

BRUCE E. SMITH LAW OFFICES, PLLC

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NICHOLASVILLE, KENTUCKY 40356

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BRUCE E. SMITH
bruce@smithlawoffice.net

May 17, 2012

RECEIVED

MAY 18 2012

PUBLIC SERVICE
COMMISSION

VIA UPS OVERNIGHT DELIVERY


Mr. Jeff R. Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, Kentucky 40602

Re: Case No. 2011-00297
Jessamine-South Elkhorn Water District's Responses
to Forest Creek LLC's Supplemental Information Requests

Dear Sir:

Enclosed is my client's Responses as referenced above. Ten copies of the Responses are attached.

Sincerely,


Bruce E. Smith

Enclosures

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 18 2012

PUBLIC SERVICE
COMMISSION

In the matter of:

FOREST CREEK, LLC

COMPLAINANT

vs.

JESSAMINE- SOUTH ELKHORN WATER DISTRICT

DEFENDANT

Case No.
2011-00297

**JESSAMINE-SOUTH ELKHORN WATER DISTRICT'S RESPONSES TO
FOREST CREEK, LLC'S SUPPLEMENTAL INFORMATION REQUESTS**

Comes the Jessamine - South Elkhorn Water District ("Water District"), by counsel, and, without waiving its jurisdictional challenge, states as follows for its Responses to Supplemental Information Requests ("Requests") served by Forest Creek, LLC ("Forest Creek"):

The Water District has not completed its investigation, discovery or analysis of all the facts of this case and has not completed preparation for the hearing. Accordingly, all of the following responses are provided without prejudice to its right to introduce at the hearing any evidence that is subsequently discovered relating to the proof of subsequently discovered material facts. Moreover, facts, documents and things now known may be imperfectly understood and, accordingly, such facts, documents, and things may not be included in the following responses. The Water District reserves the right to reference, discover, or offer into evidence at the time of hearing any and all facts, documents and things notwithstanding the initial responses and objections interposed herein. The Water

District also reserves the right to reference, discover, or offer into evidence at the time of hearing any and all facts, documents, and things that it does not presently recall but may recall at some time in the future.

GENERAL OBJECTIONS

1. The Water District objects to Forest Creek's Requests on the grounds that it seeks disclosure of information protected by the attorney-client, work product, and any other applicable privileges. To the extent that The Water District inadvertently discloses information that may arguably be protected from discovery under attorney-client privilege, the work product doctrine, or any other applicable privilege, such inadvertent disclosure does not constitute a waiver of any such privilege.

2. The Water District objects to Forest Creek's Requests insofar as they seek information concerning matters unrelated to the subject matter of this Complaint, on the grounds that they are overly broad, unduly burdensome, and seek information that is neither relevant to the subject matter of this Complaint nor reasonably calculated to lead to discovery of admissible evidence.

3. The Water District objects to Forest Creek's Requests insofar as they seek confidential proprietary and/or trade secret information of The Water District that, if disclosed, could irreparably harm The Water District. Accordingly, The Water District objects to producing any such information absent entry of an appropriate Protective Order.

4. The Water District objects to Forest Creek's Requests on the grounds that they are not limited in time frame and are overly broad and unduly burdensome because they are more than inclusive of the time period at issue at this case.

5. The Water District objects to Forest Creek's Requests to the extent that they call for information or documents that are not currently in the Water District's possession, custody or control.

6. The responses set forth below are made without in any manner waiving (1) the right to object to the use of any response for any purpose, in this proceeding or any other action, on the grounds of privilege, relevance, materiality, or any other appropriate grounds; (2) the right to object to any other documents requests involving or relating to the subject matter of the responses herein; and (3) the right to revise, correct, supplement or clarify any of the responses provided below, at any time.

The General Objections are applicable to each and every one of the following responses and objections, and failure to repeat an objection in response to a specific request shall not be deemed a waiver of the objection. Further, when The Water District specifically repeats one or more of these General Objections in response to a specific request, such specific request cannot be a waiver of these General Objections.

Subject to and without waiving these General Objections, and subject to and without waiving the specific objections noted below, The Water District responds as follows to Forest Creek's Requests for Information in accordance with the Water District's understanding of the fair meaning of those Requests. The respondent or witness for each Response will be shown in bold-faced type following the Response or that portion of the Response for which the individual is responsible.

RESPONSES FOLLOW ON NEXT PAGE

Jessamine-South Elkhorn Water District

Information Request No. 1: Please identify by name and address each entity or individual that has applied since 2005 to the Water District for a water line extension (a) where it has taken more than two years to obtain the Water District's approval of the location of the off site utilities and (b) where it has taken more than three years to obtain the Water District's approval of the location of the off site utilities.

