

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

IN RE:)	
)	
Petition of Superior Wastewater Systems, LLC For A Certificate of Convenience and Necessity To Amend Its Existing Service Territory in Williamson County)))))	DOCKET NO. 23-00051

Motion of Tennessee Wastewater Services, Inc. to Hold Proceedings in Abeyance

Summary

Tennessee Wastewater Systems, Inc. (“Tennessee Wastewater” or “TWSI”) respectfully asks that the Hearing Officer hold these proceedings in abeyance pending the outcome of a lawsuit recently filed by the Petitioner, Superior Wastewater Systems, LLC (“Superior”) in Williamson County Chancery Court. In the suit, Superior asks the Court to declare that Tennessee Wastewater must withdraw as a party to this docket.

Superior’s Petition to the Commission asks the agency to take away a substantial portion of Tennessee Wastewater’s “Milcrofton” service area in Williamson County and give it to Superior. Superior’s Petition is unusual for a number of reasons, and the case is likely to be litigious, protracted and expensive. In light of Superior’s lawsuit, the case should be held in abeyance until the court has ruled. It would be unfair to Tennessee Wastewater and a waste of significant time and resources of the Commission to spend months litigating this dispute only to have the court later rule that Tennessee Wastewater has no right to participate.

A delay in these proceedings will have little or no impact on the public's need for wastewater service in TWSI's territory.¹ None of the landowners in TWSI's service area has requested service from Tennessee Wastewater. Should such a request be received, Tennessee Wastewater will evaluate whether it can provide the requested service upon reasonable terms and conditions. Such evaluations are made on a case-by-case basis. If Tennessee Wastewater determines that it is not able "to meet the reasonable needs of the public" (T.C.A. 65-4-203) and that the owner can obtain service under more reasonable terms and conditions from another, nearby utility, Tennessee Wastewater will not object to allowing the other utility to provide service to that parcel. On two prior occasions, Tennessee Wastewater has agreed to allow Superior to provide service to requesting landowners who are located close to Superior's existing treatment system. See footnote 3, infra.

Therefore, if the Hearing Officer grants TWSI's request to hold this case in abeyance pending a court ruling, that delay will not prevent any landowner in the disputed area from obtaining service if it can reasonably be provided either by TWSI or by Superior's existing treatment plant.

Superior's Petition

As the Commission Staff has already recognized (see letter from Aaron Conklin to Erik Lybeck, November 16, 2023), Superior's Petition is not a typical application from a wastewater provider to serve a new territory. Although several property owners in the area have submitted nearly identical form letters saying they would be interested in getting wastewater service, no one has submitted a specific proposal for a commercial or residential development, much less signed a contract asking Superior to provide such service. Moreover, the Petition states that John Powell's development

¹ TWSI is not contesting Superior's request to provide service in PGA-5, which is the Triune area on the right (eastern) side of the service area map filed by Superior. Attached are copies of (1) Superior's proposed service area as filed with the Petition (2) TWSI's service area (with a note marking the location of Mr. Greg Sanford's parcel at 4833 Murfreesboro Rd.) and (3) the Triune Special Area Plan map. As one can see from the maps, there is no overlap between TWSI's service area and the Triune Special Area where Superior's treatment facility and drip field will be located. Mr. Sanford's parcel is more than five miles west of that site but only about a quarter mile from Superior's facility at Ashby Communities and about 1.5 miles from TWSI's regional treatment plant.

company will own the drip fields adjacent to the proposed new treatment plant and will “sell drip field capacity to each end-use customer (fully constructed) at market rates.” See Superior Response 2-4A to Staff’s 2nd Discovery Request. It is not clear what that means but it appears that Mr. Powell intends to use Superior’s monopoly control of the requested service area to force any customer who needs wastewater service to pay unregulated, monopolistic, “market rates” for the right to access the only drip field in the Triune area.

Intervention of TWSI

Tennessee Wastewater intends to participate fully in the docket as it has the right to do under state law. See Peoples Telephone Company v Tennessee Public Service Commission, 393 S.W. 2d 285 (Tenn. 1965). In that case, the Tennessee Supreme Court held that an area that presently has no telephone service but that lies within the certificated service territory of a telephone carrier is a “territory already receiving a like service” as that phrase is used in T.C.A. 65-4-201. The Court also held that the unserved area could not be served by any other carrier except “under certain criteria set out in” what is now T.C.A. 65-4-203.

The 2005 Settlement Agreement

Superior’s claim that Tennessee Wastewater cannot intervene in this proceeding arises from a dispute nearly twenty years ago between Tennessee Wastewater and John Powell over the provision of wastewater service to a new development called Ashby Communities. Mr. Powell, the principal developer of Ashby Communities, signed a contract with TWSI in which Mr. Powell agreed to pay the utility to construct and operate a treatment facility to serve Ashby Communities. Mr. Powell, however, failed to complete payment for the new facility and refused to turn the completed facility over to TWSI. Claiming that TWSI had forged his signature on the parties’ contract, Mr. Powell announced that he intended to keep the treatment facility, start a new wastewater utility and provide

service to his new development. He created King's Chapel and filed an application at the Commission for a certificate of convenience and necessity to serve the Ashby Communities (Docket 04-00335). Tennessee Wastewater intervened in the Commission proceeding and filed suit in Williamson County Chancery Court asking the Chancellor to require Mr. Powell to transfer ownership of the treatment system to TWSI. At TWSI's request, the Commission held docket in abeyance pending a ruling by the court on who owned the treatment facility.

Several months later, the Chancellor ruled that the treatment facility belonged to Mr. Powell. Rather than appeal, Tennessee Wastewater decided to settle the case, agreeing to let Mr. Powell keep the treatment facility and to drop its opposition to Mr. Powell's application for a CCN as long as "such application" was not amended to extend beyond Ashby Communities. The Settlement Agreement also required both parties to withdraw "any complaint or proceeding" filed by either party "in any other forum." Pursuant to that provision, Tennessee Wastewater dismissed its Williamson County suit and the Commission dismissed a complaint and a petition for declaratory judgment that Mr. Powell had filed against TWSI. In both the complaint and the petition, Mr. Powell contended that a utility should not be allowed to retain control over a service area unless the utility currently has facilities in the area. It is the same argument that Mr. Powell raises again in this proceeding.

