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APR 08 2015

PUBLIC SERVICE  
COMMISSION

HENRY E. SMITH  
[henry@smithlawoffice.net](mailto:henry@smithlawoffice.net)

April 7, 2015

**VIA UPS OVERNIGHT**

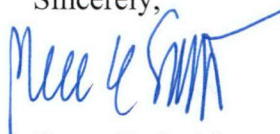
Mr. Jeff R. Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40602

Re: Jessamine-South Elkhorn Water District Notice of Filing

Dear Mr. Derouen:

Delivered under cover of this letter is an original and ten (10) copies of **Jessamine-South Elkhorn Water District's Post Hearing Brief**

Sincerely,



Bruce E. Smith

Enclosures

cc: Robert M. Watt, III, Esq.  
Jennifer Black Hans, Esq.

g:\...USEWD\Forest Hills\Derouen ltr Brief 0040715

**ORIGINAL**

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**APPLICATION OF JESSAMINE-SOUTH ELKHORN )  
WATER DISTRICT FOR A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND NECESSITY TO )  
CONSTRUCT AND FINANCE A WATERWORKS )     **CASE NO 2014 -00084**  
IMPROVEMENT PROJECT PURSUANT TO KRS )  
278.020 AND 278.300 )**

**JESSAMINE-SOUTH ELKHORN WATER DISTRICT'S POST HEARING BRIEF**

**I. INTRODUCTION**

This case involves an Application under KRS 278.020(1) by the Jessamine-South Elkhorn Water District (“District” or “JSEWD”) for a certificate of public convenience and necessity (“CPCN”) authorizing the construction of a 750,000 gallon elevated water storage tank to assure adequate and reliable service to the District’s Northwest Service Area customers. The District has established that public convenience and necessity require construction of the proposed storage tank. The District has further established that the proposed water storage tank is both reasonable and cost-effective and is neither a wasteful investment nor a duplication of facilities. The District has established that the proposed water storage tank is the most reasonable and least cost solution to assure that the District will be able to meet its obligations in providing

reliable water service to its Northwest Service Area customers both now and in years to come. The Commonwealth of Kentucky has also recognized the importance of this infrastructure project and has appropriated grant funds in the amount of \$1,440,000 for this proposed tank, which will offset approximately 70% of the estimated cost of the project. For all of the reasons set forth herein and below, the District respectfully requests that the Commission grant the requested CPCN.

## II. PROCEDURAL HISTORY

The District submitted its Application and supporting testimony and exhibits on March 7, 2015. The Commission ordered that additional information be filed, and once that information was obtained and filed, the Commission accepted the Application as filed by letter dated August 22, 2014. The Attorney General of the Commonwealth of Kentucky ("Attorney General") and the Forest Hills Residents' Association, Inc ("Forest Hills" or "Association") were permitted to intervene as full parties, and the Commission established a procedural schedule that included discovery and the filing of testimony by intervenors and rebuttal testimony by the District. The Commission also granted Forest Hills' request for a hearing, and that hearing was held on February 10-11, 2015. As directed by the Commission, the District published notice of the hearing, and as required by statute, the Jessamine County Planning and Zoning Commission was advised of the hearing by the Commission. The only members of the public who chose to speak at the hearing were members of the Association who oppose the proposed site for the tank.

Following the hearing, the District and Forest Hills were given until March 11, 2015 to respond to certain post hearing information requests, and all parties were given until April 8,

2015 to file a post-hearing brief if desired.

As part of its Application, the District moved that the record in Case No 2012-00470 be incorporated by reference into this proceeding, and that motion was granted by the Commission on March 24, 2014. In Case No 2012-00470, the Commission found that the District needed additional storage capacity, but had not presented sufficient evidence to support a tank capacity of 1,000,000 gallons as requested in that case.<sup>1</sup> An extensive record was created in that case, and this and other findings by the Commission will be discussed as relevant below.

### **III. OVERVIEW OF PROPOSED PROJECT**

The District's Application is for a CPCN for a 750,000 gallon elevated water storage tank to serve its Northwest Service Area. The great majority of the District's customers reside in this service area. This area is not physically connected to the District's other, primarily rural farm, service area and the proposed storage tank will serve only the Northwest Service Area.

The District purchases water for the Northwest Service Area from Kentucky American Water Company ("KAW"). Pursuant to its service contract with KAW, the District is obligated to provide its own storage capacity to meet its customers' needs. The District currently has two elevated storage tanks in operation for this purpose, a 50,000 gallon tank and a 500,000 gallon tank.<sup>2</sup> The District has not constructed any addition of storage capacity since the 500,000 gallon tank was constructed in the mid-1990's.

The Northwest Service Area has experienced very significant population growth in recent

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<sup>1</sup> Case No 2012-00470, Order of April 30, 2013, Order on Rehearing of January 3, 2014

<sup>2</sup> Application at page 9

years, and is projected to continue to grow at a rapid rate<sup>3</sup> As found by the Commission in Case No. 2012-00470, the District is deficient in storage to meet the minimum current average day demand as required by 807 KAR 5:066, Section 4(4), and is “not in compliance” with that regulation.<sup>4</sup>

The proposed project is intended to bring the District into compliance with the Commission’s storage regulation, as well as to provide sufficient cost-effective storage to meet growth requirements, fire protection and other emergency needs The District proposes to construct a 750,000 gallon elevated storage tank on property that it has owned for this purpose since 2004. The water tank will be constructed in close proximity to the District’s current distribution system and the infrastructure needed to make the most efficient use of the additional storage The District has determined that a 750,000 gallon tank is the most cost-effective means of providing the needed new storage

The District filed its plans, specifications and approvals for the project in August 2014 The District has obtained all necessary permits for the project and owns the site on which the tank is to be constructed No additional acquisitions of property or rights of way are necessary for the project as proposed

#### IV. ARGUMENT

##### A. THE DISTRICT’S REQUEST FOR A CPCN FOR THIS PROPOSED STORAGE TANK SHOULD BE GRANTED.

This Application is submitted pursuant to KRS 278.020(1), which states in relevant part

No person, partnership, public or private corporation, or any combination thereof shall . . . begin the

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<sup>3</sup> See population growth study filed as an attachment to the prefiled testimony of Dallam B Harper, Jr , AICP

<sup>4</sup> Case No 2012-00470, Order of April 30, 2013 at page 13

construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278 010 until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction. .

“Public convenience and necessity” has been interpreted by Kentucky’s highest court to mean that a proposed facility or service is needed, and that the proposed facility or service will not result in “wasteful duplication”<sup>5</sup>

“Need” requires

A showing of substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated

...[T]he inadequacy must be due to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business .<sup>6</sup>

The Court has also determined that a “substantial inadequacy of existing service” is not limited to a current inadequacy. An inadequacy expected a number of years into the future is sufficient “in view of the long range planning necessary in the public utility field.”<sup>7</sup>

“Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unreasonable multiplicity of physical properties ”<sup>8</sup>

The Court has stated the following with respect to the standard to be applied

As we view it, if the . . . proposal is feasible (capable of supplying

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<sup>5</sup> *Kentucky Utilities Co v Public Service Commission*, 252 S W 2d 885, 890 (Ky 1952)

<sup>6</sup> *Id* At 890

<sup>7</sup> *Kentucky Utilities Co v Public Service Commission*, 390 S W 2d 168, 171 (Ky 1965)

<sup>8</sup> *Kentucky Utilities Co* , 252 S W 2d at 890

adequate service at reasonable rates) and will not result in wasteful duplication, the Public Service Commission is authorized to grant a certificate .<sup>9</sup>

**B. THE PROPOSED FACILITY IS NEEDED.**

In Case No. 2012-00470, the Commission determined that the District was not in compliance with the minimum storage requirements of 807 KAR 5 066, Section 4(4). However, the Commission also found that the District has not presented sufficient evidence to support the need for a 1,000,000 gallon tank as proposed in that proceeding. The Commission stated:

“Our decision today should not be regarded as a rejection of JSEWD’s request for additional storage capacity. As we have previously noted, the record demonstrates a need for additional storage capacity. JSEWD has failed to demonstrate that the level of storage capacity that the proposed facility will provide is necessary. To the extent that JSEWD can provide more convincing and reliable evidence on the customer growth and demand in the Northwest Service Area or additional evidence on the suitability of smaller water storage facilities for that area, it may request rehearing on this Order to present such evidence or file a new application.”<sup>10</sup>

In that Order, the PSC determined that the District should address the following issues in a new application:

1. Population growth,
2. Demand growth;
3. Fire protection needs; and
4. Suitability of a smaller capacity tank to meet current and future demands<sup>11</sup>

In its Order on Rehearing dated January 7, 2014 at page 20, the PSC stated that its prior Order “did not find that the proposed water storage facility was wasteful or excessive, but only

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<sup>9</sup> *Kentucky Utilities Co.*, 390 S.W.2d at 175

<sup>10</sup> Case No. 2012-00470, Order of April 30, 2013 at page 12

<sup>11</sup> Case No. 2012-00470, Order of April 30, 2013 at pp. 10-12

that insufficient evidence has been provided to support the proposed facility's total capacity...". At page 21 of that Order, the PSC further criticized the District's growth evidence because it was not sponsored or prepared by a witness with "expertise in the areas of population projection, urban planning or demographics...".