Answer: The Water District objects to this Request for the reasons that Forest Creek is seeking information which requires analysis¹ and the creation of a document that does not exist and is not created in the ordinary course of the Water District's business; that the time period encompassed by the Request is excessive; that Forest Creek is seeking information which it intends to use in Jessamine Circuit Court Civil Action 12-CI-00081, styled: *Forest Creek, LLC vs. Harold Eugene Snowden, Jr., et al.*; that the information the Request seeks is irrelevant in that Forest Creek's Complaint raises an issue about a specific application which was approved and not about applications for extension of water service generally; and that other applicants for water line extensions are entitled to privacy with respect to their applications which the Water District must protect where possible. Lastly, Forest Creek is entitled to inspect non-

¹ Such analysis would necessarily require, among other things, a determination as to each applicant whether, as admitted by Forest Creek, any delays were due to adverse economic conditions, numerous lawsuits to which the Water District was not a party or occasioned by the failure of the applicant to submit a complete set of constructions plans.

Jessamine-South Elkhorn Water District

privileged documents under KRS 61.870 *et seq.* and Forest Creek has already exercised its right in this respect by making three (3) separate Open Records Requests (January 31, 2012; May 1, 2012; and May 7, 2012) which involved 12 different entities that obtained extensions of various types from the Water District dating back to as early as 2000. All of the Open Records Request made by Forest Creek's counsel in this proceeding and Forest Creek's counsel in *Forest Creek, LLC vs. Harold Eugene Snowden, Jr., et al.* (Constance Gullette Grayson, Esq.) have been satisfied. Furthermore, the aforementioned counsel have shared this information.² **[Respondent – Counsel for Water District]**

² See copy of email message attached.

Bruce Smith

From: Constance Grayson [cgraysonlaw@yahoo.com]
Sent: Monday, May 07, 2012 12:46 PM
To: Bruce Smith
Subject: Re: Open Records Request/Jessamine South Elkhorn Water District/Corman-McQueen Golf, Inc.
Thank you. I will coordinate with Rob.

Constance G. Grayson
Gullette and Grayson
125 S. Main Street
Nicholasville, KY 40356
(859) 885-5536

From: Bruce Smith <bsmith@smithlawoffice.net>
To: Constance Grayson <cgraysonlaw@yahoo.com>
Sent: Monday, May 7, 2012 12:38 PM
Subject: Open Records Request/Jessamine South Elkhorn Water District/Corman-McQueen Golf, Inc.

Connie

Attached is my client's response to your "co-counsel's" Open Records Request on the same matter. Rob referred to the project by reference to the subdivision title "Keene Manor" rather than using the developer's name, Corman-McQueen.

I am anticipating that Rob will share this information with you with as he has with other documents in the Forest Creek matter. However, if you would like to inspect the records separately, I will be happy to arrange.

Thank you for your patience.

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

The following warning is required by the IRS whenever tax advice is given. If this email contains no direct or indirect tax advice, the warning is not applicable. As a result of perceived abuses, the Treasury has recently promulgated Regulations for practice before the IRS. These Circular 230 regulations require all attorneys and accountants to provide extensive disclosure when providing certain written tax communications to clients. In order to comply with our obligations under these Regulations, we would like to inform you that since this document does not contain all of such disclosure, you may not rely on any tax advice contained in this document to avoid tax penalties nor may any portion of this document be referred in any marketing or promotional materials.

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This message has been sent from a law firm and may contain information which is confidential or privileged. If you are not the intended recipient, please the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. Please advise immediately if you or your employer do not want us to use Internet e-mail for future messages of this kind. Thank You.

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BRUCE E. SMITH
bruce@smithlawoffice.net

May 4, 2012

VIA FACSIMILE: (502) 875-7158
AND FIRST CLASS US MAIL

Robert C. Moore, Esq.
P.O. Box 676
Frankfort, Kentucky 40602-0676

Re: Open Records Request Letter
Dated May 1, 2012 (attached)

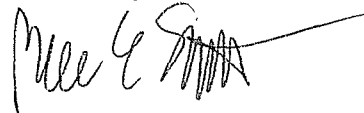
Dear Mr. Moore:

I have been asked on behalf of the Jessamine-South Elkhorn Water District ("District") to respond to the above referenced letter. Due to the volume of materials encompassed within your Request, the fact that many of the documents for each development are not filed in a single place or file, the current size of the District's office staff and the timing of your request in relation to the staff's workload, the District will be unable to make all of the materials available to you by today.

The earliest date that all of these documents can be made available is Friday, May 11, 2012 at 9:00 AM.

The District has not had any contact from you to schedule an inspection as represented in your letter. However, the District will do as much as it reasonably can to accommodate your request when you do call. Since the scheduling your request has been delegated to me, please direct your call to my office.