TWSI filed a copy of the Settlement Agreement with the Commission and, pursuant to the Agreement, explained to the Commission that the utility was withdrawing its opposition to the issuance of a CCN to King's Chapel as long as the application was not amended to extend service beyond Ashby Communities. Citing those conditions of TWSI's withdrawal, the Commission issued a CCN to King's Chapel, transferred from TWSI's to King's Chapel the parcels of land where Ashby

Communities is located, and dismissed both Mr. Powell's complaint against TWSI and his petition for a declaratory judgment.²

Superior's Attempt to Force TWSI to Withdraw

The Settlement Agreement resolved all contested matters between the parties at that time, as it was intended to do. It was not intended to preclude all future disputes. Mr. Powell has now resurrected his argument that Tennessee Wastewater has no vested right to provide service in those parts of its service territory where it does not already have facilities. Although that complaint was dismissed as part of the Settlement Agreement, nothing in the Agreement prevents Mr. Powell from raising the argument again. Similarly, nothing in the Agreement prevents TWSI from protecting its statutory right to offer service throughout its service territory ---whether or not it has facilities there--- in accordance with the Supreme Court's holding in Peoples Telephone Company v. Tennessee Public Service Commission, supra, and the requirements of T.C.A. 65-4-203.

Mr. Powell wants to have it both ways. He argues that he can try again to take over unserved areas in TWSI's territory but that the Settlement Agreement prohibits TWSI from fighting back. He argued to the Hearing Officer that TWSI was barred by the Settlement Agreement from intervening in this proceeding. The Hearing Officer disagreed and granted TWSI's petition. Mr. Powell then threatened to sue TWSI if the utility did not withdraw its petition. TWSI declined to withdraw. (See letter of October 11, 2023, from Henry Walker to Todd Hancock filed in Docket 23-00051.) Now, Mr. Powell has filed suit in Williamson County, asking the court to hold that TWSI's 2005 agreement to withdraw its objection to his CNN application to serve Ashby Communities somehow ---nearly twenty years later--- prohibits TWSI from raising an objection to Superior's request to provide service

² These events are described in TRA dockets 04-00335, 05-00204 and 05-00062.

throughout a large area without regard to the territorial rights of TWSI. A copy of the complaint is attached.

Superior's argument is not one the court is likely to accept. Nevertheless, it would be foolish for the agency and the parties to spend months litigating this case without knowing whether or not TWSI has the right to participate. Just as the Commission awaited a court decision before deciding whether TWSI or King's Chapel could serve Ashby Communities, the agency should again await a ruling from the Chancery Court before deciding the respective claims of the two utilities. TWSI should not have to litigate both cases at the same time and should not be forced to spend a significant amount of time and money in this case only to have a court later rule that the effort has been wasted.

No Harm in Waiting for a Court Decision

Superior's Petition asks that the utility be allowed to build a treatment facility east of Triune and provide wastewater service from that facility to customers in and around the Triune area. All of the letters from local officials and most of the requests for service from landowners seek service in the "Triune Special Area" shown here:

<https://www.williamsoncountyttn.gov/DocumentCenter/View/17662/Triune-Special-Area-Plan>.

In fact, Superior's recent response to the Staff's 3rd Discovery Request states (Response 3-4) that Superior's newly acquired drip fields and proposed treatment facility should provide the utility with adequate capacity to serve "both the current and potential wastewater needs for the Triune area." Emphasis added. In other words, the proposed new treatment facility and newly acquired drip fields are intended to serve customers in and around Triune, not customers located five miles to the west in the service territory of Tennessee Wastewater. Superior apparently intends to serve those customers by connecting them to Superior's nearby wastewater system that currently serves Ashby Communities.

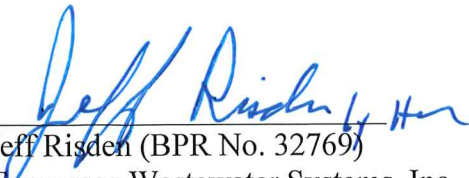
Superior claims that there are potential wastewater customers located in TWSI's service territory who cannot now obtain service from TWSI. Not one of those customers has requested service from TWSI. Until one does, TWSI has no reason to determine whether or not the utility can meet the reasonable needs of that customer (or developer) as described in T.C.A. 65-4-203 or whether to permit another, nearby utility, such as Superior, to provide the requested service. If TWSI can provide service under reasonable terms, it will do so. However, TWSI has on two prior occasions decided that it would be more practical for a customer located near Ashby Communities to receive wastewater service from Superior, not TWSI³. This process of handling requests for service on a case-by-case basis will continue regardless of what happens in the Chancery Court.

Conclusion


In sum, this case---now that it has been separated from Superior's application to serve the Triune area---is not about meeting a public need for service but wholly about Mr. Powell wanting to take over a large part of TWSI's service area because, he believes, TWSI no longer has a right-of-first refusal in areas where it does not have facilities. He is free to make that argument, but there is no reason to litigate this case until the parties and the Commission know the outcome of the Williamson County lawsuit. Therefore, TWSI asks that the Hearing Officer hold this proceeding in abeyance until the Chancellor has issued his decision as to whether TWSI may participate as a party in this case.