The District has addressed each and every concern expressed by the PSC in these Orders, both in its Application (and attachments and supplements) and in its prefiled testimony

The District retained the services of Dallam B Harper, Jr., AICP to conduct a study of population growth in the District's Northwest Service Area. Mr Harper's study confirms an expectation of substantial growth in the Northwest Service Area His full analysis and sworn testimony is attached to the District's Application. His projections were incorporated into the appropriate analysis of needed storage capacity in the District's Storage Capacity Analysis <sup>12</sup> No party submitted any testimony that challenged any of Mr Harper's findings

The District's project engineer, Horne Engineering, Inc , conducted an extensive storage capacity analysis, as well as a hydraulic analysis that fully supports the need for the proposed facility John G. Horne analyzed fire protection needs utilizing the Insurance Service Office, Inc ("ISO") methodology for the Northwest Service Area, and determined that the District requires 540,000 gallons for an adequate and reasonable fire protection reserve A study performed by the ISO for the Jessamine County Fire Department (an independent analysis unrelated to this proceeding) completely supports John Horne's analysis of fire protection needs.<sup>13</sup> No party submitted any testimony challenging John Horne's analysis

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<sup>12</sup> Christopher Horne Prefiled Testimony at pg 5, lines 6-9

<sup>13</sup> JSEWD Supplemental Information Response filed January 30, 2015



L. Christopher Horne analyzed the District's storage needs using three different analytical frameworks.<sup>14</sup> All three methodologies demonstrate that additional storage is needed now, and that at least 750,000 gallons of additional storage will be necessary within eight (8) years.<sup>15</sup> The hydraulic analysis performed by Christopher Horne and attached as an exhibit to his prefiled testimony establishes that the proposed tank will be beneficial to the performance of the District's system, and will be turned over in a 72 hour period.<sup>16</sup> No party has filed any testimony challenging Christopher Horne's testimony or analyses.

In accordance with the Commission's directive to investigate the feasibility of smaller tanks than the 1,000,000 gallon tank proposed in Case No. 2012-00470, the District determined to propose a 750,000 gallon tank in this Application, and reviewed both a 500,000 gallon and 750,000 gallon tank as possible alternatives. The District has determined that if a 500,000 gallon tank were approved at this time, an additional 250,000 gallon tank would be necessary no more than eight years from now. Christopher Horne prepared a present worth analysis and determined that building a 500,000 gallon tank now and a 250,000 gallon tank eight years from now would increase the costs for needed by capacity by some \$300,000.<sup>17</sup> Christopher Horne therefore recommended that a 750,000 gallon tank now would be the preferred over a 500,000 gallon tank now and a 250,000 gallon tank eight years from now.<sup>18</sup> No party filed any testimony challenging the District's present worth analysis.

The District respectfully submits that it has fully responded to every question raised by

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<sup>14</sup> Christopher Horne Prefiled Testimony at page 4

<sup>15</sup> Christopher Horne Prefiled Testimony at pg 6

<sup>16</sup> Christopher Horne Prefiled Testimony at pp 4-5

<sup>17</sup> Christopher Horne Prefiled Testimony at pg 5

<sup>18</sup> Christopher Horne Prefiled Testimony at pp 6-7

the Commission with respect to need for the proposed storage capacity. The lack of any testimony opposing the District's extensive testimony and analyses in this area indicate the extent to which the District has successfully addressed the concerns raised by the Commission in Case No. 2012-00470.

**C. THERE IS NO ALTERNATIVE SUPPLIER OF STORAGE.**

In Case No. 2012-00470, Forest Hills suggested during cross-examination that perhaps KAW could provide any needed storage for the District. Although no evidence was presented to demonstrate that KAW was either willing or able to provide such storage, the Commission in its Order stated as follows:

“We agree with the Intervenors that JSEWD should have investigated the availability of obtaining water storage capacity from Kentucky American. At a minimum, JSEWD should have demonstrated that such capacity was unavailable or insufficient to address the water district's requirements.”<sup>19</sup>

In response to this Commission directive, the District submitted as part of its Application an analysis of the ability of KAW to provide needed water storage to JSEWD. The analysis demonstrates that KAW is not capable of providing the needed storage, even if it were released from its current supply contract which requires that the District be responsible for its own storage. Fortunately, as a result of a meeting between the District's Board Chair and the President of KAW, both agreed that KAW was not in a position to provide storage to the District in an emergency even if the current supply contract were amended. This agreement was memorialized in a letter from Cheryl Norton, President of KAW, sent directly to the Commission.

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<sup>19</sup> Order of April 30, 2014 at pg. 11, fn. 41

on or about March 7, 2014, and part of the record in this case (See attached letter which follows this page )<sup>20</sup>

As an information request in this proceeding, Forest Hills requested that the District address the possibility of the City of Nicholasville reserving storage for the District. The record in this case includes a letter from the Public Utilities Director of Nicholasville stating directly and unequivocally that Nicholasville cannot reserve storage service for the District (See attached letter which follows this page)<sup>21</sup>. There is no alternative supplier. The only reasonable alternative for the District is additional storage.<sup>22</sup>

**D. THE PROPOSED STORAGE TANK WILL NOT RESULT IN A WASTEFUL INVESTMENT OR DUPLICATION OF FACILITIES, AND IS REASONABLE UNDER EXISTING AND FORESEEABLE CIRCUMSTANCES.**

The District has determined that the proposed 750,000 gallon storage tank is the best solution to meet the District's needs as established by its Storage Capacity Analysis. As part of this determination, the District has examined all reasonable alternatives to the proposed tank. Very early on, the District had considered the possibility of having two pressure zones for its system, but determined that such an alternative was could not be accomplished due to its inability to find an available site in the southern zone.<sup>23</sup> The District has considered the possibility of reserving storage on either the KAW or the City of Nicholasville system. As noted above, neither KAW nor the City of Nicholasville by their own statements can provide the needed storage capacity. As there is no other storage system that can reasonably reserve storage

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<sup>20</sup> JSEWD Response to Commission Order of June 5, 2014

<sup>21</sup> JSEWD Response to Forest Hills Information Request No. 20

<sup>22</sup> The District also addressed an inquiry into whether reducing line loss and leaks could reduce the need for additional storage. The answer is unequivocally no. John G. Horne Prefiled Testimony at page 4.

<sup>23</sup> Case No. 2012-00470, JSEWD Amended Response to FH First Request for Information No. 45



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March 18, 2014

Jeff R. DeRouen, Executive Director  
Kentucky Public Service Commission  
P O. Box 615  
211 Sower Boulevard  
Frankfort, Kentucky 40602-0615

RE. Jessamine-South Elkhorn Water District CPCN Application

Dear Mr. DeRouen,

It is my understanding that a letter dated March 7, 2014 was sent to you by South Elkhorn Water District's counsel in regard to an application filed by South Elkhorn Water District ("the Water District") for approval of construction and financing of an above-ground storage tank. In addition, it is my understanding that this letter represented that Kentucky American Water would be sending a statement to the Public Service Commission confirming certain statements in the letter.

I can confirm that I requested a meeting with the Water District to discuss several matters, and that the meeting occurred with Nick Strong, Water District Board Member, on March 7, 2014. During the meeting, we discussed Kentucky American Water's storage capacity and the inability of Kentucky American Water to guarantee additional capacity to serve the Water District in an emergency situation.

I can also confirm that Kentucky American Water's agreement with the Water District places responsibility for storage solely on the Water District. Any changes to this agreement would require analysis, negotiation and a written agreement signed by both parties, none of which has occurred at this time.

Sincerely,

Cheryl D Norton  
President

c Sen. Tom Buford  
Rep. Robert R. Damron  
Nick Strong  
Bruce Smith, Esq.



# Nicholasville

October 2, 2014

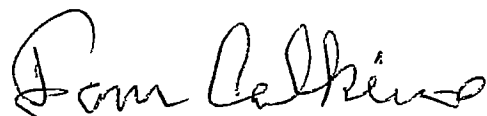
Mr Nick Strong, Chairman  
Jessamine-South Elkhorn Water District  
802 South Main Street  
Nicholasville, Kentucky 40356

Re PSC Information Request

Dear Mr. Strong

In response to your counsel's inquiry, I can state without reservation that the City of Nicholasville does not have excess water storage capacity which can be allocated or shared with your District or any other water purveyor. Although it is true that the City is investigating the possibility of providing a connection between the City's and the District's water systems, there are no final plans, financing or agreements to do so.

Sincerely,



Tom Calkins

Public Utilities Director

capacity for the District, there will be no duplication of facilities when the proposed tank is constructed

The District also has considered, in accordance with the Commission's findings in Case No 2012-00470, alternative capacities for the proposed tank. In Case No 2012-00470, the District considered and modeled a 1,000,000 gallon tank. While a 1,000,000 gallon tank would provide additional economies of scale over the 750,000 gallon tank proposed in this proceeding, the District chose to consider both a 750,000 gallon tank and a 500,000 gallon tank per the Commission's directive. The District's Storage Capacity Analysis demonstrates that the District will need to have an additional 750,000 gallons of capacity by 2023. That need could be addressed by a 750,000 gallon tank now or a 500,000 gallon tank now and an additional 250,000 gallon tank by 2023. However, as noted above in the discussion of present value analysis, the cost of constructing two facilities will exceed the cost of constructing one by some \$300,000. This will, in the District's view, result in significant additional cost to all of the District's ratepayers as compared to the proposed 750,000 gallon tank. The construction of two facilities rather than one will also raise the necessity of determining the proper site for a second facility, with the attendant possibility of another challenge from an intervenor as to the appropriateness of the proposed site for such a facility.

