The application is fairly simple, but the one constraint is that a borrower through the program has to have a 1.20 times debt service coverage (for every \$100k of debt service, there have to be \$120k of available revenues to cover it).

Please feel free to give me a call if you have any questions or if you would like more information on KY Rural Water's program!

Kristen Millard  
Morgan Keegan & Co. Inc.  
489 East Main Street  
Lexington, KY 40507  
(859) 232-8249 (T)  
(859) 232-8255 (F)

---

Morgan Keegan & Company Inc. DOES NOT ACCEPT ORDERS AND/OR INSTRUCTIONS REGARDING YOUR ACCOUNT BY E-MAIL. Transactional details do not supersede normal trade confirmations or statements. The information contained in this transmission is privileged and confidential. It is intended for the use of the individual or entity named above. The information contained herein is based on sources we believe reliable but is not considered all-inclusive. Opinions are our current opinions only and are subject to change without notice. Offerings are subject to prior sale and/or change in price. Prices, quotes, rates and yields are subject to change without notice. Morgan Keegan & Company Inc., member FINRA and SIPC, is a registered broker-dealer subsidiary of Regions Financial Corporation. Investments are NOT FDIC INSURED, NOT BANK GUARANTEED and MAY LOSE VALUE. Morgan Keegan & Company Inc. reserves the right to monitor all electronic correspondence.

7/13/2010

**Jessamine South Elkhorn Water District  
Summary of Schedules**

	<u>Fifteen Year Term</u>	<u>Twenty Year Term</u>	<u>Twenty-Five Year Term</u>
<b>Par Amount</b>	1,560,000.00 *	1,565,000.00	1,565,000.00
<b>Total Principal and Interest</b>	\$2,031,318.31	\$2,269,101.77	\$2,550,119.23
<b>Average Annual Debt Service</b>	135,421.22	113,455.09	102,004.77
<b>All -in Cost</b>	4.1220566%	4.3698095%	4.6024079%
<b>Average Coupon</b>	3.55828%	3.89642%	4.23339%

\* Due to the premium/discount structure of shorter deals. Makes no difference in the total cost.

**\$1,560,000**

*Jessamine-South Elkhorn Water District*  
*Potential Refunding through the Kentucky Rural Water Finance Corporation*  
*Fifteen Year Term*

**Net Debt Service Schedule**

Date	Principal	Coupon	Interest	Total P+I	Expenses	Net New D/S
06/30/2011	-	-	20,718.24	20,718.24	-	20,718.24
06/30/2012	85,000.00	2.200%	49,122.50	134,122.50	450.00	134,572.50
06/30/2013	85,000.00	2.200%	47,252.50	132,252.50	450.00	132,702.50
06/30/2014	90,000.00	2.200%	45,327.50	135,327.50	450.00	135,777.50
06/30/2015	90,000.00	2.200%	43,347.50	133,347.50	450.00	133,797.50
06/30/2016	95,000.00	2.325%	41,253.13	136,253.13	450.00	136,703.13
06/30/2017	95,000.00	2.700%	38,866.26	133,866.26	450.00	134,316.26
06/30/2018	100,000.00	3.200%	35,983.76	135,983.76	450.00	136,433.76
06/30/2019	100,000.00	3.200%	32,783.76	132,783.76	450.00	133,233.76
06/30/2020	105,000.00	3.450%	29,372.51	134,372.51	450.00	134,822.51
06/30/2021	110,000.00	3.575%	25,595.01	135,595.01	450.00	136,045.01
06/30/2022	115,000.00	3.700%	21,501.26	136,501.26	450.00	136,951.26
06/30/2023	115,000.00	3.825%	17,174.38	132,174.38	450.00	132,624.38
06/30/2024	120,000.00	3.950%	12,605.00	132,605.00	450.00	133,055.00
06/30/2025	125,000.00	3.950%	7,766.25	132,766.25	450.00	133,216.25
06/30/2026	130,000.00	4.075%	2,648.75	132,648.75	450.00	133,098.75
<b>Total</b>	<b>\$1,560,000.00</b>	<b>-</b>	<b>\$471,318.31</b>	<b>\$2,031,318.31</b>	<b>\$6,750.00</b>	<b>\$2,038,068.31</b>

**\$1,565,000**

*Jessamine South Elkhorn Water District  
Potential Refunding through the Kentucky Rural Water Finance Corporation  
Twenty Five Year Term*

**Sources & Uses**

Dated 09/02/2010 | Delivered 09/02/2010

**Sources Of Funds**

Par Amount of Bonds..... \$1,565,000.00

**Total Sources..... \$1,565,000.00**

**Uses Of Funds**

Original Issue Discount (OID)..... 14,492.65

Total Underwriter's Discount (1.250%)..... 19,562.50

Costs of Issuance..... 29,105.00

Deposit to Project Construction Fund..... 1,500,000.00

Rounding Amount..... 1,839.85

**Total Uses..... \$1,565,000.00**



**Kentucky Rural Water  
Finance Corporation**  
*Flexible Term Finance Program*

# How much will it cost to complete your next project?

## The Flexible Term Finance Program provides low-cost financing to Kentucky utility systems!

### Benefits of the Flexible Term Finance Program

- Access to capital for small and medium sized utility systems
- Minimum loan sizes starting at \$100,000
- Tax-exempt fixed interest rates
- Flexible loan terms from 1 to 30 years
- Program rating of "AA-" from Standard & Poor's ("AAA" with insurance)
- No minimum customer base requirement
- No participant cross liability
- Debt Service Reserve not required (program level reserve maintained)
- Bonds secured by utility revenues
- Annual principal, semi-annual interest with monthly sinking fund requirement
- Quick and simple application process, no application fee
- Project funding in 60-120 days

### Simple steps to apply for funding

- Download application at [www.krwa.org](http://www.krwa.org) or call a finance team member listed on the reverse page
- Complete and authorize application indicating desire to participate in program
- Return completed application to the Kentucky Rural Water Finance Corporation at the address listed on the reverse page
- Preliminary credit review conducted by Morgan Keegan and legal review by Rubin & Hays
- Loan authorizing resolution executed by participant
- Upon financing approval, borrower is assigned a non-public shadow rating by Standard & Poor's
- Loan funding within 60-120 days
- Borrower receives loan proceeds on or shortly after funding date

*See reverse side for more details.*

---

*Funding derived through the issuance of tax-exempt bonds.*

---



---

*KRWFC has issued over \$400,000,000 in bonds to finance infrastructure projects.*

---




---

*The bonds are issued on a fixed rate basis with attractive features and flexible terms.*

---



---

*Quick and simple access to loan funds.*

---



Program Sponsor & Marketing Agent  
**Kentucky Rural Water Finance Corporation**  
P. O. Box 1424  
Bowling Green, KY 42102-1424  
Contact: Gary Larimore  
270.843.2291  
g.larimore@krwa.org  
Contact: Andy Lange  
270.843.2291  
a.lange@krwa.org

## Morgan Keegan

Morgan Keegan & Company, Inc.  
Member, Federal Reserve System

Program Administrator & Underwriter  
**Morgan Keegan & Company, Inc.**  
489 East Main Street  
Lexington, KY 40507  
Contact: Kristen Millard  
859.232.8249  
kristen.millard@morgankeegan.com  
Contact: Bob Pennington  
859.232.8211  
bob.pennington@morgankeegan.com

## Rubin & Hays

Program Bond Counsel  
**Rubin & Hays**  
Contact: Charles Musson  
502.569.7525  
csmusson@rubinhays.com  
Contact: Randy Jones  
502.569.7534  
wrjones@rubinhays.com

## REGIONS

Program Trustee  
**Regions Bank**  
Contact: Wallace Duke  
615.770.4359  
wallace.duke@regions.com

## Key Features of the Flexible Term Finance Program

### Eligible Participants:

Government created or structured utility systems, to include cities, counties and water districts.

### Eligible Projects:

Program loans include refundings and financings for a wide range of projects to include water, stormwater, wastewater, natural gas, infrastructure improvement, vehicle/equipment purchase, and various other types of projects.

### Loan Type:

Tax exempt, long or short term fixed rate

### Interest Rates:

Interest rates are market determined and based on an "AA-" S&P underlying rating and, if economically advantageous, with "AAA" rated bond insurance. Please check with Morgan Keegan or the Kentucky Rural Water Finance Corporation for a rate estimate or finance plan.

### Loan Term, Amortization and Prepayment:

Maturity up to 30 years with a 10 year par call for early repayment. Loan structures require annual principal and semi-annual interest with monthly sinking fund requirements. Capitalized interest and deferred principal payments are permitted based on credit and the construction project.

### Security and Operating Covenants:

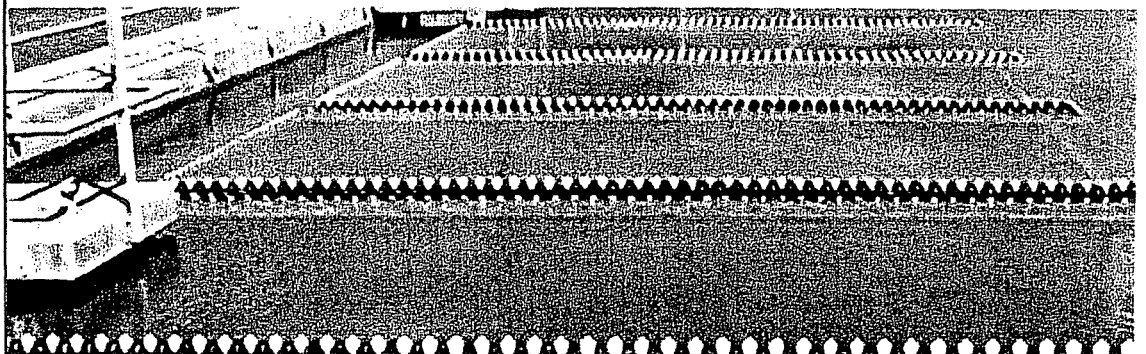
The basic security of the loan is a parity loan obligation secured by utility revenues. Basic operating covenants require a 1.20x debt coverage ratio or higher.

### Documentation:

Streamlined and efficient application and loan documentation process. The loan agreement is prepared by the program bond counsel and is executed by the borrower.

### Closing Costs:

Borrower may fund closing costs from loan proceeds.



# Horne Engineering, Inc.

216 SOUTH MAIN STREET • NICHOLASVILLE, KENTUCKY 40356 • (859)885-9441 • FAX (859)885-5160

---

ENGINEERS • LAND SURVEYORS • PLANNERS  
*email@horneeng.com*

## MEMORANDUM

To: Board of Commissioners  
Jessamine South Elkhorn Water District

From: John G. Horne, PE, PLS  
Consulting Engineer



Date: August 5, 2010

Subject: Rural Development (RD) Application and Project Checklist for Requested Funding

---

Enclosed is a copy of the SF-424 form for application for Federal Assistance. This is a fairly generic and simple form that applies to federal funding requests. However, once an application for funding is accepted and prior to approval of funding, the RUS Bulletin 1780-6 Processing Checklist kicks in.

This checklist has 143 items of which the District is responsible to satisfy 77, or more than ½ of these items. Time wise, it is usually 12-18 months from inception to funding.

RD's current interpretation is that the District's current application must be reapplied for, therefore, putting it in the 12-18 month category which makes timing a critical issue for this agency availability.

JGH/jt  
enc.

cc: Glenn T. Smith  
Bruce E. Smith  
Engr/3569  
Engr/3891  
Corr.

