

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

RECEIVED

FEB 24 2009

PUBLIC SERVICE
COMMISSION

In the Matter of:

**THE VILLAS OF WOODSON BEND
CONDOMINIUM ASSOCIATION, INC., et. al.**

Complainant

SOUTH FORK DEVELOPMENT, INC.,

TIMOTHY L. GROSS,

And

**THE JANICE GROSS LIVING REVOCABLE
TRUST, Janice Gross, Trustee**

Defendants

Case No.: 2009-00037

ANSWER

Comes now the Defendants, South Fork Development, Inc., Timothy L. Gross and The Janice Gross Living Revocable Trust, Janice Gross, Trustee and for their answer to the verified complaint herein states and avers as follows:

1. The defendant lacks sufficient knowledge to comment on the averments regarding the correct address of the Villas of Woodson Bend. The defendants admit that the Villas Condominium regime was established from master deed filed with the Pulaski County Court Clerk. The defendant denies that the Association is vested with authority and duty to protect the members collective interests in the condominium property.

2. Denied.

3. Denied.

4. The Janice Gross Living Revocable Trust owns the land upon which the sewer facility is located. The remainder of the averment is denied.

5. Denied.

6. The plaintiff has made numerous assertions regarding the law. These averments speak for themselves. Therefore the defendant lacks sufficient knowledge or reason to comment upon the averments as contained in paragraph 6.

7. The plaintiff has made numerous assertions regarding the law. These averments speak for themselves. Therefore the defendant lacks sufficient knowledge or reason to comment upon the averments as contained in paragraph 7.

8. The plaintiff has made numerous assertions regarding the law. These averments speak for themselves. Therefore the defendant lacks sufficient knowledge or reason to comment upon the averments as contained in paragraph 8. The defendant denies that it is a utility.

9. The plaintiff has made numerous assertions regarding the law. These citations speak for themselves. Therefore the defendant lacks sufficient knowledge or reason to comment upon the averments as contained in these paragraphs.

10. The plaintiff has made numerous assertions regarding the law.

These legal citations speak for themselves. Therefore the defendant lacks sufficient knowledge or reason to comment upon the averments as contained in paragraph 10.

11. The plaintiff has made numerous assertions regarding the law. These citations speak for themselves. Therefore the defendant lacks sufficient knowledge or reason to comment upon the averments as contained in paragraph 11.

12. The plaintiff has made numerous assertions regarding the law. These citations speak for themselves. Therefore the defendant lacks sufficient knowledge or reason to comment upon the averments as contained in paragraph 12. The remainder of the averment is denied.

13. The defendant lacks sufficient knowledge to comment on the averments contained in paragraph 13. The defendant is uncertain what required schedules to which the plaintiffs referring and therefore the remainder of paragraph 13 are denied.

14. The defendant lacks sufficient knowledge to comments on the averments contained in paragraph 14. The defendant is uncertain what required schedules to which the plaintiffs referring and therefore the remainder of paragraph 14 are denied.

15. Denied.

16. Admit.

17. Denied.

18. Denied.

19. There were no owners until 2006. Therefore there was no one that could be charged. The defendant admits that there were no charges until 2007.

20. Admit.

21. Denied.

22. Admit.

23. Denied. The homeowners association paid for half of an electric bill.

24. Admit.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

AFFIRMATIVE DEFENSES

DEFENSE I

The defendant obtained the necessary permits to construct and/or operate a sewage treatment facility. ***(Please see attachments as Appendix A)***

DEFENSE II

Advice of counsel.

DEFENSE III

This matter should be dismissed for failure to state a cause of action upon which relief can be granted.

DEFENSE IV

This matter should be dismissed and the Public Service Commission does not have jurisdiction over the subject matter alleged in the proper jurisdiction only lies in the Circuit Courts of the Commonwealth of Kentucky, and any actions by this Commission are null and void.

DEFENSE V

This matter should be dismissed since the Public Service Commission does not have jurisdiction over the subject matter or the parties hereto as same has never been delegated the authority, and any actions by this Commission are null and void.

DEFENSE VI

This matter should be dismissed in that the Public Service Commission is attempting to exceed its authority over the subject matter and the parties hereto and any actions by this Commission are null and void.

DEFENSE VII

The defendant states that the plaintiffs are attempting to seek unjust enrichment by receiving the benefits of a sewer facility and have unclean hands in their own actions, namely, urging the defendants herein not to file with the Public Service Commission so that the sewage facility could be sold.

DEFENSE VIII

Quantum Meruit.