The District has prudently planned for this needed investment. It acquired an appropriate site in 2004 for a very reasonable price. It has used equipment left over from another project to upgrade its distribution system. It has sought and received grant funds from the General Assembly that will offset approximately 70% of the capital costs of this project, and has received

necessary approval from the KIA for the use of these funds in this project<sup>24</sup> Construction will be bid as required by law. As a water district, the District will not finance any part of this project with equity funding, and will not earn a return or profit on the project. It is worth noting that the District chose not to finance its proposed facility in Case No. 2012-00470 with federal funds as state funding would result in less cost to the District and, ultimately, its ratepayers<sup>25</sup> Approval of the requested CPCN will not result in either excessive investment or duplication of facilities

**E. THE DISTRICT HAS CONSIDERED NUMEROUS ALTERNATIVE SITES FOR THIS TANK, AND THE SWITZER SITE IS THE MOST APPROPRIATE AND REASONABLE SITE FOR THE FACILITY.**

The District has responsibly planned for many years to be ready to meet increased demand in its Northwest Service Area, and as part of that planning acquired what is referred to in this proceeding as the Switzer site in 2004 as the site for an additional storage tank Prior to acquiring the Switzer site, the District investigated 11 possible sites Of these sites, seven property owners were not interested in further discussion with the District.<sup>26</sup>

Since the acquisition of the Switzer site, the District has continued to investigate and consider possible alternatives When the Forest Hills subdivision was being planned in the summer of 2005, the District advised the developer that it planned to build a water storage tank on the adjoining Switzer site, and that the developer should place future purchasers of lots in Forest Hills on notice of the tank's future construction The developer offered to donate a tank site within the Forest Hills subdivision for the planned water tank, and to reimburse the District

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<sup>24</sup> In approving these grant funds, the General Assembly has obviously recognized the value of this project

<sup>25</sup> See Exhibit "A", page 14 of JSEWD Response to Motion for Hearing in Case No 2012-00470

<sup>26</sup> John Horne Rebuttal Testimony at page 3, see also Exhibit A to the Rebuttal Testimony of L Nicholas Strong at pp 2-3 for additional detail

for the costs it had already expended on the Switzer site. Negotiations on this proposal continued through 2006, but the developer then refused to complete the transaction.<sup>27</sup> The final plat for the subdivision clearly shows the existence of a wide buffer lot between the residence lots at 732 and 733 Chinkapin Drive and the Switzer site. As shown on JSEWD Hearing Information Response, the proposed tank is 243.9 feet from the closest residence.

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.<sup>28</sup> The District was then approached at its April 2010 monthly meeting by a resident of the Forest Hills subdivision, Mr. William Bates, who inquired as to the planned use for the Switzer site. Mr. Bates was advised of the planned use of the site, and that the subdivision developer was fully aware of that plan. Mr. Bates returned for the May 2010 meeting and voiced an objection to the planned use of the Switzer site. The District agreed to discuss and consider an alternative tank site on the McMillen farm adjoining Forest Hills to the east, but advised Mr. Bates that consideration would need to proceed on a timely basis and that the added expense in securing an additional site would need to be reimbursed by Forest Hills and would not be borne by other ratepayers.

In the course of negotiations with the Forest Hills' residents, the District fully considered the proposed McMillen site under the conditions stated above, as well as another site known as the Brown site. The District staff investigated the Brown site and determined that the Brown site was not suitable on legal and technical grounds. Forest Hills then offered to agree to another site

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<sup>27</sup> Exhibit A to Rebuttal Testimony of L. Nicholas Strong at page 4

<sup>28</sup> The history recited in this and the following paragraph are all part of Exhibit A to the Rebuttal Testimony of L. Nicholas Strong, pp. 5-8



on the McMillen farm, and to immediately post a \$250,000 letter of credit as security for the added costs to the District of investigating and relocating to the new McMillen farm location. The District's attorney was instructed to prepare a memorandum of understanding, incorporating the terms of Forest Hills' offer and send it for execution to another resident of Forest Hills, T Logan Davis, who conveyed the offer on behalf of the Forest Hills. This was done on March 11, 2011<sup>29</sup> The District was never contacted by Mr Davis or Forest Hills after this memorandum was sent. Instead, Forest Hills chose to retain counsel and file a complaint against the District<sup>30</sup>

Three days prior to the scheduled hearing in Case No 2012-00470, Forest Hills filed an analysis dated January 3, 2013 and entitled Jessamine South Elkhorn Water District Water Tank Siting Study This document was prepared by Photo Science Geospatial Solutions ("Photo Science") The document alleged that Photo Science had identified eight possible alternative sites, including the Switzer site, for evaluation.

Despite the very late filing of this analysis, the District decided in a good faith to review the sites suggested by Forest Hills, and requested that the Commission to postpone the scheduled hearing in order to allow a full investigation of the proposed alternatives The hearing was postponed from January 13 until March 10, 2013 for this purpose.

The District's project engineer, John G Horne, performed an extensive review of proposed alternative sites, including site visits and an analysis using the matrix proposed by Photo Science to evaluate the suitability of the proposed sites Horne Engineering filed a full 51

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<sup>29</sup> Attachment to Rebuttal Testimony of Nicholas L Strong, at page 8 of the attachment

<sup>30</sup> Case No 2011-00138 This complaint has been incorporated by reference into Case No 2012-00470, which has further been incorporated by reference into Case No 2014-00084 In that complaint, and subsequently, Forest Hills has made a number of complaints about the District's conduct and reasonableness in its interactions with Forest Hills The District's response to these complaints about alleged unreasonable treatment have been fully addressed in the District's rebuttal testimony by Mr Mr Strong and Mr Horne

page analysis and evaluation of the Photo Science study and proposals on February 25, 2013.<sup>31</sup> Among other findings, the analysis demonstrated that using the Photo Science matrix, the Switzer site came out as the most preferred site for the tank.<sup>32</sup>

The District has evaluated at least 21 sites for this water tank – 11 sites in its initial review, an additional site within the then-proposed Forest Hills subdivision as suggested by the developer, three sites proposed by or discussed with Forest Hills’ residents, and seven sites in addition to the Switzer site that were proposed as possible alternatives by Photo Science. The District has conducted a more than reasonable and full investigation of alternative sites for this project. Further, the District’s Board Chair again offered during the hearing to discuss the McMillen site that Forest Hills once offered to agree to, providing that Forest Hills is willing to hold the District’s customers harmless from additional costs associated with a different site.<sup>33</sup>

After all the scrutiny that has been accorded to the Switzer site in two full scale evidentiary proceedings, there is not one scintilla of evidence in the record that it has any legal, geotechnical, environmental, historical, archaeological or engineering issues that render it unsuitable as the site for the proposed water tank. The Switzer site has long been owned by the District for this purpose. The District has fully discharged its responsibilities in site selection and investigation of alternatives, and is recommending a site that has received all necessary regulatory approvals<sup>34</sup> and does not require any further property or easement acquisition.

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<sup>31</sup> Horne Evaluation, dated February 22, 2013, Case No. 2012-00470, designated as JSEWD – Exhibit 03 in Case No. 2014-00084

<sup>32</sup> Horne Evaluation, *ibid*, at pp. 34-35

<sup>33</sup> Video record of hearing dated February 11, 2015 at 10:20:38-10:21:21

<sup>34</sup> See, e.g., John Horne rebuttal testimony at pp. 9-10

## V. RESPONSE TO FOREST HILLS ALLEGATIONS

Intervenor Forest Hills has alleged that the District has failed to investigate alternatives, particularly siting alternatives, and has been unreasonable in its dealings with Forest Hills. These allegations have been the subject of extensive review in both Case No. 2012-00470 and the current case. District witnesses Strong and John Horne have responded in depth to these allegations in their rebuttal testimony in this proceeding, and their testimony will not be repeated in full here. The District has tried to work with those members of the intervenor Association who have had concerns about this project, but has also kept in mind its obligations to all of its ratepayers.

As noted above, the District has considered a number of functional alternatives to the new proposed storage tank. It has considered whether KAW or the City of Nicholasville could reserve storage for the District's needs. Both entities have made it clear that they cannot reserve such storage. Early on, the District considered two pressure zones, but could not find an available site in the southern zone.<sup>35</sup> The District has considered different tank capacities, and has revised its request from Case No. 2012-00470 from a 1,000,000 gallon tank to a 750,000 gallon tank. In this application, the District has considered the alternative of constructing a 500,000 gallon tank now and a 250,000 gallon tank by 2023, but has concluded that a 750,000 gallon tank size is most appropriate.

