AGENDA

Utility Management Review Board

April 3, 2014
10:00 am
Room 31, Legislative Plaza
301 Sixth Avenue North
(6th Avenue between Charlotte Avenue and Union Street)
Nashville, Tennessee

Call to Order		
Approval of Minutes		December 5, 2013
Case:	Lone Oak Utility District	Sequatchie County
Complaint:	City of Elkton vs. South Giles Utility District Clarification of Board request	Giles County
Petition:	Belvidere Rural Utility District Request to change commissioner selection procedure	Franklin County
Investigative report:	Carderview Utility District	Johnson County
Water loss status:	Clearfork Utility District	Campbell/Claiborne Counties
Hearing:	Bent Creek Golf Village vs. Webb Creek Utility District	Sevier County
Miscellaneous:	Commissioner training approvals Complaint log Jurisdiction list Compliance reports Next UMRB regular meeting	
Open Discussion		

Visitors to the Legislative Plaza are required to pass through a metal detector and must present photo identification. Individuals with disabilities who wish to participate in this meeting or to review filings should contact the Office of State and Local Finance to discuss any auxiliary aids or services need to facilitate such participation. Such contact may be in person or by writing, telephone or other means, and should be made prior to the scheduled meeting date to allow time to provide such aid or service. Contact the Office of State and Local Finance (Ms. Joyce Welborn) for further information.

505 Deaderick Street, Suite 1500
James K. Polk State Office Building
Nashville, TN 37243-1402
Telephone (615) 401-7864
Fax (615) 741-6216
Joyce.Welborn@cot.tn.gov

MINUTES

of the

UTILITY MANAGEMENT REVIEW BOARD MEETING

December 5, 2013

10:00 am

The meeting of the Utility Management Review Board (UMRB) in Room 31 of the Legislative Plaza in Nashville, Tennessee, was opened by Chair Ann Butterworth.

Board members present and constituting a quorum:
Ann Butterworth, Chair, Comptroller Designee
Tom Moss, Vice-Chair, Department of Environment and Conservation (TDEC) Commissioner Designee
Troy Roach, New Market Utility District Manager
Donald Stafford, Eastside Utility District Manager
Pat Riley, Gibson County Utility District Manager
Rebecca Hunter, Hixson Utility District Commissioner
Jason West, Second South Cheatham Utility District Commissioner
Jim Hunter, West Wilson Utility District Commissioner

Members absent:
Loyal Featherstone, consumer interests

Staff present:
Joyce Welborn, Comptroller's Office
Greg Cothron, Comptroller's Office

Approval of Minutes

Ms. Butterworth called the meeting to order, declared a quorum and requested the members to introduce themselves, acknowledging the newest board member Mr. Jim Hunter. She then suggested rearranging the agenda to first take up the matters of those present at the meeting. Ms. Hunter moved approval of the minutes of August 1, 2013, meeting as distributed with two typographical changes ("Moos" to "Moss" and "64" to "641".) Mr. Stafford seconded the motion, which was unanimously approved.

Rate Review

Bent Creek Golf Village vs. Webb Creek Utility District

Counsel for both Bent Creek and Webb Creek were present. The parties had not been able to reach an agreement, so a hearing date was set for April 3, 2014. Any documentation required of the parties is to be submitted to Board staff by February 1, 2013. Board attorney, Ms. Rachel Newton, who was not able

to attend the meeting, will notify the parties upon her return to the office of any additional requirements. Mr. Stafford moved to approve these dates. Mr. Roach seconded the motion which carried unanimously.

Water loss case

Cherokee Hills Utility District

At the previous meeting, the Board voted to require the attendance of the Board of Commissioners at the December meeting. All three commissioners were present: John Broccoli, Dennis Ledford, and Jimmy Newton. Mr. L. J. Hoogendoorn, manager, and Lawrence Gale, accountant for the District, were also present. The commissioners stated that the Cherokee Hills system is a spring fed system and water is pumped to the top of the hill to a storage tank. Any water not used by customers will flow out of the tank and into the river. It is their position that there is no water loss. They believe installing individual meters in the system would not be cost effective. There is currently a meter at the spring but not at the overflow from the tank. Mr. Hoogendoorn stated that 30% to 40% of the water pumped from the spring goes to the river. Mr. Gale asked if the only compliance items that are needed by the District are the requirements set forth in GASB 63, submittal of the AWWA water loss worksheet and the Excel worksheet via CARS. Ms. Welborn confirmed the auditing requirements, but also explained the water loss reporting requirements established by the Board relative to the validity score and the non–revenue water as a percent of operating cost. Mr. Stafford moved that the District install scattered meters in the system (at least one within each of the six Bac-T sampling areas) and at the overflow to determine the amount of water being used within the system and that being released to the river. Additionally those meters, in conjunction with the one currently at the spring, will assist in determining water accountability. Those few meters will not account for all the loss, but "it is a start." Mr. Chris Leauber, the water loss consultant for the Board, explained that installing a few meters in the system would allow the District to better comply with the water loss reporting requirement. Mr. Moss seconded the motion which carried unanimously. Mr. Stafford requested a map of the District which Mr. Hoogendoorn provided to staff. Mr. Stafford also said that he has some scrap meters that he would donate to the District for the zone installation.

Complaint cases

City of Elkton vs. South Giles Utility District

At the previous meeting, each party had been instructed to file with staff proposed findings of fact and conclusions of law, with a copy to Board counsel. The submitted information was included in the Board's agenda packet. Mr. Moss stated that neither party had submitted information showing that the cost of service for fire hydrants was either just or unjust or reasonable or unreasonable and moved to require the District to complete a cost of service study. The entire study - including the supporting documentation and the final report – is to be submitted to Board staff no later than May 1, 2014. The

review of the information will be conducted at the June 5, 2014, Board meeting. Ms. Hunter seconded the motion which carried unanimously.

Kristin Pheiffer vs. South Giles Utility District

Ms. Kristin Pheiffer properly filed her complaint with the Board on September 12, 2013, regarding a $40 fee she was charged to replace the District's cut off valve at the water meter on her property. It was her understanding that the cut off valve on the meter was the responsibility of the District and the customer should not have to pay for such a repair or replacement. It was also her understanding that the policy of the District required a customer cut off valve on the line in order to prevent the customer from using the District's cut off on the meter. Ms. Pheiffer stated that she has multiple cut off valves on her line. She stated that the District agreed to waive the fee if she installed her own cut off valve within twelve inches of the meter as stated in the District's policy. Ms Cathy Dradt, manager of the District, stated that the District policy requires the customer to have a cut off valve. At the September 19, 2013, meeting of the District the policy was clarified to require the cut off valve to be within twelve inches of the meter. Mr. West moved that because the cut off valve had not broken related to abuse by the customer and the "twelve-inch" requirement had not been officially adopted by the District until after Ms. Pheiffer had filed the complaint, the District be required to waive the fee charged Ms. Pheiffer. Ms. Hunter seconded by the motion. Motion carried with Mr. Roach voting no.

Deborah Goddard vs. West Knox Utility District

Ms. Goddard filed a timely appeal of the decision of West Knox Utility District's denial of her request to install a sewer tap to her property at 9922 Chesney Road by crossing Chesney Road to make the tap. Based on the District's written policy, "all service connections to the WKUD sewage system shall be made at suitable locations selected by WKUD." Mr. Drexel Heidel, manager of the District, stated that there were three options for a sewer connection to the Goddard residence. Ms. Goddard was requesting the one that was most expensive to the District but closer to the residence, therefore a lower cost to her in addition to not interfering with possible future agricultural use of the land. Mr. Moss moved to deny the complaint of Ms. Goddard stating that WKUD was adhering to its policy and proposing the most cost effective method for the District. Mr. Stafford seconded the motion, which carried unanimously.

Cases

Lone Oak Utility District

At the previous meeting, the Lone Oak Utility District commissioners had been required to attend this Board meeting. Staff received word that the commissioners were out of town on business and would not be attending. Information received by staff on December 4, 2013, stated that the District was actively working to resolve several issues in preparation of merging the system with the City of Dunlap. The District is working on changing the depreciation, determining the proper ownership of some of the assets, and reflecting the correct revenue. A new accountant has been hired. Mr. Stafford believes the District will get the merger resolved prior to the June meeting of the Board. However, he moved that

the District be sent a letter similar to the one previously sent to Cherokee Hills regarding the subpoena power of the Board. Any authority the chair needs to issue the subpoena is included in the motion. Mr. Moss seconded the motion, which carried unanimously.

Tansi Sewer Utility District

Ms. Welborn gave a brief history of the District and stated that it is currently involved with the bankruptcy of Tansi Waste Management Inc. (TWMI). The bankruptcy trustee has requested the sewer system be returned from the District to the TWMI in order to resolve the creditors of the system. Mr. Cothron has spoken with the Attorney General's office about the case. Based on the circumstances and the advice by the Attorney General's office, staff recommended that the Board take no action. The Board concurred.

Status reports

Clearfork Utility District

Mr. Moss moved that Clearfork be asked to clarify some of the responses presented on the initial checklist and explain why the validity score dropped. Ms. Hunter seconded the motion. The motion carried unanimously.

Roan Mountain Utility District

Mr. Roach moved that the Board accept the information submitted by the District and continue to monitor the system until compliance was achieved. Mr. Stafford seconded the motion, which carried unanimously.

Compliance reports

Arthur Shawanee, Cold Springs, Double Springs, Leoma, Quebeck-Walling, Siam, South Elizabethton and Bon de Croft Utility Districts have all submitted audits which reflect compliance for both financial and water loss issues.

Miscellaneous

State law requires that utility district **training approvals** be submitted to the Board. One approval has been filed with the Board.

A customer **complaint log**, a list of utility districts under the **jurisdiction** of the Board and a **water loss status** list had been included in the packet.

At 11:40 am Ms. Butterworth said all in favor of adjourning, say aye. Adjournment carried unanimously.

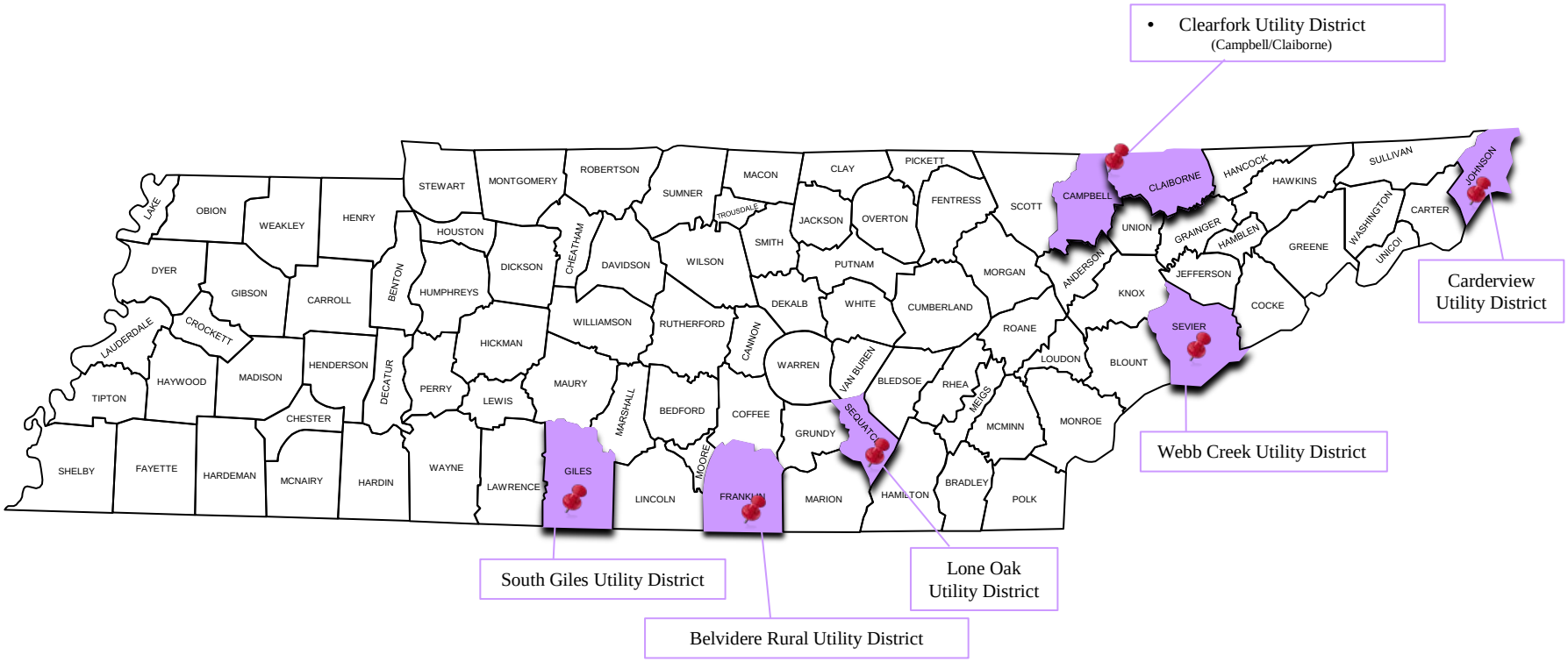
Respectfully submitted,

Ann Butterworth
Chair

Joyce Welborn
Board Coordinator

UMRB

APRIL 3, 2014



December 12, 2013 **RETURN RECEIPT REQUESTED**

Mr. John Lyman, President
Lone Oak Utility District
885 Grandview Road
Signal Mountain, TN 37377

Mr. Bernard Stewart
911 Horseshoe Rd
Signal Mountain, TN 37377

Mr. Carl Frazier
3010 Deerwood Ln
Signal Mountain, TN 37377

Dear Commissioners:

The Utility Management Review Board (UMRB) met on December 5, 2013, , in part, to discuss the condition of the Lone Oak Utility District. At that meeting, the Board voted once again to require the attendance of the commissioners at the April 3, 2014, meeting.

Although it is our sincere wish to avoid such measures, the Board does have the authority to issue subpoenas in order to compel attendance at the meeting. This authority is granted by T.C. A. § 7-82-702(12). Failure to appear could ultimately result in a finding of contempt against the party upon whom the subpoena is served. Again, we hope you will appear at the April 3, 2014, meeting of the Utility Management Review Board in response to this letter.

However, if the planned merger is completed and all paperwork submitted to staff of the Board by March 1, 2014, the requirement to attend the meeting is no longer valid.

If you have any questions, please feel free to contact me at (615) 401-7864 or Joyce.Welborn@cot.tn.gov .

Sincerely,

Joyce Welborn
Utilities Board Manager

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MR. Carl Frazier
3010 Deerwood Ln
Signal Mountain, TN
37377

COMPLETE THIS SECTION ON DELIVERY

A. Signature
x Janet Frazier ☐ Agent ☒ Addressee

B. Received by (Printed Name) | C. Date of Delivery
12-16-13 RB3

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7012 2210 0002 7408 3115

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MR. John Lyman, Pres.
Lone Oak Utility Dist.
885 Grandview Rd
Signal Mountain, TN
37377

COMPLETE THIS SECTION ON DELIVERY

A. Signature
x ☐ Agent ☐ Addressee

B. Received by (Printed Name) JOHN LYMAN | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

SIGNAL MOUNTAIN
DEC 17 2013
USPS 37377

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7009 1680 0001 5177 4994

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MR. Bernard Stewart
911 Horseshoe Rd.
Signal Mountain, TN
37377

COMPLETE THIS SECTION ON DELIVERY

A. Signature
x Virginia Stewart ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7009 0080 0000 1122 9953

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

UNITED STATES POSTAL SERVICE

CHATTANOOGA TN 37

16 DEC 2013 PM 1

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Comptroller of the Treasury
Division of Local Government Audit
Suite 1500, James K. Polk Bldg.
Nashville, TN 37243-1402

43+1402

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

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43+1402

Case Study

Case:	Lone Oak Utility District
Location:	Sequatchie County
Chairman:	Tommy Johnson
Customers:	101 water
Water Loss:	18%

The Lone Oak Utility District has been reported to the Board as having three consecutive years with a net operating loss as of December 31, 2006:

The rates in effect as shown in the December 31, 2006 audit were:

First 2,000 gallons	$31.39 minimum bill
Over 2,000 gallons	$ 5.25 per thousand gallons

The day of my visit, I was told that there were 111 customers. A creation petition was presented to the UMRB in December 1999. The entire system was built with EPA and CDBG funds. Except for a $17,763 bank loan from 2005, the District has no debt. The bank loan was not approved by the Division of Local Finance. Tennessee American also made a "like kind investment in the Company's system in the amount of $260,000."

The District has an Operations and Maintenance Agreement, signed in 2002, with Tennessee American Water Company. Tennessee American treats all the customers as their own and bills accordingly. Therefore, the information required to be on utility district bills by statute is not there. That information includes date, time and place of commissioners meetings. The phone number shown on the bill is that of Tennessee American. If someone wants service in the Lone Oak area, they must contact Tennessee American because there is no phone number for Lone Oak.

The O & M Agreement is for a period of forty years and gives Tennessee American the right to install lines and taps within the service area of the District and own those lines and taps. Although Lone Oak water is purchased from Walden's Ridge Utility District, the agreement provides that Tennessee American is the "exclusive provider for the total water requirements of the customers served" from the Lone Oak system. Walden's Ridge purchases 100% of their water from Tennessee American. If Tennessee American is required to install, relocate and/or replace capital items (unit of property), "in every such instance, the unit of property shall be and remain the property of" Tennessee American.

Walden's Ridge purchased some water lines from Lone Oak installed in an area adjacent to Walden's Ridge for $123,227. The note was for a lump sum of $33,227 and payments of $1,000 per month for ninety (90) consecutive months at zero percent interest. That loan was not approved by the Division of Local Finance.

The agreement allows Tennessee American to bill and collect on behalf of the District. The accountants of the District are to review – at least annually – the system of accounts maintained by Tennessee American and report the results to both parties. Tennessee American is to pay the District no more than $12,000 annually to pay

reasonable costs of: 1) Board of Director expenses, 2) Engineering, Legal and Accounting Expenses, 3) Liability Insurance and Bonds and 4) Miscellaneous Supplies and Expenses.