Q:\ProjectDir\jsewd\WO3569\JSEWD-BOC,RD-App&Checklist.mem

G. Smith

# Horne Engineering, Inc.

216 SOUTH MAIN STREET • NICHOLASVILLE, KENTUCKY 40356 • (859)885-9441 • FAX (859)885-5160

ENGINEERS • LAND SURVEYORS • PLANNERS  
email@horneeng.com

## MEMORANDUM

To: Board of Commissioners  
Jessamine South Elkhorn Water District

From: John G. Horne, PE, PLS  
Consulting Engineer



Date: August 6, 2010

Subject: Proposed Relocation of 1.0 MG Catnip Hill Elevated Tank and Construction Scheduling

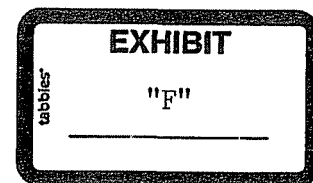
The purpose of this memo is to summarize the current status of the Catnip Hill tank project with the anticipated hope that a final decision as to direction and scheduling of construction may be concluded.

Presently, we are about 90% complete on our design of the Catnip Hill elevated tank at its original site location on the Switzer property. However, for the past several weeks, we have held work in abeyance due to the ongoing negotiation and uncertainty. Since last month's meeting, there have been some additional rumblings of which I believe you need to be apprized. Also, the question of funding may have some bearing on your decision of scheduling.

Tank Relocation - I have been informed by Judge Cassity that the Forest Hill group had met with him and apprized him that Representative Damron was going to obtain the additional \$100,000 needed to relocate the tank. Subsequently, I contacted Bob and he stated that he did not have any problem with booting the needed additional funding of another \$100,000. However, this would be dependent upon his being able to obtain legislative grants in the upcoming January 2011 session. I cautioned Bob that the \$100,000 being batted around was an "off the wall" guess and probably not realistic. I further informed him that I thought the District would arrive at a realistic estimate of cost to be available if this proposal proceeds.

Funding - Under separate cover, you have received a discourse and information relative to the funding options available for this project. With fear of prejudicing your decision, it appears that the most obvious option for funding would be the legislative grant which would include the additional cost of relocation. This cost will be discussed in a subsequent paragraph.

However, the awarding of legislative grants is not a certainty, and it appears that if the District wishes to pursue relocation, then the extra cost is going to have to be indemnified by the Forest Hill group or their designee.





Relocation Cost - Enclosed is a location sketch of what we understand to be the proposed site for the relocated tank. Based on this, we have generated an estimate of the construction cost relative to relocating to the alternate site (that summary is attached to the sketch). Following is a summary of these costs:

Estimated Cost of Relocation Catnip Hill Elevated Tank	
Task	Estimated Cost
Geotechnical Survey	\$ 7,000
Electrical Extension	\$ 5,000
Legal/Survey, Platting & Transfer	\$ 13,000
Construction Cost	\$ 225,000
Engineer Redesign	\$ 50,000
ESTIMATED TOTAL	<u>\$ 300,000</u>

JGH/jt

enc

cc w/enc: Glenn T. Smith

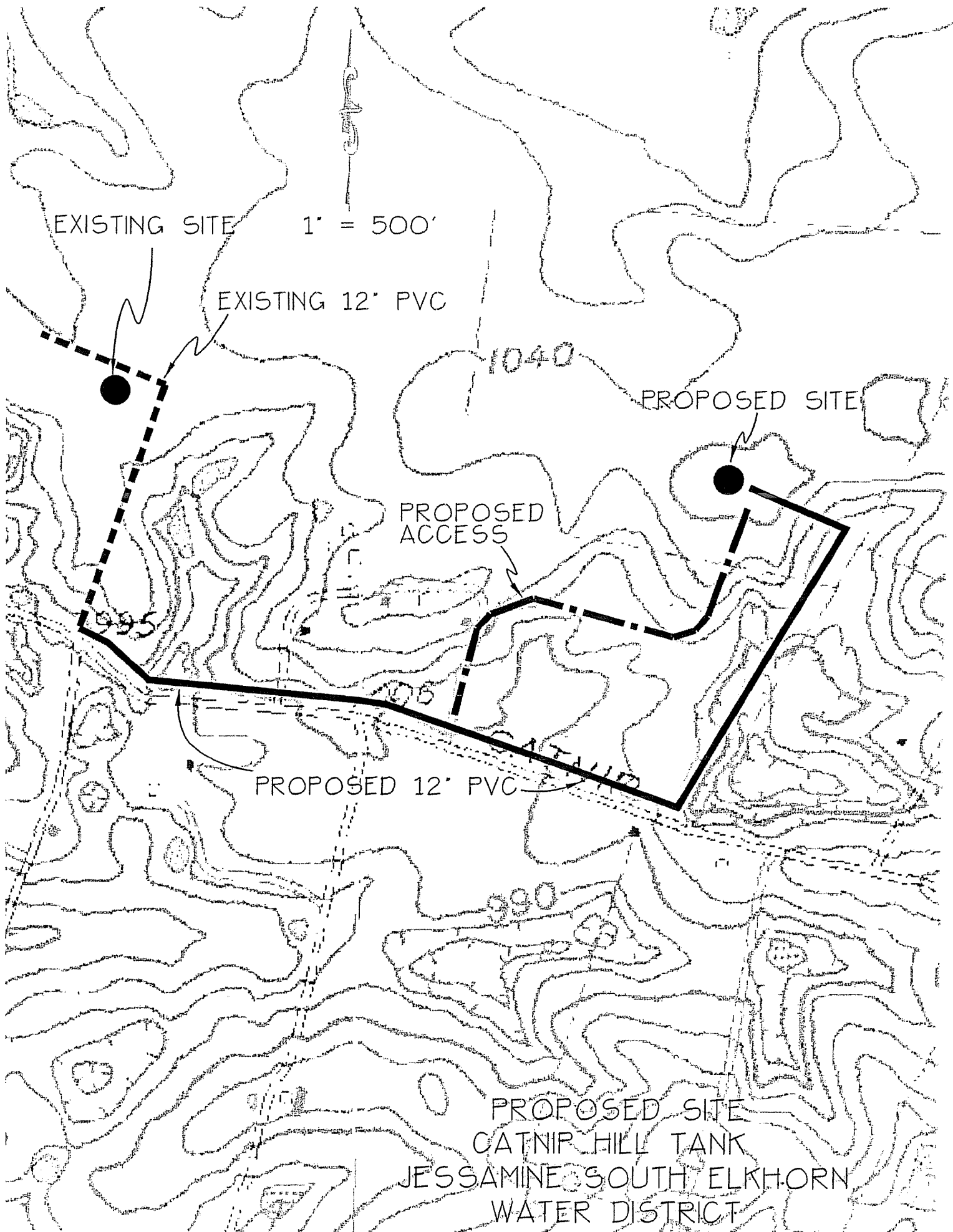
Bruce E. Smith

Engr/3891

Engr/3893

Corr.

Q:\ProjectDir\sewd\WO3569\JSEWD-BOC,ProposedRelocationOfTankSite.mem



EXISTING SITE

1" = 500'

EXISTING 12" PVC

PROPOSED SITE

PROPOSED ACCESS

PROPOSED 12" PVC

PROPOSED SITE  
CATNIP HILL TANK  
JESSAMINE SOUTH ELKHORN  
WATER DISTRICT

**ESTIMATED CONSTRUCTION COST  
CATNIP TANK RELOCATION**

Item	Quantity	Unit	Unit Cost	Cost
12" PVC	5000	LF	\$30	\$150,000
6" PVC	500	LF	\$20	\$10,000
12" Gate Valve	5	Ea	\$1,500	\$7,500
6" Gate Valve	4	Ea	\$800	\$3,200
Road Bore	80	LF	\$200	\$16,000
Service Relocation	1	Ea	\$850	\$850
Fire Hydrant Assembly	2	Ea	\$2,500	\$5,000
Gravel Access/Pipe	2500	LF	\$5	\$12,500
Tie-in	3	Ea	\$2,500	\$7,500
			Total	\$212,550
			Contingency @ 5.8%	\$12,450
<b>TOTAL ESTIMATED COST</b>				<b>\$225,000</b>

January 5, 2011

Jessamine South Elkhorn Water District  
802 South Main Street  
Nicholasville, KY 40356

Gentlemen:

This is to advise you that Forest Hills Owners Association requests the Jessamine South Elkhorn Water District to locate its new proposed water storage tank on the property of Mr. and Mrs. Ron Brown which fronts on Old U. S. Highway and abuts your existing water tower property. If you are inclined to do this, it is our intent to pay the purchase price for the Browns in the amount of \$65,000.00. As part of the condition of this payment, is that you would transfer to our Association the acre of ground located on the South side of property of Forest Hills Subdivision near Chinkapin Drive, that you presently acquired from Sue Switzer. This letter of intent shall remain open for a period of ninety (90) days from the date of this letter. Should you wish to contact us or discuss any details of this proposal, we would be happy to meet with you at any time.

Very truly yours,

*W. H. Bates, Pres.*

Forest Hills Owners Association

**EXHIBIT**

GROUP "G"

tabbles

January 5, 2011

Jessamine South Elkhorn Water District  
802 South Main Street  
Nicholasville, KY 40356

Gentlemen:

This is to advise you that the undersigned do hereby give their intent to sell to you an acre of land situated on the east side of Old U. S. 68 which would be adjacent to the north side of your existing water tower site, which is located just north of the Catnip Hill Pike with the lot be of the identical depth of your existing water tank site and with said width running north and parallel with U. S. 68 to include one acre of land. It is our understanding that you would use this property for additional water tower site. It would be our intention to sell this property for \$65,000.00. This letter of intent shall remain open for a period three (3) months of the date of this letter. It is understood that you and/or your agents may enter this property for the purpose of determining the feasibility of the placement of the water tower with the only reservation that you restore to its present condition.

Very truly yours,



Ronald W. Brown

Jane Hunter Brown

Bruce Smith

# Horne Engineering, Inc.

216 SOUTH MAIN STREET • NICHOLASVILLE, KENTUCKY 40356 • (859)885-9441 • FAX (859)885-5160

ENGINEERS • LAND SURVEYORS • PLANNERS  
email@horneeng.com

## MEMORANDUM

To: Board of Commissioners  
Jessamine South Elkhorn Water District

From: John G. Horne, PE, PLS  
Consulting Engineer

Date: January 24, 2011

Subject: Catnip Elevated Tank Bid Date and Site Relocation

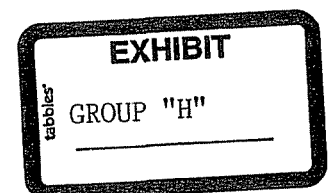
Our original schedule for this project was to receive construction bids this week. With the change from KRWA to RD financing, this schedule was bumped ahead several months. However, we are quite optimistic that we can expedite the RD application process and still meet a relatively short bid schedule. However, meeting this schedule has become more exacting due to the continued efforts of some of the residents of Forest hills, as regards their efforts to change the tank location.

Subsequent to the January meeting and your instructions, this office initiated the process to determine feasibility and cost differential to change the proposed tank relocation from the District's currently owned lot to one proposed by Mr. Bates, i.e., a lot to be conveyed by the Brown's.

A part of that review process was to review the existing deed(s) and plat(s) to ascertain platting requirements for the proposed lot. From the start of the review, there were issues and deficiencies identified, and the further the review, the worse they became. Actually, I cannot recall any other situation that has as many major survey and title problems associated with a Planning Commission approved subdivision. I still cannot explain or understand how this got through the process; regardless, it did.

