

RECEIVED

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T.R.A. DOCKET ROOM

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

February, 10 2012

IN RE:

DATA REQUEST DATED FEBUARY 3, 2012 REQUARDING THE  
PETITION OF AQUA GREEN UTILITY INC. TO IMPLEMENT  
TAP FEE'S FOR THE SERVICE OF THE PART OF JEFFERSON  
COUNTY, TENNESSEE KNOWN AS STONEBRIDGE ON DOUGLAS  
LAKE.

DOCKET NO. 12-00004

1.) Provide a schedule showing all amounts paid to Advanced Septic, Inc. for construction of the sewer plant or any component of a collection system or treatment system at Stonebridge. The list should include all amounts from Chip Leonard, Stonebridge on Douglas Lake LLC, RPM Group, Inc., Sam Pinner and the Homeowners Association ("HOA"), referred to in this Petition, or any member of the HOA. List each amount, the date paid and the payer.

The amounts received by Advanced Septic, Inc are:

- A) From Chip Leonard (Developer) upon acceptance of contract \$10,000.00 on 6/30/2010.
- B) From Chip Leonard (Developer) first draw for plant construction \$32,000.00 on 5/16/2011
- C) From the Stonebridge HOA to complete the plant construction to a point where delays or weather will not cause damage to the completed items. \$35,000.00 on 11/17/2011.

2.) Provide a schedule showing all amounts paid to Aqua Green or "tap fees" collected by Aqua Green for construction of the sewer plant or any component of a collection system or treatment system at Stonebridge. List each amount, the date paid and the payer.

No payments what so ever have been paid to Aqua Green Utility Inc.

3.) Provide a schedule by month showing all revenues (other than tap fees listed above) that Aqua Green has received from any of the lot owners at Stonebridge.

No payments what so ever have been paid to Aqua Green Utility Inc.

4.) Provide the utility's definition of tap fees and Aqua Green's expenses the proposed tap fees will cover.

Aqua Green Utility Inc. considers a tap fee, as a fee that must be paid before a customer will be allowed to connect to the sewer system. The tap fees collected by Aqua Green Inc. will be paid to Advanced Septic Inc. to cover the costs of construction of the waste water treatment facility.

5.) If any tap fees have been collected to date, what account(s) have they been booked to? Are you aware that tap fees are considered revenues of the utility for which appropriate taxes and related fees are owed?

It is my understanding that tap fees are being collected by the Stonebridge HOA and are being held in a bank account awaiting TRA approval of this funding option. The intent is that once approved the tap fees would quickly be paid to Aqua Green Utility Inc. who would pay them to Advanced Septic Inc. to expedite the completion of the wastewater treatment facility. Aqua Green Utility Inc. is familiar with any and all tax ramifications of any income received.

6.) What would prevent Advanced Septic from contracting directly with the Homeowner's Association to finance the system?

Advanced Septic Inc. has no ability to refuse sewer service to an Aqua Green Utility Inc. customer who has not paid the tap fee. Advanced Septic Inc. has not attempted to contract with the HOA for financing because I understand that the HOA does not have the ability to finance the funds needed for payment of the completion of the wastewater treatment facility.

7.) Has Advanced Septic attempted to contract with the Homeowner's Association for financing? If so, explain the outcome. If not, explain why an attempt has not been made.

No Advanced Septic Inc. has not attempted to contract with the HOA for financing. It is my understanding that the HOA does not have the ability to finance the funds needed for payment of the completion of the wastewater treatment facility.

8.) In the Data Response, filed June 27, 2011 in Docket No. 10-00145, you stated that if the developer did not pay for the system as agreed, you would turn the contract over to your attorney. Have you filed a law suit for breach of contract to collect the monies due to build the wastewater system? If so, provide a copy of the lawsuit. If no legal action has been taken by Advanced Septic, explain why.

Advanced Septic Inc. did consult with our attorney and explored the legal possibilities of collecting on the unpaid amounts and enforcing the contract. Our attorney normally handles collection accounts on a contingent basis. Our attorney refused to accept this account on a contingent basis and requested a \$325.00 per hour basis. I understood his reasoning to be that other law suits are already filed for several million against the developer and the chance of collecting anything is very unlikely. It was decided not to waste good money after bad.

9.) Explain all steps you have taken to collect monies owed by the developer to Advanced Septic, Inc., such as any other legal action, letters or e-mails to the developer, letters to developer from collectors, attorneys, etc. Provide copies of any communications. Explain any further actions that you plan to take against the developer.