³ In Docket 19-00043 Superior (then known as King's Chapel) sought to expand its CCN to include the Hill and Roberts parcels which are adjacent to its treatment plant. TWSI intervened in the docket, but after discussion between the parties and TWSI coming to the conclusion that Superior was better suited to serve the parcels, TWSI withdrew its petition and ceded the parcels to Superior. Likewise, in Docket 20-00109 Superior sought to expand its CCN to include the Fox parcel. TWSI did not intervene in this docket but responded to staff data requests about its ability to serve the parcel. TWSI determined that Superior was better situated to serve the Fox parcel and notified Commission staff in the responses to the data request that it would cede the parcel.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

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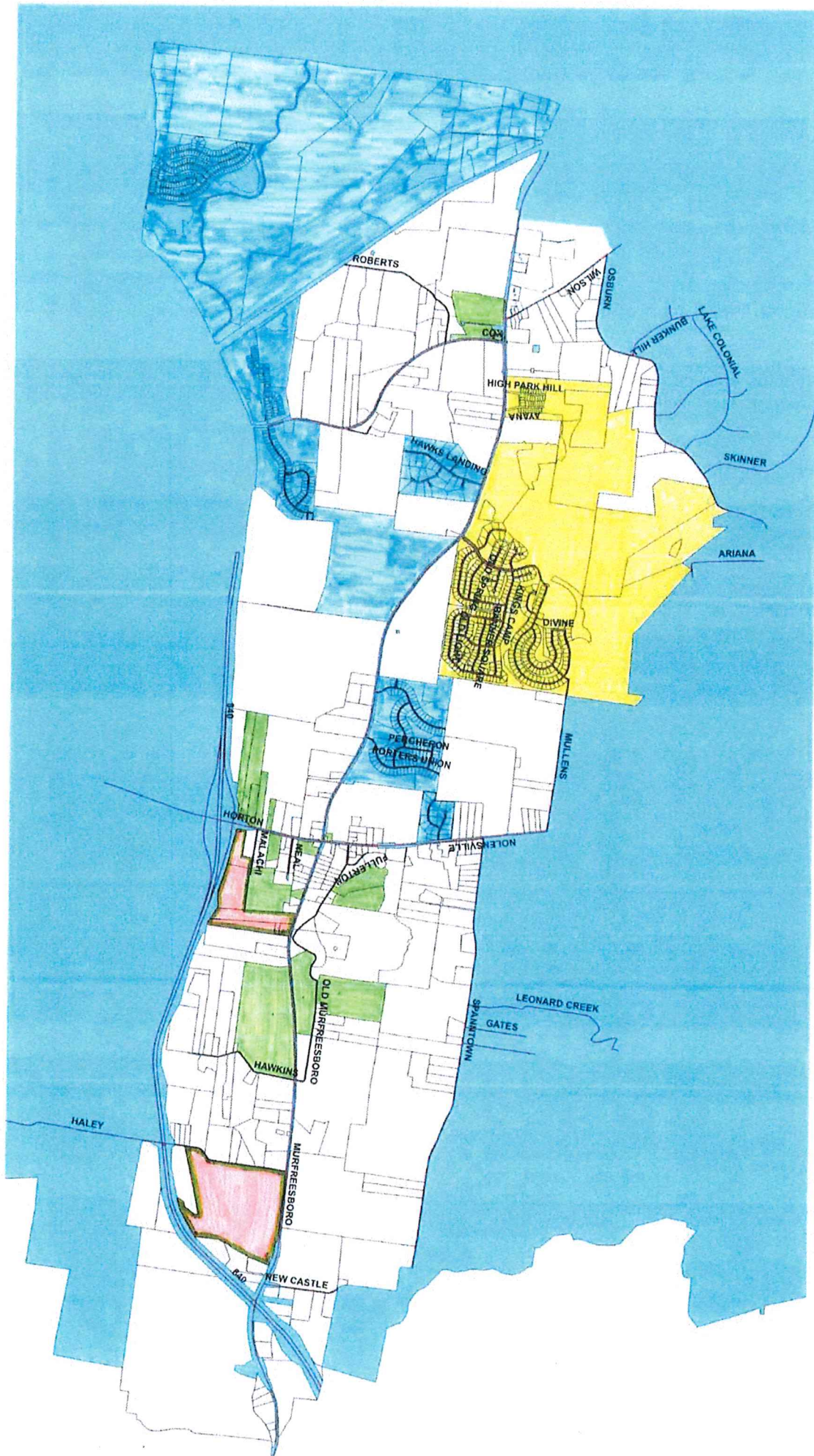
This the 1st day of December 2023.