Bruce and I have met on several occasions to review and discuss the question of clear title to the lot proposed by Mr. Bates and it is our consensus opinion that he cannot certify clear title under the current situation. This is not to say that it is not possible to clear title, but under the current situation, it does not appear feasible nor practical. The caveat being, under RD application requirements, he MUST certify clear title before the project can be bid.

I have forwarded under separate cover an estimated cost summary relative to additional costs of relocation, while not exorbitant are substantial. Another stumbling block in the proposed process is the proposal of Mr. Bates that the District's lot be conveyed to the Forest Hill HOA by consolidation to property they supposedly own, which in my opinion cannot meet the regulations of Jessamine County.



From discussion with Squire Meckstroth and other persons in the area of Harrods Ridge and Keene Run, it now appears that these persons have become cognizant of the request of Forest Hill, and suffice it so say, they are not in agreement and accord.

It was my understanding from the January meeting that the District had placed a self-imposed deadline that a full and binding agreement must be culminated by the February 2, 2011 meeting. Suffice it to say, I cannot emphasize the urgency in maintaining this schedule. If the location is changed, this necessitates an extension of 4-8 weeks of the approval process, and under the current title situation, I do not see bids being taken until the fall of 2012.

JGH/jt

cc: Hon. Wm. Neal Cassity  
Glenn T. Smith  
Bruce E. Smith  
Engr/3569  
Engr/3933  
Corr.

Q:\ProjectDir\jsewd\WO3569\SEWD-BOC,TankRelocationBidDateChange.mem

# Horne Engineering, Inc.

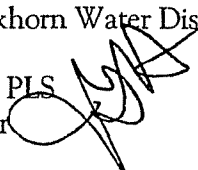
216 SOUTH MAIN STREET • NICHOLASVILLE, KENTUCKY 40356 • (859)885-9441 • FAX (859)885-5160

---

ENGINEERS • LAND SURVEYORS • PLANNERS  
email@horneeng.com

## MEMORANDUM

To: Board of Commissioners  
Jessamine South Elkhorn Water District

From: John G. Horne, PE, PLS  
Consulting Engineer 

Date: January 24, 2011

Subject: Cost Summary Evaluation Relative to the Relocation of the Proposed Catnip Elevated Storage Tank

---

Aside from what appears to be some items of oversight and/or mistakes in the purchase agreement, such as; failure of Ms. Brown to sign and addressed to Jessamine-South Elkhorn Water District as purchaser, the stipulation of size as to equaling the depth of existing tank is untenable. The footprint of the proposed tank would extend outside this boundary. The minimum size workable area will be a tract of 165' x 264'.

Initial review of the record plat(s) indicate that there is a serious problem with title regarding various and subsequent conveyances in this development which apply directly at the problem at hand. I have discussed this with the District's attorney and I believe there is strong sentiment that obtaining clear title would be impractical, but possible. For that reason, I have included and estimate of survey work which I anticipate would be required for quieting title. Of course, at present this is an extremely uncertain item.

Based on a cursory cost review and site comparison, we have developed an estimated cost summary (attached) which reveals that it can be anticipated that the changes in sites will result in a net cost increase of \$32,925.

This information is presented for your review and cognition. If further detail and/or explanation is required, please notify and we will be delighted to oblige.

JGH/jt

enc.

cc: Glenn T. Smith  
Bruce E. Smith  
W. D. Bates/Forest Hills Home Owners Association, Inc.  
Engr/3569  
Engr/3933  
Corr.



**ESTIMATED COST SUMMARY**  
**Catnip Elevated Tank Relocation**  
**Jessamine-South Elkhorn Water District**  
**January, 2011**

Description	Cost
Archaeological Survey	\$3,275
Biological Survey	\$2,650
Geotechnical Survey	\$6,700
Electrical Service (onsite)	(\$5,000)
Access Road (300' less)	(\$11,700)
Site Grading (100 <sup>2</sup> @3= ± 1000cy)	\$10,000
Storm Drainage	(\$17,000)
Overflow Discharge	\$5,000
Existing Fencing Relocation	\$3,000
Engineering Redesign	\$10,000
Topo Survey	\$2,000
Plan Redesign	\$6,000
KDOW Approval	\$500
KYTC Encroachment Permit	\$1,000
FAA Application	\$500
Platting	\$26,000
Boundary Retracement	\$10,000
Quiet Title	\$15,000
Minor Plat	\$1,000
Draft	\$780
Application	\$200
Recording	\$20
<b>TOTAL ESTIMATED COST</b>	<b><u><u>\$32,925</u></u></b>

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

February 2, 2011

**PERSONAL DELIVERY**

William M. Arvin, Sr., Esq.  
108 West Maple Street  
Nicholasville, Kentucky 40356

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

Dear Bill:

This letter will confirm our brief meeting on January 21, 2011 and a follow up telephone conversation we had during the week of January 24, 2011. As I advised them, the District's investigation of the new tank site proposed by the Association has revealed significant problems with regard to the title to this ground and other concerns.

First, the various plats of the residual farmland of Forest Hills which have been recorded do not agree with regard to the total acreage of this tract. Please review the plats recorded at Plat Cabinet 10 at Slides 121, 123, 143 and 224 and Plat Cabinet 11 at Slide 11. This disagreement places in question precisely how much land the Browns actually own and the configuration of same.

Second, the plat recorded at Plat Cabinet 10, Slide 143, which includes a portion of the residual, does not appear to have been amended such that it no longer has any legal effect.

Third, none of the aforementioned plats conform to the Cluster Ordinance regulations found in the Jessamine County Zoning Ordinance. For example, some of these plats reflect Community Green Space lots which are included as part of the residual space calculation, but exist as separate lots owned by an entity other than the individuals who own the residual. See Deed Book 646, Page 602.

Fourth, there is a substantial lien on the residual held by Wilkinson Development, LLC found in Deed Book 548, Page 544.

Fifth, your client proposes to convey the parcel presently owned by the District, which is located at the rear of Forest Hills, to the Association which is then to be consolidated to Community Green Space. As previously pointed out, the existence and ownership by a separate entity of the Community Green Spaces is violative of the Zoning Ordinance. Accordingly, increasing the size of such space through consolidation would be a further infraction.

William M. Arvin, Sr., Esq.  
February 2, 2011  
Page Two

Sixth, there is a serious question in my mind whether or not the owner of the residual can convey a portion thereof since dividing the residual is in direct contravention of the Zoning Ordinance and is expressly prohibited by it.

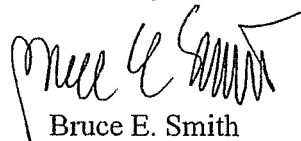
Other problems which exist and that are unrelated to the issue of title, but still concern the District are as follows:

1. The configuration of the lot offered in exchange for the District's existing lot will not accommodate the above ground storage tank the District is required to construct. See Horne Engineering, Inc. letter attached.

2. The letter of intent from the owners of the residual from which the new lot will be taken is only signed by one of the owners. This calls into question the commitment purportedly made by these owners.

In conclusion, it appears that there are substantial obstacles to an exchange of property between the District and the Association. I would appreciate hearing your thoughts and your estimate of a timeline within which all of these problems can be cured, if at all possible.

Sincerely,



Bruce E. Smith

Enclosure

cc: Mr. Nick Strong  
Mr. John G. Horne  
Mr. W.D. Bates

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

February 24, 2011

**PERSONAL DELIVERY**

William M. Arvin, Sr., Esq.  
108 West Maple Street  
Nicholasville, Kentucky 40356

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

Dear Bill:

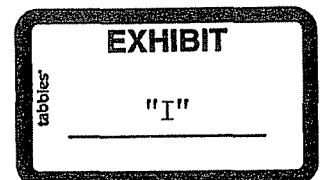
This letter will confirm the decision made by the Board of Commissioners of the District at its February, 2010 meeting regarding the relocation of the above-ground water storage tank site as proposed by the Association. By motion, it was decided that the District will use the site which it purchased some years ago from Sue Switzer. The District regrets that it could not accommodate your client's concerns, but in the final analysis, there were too many obstacles to overcome in order to change the site and it is not in the best interests of the District's customer base to delay advancement of this project further.

In addition to the title and other problems set forth in my letter to you of February 2, 2011, the following additional factors combined to ultimately drive the District's determination to move forward with its presently owned site:

(1) The District is currently, and has been for some time, in violation of Kentucky Public Service Commission Regulations as to its water storage capacity in the Northwest Territory. To date, the PSC has not imposed any penalties upon or taken any action against the District, but the Board is seriously concerned that this state of grace could come to a sudden end.

(2) The District is under a short timeline in terms of obtaining funding for this project. Any further delay in moving forward on the funding request would in all probability mean that the District could not secure the necessary monies to construct the tank.

(3) A representative of the Harrod's Ridge neighborhood association appeared at the February meeting and expressed its extreme displeasure at the prospect of another tank being located in the immediate vicinity of its subdivision and being placed next to an existing tank. Because there is one tank already located inside this subdivision and there is another tank located on old US 68 within sight thereof, the District is concerned that the association may want to litigate a decision to construct a third tank on the site proposed by your client.



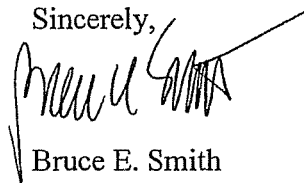
William M. Arvin, Sr., Esq.  
February 24, 2011  
Page Two

(4) Although your client may have been confident that it could, in time, cure all of the title problems with the proposed new site, the District has to comply with the title requirements of its funding agency. These requirements appear to be more stringent than the usual standards applied by commercial lenders.

Without mentioning any added factors which might come into play, the reasons stated above present a considerable "timing" problem for the District in terms of moving forward with the project. In view of the circumstance that the District now owns a site which is suitable for construction of a tank and which has been approved by the funding agency, any further delay places the District in a precarious position with the PSC and its customer base.

The Board asked me to convey its extreme disappointment in not being able to work through your client's concern with the present tank site and not being able to reach a resolution that would be acceptable to all of the residents in this part of its territory while at the same time permitting the Board to meet its obligations to the PSC and the rest of its customers.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce E. Smith", with a long horizontal flourish extending to the right.

Bruce E. Smith

cc: Board of Commissioners  
Mr. W.D. Bates

g:\...USEWD\Forest Hills\Arvin ltr 022211

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")

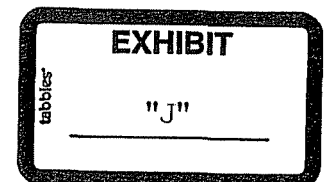
Dear Mr. Davis:

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



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.<sup>1</sup>

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.

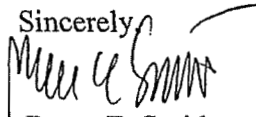
In the event that all of the foregoing conditions are met, the Association shall have a plat prepared for recording in the Jessamine County Clerk's office which reflects the McMillen Farm tank site, the easements for the path of the watermain and access road to the site and the consolidation of the Switzer 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.

---

<sup>1</sup> 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

g:\..JSEWD\Forest Hills\Notice 031111



**FLOOD PLAIN NOTE**

A portion of the flood plain, shown according to the National Flood Insurance Program, is located on the east side of the site. The flood plain is shown on the map of the site. The flood plain is shown on the map of the site.

**ZONING NOTE:**

The zoning for the site is R-1. The zoning is shown on the map of the site. The zoning is shown on the map of the site.