Advanced Septic Inc. has sent text, made phone calls, and sent monthly invoices to the developer with no response. The developer just does not respond in any form. Advanced Septic Inc. has no expectations of ever being paid by the developer. If allowed by the TRA, Aqua Green Utility Inc. believes that by not connecting the developer's lots to the system until he pays the HOA for the wastewater treatment plant contract and will force payment. The lots 27, 64 and 65 may sell for up to \$600,000.00 this is considered leverage to help the homeowners to recover their money.

See attached

10.) If the proposed tap fees are not approved by the TRA, discuss other possible sources of funding to build the system.

After extended discussions with the HOA, the only other viable option (an assessment) was ruled out. We looked at a special assessment as a possibility for funding. In considering the special assessment a homeowner made others aware of a problem he experienced in a development nearby. We were told that that development had a special assessment for a water line to be installed. Only about 30% of the homeowners ever paid the assessment, and once the line was installed and operational, all homeowners were allowed to connect even the ones who did not pay. Individual homeowners have expressed to me that they are willing to pay their fair share for this plant but are unwilling to pay for those who do not want to pay. The tap fee is the only option I know of to resolve this issue and get this wastewater facility built.

11.) Discuss the rationale for requiring all lot owners pay a tap fee, even though they do not yet have service and may or may not decide to build a house in the future?

I can't imagine why a person would buy a very expensive lot in a neighborhood and not plan on someone building there someday; raw land could be bought for a small fraction of the price. The tap fee proposed would be paid before someone builds and does not have to be paid now. In order to encourage payment by individual homeowners, the tap fee will increase six percent (6%) 90 days after approval, and 6% each year thereafter. To put it quite simply Advance Septic Inc. expects cost increases in years to come if not paid now. Additionally Advanced Septic Inc. will not invest in the construction necessary for future homeowner connection without a fair return on the investment.

12.) Provide a reference to any state law or Authority rules/orders that would allow Aqua Green to refuse service to any lot owner (including the owner(s) of lots 27, 64 or 65).

I am not aware of any law that requires a business to provide a service to any entity without some form of payment. It should be noted that lots 27, 64 and 65 are owned by the developer who has entered into a contract with Aqua Green Utility Inc. and Advanced Septic Inc. to provide sewer service and has failed to live up to his payment obligations.

13.) Provide a list of expenses that Aqua Green has incurred to date associated with Stonebridge. Provide the listing by month from August, 2011 to the present.

Aqua Green Utility Inc. has paid:

Plant electricity for recirculation and pumping: \$20.33 August 15, 2011

Plant electricity for recirculation and pumping: \$20.33 September 15, 2011

Property Tax Jefferson County: \$149.00 October 3, 2011

Plant electricity for recirculation and pumping: \$42.70 October 19, 2011

Plant electricity for recirculation and pumping: \$25.58 November 15, 2011

Plant electricity for recirculation and pumping: \$40.90 December 15, 2011

TDEC SOP permit renewal cost: \$350.00 December 31, 2011

Plant electricity for recirculation and pumping: \$68.68 January 23, 2012

14.) Is there a contract between Advanced Septic, Inc. and the HOA at Stonebridge and/or between Aqua Green Utility, Inc. and the HOA at Stonebridge? If so, provide a copy(ies).

See attached

15.) How was a tap fee of \$4,250 per lot determined? Provide any calculations and/or assumptions used.

The tap fee is a calculation based on the original contract cost and other associated cost including needed land and any additional plant construction cost for all lots. The original contract is for \$405,000.00 we deducted the amount paid by the developer of \$42,000.00 then we added \$95,000.00 to be paid by Advanced Septic Inc. toward the purchase of additional property or plant cost needed to allow all homeowners to connect to the system. This total is divided by 108 lots equaling a rounded number of \$4250.00 per lot. It is important to understand this amount is based on a plan to complete this system for all homeowners. With approval for just 50 lots and a \$35,000.00 payment from the HOA, Advanced Septic Inc. will only have enough funds to finish the facility for 50 lots and will not be repaid for the approximately 60% of current plant completion invoiced to the developer. This mutually agreed on amount with the HOA and Advanced Septic Inc. assures Advanced Septic Inc. continued assistance with finding the property needed to complete the system for all homeowners not just 50. When the wastewater treatment plant is operational, any completed homes will be billed the monthly rate of \$44.53 and any lots up to 50 total who pay the tap fee will be billed the approved access fee tariff of \$120.00 per year. Once plant capacity for

all homes is permitted through TDEC for all homeowners, Aqua Green Utility Inc. will bill all homeowners at the current approved access fee tariff of \$120.00 per year.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dart Kendall', is written over a horizontal line.