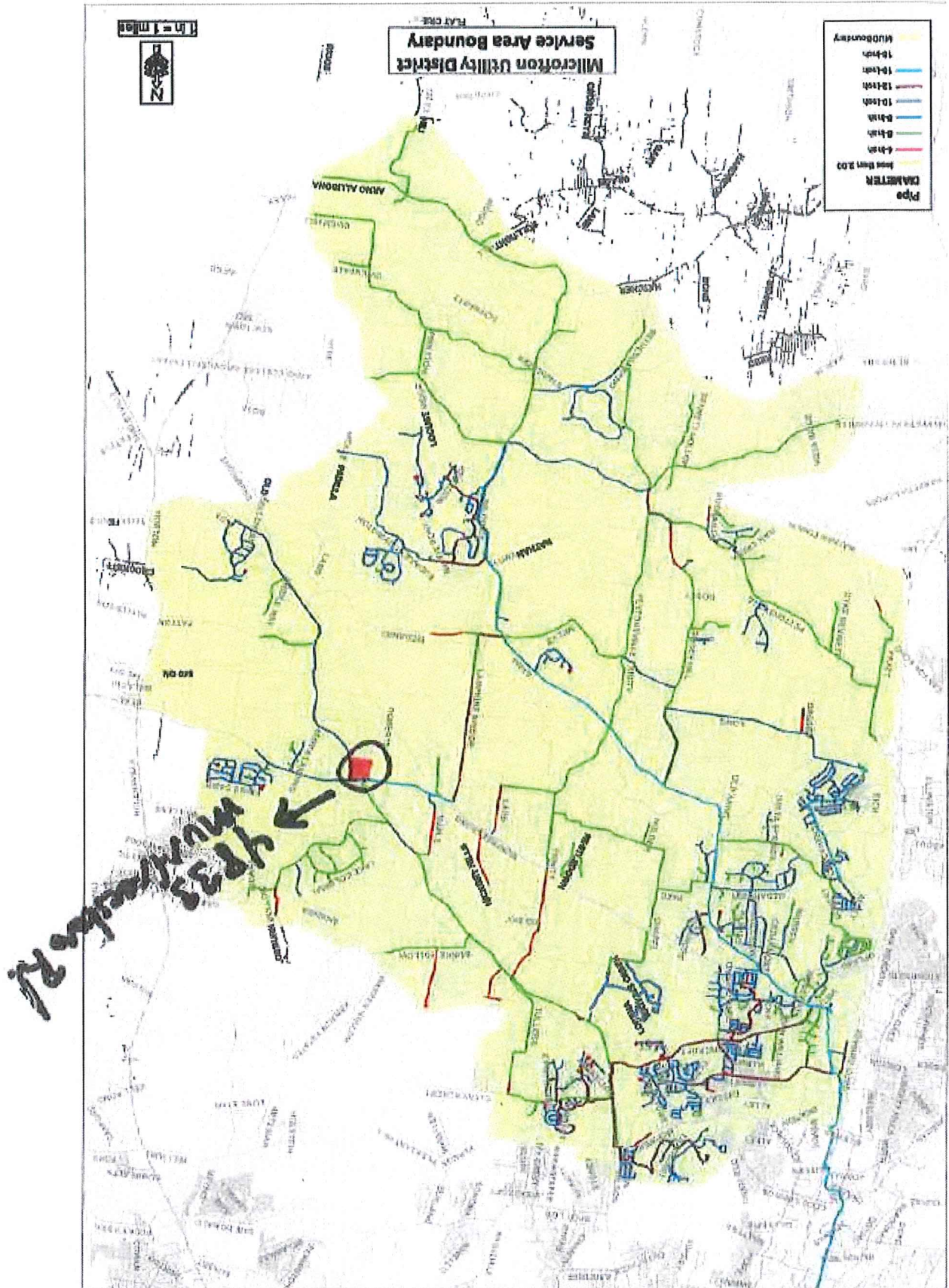
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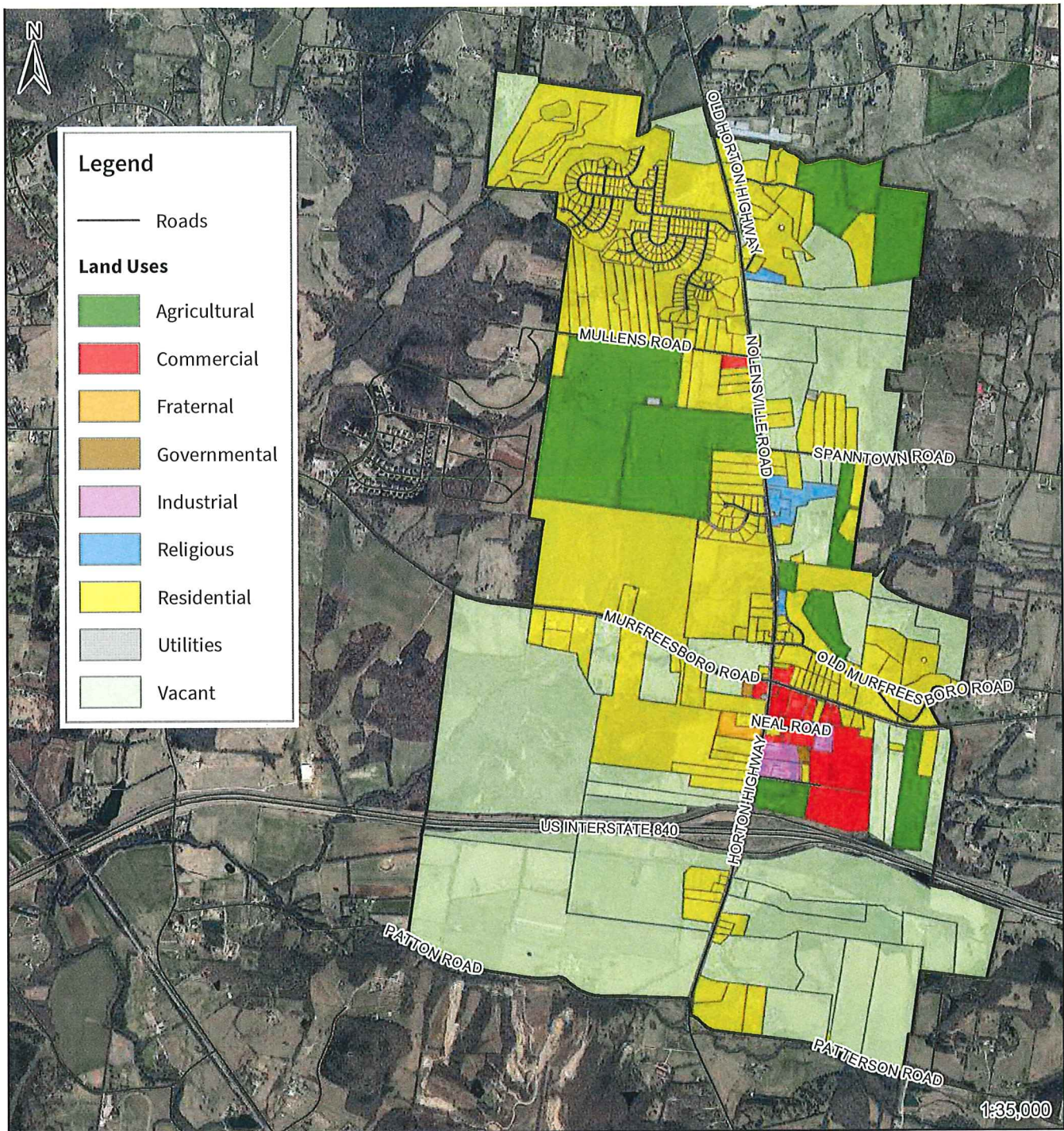
Counsel for Tennessee Wastewater Systems, Inc.

Attachment 1



-  Area we already serve
-  People who have requested sewer service
-  Area not planning to serve
-  Properties under contract for development and sewer plant and drip field site





Triune Special Area Plan
Existing Land Uses



DISCLAIMER: This map was created by the Williamson County Planning Department and was compiled from the most authentic information available. The County is not responsible for any errors or omissions herein.