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<sup>35</sup> Case No. 2012-00470, JSEWD Amended Response to FH First Request for Information No. 45

Forest Hills' obvious paramount concern is to have any storage tank constructed somewhere other than the Switzer site. As noted above, the District has considered at least 21 alternative sites for this project. With respect to specific claims made by Forest Hills

**A. EVEN IF APPLICABLE TO WATER TANK SITING, THE PHOTO SCIENCE METHODOLOGY DEMONSTRATES THAT THE SWITZER SITE IS THE MOST APPROPRIATE SITE FOR THIS PROJECT.**

Through its witness G Michael Ritchie, Forest Hills has criticized the District's site selection process. Mr. Ritchie claims to have adapted a process used in high voltage electric transmission line siting to be used for water tank siting in this case<sup>36</sup>

As discussed above, in Case No 2012-00470, Forest Hills filed a siting analysis several days before the scheduled hearing in that case. At the District's request, the Commission delayed the hearing in that case from January 7, 2013 to March 10, 2013. In that time, Horne Engineering conducted an extensive review of the various alternative sites proposed by Mr. Ritchie and his company, Photo Science. In addition to physical visits to each site (which neither Mr. Ritchie nor anyone from his company conducted), Horne Engineering used the matrix proposed by Photo Science to evaluate each of the sites according to the standards proposed by Photo Science.

The clear result of evaluating the sites proposed by Photo Science and using the Photo Science proposed matrix was that the Switzer site is not only an acceptable site, it is the best and highest rated site for this project. Under the Photo Science matrix, the lower the matrix value of a

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<sup>36</sup> The District has objected to the use of this methodology in water tank siting cases. The statutory and regulatory requirements for approval of high voltage electric transmission lines exceed those applicable to water storage tanks. The Commission has determined that it will consider the arguments put forth by Forest Hills in this regard, and the discussion herein relates to the weight to be given to Forest Hill's proposal in this case. The District does not, by discussing these issues, waive its objection to consideration of such standards and methodologies beyond electric high voltage transmission line cases, and in particular with respect to a water tank siting issue.

site, the more appropriate the site for the project. As shown by the Horne analysis, the Switzer site is the obvious winner using the Photo Science matrix <sup>37</sup>

Despite this result, Mr Ritchie in his testimony in Case No 2014-00084 has stated that the Switzer site is not an acceptable site. Despite the obvious fact that the District has considered some 21 sites, including those that he himself proposed, Mr Ritchie also states in his testimony that the District never considered any alternative sites. Mr Horne refutes this anomalous testimony in his rebuttal testimony. However, certainly the question remains as to how Mr. Ritchie can make such statements in light of the uncontested fact that the District has investigated numerous alternatives, including those suggested by Mr Ritchie.

At the hearing in this case, Mr Ritchie made the completely erroneous claim that Mr Horne had misapplied his method, because Mr Horne stated that the Switzer site was the highest ranked alternative. Mr Ritchie stated that Horne misunderstood the matrix, and the fact that the Switzer site got the highest score on the matrix meant that the Switzer site was the worst site for the tank. As shown above, this is exactly the opposite of what the Horne evaluation showed.

Upon further examination, Mr Ritchie was shown a copy of the Horne evaluation. His answer was that he did not believe that he had seen that document <sup>38</sup>. It is unclear from the record whether Forest Hills never bothered to share this document with Mr Ritchie, or whether Mr Ritchie just never bothered to review it. He simply did not know what Horne did, although that did not stop him from criticizing the District and the Horne evaluation.

The District has many issues with the facile effort to adapt the EPRI methodology espoused by Photo Science to use as an advocacy tool. While Mr Ritchie extols the value of the

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<sup>37</sup> Horne Evaluation, Exhibit JSEWD 03 - at page 35 (See following page attached hereto for reference)

<sup>38</sup> Video Record February 11, 2015 at 15:02:26 - 15:03:05

process and involving stakeholders at great length, he never attempted to seek input from the District prior to filing his analysis, or since for that matter. He admits that this approach has never been applied before in a water tank siting case<sup>39</sup> He does not propose that the Commission adopt such an approach pursuant to a statutory change or regulatory adoption process that would give all stakeholders an opportunity to review and comment upon such a change prior to it being imposed His adversarial approach in this proceeding is completely contrary to his claim that his approach is a process of involvement and reason, not merely advocacy for a particular result John Horne's analysis and rebuttal testimony details the many errors in Mr Ritchie's analysis<sup>40</sup> that presumably could have been avoided had he followed his own process recommendations

However, even given all of the above, if the Photo Science methodology is to be given any weight in this case, the Horne study demonstrates that the Photo Science matrix fully supports the Switzer site as the best site for this project. Further, Mr. Ritchie agreed that he did not know of any engineering, technological, architectural or historical problems with the Switzer site<sup>41</sup>

**B. MR. RITCHIE'S LAST MINUTE RECOMMENDATION OF AN ALTERNATIVE SITE SHOULD NOT BE CONSIDERED; IF IT IS, THE SITE HE RECOMMENDS IS NOT AN APPROPRIATE ALTERNATIVE.**

At the March 12, 2015 hearing on this matter, Mr Ritchie testified that he had made a site visit of some kind to Forest Hills a few days before the hearing, and as a result of his visit, he was prepared to recommend that the site for an elevated storage tank be changed to another site, which has been referred to as the Brown site.

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<sup>39</sup> Forest Hills Response to JSEWD First Request, No 20

<sup>40</sup> John G Horne Rebuttal Testimony

<sup>41</sup> Video Record of February 11, 2015 hearing at 14 52 48 – 14 53 25

Prior to this testimony, Mr. Ritchie had not recommended a specific site despite multiple opportunities to do so. There is no evidence in the record that he conducted visits to any of the sites to which he referred in his analysis filed in January, 2013 in Case No. 2012-00470. His testimony in case No. 2014-00084 did not refer to the Brown site or any other specific site, and the only additional evidence to which he referred was an aerial photograph taken in July, 2014.<sup>42</sup> The District objects to this last minute Hail Mary on Forest Hills' part. If Forest Hills wanted to present testimony or expert opinion about the preferability of a specific site over the Switzer site, it has had over two years to do so. It should not be permitted to present a material change in testimony the day of the hearing, when there is no good cause for Forest Hills to have delayed presenting this argument and where Mr. Ritchie did not even take the time over a period of some two years to review Mr. Horne's in-depth analysis.

Assuming *arguendo* that it is appropriate for Forest Hills to present this very late additional testimony, the Brown site has been discussed for over four years. The record in both case No. 2012-00470 and 2014-00084 is replete with references to the problems with the Brown site. The latest reference to the Brown site and its legal and physical limitations can be found in the attachment to Mr. Strong's testimony at page 7, which also refers to Group Exhibit "H" attached to the District's Answer to a Complaint filed by Forest Hills in 2011. This Exhibit includes three letters sent by the District's engineer and counsel which illustrate the depth of the investigation of the Brown site, as well as the legal and technical deficiencies with the Brown site. Most telling with respect to the Brown site, however, is that as shown in Mr. Horne's evaluation of possible sites suggested by Photo Science in 2013, the Switzer site comes out as the far superior site to the Brown site using Mr. Ritchie's own matrix system. Even absent the

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<sup>42</sup> Forest Hills response to JSEWD's First Requests, No. 23  
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significant difficulties with the Brown site, there is no rational basis under Mr Ritchie's matrix system for choosing the Brown site over the Switzer site

**C. EVEN ASSUMING THAT THE ALLEGED IMPACT ON PROPERTY VALUES IS AN APPROPRIATE ISSUE IN A WATER DISTRICT STORAGE TANK CPCN APPLICATION, THE EVIDENCE DOES NOT SUPPORT A FINDING THAT PROPERTY VALUES IN FOREST HILLS WILL BE ADVERSELY AFFECTED BY THE PROPOSED PROJECT.**

Forest Hills alleges that constructing the requested water tank on the Switzer site will lead to a 20% decline in property values in the Forest Hills subdivision due to the Switzer site's proximity to the subdivision. Its consultant and witness, Mr. E. Clark Toleman, has testified to this alleged impact on property values, although prior to March 11, 2015, he had not presented any study, workpapers, calculation or market analysis which purports to support his 20% conclusion despite repeated opportunities and requests to do so. As he stated at the February 11, 2015, hearing, his 20% conclusion is a "judgment call" <sup>43</sup>

Forest Hills' witness Mr. T. Logan Davis testified that his opposition to the proposed project is not mere aesthetics – it is fueled by Mr. Toleman's allegation that real estate prices will fall drastically (and apparently permanently in Mr. Toleman's view) should the proposed tank be built on the Switzer site <sup>44</sup>

Mr. Toleman's first appearance on this issue came in response to a JSEWD information request in Case No. 2012-00470 <sup>45</sup>. In that response, Mr. Toleman stated that it would be difficult to quantify a reduction in real estate values due to the proposed tank in that case. By the time the

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<sup>43</sup> Video record, February 11, 2015 hearing at 16:27:52

<sup>44</sup> Davis Prefiled Testimony at pp. 4-5

<sup>45</sup> Case No. 2012-00470, Forest Hills Response to JSEWD Supplemental Information Requests No. 3 (a)



hearing in that case occurred, Mr Toleman stated that he could quantify the reduction and that it was 20%. Mr Toleman did not provide any calculations, work papers or market analysis to support his 20% conclusion in Case No. 2012-00470.