**SETBACK REQUIREMENTS**

The setbacks for the site are as follows: Front: 10 feet, Side: 5 feet, Rear: 5 feet. The setbacks are shown on the map of the site.

**TEMPORARY TURNAROUND NOTE**

A temporary turnaround shall be provided at the end of the driveway. The turnaround shall be provided at the end of the driveway. The turnaround shall be provided at the end of the driveway.

**SCREENING NOTE**

The site shall be screened by a minimum of 10 feet of trees. The screening shall be provided by a minimum of 10 feet of trees. The screening shall be provided by a minimum of 10 feet of trees.

**HOMEOWNERS ASSOCIATION NOTE**

The site shall be subject to the rules and regulations of the homeowners association. The site shall be subject to the rules and regulations of the homeowners association. The site shall be subject to the rules and regulations of the homeowners association.

**RESIDUAL LAND NOTE:**

The site is a residual land. The site is a residual land. The site is a residual land. The site is a residual land. The site is a residual land.

**SIGHT DISTANCE NOTE**

The sight distance for the site is 300 feet. The sight distance for the site is 300 feet. The sight distance for the site is 300 feet. The sight distance for the site is 300 feet. The sight distance for the site is 300 feet.

TRACT	AREA (AC)	AREA (SQ FT)	PERCENTAGE
TRACT 1	142,309	9,744,000	99.99%
TRACT 2	142,309	9,744,000	99.99%
TRACT 3	142,309	9,744,000	99.99%
TRACT 4	142,309	9,744,000	99.99%
TRACT 5	142,309	9,744,000	99.99%
TRACT 6	142,309	9,744,000	99.99%
TRACT 7	142,309	9,744,000	99.99%
TRACT 8	142,309	9,744,000	99.99%
TRACT 9	142,309	9,744,000	99.99%
TRACT 10	142,309	9,744,000	99.99%

**SITE STATISTICS**

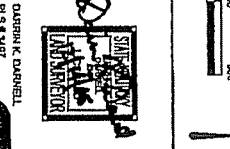
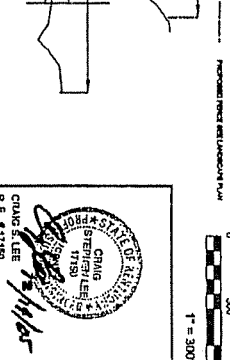
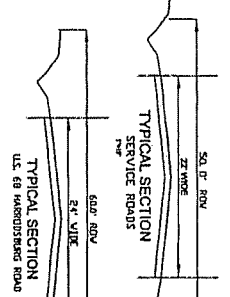
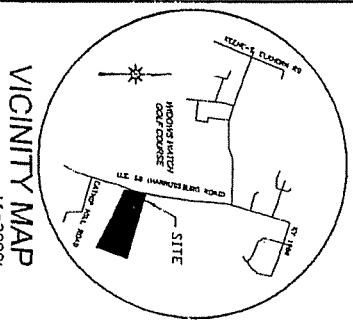
TRACT 1	142,309
TRACT 2	142,309
TRACT 3	142,309
TRACT 4	142,309
TRACT 5	142,309
TRACT 6	142,309
TRACT 7	142,309
TRACT 8	142,309
TRACT 9	142,309
TRACT 10	142,309

**PURPOSE OF PLAT**

The purpose of this plat is to divide the land into lots. The purpose of this plat is to divide the land into lots. The purpose of this plat is to divide the land into lots.

**NOTES**

1. The site is a residual land. 2. The site is a residual land. 3. The site is a residual land. 4. The site is a residual land. 5. The site is a residual land. 6. The site is a residual land. 7. The site is a residual land. 8. The site is a residual land. 9. The site is a residual land. 10. The site is a residual land.



**CERTIFICATE OF OWNERSHIP AND DEDICATION**

I, the undersigned, being the owner of the above described land, do hereby certify that the same is being offered for public use and that the same is being dedicated to the public use of the community.

**CERTIFICATE OF ACCURACY**

I, the undersigned, being the owner of the above described land, do hereby certify that the same is being offered for public use and that the same is being dedicated to the public use of the community.

**CERTIFICATE OF APPROVAL FOR RECORDING**

I, the undersigned, being the owner of the above described land, do hereby certify that the same is being offered for public use and that the same is being dedicated to the public use of the community.

**FINAL RECORD PLAT**

**FOREST HILLS**

5785 HARRODSBURG ROAD  
JESSAMINE COUNTY, KENTUCKY

**OWNERS / CLIENT**  
FOREST HILLS, LLC  
P.O. BOX 104  
LEXINGTON, KY 40588

**PERFORMED AND PREPARED BY**  
CRAIG S. LEE  
422 CODDLE DRIVE  
LEXINGTON, KY 40509  
(502) 253-5518

**DATE OF SURVEY** 11/22/2005  
**DATE OF PLAT** X-0436  
**ZONED** A-1  
**PLOT #** X-043

**EXHIBIT GROUP "K"**

**CAB10 Pg 121**

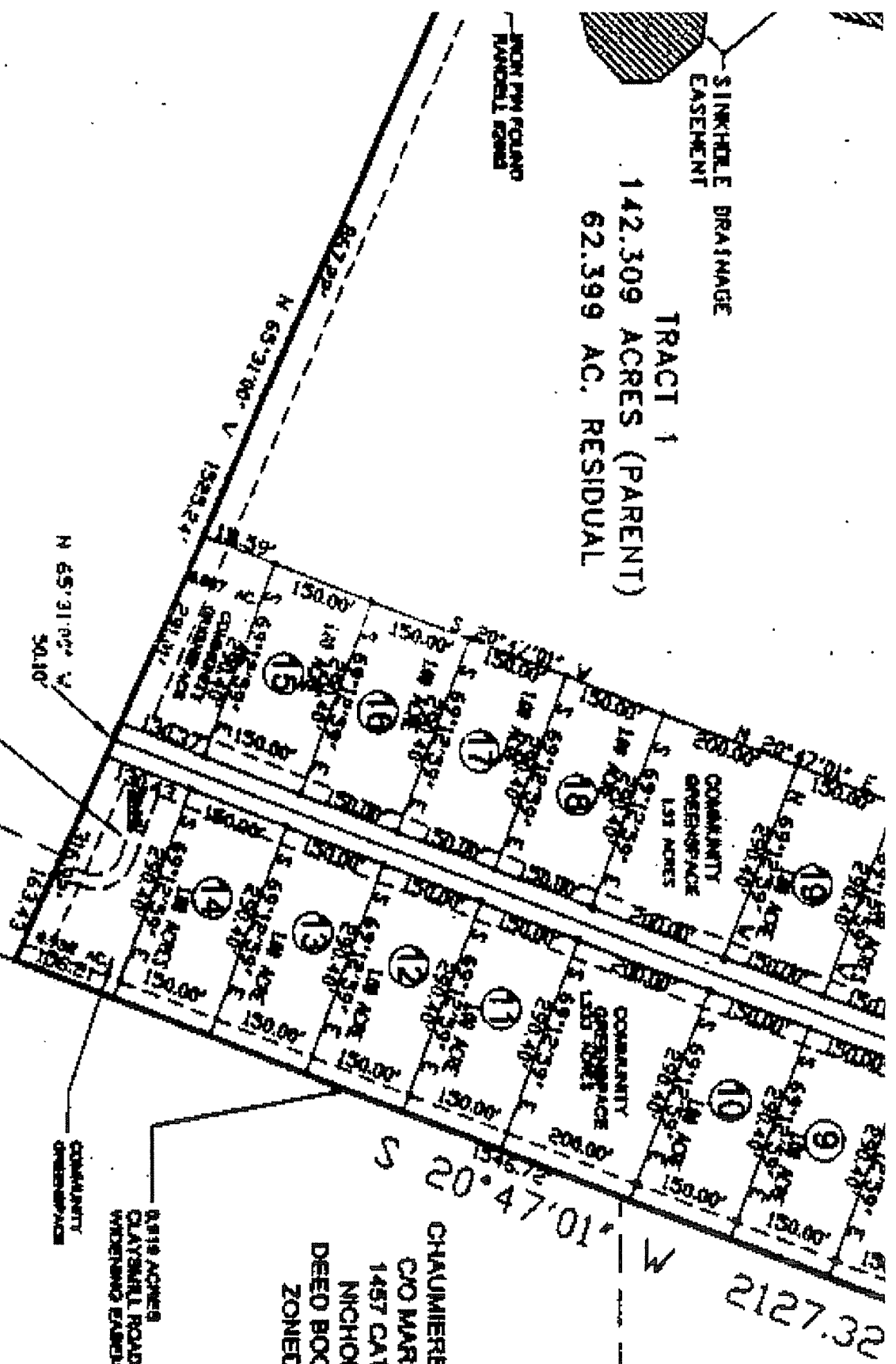
**DOCUMENT NO:** 187764  
**RECORDED ON:** JANUARY 19, 2006 @ 10:35:24AM  
**TOTAL FEES:** \$15.00  
**COUNTY CLERK:** SMI L. HODGINS, CLC  
**COUNTY:** JESSAMINE COUNTY  
**BETTY C. GIBBLETT**  
**BOOK 0810**  
**PAGES 121 - 121**

SINKHOLE DRAINAGE  
EASEMENT

TRACT 1  
142.309 ACRES (PARENT)  
62.399 AC. RESIDUAL

IRON PIN FOUND  
HARDELL ROAD

20' ACCESS EASEMENT IN  
FAVOR OF JESSAMINE SOUTH ELKSHIRE  
WATER DISTRICT



TIMOTHY  
300 WIN  
NICHOLS  
DEED BOOK  
ZONED A

CHAUMIERE DU PRAIRE FAR  
C/O MARGARET S. RASH  
1457 CATNIP HILL ROAD  
NICHOLASVILLE, KY  
DEED BOOK 217, PAGE 310  
ZONED A-1 COUNTY

0.818 ACRES  
CLAYBELL ROAD  
WIDENING EASEMENT

COMMUNITY  
GREENSPACE

LOT 18 BLUE SWITZER AMENDED MINOR  
SUBDIVISION PLAT DATED MAY 2004  
FOR THE JESSAMINE SOUTH ELKSHIRE  
WATER DISTRICT

# LEGEND

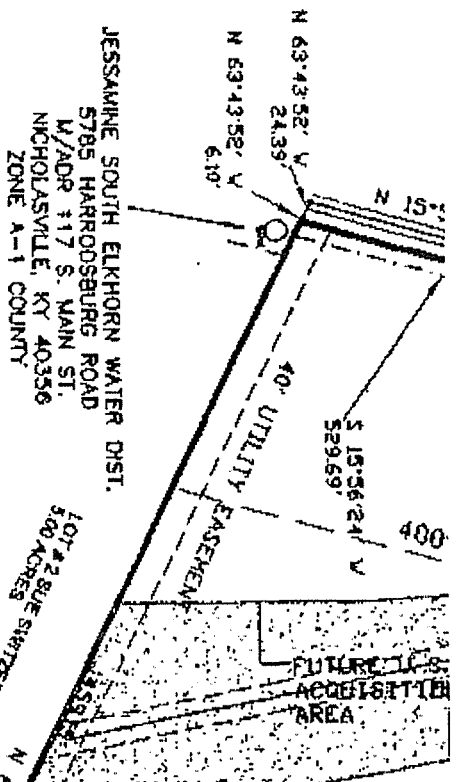
● IRON PIN SET WITH YELLOW CAP  
Labeled DIXBARNELL PLS N 3497

