

FILE OR RECORDING DOCUMENTS

Date: June 27, 2005

SUBJECT: Howard B. Keen vs. Carroll County Water District #1, #2004-00348

FILING OR RECORDING OF DOCUMENTS:

Defendant's Answers to Interrogatories and Requests for Production of Documents
ORIGINAL AND TEN (10) COPIES

Ruth H. Baxter/dmp

TO: Commonwealth of Kentucky
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602-0615

CRAWFORD & BAXTER, P.S.C.
JAMES M. CRAWFORD RUTH H. BAXTER
Attorneys at Law
523 HIGHLAND AVENUE - P.O. BOX 353
CARROLLTON, KY 41008
PHONE: (502) 732-6688 - (800) 442-8680
FAX: (502) 732-6920

RECEIVED

JUN 29 2005

PUBLIC SERVICE
COMMISSION

RECEIVED

COMMONWEALTH OF KENTUCKY

JUN 29 2005

BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

HOWARD B. KEEN)

COMPLAINANT)

VS.)

CASE NO. 2004-00348

CARROLL COUNTY WATER DISTRICT NO. #1))

DEFENDANT)

**DEFENDANT CARROLL COUNTY WATER DISTRICT #1'S
ANSWERS TO INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED BY
COMPLAINANT HOWARD B. KEEN**

** ** * * *

Comes now Defendant Carroll County Water District #1 and provides the following Answers to the Interrogatories and Requests for Production of Documents propounded by the Complainant Howard B. Keen:

1. State your full, correct name and any other name or nickname by which you have ever been known. (If you are answering on behalf of a corporation, partnership, or other entity, state the full name of the entity, any other names by which the entity has been known in the five (5) years preceding this lawsuit, and the full name and title of the person answering this Interrogatory.)

ANSWER: Carroll County Water District No. 1, a/k/a Carroll County Water District Number 1, a/k/a Carroll County Water District #1; James "Jim" L. Smith, Manager.

2. During the year immediately prior to the commencement of this action, was Defendant a party to any lawsuit in any state or federal court? If so, for each action, state:

CRAWFORD & BAXTER, P.S.C.
ATTORNEYS-AT-LAW
CARROLLTON, KY

- a. The court in which it was filed.
- b. The date on which it was filed.
- c. The name of each plaintiff.
- d. The name of each defendant.
- e. The file number.
- f. Whether it is still pending, and, if not, the date on which it terminated.

ANSWER: No.

3. Please produce copies of any and all plans requiring the granting of an easement by Howard B. Keen (hereinafter "Complainant") as well as any and all plans that were created and/or edited due to the Complainant's refusal to grant such an easement. Include copies of any and all survey results and engineering schematics.

ANSWER: A copy of the sheet of the plans involving the granting of the easement by Howard B. Keen was attached as Exhibit 1 to the Response of the Carroll County Water District No. 1 to the Public Service Commission. The 'as built' drawings have not yet been furnished to the District so the official plans that were created/edited due to the Complainant's refusal are not within the records of the District. The explanation furnished to Question One to the District's Response to the Public Service Commission explains the service lines in question. A complete set of the plans for the project with engineering schematics are available in the office of the Carroll County Water District No. 1, and are available for review and inspection during regular business hours.

4. Please list the following alleged costs to the Defendant.
 - a. Cost of drafting plan utilizing the easement of the Complainant's land.
 - b. Certified, estimated cost of implementing original plan utilizing the easement of the Complainant's land.

c. Cost of editing/re-drawing plan to exclude the easement of the Complainant's land.

d. Certified, actual cost of implementing edited plan excluding the easement of the Complainant's land.

ANSWER: The District does not have a breakdown on the individual 'cost' of drafting plans utilizing the easement of the Complainant's land as the plans were developed and prepared by an engineering firm as a total cost of the project. The estimated cost of implementing the original plan utilizing the easement of the Complainant's land was \$72,000.00. The District does not have the cost of editing/re-drawing plans to exclude the easement of the Complainant's land as same has not been provided by the engineering firm, but the 'as built' drawings showing the changed location of the water line to exclude the proposed easement of the Complainant's land is estimated to cost \$600.00. The certified, actual cost of implementing the edited plan excluding the easement of the Complainant's land was approximately \$72,000.00.