In Case No 2014-00084, Mr Toleman prefiled testimony that reiterated his conclusion that there would be a 20% reduction in value in the Forest Hills subdivision if the proposed 750,000 gallon tank were built on the Switzer site. The District specifically asked that Mr Toleman to produce “all economic studies, work papers and calculations” that might support his conclusion. There was no objection to this question Mr Toleman did produce 104 pages of documents. The first 81 pages consisted of articles from real estate journals, none of which were authored by Mr. Toleman Mr Toleman also produced 13 pages of printouts from the Jessamine County PVA website, and three pages of calculations of the current PVA values of properties in Forest Hills in which the 20% reduction was merely assumed<sup>46</sup> There was no effort in any of these pages to show the derivation or calculation of Mr. Toleman’s critical 20% conclusion. The 20% reduction was used only as a given, to multiply times property values that result in a big number for alleged damages to property values The remainder of Mr Toleman’s response consisted of pictures of homes in Forest Hills and of various water tanks.

The critical point here is that when asked for “all economic studies, work papers or calculations” of his only material assertion – that there would be a 20% decline in property values” – Mr Toleman presented nothing Once the 20% is assumed (or 10% or 30% or any percent), the “damages” is purely a very basic mathematical assumption – x % of added up PVA values. But this “calculation” lends no support to the material claim – of a 20% reduction in property values

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<sup>46</sup> Mr Toleman’s response also included photographs of various water tanks

At the February 11, 2015, hearing, Mr. Toleman made various claims as to how he had arrived at his 20%, including at one point saying for the first time that he had performed a “paired-sales analysis” that supported his claim.<sup>47</sup> Mr. Toleman also testified that he had actually found yet another percentage reduction, which he then adjusted for a “market downturn” – again with no written evidence submitted of how such an adjustment was derived. Further, when asked directly by the District during discovery to provide any such “economic studies, work papers or calculations”, Mr. Toleman provided nothing. Although the request was continuing, Mr. Toleman said nothing of these alleged calculations until the hearing. At the hearing, Mr. Toleman did finally admit that his 20% calculation was a pure “judgment call”<sup>48</sup>

District rebuttal witness, Mr. William L. Berkley, addressed the deficiencies in Mr. Toleman’s approach in his rebuttal testimony. His rebuttal will not be repeated here, but the District respectfully requests that the Commission review his findings and his concerns about the serious defects in the approach taken by Mr. Toleman. Mr. Berkley performed a proper market analysis that shows that there is no credible evidence that the proposed tank will cause a decline in real estate values in Forest Hills.<sup>49</sup> As Mr. Berkley concluded after careful study, the decline in real estate values in Forest Hills is related to the real estate cycle, not to proximity to a planned storage tank.<sup>50</sup> After investigating and updating recent market data, Mr. Berkley reiterated his

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<sup>47</sup> Mr. Toleman did say that he had some notes, but no such notes were provided to the District prior to or at the hearing.

<sup>48</sup> Video Record of February 11, 2015 hearing at 16:27:50. The entire discussion from 16:27:47 – 16:28:20 clearly demonstrates that Forest Hills failed to provide any calculations with respect to Mr. Toleman’s 20% recommendation. No reason is given for this failure. In the end, Mr. Toleman admitted that his 20% reduction was a judgment call. See Berkley rebuttal about the reasonableness of making such a “judgment call” in an appraisal situation.

<sup>49</sup> The District has objected to having prognostications based purely on judgment being considered as evidence in a water tank CPCN case, and is not aware of such a consideration being given any weight in previous such cases. The District maintains its objection to the consideration of purely “professional judgment” testimony as either relevant or helpful in an application such as this, and nothing stated herein should be construed as a waiver of such objection.

<sup>50</sup> Berkley Analysis, Case No. 2012-00470 at page 29. Mr. Berkley reiterated his conclusion in his rebuttal testimony.

conclusions in his January 15, 2015 rebuttal testimony. In particular, he concluded that “the presence of above ground water tanks in residential areas do not adversely impact real estate values in those areas”<sup>51</sup>

At the hearing, Forest Hills for the first time introduced evidence that a property in Forest Hills sold in December, 2013, and that its market value declined over its value in 2009<sup>52</sup>. As Mr. Berkley explained, a particular sale can turn on a number of variables, and that is why anecdotal or judgmental evidence is not a reliable guide to asserting whether a particular event will have an impact on property values<sup>53</sup>. The sale of one improved property does not constitute reliable evidence of the impact of the proposed tank on either that property or the entire subdivision, let alone establish that such a decline has anything to do with the proposed water tank. Further, there is no evidence that Mr. Toleman reviewed this particular property or sale in detail to determine what factors might be involved that resulted in this sale.

Improved properties that are resold do not always increase in value. The mere fact that a resale property decreases in value does not establish the cause or causes for such a decrease. For instance, 619 Burr Oak sold in 2007 for \$1,450,000, then resold in 2009 for \$1,265,000<sup>54</sup>, a decline of \$185,000. As Mr. Berkley correctly stated, one sale does not establish a trend.

Jessamine County online property records also state that 618 Burr Oak, a property cited by Mr. Toleman in his response with incorrect values, sold for \$762,249 on May 15, 2014 and is

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in preparation for which he reviewed and updated relevant market data

<sup>51</sup> Berkley Rebuttal Testimony at page 5

<sup>52</sup> This sale occurred in December, 2014, but was not referenced by Forest Hills in any way until the hearing on February 10, 2015

<sup>53</sup> Video Record of Hearing on February 10, 2015 at 10:57:12 – 10:58:04

<sup>54</sup> Forest Hills Response to JSEWD First Requests, No. 9 at pg. 87 of 104. The seller of 619 Burr Oak in 2009 was former UK basketball coach, Billy Gillispie, who left UK in 2009, which may explain the reduced sale price. Berkley Market Analysis, page 9, Case No. 2012-00470. The obvious point is that individual resales of improved property can be drastically affected by conditions that do not relate to nearby planned land uses.

currently assessed at \$802,249 Forest Hills did not make any effort to refer to this sale, and to say that the sale referred to by Forest Hills at the hearing reflects evidence of a trend in Forest Hills would be misleading JSEWD respectfully requests that the Commission take administrative notice of the Jessamine County online property records at [www.jessaminepva.com](http://www.jessaminepva.com), and affirm that this information is correct, and permit the District to refer to this sale in its brief Attached for ease of reference at the end of this brief are the most recent PVA sheet for 618 Burr Oak and the most recent sales history for properties on Burr Oak as reported by the Jessamine PVA <sup>55</sup>

**D FOREST HILLS VERY LATE FILED “SUR-REBUTTAL” EXHIBIT SHOULD NOT BE AMITTED OR CONSIDERED BY THE COMMISSION, AND IF ADMITTED SHOULD BE GIVEN LITTLE OR NO WEIGHT IN THE COMMISSION’S DECISION.**

As noted above, the District has diligently sought to obtain from Forest Hills any non-subjective basis for Mr Toleman’s allegation that there will be a 20% reduction in property values in the Forest Hills subdivision as the result of constructing a water storage tank on the Switzer site Up to and including the hearing in this case, Forest Hills has not presented any such evidence, either in workpapers, calculations or written analysis

At the hearing in this case, Mr Toleman for the first time claimed that he had done some sort of “paired sales” analysis, and that such analysis included an adjustment by which Mr Toleman allegedly removed the effects of the housing recession of recent years in arriving at such a result. Even at the hearing, Mr Toleman advised that he did not have a written analysis,

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<sup>55</sup> Concurrently with this brief, JSEWD has filed a Motion for the Commission to take administrative notice of certain Jessamine PVA records, including these specified records

although he had some “notes” No answer was given as to why this evidence had not been provided prior to the hearing despite the continuing request from the District for any and all workpapers or calculations relating to Mr Toleman’s 20% conclusion.

The Commission’s staff requested that Mr Toleman provide any calculations or workpapers that Mr Toleman had prepared prior to the hearing concerning this allegation The District objected to this request at the hearing because if any such documents then existed, Forest Hills had withheld this information despite longstanding requests for precisely such documents by the District. The Commission overruled the objection, and directed the District to further argue its objection in its brief.<sup>56</sup>

On March 11, 2015, Forest Hills filed Responses to Hearing Data Requests that consisted of a plat and Toleman’s “workpapers and calculations” allegedly developed by him prior to the hearing and confirmed in his sworn Certification The response itself is entitled “Hearing Notes”, and consists of a “paired sales” analysis of sales entirely within the Forest Hills subdivision that allegedly show a reduction in property values. This reduction then is apparently subjected to an unexplained adjustment for a general decline in real estate values

This filing is clearly objectionable and prejudicial to the District. As identified in the Response, it is “workpapers and calculations” concerning the 20% allegation. It is alleged that these “workpapers and calculations” were in existence prior to the hearing. Yet they were withheld despite specific request by the District. No objection was made to the request by Forest Hills Forest Hills should not be rewarded for its failure to properly produce this document so as

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<sup>56</sup> Video record February 11, 2015 hearing at 4 09 15 – 4 09 43

to allow the District a fair opportunity to address it in its rebuttal testimony, or for that matter to give the District any meaningful opportunity to contest this analysis<sup>57</sup>

The filing is further deficient in that it gives no indication whatsoever of when it was prepared. As Forest Hills refused to provide this document prior to the hearing, the onus is on it to produce some evidence other than the implied assurance that this response was in existence in its current form prior to the hearing. No such evidence was presented.