○ IRON PIN FOUND

# ENTRANCE PIPE

IT SHALL BE THE RESPONSIBILITY OF EACH PROPERTY OWNER TO  
ENSURE ADEQUATE DRAINAGE PIPING AT EACH DRIVEWAY  
ENTRANCE (MIN 15" DIA. PIPES)





# SITE STATISTICS

TOTAL PROPERTY AREA	168.87 ACRES
TRACT 1	142.309 ACRES
TRACT 2 (NOT IN CLUSTER)	26.561 ACRES
2B - 1 ACRE LOTS	26.0 ACRES
RESIDUAL FARM (REMAINDER)	101.02 ACRES
AREA IN FORMER CLAYS HILL ROAD WIDENING	1.23 ACRES
COMMUNITY GREENSPACE	4.390 ACRES
NEW R.O.W. AREA	7.00 ACRES

## PURPOSE OF PLAT

THE PURPOSE OF THIS PLAT IS TO SUBDIVIDE 168.87 ACRES INTO TRACTS ONE (1) AND TWO (2). IT IS ALSO THE PURPOSE OF THIS PLAT TO SUBDIVIDE TRACT 1 INTO 28 ONE ACRE BUILDING LOTS AND PROVIDE A REMAINDER OF 101.62 ACRES AS RESIDUAL FARM LAND IN ACCORDANCE WITH THE CLUSTER DEVELOPMENT REGULATION OF THE VILLORE JESSAMINE COUNTY JOINT PLANNING COMMISSION ZONING ORDINANCE

## NOTES

1. THE RECORD SOURCE FOR THE PROPERTY SHOWN HEREON IS AS FOLLOWS DEED BOOK 74, PAGE 61.
2. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS OF RECORD, SHOWN OR NOT.
3. THE SURVEY SHOWN HEREON IS A CLASS "A" URBAN SURVEY AND THE ACCURACY AND PRECISION OF SAID SURVEY MEETS ALL THE SPECIFICATIONS OF THIS CLASS.
4. ALL PROPERTY CORNERS HAVE BEEN MONUMENTED WITH A 5" X 8" REBAR, 18" LONG WITH A YELLOW CAP BEARING "D.C. DANIELS # 3497".
5. SANITARY SEWER DISPOSAL FOR THE DEVELOPMENT SHALL BE BY A SUBSURFACE METHOD APPROVED BY THE JESSAMINE COUNTY HEALTH DEPARTMENT. THE PROPERTY OWNER SHALL OBTAIN A VALID SUBSURFACE SEWAGE DISPOSAL PERMIT ISSUED PURSUANT TO 902 KAR 10-061 AND 902 KAR 10-05.
6. UNLESS OTHERWISE NOTED ALL PROPERTY LINES HAVE A 20" DRAINAGE & UTILITY EASEMENT CENTERED ALONG EACH SIDELOT LINE AND EACH REAR LOT LINE.
7. ASPHALT PAVING SPECIFICATION TO MEET OR EXCEED REQUIREMENT OF THE JESSAMINE COUNTY PLANNING COMMISSION AND TO INCLUDE 4 INCHES 40 STONE, 4 INCHES D.G.A. CRUSHED STONE BASE, 2.0 INCHES BITUMINOUS BASE AND 1.0 INCHES BITUMINOUS SURFACE.
8. ALL COMMUNITY GREENSPACE AREAS, MIDDANS, AND LANDSCAPE SCHEMING WILL BE VILLORE FORMED BY THE DEVELOPER AND A SUBJECT TO THE

**FLOOD PLAIN NOTE**

A REVIEW OF THE FLOOD PLAIN MAPS AND RECORDS HAS REVEALED THAT THE PROPOSED TRACT 1 IS NOT IN A FLOOD PLAIN AREA. THE FLOOD PLAIN MAPS SHOW THAT THE TRACT IS IN A HIGH GROUND AREA AND IS NOT SUBJECT TO FLOODING.

**TEMPORARY TURNAROUND NOTE**

A TEMPORARY TURNAROUND SHALL BE PROVIDED AT THE CORNER OF ALL TRACTS, AND SHALL BE LOCATED IN THE CENTER OF THE TRACT. THE TURNAROUND SHALL BE LOCATED IN THE CENTER OF THE TRACT AND SHALL BE 10 FEET WIDE. THE TURNAROUND SHALL BE 10 FEET WIDE AND SHALL BE LOCATED IN THE CENTER OF THE TRACT.

**RESIDUAL LAND NOTE**

THE REMAINDER OF THE PROPERTY SHALL BE REMOVED BY THE OWNER OF THE TRACT. THE REMAINDER OF THE PROPERTY SHALL BE REMOVED BY THE OWNER OF THE TRACT. THE REMAINDER OF THE PROPERTY SHALL BE REMOVED BY THE OWNER OF THE TRACT.

**CERTIFICATE OF OWNERSHIP AND DEDICATION**

I, DO HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY DESCRIBED IN THE FOREST HILLS MINOR SUBDIVISION PLAT AND THAT I AM DEDICATING THE PROPERTY TO THE PUBLIC USE AS SHOWN ON THE PLAT. I AM DEDICATING THE PROPERTY TO THE PUBLIC USE AS SHOWN ON THE PLAT.

**CERTIFICATE OF ACCURACY**

I, DO HEREBY CERTIFY THAT THE SURVEYING DATA SHOWN HEREON WAS OBTAINED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT THE SURVEYING DATA IS ACCURATE AND CORRECT. I AM DEDICATING THE PROPERTY TO THE PUBLIC USE AS SHOWN ON THE PLAT.

DATE: 2-2-06  
 SIGNATURE: [Signature]  
 TITLE: [Title]

**SETBACK REQUIREMENTS**

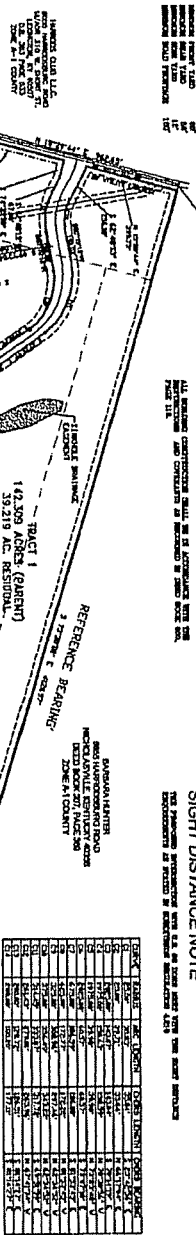
MINIMUM FRONT YARD SETBACK: 10 FEET  
 MINIMUM SIDE YARD SETBACK: 5 FEET  
 MINIMUM REAR YARD SETBACK: 10 FEET

**SCREENING NOTE**

SCREENING SHALL BE PROVIDED AT THE CORNER OF ALL TRACTS, AND SHALL BE LOCATED IN THE CENTER OF THE TRACT. THE SCREENING SHALL BE 10 FEET WIDE AND SHALL BE LOCATED IN THE CENTER OF THE TRACT.

**SIGHT DISTANCE NOTE**

THE PROPOSED TURNAROUND SHALL BE 10 FEET WIDE AND SHALL BE LOCATED IN THE CENTER OF THE TRACT. THE PROPOSED TURNAROUND SHALL BE 10 FEET WIDE AND SHALL BE LOCATED IN THE CENTER OF THE TRACT.



TRACT NO.	ACRES	OWNER	STATUS
1	142,309	FOREST HILLS, LLC	RESIDENTIAL
2	82,399	FOREST HILLS, LLC	RESIDENTIAL

**SITE STATISTICS**

TRACT NO.	ACRES	OWNER	STATUS
1	142,309	FOREST HILLS, LLC	RESIDENTIAL
2	82,399	FOREST HILLS, LLC	RESIDENTIAL

**PURPOSE OF PLAT**

THE PURPOSE OF THIS PLAT IS TO SUBDIVIDE THE PROPERTY INTO TRACTS FOR RESIDENTIAL DEVELOPMENT. THE TRACTS SHALL BE 142,309 ACRES AND 82,399 ACRES. THE TRACTS SHALL BE 142,309 ACRES AND 82,399 ACRES.

**NOTES**

1. THE PROPOSED TURNAROUND SHALL BE 10 FEET WIDE AND SHALL BE LOCATED IN THE CENTER OF THE TRACT. THE PROPOSED TURNAROUND SHALL BE 10 FEET WIDE AND SHALL BE LOCATED IN THE CENTER OF THE TRACT.

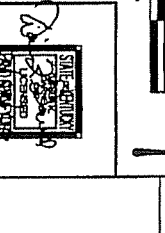
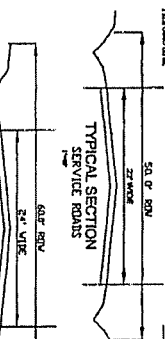
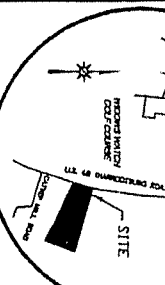
**MINOR SUBDIVISION PLAT**

**FOREST HILLS**  
**785 HARRODSBURG ROAD**  
**JESSAMINE COUNTY, KENTUCKY**

DATE OF SURVEY	DATE OF PLAT	ZONED	PILOT NO.
AUGUST/2005	10/14/2005	X-0436	X-0436C

**OWNERS / CLIENT**  
 FOREST HILLS, LLC  
 P.O. BOX 1047  
 LEXINGTON, KY 40588

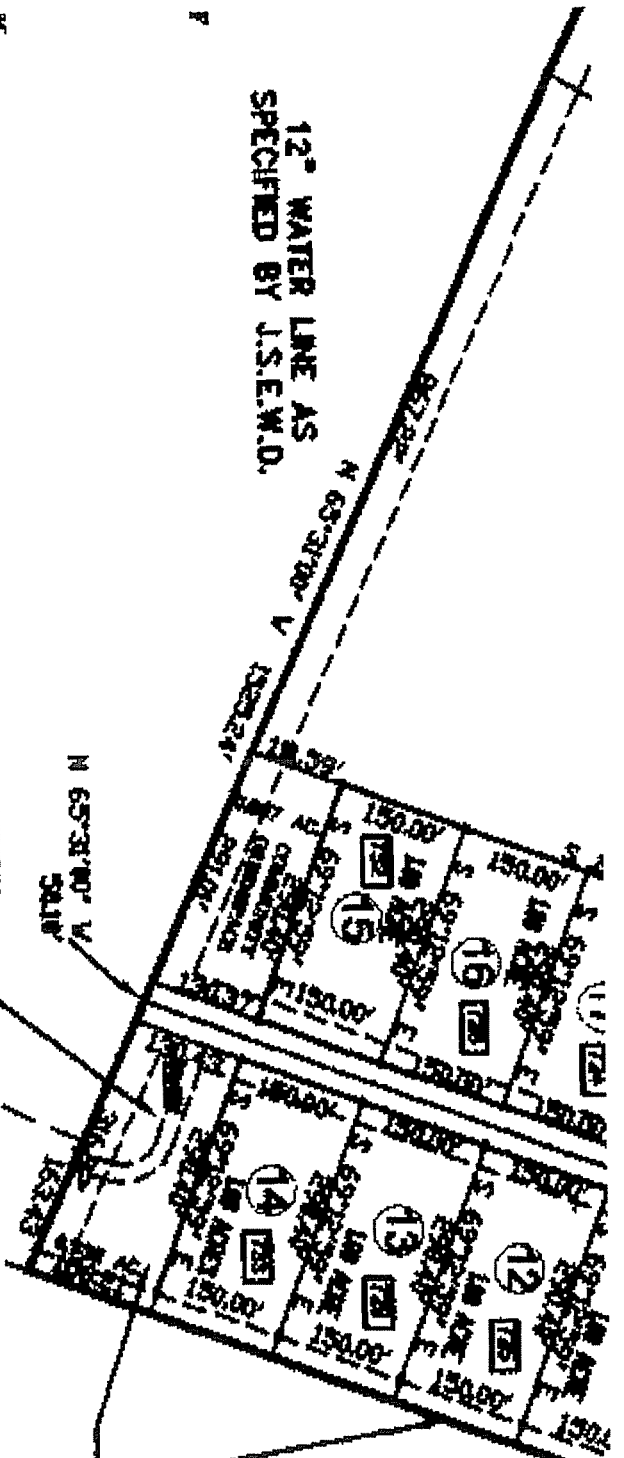
**PERFORMED AND PREPARED BY**  
 DARREN K. DARVELL PLS  
 355 RETRAC ROAD  
 LEXINGTON, KY 40503  
 (502) 298-8718



JESSAMINE COUNTY  
 CAB10 Pg 123

12" WATER LINE AS SPECIFIED BY J.S.E.W.D.