The District requested a postponement from the February 2008 meeting. Based on the December 31, 2006 audit, a revenue increase of approximately 500% would be needed to generate a positive change in net assets.

Enclosed in this packet is a copy of the available financial history for the District, a spreadsheet showing the projections thru 2010, and a copy of the 2007 budget (furnished by the District.)

Utility Management Review Board
Status Report

Case:	Lone Oak Utility District
Location:	Sequatchie County
Chairman:	John Lyman
Customers:	120 water
Water Loss:	18.5%

THIS IS THE STATUS REPORT THAT WAS PRESENTED TO THE UMRB IN APRIL 2010. SINCE NO AUDIT HAS BEEN SUBMITTED SINCE THE DECEMBER 2008 FISCAL YEAR END, NOTHING HAS CHANGED IN THE STATUS.

The Board voted at the April 2010 meeting to require the District to have discussions with Sequatchie County regarding a solution to the financially distressed condition of the District and to require the District to review the possibility of becoming something other than a utility district. A report was to be made to the Board in no longer than one year. At that meeting, the Board was told that the December 31, 2009 audit was received by the District the night before. That audit still has not been filed with the Division of Municipal Audit.

As of January 25, 2011, staff has heard nothing from the District.

Staff did receive a call from Tennessee American Water that the Sequatchie County Commission was not convinced that it would take over the District for fear that it would have to repay the State Tribal Assistance Grant that it received when the District was created. The takeover of Lone Oak by Walden's Ridge Utility District is not desirable to Sequatchie County officials.

The Lone Oak Utility District has been reported to the Board as having at least five consecutive years with a negative change in net assets as of December 31, 2008:

The rates in effect as shown in the December 31, 2008 audit were:

First 2,000 gallons	$31.39 minimum bill
Over 2,000 gallons	$ 5.25 per thousand gallons

A creation petition was presented to the UMRB in December 1999. The entire system was built with EPA and CDBG funds. Except for a small balance on a bank loan from 2005, the District has no debt. The bank loan was not approved by the Division of Local Finance. Tennessee American also made a "like kind investments in the Company's system in the amount of approximately $260,000."

The District has an Operations and Maintenance Agreement, signed in 2002, with Tennessee American Water Company. Tennessee American treats all the customers as their own and bills accordingly. Therefore, the information required to be on utility district bills by statute is not there. That information includes date, time and place of commissioners meetings. The phone number shown on the bill is that of Tennessee American. If someone wants service in the Lone Oak area, they must contact Tennessee American because there is no phone number for Lone Oak.

The O & M Agreement is for a period of forty years and gives Tennessee American the right to install lines and taps within the service area of the District and own those lines and taps. Although Lone Oak water is purchased from Walden's Ridge Utility District, the agreement provides that Tennessee American is the "exclusive provider for the total water requirements of the customers served" from the Lone Oak system. Walden's Ridge purchases 100% of their water from Tennessee American. If Tennessee American is required to install, relocate and/or replace capital items (unit of property), "in every such instance, the unit of property shall be and remain the property of" Tennessee American.

Walden's Ridge purchased some water lines from Lone Oak installed in an area adjacent to Walden's Ridge for $123,227. The note was for a lump sum of $33,227 and payments of $1,000 per month for ninety (90) consecutive months at zero percent interest. That loan was not approved by the Division of Local Finance.

The agreement allows Tennessee American to bill and collect on behalf of the District. The accountants of the District are to review – at least annually – the system of accounts maintained by Tennessee American and report the results to both parties. Tennessee American is to pay the District no more than $12,000 annually to pay reasonable costs of: 1) Board of Director expenses, 2) Engineering, Legal and Accounting Expenses, 3) Liability Insurance and Bonds and 4) Miscellaneous Supplies and Expenses.

District officials were notified by mail dated December 15, 2009, that they were scheduled to appear before the UMRB on April 1, 2010 with an update of the status of the District. Mr. Lyman was e-mailed on February 16, 2010 regarding the April 1 appearance with staff offering to meet with District officials to prepare for the meeting. Staff also spoke with Mr. Lyman on March 15, 2010. During that conversation, the relationship with Walden's Ridge was discussed and Mr. Lyman stated that he would get information to me. As of March 22, 2010, no information has been received.

Utility Management Review Board
Status Report

Case:	Lone Oak Utility District, Sequatchie County
Chairman:	John Lyman
Customers:	125 water
Water Loss:	16.38%

The Lone Oak Utility District has been reported to the Board as having a negative change in net assets since as of December 31, 2004. The financial and rate history is attached.

A creation petition was presented to the UMRB in December 1999. The entire system was built with EPA and CDBG funds. Tennessee American also made a "like kind investment in the Company's system in the amount of approximately $260,000."

The Operation and Management Agreement is for a period of forty years and gives Tennessee American the right to install lines and taps within the service area of the District and own those lines and taps. Although Lone Oak water is purchased from Walden's Ridge Utility District, the agreement provides that Tennessee American is the "exclusive provider for the total water requirements of the customers served" from the Lone Oak system. Walden's Ridge purchases 100% of their water from Tennessee American. If Tennessee American is required to install, relocate and/or replace capital items (unit of property), "in every such instance, the unit of property shall be and remain the property of" Tennessee American.

The agreement allows Tennessee American to bill and collect on behalf of the District. The accountants of the District are to review – at least annually – the system of accounts maintained by Tennessee American and report the results to both parties. Tennessee American is to pay the District no more than $12,000 annually to pay reasonable costs of: 1) Board of Director expenses, 2) Engineering, Legal and Accounting Expenses, 3) Liability Insurance and Bonds and 4) Miscellaneous Supplies and Expenses.

The Board voted at the April 2010 meeting to require the District to have discussions with Sequatchie County regarding a solution to the financially distressed condition of the District and to require the District to review the possibility of becoming something other than a utility district.

Staff has been told that nothing has changed in the status of the District. Officials have met with Sequatchie County and the City of Dunlap. It appears that the hindrance in any sort of takeover of the District is prevented by the fact that any assets that must be assumed have a high depreciation expense associated with them.

Staff has no further suggestions except the consolidation with Walden's Ridge Utility District. That consolidation has been deemed unacceptable by the Lone Oak commissioners and the Sequatchie County commissioners.

Lone Oak Utility District						
Projections						
			0%	*Growth rate*	*Growth rate*	*Growth rate*
	Audited	**Projected**		***Projection***	***Projection***	***Projection***
FYE 12/31	**2012**	**2013**		**2014**	**2015**	**2016**
Water revenues	$ 25,152	$ 25,152		$ 25,152	$ 25,152	$ 25,152
Other revenues	$ 650	$ 650		$ 650	$ 650	$ 650
			120%	$ 30,182	$ 30,182	$ 30,182
Total Oper Revenue	**$ 25,802**	**$ 25,802**		**$ 55,984**	**$ 55,984**	**$ 55,984**
Total Oper Expenses	**$ 51,971**	**$ 53,010**	**2%**	**$ 54,070**	**$ 55,152**	**$ 56,255**
Operating Income	$ (26,169)	$ (27,208)		$ 1,914	$ 833	$ (270)
Interest Expense						
Change in Net Position	**$ (26,169)**	**$ (27,208)**		**$ 1,914**	**$ 833**	**$ (270)**
Supplemental Information						
Principal payment				$ -	$ -	$ -
Depreciation	$ 35,204	$ 54,885		$ 54,885	$ 54,885	$ 54,885
Water Rates						
First 2,000 gallons	$ 31.39					
over 2,000 gallons	$ 5.25					
Customers	129					
Water Loss	**86/15.7%**					

LONE OAK UTILITY DISTRICT									
HISTORY FILE									
	Audited	**Audited**	**Audited**	**Audited**	**Audited**	**Audited**	**Audited**	**Audited**	**Audited**
FYE 12/31	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**
Water revenues	$ 16,556	$ 9,174	$ 9,790	$ 10,702	$ 11,588	$ 12,061	$ 11,242	$ 12,508	$ 25,152
Other revenues	$ -	$ -	$ 19,361	$ 11,217	$ 10,480	$ 10,325	$ 10,803	$ 11,167	$ 650
Total Oper Revenue	**$ 16,556**	**$ 9,174**	**$ 29,151**	**$ 21,919**	**$ 22,068**	**$ 22,386**	**$ 22,045**	**$ 23,675**	**$ 25,802**
Total Oper Expenses	**$ 66,902**	**$ 66,717**	**$ 70,307**	**$ 69,716**	**$ 72,309**	**$ 69,064**	**$ 70,594**	**$ 77,623**	**$ 51,971**
Operating Income	$ (50,346)	$ (57,543)	$ (41,156)	$ (47,797)	$ (50,241)	$ (46,678)	$ (48,549)	$ (53,948)	$ (26,169)
Interest Expense	$ 1,016	$ 2,980	$ 2,368	$ 1,708	$ 1,001	$ 248			
Change in Net Position	**$ (51,362)**	**$ (60,523)**	**$ (43,524)**	**$ (49,505)**	**$ (51,242)**	**$ (46,926)**	**$ (48,549)**	**$ (53,948)**	**$ (26,169)**
Supplemental Information									
Principal payment	$ 1,800	$ 7,884	$ 8,497	$ 9,156	$ 9,863	$ 7,900			
Depreciation	$ 54,005	$ 54,765	$ 54,765	$ 54,875	$ 54,885	$ 54,562	$ 54,383	$ 54,113	$ 35,204
Water Rates									
First 2,000 gallons	$ 31.39	$ 31.39	$ 31.39	$ 31.39	$ 31.39	$ 31.39	$ 31.39	$ 31.39	$ 31.39
over 2,000 gallons	$ 5.25	$ 5.25	$ 5.25	$ 5.25	$ 5.25	$ 5.25	$ 5.25	$ 5.25	$ 5.25
Customers	106	106	101	112	120	120	121	125	129
Water Loss					**18.50%**	**18.27%**	**18.58%**	**16.38%**	**86/15.7%**

HENRY, HENRY & UNDERWOOD, P.C.

JOSEPH W. HENRY, JR ■ ROBERT C. HENRY ■ TIMOTHY P. UNDERWOOD

January 22, 2014

JAN 27 2014

Joyce Welborn
State of Tennessee
Utility Management Review Board
James K. Polk Office Building
505 Deadrick Street, Suite 1500
Nashville, TN 37243-1402

RE: City of Elkton v. South Giles Utility District

Dear Ms. Welborn:

Please find enclosed herein a Motion to Clarify in reference to the above.

With best wishes,

Sincerely,

Joe W. Henry, Jr.

Joe W. Henry, Jr.

JWH:clw
Enclosure
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P.O. BOX 458 ■ 119 SOUTH FIRST STREET ■ PULASKI, TENNESSEE 38478 ■ TEL: 931.363.4571 ■ FAX:931.363.4592

EST. 1941

JOE W. HENRY (1916-1980)

UTILITY MANAGEMENT REVIEW BOARD

STATE OF TENNESSEE

In the matter of:	)	
	)	
CITY OF ELKTON, TENNESSEE,	)	
	)	
PETITIONERS	)	
	)	
V.	)	**NO. _____**
	)	
SOUTH GILES UTILITY DISTRICT,	)	
	)	
RESPONDENT	)	
	)	
_____	)	

MOTION TO CLARIFY

Comes now the South Giles Utility District and would move the Utility Management Review Board (UMRB) as follows:

A. Relief Sought:

1. For clarification of a directive from the UMRB relative to a cost study to be performed by the South Giles Utility District.

B. Grounds:

1. That both parties were directed by the UMRB to submit Findings of Fact and Conclusions of Law by a certain date and to reconvene for consideration of the issues raised on December 5, 2013.

2. That all parties were present at the meeting of the UMRB on December 15, 2013 and after certain statements were offered by the City of Elkton through its Mayor and the South Giles Utility District through its manager, the Board opined that the "cost of service" was not presented by either side and that it would be beneficial to the Board to have those numbers.

3. That the Motion to require a "Cost of Service" was carried unanimously and the District was given a directive to submit the results to Joyce Welborn on or before May 1, 2014.

4. That it is unclear what the "cost of service" is to entail, what specific numbers the Board is interested in covering and what specific services.

5. That the District wants to comply with the directive of the Board, however, does not want to incur unnecessary costs for the preparation of the numbers which might be in excess or different of what the Board actually wants nor does it want to leave out numbers or explanation of the numbers that the Board needs.

6. The District, therefore, asks the Board for clarification of what exactly is meant by the "cost of service" and an explanation of what services and what costs need to be prepared and presented by the District.

Respectfully Submitted,

HENRY, HENRY & UNDERWOOD, P.C.

By:_____

Joe W. Henry, Jr.
Attorney for Respondent
Reg #2613
P. O. Box 458
Pulaski, TN 38478

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served upon all parties of interest in this cause by delivering a true and exact copy of said pleading to said parties or to the offices of their counsel of records or by placing a true and exact copy of said pleading in the United States mail, first class, proper postage prepaid, addressed to said parties or their respective counsel at (his/her/their) respective addresses shown, to wit:

Mayor Carolyn S. Thompson
168 Main Street
P.O. Box 157
Elkton, TN 38455

Rachel Newton
Assistant General Counsel
State of Tennessee
Comptroller of Treasury
Office of General Counsel
James K. Polk State Office Building
505 Deadrick Street, Suite 1700
Nashville, TN 37243-1402

Cathy Dradt
South Giles Utility District
P.O. Box 262
Elkton, TN 38455

This the 22 day of January, 2014

Joe W. Henry, Jr.

Definitions
AWWA M1 Manual Principles of Water Rates, Fees, and Charges.

Cost of service –
The total annual operation and maintenance expense and capital-related costs incurred in meeting various aspects of providing water utility service.

Customer class cost-of-service study -
The process of determining the cost of providing water service to each of the defined customer classifications. This includes the functionalization and allocation of water system revenue requirements (the system cost of service) followed by the distribution of costs by customer classification based on the annual usage, peak demands, and customer-related costs for which each class of service is responsible.

BRANSTETTER, STRANCH & JENNINGS, PLLC
ATTORNEYS AT LAW
227 SECOND AVENUE NORTH
FOURTH FLOOR
NASHVILLE, TENNESSEE 37201-1631
TELEPHONE (615) 254-8801 ~ FACSIMILE (615) 250-3937

CECIL D. BRANSTETTER, SR.
C. DEWEY BRANSTETTER, JR.
R. JAN JENNINGS*
JOE P. LENISKI, JR.
DONALD L. SCHOLES
MIKE STEWART
JAMES G. STRANCH, III
J. GERARD STRANCH, IV
MICHAEL J. WALL

ASSOCIATES:
KARLA M. CAMPBELL
BEN GASTEL*
STACEY K. SKILLMAN **

OF COUNSEL:
ROBERT E. RICHARDSON, JR. ***

* ALSO ADMITTED IN GA
** ALSO ADMITTED IN KY
*** ONLY ADMITTED IN OH

MAR 12 2014

March 12, 2014

Utility Management Review Board
Comptroller of the Treasury
Office of State & Local Finance
Suite 1500, James K. Polk Bldg
505 Deaderick Street
Nashville TN 37243-1402
Attention: Joyce Welborn

Via Hand Delivery

Re: Petition of Belvidere Rural Utility District of Franklin County, Tennessee, for Approval of Resolution Pursuant to T.C.A. § 7-82-307(a)(7)

Dear Members of the Board:

Pursuant to T.C.A. § 7-82-307(a)(7), I am submitting to you a certified copy of the Resolution adopted by the Belvidere Rural Utility District Board of Commissioners on February 13, 2014, and an accompanying Petition requesting your approval of the Resolution. This Resolution was adopted by the District's Board to change the District's present method of filling vacancies on its Board of Commissioners from popular election to county mayor appointment upon the submission of three nominees in order of preference by the District's Board of Commissioners which is the uniform method for filling vacancies enacted by the General Assembly in the Utility District Commissioner Selection Reform Act of 2004.

I had emailed Joyce Welborn last Friday to advise her that the certified copy of the Resolution which is Exhibit 2 to the Petition had been mailed certified mail to me last Wednesday by the District. When I did not receive it by Friday, the District made an inquiry to the United States Postal Service (USPS) about the delivery. The USPS informed the District that the certified letter had been delivered to the State of Tennessee by mistake. As of yesterday the USPS had not yet retrieved the letter back from the State so it could deliver the certified letter to me. Rather than delay the filing of the Petition, I have attached an uncertified copy of the Resolution to the Petition which was faxed to me by the District. I have requested that the District complete another certification and to forward it to me in the event there is a long delay in the USPS getting the District's certified letter to me delivered. As soon as I have the new certification, I will forward it on to you.

Please place this matter upon the agenda of the next meeting of the Utility Management Review Board for its consideration. I have enclosed an extra copy of the Petition which I would appreciate your marking received and returning to me. If you need anything further from me to place this matter on the next meeting's agenda for consideration, please let me know.

Sincerely yours,

Donald L. Scholes

DONALD L. SCHOLES

Enclosures
c: James R. Reynolds, President of
the Board of Commissioners

BEFORE THE UTILITY MANAGEMENT REVIEW BOARD

In re:	)
	)
PETITION OF BELVIDERE UTILITY	)
DISTRICT OF FRANKLIN COUNTY,	)
TENNESSEE FOR APPROVAL OF	)
RESOLUTION PURSUANT TO	)
T.C.A. § 7-82-307(a)(7)	)

PETITION

Comes now the Petitioner, Belvidere Rural Utility District of Franklin County, Tennessee (the District), and files this Petition with the Utility Management Review Board (UMRB) pursuant to T.C.A. § 7-82-307(a)(7) to obtain approval of the Resolution adopted by the District's Board of Commissioners to change the District's present method of filling vacancies on the District's Board of Commissioners to the uniform method of county mayor appointment upon the submission of three nominees as set forth in T.C.A. § 7-82-307(a)(4). In support of this Petition, the Petitioner submits and states as follows:

1. Belvidere Rural Utility District of Franklin County, Tennessee is a utility district created pursuant to Title 7, Chapter 82 of the Tennessee Code Annotated, which provides water service within its boundaries in Franklin County, Tennessee. The District has approximately 570 customers.