Dart Kendall  
Aqua Green Utility Inc.  
President  
3350 Galts Road  
Acworth, GA 30102  
865-908-0432

## CONTRACT AGREEMENT

THIS AGREEMENT made as of the first day of February in the year of 2012.

Between Parties:

Stonebridge on Douglas Lake Homeowner Association, Inc. ("Owner")  
PO Box 747  
Smithville, TN 37166

and

Advanced Septic, Inc. ("Contractor")  
3350 Galts Road  
Acworth, Georgia 30102

and

Aqua Green Utility Inc. ("Utility")  
3350 Galts Road  
Acworth Georgia 30102

For the following Project:

Stonebridge Project ("Project")

1. Scope of Work ("Work")

This Scope of Work ("Work") will include design drawings submitted by Contractors engineering firm for final approval to standards necessary for the State of Tennessee to allow modification to the current SOP permit, utilizing the land on Lot 115 Tranquil Trail to amend the SOP from 50 to 108 lots. The number of approved lots will be determined by The Tennessee Department of Environment and Conservation ("TDEC"). The Utility will apply for changes to the necessity and convenience permit with the Tennessee Regulatory Authority ("TRA") to accept the conditions of this contract. The Contractor will add tops to the existing sewage treatment tanks capable of meeting TDEC requirements and standards necessary for the disposal of wastewater for the Stonebridge Subdivision that will consist of 108 residential homes (1 home per lot). This plant and system will not provide sewage service for commercial or condominium type facilities.

The Owner also agrees to transfer all easements to all central sewer components so the Utility may go onto private property and make repairs.

The step tanks are placed at each residence at the cost of the homeowner and must meet the Utilities' standards. These standards may be changed if necessary to meet local or state requirements as needed. The Utility will be responsible for the maintenance of these tanks, including sludge removal and pump replacement.

**Not included in this contract price:**

The cost of individual septic and dosing "step" tanks located at residences.

**2. Price and Payment**

Owner shall pay the Contractor for performance of the Work the sum of \$35,000.00

a.	Acceptance of contract by owner	\$35,000.00
	Less check # 692	<u>\$ 5,000.00</u>
	Balance	\$30,000.00

Total without tap fees: \$35,000.00

**3. Time**

The utility shall submit a modification to the current State Operating Permit (SOP) to TDEC with a signed engineering report and associated drawings no later than 3 weeks of receiving payment.

**4. Changes**

No alteration shall be made in the Work except on the written order of the Owner, at which time Contractor shall perform any such changes only after a price has been established and agreed to by Owner for the additional work to be performed. Any changes may impact the duration of the performance of the Work.

**5. Indemnification**

The Parties shall indemnify and hold each other harmless from and against all claims, damages, losses and expenses, including reasonable attorney fees, costs of court and other legal expenses arising out of or resulting from their sole acts and/or omissions, including any such claim, damage, loss or expense which is attributable to bodily injury, sickness, disease, death or the injury to or destruction of personal or tangible property.

**6. Insurance**

**Contractors' Insurance**

The Contractor shall maintain such insurance as will protect it from claims under workers compensation and from any other claims arising from injury or death during the performance of

its Work. Automobile Bodily Injury and Property Damage Liability Insurance coverage shall not be less than \$300,000.00. Comprehensive General Bodily Injury and Broad Form Property Damage Liability Insurance coverage shall not be less than \$1,000,000.00. Contractor shall maintain policies already shown to Owner and will have proof of such policies faxed to the owner any time requested.

7. Miscellaneous provisions

In order to complete the sewer treatment system each lot owner will pay a tap fee of \$4250.00. The cost of the tap fee will increase 6% 90 days after TRA approval and 6% each year thereafter until the tap fee is paid.

Once this agreement is approved by the TRA and if someone decides not to pay the tap fee, Aqua Green Utility Inc will not allow that person to connect to the system.

If 11 tap fees have been paid and soil test results are approved by the owner the Contractor agrees to pay \$44,900.00 to buy Lot 115 Tranquility Trail. The contractor will install drip dispersal zones on Lot 115 as needed to add that property to the existing system including running lines to lot 115 as needed to increase capacity.

The Owner understands once a minimum of 34 tap fees and \$35,000.00 is paid, the Contractor will complete the sewer treatment plant construction. The Contractor agrees to build the Sewer treatment plant currently approved by TDEC. Once plant construction is complete, Aqua Green Utility Inc. the Utility, will assume operation and responsibility (including any pump and haul operations necessary) with ownership of all components of the system and drip field property. The Utility will bill the homeowners for this service at a rate set and approved by the TRA. The Utility will be responsible for all future costs including electricity, phone line, sludge removal, water, part replacements and certified operator visits.