By Commission Order, the District was required to file its rebuttal testimony on January 15, 2015. If this document existed prior to this date, Forest Hills' refusal to provide it prevented the District from investigating and addressing this claim in its rebuttal testimony. If it was created after the filing of rebuttal testimony (even if prior to the hearing), it is clearly impermissible sur-rebuttal testimony based on Mr. Berkley's rebuttal, which criticized Mr. Toleman for not having done any market analysis to support his 20% allegation. If it was created after the hearing, it is beyond the scope of the hearing request. Under any of the above circumstances, the filing and Mr. Toleman's new testimony at the hearing should be stricken since Forest Hills refused to provide any "workpapers or calculations" of this alleged reduction until it was too late for the District to respond.

The District respectfully renews its objection to the consideration of any new testimony about previously withheld workpapers or calculations or the presentation of alleged workpapers and calculations that were withheld from the District until a month after the hearing concluded.

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<sup>57</sup> Pursuant to 807 KAR 5 001, Section 11(4), the District is prohibited from referring to any evidence not in the record at the close of testimony. The filing by Forest Hills was made pursuant to Commission Order, but no provision was made for the District to provide additional evidence with respect to this filing, including for instance additional or more recent PVA information that might contradict Mr. Toleman's claims. Particularly given Forest Hills' continuing failure to provide these workpapers and calculations on a timely basis, the District is severely prejudiced by being precluded from an effective opportunity to challenge this filing. The District has filed a motion for the Commission to take administrative notice of certain public records with respect to properties reviewed by Mr. Toleman, but the relief sought in such motion will not eliminate the prejudice to the District, only reduce it.

The alleged notes by Toleman are also of little or no evidentiary value. They are entirely self-referential to sales within the Forest Hills subdivision. There is no analytical basis by which Mr. Toleman adjusts the analysis to allegedly remove the impact of the general housing downturn from the analysis – he simply imposes such an adjustment. While Mr. Toleman alleged at the hearing without citing evidence that the impact of the general housing recession is over, all but one of the sales that were analyzed in this filing were between 2006 and 2012. It is purely Mr. Toleman's subjective opinion that any of the decline in real estate values between 2006-2012 is related to the District's plan to construct a storage tank on the Switzer site. This is the kind of subjective judgment that Mr. Berkley properly warned against in his careful market analysis and rebuttal testimony.

The only reported sale in Toleman's post-hearing exhibit after 2012 is at 575 Burr Oak. This sale for \$194,000, cited as being in 2014, shows that the subject property had recovered almost all of its 2007 value of \$225,000. This is consistent with Mr. Berkley's conclusion that property values in Forest Hills (as elsewhere) were severely impacted by the housing market recession, but are recovering.

The notes filed by Mr. Toleman do not provide a sound analytical basis for calculating a reduction in property values in Forest Hills that have been, or will be, caused by the proposed water tank. The calculations and workpapers make no effort to empirically analyze to what extent any decline in property values is due to the economic housing recession. Mr. Toleman's judgment on behalf of his client is not a sufficient basis upon which to conclude that economic conditions are not responsible for any reported decline in property value.

Mr. Toleman's notes are also riddled with serious errors and omissions. For example, his notes include the same transaction twice. Sales of lots reported at No. 3 and No. 6 of his notes

(622 Burr Oak) are the same sale. The fact that the double-counted sale is the largest decline in lot value reported by Mr Toleman compounds the error

As Mr Berkley noted in his analysis in Case No 2012-00470, four lot sales in 2012 were a result of bank liquidations Mr Toleman made no effort to identify such liquidations The 2012 transaction seller for 622 Burr Oak is PBI Bank.<sup>58</sup> Mr Toleman did not identify this or any other transaction on his notes as a bank liquidation It is completely unreasonable and illogical to assert that the District is responsible for a general decline in property values that led to this, and other, foreclosures in Forest Hill Further, 622 Burr Oak sold again in 2012 for a healthy \$718,500.<sup>59</sup>

Mr Toleman also includes 618 Burr Oak in his analysis, finding a 53% decline in lot value between 2006 and 2012 However, the property sales history submitted by Toleman in his response to the District's Information Request No 9 (pages 86-88 of 104) makes it clear that this is not the sales history of 618, as stated by Mr Toleman, but the sales history of 626 Burr Oak <sup>60</sup> Mr Toleman also omits a reported sale from his response for 626 Burr Oak in 2006 for \$340,000 626 was sold later in 2006 for \$170,000, which merely demonstrates the volatility of lot prices even absent consideration of the proposed water tank. With respect to actual Lot No 618 Burr Oak, Mr Toleman asserts that this lot has an assessed value of \$277,000 <sup>61</sup> This is, of course, completely inconsistent with his "paired sales" valuation analysis Jessamine PVA records show that 618 Burr Oak actually sold for \$762,249 on May 15, 2014, and is currently assessed at

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<sup>58</sup> Berkley Analysis, Case No 2012-00470 at page 10

<sup>59</sup> Berkley Analysis, Case No 2012-00470 at page 9

<sup>60</sup> The owner of 626 Burr Oak is not identified in the record as this issue has only arisen due to the post-hearing filing of these notes and Mr Toleman does not identify the seller The District cannot cite to the details of this transaction that are not in the record due to 807 KAR5 001, Section 11(4) unless the Commission takes administrative notice as requested Had this document been properly and timely filed, the District would have had further argument with respect to this transaction, but cannot do so herein absent administrative notice due to the very late nature of this filing All transactions in Forest Hills, including more complete information on the 2012 transaction, are reported online at the Jessamine County PVA site, [www.jessaminepva.com](http://www.jessaminepva.com)

<sup>61</sup> Forest Hills Response to the District's First Requests, No 9, page 96 of 104



\$804,249 The District again requests that the Commission take administrative notice of the Jessamine PVA records so as to prevent Mr. Toleman's totally inaccurate recitation of values and events from further clouding the record in this case <sup>62</sup>

Jessamine PVA records show that the seller in the latest transaction involving 626 Burr Oak was PBI Bank Mr Toleman did not reveal this in his notes The Jessamine PVA property record for 626 Burr Oak is attached at the end of this brief for ease of reference The District again requests that the Commission take administrative notice of the Jessamine PVA records so as to provide a complete official record of the transaction

Mr Toleman further errs in reporting that 619 Burr Oak sold in 2006 for \$170,000 and then sold again in 2007 for \$145,000. In fact, the 2007 sale was for \$1,450,000 <sup>63</sup>

These numerous material errors and omissions alone are sufficient reason to completely discount Mr Toleman's "paired sales" analysis The District respectfully requests that the Commission reject Mr Toleman's arguments and find that Mr Berkley has demonstrated that the proposed storage tank will not be adverse to property values in the Forest Hills subdivision.

It is significant to note that there have been six homes constructed post Case No 2012-00470 hearing, four of which are in direct view of the proposed water tower Further, there are two new homes being constructed which will have direct views of the proposed tank on the Switzer site <sup>64</sup>As shown in the survey requested by Forest Hills and filed by the District as part of its post hearing information responses, this new construction is taking place in close proximity to the tank <sup>65</sup> While these property owners are fully aware of the proposed tank, they are proceeding

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<sup>62</sup> As previously noted, JSEWD is filing concurrently with this brief a Motion for the Commission to take administrative notice of certain Jessamine PVA records, including this record for 626 Burr Oak

<sup>63</sup> Berkley Analysis, Case No 2012-00470 at page 9

<sup>64</sup> John Horne Rebuttal Testimony at pg 13

<sup>65</sup> JSEWD Post Hearing Data Response pg 6 of 15

to build without complaint or expressed concern about property diminution. Their conduct is consistent with Mr Berkley's findings, but not with Mr Toleman's conclusion

**E. DESPITE EFFORTS TO PORTRAY THE TANK AS VIRTUALLY ON TOP OF FOREST HILLS RESIDENCES, THE TANK IS NOT UNDULY PROXIMATE TO ANY RESIDENCE AND IS NOT A DANGER TO ANY RESIDENTS OF FOREST HILLS OR THEIR PROPERTIES.**

Forest Hills has objected to the Switzer site due to the proximity of the proposed site to residences in Forest Hills. At the hearing, Forest Hills asked Mr Berkley if he was aware that if a property is in the "fall distance" or "fall zone" of a utility structure, that such proximity could properly be considered as a diminution factor in an appraisal. The implication of this question is that the proposed water tank might present some danger to residential structures in the event of an extreme calamity and that if so, such a possibility is properly considered in appraising the value of a property. Forest Hills' counsel also repeatedly asserted in questioning that one of the homes in Forest Hills is in the "fall zone" of the proposed tank as measured by the height of the tank.<sup>66</sup>

This implication assumes an event which is extremely unlikely. Forest Hills did not present any evidence as to what sort of calamity might result in the total structural failure of the tank. Presumably a natural disaster such as an earthquake or tornado, even if sufficient to overcome the building standards required for the proposed tank, would also result in substantial damage to neighboring properties. However, even assuming for purposes of argument that some such catastrophe could occur to this tank and not damage neighboring structures on its own, the

