

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|--|---|------------|
| NOTICE OF AND APPLICATION FOR APPROVAL |) | |
| OF TRANSFER OF A WASTEWATER TREATMENT |) | CASE NO. |
| UTILITY FROM PRO MAN PROPERTY |) | |
| MANAGEMENT, LLC TO FOX RUN LIVING, LLC; |) | 2019-00390 |
| APPLICATION FOR APPROVAL OF TRANSFER FROM |) | |
| FOX RUN LIVING, LLC TO FOX RUN UTILITY, LLC; |) | |
| AND OFFER TO SETTLE ANY VIOLATIONS |) | |

NOTICE

Applicant Fox Run Living, LLC (“Fox Run Living”) hereby notifies the Kentucky Public Service Commission (“the Commission”) of the acquisition of a sewer utility by Fox Run Living from Pro Man Property Management, LLC (“Pro Man”), dba South Hills Subdivision Sewer Plant.

By agreement dated October 23, 2017, King Communities, LLC (“King Communities”) executed a purchase agreement to acquire an apartment complex called Norse Landing, and the associated sewer facilities from Pro Man (Exhibit A). Subsequently, King Communities was substituted as the buyer and replaced by Laura A King Trust and Fox Run Living, who together own the assets as Tenants in Common, each with a 50% ownership interest.

Fox Run Living received an inspection report from the Commission, dated March 29, 2019, which noted the following deficiency:

It appears that Fox Run Living, LLC has acquired ownership of Pro Man Property Management, LLC without prior approval by the commission. If so, this is contrary to 278.020(6) and (7).

Until receipt of this inspection report and the accompanying deficiency notice, Fox Run Living was unaware that the sewer utilities purchased as part of the apartment complex transaction were

a regulated utility. Once Fox Run Living became aware of its regulatory requirements, it began taking steps to receive the necessary approvals for a transfer of the sewer utility.

APPLICATION

Pursuant to KRS 278.020(7) and KRS 278.020(10), Fox Run Living hereby applies to the Commission for approval of the transfer of the Pro Man sewer utility, including two treatment plants and the collection system, to Fox Run Living; and subsequently for approval to transfer the same assets from Fox Run Living, LLC to F R Utility, LLC (“F R Utility”). In support of its request, Fox Run states the following:

1. Applicant, Fox Run Living, LLC, is a Colorado Limited Liability Company, in good standing with the state of Colorado, and authorized to do business in the Commonwealth of Kentucky.
2. The CEO of both Fox Run Living and F R Utility is Jimmy King. He will oversee the operations of the utility. His contact information is as follows:

Mailing Address: PO Box 44218 Denver, CO 80201.

Email Address: Jimmy@Kingcommunities.com
3. The wastewater treatment plant is a 20,000 thousand gallon/per day plant that is approximately 20-25 years old. The average daily flow for 2018 was 7,750 gallons/per day. Fox Run Living estimates the remaining useful life of the treatment plant with proper maintenance to be twenty-five years.
4. The utility operates pursuant to KPDES permit # KY 0034711, issued August 1, 2018.
5. The utility is operated by Certified Operator, Carl Crone. Carl Crone, owner of Crone Environmental Services (CES), worked for Sanitation District #1 for 31 years. Upon retiring, he started CES in 1998. Carl Crone currently holds a Class IV Wastewater

Operator certification, as well as, a Class II Collection System certification (Exhibit F). CES is also field lab certified with the state of Kentucky, giving CES the ability to sample and test water, as well as, submit samples to the laboratory for further analysis.

6. The bookkeeper will be an individual who works for King Communities and manages the books for various other entities. Her time spent on the utility will be tracked and only her time spent on the utility will be billed to the utility.
7. Pace Analytics is the testing and results reporting company.
8. The Fox Run Living wastewater treatment plant is not subject to the regulation of any metropolitan sewer district.
9. Since Fox Run Living acquired ownership in the utility, it has installed new airlines and diffusers, as well as new skimmers and sludge return pipes in the clarifier. In the spring of 2019, Fox Run Living installed two new main trunk/sewer lines entering the plant. At the same time, Fox Run Living sealed the influent pipeline, stopping rainwater runoff from entering plant. A dechlorination contact tank was added as well.
10. Per the Pro Man tariff, approved August 28, 2006, customers of the sewer utility pay \$13.67 per month (Exhibit G). It appears this was the original rate set for service and the rate has never increased.
11. Fox Run Living has operated and invested capital in the sewer utility since 2017.
12. After much consideration of the best approach to managing the utility, and in-depth discussions with the Commission's staff, Fox Run Living has determined that proper recordkeeping for the utility can best be accomplished by separating the assets of the utility from the assets of the apartment complex.

13. F R Utility is a new LLC recently formed. (See attachment). Following approval from this Commission, Fox Run Living will transfer the assets of the utility into F R Utility. The ownership structure and all relevant individuals and organizations involved in the management and operation of the utility will stay the same. The transfer from Fox Run Living to F R Utility is only for the purposes of simplifying the bookkeeping and separating the regulated operations from non-regulated operations (the apartment complex), which should have the added benefit of providing additional transparency to future filings with the Commission.
14. As part of the ownership's commitment to proper and lawful operation of the sewer, following approval of this application F R Utility intends to file an application with the Commission for a rate adjustment pursuant to 807 KAR 5:076.
15. Fox Run Living originally filed an application with the Commission to approve the transfer from Pro Man to Fox Run Living, but issues arose during the pendency of the matter regarding the management structure of the utility and ultimately, the application was withdrawn. See Case No. 2019-00153.
16. Because the majority of the details and documents relevant to this application have previously been filed and discussed in Case No. 2019-00153, the applicant requests that the Commission incorporate the record in Case No. 2019-00153 into this matter.

OFFER

Fox Run Living recognizes the process it utilized to take ownership and control of the utility likely violated KRS 278.020(6). In an effort to acknowledge Fox Run's unintended violation, the authority of the Commission over the sewer utility, and to expedite the resolution of this matter, Fox Run Living would like to make an offer to settle any alleged or acknowledged

violations. Fox Run Living offers to pay a penalty in the amount of \$500 to the Commission to settle any and all alleged or acknowledged violations of KRS 278, payable within 30 days of receipt of an order from the Commission approving the transfer of the utility and accepting this offer of payment as resolution of any and all outstanding violations of KRS 278.

Respectfully submitted,

FROST BROWN TODD LLC



Gregory T. Dutton
FROST BROWN TODD LLC
400 W. Market Street, 32nd Floor
Louisville, KY 40202
(502) 589-5400
(502) 581-1087 (fax)
gdupton@fbtlaw.com
Counsel for Fox Run Living, LLC

FILING CERTIFICATION

In accordance with 807 KAR 5:001 Section 8(7), this is to certify that Fox Run's November 19, 2019 electronic filing is a true and accurate copy of the documents being filed in paper medium; that the electronic filing was transmitted to the Commission on November 19, 2019; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and three copies of the filing will be delivered to the Commission within three days of the electronic submission.

A handwritten signature in blue ink, appearing to read "Gregory T. Smith", is written over a horizontal line.

Counsel for Fox Run living, LLC