20' ACCESS EASEMENT IN FAVOR OF JESSAMINE SOUTH ELDOCAN WATER DISTRICT



CHALMIERE DU PRAIRE F  
 C/O MARGARET S. RAS  
 1457 CATNIP HILL ROAD  
 NICHOLASVILLE, KY  
 DEED BOOK 217, PAGE 1  
 ZONED A-1 COUNTY

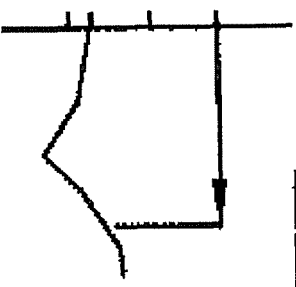
### ENTRANCE PIPE

IT SHALL BE THE RESPONSIBILITY OF EACH PROPERTY OWNER TO ENSURE ADEQUATE DRAINAGE PIPING AT EACH DRIVEWAY ENTRANCE (MIN 15" DIA PIPE)

LOT 18 BLE SWITZER ASSIGNED SENIOR SLEEVISION PLAN DATED MAY 2004 FOR THE JESSAMINE SOUTH ELDOCAN WATER DISTRICT

### LEGEND

- IRON PIN SET WITH YELLOW CAP LABELED DIAMONELL PLS # 3497
- IRON PIN FOUND
- ▨ SINKHOLE DRAINAGE EASEMENT
- EXISTING FENCE
- - - PROPOSED FENCE SEE LANDSCAPE PLAN



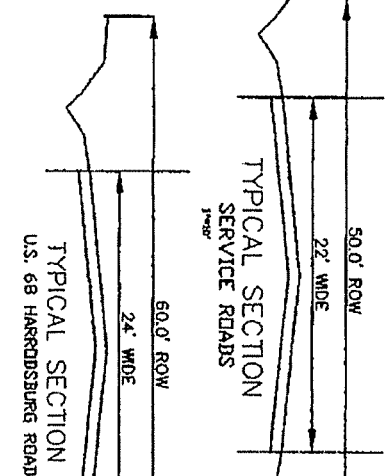
FUTURE U.S. 68 ACQUISITION AREA

285
286
287
288
289
290
291
292
293
294
295
296

VE ACRE  
TO  
BE  
ADDED  
TO  
THE  
PLAT  
MAP  
AS  
NOTED  
HEREIN

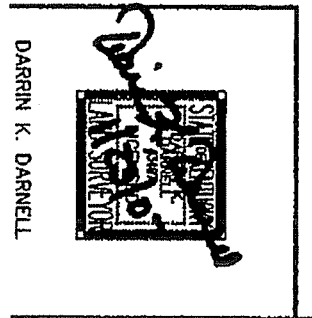
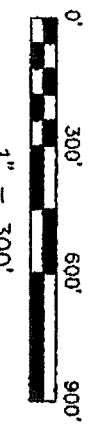
# NOTES

1. THIS PROPOSED SURVEY FOR THE PROPOSED SEPARATE LOTS AS FOLLOWS...
2. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS OR RECORDS, EASEMENTS OR NOT...
3. THE SURVEY BEING HEREBY IS A CLASS "A" URBAN SURVEY AND THE...
4. ALL PROPERTY OWNERS HAVE BEEN NOTICED WITH A 30% RECALL...
5. THE PROPOSED SURVEY BEING HEREBY IS SUBJECT TO THE...
6. THIS SURVEY BEING HEREBY IS SUBJECT TO ALL EASEMENTS...
7. A GENERAL PAYING REQUIREMENT TO MAKE OR EXCEEDS REQUIREMENT OF...
8. THE PLAT MAP IS SUBJECT TO ALL EASEMENTS OR RECORDS, EASEMENTS OR...
9. THE PLAT MAP IS SUBJECT TO ALL EASEMENTS OR RECORDS, EASEMENTS OR...
10. THE PLAT MAP IS SUBJECT TO ALL EASEMENTS OR RECORDS, EASEMENTS OR...
11. ALL LOTS SHALL BE ACCESSIBLE FROM THE INTERNAL STREET, NO FUTURE DIRECT...



- LEGEND
- IRON PIN SET WITH YELLOW CAP LABELED OVERNIGHT PLS # 3487
- IRON PIN FOUND
- SINKHOLE DRAINAGE EASEMENT
- PROPOSED FENCE SET LANDSCAPE PLAN
- EXISTING FENCE

**ENTRANCE PIPE**  
LOT 18 SUE SWITZER ADJOINED MAJOR SUBDIVISION PLAT DATED MAY 2004, WITH THE SESSAMIE SOUTH ELKHORN WATER SYSTEM  
IT SHALL BE THE RESPONSIBILITY OF EACH PROPERTY OWNER TO ENSURE REPAIR AND MAINTENANCE OF EACH PROPERTY OWNER TO ENTERANCE OPEN 15" DIA. PIPE.



DARRIN K. DARNELL

MINC	5785 I	OWNERS / CLIENT
JESSAMIT	PERFORMED ANI	DARRIN K. DARNELL
	395 RETRAC ROAD	LEXINGTON, KY 4050
	(859) 296-8716	
	1" = 300'	
	DATE OF SURVEY	AUGUST/2005

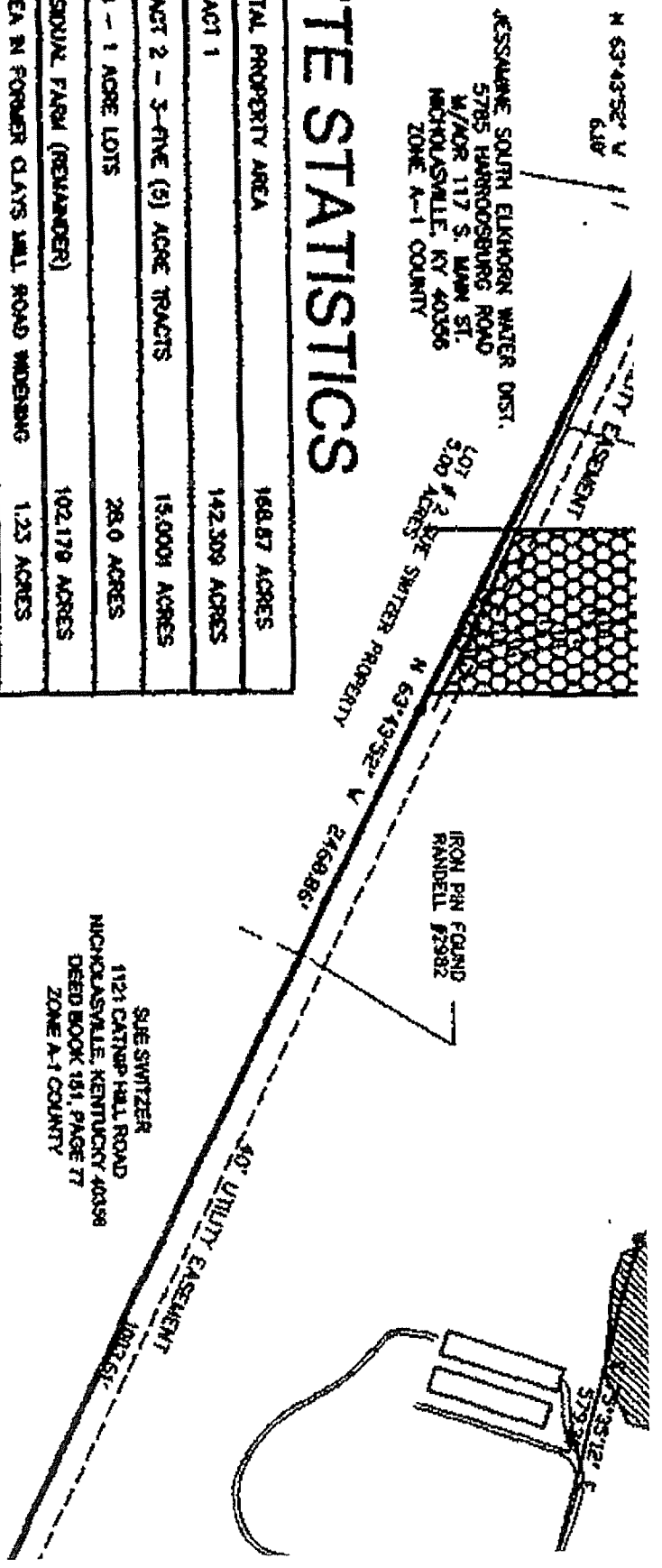
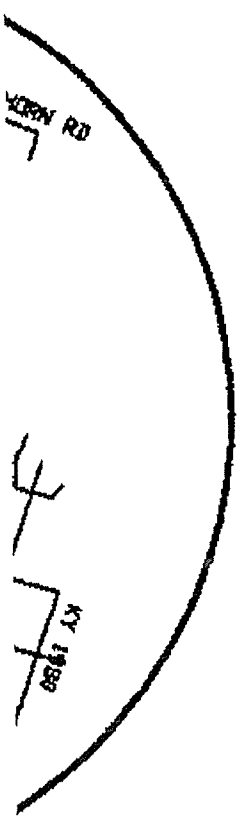


N 63°43'52" W  
6.88'

JESSAMINE SOUTH ELKHORN WATER DIST.  
5785 HARRISBURG ROAD  
W/MOR 117 S. MAIN ST.  
MICHOLASVILLE, KY 40356  
ZONE A-1 COUNTY

# SITE STATISTICS

TOTAL PROPERTY AREA	168.87 ACRES
TRACT 1	142,309 ACRES
TRACT 2 - 3-FIVE (5) ACRE TRACTS	15,000 ACRES
28 - 1 ACRE LOTS	28.0 ACRES
RESIDUAL FARM (REMAINDER)	102,179 ACRES
AREA IN FORMER CLAYS MILL ROAD WIDENING	1.23 ACRES
COMMUNITY GREENSPACE	4,399 ACRES
NEW R.O.W. AREA	7.06 ACRES
FARM TRACT LOT 29	11.00 ACRES