Attachment 2

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE

**SUPERIOR WASTEWATER
SYSTEMS, LLC f/k/a KINGS CHAPEL
CAPACITY, LLC,**

Plaintiff,

v.

**TENNESSEE WASTEWATER
SYSTEMS, INC.,**

Defendant.

Case No. _____

COMPLAINT

Plaintiff Superior Wastewater Systems, LLC, formerly known as King's Chapel Capacity, LLC, ("Superior") states as follows for its complaint against Defendant Tennessee Wastewater Systems, Inc. ("TWSI"):

PARTIES, JURISDICTION & VENUE

1. Plaintiff Superior is a limited liability company organized and existing under the laws of the state of Tennessee, with its principal place of business in Tennessee.

2. Defendant TWSI is a corporation organized and existing under the laws of the state of Tennessee, with its principal place of business in Tennessee. TWSI may be served with process through its registered agent, Jeff Riden at 851 Aviation Parkway, Smyrna, Tennessee 37167.

3. This Court has jurisdiction over the subject matter of this action and the parties, and venue is properly laid in this Court because Superior's causes of action arise out of the breach of a settlement agreement negotiated and executed in Williamson County. In addition,

the contract at issue in this case contains a forum selection clause requiring all actions be brought in Williamson County Chancery Court.

FACTUAL BACKGROUND

4. Superior is a provider of wastewater utility services and is regulated by the Tennessee Public Utility Commission. Superior was formed in 2004, under the name of King's Chapel Capacity, LLC. In 2019, the company's name was formally changed to Superior Wastewater Systems, LLC.

5. TWSI is also a provider of wastewater utility services and is also regulated by the Tennessee Public Utility Commission.

6. A public utility must apply for and obtain a certificate of convenience and necessity ("CCN") before establishing service into a new municipality or territory. *See* Tenn. Code Ann. § 65-4-201. This dispute concerns TWSI's improper attempts to interfere with Superior's attempts to amend its CCN to include new service territories.

A. In 2005, Superior and TWSI Entered into a Settlement Agreement wherein TWSI agreed not to object to Superior's future attempts to expand its service territory.

7. On October 5, 2004, Superior submitted its application for a CCN to operate wastewater disposal systems in connection with 269 single family homes in Williamson County, Tennessee. *See* Petition of King's Chapel Capacity, LLC for a Certificate of Public Convenience and Necessity to Provide Wastewater Service, pending before the Tennessee Regulatory Authority (now known as the Tennessee Public Utility Commission), Nashville, Tennessee, Docket No. 04-00335.

8. TWSI objected to Superior's CCN application, claiming that TWSI already had a CCN to provide service to the same area.

9. Superior and TWSI litigated this dispute in a variety of matters pending before both Tennessee state courts and the Tennessee Regulatory Authority for several months.

10. On July 25, 2005, the parties entered into a highly negotiated settlement agreement ("Agreement") to resolve their disputes. A true and correct copy of the Agreement is attached hereto as **Exhibit A**.

11. Pursuant to the Agreement, TWSI agreed that it would withdraw its objection to Superior's CCN application.

12. But the Agreement did not stop at requiring withdrawal of objections to the then-pending CCN application. Instead, as most relevant to this case, TWSI *also* agreed that it would not submit any objections to or otherwise oppose any *future* amendments to Superior's CCN application. Specifically, the Agreement states:

Upon execution of this Settlement Agreement, TWS[I] shall . . . withdraw any objection or opposition to the CCN Application before the Tennessee Regulatory Authority filed by KCC for the establishment of the wastewater treatment facility in the area set forth in the Application, or as such application may be amended provided such amendment does involve a revision or change of the geographic area and number of customers to be served.

See Exhibit A at 3 (emphasis added).

13. This provision, which is central to this case, was thoroughly negotiated by the parties. As initially proposed by TWSI, this provision stated that TWSI would not object to an amendment so long as it "does not involve a revision or change of the geographic area and number of customers to be served."

14. This version of the provision was unacceptable to Superior, which insisted upon an Agreement that would preclude the possibility of similar disputes occurring in the future.

15. Accordingly, the word "not" was deleted from this provision, at which point Superior agreed to execute the Agreement.

16. In addition, the parties agreed to include provisions in the Agreement which preclude reliance upon parol and other extrinsic evidence regarding its terms, stating:

THIS SETTLEMENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT between the Parties with regard to the matters set forth herein. There are no other understandings or agreements, verbal or otherwise, in relation thereto between the Parties except as herein expressly set forth.

Id. at 5 (emphasis in original).

17. The terms of the Agreement also made it abundantly clear that the parties had closely negotiated its terms, precluding any argument of mistake:

IN ENTERING INTO THIS SETTLEMENT AGREEMENT, each of the Parties represents to the others that they have read completely all terms hereof and that such terms are fully understood and voluntarily accepted. Each of the Parties further acknowledges and represents that they have been adequately represented by counsel of their own choosing or that they have had the opportunity to obtain such counsel in connection with the negotiation and execution of this Settlement Agreement.

Id. (emphasis in original)

18. Both parties were, in fact, represented by counsel when negotiating, finalizing, reviewing, and executing the Agreement.

19. On January 3, 2006, after TWSI withdrew its objection to the CCN pursuant to the Agreement, the Tennessee Regulatory Authority granted Superior's petition to provide wastewater services to the Ashby Communities in Williamson County, Tennessee, thereby allowing Superior to provide services within a portion of TWSI's claimed service area.

B. TWSI Breaches the Settlement Agreement by Objecting to Superior's Petition to Amend its CCN.

20. On July 6, 2023, Superior filed a motion to amend its CCN application by expanding Superior's existing service territory to include an additional 355 parcels in proximity to the Triune area in Williamson County. *See* Petition of Superior Wastewater Systems, LLC to

Amend Existing Service Territory in Williamson County, pending before the Tennessee Public Utility Commission, Nashville, Tennessee, Docket No. 23-00051.

