

**TUNE, ENTREKIN & WHITE, P.C.**

ATTORNEYS AT LAW

RECEIVED

AmSOUTH CENTER  
SUITE 1700

315 DEADERICK STREET  
NASHVILLE, TENNESSEE 37203

TEL (615) 244-2770 FAX (615) 244-2778

JOHN C. TUNE  
1931-1983

ERVIN M. ENTREKIN  
1927-1990

*Of Counsel*

JOHN D. FITZGERALD, JR.  
\* Rule 31 listed General Civil Mediator

THOMAS V. WHITE  
JOHN W. NELLEY, JR.  
THOMAS C. SCOTT  
PETER J. STRIANSE  
HUGH W. ENTREKIN  
BEN H. CANTRELL  
JOHN P. WILLIAMS  
LESA HARTLEY SKONEY  
JOSEPH P. RUSNAK  
TODD E. PANTHER  
SHAWN R. HENRY  
T. CHAD WHITE  
STEPHEN A. LUND

August 30, 2007

Eddie Robinson  
Chairman, Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

DOCKET NO.

07-00199

**Re: Turnberry Homes v. King's Chapel Capacity**

Dear Dr. Robinson:

Please find enclosed one original plus 14 copies of Turnberry Homes' formal complaint for injunctive relief against King's Chapel Capacity. Please return one stamped "filed" copy to my office with my firm's runner.

Feel free to contact me with any questions.

Sincerely,

**TUNE, ENTREKIN & WHITE, P.C.**

*Stephen A. Lund*

Stephen A. Lund

Enclosures as stated

**TURNBERRY HOMES, LLC,**

**Petitioner,**

**v.**

**KING’S CHAPEL CAPACITY, LLC,**

**Respondent.**

## PETITION FOR INJUNCTIVE RELIEF

3. Hang Rock, Ashby, and KCC are all Tennessee limited liability companies controlled by John Powell.

4. Turnberry Homes has constructed residences on Lots 138 and 139. Each lot must have a collection tank that hooks into the main sewer system. The collection tank is a necessity in order for the lot to have sewer services.

5. Lot 138 presently has a collection tank installed and hooked into the on-site sewer system. Lot 139 does not have a collection tank installed or hooked into the on-site sewer system.

6. Turnberry Homes owns or has owned 22 other lots in King's Chapel. Mr. Powell informed Turnberry Homes that it must purchase the requisite collection tank for each lot from KCC and/or Ashby, and that only Electel, Inc. ("Electel") could install the collection tanks in King's Chapel. Wayne Stine is the president of Electel. However, Mr. Stine is also Ashby's project manager for King's Chapel. Mr. Stine reports directly to Mr. Powell.

7. Turnberry Homes has purchased a collection tank for every lot it owned in King's Chapel, except for Lot 139. Turnberry Homes purchased each collection tank from KCC and/or Ashby. Turnberry Homes has requested a collection tank from KCC and/or Ashby for Lot 139, but KCC and/or Ashby refuses to deliver it. As a result, Turnberry Homes cannot obtain sewer services for Lot 139. This prevents Turnberry Homes from obtaining a use and occupancy certificate for Lot 139, which, in turn, prevents Turnberry Homes from selling the residence on that lot.

8. On August 14, 2007, at Mr. Powell's directive, Mr. Stine shut off the sewer service valve on Lot 138. On August 15, 2007, Turnberry Homes turned the valve back on. On August 22, 2007, Mr. Powell personally shut off the sewer service valve on Lot 138. Turnberry Homes cannot obtain a use and occupancy certificate for Lot 138

without sewer services. As a result, Turnberry Homes cannot sell the residence on Lot 138.

9. Turnberry Homes and Hang Rock are involved in litigation pending in the Chancery Court for Williamson County, Tennessee, styled *Turnberry Homes, LLC v. Hang Rock, LLC*, Docket No. 33131. Turnberry Homes filed the Hang Rock litigation seeking an interpretation of the payment provisions of a contract between Turnberry Homes and Hang Rock. If Turnberry Homes prevails as expected in the Hang Rock litigation, Hang Rock will be denied payment of over \$80,000.00.