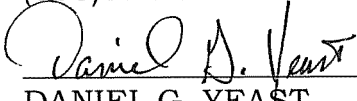
WHEREFORE, the defendants herein respectfully request entry of an order or declaration dismissing the plaintiffs complaint.

Respectfully Submitted,

Daniel G. Yeast
Leonard Brashear
MORGAN, MADDEN, BRASHEAR
& COLLINS, PLLC
1112 South Highway 27
Suite B
Somerset, KY 42501
(606) 678-2533

And

Hon. Leonard Brashear
MORGAN, MADDEN, BRASHEAR
& COLLINS, PLLC
P.O. Box 677
Hyden, KY 41749
(606)672-3577

BY: 

DANIEL G. YEAST
LEONARD R. BRASHEAR
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by mailing same, postage prepaid, to the following:

ORIGINAL MAILED TO:

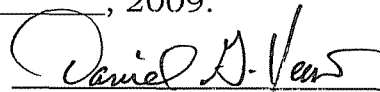
Public Service Commission
P.O. Box 615
Frankfort, KY 40602-0615

COPIES MAILED TO:

Hon. Michael M. Hirn
Dinsmore & Shohl, LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, KY 40402-2810

Hon. Leonard Brashear
MORGAN, MADDEN, BRASHEAR
& COLLINS, PLLC
P.O. Box 677
Hyden, KY 41749

On this the 20th day of February, 2009.



DANIEL G. YEAST
LEONARD BRASHEAR
ATTORNEYS FOR DEFENDANTS

APPENDIX "A"



ERNIE FLETCHER
GOVERNOR

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
DIVISION OF WATER
14 REILLY ROAD
FRANKFORT, KENTUCKY 40601
www.kentucky.gov

LAJUANA S. WILCHER
SECRETARY

June 22, 2006

Mr. David S Pyzoha
Southfork Development, Inc.
711 Colyer Road
Bronston, KY 42518

Re: Villas at Woodson Bend Ph 2
Pulaski County, Kentucky
Project ID: 06-0224
Villas at Woodson Bend - 10665
Activity ID: APE20060001

Dear Mr. Pyzoha:

In accordance with KRS Chapter 224.10-100 (19), the Environmental and Public Protection Cabinet approves the Construction Permit Application for Sewer Line Construction dated March 24, 2006

Division of Water approves your request for construction of approximately 6,151 LF of 8" PVC pipe. This approval is limited to 34 unit connections only, future line extension or connection of house (s) to the sewer line is requires separate approval from Division of Water.

Water use records are useful in predicting future use but they are not infallible. Therefore, sewage flow measuring device(s) are required. This approval is issued on the condition that once the proposed vacation units are constructed and occupied, if the total sewage flow to your treatment facility approaches 80 % of its capacity, that you should then immediately contact the Division of Water to discuss expanding the capacity of your treatment plant.

If we can be of any further assistance or should you wish to discuss this correspondence, please do not hesitate to contact Abbas Pourghasemi at 502/564-2225, extension 429.

Sincerely,

Harold L. Sparks, P.E., Supervisor
Wastewater Facilities Review Section
Facilities Construction Branch
Division of Water

HLS/AGP
c: Pulaski County Health Department
EMH&T, Inc.
Attachment

Sewer Line Construction
Villas at Woodson Bend
Facility Requirements

Activity ID No.: APE20060001

Page 1 of 3

PORT1 (Villas @ Woodson Bend) Villas at Woodson Bend Ph 2:

Submittal/Action Requirements:

Condition No.	Condition
---------------	-----------

S-1	When this system is completed, the applicant shall submit written certification: Due 30 calendar days after Completion of Construction to the Division of Water that the facilities have been constructed and tested in accordance with the approved plans and specifications and the above approval conditions. Such certification shall be signed by a registered professional engineer. Failure to certify may result in penalty assessment and/or future approvals being withheld. [401 KAR 5:005 Section 24(2)]
-----	--

Narrative Requirements:

Condition No.	Condition
---------------	-----------

T-1	The plans and specifications submitted for the project are approved by the Environmental and Public Protection Cabinet as to sanitary features, subject to the requirements contained within the permit. [401 KAR 5:005 Section 24(4)(a)]
T-2	Authority to construct these sewers is hereby granted. This approval is issued under the provisions of KRS Chapter 224.10-100 (19) regulations promulgated pursuant thereto. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any permits or licenses required by this Cabinet and other state, federal, and local agencies. [401 KAR 5:005 Section 24(4)(a)]
T-3	The plans include approximately 6,151 linear feet of 8 inch PVC sanitary sewers. The flow from these lines is to be treated at the on-site No-Discharge System, KPDES Permit No. KY02006100, Pulaski County, Kentucky. [401 KAR 5:005 Section 24(4)(a)]
T-4	The types of sanitary sewer pipe shall be limited to PVC. [401 KAR 5:005 Section 1(2)]
T-5	This subdivision sewer line extension approval is for 34 unit connections, only. The anticipated flow is 8500 gpd. [401 KAR 5:005 Section 1(2)]
T-6	PVC pipe material and joints shall conform to ASTM D-3034, latest revision. [Ten States (WW) 33.81]
T-7	Flexible thermoplastic sewer pipe installation for gravity sewers shall conform to ASTM D2321, latest revision. [Ten States (WW) 33.81]
T-8	Gravity sewer lines and force mains shall have a minimum of thirty (30) inches of cover or provide comparable protection. [401 KAR 5:005 Section 8(9)]

Sewer Line Construction
Villas at Woodson Bend
Facility Requirements

Activity ID No.: APE20060001

PORT1 (continued):

Page 2 of 3

Narrative Requirements:

Condition No.	Condition
T-9	A drop pipe shall be provided where the sewer enters the manhole at two feet or more above the manhole invert. [Ten States (WW) 34.2]
T-10	All sewers shall be low pressure air tested. A deflection test shall be performed on all gravity sanitary sewers using flexible pipe. The test shall be performed after the final backfill has been in place for at least thirty days. No pipe shall exceed a deflection of five percent. If the deflection test is to be run using a rigid ball or manhole shall be tested for watertightness. [401 KAR 5:005 Section 8(6)(a)]
T-11	If gravity sewer lines and force mains are to be constructed in fill areas, the fill areas shall be compacted to ninety-five (95) percent density as determined by the Standard Proctor Density test or to a minimum of ninety (90) percent density as determined by the Modified Proctor Density test prior to the installation of the sewer lines. [401 KAR 5:005 Section 8(10)]
T-12	Sewers crossing water mains shall be laid to provide a vertical distance of 18 inches between the outside of the water main and the outside of the sewer. This shall be the case where the water main is either above or below the sewer. The crossing shall be arranged so that the sewer joints are equidistant and as far as possible from the water main joints. Where a water main crosses under a sewer, adequate structural support shall be provided for the sewer to prevent damage to the water main. [Ten States (WW) 38.32]
T-13	Sewers shall be laid at least 10 feet horizontally from any existing or proposed water main. The distance shall be measured from edge to edge. [Ten States (WW) 38.31]
T-14	Concrete anchors shall be provided, with a spacing not over thirty six (36) feet center to center, on all gravity sewer lines having a slope greater than twenty (20) percent and up to thirty five (35) percent. [Ten States (WW) 33.46]
T-15	The entrance of groundwater into, or loss of waste from, a new gravity sewer line shall be limited to 200 gpd per inch of diameter per mile of the gravity sewer line. This limitation includes manholes, gravity sewer lines, and appurtenances. [401 KAR 5:005 Section 8(5)]
T-16	Facilities shall be designed in accordance with the "Recommended Standards for Wastewater Facilities" of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers, commonly referred to as "Ten States' Standards", 1990 edition. [401 KAR 5:005 Section 7(1)(a)]
T-17	The permit is issued to the applicant and the permittee shall remain the responsible party for compliance with all applicable statutes and administrative regulations until a notarized applicable change in ownership certification is submitted and the transfer of ownership is acknowledged by the cabinet. [401 KAR 5:005 Section 24(3)]

Sewer Line Construction
Villas at Woodson Bend
Facility Requirements

Activity ID No.: APE20060001

PORT1 (continued):

Page 3 of 3

Narrative Requirements:

Condition No.	Condition
T-18	There shall be no deviations from the plans and specifications submitted with the application or the conditions specified unless authorized in writing by the cabinet. [401 KAR 5:005 Section 24(4)(b)1]
T-19	The issuance of a permit by the cabinet does not convey any property rights of any kind or any exclusive privilege. [401 KAR 5:005 Section 24(6)]
T-20	A permit to construct a facility shall be effective upon issuance unless otherwise conditioned. Construction shall be completed within twelve (12) months unless additional time is requested. If construction is not commenced within the twelve (12) months following a permit's issuance, a new permit shall be obtained before construction may begin. The cabinet may allow a single twelve (12) month extension to begin construction if site conditions have not changed. [401 KAR 5:005 Section 24(1)]
T-21	The Construction Permit is effective on June 22, 2006 and expires on June 22, 2007. [401 KAR 5:005 Section 24(1)]