21. On August 23, 2023, TWSI filed a Petition to Intervene, claiming that several of the parcels Superior requested to be included in the amended CCN fall within TWSI's certificated service territory—exactly the same objection it raised nearly twenty years earlier.

22. On October 6, 2023, Superior sent a letter to TWSI informing it that its intervention was a breach of the Agreement and requesting that TWSI immediately withdraw its Intervening Petition.

23. TWSI refuses to withdraw its Intervening Petition, and instead, attempts to rely on parol and extrinsic evidence to modify the clear and unambiguous terms of the Agreement.

24. TWSI's intervention and objection is a clear breach of the terms of the Agreement. Superior has petitioned to amend its CCN in a manner that changes both the geographic area and the number of customers served. Under the Agreement, TWSI expressly agreed that it would not file any objection or opposition to such an amendment of Superior's CCN application.

C. TWSI's Obligation To Reimburse Superior For Its Costs and Expenses Incurred From TWSI's Breach of the Agreement

25. The Agreement permits Superior to recover "all costs and expenses incident" to implementing the provisions and/or objective of the Agreement, including attorneys' fees, against TWSI. *Id.* at 5.

26. Superior has incurred substantial costs and expenses based on TWSI's breach of the Agreement, including but not limited to, responding to TWSI's Motion to Intervene, preparing for and attending the hearing on the Motion to Intervene, attempting to informally

resolve TWSI's breach, and filing the instant action to enforce the Agreement. These costs will continue to accrue as Superior is forced to litigate this issue.

COUNT I – BREACH OF CONTRACT

27. The foregoing allegations are incorporated by reference.

28. The Agreement is a valid and enforceable contract between the parties.

29. Superior fully discharged its obligations under the Agreement.

30. As described above, TWSI has materially breached the Agreement.

31. Superior has been damaged in an amount to be proven at trial, including its reasonable attorneys' fees and costs, as a direct and proximate result of Defendants' breaches of the Agreement and any delays to the award of an amended CCN and subsequent lost revenue caused by TWSI's objection.

32. Because monetary damages will not make Superior whole for TWSI's breach of the Agreement, Superior requests it be awarded a judgment for specific performance requiring TWSI to withdraw its Intervening Petition in Docket No. 23-00051 of the Tennessee Public Utility Commission, Nashville, Tennessee, and award Superior all additional special, incidental, and consequential damages resulting from the breach, including its reasonable attorneys' fees.

COUNT II – DECLARATORY JUDGMENT

33. The foregoing allegations are incorporated herein by reference.

34. Superior is a "person" as defined in Tenn. Code Ann. § 29-14-101, whose rights, status, and/or other legal relations are affected by the Agreement.

35. An actual controversy exists as to Superior and TWSI's respective rights and obligations under the Agreement.

36. A declaration by the Court would terminate the controversy between Superior and TWSI.

37. Pursuant to Tenn. Code Ann. § 29-14-103, Superior seeks a declaration that: (1) TWSI has breached the Agreement by filing its Motion to Intervene; (2) that TWSI must withdraw its Intervening Petition in Docket No. 23-00051 of the Tennessee Public Utility Commission, Nashville, Tennessee; and (3) that Superior is entitled to all additional special, incidental, and consequential damages resulting from the breach, including its reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Superior prays that the Court award it:

1. Judgment for specific performance as requested above;
2. Declaratory judgment as requested above;
3. An award of its reasonable attorneys' fees and costs incurred in this action;
4. An award of its reasonable attorneys' fees and costs incurred in having to respond to the Intervening Petition in Docket No. 23-00051 of the Tennessee Public Utility Commission, Nashville, Tennessee, to the fullest extent permitted by law and the Agreement; and
5. Any other relief, specific or general, to which the Court may find Superior entitled.

Respectfully submitted:

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Attorney for Plaintiff

EXHIBIT A

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

THIS SETTLEMENT AND MUTUAL RELEASE AGREEMENT ("Settlement Agreement") is entered into by and between J. POWELL DEVELOPMENT, LLC, (a non existent entity) JOHN POWELL, ELAINE POWELL, C. WRIGHT PINSON, ASHBY COMMUNITIES, LLC, HANG ROCK, LLC, ARRINGTON MEADOWS, LLC, and KINGS CHAPEL CAPACITY, LLC ("KCC"), on behalf of themselves, their agents, officers, employees and directors, hereinafter cumulatively referred to as Parties of the First Part and TENNESSEE WASTEWATER SYSTEMS, INC. f/k/a ON-SITE SYSTEMS, INC. ("TWS"), ON-SITE CAPACITY DEVELOPMENT COMPANY, PICKNEY BROTHERS, INC., ROBERT PICKNEY and CHARLES PICKNEY, on behalf of themselves, their agents, officers, employees and directors, hereinafter cumulatively referred to as Parties of the Second Part;

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged;

THE PARTIES INTEND BY THIS SETTLEMENT AGREEMENT TO COMPROMISE AND SETTLE ALL MATTERS that may exist between them including, without limitation, those pertaining to that certain civil litigation between them pending in Chancery Court in Williamson County, TN Case # 31074, subject to the provisions and conditions herein.

WHEREAS, the parties hereto desire to achieve the following objectives:

- I. The transfer of the State Operating Permit for Kings Chapel from TWS to KCC by the Tennessee Department of Environment and Conservation ("TDEC") if allowed by applicable TDEC rules or KCC securing a State Operating Permit if such transfer is not allowed.
- II. The granting of a Certificate of Need and Necessity ("CCN") by the Tennessee Regulatory Authority ("TRA") to KCC.
- III. Acceptance of the wastewater plant and final Plat Re-Approval by Williamson County for Kings Chapel Development.
- IV. The transfer and acknowledgement that the wastewater treatment plant is owned by Parties of the First Part permitting the Parties of the First Part to service and therefore sell all buildable lots in the subdivision known as Kings Chapel.
- V. Execution by the appropriate Party of the Second Part of the documentation necessary for the transfer of the State Operating Permit ("SOP") for Kings Chapel before TDEC (if such transfer is allowed by TDEC) and removal of the Objection to the CCN for KCC ("Intervention") must be completed upon the reasonable request of the Parties of the First Part at a time and in forms acceptable to Parties of the First Part.
- VI. Ownership by KCC of the Wastewater Treatment Plant and the unconditional licensure of to use any copyrighted or non-copyrighted materials related to the design of the Wastewater Treatment Plant at the site of the Kings Chapel Development.