2. The District currently fills vacancies on its Board of Commissioners pursuant Chapter 772 of the 1994 Tennessee Public Acts as amended by Chapter 588 of the 1998 Tennessee Public Acts. Copies of these two public chapters are attached to this Petition as

Exhibit 1. Under these two public chapters of local application, nominations to fill a vacancy on the board due to the expiration of a commissioner's term are made solely by the submission of a nominating petition signed by at least ten of the District's customers at a nomination meeting held before the District's annual meeting. At the annual meeting the District's customers elect a commissioner to fill the vacancy from the nominated candidates and any write-in candidates. Vacancies created by death, resignation, disability, ouster or forfeiture of office, are filled by the District's Board of Commissioners until the next annual meeting at which the customers elect a person to fill the vacancy.

3. In 2004 the Tennessee General Assembly enacted the Utility District Commissioner Selection Reform Act of 2004, Chapter 618 of the 2004 Tennessee Public Acts, (the Act) which provides that the uniform method for filling vacancies on utility district boards of commissioners is by county mayor appointment upon the submission of three nominees in order of preference by the utility district's board of commissioners.

4. A primary purpose of the Act was to "achieve greater uniformity in the methods for filling such vacancies [on utility district boards of commissioners] and to provide mechanisms for achieving even greater uniformity without enactment of more general bills of local application or private act." The Act states, "The passage of this act shall be evidence of the legislature's intent to create a uniform general law of statewide application for selecting utility district commissioners." T.C.A. § 7-82-307(a)(6).

5. To further this purpose the General Assembly included a provision in the Act, T.C.A. § 7-82-307(a)(7), which allows the board of commissioners of a utility district which fills vacancies by a method other than the uniform county mayor appointment selection method to adopt the uniform method. The uniform method may be adopted by the adoption of a resolution

"to change its present method of selection to appointment by a county mayor" under T.C.A. § 7-82-307(a)(4). Under T.C.A. § 7-82-307(a)(7), the utility district must file a certified copy of the resolution with the UMRB, and the UMRB is directed to enter an order approving or disapproving the resolution.

7. In 2012 and 2013 the General Assembly amended T.C.A. § 7-82-307 mandating that all utility districts fill vacancies by the uniform county mayor appointment method except for those utility districts which filled vacancies by customer election on the effective dates of these amendments.

6. I have attached as Exhibit 2 to this Petition a certified copy of the Resolution passed by the District's Board of Commissioners on February 13, 2014, pursuant to T.C.A. § 7-82-307(a)(7) to change the District's present method of filling vacancies on its Board of Commissioners from popular election to county mayor appointment upon the submission of three nominees in order of preference by the District's Board of Commissioners which is the uniform method for filling vacancies enacted by the General Assembly in the Act.

7. Historically, the District has rarely had a contested election. During the past five years only one person has submitted a nomination petition to run for each vacancy on the Board of Commissioners. For each election in which an incumbent Commissioner did not submit a nomination petition, the District had to actively recruit someone as a candidate and request that he or she submit a nomination petition to even have one candidate for the election.

8. The number of customers who attend the election meeting and vote is very poor. During the last four elections, the number of customers who voted in each election was as follows:

February 2013	10 customers (6 of the voters were either District Commissioners or the District's water plant operator)
February 2012	12 customers (3 of the voters were either District Commissioners or the District's water plant operator)
February 2011	7 customers (5 of the voters were either District Commissioners or the District's water plant operator)
February 2010	5 customers (the 5 voters were District Commissioners)

As a result the Commissioners have been selected by a very tiny minority of the District's customers.

9. The lack of customers willing to submit nomination petitions to run and the tiny number of eligible customers who actually vote in elections indicate that the election of this District's commissioners does not accomplish the intended purpose of the legislature in having the District's commissioners elected by its customers.

10. The filling of vacancies by county mayor appointment upon the submission of three nominees in order of preference by the District's Board of Commissioners strikes an appropriate balance by allowing the District's Board which is familiar with the duties and the operations of the District and the Franklin County Mayor who is elected by the customers of Franklin County to participate in the filling of vacancies on the District's Board.

11. The Franklin County Mayor, Richard Stewart, supports the change in the method of filling vacancies on the District's Board to the county mayor appointment method. I have attached as Exhibit 3 to the Petition a letter from Mayor Stewart to the UMRB in which he expresses his support for the approval of the District's Resolution.

12. The District requests that the UMRB enter an order approving the Resolution pursuant to T.C.A. § 7-82-307(a)(7).

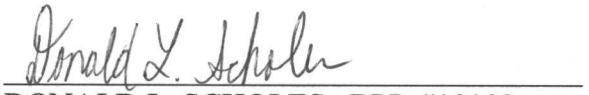
13. The Resolution changes the District's present method of filling vacancies to the uniform method adopted by the General Assembly for utility districts in Tennessee. Upon the approval of the Resolution, the District will begin using this method of filling vacancies on its Board of Commissioners which the majority of utility districts in Tennessee now use to fill vacancies on their boards of commissioners.

14. The Resolution is consistent with and accomplishes the General Assembly's purpose in passing the Act. The Resolution promotes greater uniformity in the methods for filling vacancies on utility district boards of commissioners in Tennessee and achieves such greater uniformity without the enactment of a general bill of local application or private act for the District to make this change.

WHEREFORE, PREMISES CONSIDERED, PETITIONER PRAYS that the Utility Management Review Board enter an Order approving the Resolution as requested in this Petition.

Dated this 12th day of March, 2014.

Respectfully submitted,



DONALD L. SCHOLES BPR #10102
Branstetter, Stranch & Jennings, PLLC
227 Second Avenue, Fourth Floor
Nashville, Tennessee 37201-1631
(615) 254-8801
dscholes@branstetterlaw.com

Attorney for the Petitioner, Belvidere Rural Utility District of Franklin County, Tennessee

EXHIBIT

tabbies

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TENNESSEE ADVANCE LEGISLATIVE SERVICE

1994 REGULAR SESSION

PUBLIC CHAPTER NO. 772

SENATE BILL NO. 1694, SUBSTITUTED FOR: HOUSE BILL NO. 1770

1994 Tenn. ALS 772; 1994 Tenn. Pub. Acts 772; 1994 Tenn. Pub. Ch. 772; 1993 Tenn. SB 1694

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT To amend Tennessee Code Annotated, Title 7, relative to certain utility districts in counties having a population of not less than thirty-four thousand five hundred (34,500) nor more than thirty-four thousand seven hundred thirty (34,730), according to the 1990 federal census of population, or any subsequent federal census.

To view the next section, type .np* and TRANSMIT.
To view a specific section, transmit p* and the section number. E.g. p*1

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

[*1] SECTION 1. Tennessee Code Annotated, Section 7-82-307, is amended by adding the following as a new, appropriately designated subsection:

(. . .)

(1) Notwithstanding the provisions of this section or any other law to the contrary, any utility district, which has a service area that lies primarily within a county having a population of not less than thirty-four thousand five hundred (34,500) nor more than thirty-four thousand seven hundred thirty (34,730), according to the 1990 federal census of population or any subsequent federal census, shall be governed by a five (5) member board of commissioners. Except as otherwise provided in this subsection, the members of such board shall be elected by the customers of the district at the annual meeting of the utility district. As used in this subsection, "customer" means any individual or entity who receives bills from the utility district, pays money for such services and resides or operates within the boundaries of the district. Each individual or entity shall be limited to one vote.

(2) The three (3) members serving on the board of commissioners on the effective date of this act shall continue to serve until the expiration of their terms or until a vacancy occurs. Their successors shall be elected for a four (4) year term. The two additional members elected pursuant to this subsection shall serve initially for three (3) and four (4) years. Thereafter their terms shall be for four (4) years. No member shall serve for more than two (2) consecutive terms.

(3) Within sixty (60) days of the effective date of this act, the existing board of commissioners shall call a special meeting for the purpose of filling the two (2) newly created positions on the board. The procedure for filling these positions shall be the same as for filling vacancies, as set forth in this subsection.

(4) If the district serves residents of more than one county, there shall be one commissioner elected from each county. The remaining commissioners shall be elected from the county in which the principal office is located.

(5) Vacancies on the board due to the expiration of a term, or due to an increase in the number of members on the board, shall be filled as follows:

For each vacancy, the incumbent commissioners shall select three (3) nominees, in accordance with any residential requirements that may apply to the office vacated, or to be vacated, and shall prepare a ballot for each vacancy. Other nominees may be placed on the ballot by submitting, twenty (20) days prior to the election, a nominating petition signed by not less than ten (10) customers who are residents of the county within which the vacancy occurs, Write-in votes for unlisted candidates will also be considered. Vacancies shall be filled by a plurality of the votes cast for each seat.

(6) At least forty (40) days prior to the election, the incumbent commissioners of the utility district shall mail written notice of such meeting and election to all customers and shall list any vacancies to be filled. In the event the commissioners fail to set the date for the meeting, or fail to mail notice of such meeting, or fail to hold such meeting, or fail to hold the election, the county executive shall cause such things to be done upon petition of any twenty (20) customers of the district.

(7) Vacancies occurring on the board of commissioners created by death, resignation, disability, ouster or forfeiture of office, shall be filled by the remaining commissioners, until the next annual meeting, at which time the vacancy shall be filled by the customers.

[*2] SECTION 2. This act shall take effect on becoming law, the public welfare requiring it.

HISTORY:
Approved by the Governor April 14, 1994

SPONSOR: SB 1694 By Cooper
HB 1770 By Rigsby

TENNESSEE ADVANCE LEGISLATIVE SERVICE
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TENNESSEE 100TH GENERAL ASSEMBLY

PUBLIC CHAPTER NO. 588

SENATE BILL NO. 2065

1998 Tenn. ALS 588; 1998 Tenn. Pub. Acts 588; 1998 Tenn. Pub. Ch. 588; 1997 Tenn. SB 2065

BILL TRACKING SUMMARY FOR THIS DOCUMENT

SYNOPSIS: AN ACT to amend Tennessee Code Annotated, Section 7-82-307(ff), relative to water utility districts.

To view the next section, type .np* TRANSMIT.
To view a specific section, transmit p* and the section number. e.g. p*1

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

[*1] SECTION 1. Tennessee Code Annotated, Section 7-82-307(ff)(1), is amended by deleting from the third sentence the words 'the boundaries' and by substituting instead the words 'the area served by'.

[*2] SECTION 2. Tennessee Code Annotated, Section 7-82-307(ff)(2), is amended by deleting the final sentence and by substituting instead the following:

No member shall serve for more than two (2) consecutive four-year terms beginning after June 13, 1994.

[*3] SECTION 3. Tennessee Code Annotated, Section 7-82-307(ff)(4), is amended by deleting from the first sentence the words 'each county' and by substituting instead the words 'each county having more than thirty (30) customers as herein defined'.

[*4] SECTION 4. Tennessee Code Annotated, Section 7-82-307(ff), is amended by deleting subdivisions (5) and (6) and by substituting instead the following:

(5) Vacancies on the board due to term expirations or to an increase in the number of members shall be filled as follows:

Candidates shall be nominated at a meeting scheduled by its board to occur before the annual meeting, (with the board to fix by its regulations the date of its annual meeting), and such reasonable notice of each such meeting as the board may require shall be published in a newspaper or newspapers of general circulation in the area served by the

district. Qualification to nominate and to vote shall be determined conclusively from the district's billing records to establish the entity or individual responsible (or residents jointly responsible), for paying the utility services at each site receiving such services. Nominations shall be solely by petition and each nominating petition, to be valid, must be signed by not less than ten (10) qualified customers receiving services in the county in which the vacancy exists, but all qualified customers shall be entitled to cast ballots on the actual voting regardless of the site of their receipt of services, and all voting shall be by written ballots with qualified customers entitled to make write-in selections in lieu of any of the nominated candidates for any vacancy.

(6) Each vacancy shall be filled by a plurality of the votes, with the incumbent commissioners who are not nominees to make the selection between tied candidates in the event of a tie. The hours for the conduct of each election shall be as previously determined by the individual water district's board of commissioners, and set out in the published notices of the election meeting. In the event the board of commissioners of any water utility districts subject to this subsection shall fail to establish the date of its annual meeting, the first meeting of the board of commissioners during the year shall by law be the date of the annual meeting, and in the event the commissioners shall fail to establish the date of a nominating meeting, the same shall be the next regular meeting conducted before the date of the election meeting.

[*5] SECTION 5. This Act shall take effect upon becoming a law, the public welfare requiring it.

HISTORY:
Approved by the Governor March 10, 1998.

SPONSOR: By Cooper Substituted for: House Bill No. 2071 By Fraley

EXHIBIT

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RESOLUTION

Whereas, the District fills vacancies on its Board of Commissioners by election by the District's customers in accordance with Chapter 772 of the 1994 Tennessee Public Acts and Chapter 588 of the 1998 Tennessee Public Acts;

Whereas, in 2004 the Tennessee General Assembly enacted the Utility District Commissioner Selection Reform Act of 2004 which provides that the uniform method for filling vacancies on utility district boards of commissioners is by county mayor appointment upon the submission of three nominees in order of preference by the utility district's board of commissioners;

Whereas, in 2012 the General Assembly enacted Chapter 538 of the 2012 Tennessee Public Acts which required that all utility districts which filled board vacancies by the vote of the remaining board members begin filling vacancies by the uniform county mayor appointment selection method;

Whereas, the Utility District Commissioner Selection Reform Act of 2004 (the Act) permits utility districts using a method of selection other than the uniform county mayor appointment selection method on the effective date of the Act to continue to use such other method;

Whereas, to encourage existing utility districts to adopt the uniform county mayor appointment selection method, the General Assembly included a provision in the Act which permits a utility district which uses a utility district commissioner selection method other than the uniform county mayor appointment selection method to adopt the uniform method by

adopting a resolution "to change its present method of selection to appointment by a county mayor" under T.C.A. § 7-82-307(a)(4);

Whereas, the filling of vacancies by election of the customers of a utility district is the least used method of filling vacancies on utility district boards in Tennessee with less than 10% of utility districts using an election to fill vacancies;

Whereas, in the past few years, a very small percentage of the District's existing customers cast votes in the popular election to fill vacancies on the District's Board of Commissioners; and

Whereas, the District's Board of Commissioners has determined that it is in the best interests of the District to adopt the uniform county mayor appointment selection method to fill all future vacancies on the District's Board of Commissioners as provided by T.C.A. § 7-82-307(a)(9).

NOW THEREFORE, BE IT HEREBY RESOLVED, BY THE BOARD OF COMMISSIONERS that the District hereby adopts this Resolution pursuant to T.C.A. § 7-82-307(a)(9) to change the District's present method of filling vacancies on its Board of Commissioners from election by the District's customers to county mayor appointment upon the submission of three nominees in order of preference by the utility district's board of commissioners pursuant to T.C.A. § 7-82-307(a)(4) which is the uniform method for filling vacancies enacted by the General Assembly.

BE IT FURTHER RESOLVED that this change in the method of selection to the uniform method of county mayor appointment upon the submission of three nominees in order of preference by the utility district's board of commissioners shall become effective upon the approval of this Resolution by the Utility Management Review Board.

BE IT FURTHER RESOLVED that the District's legal counsel shall file a certified copy of this Resolution with the Utility Management Review Board with a petition requesting that the Utility Management Review Board approve this Resolution as set forth in T.C.A. § 7-82-307(a)(9).

Adopted and approved this 13 day of February, 2014.

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Belvidere Rural Utility District
8768 David Crockett Parkway West
Belvidere, Tennessee 37306

CERTIFICATION

I, Ed Burns, do hereby certify that I am the duly qualified and acting Secretary of Belvidere Rural District of Franklin County, Tennessee and as such official I further certify that the foregoing is a true and correct copy of a Resolution adopted by the Board of Commissioners at a meeting, a quorum being present and acting throughout, held on February 13, 2014.

Ed Burns

Ed Burns, Secretary

EXHIBIT

3

FRANKLIN COUNTY, TENNESSEE

RICHARD STEWART, COUNTY MAYOR

855 DINAH SHORE BLVD., SUITE 3
WINCHESTER, TN 37398

OFFICE: (931) 967-2905
FAX: (931) 962-0194
richard.stewart@franklincotn.us

March 4, 2014

Utility Management Review Board
Comptroller of the Treasury
Office of State & Local Finance
Suite 1500, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243-1402

RE: Petition of Belvidere Rural Utility District of Franklin County, Tennessee

Dear Member of the Board,

I have been informed that the Board of Commissioners of the Belvidere Rural Utility District of Franklin County, Tennessee (the District) has adopted a resolution to change the method of filling vacancies on the Board from election by the customers to appointment by the county mayor. I am aware that the District has a difficult time finding candidates who are interested in becoming members of the Board when an election must be held to fill a vacancy. I am aware that historically a very small percentage of the District's customers actually vote in these elections.

I am writing you to express my full support for the District's desire to change the method for filling vacancies on the Board to county mayor appointment as permitted by Section 7-82-307(a)(7) of Tennessee Code Annotated. I am confident that this change will result in more qualified persons to fill vacancies on the District's Board and is in the best interest of the District's customers and the citizens of Franklin County.

I am thanking you in advance for your favorable action on the District's request for approval of its resolution to change the filling of vacancies to county mayor appointment.

Sincerely,

Richard Stewart
Franklin County Mayor

SPECIAL INVESTIGATION

CARDERVIEW UTILITY DISTRICT
JULY 1, 2012, THROUGH JUNE 30, 2013

State of Tennessee

Comptroller of the Treasury

STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
JAMES K. POLK STATE OFFICE BUILDING, SUITE 1600
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1402
PHONE (615) 401-7907
FAX (615) 532-4499

Justin P. Wilson
Comptroller of the Treasury

March 5, 2014

Members of the Board of Commissioners
Carderview Utility District
177 Rainbolt Street
Butler, TN 37640

Ladies and Gentlemen:

The Office of the Comptroller of the Treasury conducted a special investigation of selected records of the Carderview Utility District which focused on the period July 1, 2012, through June 30, 2013. When warranted, this scope was expanded.