If 45 tap fees have been paid within 6 months of TRA approval of this agreement. The Utility will transfer ownership of Lots 98 and 99 to the Owner at no cost with the understanding these lots will be sold. If 45 tap fees are not paid within 6 months of TRA approval. the Utility will put Lots 98 and 99 up for sale with the proceeds going to the completion of the system.

Once 55 landowners pay the tap fees, \$35,000.00 and any other funds received as advance payment will be repaid to the Owner buy the Contractor.

The Owner will send out a letter to the lot owners with the terms of this agreement and a request asking them to send in a check for tap fees made out to Aqua Green Utility Inc. The Owner will hold the checks until TRA approval of this agreement, then give the checks to Aqua Green Utility Inc.



8. Tennessee Regulatory Authority Provisions


The Utility will collect tap fees and pay all tap fee amounts to the Contractor as payment for the sewage treatment facilities and any land purchase.

This agreement is dependent approval with the Tennessee Regulatory Authority.

The Parties submit to the jurisdiction and venue of the Courts of The State of Tennessee for the resolution of any disputes.

ACCEPTED:

OWNER:


  
(Signature)  
Michael T Sorrells  
Print

Sworn & subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2011.

CONTRACTOR:

  
(Signature)  
Dart Kendall (CEO, Advanced Septic Inc.)

UTILITY:

  
(Signature)  
Dart Kendall (President, Aqua Green Utility Inc.)

Sworn & subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2011.

**Subject:** Stonebridge  
**From:** Becky Kendall <beckyken17@att.net>  
**Date:** 1/5/2012 3:35 PM  
**To:** Lynette Wright <lynette@rpmland.com>

Hi Lynette,

I just emailed our statement. Following up to see if you received it.  
Quickbooks does not let me know if an email failed or not.

Thanks,  
Becky Kendall  
770-966-0998

**Subject:** Stonebridge  
**From:** Becky Kendall <beckyken17@att.net>  
**Date:** 12/2/2011 4:51 PM  
**To:** Lynette Wright <lynette@rpmiland.com>

Hi Lynette,

I just emailed our statement for you to pass on to Chip. I know this is probably hopeless, but I've been praying he'll make some effort. I'm sorry if my last email was cynical, but it really is hard to deal with all our bills and the burden this is putting on the homeowners during the holidays. I've decided I'm not going to let this ruin our Christmas. I hope you will have a wonderful Christmas also. I will only email you statements from now on. I am calling Chip myself, instead of you, to follow up with payment. I guess you could say that is my Christmas present to you!

Thanks for being so kind and considerate.

Becky Kendall  
Advanced Septic Inc.  
770-966-0998

**Subject:** Stonebridge

**From:** Becky Kendall <beckyken17@att.net>

**Date:** 11/10/2011 5:14 PM

**To:** Lynette Wright <lynette@rpmland.com>

Just checking to see if Chip might care about the plight he has put everyone in and pay his debt. This is really messing up the holidays for 100 plus owners and ourselves. Please pass this on to him.

Thanks,  
Becky Kendall  
Advanced Septic Inc.  
770-966-0998

**Subject:** Stonebridge

**From:** Becky Kendall <beckyken17@att.net>

**Date:** 10/24/2011 4:41 PM

**To:** Lynette Wright <lynette@rpmland.com>

Hi Lynette,

Just checking in to see if you had a chance to talk to Chip about payment. I'm praying he'll come through and do the right thing.

Thanks,

Becky Kendall

Advanced Septic Inc.

770-966-0998

I hope you understand that I've got to keep checking on any word of payment for Stonebridge. While I feel that Dart has gone way above and beyond the call of duty in getting this project permitted, etc. and that we should get paid for our contractual agreement... I also sympathize with the 100+ homeowners, as they essentially have property that is worthless without a sewer system. They can't get building permits or even sell their property. How can anybody leave these people high and dry like that? We have done all that we can do at this point. We have billed according to work completed as indicated on our contract. We are not trying to pull anything. Why did Chip tell us that he is working on payment and then we've heard nothing for a month now? Last week I sent a bill for permitting a lot that will provide sewer for all the lots now, not just 50.. which is good news. These restrictions from TDEC are not our doing, in fact they have been a thorn in our side. I'm sorry for venting, but I honestly don't think we or the homeowners deserve this silent, no comment type of treatment. Again, I know this is not your doing, but please feel free to pass this on.