10. When KCC and/or Ashby refused to provide Turnberry Homes sewer services for Lots 138 and 139, KCC initially would not give Turnberry Homes any reason for its refusal of service. As a result, Turnberry Homes sent a letter to the Consumer Services Division of the Authority. Attached as **Exhibit 1** and incorporated herein by reference is a true and accurate copy of Turnberry Homes' letter.

11. Turnberry Homes first learned of KCC's reason for refusing service when KCC responded to Turnberry Homes' complaint with the Authority. In that response, KCC states that KCC and Ashby entered into a Wastewater Treatment Facility Service Agreement ("Agreement"). According to KCC's response, "the Agreement gives Ashby the right to deny initial connection to the wastewater system if Ashby does not receive full payment on lots and land sold by Ashby to homebuilders in the subdivision." Attached as **Exhibit 2** and incorporated herein by reference is a true and accurate copy of KCC's response.

12. KCC's response goes on to state that "[c]ertain contractual issues regarding full payment of lots and land sold by Hang Rock, LLC to Turnberry Homes are

in dispute and currently pending in the Williamson County Chancery Court.” This dispute is *Turnberry Homes, LLC v. Hang Rock, LLC*, Docket No. 33131 in the Williamson County Chancery Court (“Action”). The Action has been pending since December 21, 2006, well before the events giving rise to this petition.

13. In addition to Turnberry Homes’ complaint to the Authority, Turnberry Homes filed suit against KCC seeking a mandatory injunction. This case is styled *Turnberry Homes, LLC v. King’s Chapel Capacity, LLC and Ashby Communities, LLC*, Docket No. 33796. On August 23, 2007, the Court, in granting Turnberry Homes injunctive relief, made the following comments from the bench:

[B]ased on what I've heard, I'm going to allow Turnberry to purchase their own tank, and I am going to give Ashby first right of refusal so that if they wish to install this tank pursuant to their specifications, they will have -- ten days sounds reasonable to me.

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Ten days from the date it reaches the property in question. Then Ashby has first right of refusal to install it and get paid for it. If they don’t want to, then Turnberry is -- it’s their discretion. And I won’t look kindly on, if that happens, Ashby coming in and whining about it later. In fact, I may just preclude them altogether, because they had the opportunity to do it just like they wanted. So I better not hear from them that they’re whining about it after the fact, when I gave them the chance. Now, that’s fair. That’s common sense. You don’t come back on that.

The issues concerning Lot 138 were not before the Court.

14. Pursuant to Tenn. Code Ann. § 65-4-113, no public utility “shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.”

15. KCC has a certificate of public convenience and necessity issued by the Authority. However, in the Agreement between KCC and Ashby, KCC granted Ashby

the right to deny initial connections to the on-site sewer system. Therefore, KCC has transferred its authority to provide utility services to Ashby in violation of Tenn. Code Ann. § 65-4-113.

16. Pursuant to Tenn. Code Ann. § 65-4-115, no “public utility shall adopt, maintain, or enforce any regulation, practice, or measurement which is unjust, unreasonable, unduly preferential or discriminatory, nor shall any public utility provide or maintain any service that is unsafe, improper, or inadequate, or withhold or refuse any service which can reasonably be demanded and furnished when ordered by the authority.” Further, pursuant to Authority Regulation 1220-4-13-.14, “[w]hen a prospective customer is refused service, or an existing customer has service discontinued...the public wastewater utility shall notify the customer promptly of the reason.”

17. The Authority has the power, for good cause, to: 1) suspend or revoke a public wastewater utility’s certificate of public convenience and necessity; 2) order the forfeiture of the utility’s funds; and 3) make a claim against the utility’s financial security. Authority Regulation 1220-4-13-.09. Good cause is defined as “fraud, dishonesty, misrepresentation, self-dealing, or gross mismanagement on the part of the public wastewater utility.” *Id.*

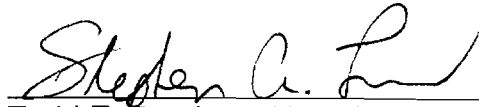
18. KCC and/or Ashby requires Turnberry Homes to purchase collection tanks from KCC and/or Ashby. KCC and/or Ashby will only allow Electel to install the tank. The president of Electel is also Ashby’s project manager. KCC and Ashby are controlled by Mr. Powell. Thus, KCC has engaged in self-dealing.