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<sup>66</sup> Video Record of February 10, 2015 at 11:12:00 – 11:13:04

facts are that the tank is sufficiently removed from any residential structures to protect against such damage, and that counsel's continued contention that any home in Forest Hills is in the "fall zone" of the proposed tank is factually incorrect

As demonstrated by the survey filed by the District on March 11, 2015<sup>67</sup>, the center of the proposed tank is 243.9 Feet from the nearest residential structure in the Forest Hills subdivision. Even if laid on its side, the proposed tank would not encroach on any residential lot in Forest Hills. Presumably at least in part due to his knowledge of the proposed tank, the Forest Hills developer created two residual areas between the nearest residential lots on Chinkapin Drive and the Switzer site. These lots form a very substantial buffer between the residential lots at the end of Chinkapin and the Switzer site. Even if some catastrophe laid the proposed tank on its side in exactly the direction of the nearest residence in Forest Hills, there would be no encroachment of the tank on that residence, or even on the closest residential lot outside Forest Hills. Further, as noted on the survey, any extremely unlikely catastrophic failure would result in the tank buckling, and not toppling on its side. The "fall zone" for such a unlikely event would be the Switzer site, not any Forest Hills residences

**F. THE DISTRICT HAS BEEN REASONABLE IN ITS DEALINGS WITH THE INTERVENOR AND OTHER INTERESTED PARTIES.**

Forest Hills has complained that the District has been unreasonable in its dealings with the Association and its members who oppose the Switzer site. As noted above, these claims are without merit, and are fully addressed both in rebuttal testimony and in this brief.

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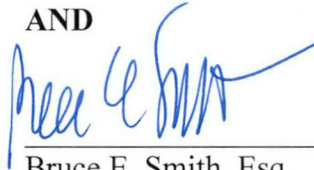
<sup>67</sup> Home Post Hearing Data Response Pg 6 of 15

**VI. CONCLUSION**

For all of the reasons stated this brief and in the District's comprehensive filings, the District respectfully requests that the Commission grant the requested CPCN.

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**AND**



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**CO-COUNSEL FOR DISTRICT**

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true copy of the foregoing Post Hearing Brief with attachments was mailed to the following individuals, postage prepaid, on April 8, 2015:

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Bruce E. Smith

Jessamine County, Kentucky  
Property Valuation Administrator  
Brad Freeman



## Property Search Display

**618 BURR OAK**

### Property Information

Owner DIXON GREGORY L & PATRICIA R  
Mailing Address 618 BURR OAK DRIVE  
NICHOLASVILLE KY 40356

Legal Description Lot 24  
Block  
Unit  
Section  
DB/PG 710/53 PC/SL PC10/121

Subdivision FOREST HILLS  
Tax District C at 1 039 / \$100 of assessed value  
Parcel ID# 043-00-00-001 24  
Property Class Residential  
Lot Size  
Acreage 1 .7

### Property Characteristics

Square Feet	3424	Style	1 STORY	Year Built	2014
Bedrooms	3	Full Bath	3	Half Bath	1
Basement	SUNKEN	Bsmt Total Sq Ft	3424	Bsmt % Finished	0
Exterior	MAS/VEN	Garage/Carport	ATTCHD 3		
HeatType	ELECTRC	Central Air	Y		
Fireplace		Pool	Y		

### Assessment

Fair Cash Value Total \$ 802249  
Homestead Exemption \$ 0 0  
Disability Exemption \$ 0

Taxable Assessment for 2016 \$ 802249  
Taxable Assessment for 2015 \$ 802249

### Sales History

Date	05/15/2014	Price \$ 762249	DB/PG 710/53
Buyer's Name	DIXON GREGORY L & PATRICIA R		
Seller's Name	GALE PROPERTY MANAGEMENT LLC		
Date	08/22/2013	Price \$ 137000	DB/PG 696/108
Buyer's Name	GALE PROPERTY MANAGEMENT LLC		
Seller's Name	SHELTON BRETT & CECILIA		

**Photo**

(click photo to enlarge)

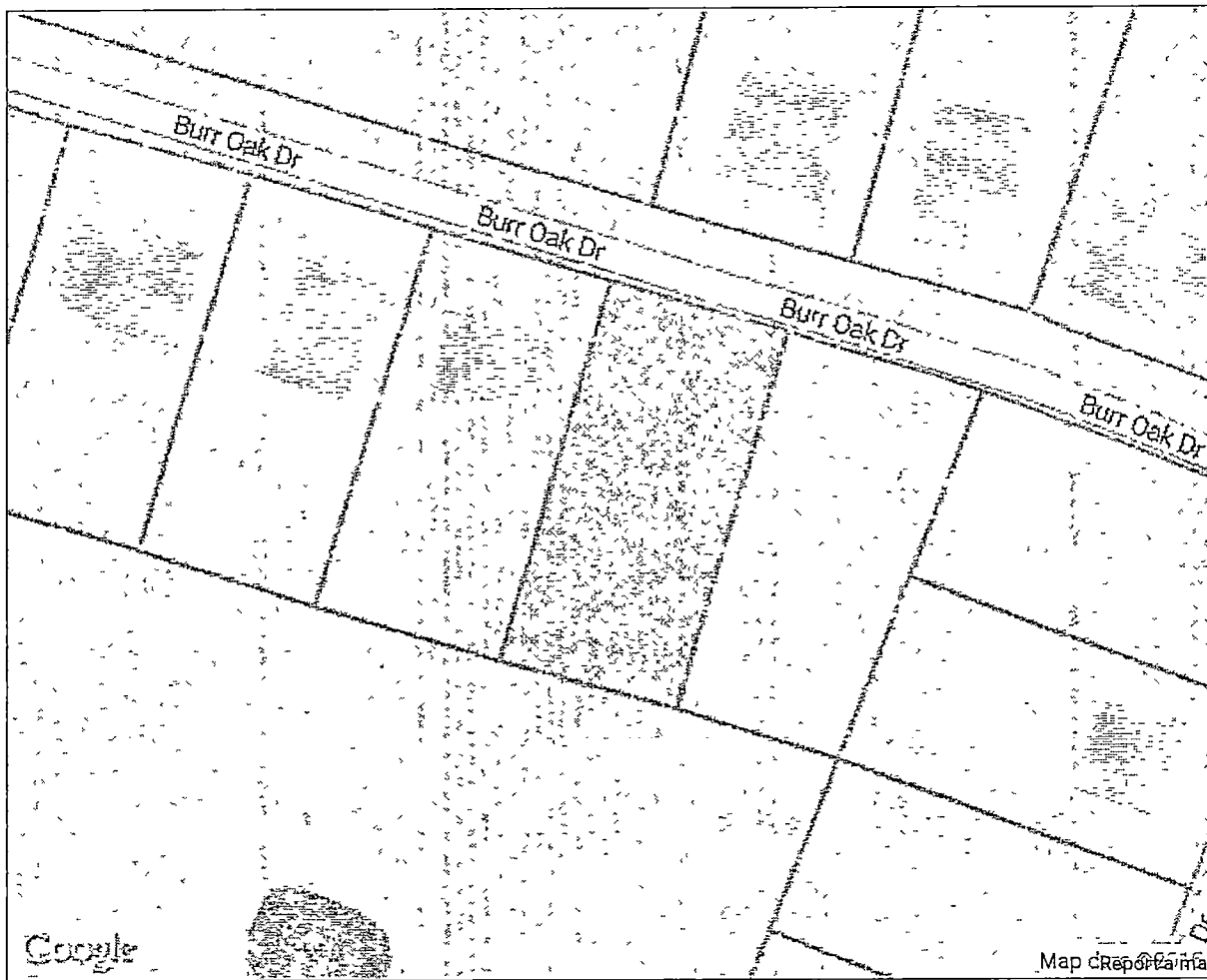


**Sketch**

(click sketch to enlarge)



**GIS Map**



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Jessamine County, Kentucky  
 Property Valuation Administrator  
 Brad Freeman



## Sales Search Results

(Please click on "View Record" for the property you want to see)

	Sale Price	Sale Date	SqFt	Street Address
<a href="#">View Record</a>	170000	02/07/2006	0	623 BURR OAK DRIVE
<a href="#">View Record</a>	170000	03/15/2006	0	639 BURR OAK DR
<a href="#">View Record</a>	340000	04/13/2006	0	631 BURR OAK
<a href="#">View Record</a>	340000	04/13/2006	0	626 BURR OAK DR
<a href="#">View Record</a>	170000	04/13/2006	0	627 BURR OAK
<a href="#">View Record</a>	340000	04/18/2006	0	638 BURR OAK
<a href="#">View Record</a>	175000	04/18/2006	0	604 BURR OAK
<a href="#">View Record</a>	175000	04/18/2006	0	600 BURR OAK
<a href="#">View Record</a>	170000	04/22/2006	0	619 BURR OAK
<a href="#">View Record</a>	170000	04/26/2006	0	612 BURR OAK DR
<a href="#">View Record</a>	170000	05/03/2006	0	618 BURR OAK
<a href="#">View Record</a>	0	07/17/2006	0	626 BURR OAK DR
<a href="#">View Record</a>	0	07/17/2006	0	635 BURR OAK DR
<a href="#">View Record</a>	0	07/24/2006	0	608 BURR OAK DR
<a href="#">View Record</a>	937324	10/13/2006	0	639 BURR OAK
Page <b>1</b> of <b>44</b> Total Records <b>44</b>				