Presented in this report are the findings resulting from this special investigation. Copies of this report are being forwarded to Governor Bill Haslam, the State Attorney General, the District Attorney General, certain state legislators, and various other interested parties. A copy is available for public inspection in our office and may be viewed at http://www.comptroller.tn.gov/ia/.

Sincerely,

L. Rene Brison

L. Rene Brison, CPA, CFE, Assistant Director
Office of the Comptroller of the Treasury

LRB/RAD

SPECIAL INVESTIGATION OF SELECTED RECORDS OF CARDERVIEW UTILITY DISTRICT FOR THE PERIOD JULY 1, 2012, THROUGH JUNE 30, 2013

SUMMARY

The Office of the Comptroller of the Treasury conducted a special investigation of selected records and operations of the Carderview Utility District. The investigation focused on the period July 1, 2012, through June 30, 2013. The special investigation revealed the following:

- District management failed to obtain required bids for some applicable purchases.
- The district manager improperly used grant funds received for emergency line extensions to partially fund the construction of the new district office building.
- District commissioners failed to provide adequate guidance for, or to ensure consistent enforcement of, the district's cutoff policy and assessment of dry tap fees.
- The district's truck was not marked or identified as a district vehicle. In addition, the district failed to properly report the value of the superintendent's personal use of this vehicle.

FINDINGS AND RECOMMENDATIONS

Presented below are the findings related to internal control and compliance deficiencies noted during the special investigation. Utility district officials have indicated they have corrected or intend to correct each of these deficiencies.

1. **FINDING: District officials failed to obtain required bids for some applicable purchases**

Carderview Utility District officials failed to obtain the required bids for some applicable purchases related to construction of the district's new office building. The district's purchasing policy requires competitive bidding for all purchases over $1,000. The special investigation revealed that management made multiple purchases exceeding $1,000 related to office building construction without obtaining competitive bids.

RECOMMENDATION:

To obtain the best possible price, comply with the district's purchasing policy, and avoid the appearance of impropriety, district officials should ensure that all expenditures exceeding the district's established bid limit are properly bid.

MANAGEMENT'S RESPONSE:

Members of the Board of Commissioners:

We concur. Carderview Utility has since changed its policy to obtain three bids on all purchases over the amount of $5,000.

2. **FINDING: Grant funds were improperly used to partially fund the construction of the district's office building**

The district manager used at least $6,463 in emergency line extension grant funds to pay invoices related to the construction of the district's office building. (Refer to Exhibit 1.) The grantor agency, USDA Rural Development, de-obligated the remaining unused emergency line extension grant funds but did not require the district to reimburse the improperly expended funds.

Exhibit 1

The Internal Control and Compliance Manual for Tennessee Utility Districts, page 65, requires district officials to:

> Assign an individual(s) who is familiar with legal, grant, contractual, debt, and other requirements and who is independent of the purchasing and record keeping responsibilities, to review the financial reports and expenses to ensure that they comply with those requirements.

RECOMMENDATION:

To avoid possible penalties, including ineligibility for consideration of future grant funds, members of the board of commissioners should assign a qualified person to review grant-related transactions in order to ensure grant funds are used only for the purposes for which they were obtained.

MANAGEMENT'S RESPONSE:

Members of the Board of Commissioners:

We concur. We will acquire the services of an independent, qualified individual to review and oversee all grant money to ensure compliance with all legal requirements.

3. **FINDING:** **Commissioners failed to consistently enforce the district's cutoff policy and assessment of the dry tap fee**

District commissioners failed to provide adequate guidance for, or ensure consistent enforcement of, the district's cutoff policy and assessment of dry tap fees. Although district commissioners adopted a policy setting forth the conditions resulting in discontinuance of service, the policy did not establish the cutoff date for delinquent accounts. Further, the commissioners failed to include the policy on customers' bills or on customers' applications for service. Neither the commissioners nor the manager could provide a specific intended cutoff date for delinquent accounts. As a result, delinquent customers were disconnected from district services at the discretion of the manager. The investigation revealed the manager ordered some customers with delinquent accounts to be disconnected while allowing the continuation of service for other such customers, including family members.

Comptroller investigators also discovered that district officials were not consistent in the application of the requirements related to the assessment of the dry tap fee. The district manager assessed and billed properties in subdivisions or developments the related monthly fee but did not assess or collect the dry tap fee on other properties, including property she owned. As a result, the district failed to collect approximately $1,600 per year from 13 dry taps not located in a subdivision or development.

The *Internal Control and Compliance Manual for Tennessee Utility Districts* requires district officials to comply with all policies and ensure the policies are consistently applied. Page 43, Section 9, requires district officials to ensure that

> if accounts remain unpaid on the district's cutoff date, service is discontinued in compliance with the district's written policy. (The cutoff policy should be adopted by the governing body, recorded in the minutes, and included in the district's policy manual.)

RECOMMENDATION:

To comply with state regulations, to make sure that all customers are treated fairly, and to avoid the appearance of impropriety and favoritism, members of the board of commissioners should ensure the approved cutoff policy includes a clear grace period, after which, service is consistently discontinued for all delinquent customers. Board members should also ensure that the manager assesses dry tap fees uniformly to all applicable customers.

MANAGEMENT'S RESPONSE:

Members of the Board of Commissioners:

We concur. Carderview has revamped its policy to ensure clear and concise deadlines and procedures on dry tap fees and cutoff policies. Board members will ensure proper enforcement of these policies.

4. **FINDING: District officials failed to identify a district truck as a district vehicle and failed to properly report personal use of that vehicle**

District officials did not mark or identify the district-owned truck as a district vehicle and failed to properly report the value of the superintendent's personal use of this vehicle. The district truck had no markings to identify it as a district vehicle. (Refer to Exhibit 2.) In fact, the manager purchased a commercial license plate for the vehicle at a significantly higher cost than a government license available for only $4. (Refer to Exhibit 3.) Comptroller investigators also discovered that although the former district superintendent[1] admitted he used the district's pickup truck for personal purposes, including hauling firewood and produce, he did not maintain mileage logs documenting the amount of personal use. The manager failed to properly report this fringe benefit on the superintendent's Form W-2.

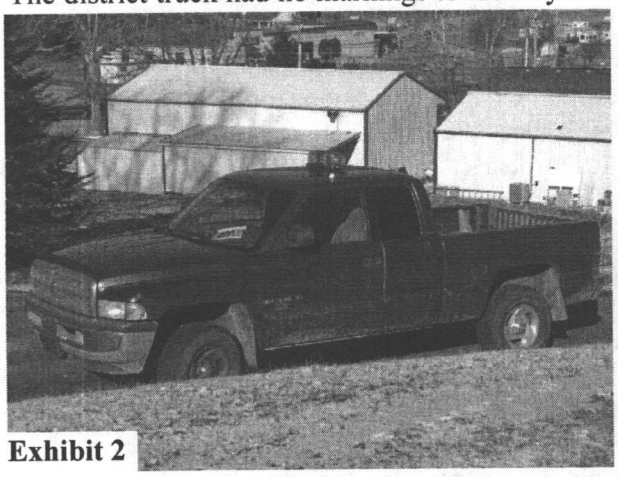

Exhibit 2

Exhibit 3

The district had no written personnel policy specifically prohibiting personal use of a district vehicle. The Internal Revenue Service (IRS) considers use of an employer-provided vehicle to be taxable as personal use of the vehicle unless personnel policies specifically prohibit such use. IRS Publication 15-B includes information for valuing the fringe benefit.

[1] The district superintendent resigned immediately before the start of this investigation. He is the husband of the former district manager, who resigned before the release of this report.

The *Internal Control and Compliance Manual for Tennessee Utility Districts*, Page 55, Section 1, states that district officials should

> require that all capital assets be identified (tagged or marked), and recorded immediately following the purchase of such items. Vehicles and equipment (backhoes, mowers, etc.) should have the district's name or seal clearly displayed.

Clearly marking vehicles as district property reduces the risk that district employees will use them for other than utility business.

It is the board of commissioners' responsibility to ensure that district employees use ratepayer funds prudently. Investigators could not determine a benefit to the district derived from an employee using a district vehicle for personal purposes.

RECOMMENDATION:

To discourage vehicle use that does not benefit the district, all district vehicles should be clearly and permanently marked to identify them as district property. In addition, a comprehensive vehicle use policy should be adopted to formalize the use of district vehicles. District commissioners should ensure that a mileage log for all vehicles is maintained and reviewed. Commissioners should also ensure that the manager accurately and properly reports all employees' compensation, including the calculated value of personal use of a district vehicle, on IRS Form W-2.

MANAGEMENT'S RESPONSE:

Members of the Board of Commissioners:

We concur. We have employed a new manager and operator who will be in charge of utility vehicles. He will be keeping a mileage log and understands that the vehicle is strictly for utility use. He is also acquiring the materials to properly mark the utility vehicle so as to further discourage improper use.

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O. E. SCHOW, IV
DARSI NEWMAN SIRKNEN
M. AARON SPENCER
ROBERT L. VANCE
LOUIS C. WOOLF (RETIRED)

October 15, 2013

Via E-Mail: joyce.welborn@cot.tn.gov
& U.S. Mail

Tennessee Utility Management Review Board
c/o Ms. Joyce Welborn
Office of the Comptroller of the Treasury
Division of Local Finance
505 Deaderick Street, Suite 1700
Nashville, Tennessee 37243-0274

Re: Webb Creek Utility District/ Bent Creek Golf Village Condominium Association, Inc.

Dear Ms. Welborn:

In accordance with the August 20, 2003, correspondence from the State of Tennessee Comptroller of the Treasury, Office of General Counsel, please find attached Bent Creek Golf Village Condominium Association, Inc.'s Complaint.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Robert L. Vance

RLV:dw
Attachment
040330.0002
cc: James Gass, Esq. (Via E-Mail: jgass@ogrlawfirm.com & U.S. Mail)
Joe Shirley, Esq. (Via E-Mail: joe.shirley@ag.tn.gov & U.S. Mail)
Rachel Newton, Esq. (Via E-Mail: Rachel.Newton@cot.tn.gov & U.S. Mail)
Gregory C. Logue, Esq. (Via E-Mail: glogue@wmbac.com)

806393.1

UTILITY MANAGEMENT REVIEW BOARD

BENT CREEK GOLF VILLAGE	)
CONDOMINIUM ASSOCIATION, INC.	)
	)
v.	)
	)
WEBB CREEK UTILITY DISTRICT	)

COMPLAINT

Bent Creek Golf Village Condominium Association, Inc. ("Bent Creek"), by and through counsel, respectfully submits this formal complaint regarding its rate protest pursuant to Tenn. Code Ann. § 7-82-402(a) and in accordance with the Scheduling Order set forth in correspondence dated August 20, 2013, from the State of Tennessee Comptroller of the Treasury, Office of General Counsel.

I. PARTIES

1. Bent Creek is a Tennessee corporation with its principal place of business located at 10600 West Charleston Boulevard, Las Vegas, Nevada 89135.

2. Webb Creek Utility District ("Webb Creek") is a utility district created pursuant to the Utility District Law of 1937, Tenn. Code Ann. §§ 7-82-101, *et seq*. Webb Creek provides water service to Bent Creek.

II. FACTS AND PROCEDURAL HISTORY

3. The water rates being charged by Webb Creek to Bent Creek are unjust and unreasonable because they do not accurately reflect the cost of providing water to Bent Creek in relation to other customers in the district, and thus force Bent Creek to pay a disproportionate share of Webb Creek's water revenue. Webb Creek is and has been charging Bent Creek more than twice what it cost to provide water to Bent Creek.

4. Webb Creek's cost of providing water to Bent Creek is between $1,602 to $2,352 per month. As of 2011, Webb Creek was charging Bent Creek an average of $4,770 per month for water, more than double what it cost Webb Creek to provide water to Bent Creek. Webb Creek is now charging Bent Creek even more per month.

5. In addition, under Webb Creek's current rate structure, Bent Creek is paying a disproportionate share of Webb Creek's water revenue compared to the amount of water it uses.

6. On average, Bent Creek uses approximately 10% of the water sold by Webb Creek per year, but under the current rate structure, pays on average of between 12 and 13% of Webb Creek's annual water revenue. This results in Bent Creek paying, on average, more than $10,000 per year in excess of its share of Webb Creek's water revenue.

7. As discussed in greater detail below, Webb Creek has unfairly, arbitrarily and illegally increased Bent Creek's water rates by almost doubling the number of monthly minimum bills Bent Creek is required to pay. Webb Creek has accomplished this increase by improperly reclassifying 37 of Bent Creek's two-bedroom units as separate units for the sole purpose of forcing Bent Creek to pay a monthly water bill based upon 37 additional minimum bills.

8. In order to support the new rate structure it had already adopted, Webb Creek retained a rate study consulting firm, Raftelis Financial Consultants, Inc. ("Raftelis"), to perform a rate study which was completed on July 16, 2009.

9. Raftelis did not consider Webb Creek's cost of providing water to Bent Creek when it performed the rate study, and the study does not reflect Webb Creek's cost of providing water to Bent Creek.

10. Nor did Raftelis consider the proportionality of customers' use of water versus the percentage of Webb Creek's water revenue they are required to pay under the current rate

structure despite the fact that Webb Creek stated this was the goal in adopting the new rate structure.

11. Notably, the Tennessee Court of Appeals has struck down the Raftelis study, but Webb Creek has not conducted a new study and has continued for over a year to charge Bent Creek unfair rates supported by the invalidated study.

12. Bent Creek, as it pertains to the present dispute, is a timeshare development. (*See* Master Deed attached hereto as **Exhibit A**).

13. Under the Tennessee Time-Share Act of 1981, "[e]ach time-share estate constitutes for purposes of title a separate estate or interest in property except for real property tax purposes." Tenn. Code Ann. § 66-32-103(b). Pursuant to the Time-Share Act, real property may be divided into intervals, and an individual purchasing an interval is the owner of the property for that period of time.

14. Bent Creek is a horizontal property regime formed pursuant to the Tennessee Horizontal Property Act, Tenn. Code Ann. §§ 66-27-101, *et seq*. The Horizontal Property Act requires that the master deed of property converted to horizontal property contained the "description and number of each apartment, expressing its area, location and any other data necessary for its identification . . . ." Tenn. Code Ann. § 66-27-107(b)(2). Pursuant to this statutory structure, the master deed must describe the units that are available for purchase and sale, and any attempt to define or describe the units in a manner which is not consistent with the Master Deed thus contradicts Tennessee law.

15. As set forth in the Master Deed, Bent Creek's units are classified as follows: one-bedroom golf villas (6); two-bedroom golf villas (9); two-bedroom cabins (4); and two-bedroom villas (28). (Master Deed, at Section 1.34). An individual may purchase, sell, or own only the

units that are described in the master deed. Once an individual purchases a unit, he or she is prohibited from splitting up a unit for resale.

16. Prior to Webb Creek's change in its rate structure, Bent Creek received a water bill for its time-share units based upon 47 minimum bills, which represents the number of time-share units present at Bent Creek's facility and set forth in the Master Deed.

17. Under Webb Creek's current rate structure, Bent Creek receives a bill based upon 84 minimum bills for its time-share units. As a basis for this change, Webb Creek reclassified each of Bent Creek's nine two-bedroom golf villas and 28 two-bedroom villas as two separate units instead of single units.

18. Pursuant to Bent Creek's Master Deed, Bent Creek's nine two-bedroom golf villas and 28 two-bedroom villas are specifically defined as single units. (*See* Master Deed, Section 1.34).

19. According to the Master Deed, these units cannot be purchased, sold, or owned as separate units. (*Id.*, Section 4.1).

20. Webb Creek's reclassification of these units directly contradicts the legal description of the units contained in the Master Deed.

21. In order to support its reclassification, Webb Creek adopted a definition of "Single Residential Unit" that specifically targets Bent Creek and, more particularly, its two-bedroom golf villas and two-bedroom villas.

22. Webb Creek's definition of a "Single Residential Unit" is "a single livable unit with proper sanitary facilities that may be separately occupied and closed off from any other unit, and that has a separate exterior entrance."

23. There is no basis for this definition other than to force Bent Creek to pay a monthly water bill based upon 84 minimum bills instead of 47. Webb Creek has unfairly treated Bent Creek differently from other customers in the district by adopting a definition as part of its rate structure that applies only to Bent Creek.

24. Moreover, Webb Creek's definition completely ignores Bent Creek's duly recorded Master Deed, which specifically provides that the two-bedroom golf villas and two-bedroom villas are single units that cannot be purchased, sold, or owned separately.

25. Bent Creek protested Webb Creek's new water rates to Webb Creek's Board of Commissioners and, following a hearing, the district denied relief on August 11, 2008.

26. On September 2, 2008, Bent Creek filed a Notice of Appeal to the UMRB.

27. The UMRB held hearings on February 5, 2009, August 6, 2009, and October 1, 2009, then a final hearing on February 3, 2011, during which Bent Creek and Webb Creek submitted evidence to the UMRB.

28. On March 2, 2011, the UMRB entered an Order denying Bent Creek's request for relief.

29. Bent Creek filed a Petition for Writ of Certiorari in the Chancery Court for Sevier County, Tennessee on May 2, 2011.

30. While this action was pending, the Chancery Court for Sevier County, Tennessee heard the case of Outdoor Resorts, another Webb Creek customer. In reviewing that case, the Tennessee Court of Appeals in *Outdoor Resorts at Gatlinburg, Inc. v. Utility Management Review Board*, 2012 WL 1267858 (Tenn. Ct. App. April 13, 2012), held that the Raftelis rate study did not constitute "substantial and material evidence" to support the UMRB's decision affirming Webb Creek's rate structure. *Id.* at *5 and *9.

31. The Court of Appeals also held that the UMRB has the authority to order utility districts to refund rates to customers. *Id.* at *5-6 and *9.