19. KCC has no legal basis to deny Turnberry Homes service to Lots 138 and 139. KCC is wrongfully and maliciously refusing to provide service because of the pending litigation between Turnberry Homes and Hang Rock, another entity controlled by Mr. Powell. This refusal of service, therefore, is out of spite for Turnberry Homes, as the Hang Rock litigation has no relation to the provision of sewer services. Rather, Mr. Powell, through his self-dealing, is using KCC's position as the sole provider of sewer services in King's Chapel to cause Turnberry Homes to abandon its claims against Hang Rock in the Hang Rock litigation. This practice is clearly "unjust, unreasonable, unduly preferential or discriminatory" under Tenn. Code Ann. § 65-4-115, and constitutes good cause under Authority Regulation 1220-4-13-.09 for appropriate sanctions.

WHEREFORE, premises considered, Turnberry Homes respectfully requests:

1. That the Authority order an expedited hearing to determine the merits of this petition;
2. That the Authority command KCC to restore sewer services to Lot 138, and enjoin KCC from illegally transferring its authority to provide sewer services to Mr. Powell, Ashby, Electel, and Hang Rock;
3. That the Authority enjoin KCC, Mr. Powell, Ashby, Electel, and Hang Rock from further interfering with sewer services on Lot 138;
4. That the Authority command KCC to provide sewer services to Lot 139; and
5. That the Authority grant Turnberry Homes any other relief which the Authority may deem appropriate.

RESPECTFULLY SUBMITTED,



Todd E. Panther (#14438)  
Stephen A. Lund (#25531)  
TUNE, ENTREKIN & WHITE, P.C.  
AmSouth Center, Suite 1700  
315 Deaderick Street  
Nashville, TN 37238-1700  
(615) 244-2770 - telephone  
(615) 244-2778 - fax  
*Attorneys for Turnberry Homes, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing document has been served, via the method(s) indicated below on the following counsel of record, this the 30<sup>th</sup> day of August, 2007.

- ☐ Hand
- ☒ Mail
- ☐ Fax
- ☐ Fed. Ex.
- ☐ E-Mail

Charles B. Welch, Jr.  
Jamie R. Hollin  
618 Church Street, Suite 300  
Nashville, TN 37219



Stephen A. Lund (#25531)





To: Tennessee Regulatory Authority  
From: Turnberry Homes  
Date: 7/11/07  
Re: John Powell/Ashby Communities at Kings Chapel

**Richard J. Bell**  
*President*

**Theresa M. Sells**  
*Chief Financial Officer*

**Nicky D. Wells**  
*Vice President*  
*Land Development Division*

My name is Richard Bell and I am the president of Turnberry Homes. We are under contract to purchase 24 lots in the first phase of Kings Chapel located on Highway 96 in Arrington, Williamson County. John Powell is the president of Ashby Communities who developed all the lots in Kings Chapel and who is the owner and operator of an on site sewer system whose permit to act as a public utility was granted by the State of Tennessee.

We have purchased all of the lots for which we were contracted. Our only source of sewer is John Powell, the developer and on-site sewer owner. On our last home being constructed on lot 139 (a fully platted and approved building lot), Powell is refusing to provide and install the necessary holding tank required to hook-up to the on-site sewer system. He has provided this to all other previous lots we purchased and we are paid in full on all past such services. As Powell demands, we must pay him COD on all deliveries of the tank and its installation for which we are fully prepared to provide on lot 139. And yet, Powell refuses to provide us the right to hook-up to his sewer system. We have no other alternative, approved provider to hire to install this service as only Powell and Ashby Communities allow their own service.

As Powell is refusing to provide this service we must place the construction of our home on hold which will cause us financial loss in interest carry and inability to sell and transfer the property. We ask for your immediate assistance and intervention in this matter.