Agency Interest # 29626

NATURAL RESOURCES AND ENVIRONMENTAL
PROTECTION CABINET

Certifies That

Dallas H. Blanton

IS A DULY LICENSED OPERATOR BY THE STATE OF
KENTUCKY

WW Treatment III 7394

Expiration Date:

6/30
2007



Home Phone # - 376-3064
Cell Phone # 271-3674

KNDOP



**Kentucky No Discharge
Operational Permit**

PERMIT

PERMIT NO.: 02006100

AUTHORIZATION TO OPERATE A NO DISCHARGE WASTE TREATMENT SYSTEM

PURSUANT TO AUTHORITY IN KRS 224,

Southfork Development, Inc.
P.O. Box 222
Bronston, KY 42518

is authorized to operated a no discharge system for disposal of treated wastewater at

Villas at Woodson Bend
Colyer Rd
Bronston, Pulaski, KY 42518

in accordance with all applicable provisions of said Statute and all rules and regulations hereto and hereafter issued by the Department.

SEE ATTACHED FOR CONDITIONS

This permit is issued for the period from February 9, 2007 to February 8, 2012.

Issued at Frankfort, Kentucky this the 9th day of February, 2007.

**FOR: David W. Morgan, Director
Division of Water**

DWM:JMB:SJB
Enclosures

DEPARTMENT FOR ENVIRONMENTAL PROTECTION
Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601
Printed on Recycled Paper



Evans, Mechwart, Hambleton & Tilton, Inc.
Engineers, Surveyors, Planners, Scientists

August 10, 2006

Ms. Tina Bailey
Inventory & Data Management Section
KPDES Branch
Division of Water
14 Reilly Road
Frankfort, KY 40601

RE: Renewal Application for Permit # 02006100
Southfork Development, Villas at Woodson Bend
AI No. 10665

Dear Ms. Bailey:

On behalf of Southfork Development, Inc., I am herewith, transmitting a signed KNOP Form ND Application to renew the operating permit #02006100 per our conversation today. If there are any questions, please do not hesitate to contact me.

Sincerely,

EVANS, MECHWART, HAMBLETON & TILTON, INC.

David S. Pyzoha, PE
Principal

2000-1246
Cc: Tim Gross - Southfork

It was in the file but never processed. It will be put through immediately per Tina.

*Barry Elmore x 459 (502) →
was contacted re operator's reg. mtg.*

*Compliance Assistance
564-0323*

M C M X X V I



ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

Ernie Fletcher
Governor

Frankfort Office Park
14 Reilly Road
Frankfort, Kentucky 40601
www.kentucky.gov

LaJuana S. Wilcher
Secretary

June 28, 2006

E. M. H. & T Incorporated
8790 Governors Hill Drive Suite 110
Cincinnati, Ohio 45249

Re: KNDOP No.: 02006100
Villas At Woodson Bend
Pulaski County, Kentucky

Dear Mr. David Pyzlha:

Our records indicate that the above-referenced Kentucky No Discharge Operational Permit (KNDOP) is due to expire July 24, 2006. In order to renew the authorization to operate a no discharge waste treatment system, it will be necessary for you to complete the enclosed application form(s). Issuance of this permit is in accordance with the authority vested under KRS 224 and 401 KAR 5:005. If you no longer own or operate this facility, please send us a letter indicating the status or the new owner's name and address if the property has been sold.

Please complete the enclosed application form(s) and submit them to the KPDES Branch, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, within thirty (30) days of the date of this letter. Failure to obtain authorization could result in enforcement action.

If you have any questions regarding the completion of these form(s), please contact Robert Clay at (502) 564-2225, extension 554.

Sincerely,

A handwritten signature in cursive script that reads "Vickie L. Prather".

Vickie Prather, Acting Supervisor
Inventory & Data Management Section
KPDES Branch
Division of Water

CS:TB:tb
Enclosure

c: Columbia Regional Office
Division of Water Files

4. Aerated Lagoon Size

150 lb/day/acre of lagoon surface area - In accordance with the sizing requirement found in 401 KAR 5:005 Section 18.

10' minimum depth - In accordance with Section 93.416 (b) of the Recommended Standards for Wastewater Facilities (hereafter referred to as "RSWP").

4:1 minimum inner slope - In accordance with Section 93.414 of RSWP.

3:1 maximum length:width ratio - In accordance with Section 93.36 of RSWP.

Required Surface Area

Design Flow = 0.026 MGD

$0.026 \text{ MGD} \times 240 \text{ mg/L BOD}_5 \times 8.34 = 52 \text{ lb/day}$

$52 \text{ lb/day} / 150 \text{ lb/day/acre} = 0.347 \text{ acre} \times 43,560 \text{ sf/acre} = 15,113 \text{ sf}$

Surface Area Provided

$70' \times 110' = 7,700 \text{ sf} \times 2 \text{ lagoons} = 15,400 \text{ sf}$

Lagoon Size

Based on the aerated lagoon depth of 10', the mid-water depth is 5'. Based on that depth and an inner slope of 3:1, the length to width ratio is 2:1, 40' x 80'.