32. In light of the *Outdoor Resorts* ruling, the Attorney General and Webb Creek filed a joint motion in the Bent Creek Chancery Court case "for redetermination of Bent Creek's water rates consistent with the Court of Appeals' decision in *Outdoor Resorts*." (Respondents' Joint Motion for Remand in Chancery Court for Sevier County Tennessee Case No. 11-5-225, ¶ 11). (A true and correct copy of Respondents' Joint Motion for Remand is attached hereto as **Exhibit B**).

33. On December 7, 2012, the Chancery Court for Sevier County, Tennessee entered an Order for Remand and remanded the action "to the UMRB for further proceedings to establish the water rates for Petitioner Bent Creek Golf Village Condominium Association, Inc. ("Bent Creek") in conformity with the Court of Appeals' decision in the companion case of *Outdoor Resorts at Gatlinburg, Inc. v. Utility Management Review Board, et al.*, No. E2011-01449-COA-R3-CV, 2012 WL 1267858 (Tenn. Ct. App. April 13, 2012)." (A true and correct copy of the Order granting Respondents' Joint Motion for Remand in Chancery Court for Sevier County, Tennessee Case No. 11-5-225 is attached hereto as **Exhibit C**).

III. RELIEF REQUESTED BY BENT CREEK

34. Bent Creek incorporates by reference the averments contained in Paragraphs 1-33 above.

35. Bent Creek respectfully requests that the Board order that the water rates being charged by Webb Creek to Bent Creek are not just and reasonable, because they are more than double Webb Creek's cost of service of providing water to Bent Creek. The rate study relied upon by Webb Creek to justify a departure from the well-established cost of service method for

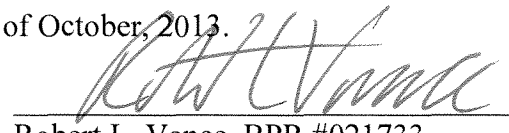
setting rates has been invalidated by the Tennessee Court of Appeals, and Webb Creek has provided no alternative evidence to support its rate structure.

36. Bent Creek respectfully requests that the Board order that the water rates being charged by Webb Creek to Bent Creek are unjust and unreasonable, because the rate structure forces Bent Creek to pay a disproportionate share of Webb Creek's water revenue compared to the amount of water it uses. Webb Creek's stated purpose for departing from a cost of service method was to allocate water rates based upon actual usage, but the rate structure does not accomplish this with respect to Bent Creek. Moreover, the rate study relied upon by Webb Creek to support this departure from standard practices has been invalidated.

37. Bent Creek respectfully requests that the Board order that Webb Creek improperly increased Bent Creek's number of minimum monthly bills by unfairly and unjustly reclassifying its two-bedroom units as separate units. In addition, Bent Creek respectfully requests that the Board order that Webb Creek did not have the legal authority to implement these arbitrary reclassifications in light of the provisions of the Tennessee Horizontal Property Act, Tenn. Code Ann. §§ 66-27-101, *et seq.*, the Tennessee Time-Share Act of 1981, Tenn. Code Ann. §§ 66-32-101, *et seq.* and Bent Creek's recorded Master Deed.

38. Finally, Bent Creek respectfully requests that the Board order Webb Creek to refund the excess water rates it has charged to Bent Creek in the amount of $150,000.

Respectfully submitted this 15th day of October, 2013.



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900 Riverview Tower
900 S. Gay Street
Knoxville, TN 37902-1810
(865) 215-1000

Attorneys for Bent Creek Golf Village Condominium Association, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Complaint has been served upon the following counsel for the parties in interest herein via e-mail and by delivering same to the offices of said counsel, or by mailing same to the offices of said counsel by United States Mail with sufficient postage thereon to carry the same to its destination.

James L. Gass, Esq.
Ogle, Gass & Richardson, P.C.
P. O. Box 5365
Sevierville, TN 37864-5365

Joe Shirley, Esq.
Rachel Newton, Esq.
Tennessee Attorney General
P. O. Box 20207
Nashville, TN 37202-0207

This the 15th day of October, 2013.

Attorney

FOURTH AMENDMENT TO MASTER DEED
FOR BENT CREEK GOLF VILLAGE HORIZONTAL PROPERTY REGIME

THIS FOURTH AMENDMENT TO MASTER DEED FOR BENT CREEK GOLF VILLAGE HORIZONTAL PROPERTY REGIME ("Fourth Amendment") is made as of the 13th **day of** May, 1999, **by SUNTERRA CORPORATION, a Maryland** corporation formerly known as Signature Resorts, Inc. ("Developer").

WITNESSETH:

WHEREAS, Developer executed and recorded that certain Master Deed for Bent Creek Golf Village Horizontal Property Regime which is recorded in Book D612, Page 1, official records of the Register of Deeds, Sevier County, Tennessee, as amended by that certain First Amendment to Master Deed for Bent Creek Golf Village Horizontal Property Regime which is recorded in Book D619, Page 762, said official records, that certain Second Amendment to Master Deed for Bent Creek Golf Village Horizontal Property Regime which is recorded in Book D622, Page 146, said official records, and that certain Third Amendment to Master Deed for Bent Creek Golf Village Horizontal Property Regime which is recorded in Book D649, Page 374, said official records (as amended, the "Master Deed");

WHEREAS, some Units (as such term in defined in the Master Deed) previously dedicated to the horizontal property regime have been destroyed by fire;

WHEREAS, the Developer wishes to create within the Master Deed a new Unit Type (as such term is defined in the Master Deed) to be defined herein as a 2 BR Golf Villa;

WHEREAS, the Developer wishes to amend the Master Deed for the purpose of converting eighteen (18) previously dedicated but unsold 1 BR Golf Villas to nine (9) 2 BR Golf Villas; and

WHEREAS, the Developer desires to amend the Master Deed for the purpose of submitting sixteen (16) additional Units to the horizontal property regime created by the Master Deed.

NOW, THEREFORE, Developer hereby declares as follows:

1. Section 1.39 of the Master Deed is hereby deleted in its entirety and the following is inserted in lieu thereof:

1.39 "Unit Type" shall mean one (1) of the four (4) following types of Units at the Project: 1 BR Golf Villa, 2 BR Golf Villa, 2 BR Cabin, or 2 BR Villa. The Units in Phases I and II are of the following Unit Types:

BK D660 PG 542

(a) "1 BR Golf Villa" shall mean a Unit containing 1 bedroom, 1 bath, a kitchen, living and dining area together with an undivided interest in the

EXHIBIT
tabbies
A
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Common Elements appurtenant to such Unit. The Phase I 1 BR Golf Villas will be located in one three-story building which the Developer will construct and are identified on Exhibit "G-2" to the Master Deed by the following numbers: 2101A, 2101B, 2102A, 2102B, 2103A and 2103B;

(b) "2 BR Golf Villa" shall mean a Unit containing 2 bedrooms, 2 bathrooms, 2 kitchens, 2 living and dining areas, as such Unit is described in the condominium plat recorded as an exhibit to the Master Deed, together with an undivided interest in the Common Elements appurtenant to such Unit. A 2 BR Golf Villa is comprised of an "A" portion containing one (1) bedroom, one (1) bathroom, a kitchen, a dining room, a living room and a washer/dryer closet and a "B" portion containing one (1) bedroom, one (1) bathroom, a kitchen, a living room, a dining room and a washer/dryer closet. The Phase II 2 BR Golf Villas shall be located in one three-story building identified on Exhibit "G-2" to the Master Deed by the following numbers: 2104AB, 2201AB, 2202AB, 2203AB, 2204AB, 2301AB, 2302AB, 2303AB and 2304AB;

(c) "2 BR Cabin" shall mean a Unit containing 2 bedrooms, 2 baths, a kitchen, living and dining area, as such Unit is described on Exhibit "G-4" to the Master Deed, together with an undivided interest in the Common Elements appurtenant to such Unit. The Phase I 2 BR Cabins shall be identified on the condominium plat by the following numbers: 13101, 13102, 13103, and 13104; and

(d) "2 BR Villa" shall mean a Unit containing 2 bedrooms, 2 bathrooms, 2 kitchens, 2 living and dining area, as such Unit is described in the condominium plat recorded as an exhibit to the Master Deed, together with an undivided interest in the Common Elements appurtenant to such Unit. A 2 BR Villa is comprised of an "A" portion containing one (1) bedroom, one (1) bathroom, a kitchen, a dining room, a living room and a washer/dryer closet and a "B" portion containing one (1) bedroom, one bathroom, a kitchenette, a living/dining area and a washer/dryer closet. The Phase I and II 2 BR Villas shall be identified on Exhibit "G-5" to the Master Deed by the following numbers: 11101AB, 11102AB, 11103AB, 11104AB, 11105AB, 11106AB, 11201AB, 11202AB, 11203AB, 11204AB, 11205AB, 11206AB, 11127AB, 11128AB, 11129AB, 11130AB, 11131AB, 11132AB, 11133AB, 11134AB, 11227AB, 11228AB, 11229AB, 11230AB, 11231AB, 11232AB, 11233AB and 11234AB.

2. Section 4.1 of the Master Deed is hereby deleted in its entirety, ~~and the~~ following is inserted in lieu thereof:

4.1 Timeshare Estates. **TIME-SHARE ESTATES, AS THAT TERM IS DEFINED BY SECTION 66-32-102, TENNESSEE CODE ANNOTATED, MAY BE CREATED WITH RESPECT TO SOME OR ALL OF THE UNITS IN THE PROJECT.** The total number of Units in Phases I and II of the Project is

forty-seven (47). The maximum number of Timeshare Interests to be conveyed in each Unit is one-hundred and four (104), assuming that all Timeshare Interests are Alternate Year Timeshare Interests; provided, however, this maximum number may increase in the event the Developer creates a new Use Period by an amendment to this Declaration, but under no circumstances may the creation of additional Timeshare Interests cause the Project to exceed a one-to-one purchaser to accommodation ratio.

3. The Building One Developer Unit and 1 BR Golf Villa Units 1201, 1202, 1203 and 1204 were destroyed by fire. Declarant, as the sole owner of such Units, hereby removes the Building One Developer Unit and 1 BR Golf Villa Units 1201, 1202, 1203 and 1204 from the Bent Creek Golf Village Horizontal Property Regime created by the Master Deed. All references included within the Master Deed to the Building One Developer Unit and 1 BR Golf Villa Units 1201, 1202, 1203 and 1204 are hereby deleted in their entirety.

4. The property described in Exhibit "A-4" attached hereto and by this reference made a part hereof is hereby added to Exhibit "A" of the Master Deed and included within the horizontal property regime. All references to Exhibit "A" shall hereafter include the property described in Exhibit "A-4" to this Fourth Amendment.

5. Exhibit "D" to the Master Deed is hereby deleted in its entirety, and Exhibit "D-4" attached to this Fourth Amendment is inserted in lieu thereof. All references to Exhibit "D" in the Declaration are hereby deleted and Exhibit "D-4" is inserted in lieu thereof.

6. Exhibit "F-1" to the Master Deed and all references thereto are hereby deleted in the entirety.

7. Exhibit "F-2" to the Master Deed is hereby deleted in its entirety, and Exhibit "G-2" to this Fourth Amendment is inserted in lieu thereof. All references within the Master Deed to Exhibit "F-2" are hereby deleted and replaced with references to Exhibit "G-2".

8. Exhibit "F-3" to the Master Deed and all references thereto are hereby deleted in the entirety.

9. Exhibit "F-4" to the Master Deed is hereby deleted in its entirety, and Exhibit "G-4" to this Fourth Amendment is inserted in lieu thereof. All references within the Master Deed to Exhibit "F-4" are hereby deleted and replaced with references to Exhibit "G-4".

10. Exhibit "F-5" to the Master Deed is hereby deleted in its entirety, and Exhibit "G-5" to this Fourth Amendment is inserted in lieu thereof. All references within the Master Deed to Exhibit "F-5" are hereby deleted and replaced with references to Exhibit "G-5".

11. Except as modified hereby, the Master Deed shall remain in full force and effect and is hereby ratified and confirmed.

IN WITNESS WHEREOF, Developer has executed this Fourth Amendment to Master Deed for Bent Creek Golf Village Horizontal Property Regime on the day and year first above written.

SUNTERRA CORPORATION, a Maryland corporation formerly known as Signature Resorts, Inc.

By: Thomas A. Bell

Printed name: Thomas A. Bell

Its: Secretary and General Counsel

STATE OF Georgia)
) SS.
COUNTY OF Fulton)

The foregoing instrument was acknowledged before me this 13th day of May, 1999, by Thomas A. Bell, the Secretary of Sunterra Corporation, a Maryland corporation on behalf of said corporation. He/She is personally known to me or has produced _____ as identification and did not take an oath.

Elizabeth Anne Holland

Notary Public, State of Georgia

Printed Name: Elizabeth Anne Holland

My Commission Expires:

ELIZABETH ANNE HOLLAND NOTARY PUBLIC DEKALB COUNTY GEORGIA EXPIRES JUNE 3, 2002

BK D660 PG 545

EXHIBIT "A-4"

LEGAL DESCRIPTION OF PHASE II

All that tract or parcel of land lying and being in the 17th District of Sevier County, Tennessee, and being more particularly described as follows:

To find the Point of Beginning, commence at an iron pin set at the common point of the northerly right of way of Tennessee Route No. 73/U.S. Highway 321 and the easterly boundary line of property conveyed by Jay S. Husky and Helen Husky to Signature Resorts, Inc. by General Warranty Deed dated September 3, 1997, and recorded in Book D606, Page 674, official records of the Register of Sevier County, Tennessee; thence running North 00 degrees 45 minutes 42 seconds East a distance of 617.10 feet to an iron pin; thence running North 72 degrees 38 minutes 45 seconds West a distance of 75.46 feet to a point; thence running South 59 degrees 31 minutes 29 seconds West a distance of 94.26 feet to a point on the northwest corner of Unit 11106AB in Villa Building A of Bent Creek Golf Village Horizontal Property Regime; thence running South 63 degrees 54 minutes 44 seconds West a distance of 353.96 feet to the Point of Beginning;

From said Point of Beginning, thence running South 60 degrees 22 minutes 52 seconds West a distance of 146.65 feet to a point; thence running North 29 degrees 37 minutes 12 seconds West a distance of 20.00 feet to a point; thence running South 62 degrees 14 minutes 41 seconds West a distance of 39.65 feet to a point; thence running South 49 degrees 35 minutes 57 seconds East a distance of 152.41 feet to a point; thence running along a curve to the left having a radius of 189.00 feet and an arc distance of 161.34 feet and being subtended by a chord bearing South 74 degrees 03 minutes 19 seconds East a chord distance of 156.49 feet to a point; thence running North 40 degrees 06 minutes 54 seconds East a distance of 103.01 feet to a point; thence running North 49 degrees 35 minutes 57 seconds West a distance of 210.68 feet to the Point of Beginning.

Said tract of land contains approximately 0.882 acres pursuant to a survey of Bent Creek Golf Village, Villas Buildings B and C prepared for Sunterra Corporation by Smoky Mountain Land Surveying Co., Inc., Howard T. Dawson, Tennessee Registered Land Surveyor No. 1301, Drawing No. 970756BC dated April 26, 1999, and last revised May 7, 1999.

EXHIBIT "D-4"

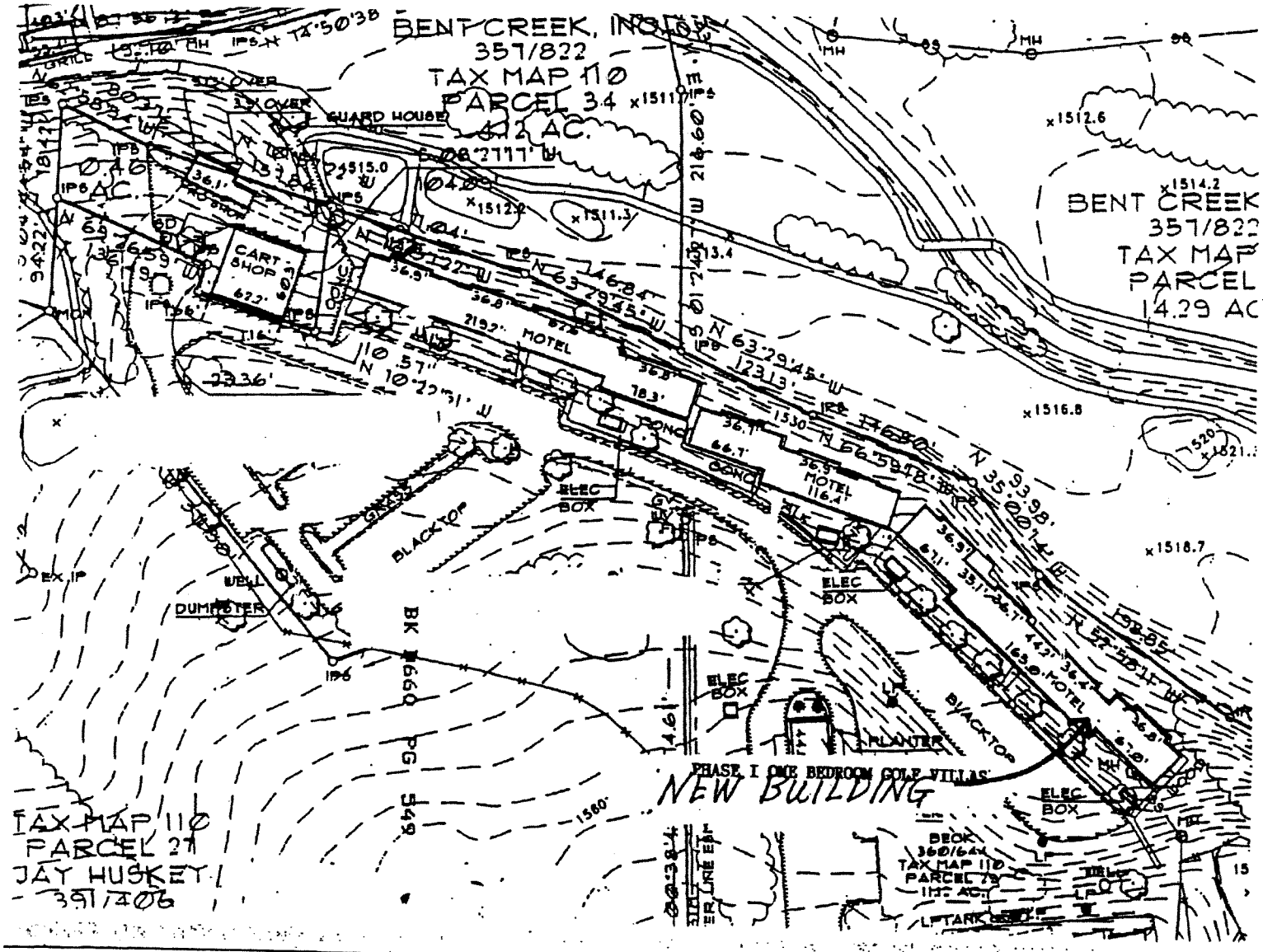
The following information applies to all Units currently within Bent Creek Golf Village Horizontal Property Regime:

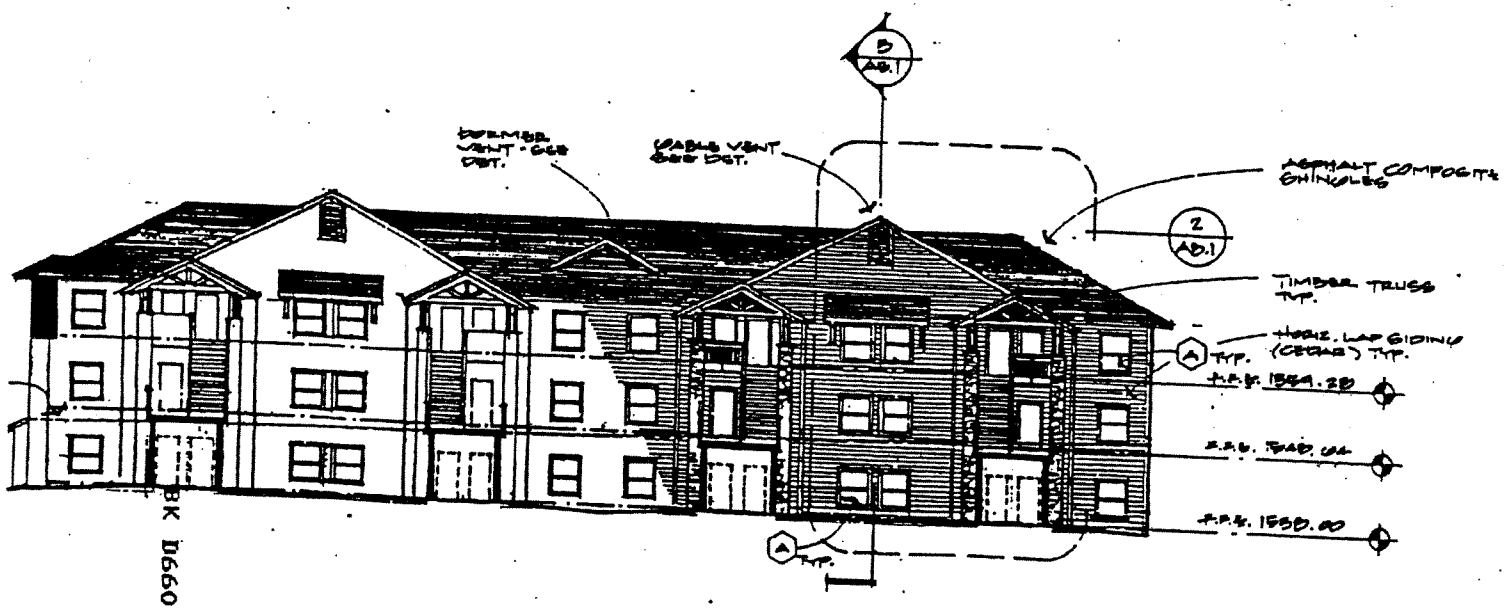
1.	Undivided Common Elements and Common Surplus Per Unit	
	(i) 2 BR Villas	2.22%
	(ii) 2 BR Cabins	2.00%
	(iii) 2 BR Golf Villas	2.22%
	(iv) 1 BR Golf Villas	1.61%
2.	Use Period Available	Entire Vacation Weeks
3.	Frequency of Use	Every Calendar Year or Alternate Calendar Years
4.	Undivided Interest in Common Elements and Common Surplus Per Timeshare Interest	
	(a) Every Calendar Year	
	(i) 2 BR Villa	.042%
	(ii) 2 BR Cabin	.038%
	(iii) 2 BR Golf Villa	.042%
	(iv) 1 BR Golf Villa	.030%
	(b) Alternate Calendar Years	
	(i) 2 BR Villa	.021%
	(ii) 2 BR Cabin	.019%
	(iii) 2 BR Golf Villa	.021%
	(iv) 1 BR Golf Villa	.015%
5.	Undivided Interest in Common Furnishings Within Unit	
	(a) Every Calendar Year	1/52
	(b) Alternate Calendar Years	1/104
6.	Floating or Fixed Units and Weeks	Floating
7.	Starting Day of Vacation Weeks	Saturday

EXHIBIT "G-2"

Phase I 1 BR Golf Villas and

Phase II 2 BR Golf Villas


BENT CREEK, INC.
357/822
TAX MAP 110
PARCEL 34
GUARD HOUSE
CART SHOP
MOTEL
BONC
ELEC BOX
BLACKTOP
DUMPSTER
WELL
BK 1660 PG 549
PHASE I ONE BEDROOM GOLF VILLAS
NEW BUILDING
PLANTER
TAX MAP 110
PARCEL 27
JAY HUSKEY
391/406
BENT CREEK
357/822
TAX MAP
PARCEL
14.29 AC



BK 1660 PG 550

FRONT ELEVATION

1/16" = 1'-0"

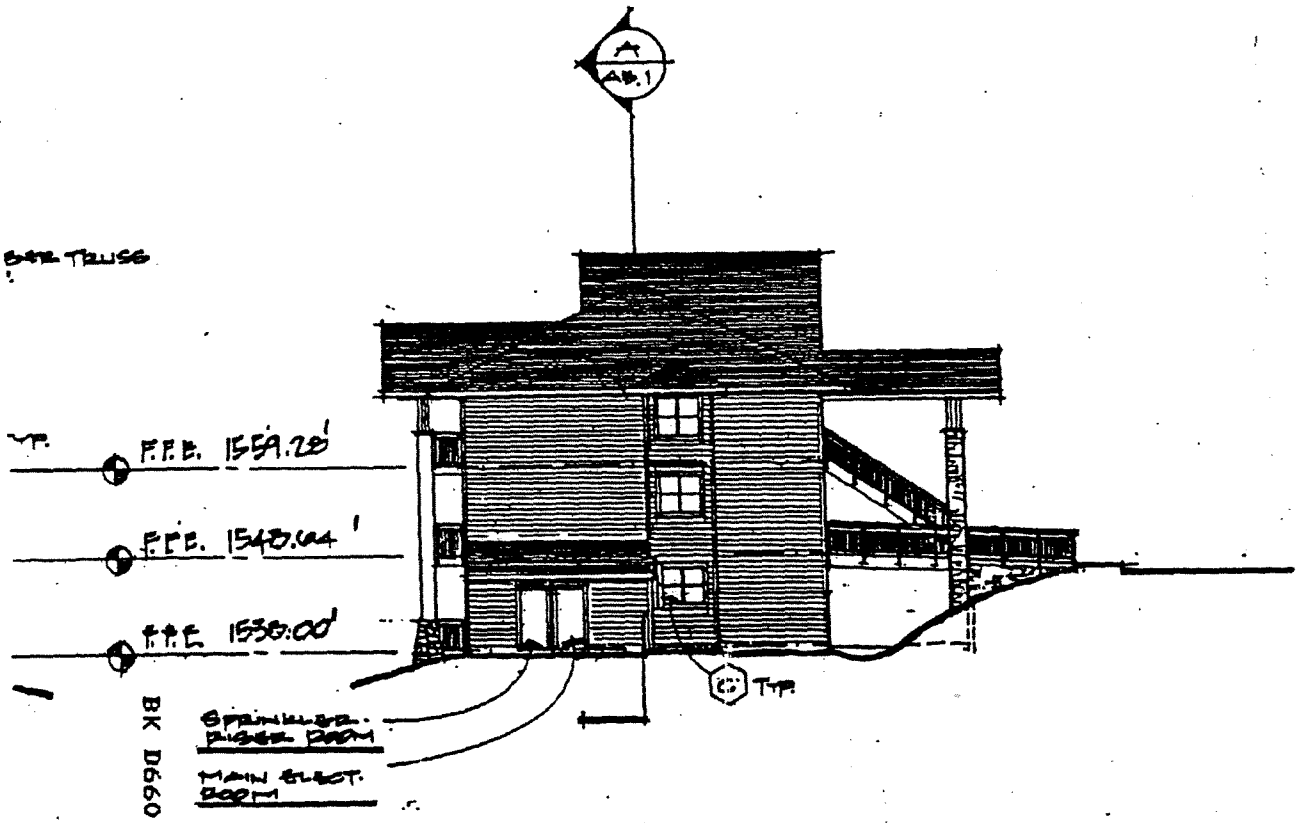
PHASE 'A'

Phase 1

Exhibit G-2

One-bedroom Villas

Phase A - add. units

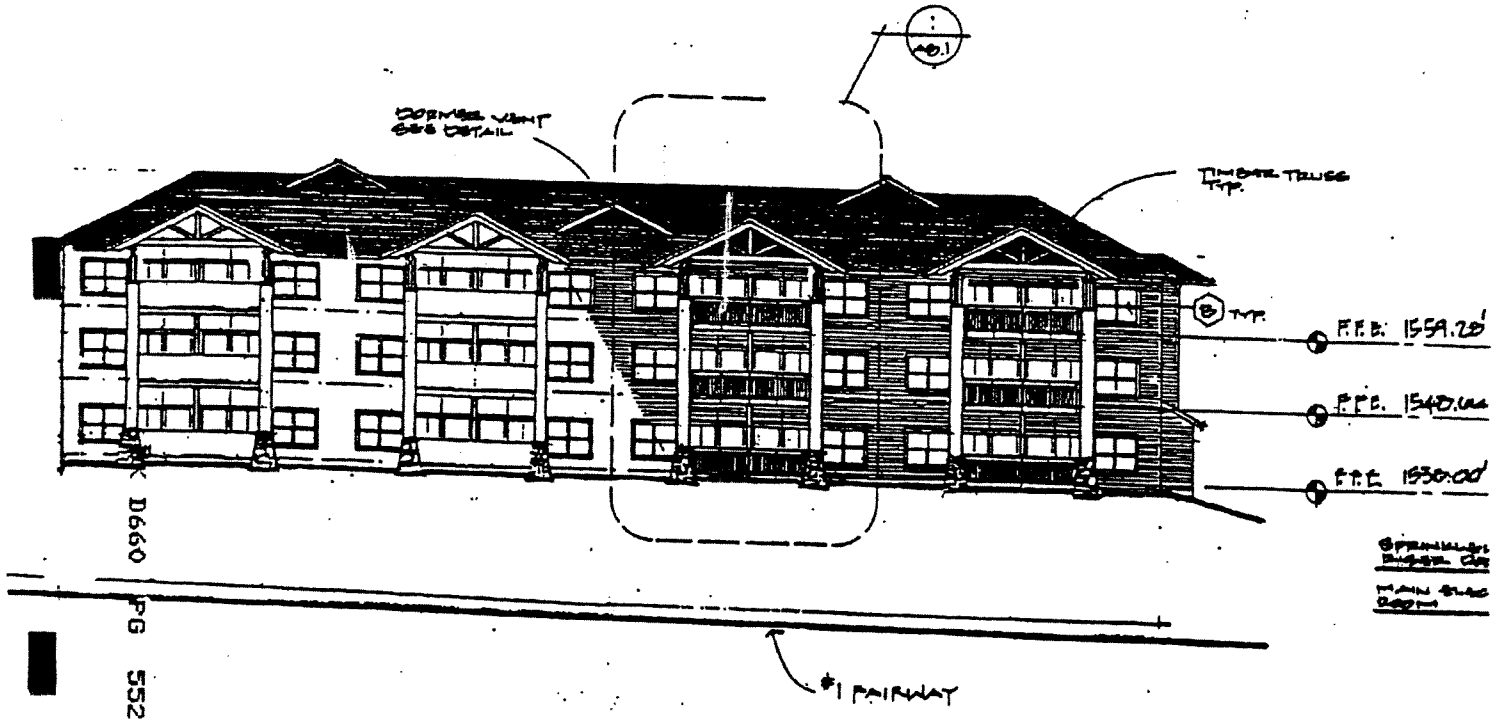


LEFT SIDE ELEVATION

1/16" = 1'-0"

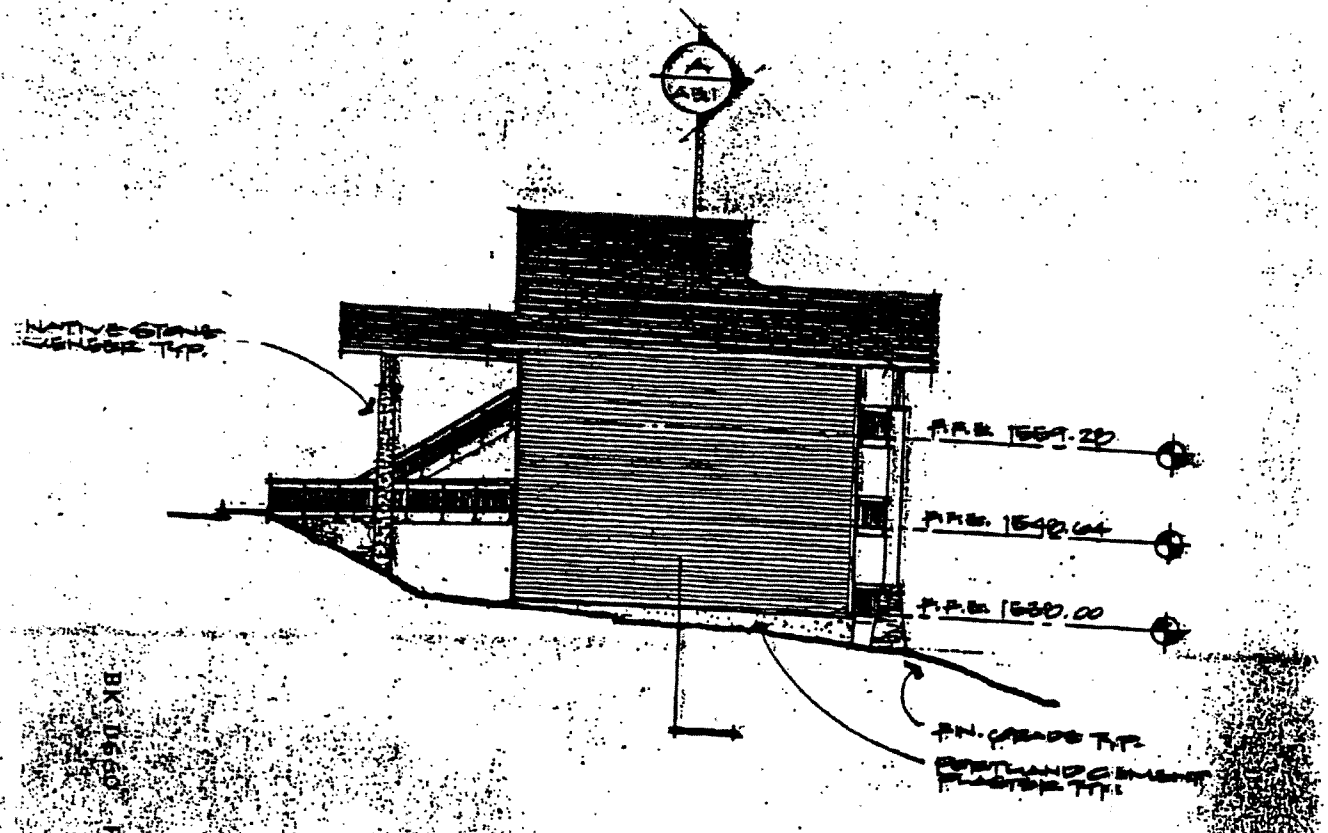
PHASE 'A'