5. Please describe, with specificity, how the Complainant's refusal to relinquish his property rights via an easement to the Defendant, caused the Defendant the alleged additional costs mentioned in the Defendant's Verified Response. Please include a summary of the additional costs, if any, to the Defendant, due to the Complainant's refusal to relinquish his property rights.

ANSWER: As a result of the Complainant's refusal to relinquish his property rights for this project, the District had to go to the other side of the road and excavate several private driveways and a parking lot. The District incurred additional costs for purchasing and hauling gravel for repacking under the driveways and parking area in the sum of \$2,109.00.

6. Identify and describe in detail all NON-PRIVILEGED statements, whether, oral, or recorded, concerning the facts and circumstances involved in this case (i.e. when made, the

verbatim contents thereof, if oral or written, etc.) and identify in detail who made each of the statements (i.e. names, addresses, phone numbers, employers, job titles, etc.).

ANSWER: James L. Smith, Manager, Carroll County Water District, Fred Marsh, project engineer with Sieco-Strand Engineers, and Bobby Noble, employee of the District, had conversations with the Complainant on at least three (3) occasions discussing the nature and extent of the project, the need for the easement through Complainant's land, the assurance that his property would be cleaned up after the construction, and that if he did not participate in the project at the time the water line was installed, there would be additional cost to him to procure water at a later date. These conversations began in early 2003 in an owners' meeting held at the Fitzgerald Restaurant on Highway 355 in Owen County, Kentucky, and continued prior to the construction of the line. The Complainant said he understood that if he did not participate at the time of construction that there would be costs to him if he later had to bore back under the road to his property. All conversations took place before the construction for the project began or during the construction on the project but prior to reaching the Clay Lick Road property.

The Complainant received an easement at the owners meeting and did not return it until March 12, 2003, with a letter, a copy of which is attached as Exhibit "6". The Complainant tendered a letter and a check for \$465.00 dated February 26, 2004, a copy of which is attached as Exhibit "7", but it was received after the project was completed and in service.

Bobby Noble, District employee, offered to show the Complainant the cleanup work being performed on the project while in construction.

A letter was written to the Complainant on March 31, 2004, by James L. Smith, Manager, a copy of which is attached as Exhibit "8".

A letter was written to the Public Service Commission dated October 1, 2004, to Beth

O'Donnell, Executive Director, in response to the Commission's Order relating to the case, a copy of which is attached as Exhibit "9".

7. State the name, occupation, business address, business telephone number, residence address, and residence telephone number of each person you expect to call as a witness at trial or who had knowledge of facts and circumstances you rely upon as to any issue in this case, together with a summary of the matters to be testified about or within the knowledge of each such person.

ANSWER: a. James L. Smith, Manager, Carroll County Water District No. 1, Ghent, Kentucky 41045 (502) 347-9400. Mr. Smith will testify about the project which is the subject of this case, the necessity of the easement through the Complainant's real estate, his conversations with the Complainant about the necessity of the easement and the cost to him if he did not participate in the project at this time.

b. Fred Marsh, Engineer, Sieco-Strand Engineering, P.O. Box 106, Hanover, Indiana 47243 (812) 866-8259; 1-800-880-9911. Mr. Marsh will testify about the project which is the subject of this case, the necessity of the easement through the Complainant's real estate, his conversations with the Complainant about the necessity of the easement and his conversations with the Complainant about his concerns as to damage to the property.

c. Bobby Noble, Employee, Carroll County Water District No. 1, Ghent, Kentucky 41045 (502) 347-9400. Mr. Noble will testify that he offered to show the Complainant the status of the construction project and the cleanup that would be performed to restore a property owner's real estate to its prior condition after construction.

8. Identify and describe in detail any photographs, motion pictures, videotapes, drawings, or reproductions of any type showing or depicting the location of where the incident that

is the subject of the Defendant's Complaint occurred, including any pertinent details (i.e. when taken or prepared, by whom, the general nature of what is depicted, etc.).

ANSWER: Exhibit "1" furnished with the District's Response to the Public Service Commission prepared by James L. Smith, Manager, on behalf of the District.

9. State the name, occupation, business address, business telephone number, residence address, and residence telephone number of each person you expect to call as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony.

ANSWER: a.) James L. "Jim" Smith, 4035 Highway 36 East, Carrollton, Kentucky 41008, Phone No. (502) 732-8223;

b.) Fred Marsh, P.O. Box 106, Hanover, Indiana 47243, Phone No. (812) 866-8259.