Sincerely,



Bruce E. Smith

Enclosure

g:\...USEWD\Forest Creek\PSC Proceeding\Moore ltr 050412

HAZELRIGG & COX, LLP

ATTORNEYS AT LAW
615 WEST MAIN STREET, SUITE 1
P.O. Box 676
FRANKFORT, KENTUCKY 40602-0676

JOHN E. BAUGHMAN
ROBERT C. MOORE
THOMAS J. HELLMANN

DYKE L. HAZELRIGG (1881-1970)
LOUIS COX (1907-1970)
FAX: (502) 876-7158
TELEPHONE: (502) 227-2271

May 1, 2012

Via Facsimile: 859-881-5080
Jessamine South Elkhorn Water District
802 South Main Street, Box 731
Nicholasville, Kentucky 40356

Re: Open Records Act; KRS 61.870

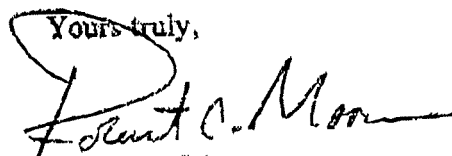
Dear Sir/Madam;

Pursuant to the above referenced statute, please make available for my inspection and copying any and all files concerning the following developments located in Jessamine County, Kentucky:

Harrods Ridge
Keene Manor
Clay's Crossing
Forest Hills
Meadow Ridge

I will be contacting you to schedule my inspection of the records and look forward to speaking with you at that time.

Yours truly,


Robert C. Moore

Jessamine-South Elkhorn Water District

Information Request No. 2: Please identify by name and address each entity or individual that has applied since 2005 to the Water District for a water line extension (a) where it has taken more than two years to obtain the Water District's approval of the construction plans of the water lines and (b) where it has taken more than three years to obtain the Water District's approval of the construction plans of the water lines.

Answer: See Answer to Information Request No. 1 herein. **[Respondent – Counsel for Water District]**

Jessamine-South Elkhorn Water District

Information Request No. 3: Please identify by name and address each entity or individual that has been named as a defendant in a lawsuit filed by the Water District since 2000, while applying for or requesting water service from the Water District.

Answer: The Water District objects to this Request on the basis that the period of time encompassed by the Request is excessive; that Forest Creek is seeking information which it intends to use in Jessamine Circuit Court Civil Action 12-CI-00081, styled: *Forest Creek, LLC vs. Harold Eugene Snowden, Jr., et al.*; and that the information the Request seeks is irrelevant in that Forest Creek's Complaint raises an issue about an application for a water line extension, not service to a customer, and about a specific application which was approved and not about applications for extension of water lines generally. Without waiving these objections, the answer is no lawsuits have been filed. The Water District has never denied any entity's application for a water line extension, including Forest Creek's, except in cases where the extension was located outside the Water District's territory and the other water supplier would not agree to the extension. As to applications or requests for water service, which is not the case here, no lawsuits filed. ³ **[Respondent – Counsel for Water District and L. Nicholas Strong]**

³ It should be remembered that it was Forest Creek that threatened a lawsuit against the Water District on December 1, 2010 and it was the Water District that was proactive in filing the lawsuit threatened by Forest Creek. See Exhibit "C" attached to Requests for Information to Complainant from Defendant filed herein and served March 30, 2012.

Jessamine-South Elkhorn Water District

Information Request No. 4: Please identify by name and address each entity or individual that has obtained since 2005 approval from the Water District to locate any of its water lines in right of way owned by the Commonwealth of Kentucky or Jessamine County.

Answer: See the Answer to Request for Information No. 1 herein. Furthermore, the issue regarding the location of Forest Creek's water main is moot due to approval of a proposed path on March 27, 2012⁴. [**Respondent – Counsel for Water District**]

⁴ See Exhibit "B" attached to Response by Water District to Forest Creek's Motion to Compel.

Jessamine-South Elkhorn Water District

Information Request No. 5: Please identify by name and address each entity or individual that has applied since 2005 to the Water District for a water line extension where John G. Horne, L. Christopher Horne or Horne Engineering, Inc., has served as the consultant or engineer for the applicant.

Answer: The Water District asserts that the information the Request seeks is irrelevant and objects to it on the grounds that Forest Creek's Complaint raises an issue about a specific application which was approved and not about applications for extension of water service generally. The Water District further objects on the grounds that the time period which the Request covers is excessive in that Forest Creek did not make a request for extension until April of 2007. Furthermore, the Water District objects on the basis that Forest Creek appears to be seeking information herein which it intends to use in Jessamine Circuit Court Civil Action 12-CI-00081, styled: *Forest Creek, LLC vs. Harold Eugene Snowden, Jr., et al.* **[Respondent – Counsel for Water District]**

Without waiving the foregoing objections, John G. Horne, L. Christopher Horne, or Horne Engineering, Inc. have represented the following applicants since 2005: ⁵

⁵ Rather than filing a separate supplement to the Water District's Answer to Forest Creek's Information Request No. 16, and in accordance with the Water District's reservation set forth in its "Response by Water District to Forest Creek's Motion to Compel" at pages 4-5 therein, the foregoing response shall serve as additional information responsive to Forest Creek's Request.