Becky Kendall  
Advanced Septic Inc.  
770-966-0998

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No virus found in this message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 10.0.1411 / Virus Database: 1522/3958 - Release Date: 10/17/11

**Subject:** Re: Stonebridge  
**From:** Becky Kendall <beckyken17@att.net>  
**Date:** 10/18/2011 3:49 PM  
**To:** Lynette Wright <lynette@rpmland.com>

Hi Lynette,

I do understand that you are the messenger and that is the only reason I am sending you my emails to pass along. I don't know of any other way to do it unless you want to give me Chips' email address. He never answers his phone and to be quite frank with you, it is probably better for me to email as I might say something I would regret on the phone. It is nice to hear your kindness in the emails. I keep thinking Chip has some issue about something, but won't communicate to let anybody know. I know that he was hoping to be able build condos in Stonebridge and TDEC's restrictions killed that, but we can't help that. We'd make more money as a utility with condos also. Dart fought them so hard but could not get them to change the soil classification. It has been so stressful for him and I have really worried about his health. Now Chip won't pay and it's like we're being punished for some reason. It is so disheartening. If he can't pay it all right now, he could let us know something. I wish he cared and understood the way you do. It's not just us, it is all those homeowners too.

Thanks for caring,  
Becky Kendall  
Advanced Septic Inc.  
770-966-0998

I understand your frustration however, please understand that I am just the messenger. . . I did pass this email along to Chip as well. I will see him on Thursday and I will definitely let him know. Again, I understand and I wish there was something I could do personally. I know that your husband has worked extremely hard on getting this taken care of I really don't know what to say except I will keep bringing this to his attention and hopefully, we can get the issues resolved.

Best Regards,

Lynette Wright  
Office Manager  
RPM Group, LLC  
9131 Cross Park Drive Suite 100  
Knoxville, TN 37923  
Phone: 865-963-0590  
Fax: 865-963-0597  
Email: [lynette@rpmland.com](mailto:lynette@rpmland.com)

-----Original Message-----

**From:** Becky Kendall [<mailto:beckyken17@att.net>]  
**Sent:** Monday, October 17, 2011 5:56 PM  
**To:** Lynette Wright  
**Subject:** Stonebridge

Lynette,

# ADVANCED SEPTIC INC

3350 Galts Road  
Acworth, GA 30102

Phone # 770-966-0998

## Statement

To:
Stonebridge on Douglas Lake, LLC

Date
2/1/2012

*A Finance Charge of 1.50% per month will be charged on invoices that are 30 days Past Due.*

Date	Transaction			Amount	Balance
05/06/2011	INV #982. Due 05/06/2011. Orig. Amount \$50,000.00.			50,000.00	50,000.00
08/22/2011	INV #1020. Due 08/22/2011. Orig. Amount \$8,000.00.			8,000.00	58,000.00
09/02/2011	INV #1022. Due 09/02/2011. Orig. Amount \$55,000.00.			55,000.00	113,000.00
09/21/2011	INV #1024. Due 09/21/2011. Orig. Amount \$55,000.00.			55,000.00	168,000.00
09/22/2011	INV #FC 94. Due 09/22/2011. Orig. Amount \$750.00. Finance Charge			750.00	168,750.00
09/22/2011	INV #FC 96. Due 09/21/2011. Orig. Amount \$120.00. Finance Charge			120.00	168,870.00
10/03/2011	INV #FC 102. Due 10/03/2011. Orig. Amount \$825.00. Finance Charge			825.00	169,695.00
10/24/2011	INV #FC 105. Due 10/24/2011. Orig. Amount \$825.00. Finance Charge			825.00	170,520.00
11/30/2011	INV #FC 109. Due 11/30/2011. Orig. Amount \$2,557.80. Finance Charge			2,557.80	173,077.80
12/31/2011	INV #FC 119. Due 12/31/2011. Orig. Amount \$2,596.17. Finance Charge			2,596.17	175,673.97
01/31/2012	INV #FC 122. Due 01/31/2012. Orig. Amount \$2,635.11. Finance Charge			2,635.11	178,309.08
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	2,635.11	2,596.17	2,557.80	170,520.00	\$178,309.08



**Subject:** Stonebridge  
**From:** Becky Kendall <beckyken17@att.net>  
**Date:** 11/1/2011 4:02 PM  
**To:** Lynette Wright <lynette@rpmland.com>

Just checking in to see if any chance of getting paid. I emailed a statement yesterday.

Becky Kendall  
Advanced Septic Inc.  
770-966-0998