## PURPOSE OF PLAT

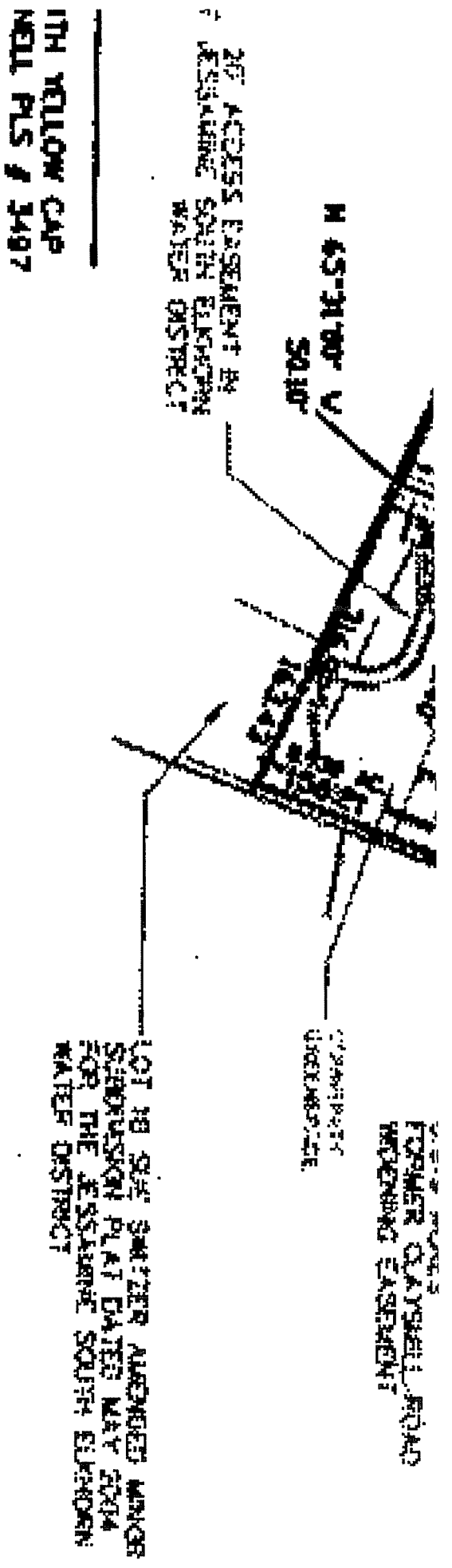
THE PURPOSE OF THIS PLAT IS TO CREATE THREE (3) FIVE ACRE TRACTS FROM TRACT 2 OF THE RECORDED PLAT IN CABINET 10 SLIDE 143 AND TO CONSOLIDATE THE 6561 ACRES REMAINING FROM TRACT 1 TO THE PARENT RESIDUAL FARM TRACT. THE RESIDUAL FARM LAND AREA REMAINS AS APPROVED WITH THE ADICTION OF THE 6561 ACRES AND NO OTHER CHANGES ARE MADE OR IMPLIED. ALL PROVISIONS OF THE CLUSTER ORDINANCE AS APPROVED FOR THIS LAND REMAIN IN FORCE.

## NOTES

1. THE RECORD SOURCE FOR THE PROPERTY SHOWN HEREON IS AS FOLLOWS  
DEED BOOK 548, PAGE 544  
PLAT CABINET 10, SLIDE 121  
PLAT CABINET 10, SLIDE 123  
PLAT CABINET 10, SLIDE 143
2. THIS PROPERTY IS SUBJECT TO ALL EASEMENTS OR RECORD, SHOWN OR IN ACCURACY AND PRECISION OF SAID SURVEY NOTS ALL THE SPECIFICATION THIS CLASS.
3. THE SURVEY SHOWN HEREON IS A CLASS "A" URBAN SURVEY AND THE ACCURACY AND PRECISION OF SAID SURVEY NOTS ALL THE SPECIFICATION THIS CLASS.
4. ALL PROPERTY CORNERS HAVE BEEN MONUMENTED WITH A 5" X 8" IRON LIND WITH A YELLOW CAP BEARING THE ADDRESS 1121 CATNIP HILL ROAD, 1121 CATNIP HILL ROAD, MICHOLASVILLE, KY 40358.
5. SANITARY SEWER DISPOSAL FOR THIS DEVELOPMENT SHALL BE BY A SUBSURFACE METHOD APPROVED BY THE JESSAMINE COUNTY HEALTH DEPARTMENT, THE PROPERTY OWNER SHALL OBTAIN A VALID SUBSURFACE SEWAGE DISPOSAL PERMIT ISSUED PURSUANT TO 926 KAR 10.051 AND 902 KAR 6. UNLESS OTHERWISE NOTED ALL PROPERTY LINES HAVE A 2' DRAINAGE & UTILITY EASEMENT CENTERED ALONG EACH SIDWLOT LINE AND EACH EAR LINE.
7. APARTLY PAVING SPECIFICATION TO MEET OR EXCEED REQUIREMENT OF JESSAMINE COUNTY PLANNING COMMISSION AND TO INCLUDE 4 INCHES 4'S 4 INCHES D.O.A. CURBED STONE BASE, 20 INCHES BITUMINOUS BASE AND 1 1/2 INCHES BITUMINOUS SURFACE.
8. ALL COMMUNITY GREENSPACE AREAS, MEDIANS, AND LANDSCAPE SCREEN WILL BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION
9. LOTS 6 THRU 14 ARE LOCATED ADJACENT TO CLAYS MILL R.O.W. AND WILL

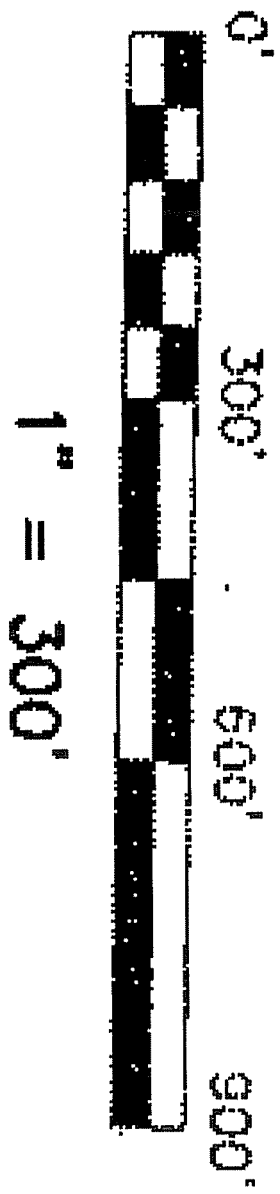






SEE EASEMENT

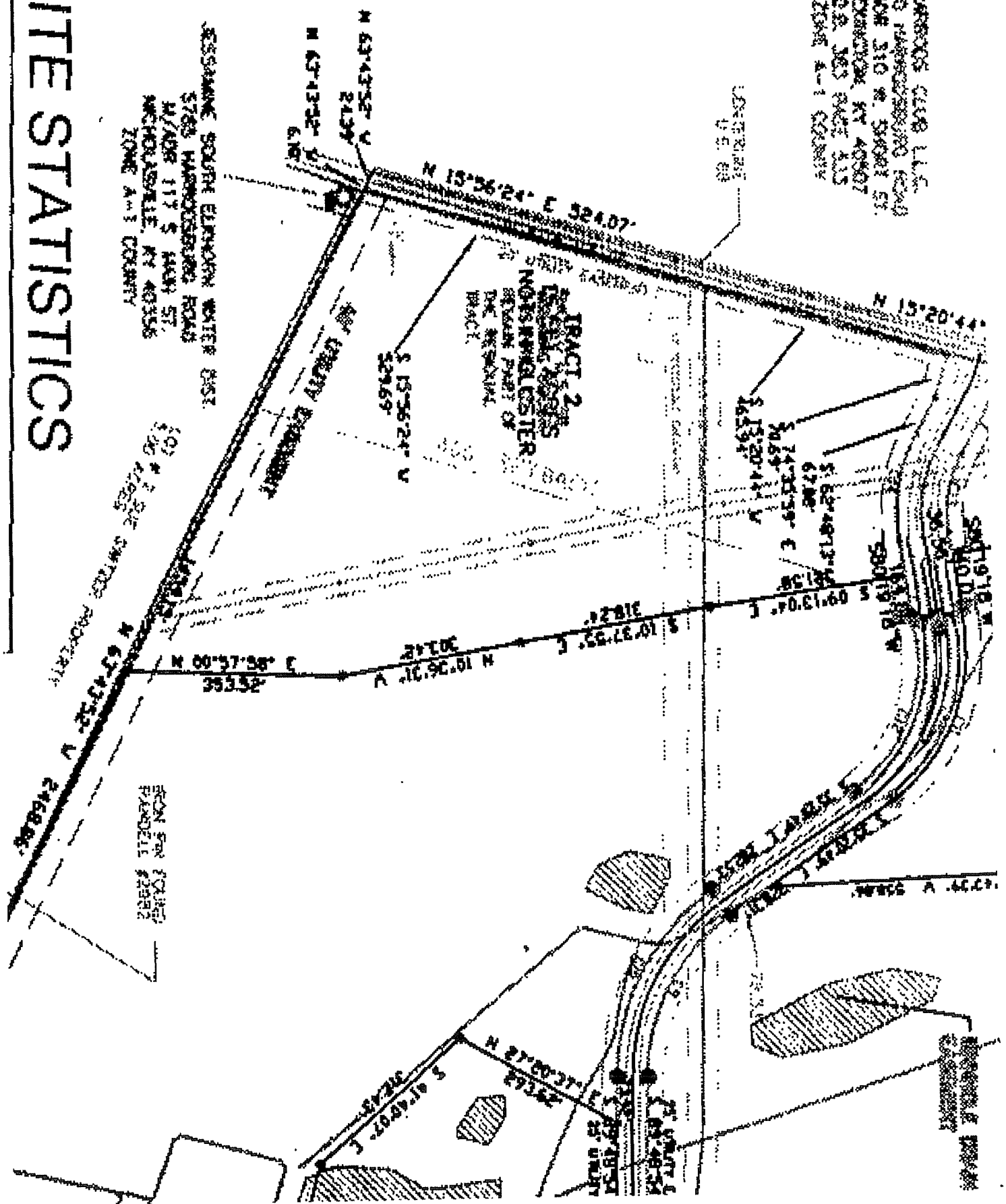
SEE LANDSCAPE PLAN



# CERTIFICATE OF APPROVAL FOR RECORDING

I DO HEREBY CERTIFY THAT THE SUBDIVISION PLAT SHOWN HEREON HAS BEEN FOUND TO COMPLY WITH THE SUBDIVISION REGULATIONS FOR JESSAMINE COUNTY, KENTUCKY, WITH THE EXCEPTION OF SUCH

HARBOROUS CLUB L.L.C.  
 8000 HARBOROUS CLUB ROAD  
 N/ADP 310 W. STREET ST.  
 LEWISTOWN, KY 40307  
 D.B. 263 PAGE 315  
 ZONE A-1 CORNER



ASSASSANE SOUTH ELKHORN WHITE DIST  
 5768 HARBOROUS CLUB ROAD  
 N/ADP 117 S MAIN ST.  
 NICHOLASVILLE, KY 40356  
 ZONE A-1 CORNER

# SITE STATISTICS

FROM SAN FOLIO  
 PHOENIX 1992

DATE: 11/11/2011

April 11, 2006

**Special Board Meeting**

The Board of Commissioners of the Jessamine South Elkhorn **Water** District met at 9:00 AM on April 11, 2006, with the following Commissioners present: Nick Strong, John Blackford, J F Hall, and Jerry Haws. Bruce Smith, Tom Smith, and Diana Clark were also present.