(To return to your Search Query, please click your browser's "back" button)

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## Sales Search Results

*(Please click on "View Record" for the property you want to see)*

	Sale Price	Sale Date	SqFt	Street Address
<a href="#">View Record</a>	170000	12/01/2006	0	626 BURR OAK DR
<a href="#">View Record</a>	500000	01/18/2007	4812	627 BURR OAK DR
<a href="#">View Record</a>	183845	03/10/2007	0	631 BURR OAK DR
<a href="#">View Record</a>	225000	03/14/2007	0	BURR OAK
<a href="#">View Record</a>	225000	04/25/2007	0	BURR OAK
<a href="#">View Record</a>	950000	05/25/2007	5347	623 BURR OAK DR
<a href="#">View Record</a>	1450000	08/09/2007	0	619 BURR OAK DR
<a href="#">View Record</a>	1260615	10/10/2007	0	604 BURR OAK DR
<a href="#">View Record</a>	400000	06/02/2008	0	608 BURR OAK
<a href="#">View Record</a>	340000	10/03/2008	0	608 BURR OAK
<a href="#">View Record</a>	153000	06/29/2009	0	626 BURR OAK DR
<a href="#">View Record</a>	1265000	07/10/2009	7311	619 BURR OAK DR
<a href="#">View Record</a>	855000	07/30/2009	5658	639 BURR OAK
<a href="#">View Record</a>	165000	07/30/2009	0	600 BURR OAK DR
<a href="#">View Record</a>	1495000	07/30/2009	5367	604 BURR OAK DR
Page  1 2 3 ... Total Records 44				

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### Sales Search Results

(Please click on "View Record" for the property you want to see)

	Sale Price	Sale Date	SqFt	Street Address
<a href="#">View Record</a>	971000	12/23/2009	5647	631 BURR OAK DR
<a href="#">View Record</a>	885000	02/24/2010	4532	635 BURR OAK
<a href="#">View Record</a>	775000	04/09/2010	5647	631 BURR OAK DR
<a href="#">View Record</a>	250000	12/30/2010	0	BURR OAK
<a href="#">View Record</a>	250000	12/30/2010	0	BURR OAK
<a href="#">View Record</a>	635000	11/23/2011	3884	612 BURR OAK DR
<a href="#">View Record</a>	84000	05/16/2012	0	BURR OAK
<a href="#">View Record</a>	120000	06/15/2012	0	BURR OAK
<a href="#">View Record</a>	718500	11/20/2012	0	BURR OAK
<a href="#">View Record</a>	80000	12/28/2012	0	626 BURR OAK DR
<a href="#">View Record</a>	137000	08/22/2013	0	618 BURR OAK
<a href="#">View Record</a>	762249	05/15/2014	0	618 BURR OAK
<a href="#">View Record</a>	1	06/04/2014	0	BURR OAK
<a href="#">View Record</a>	194000	08/04/2014	0	BURR OAK
Page <b>123</b> Total Records <b>44</b>				

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Jessamine County, Kentucky  
Property Valuation Administrator  
Brad Freeman



## Property Search Display

**626 BURR OAK DR**

### Property Information

Owner BATES WILLIAM  
Mailing Address 704 CHINKAPIN DR  
NICHOLASVILLE KY 40356-0000

Legal Description Lot 22  
Block  
Unit  
Section  
DB/PG 681/594 PC/SL PC10/121

Subdivision FOREST HILLS  
Tax District C at 1 039 / \$100 of assessed value  
Parcel ID# 043-00-00-001 22  
Property Class Residential  
Lot Size  
Acreage 1

### Property Characteristics

Square Feet	Style	Year Built
Bedrooms 0	Full Bath 0	Half Bath 0
Basement	Bsmt Total Sq Ft 0	Bsmt % Finished 0
Exterior	Garage/Carport	
HeatType	Central Air	
Fireplace	Pool N	

### Assessment

Fair Cash Value Total \$ 95000  
Homestead Exemption \$ 0 0  
Disability Exemption \$ 0

Taxable Assessment for 2016 \$ 95000  
Taxable Assessment for 2015 \$ 95000

### Sales History

Date	12/28/2012	Price \$ 80000	DB/PG 681/594
Buyer's Name	BATES WILLIAM		
Seller's Name	PBI BANK INC		
Date	06/29/2009	Price \$ 153000	DB/PG 623/106
Buyer's Name	PBI BANK INC		
Seller's Name	T L DAVIS CONSTRUCTION LLC		
Date	12/01/2006	Price \$ 170000	DB/PG 573/385
Buyer's Name	T L DAVIS CONSTRUCTION LLC		
Seller's Name	FOREST HILLS OF KENTUCKY LLC		

0	DB/PG 565/629	Buyer's Name	Date	07/17/2006	Price \$
Seller's Name	MCDONALD BUILDERS INC	FOREST HILLS OF KENTUCKY LLC			
Date	04/13/2006	Price \$ 340000	DB/PG	560/64	
Buyer's Name	MCDONALD BUILDERS INC				
Seller's Name	FOREST HILLS OF KENTUCKY LLC				

**Photo**

(click photo to enlarge)

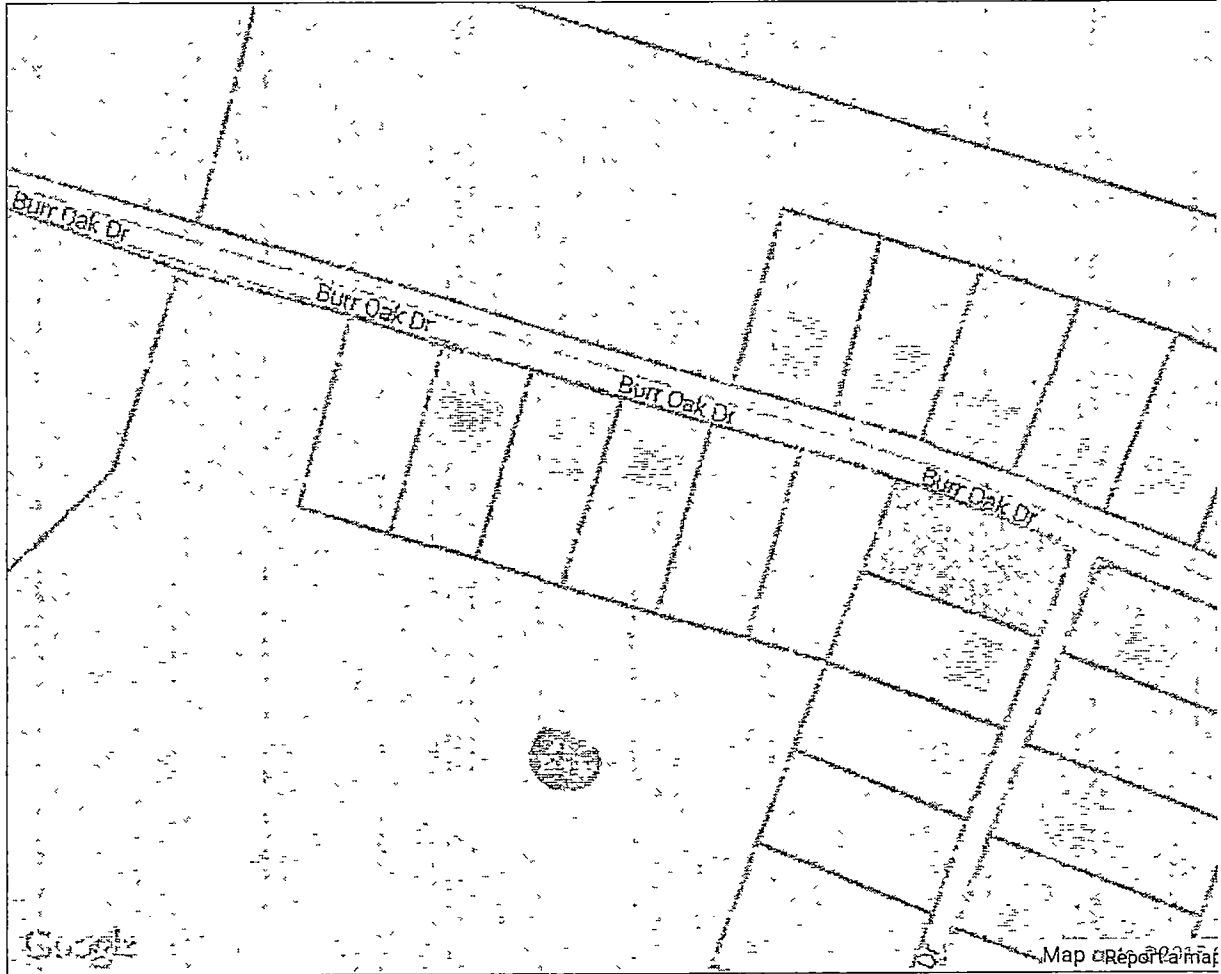


**Sketch**

(click sketch to enlarge)



**GIS Map**



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