The subject matter of their testimony and the substance of their testimony is detailed above.

10. If you, your assignors, or any agent thereof had any conversations with the Complainant material hereto:

- a. State when said conversation took place,
- b. Where, who was present, and
- c. Set forth the substance thereof as fully as possible.

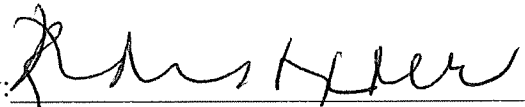
ANSWER: Refer to Answer to Interrogatory #6

11. Do you agree to reasonably supplement your responses to these Interrogatories and the accompanying Request for Production of Documents to include information hereafter acquired?

ANSWER: Yes.

CRAWFORD & BAXTER, P.S.C.
ATTORNEYS AT LAW
523 Highland Avenue
P.O. Box 353
Carrollton, Kentucky 41008
Phone: (502) 732-6688
Facsimile: (502) 732-6920
E-mail Address: CBJ523@aol.com

Attorneys for Defendant
Carroll County Water District #1

By: 
Ruth H. Baxter

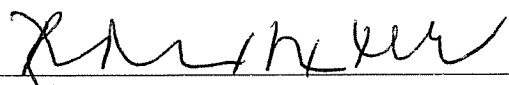
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Answers to Interrogatories and Requests for Production of Documents was mailed postage prepaid, on this the 27th day of June, 2005, to:

Hon. William K. Fulmer, II
Attorney at Law
7289 Burlington Pike
Florence, Kentucky 41042
Attorney for Complainant

and the original to:

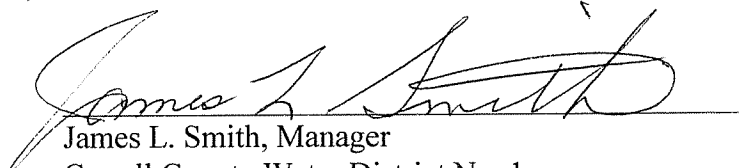
Commonwealth of Kentucky
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

By: 
Ruth H. Baxter
Attorney for Defendant
Carroll County Water District #1

VERIFICATION

I, James L. Smith, Manager of the Carroll County Water District #1, have read the foregoing Answers to Interrogatories and Requests for Production of Documents, and states that the statements contained therein are true and correct to the best of my knowledge and belief. I am authorized to sign this Verification on behalf of the District.

This the 27 day of June, 2005.



James L. Smith, Manager
Carroll County Water District No. 1

STATE OF KENTUCKY)

COUNTY OF CARROLL)

Subscribed and sworn to before me by James L. Smith, Manager, Carroll County Water District #1, on this the 27th day of June, 2005.

My commission expires: 10-13-2005


NOTARY PUBLIC, KY STATE AT LARGE

RIGHT-OF-WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of ONE DOLLAR (\$1.00) and other good and valuable consideration paid to Edward B. Reed, Marital Status: Single

Address: 72 Goodridge Ave. Florence, KY 410
Florence, Kentucky, hereinafter referred to as GRANTOR(S), by

CARROLL COUNTY WATER DISTRICT #1, P.O. Box 350, Ghent, Kentucky 41045, hereinafter referred to as GRANTEE, its successors and assigns, the receipt of which is hereby acknowledged, GRANTOR(S) do hereby grant, bargain, sell, transfer and convey unto the GRANTEE, its successors and assigns, a perpetual easement with the right to erect, construct, install, and lay, and thereafter use, operate, inspect, repair, maintain, replace and remove water mains, service lines, hydrants, valves, controls and appurtenances thereto over, across and through the land of the GRANTOR(S) situated in Boone County, Kentucky, said land being more particularly described by Deed Book _____, Page _____, in the Office of the Boone County Court Clerk, together with the right of ingress and egress over the adjacent lands of the GRANTOR(S), his or her heirs and assigns, for the purposes of this easement.

_____ (40) feet on each side of and parallel with the centerline of the water line as finally laid and constructed across the lands of the above GRANTOR(S).

The consideration hereinabove recited shall constitute payment in full for any damages to the land of the GRANTOR(S), his or her heirs and assigns, by reason of the installation, operation, and maintenance of the structures or improvements referred to herein. The GRANTEE covenants to maintain the easement in good repair so that no unreasonable damage will result from its use to the adjacent land of the GRANTOR(S), his or her heirs and assigns. The grant and other provisions of this easement shall constitute a covenant running with the land for the benefit of the GRANTEE, its successors and assigns. The GRANTOR(S) covenant that they are the owners of the above-described land and that said lands are free and clear of any liens and claims.