Randall Wright, insurance agent, addressed the Board with quotes for the renewal of employee health and life insurance coverage due May 1<sup>st</sup>. A motion to remain with John Alden was made by Mr. Haws, seconded by Mr. Blackford - approved.

The meeting was called to review the Engineering Procurement for the **Elevated Storage Tank Project**. The sealed Statements of Qualifications were opened at 9:30 AM by Mr. Haws and distributed to the Commissioners present. Each Commissioner reviewed and confidentially scored the two applicants. The scoring sheets were collected and tallied. Based on the scores a motion was made at 10:45 AM to award the engineering services to Horne Engineering Inc. The motion was made by Mr. Haws, seconded by Mr. Blackford - approved.

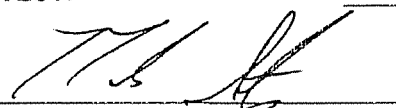
There was a discussion on the system service fee to assist in paying for the new elevated storage tank.

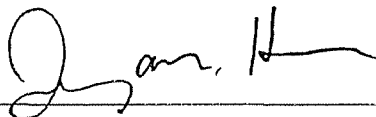
There was a discussion on the conveyance of **Legacy Estates** to District #1. JSEWD is sending a letter to the customers of Legacy explaining the situation. The Board agreed to bill District #1 for the hydrant flow testing, but not for any of the legal fees for the transfer.

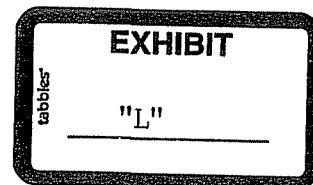
There was a discussion on the invoice for legal charges for **Darley Stud Farm**. The Board agreed to void the legal charges of \$468.75 from their invoice since an interim agreement had not been signed.

The meeting adjourned at 11:00 AM.

ATTEST:

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_



Minutes  
October 1, 2008  
Page 1

Mr. Horne recommended bagging **fire hydrants** which are temporarily out of service. He suggested buying a supply of orange bags. The Board agreed.


There was a discussion on the **City of Nicholasville** rate increase. Due to the previous rate increase which included the CON supplied customers, the Board agreed not to increase on the first tier of the pass-through.

The Commissioners were given the following reports for review: Income Statement, Balance Sheet, Water Loss, contractual payables for pre-approval, and a preliminary 2009 Budget.

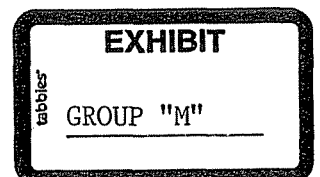
The Board asked for a proposal from BGADD as Project Administrator for the \$1,000,000 **Storage Tank** grant.

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

ATTEST:

  
\_\_\_\_\_  
Chairman





**A4**MARCH 20, 2008  
jessamineonline.com

## House budget includes funds for Jessamine

By Mike Moore

mmoores@jessaminejournal.com

At February's annual Jessamine County Chamber of Commerce legislative breakfast, Rep. Bob Damron warned those in attendance not to expect the same amount of funding to roll into the county as in years past.

Despite that warning, the Kentucky House of Representatives finished its version of the budget last week. Included in the House budget was \$2.1 million in water and sewer projects for Jessamine County.

The \$2.1 million is broken down into the following six projects:

- \$200,000 for the city of Nicholasville for the Alta Avenue Parallel Sewer Project.
- \$400,000 for the city of Nicholasville for

the Brookley Sewer Replacement Project.

- \$150,000 for the city of Nicholasville for the Cranshaw Lane Water Line Extension Project.

- \$200,000 for the city of Wilmore for Asbury College Campus Water Main Replacement.

- \$1 million for Jessamine South Elkhorn Water District for a storage tank on Catnip Hill Pike.

- \$150,000 for the West Hickman Wastewater Treatment Plant Screw Pump Replacement.

Now the House budget moves on to the Senate where Damron is optimistic about the projects surviving that step.

"I'm pretty confident that the water projects are going to stay in some final version," he said. "I think Senate President (David)

Williams, at least, always has been supportive of doing infrastructure projects such as water and sewer."

Because of the state's budget woes, Damron said the focus of the funds will stay on upgrading infrastructure.

"If we do anything at all in the budget session, I suspect it will revolve around roads and around water and sewer," he said.

Prior to the current General Assembly session, Damron and Sen. Tom Buford discussed and met with local leaders about prioritizing needs, but several things just cannot be addressed during this budget session.

"The city of Nicholasville gave us several more projects than what we've got in the budget, and of course, Jessamine South see BUDGET on page A7

Minutes  
April 20, 2005  
Page 2

There was a discussion on the tap fee for the **sewer** project. The Board instructed Mr. Smith to write a letter to LFUCG concerning this item.

Mr. Smith and Mr. Horne worked up a draft of the **sewer** agreement between the District and City of Nicholasville and have sent it to the committee appointed by the Mayor for their review. Mr. Smith was going to contact Tom Calkins informing him that the District needs the changes back before the May 4<sup>th</sup> meeting.

There was a discussion on the **Keene Rehabilitation** project with the State Revolving Fund. A motion to authorize Horne Engineering to proceed with the plans and study to qualify for 2006 funding was made by Mr. Robinson, seconded by Mr. Noland - approved.

Mr. Horne informed the Board that there was a demonstration of the sewer cluster system in Lawrenceburg set up as a teaching tool. The Board set up tentative dates of May 17<sup>th</sup> or 24<sup>th</sup> for a site visit.

There was a discussion on the **Rural Extension Project (formerly Southeast, Phase 2)**. Mr. Horne informed the Board that RD would not be the lead funding agency on this project. Mr. Horne has revised the previously approved engineering contract to remove all reference to RD approval as the lead agent and administrator. A motion to sign the revised engineering contract was made by Mr. Noland, seconded by Mr. Robinson - approved. A motion to hire Bruce Smith as the legal representative for the project was made by Mr. Robinson, seconded by Mr. Noland - approved. A motion to retain David Ewen, BGADD, as the administrator for the project at 1.5% of the second \$800,000 was made by Mr. Noland, seconded by Mr. Blackford - approved.

A motion to sign the engineering contract for the **Elevated Storage Tank** project was made by Mr. Noland, seconded by Mr. Robinson - approved. A motion to hire Bruce Smith as legal representative for the project was made by Mr. Noland, seconded by Mr. Robinson - approved. A motion to authorize the signing of the SFS 424 application form submitted to RD was made by Mr. Blackford, seconded by Mr. Robinson - approved.

A motion to sign the preliminary plat for the **Sue Switzer** property contingent on review by Horne Engineering was made by Mr. Noland, seconded by Mr. Blackford - approved.

A motion to accept **The Lakes, Unit 1B** was made by Mr. Noland, seconded by Mr. Blackford - approved.

A motion to accept **Harrods Ridge, Unit 1, 2, and 4A** was made by Mr. Blackford, seconded by Mr. Robinson - approved.



COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

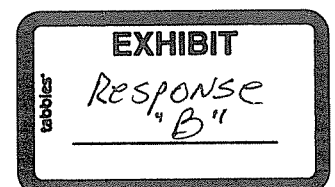
In the Matter of:

THE APPLICATION OF KENTUCKY UTILITIES )  
COMPANY TO ASSESS A SURCHARGE UNDER KRS )  
278.183 TO RECOVER COSTS OF COMPLIANCE ) CASE NO. 93-465  
WITH ENVIRONMENTAL REQUIREMENTS FOR COAL )  
COMBUSTION WASTES AND BY-PRODUCTS )

O R D E R

On August 5, 1994, the Attorney General's office, Utility and Rate Intervention Division ("AG"), filed an application for rehearing of the Commission's July 19, 1994 Order approving an environmental compliance plan and rate surcharge for Kentucky Utilities Company ("KU"). The AG argues two issues in support of rehearing: 1) the July 19, 1994 Order is unconstitutional because it takes ratepayers' property without due process of law; and 2) the Commission erred by not off-setting the increase in revenues experienced by KU since its last rate case against the amount of its requested environmental surcharge.

In support of its constitutional argument, the AG states that since a utility is deprived of its property without due process of law when rates are set too low, ratepayers are correspondingly deprived of their property when rates are too high. From this premise, the AG claims that fair, just and reasonable rates were established for KU in 1983 and now the Commission has authorized KU to charge a supplemental rate in the form of a surcharge, causing the total rate to exceed that which is fair, just, and reasonable.



In addition, the AG argues that since KU has experienced a growth in sales of approximately 50 percent since its existing rates were established in 1983, there has been a corresponding increase in KU's revenues which should be offset against the environmental surcharge. The crux of the AG's argument is that even though the environmental costs sought to be included in the surcharge are not included in existing rates, those rates are producing sufficient revenues for KU to recover such environmental costs.

Based on the petition for rehearing and being advised, the Commission hereby finds that the petition should be denied. The AG has failed to cite any case to support his claim that the ratepayers can be deprived of their property without due process of law if utility rates are set at an excessive level. To the contrary, the courts have held that ratepayers have no such property right. As stated in Hartford Consumer Activists Association v. Hausman, 381 F.Supp. 1275, 1281 (D.Conn. 1974), "Courts have yet to hold that a state agency's approval of a utility rate increase involves a deprivation of a customer's property interest, which is actionable under the Fourteenth Amendment."

While a utility is under a statutory obligation to invest capital to serve the public, ratepayers are under no obligation to invest capital or purchase utility service. This distinction was analyzed in United States Light & Heat Corp. v. Niagara Falls Gas



& Electric Light Company, 47 F.2d 567, 570 (2nd Cir. 1931), where the court held that:

Thus the gas company's business becomes subject to the Public Service Law by reason of the interest which the public has. It must submit to the control by the Public Service Commission for the common good to the extent which it has clothed its property with public interest. But a citizen has no vested rights in statutory privileges or exemption. Cooley, Constitutional Limitations (8th Ed.) 792. This gas company became bound to furnish gas within the city of Niagara Falls by reason of the Public Service Law. The consumer was not obliged to purchase gas; he was privileged to do so. A private right may be interfered with so long as it is not vested (Cooley, Constitutional Limitations [8th Ed.] 749), and a right is not vested unless it is something more than a mere expectation as may be based upon an anticipated continuation of the present general laws. [citation omitted]

See also City of Birmingham v. Southern Bell Tel. and Tel. Co., 176 So. 301 (Ala. 1937).

The AG's request to recognize the growth in sales and resultant increase in revenues since KU's existing rates were established violates KRS 278.183. As the AG acknowledges, both expenses and revenues must be examined to determine a utility's revenue requirements. However, the AG fails to acknowledge that KRS 278.183 precludes an analysis of revenue requirements. The General Assembly has authorized utilities to impose a surcharge to recover specified environmental costs not already included in existing rates, notwithstanding other provisions of KRS Chapter 278. As stated in our July 19, 1994 Order, should the AG or anyone else believe that KU's revenues now exceed its requirements, a full

and complete remedy is available by the filing of a complaint under  
KRS 278.260.

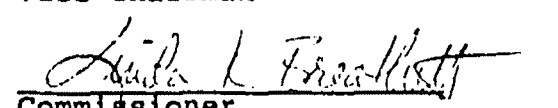
IT IS THEREFORE ORDERED that the AG's application for  
rehearing be and it hereby is denied.

Done at Frankfort, Kentucky, this 22nd day of August, 1994.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:



Executive Director