Jessamine-South Elkhorn Water District

- 1) Francis Asbury Society, Inc.
P.O. Box 7
Wilmore, KY 40390
- 2) Corman-McQueen Golf, Inc.
2260 Lexington Road
Versailles, KY 40383
- 3) Cooper Development, LLC
6377 Greenwich Pike
Lexington, KY 40511
- 4) Tugger, LLC
6377 Greenwich Pike
Lexington, KY 40511
- 5) Elkhorn Development Company, LLC
3113 Hemingway Lane
Lexington, KY 40513

[Respondent – L Nicholas Strong]

Jessamine-South Elkhorn Water District

Information Request No. 6: Please provide a copy of the minutes reflecting the approval of the Interim Water Service Agreement between Forest Creek and the Water District, and authorization for the Chairman of the Water District to sign the Interim Water Service Agreement.

Answer: See Group Exhibit “A” to Response by Water District to Forest Creek’s Motion to Compel, served on Forest Creek May 2, 2012. [**Respondent – Counsel for Water District**]

Jessamine-South Elkhorn Water District

Information Request No. 7: Please identify by name and address each individual that will be called by the Water District to testify as a witness at the hearing scheduled in this case.

Answer: The Water District has not identified at this time all of the individuals that will testify on its behalf at the hearing. However, the Water District believes at present that it will call L. Nicholas Strong (Chairman), John G. Horne and L. Christopher Horne (Consulting Engineers) and all individuals who have responded on behalf of Forest Creek to the Water District's requests for information and all individuals who file testimony herein on behalf of Forest Creek. The Water District reserves the right to disclose other individuals that will be called to testify. **[Respondent – Counsel for Water District]**

Jessamine-South Elkhorn Water District

Information Request No. 8: Please identify each document that will be introduced as an exhibit by the Water District at the hearing scheduled in this case.

Answer: Such documents have not been identified for the reason that the Complaint was filed by Forest Creek; Forest Creek's has the burden of proof; and the Water District will be unable to make a determination as to documents it will introduce until Forest Creek files its written testimony. **[Respondent – Counsel for Water District]**

Jessamine-South Elkhorn Water District

Information Request No. 9: Please provide copies of any documents or correspondence issued to J.R. Banks and/or Eagle Engineering denying an application for a water line extension.

Answer: The Water District objects to this Request on the basis that the period of time encompassed by the Request is undefined and therefore excessive; that Forest Creek is seeking information which it intends to use in Jessamine Circuit Court Civil Action 12-CI-00081, styled: *Forest Creek, LLC vs. Harold Eugene Snowden, Jr., et al.*; that the information sought is irrelevant in that Forest Creek's Complaint raises an issue about a specific application which was approved and not about applications for extension of water service generally; and that the Request is unduly burdensome in that the correspondence sought is not tied to any specific project and would require the Water District to examine and identify all of its prior water extension projects to determine the absence or presence of a connection with J.R. Banks and/or Eagle Engineering and then search those project files for the correspondence requested. Without waiving these objections, the answer to the Request is that the Water District has never denied any entity or individual's application for a water line extension, including Forest Creek's application, except in cases where the proposed extension was located outside the Water District's territory and the other water supplier would not agree to the extension.

[Respondent – Counsel for Water District and L. Nicholas Strong]

VERIFICATION

The undersigned, L. Nicholas Strong, being duly sworn, deposes and says he is the Chairman of the Jessamine-South Elkhorn Water District, that he has personal knowledge of the matters set forth in the foregoing responses for which he is the identified witness and that the information contained therein is true and correct to the best of his information, knowledge and belief.

COMMONWEALTH OF KENTUCKY
COUNTY OF JESSAMINE, SCT...

Acknowledged, subscribed and sworn to me, a Notary Public in and before said County and State by L. Nicholas strong, this the 17th day of May, 2012.

NOTARY PUBLIC NO.

Respectfully submitted,



Bruce E. Smith
BRUCE E. SMITH LAW OFFICES, PLLC
201 South Main Street
Nicholasville, Kentucky 40356
ATTORNEY FOR WATER DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Jessamine-South Elkhorn Water District's Responses to Jessamine-South Elkhorn Water District's Responses to Forest Creek's Supplemental Information Requests was served by first class mail, postage prepaid, this the 17th day of May, 2012, to Robert C. Moore, Esq., Hazelrigg & Cox, LLP, P. O. Box 676, Frankfort, KY 40602-0676.



BRUCE E. SMITH

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