IN WITNESS WHEREOF, the GRANTOR(S) have executed this instrument this _____ day of _____, 20____.

Edward B. Reed
GRANTOR

GRANTOR/GRANTOR'S SPOUSE

STATE OF KENTUCKY)
COUNTY OF Boone)

I, Michele Dunn, Notary Public, within and for the State and County aforesaid, do hereby certify that on this date the foregoing EASEMENT was produced to me in my County by the GRANTOR(S), parties hereto, and was by them signed, acknowledged and delivered as and for their free act and deed.

My Commission Expires: 07/21/05
MICHELE DUNN
NOTARY PUBLIC, KENTUCKY, STATE AT LARGE
MY COMMISSION EXPIRES JULY 21, 2005

Michele Dunn
NOTARY PUBLIC, KY., STATE AT LARGE

THIS INSTRUMENT PREPARED BY:
CRAWFORD & BAXTER, P.S.C.
ATTORNEYS AT LAW
523 Highland Avenue, P.O. Box 353
Carrollton, Kentucky 41008

Phone No. - (859) 371-9171

BY: Ruth H. Baxter
Ruth H. Baxter

CRAWFORD & BAXTER, P.S.C.
ATTORNEYS-AT-LAW
CARROLLTON, KY

March 12, 2003

Dear Sirs,

It is my understanding after speaking with Mr. Marsh, of Seice Engineers, that the main water line will come across Fairview Road and down the left side of Clay Lick Road. My property lies on the right side of Clay Lick Road. According to the map, my

and other good and valuable _____, Marital Status: _____

Florence K/41042
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B. Deen

R'S SPOUSE

Notary Public, within and for the
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2
STATE AT LARGE

CRAWFORD & BAXTER
ATTORNEYS AT LAW
CARROLLTON

THIS INSTRUMENT PREPARED BY:
CRAWFORD & BAXTER, P.S.C.
ATTORNEYS AT LAW
523 Highland Avenue, P.O. Box 353
Carrollton, Kentucky 41008

BY: Ruth H. Baxter
Ruth H. Baxter

Phone No. - (859) 371-9171

Property lies on the west side of Clay Lick Road.

I would like a meter hook-up from main water line on other side of Clay Lick Road to my property on opposite side of Clay Lick Road, when main water line is installed.

I would like a meter hook-up from main water line to come across Clay Lick Road to right

and other good and valuable
Marital Status: Flourace, Ky. 41045
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/ 41045, hereinafter referred to
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B. Reed

POUSE

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SEMENT was produced to
knowned and delivered

William J
NOTARY PUBLIC, KY., STATE AT LARGE

THIS INSTRUMENT PREPARED BY:
CRAWFORD & BAXTER, P.S.C.
ATTORNEYS AT LAW
523 Highland Avenue, P.O. Box 353
Carrollton, Kentucky 41008

Phone No. - (859) 371-9171

BY: Ruth H. Baxter
Ruth H. Baxter

CRAWFORD & BAXTER
ATTORNEYS AT LAW
CARROLLTON, KY.

front side of house.

If there is an additional charge, besides the meter hook-up fee of \$465.00, please notify me before installation.

Phone No. - (859) 371-9170

Thank You,
Howard B. Reen

CRAWFORD & BAXTER
ATTORNEYS-AT-LAW
CARROLLTON, KY

THIS INSTRUMENT PREPARED BY:
CRAWFORD & BAXTER, P.S.C.
ATTORNEYS AT LAW
523 Highland Avenue, P.O. Box 353
Carrollton, Kentucky 41008

BY: [Signature]
Ruth H. Baxter

Phone No. - (859) 371-9171

and other good and valuable
Marital Status: Florence, Ky. 41043
referred to as GRANTOR(S), by
Ky 41045, hereinafter referred to
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cessors and assigns, a perpetual
use, operate, inspect, repair,
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Page _____, in the Office of
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[Signature]

SPOUSE

Notary Public, within and for the
g EASEMENT was produced to
ed, acknowledged and delivered

[Signature]
NOTARY PUBLIC, KY., STATE AT LARGE

HOWARD B. KEEN
72 GOODRIDGE DR. PM 859-371-9171
FLORENCE, KY 41042

25-3963
440
490475277

2980

Feb. 26, 2004

Carroll County Water District #1 465.00
AT TO THE ORDER OF Four Hundred sixty-five and 00/100 DOLLARS

BANK ONE.