5. Polishing Pond (Combination Evapo-Transpiration Pond) Size

Minimum volume 0.3 of the aerated cells - In accordance with Section 93.33 of RSWP.

4:1 minimum inner slope - In accordance with Section 93.414 of RSWP.

3:1 maximum length:width ratio - In accordance with Section 93.36 of RSWP.

Minimum Required Pond Size

Volume of the Aerated Lagoon Volume = $40' \times 80' \times 10' \times 2' = 64,000 \text{ cf}$

$64,000 \text{ cf} \times 0.3 = 19,200 \text{ cf required}$

Pond Size Provided

$98' \times 178' \times 6' = 104,664 \text{ cf}$

1. **Influent Water Quality**

240 mg/l - In accordance with 401 KAR 5:005 Section 18 (2).

2. **Effluent Water Quality**

The Effluent Water Quality standards for BOD₅, suspended solids, and Fecal Coliform Bacteria are based on the requirements of secondary treatment under 401 KAR 5:045 Section 3.

	<u>Monthly average</u>	<u>Daily maximum</u>
BOD ₅ concentration –	30 mg/L	60 mg/L
TSS concentration –	30 mg/L	60 mg/L
Fecal Coliform Bacteria (N/100) – (number of colonies per 100 ml)	200	400

3. **Design Flow**

65 Units

400 gallons per unit

$65 \times 400 = 26,000$ gallons/day

AERATED LAGOON SUMMARY

• Influent Wastewater Quality		
BOD ₅ Concentration –	240 mg/l	
• Effluent Wastewater Quality		
	<u>Monthly average</u>	<u>Daily maximum</u>
BOD ₅ concentration –	30 mg/L	60 mg/L
TSS concentration –	30 mg/L	60 mg/L
Fecal Coliform Bacteria (N/100) – (number of colonies per 100 ml)	200	400
• Design Flow/Unit –	400 gpd/unit	
• Number of Units -	65 units	
• Aerated Lagoon Size (2 required) -	70' x 110' x 10'	
• Polishing Pond Size -	98' x 178' x 6'	



LEGEND



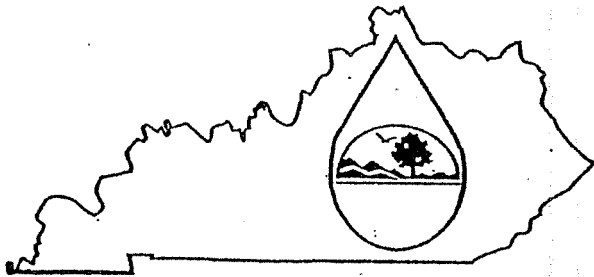
VILLAS AT WOODSON BEND SITE

A

PUMPING STATION

B

WWTP



**KENTUCKY NO DISCHARGE
OPERATIONAL
PERMIT APPLICATION**

(KNDOP)

This is an application to: (check one)

- Apply for a new permit.
- Apply for a construction permit.
- Apply for reissuance of expiring permit.
- Modify an existing permit.

Give reason for modification under Item II.A.

For additional information contact:
KPDES Branch (502) 564-3410

I. FACILITY CONTACT INFORMATION		AGENCY USE ONLY						
Name of business, municipality, company, etc. requesting permit: Villas at Woodson Bend								
Facility Mailing Address								
Primary Mailing Name: Southfork Development, Inc.								
Primary Mailing Street: PO Box 222								
Primary Mailing City, State, Zip Code: Bronston, KY 42518								
Contact Name & Telephone Number: 606-561-8458								

II. FACILITY DESCRIPTION	
Provide a brief description of activities, products, etc: Residential Development	
Standard Industrial Classification (SIC) Code and Description	
Principal SIC Code & Description:	1522 Custom Builders, Residential
Other SIC Codes:	

III. FACILITY LOCATION	
Attach a 7 1/2 minute U.S. Geological Survey quadrangle map for the site. (See instructions)	
Facility Site Latitude (degrees, minutes, seconds): 36° 57' 07" N	Facility Site Longitude (degrees, minutes, seconds): 84° 36' 33" W
Facility Location (street, road, highway, etc.) Colyer Road	
Facility Location City, State, Zip Code: Bronston, KY 42518	
County Facility is Located in: Pulaski	