BK D660 PG 551



REAR ELEVATION

BK D660 PG 552

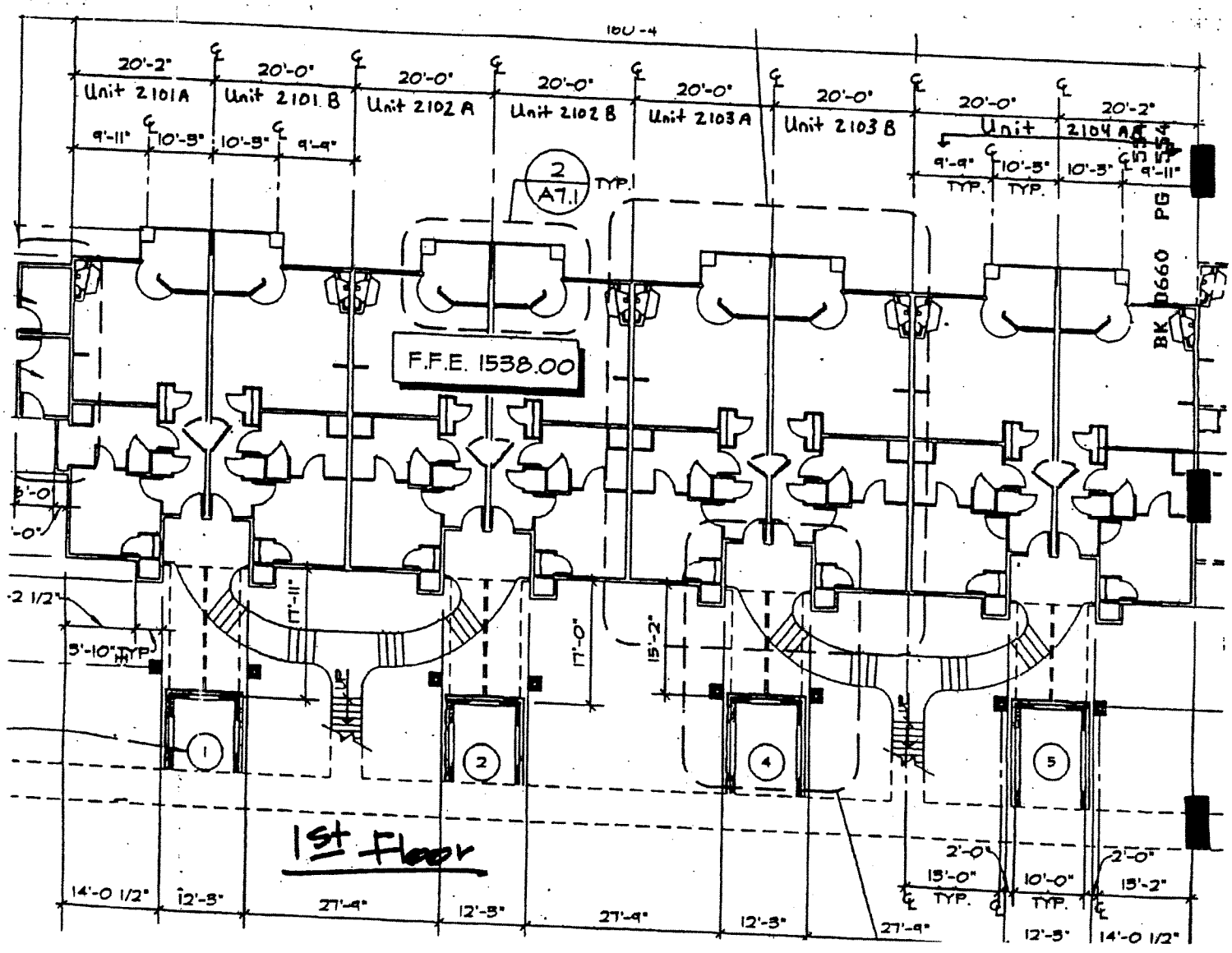


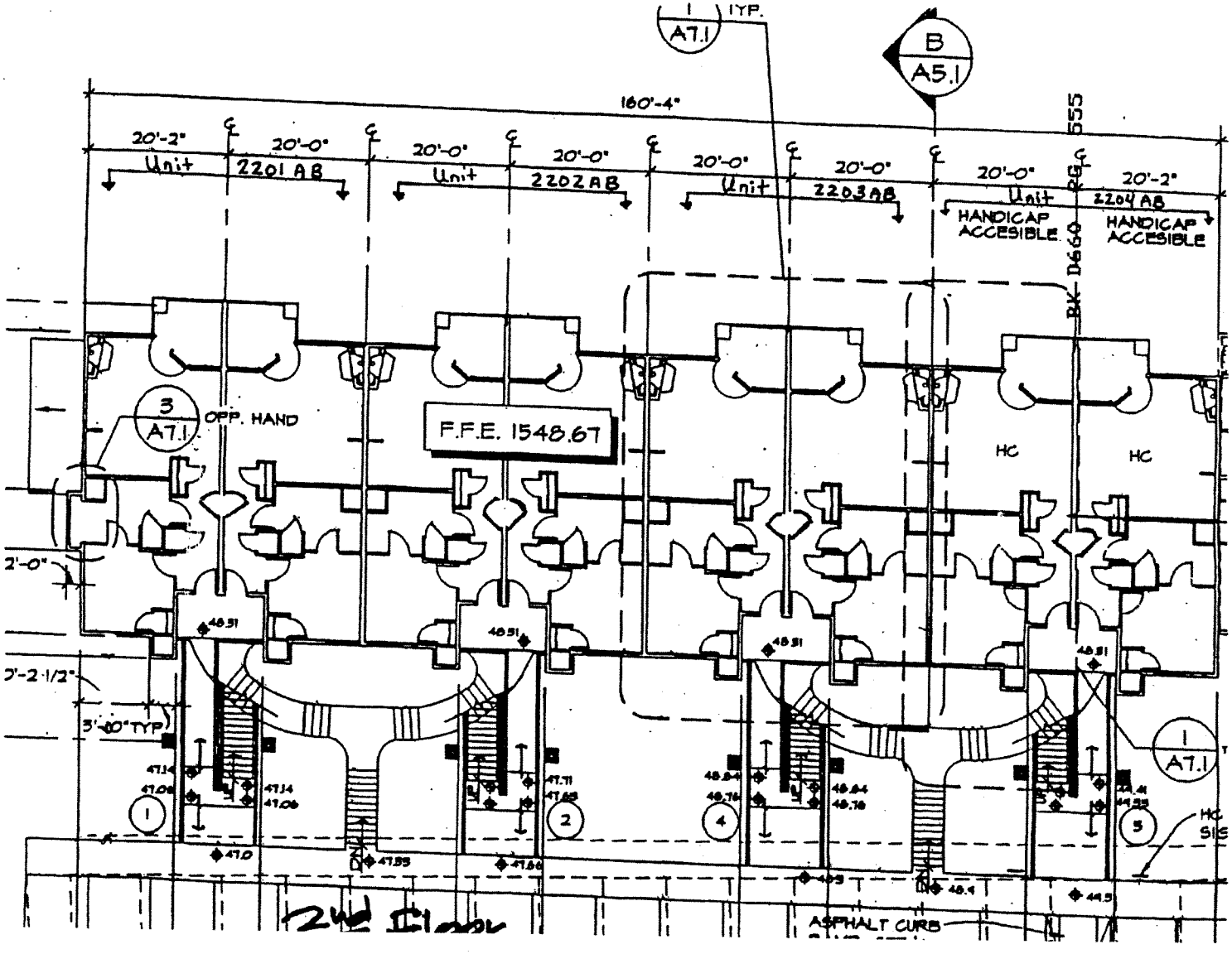
RIGHT SIDE ELEVATION

1/16" = 1'-0"

PHASE A

BK. 1650 PG. 553


Unit 2101A
Unit 2101 B
Unit 2102 A
Unit 2102 B
Unit 2103 A
Unit 2103 B
Unit 2104 A
20'-2"
20'-0"
9'-11"
10'-5"
9'-9"
TYP.
2
A7.1
F.F.E. 1538.00
17'-11"
17'-0"
15'-2"
5'-10" TYP.
UP
1
2
4
5
1st Floor
14'-0 1/2"
12'-5"
27'-9"
2'-0"
15'-0"
10'-0"
15'-2"
BK 0660 PG 554


160'-4"
20'-2"
20'-0"
20'-0"
20'-0"
20'-0"
20'-0"
20'-0"
20'-2"
Unit 2201 AB
Unit 2202 AB
Unit 2203 AB
Unit 2204 AB
HANDICAP ACCESIBLE
HANDICAP ACCESIBLE
BK D660 PG 555
1 A7.1 TYP.
B A5.1
3 A7.1 OPP. HAND
F.F.E. 1548.67
HC
HC
5'-0" TYP
1 A7.1
ASPHALT CURB

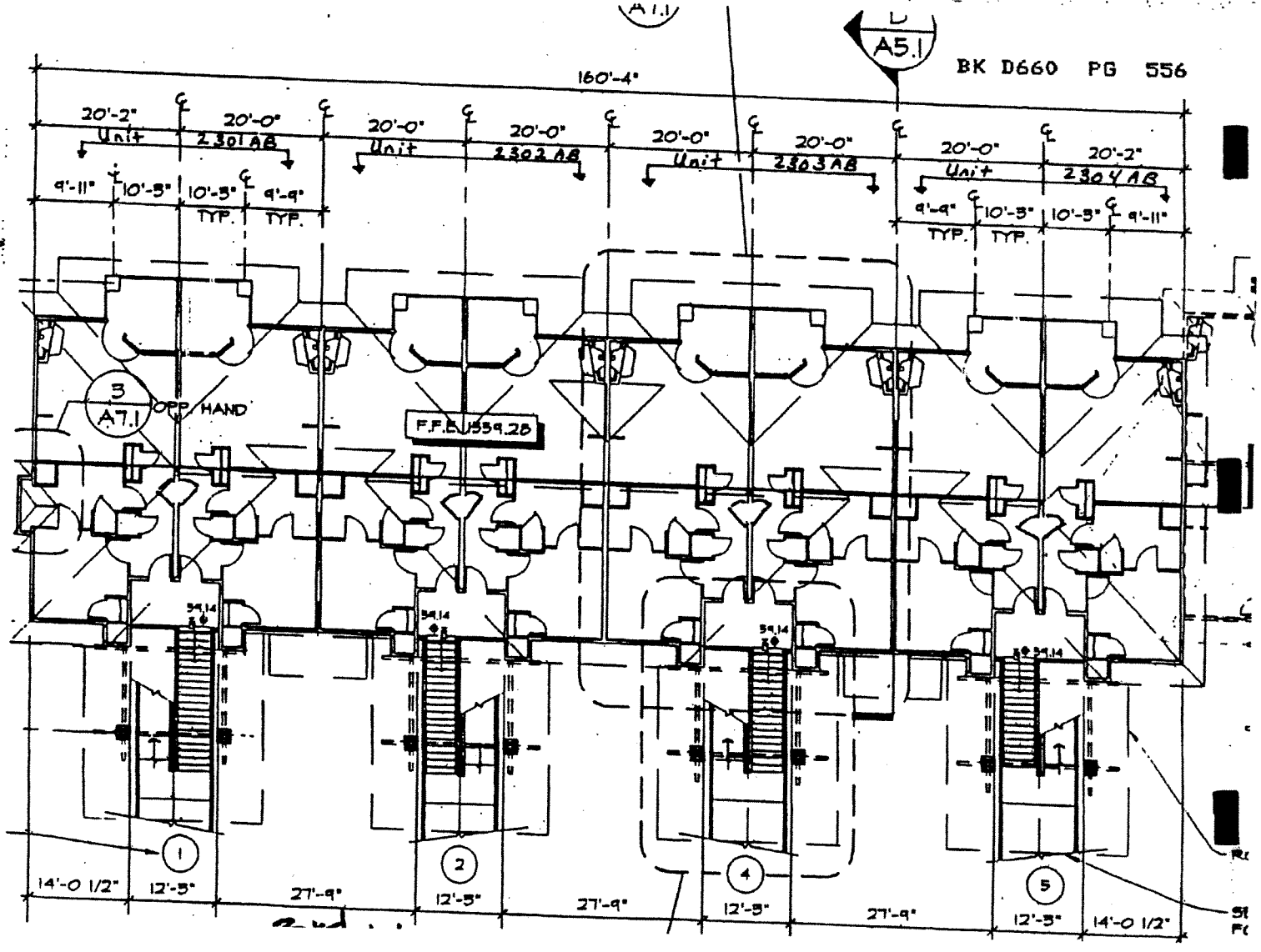
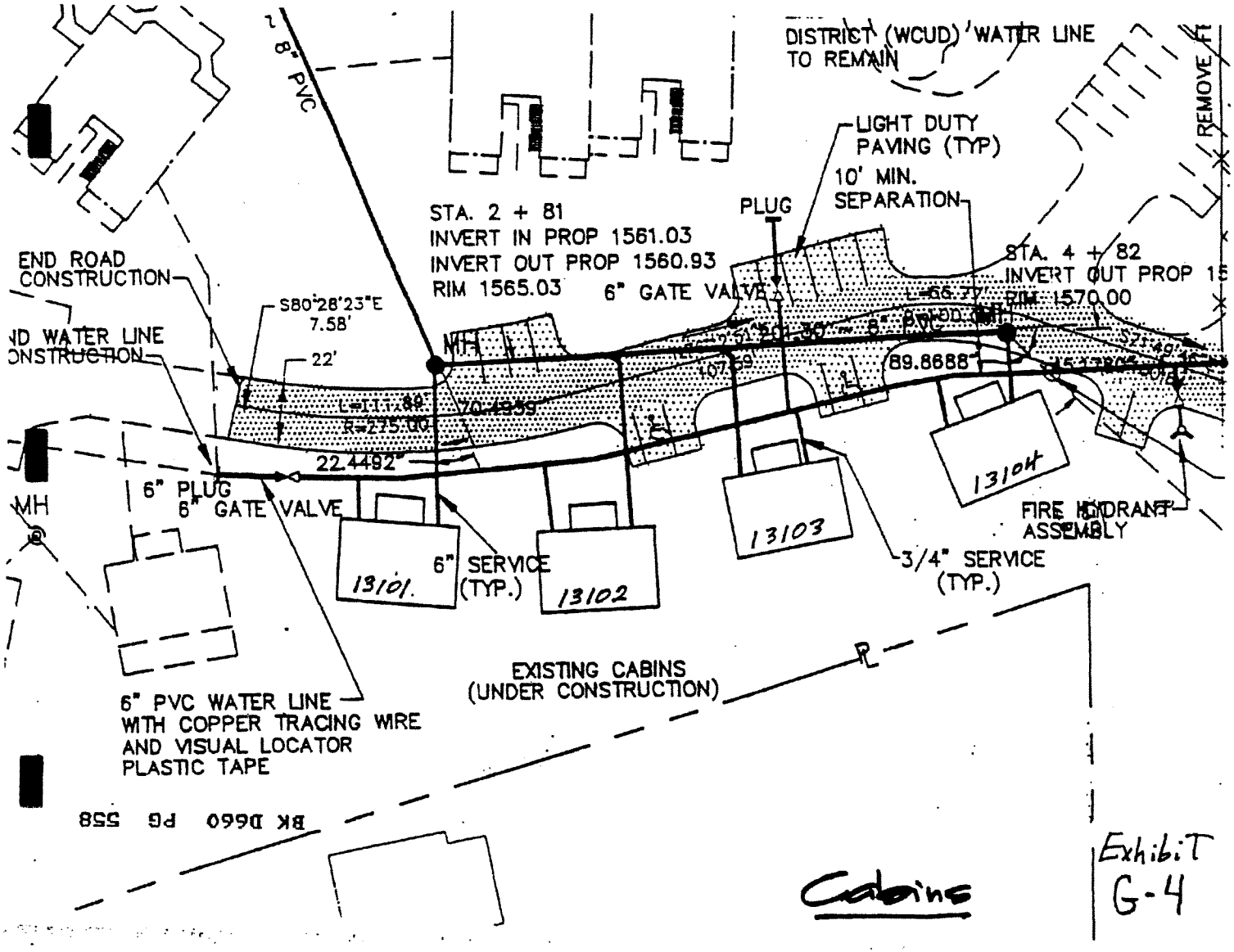

A1.1
A5.1
BK D660 PG 556
160'-4"
20'-2"
20'-0"
20'-0"
20'-0"
20'-0"
20'-0"
20'-0"
20'-2"
Unit
2301AB
Unit
2302AB
Unit
2303AB
Unit
2304AB
9'-11"
10'-5"
10'-5"
9'-9"
TYP.
TYP.
9'-9"
10'-5"
10'-5"
9'-11"
TYP.
TYP.
3
A7.1
OPP. HAND
F.F.E. 1559.28
59.14
1
2
4
5
14'-0 1/2"
12'-5"
27'-9"
12'-5"
27'-9"
12'-5"
27'-9"
12'-5"
14'-0 1/2"

EXHIBIT "G-4"