Classic One.

Bank One, NA
Columbus, Ohio 43261
www.bankone.com

Dr. Installing Water Meter Howard B. Keen
⑆044000037⑆ 490475277⑆ 2980

Feb. 26, 2004

Dear Sirs,

My property is located at the corner of Fairview and Clay Lick Roads. The entrance to my property, would be, the first gate on the right side of Clay Lick Road. I would like the meter to be installed on the right side of the front yard, if possible.

Thank You,
Howard B. Keen

CARROLL COUNTY WATER DISTRICT #1

PO BOX 350
Clair KY 41045

Phone (502) 347-9500
Fax (502) 147-9333

March 31, 2004

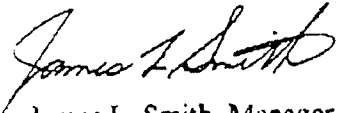
Howard B. Keen
72 Goodridge Drive
Florence, KY 41042

Ref New Meter on Clay's Lick

Howard,

We are holding your meter connection fee of \$465.00 until we can be assured that you want to proceed. I am enclosing one page from our approved tariff showing that you will have to be responsible for the costs associated with the road bore back to your property. This cost cannot be determined until the bore is complete since we cannot predict how much rock we may encounter. As I explained to you several months ago on the phone, this cost may only be several hundred dollars but could possibly go as high as \$3,000.00 or more. At that time you said you understood. Please let us know whether you want us to proceed on this basis or return you \$465.00.

Sincerely,



James L. Smith, Manager
Carroll County Water District #1

Enclosure

CARROLL COUNTY WATER DISTRICT #1

PO BOX 350
Ghent KY 41045

Phone (502) 347-9500
Fax (502) 347-9333

October 1, 2004

Beth O' Donnell
Executive Director
Public Service Commission
P.O. Box 615
211 Sower Blvd
Frankfort, KY 40602

Ref: Case No. 2004-00348

Dear Ms. O'Donnell,

This letter is the response of Carroll County Water District #1 to the Commission's Order concerning the referenced case.

Background:

After engineering was completed on the Fairview Road pipeline, a public meeting was scheduled early in 2003 at the Fitzgerald Restaurant on Hwy 255 near Fairview. This meeting was to answer questions and request easements from property owners. Present at this meeting were myself, Fred Marsh of Sieco-Strand Engineers and several residents on the road including Mr. Keen. Several folks focused their attention and questions toward me while Mr. Keen cornered Mr. Marsh of Sieco. After the meeting Mr. Marsh questioned whether Mr. Keen would allow access to his property. Several days after this meeting Mr. Keen sent an easement (undated) to the District along with a letter (handwritten) making it clear that we were to be on the opposite side of the road. Prior to the construction of this pipeline several contacts were made to Mr. Keen by myself, one of our employees, and Fred Marsh of Sieco. I personally explained possible additional costs to him if we later had to bore back to his property. He said that he guessed he would just have to pay additional costs if that was required. He said he was afraid we would damage an old cistern located on his property. We then decided to go down the other side of the road at additional cost to the District due to driveways, parking lot, and terrain differences. This project was finished and placed in service the week of 2-22-04. Mr. Keen wrote the District a check for \$465.00 on Feb. 26, which we received sometime in March. (Copy of Mr. Keen's easement and note attached)

Page 2

Ref: Case No. 2004-00348

October 1, 2004

Complaint:

Items 1-5

Acknowledged

Item – 6

The petitioner claims the regulation in the tariff does not apply since we did not have to specifically bore back across Clay Lick Road. Instead we had to bore Fairview Road at a different place and proceed along a much more expensive side of the road until we got past Mr. Keen's property. The only reason we didn't have to bore Clay Lick is because the Keen property just happened to be a corner property to Fairview Road. (See attached map)

Items 7-8

In failing to make a prompt response to petitioner's April 13, 2004 letter the petitioner asserts that the District has violated its own regulations. This is not the case, as the district had not accepted Mr. Keen as a customer. His application to become a customer of the District was conditional and inconsistent with District's tariffed rule Section AE No. 6.

Sincerely,

James L. Smith, Manager
Carroll County Water District #1

cc: Hon. Gerald Wuetcher