REP CWP
[Signature]

VII. All other provisions and conditions of this Settlement Agreement relating to the Parties obligations herein, over which they have control, must be completed without delay, upon demand and the form reasonably requested by the respective party.

THE PARTIES AGREE, WITHOUT LIMITATION, TO THE FOLLOWING CONDITIONS:

1. The Parties of the Second Part agree Kings Chapel Capacity, LLC (hereinafter referred to as "KCC") is the owner of the wastewater plant subject to the litigation including, without limitation, drip fields, buildings, wastewater transmission lines, valves, hardware, including computer equipment, gauges and other installations in the building and outside the building (all the "Wastewater Treatment Plant"), identified in the above referenced litigation and located on or in Kings Chapel Development.

2. With regard to the condition of the Wastewater Treatment Plant, the Drip Field has been constructed and the Recirculating Sand Filter System has been constructed. Parties of the Second Part represent that the Drip Field and the Recirculating Sand Filtration portion of the Wastewater Treatment Plant has been properly constructed and installed pursuant to the SOP 03032 granted by the Tennessee Department of Environment and Conservation ("TDEC") to the best of the information and belief of the Parties of the Second Part. The effluent transmission line between the above referenced facilities has not been connected across the creek located between them. The building is complete with all hardware installed therein. The software for use in the computer system located therein has not been installed but will be installed within seven days of full execution of this Settlement Agreement. Williamson County requires the additional construction of a retention pond which has not yet been constructed.

No warranty with regards to the above referenced installations is given by Parties of the Second Part. The Parties of the First Part acknowledge that additional construction is necessary to complete the Wastewater Treatment Plant as set forth above. Additionally, installation of collection lines, septic tanks, pumps and other such items has not occurred within the subdivision. Parties of the Second Part are not responsible for any of the remaining construction or cost thereof. Parties of the Second Part acknowledge that no further monies are owed for the Wastewater Treatment Plant by Parties of the First Part. Parties of the Second Part will provide and assign to the Parties of the First Part any manufacturer's warranties on components to the extent they are in the possession of the Parties of the Second Part.

3. Parties of the Second part represent that the electronic boards, panels and software LCD equipment installed, or to be installed onsite for the purpose of monitoring the wastewater system, along with the telemetry required, is proprietary. However such representations are subject to proper evidence thereof. Parties of the Second Part hereby grant to KCC the license to the use of the electronic boards, panels and software and associated and appurtenant installations for use in the operation of the wastewater system that is proprietary and further agree KCC may secure monitoring services from any third party it desires to utilize. Such license shall be unconditional and at no cost to KCC, but is limited to the wastewater treatment site which is the subject of this Settlement Agreement.

[Handwritten initials]

4. There will be no refund of sums already paid to Parties of the Second Part and Parties of the First Part owe no further sums to Parties of the Second Part.
5. TWS will immediately execute a document, in a form and substance reasonably satisfactory to Parties of the First Part prior to submittal, upon full execution of this Settlement Agreement, transferring the State Operating Permit before TDEC in a form consistent with the requirements of TDEC, and the Parties of the Second Part will fully cooperate in this process, provided Parties of the Second Part will bear no unreasonable cost associated therewith.
6. Upon execution of this Settlement Agreement, TWS shall file a cancellation and/or transfer as appropriate, in a form and substance satisfactory to Parties of the First Part prior to submittal, of that portion of its certificated area which is described in the pending KCC petition for authority and shall withdraw any objection or opposition to the CCN Application before the Tennessee Regulatory Authority filed by KCC for the establishment of the wastewater treatment facility in the area set forth in the Application, or as such application may be amended provided such amendment does involve a revision or change of the geographic area and number of customers to be served.
7. It is understood by the parties hereto, that this Agreement is not conditioned upon the granting of a CCN for Kings Chapel Development in the name of KCC. It is specifically a condition of this Agreement that the Parties of the Second Part including without limitation, their representatives and attorneys will take no action to negatively influence, delay or prevent the granting of such CCN.
8. Parties of the Second Part will withdraw any objections and take no action to negatively influence, delay or prevent Party of the First Part from obtaining all approvals from any government and/or governmental agency including without limitation, Federal, State and County, necessary for Kings Chapel development to sell buildable lots and operate the wastewater plant.
9. All parties release all other parties from the various claims, causes of action, etc., except those necessary to enforce this Settlement Agreement and associated agreements.
10. Parties of the Second Part agree to execute any documents reasonably requested to facilitate the securing of the approvals, permits, licenses and certificates by Parties of the First Part as contemplated above in this Settlement Agreement, provided the execution of any such documents is at no unreasonable cost to Parties of the Second Part and creates no obligation to incur unreasonable cost or expense on the part of the Parties of the Second Part.

THE PARTIES FURTHER AGREE TO RELEASE EACH OTHER, SUBJECT TO THE PROVISIONS AND CONDITIONS HEREIN, on behalf of themselves, their employees, agents, officers and directors to release, cancel, forgive and forever discharge, one unto the other, their agents, members, partners, shareholders, owners, officers, employees and directors from all actions, claims, demands, damages, obligations, liabilities, controversies and executions, of any kind or nature whatsoever, whether known or unknown, whether suspected or not, which have arisen, or may have arisen, or shall arise by reason of the incidents described above pertaining to

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INITIALS ON BEHALF OF ALL PARTIES OF THE FIRST PART
INITIALS ON BEHALF OF ALL PARTIES OF THE SECOND PART

[Handwritten signatures and initials]

civil litigation between them pending in Chancery Court in Williamson County, TN Case # 31074 and each does specifically waive any claim or right to assert any cause of action or alleged cause of action or claim or demand which has, through oversight or error intentionally or unintentionally or through a mutual mistake, been omitted from this Release against the other.