Respectfully

Richard J. Bell  
CC

Todd Panther; Tune, Entrekin and White

**Turnberry Homes, LLC**

215 Jamestown Park Road  
Suite 201  
Brentwood, TN 37027  
615-376-2200  
FAX 615-376-2362  
www.turnberryhomes.com

**EXHIBIT** 1

07-0461

FARRIS MATHEWS BRANAN  
BOBANGO HELLEN & DUNLAP, PLC  
ATTORNEYS AT LAW

HISTORIC CASTNER-KNOTT BUILDING  
618 CHURCH STREET, SUITE 300  
NASHVILLE, TENNESSEE 37219

Charles B. Welch, Jr.  
cwelch@farrismathews.com

Telephone: (615) 726-1200  
Facsimile: (615) 726-1776

Writers Direct Dial.  
615-687-4230

RECEIVED  
CONSUMER SERVICES DIVISION  
JUL 30 2007  
TN REGULATORY AUTHORITY

July 30, 2007

Mr. Carsie Mundy, Chief  
Consumer Services Division  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

**Re: King's Chapel Capacity and Turnberry Homes, LLC**

Dear Mr. Mundy:

Our law firm has recently been engaged to represent King's Chapel Capacity (the "Utility") in response to a complaint filed by Richard J. Bell on behalf of Turnberry Homes, LLC ("Turnberry Homes") against the Utility [John Powell/Ashby Communities, LLC]. According to the letter dated July 11, 2007, Turnberry Homes asserts that the "Utility [Powell] is refusing to provide and install the necessary holding tank required to hook-up to the on-site (sic) sewer system."

Please be advised, however, a holding tank has been installed on lot 139 in King's Chapel Subdivision (the "Subdivision"). The Utility informed Turnberry Homes that there would be no sewer service for lots 138 and 139. The Subdivision's developer, Ashby Communities, LLC ("Ashby"), has notified the Utility not to connect these lots to the wastewater system and the Utility is following these instructions based upon the Wastewater Treatment Facility Service Agreement (the "Agreement") between the Utility and Ashby.

The Agreement gives Ashby the right to deny initial connection to the wastewater system if Ashby does not receive full payment on lots and land sold by Ashby to homebuilders in the Subdivision. The Utility would be in breach of the Agreement if it were to provide wastewater services to lots sold in King's Chapel without Ashby's prior approval. Certain contractual issues regarding full payment of lots and land sold by Hang Rock, LLC<sup>1</sup> to Turnberry Homes are in dispute and currently pending in the Williamson County

<sup>1</sup> Ashby Communities, LLC is the successor-in-interest to Hang Rock, LLC.

Mr. Carsie Mundy  
July 30, 2007  
Page 2 of 2

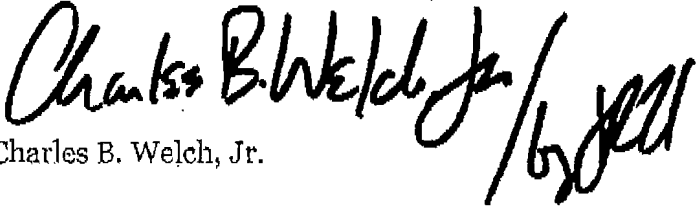
Chancery Court. The Utility is not a party to this litigation.

The Utility has never and will not deny wastewater services to an end use homeowner in the Subdivision while the litigation referenced herein is pending or otherwise. Therefore, since no residential wastewater subscribers have been denied or had their service interrupted, Turnberry Homes' complaint does not merit immediate regulatory intervention at this time. Until these matters are resolved, the Utility respectfully requests that the Tennessee Regulatory Authority dismiss this complaint or alternatively, hold the matter in abeyance until final disposition of the lawsuit between Turnberry Homes and Hang Rock, LLC.<sup>2</sup>

If I may be of further assistance in this matter, please do not hesitate to contact me. I am

Very truly yours,

FARRIS MATHEWS BRANAN  
BOBANGO HELLEN & DUNLAP, PLC



Charles B. Welch, Jr.

CBW/jrh  
Cc: John E. Powell

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<sup>2</sup> *Id.*