THE PARTIES HERETO AGREE TO REFRAIN from making any disparaging statements to any party concerning the matters addressed in this Settlement Agreement or any negative statements concerning any other party to this Settlement Agreement with relation to the matters addressed herein, (excepting governmental agencies, counsels, tax advisors or other professionals retained by a party hereto).

ANY COMPLAINT OR PROCEEDING brought by a party hereto in any other forum shall be withdrawn by the party bringing such complaint or proceeding, if possible, subject to the faithful performance of the provisions herein by the parties hereto.

PARTIES OF THE SECOND PART agree to use their best efforts to accomplish the objectives and conditions of this Agreement to the benefit of the Parties of the First Part including, without limitation, the execution of any documents reasonably requested to facilitate the conditions and objectives of the is Settlement Agreement, provided the execution of any such documents is at no unreasonable cost to Parties of the Second Part and creates no obligation to incur unreasonable cost or expense on the part of the Parties of the Second Part.

THE PROVISIONS OF THIS AGREEMENT must be read as a whole, are not severable and/or separately enforceable by either party hereto. It is further understood and agreed that until a formal motion to dismiss the above referenced case, with prejudice, is duly executed, filed and accepted by the Court, no party hereto waives any rights under the aforementioned litigation and upon the failure of any condition or default herein may proceed with such litigation as if this Settlement Agreement did not exist.

The term "unreasonable expense" or "unreasonable cost" as contemplated herein is not meant to reflect the party incurring normal minimal expense of overhead such as local travel, food, normal overhead, copy or telephone expense, courier expense, etc. shall not be deemed to have incurred "unreasonable expense". Transfer fees, permits or such expenses charged by any governmental entity for transfer or to otherwise secure the objectives of this Settlement Agreement shall be borne by Parties of the First Part.

No admission or concession is made by either party regarding the legitimacy and/or existence of copyrighted material described herein and each party reserves all rights incident thereto.

ALL PARTIES HERETO FURTHER AGREE AND ACKNOWLEDGE that each accepts the considerations and conditions herein and, subject to the above described dismissal and conditions and will be accepted by both as a full, complete, final and binding compromise of all disputed issues only upon realization of the conditions and objectives cited herein. The receipt of considerations herein shall not be considered admissions by any of the Parties hereto of any liability or wrongdoing: that, in fact, such liability and/or wrongdoing are expressly denied by

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INITIALS ON BEHALF OF ALL PARTIES OF THE FIRST PART
INITIALS ON BEHALF OF ALL PARTIES OF THE SECOND PART

[Handwritten signatures]

each of the Parties hereto; and that no past or present wrongdoing on the part of any Party shall be implied by the giving of the considerations or the execution of this Agreement. All parties further agree that this Agreement rather reflects an effort to reconcile honest differences between all concerned.

THIS SETTLEMENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT between the Parties with regard to the matters set forth herein. There are no other understandings or agreements, verbal or otherwise, in relation thereto between the Parties except as herein expressly set forth.

IN ENTERING INTO THIS SETTLEMENT AGREEMENT, each of the Parties represents to the others that they have read completely all terms hereof and that such terms are fully understood and voluntarily accepted. Each of the Parties further acknowledges and represents that they have been adequately represented by counsel of their own choosing or that they have had the opportunity to obtain such counsel in connection with the negotiation and execution of this Settlement Agreement.

THE PARTIES agree to execute any documentation or perform any act that may be required and/or reasonably requested by the other party to implement the provisions and/or objectives of this Settlement Agreement.

If any party shall default in its obligations herein, the non-defaulting party may recover all costs and expenses incident thereto including, without limitation, reasonable attorney fees.

THE PARTIES FURTHER AGREE that, to the extent permitted by controlling law, the Chancery Court, Williamson County, Tennessee shall have exclusive jurisdiction to resolve any disputes or claims, which may arise under this Settlement Agreement. The Parties further agree that the substantive law of Tennessee shall be applied to and govern all such disputes and claims.

THE PARTIES BY THEIR SIGNATURES BELOW WARRANT that they have the authority to execute this Agreement on behalf of all parties represented above for the respective Parties of the First and Second Part and that a facsimile signature, whether or not followed by an original, shall be binding upon that party and deemed an original for all purposes.

This Settlement Agreement may be signed in counterpart all of which shall form a single agreement.

THE PARTIES AGREE that this Agreement shall not be binding or valid unless duly executed by all parties and further that the rights inuring to one or more of the Parties of the First Part are not name or entity specific but apply to all Parties of the First Part and/or assigns.

WHEREFORE THE PARTIES ENTER THEIR SIGNATURE AND SEAL on the date reflected by their signatures.

PARTIES OF THE FIRST PART

JOHN POWELL

John Powell (Seal)

ELAINE POWELL

Elaine Powell (Seal)

C. WRIGHT PINSON

C Wright Pinson (Seal)

ASHBY COMMUNITIES, LLC

J. C. Powell (Seal)

HANG ROCK, LLC

J. C. Powell (Seal)

ARRINGTON MEADOWS, LLC

Elaine Powell (Seal)

KINGS CHAPEL CAPACITY, LLC ("KCC")

J. C. Powell (Seal)

7-25-05
Date

7-25-05
Date

7-25-05
Date

7-25-05
Date

7-25-05
Date

7-25-05
Date

7-25-05
Date

JCP
EP

J. POWELL DEVELOPMENT, LLC

7-25-05
Date

(a non-existent entity therefore no signature) (Seal)

PARTIES OF THE SECOND PART

TENNESSEE WASTEWATER SYSTEMS, INC.

7-25-04
Date

[Signature] (Seal)

ON-SITE CAPACITY DEVELOPMENT COMPANY

7-25-05
Date

[Signature] (Seal)

PICKNEY BROTHERS, INC.

7-25-05
Date

[Signature] (Seal)

ROBERT PICKNEY

7-25-05
Date

[Signature] (Seal)

CHARLES PICKNEY

7-25-05
Date

[Signature] (Seal)

[Signature]
[Signature]