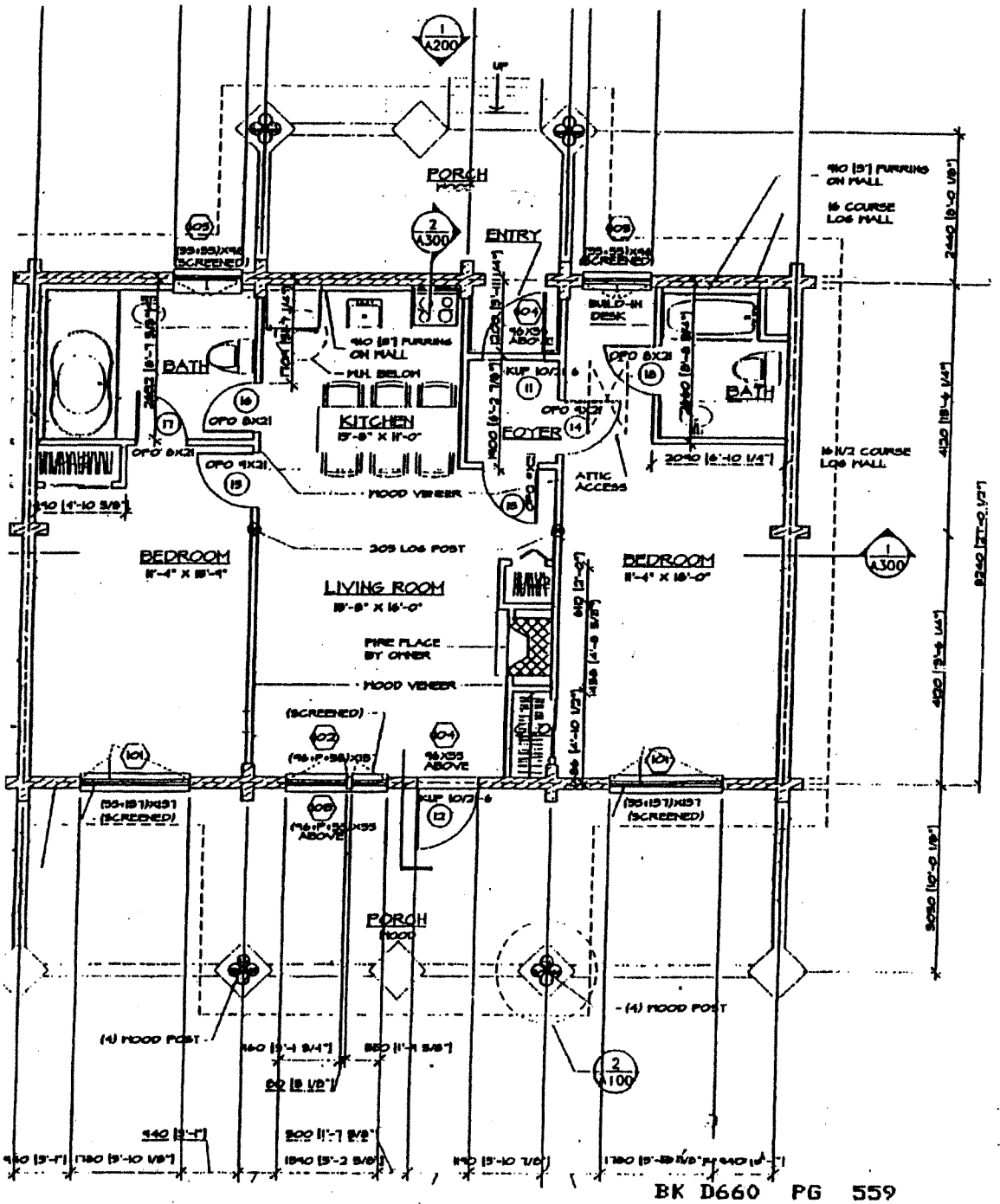
Phase I 2 BR Cabins



BK D660 PG 558

Cabins

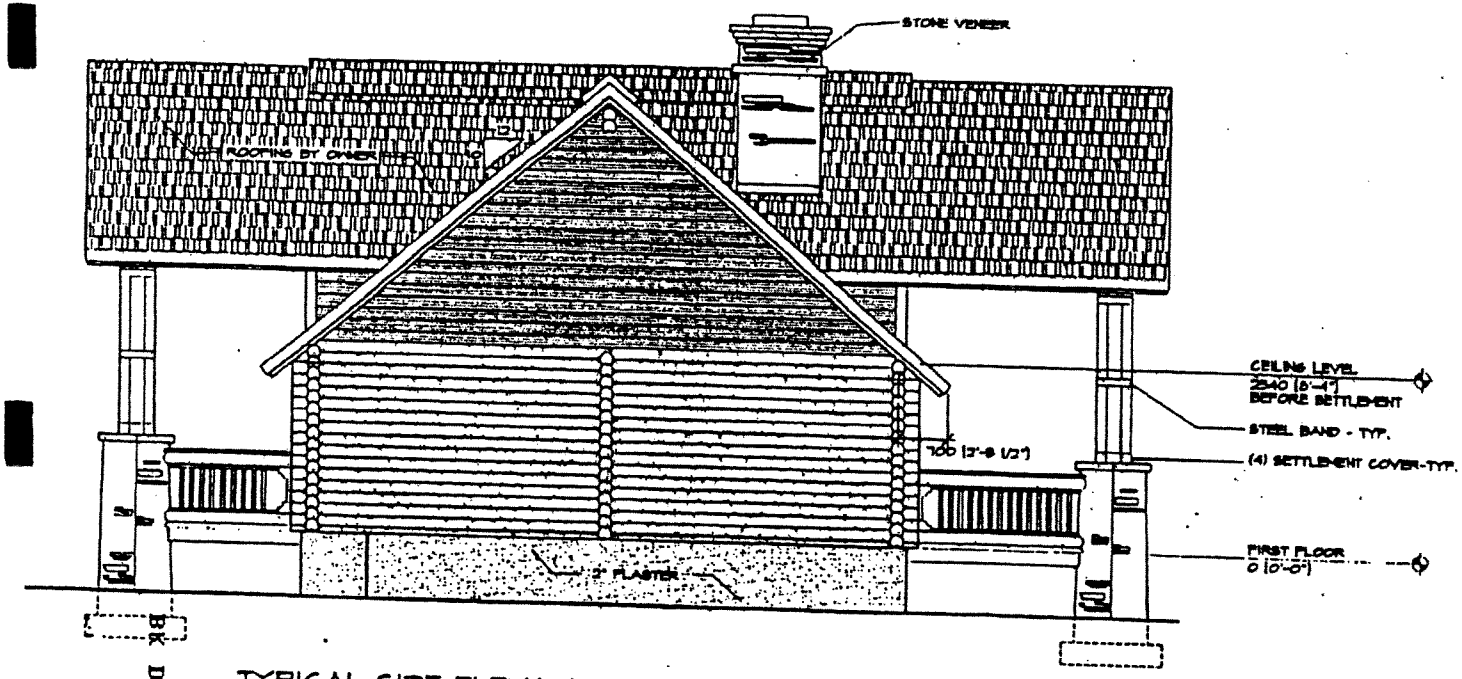
Exhibit
G-4



BK D660 PG 559

MAIN LEVEL FLOOR PLAN

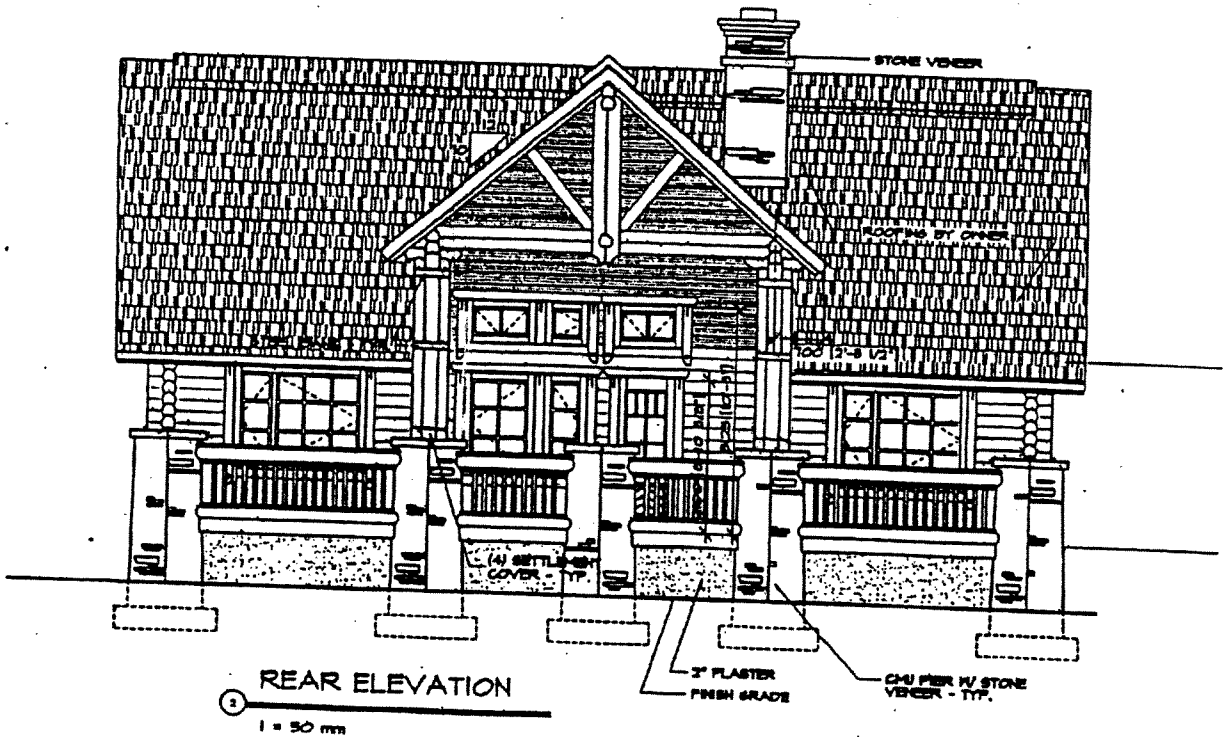
1 = 50 mm



3 TYPICAL SIDE ELEVATION

1 = 50 mm

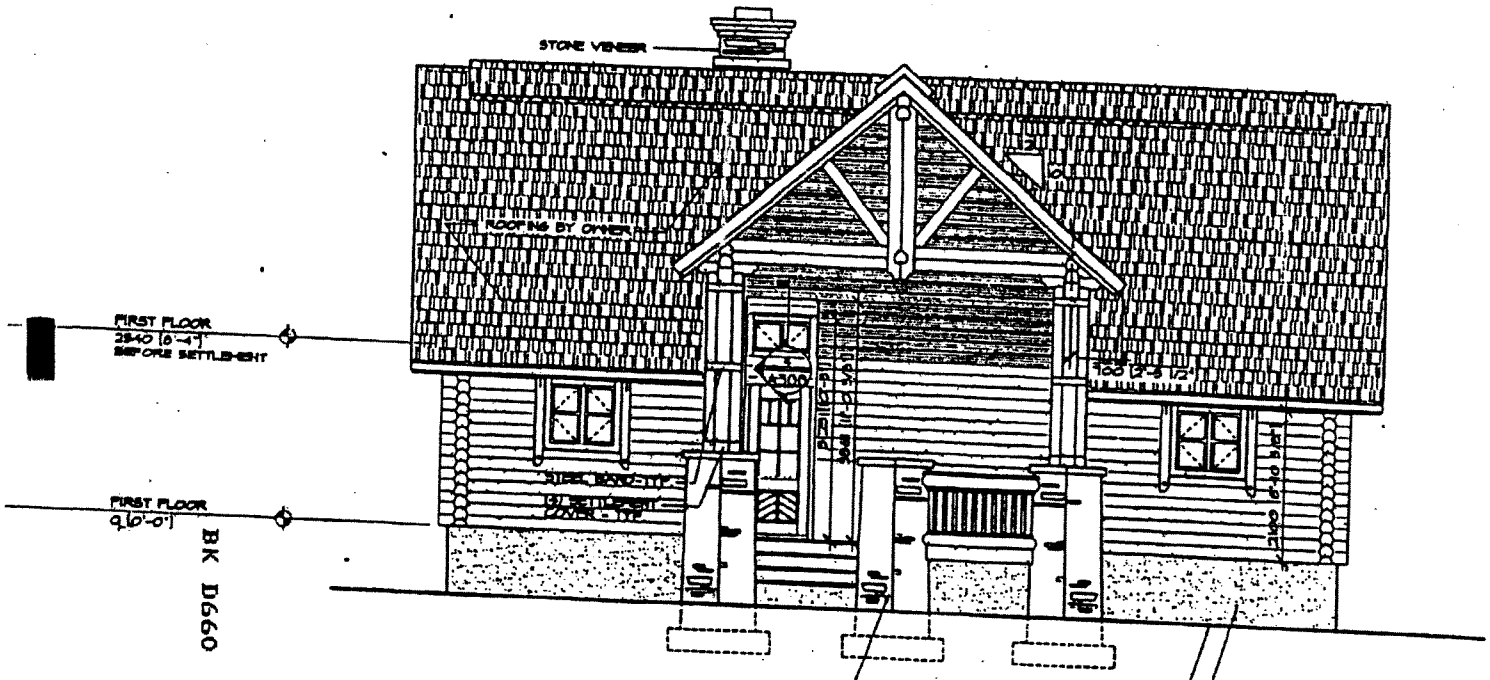
BK D660 PG 560



REAR ELEVATION

2

1 = 50 mm



FRONT ELEVATION

1 = 50 mm

BK D660 PG 562

EXHIBIT "G-5"

Phase I and II 2 BR Villas

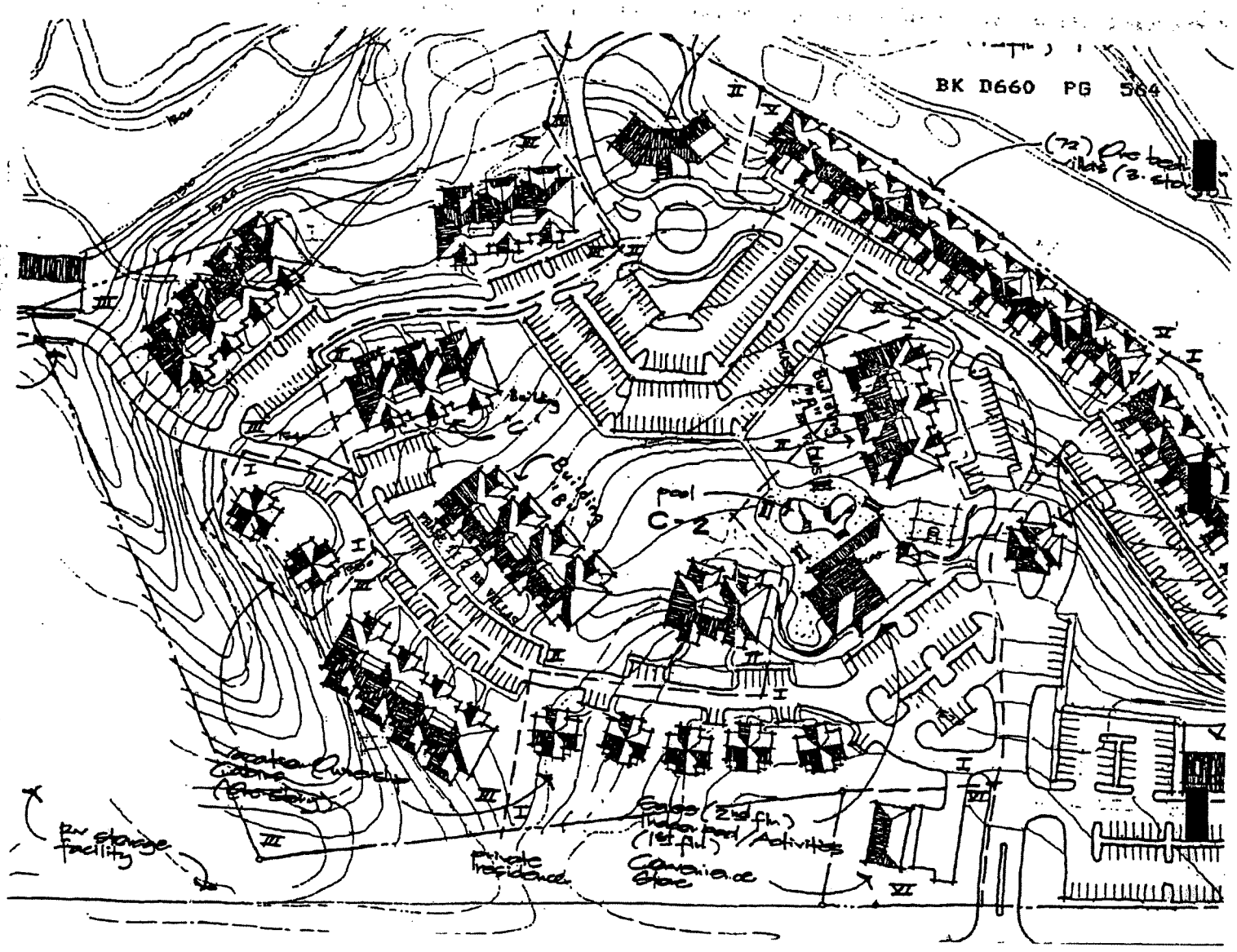
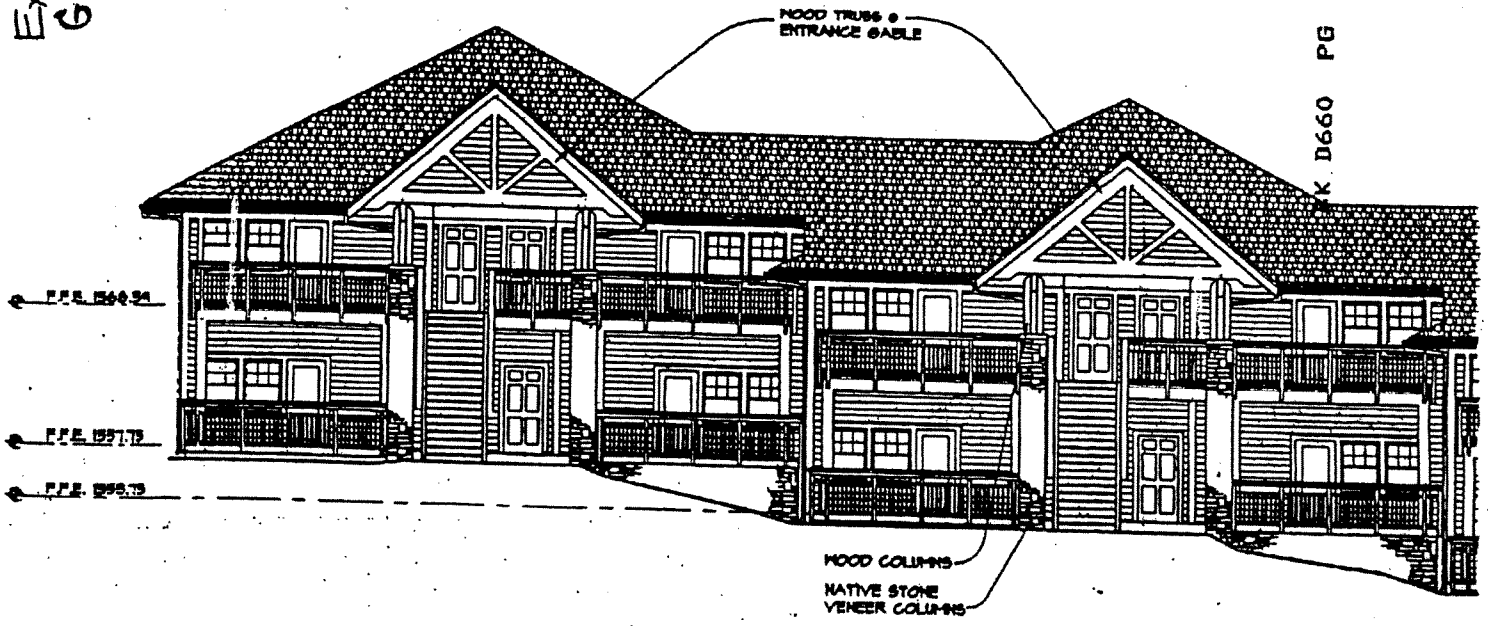

pool
Building
Private residence
Convenience store
Boat storage facility

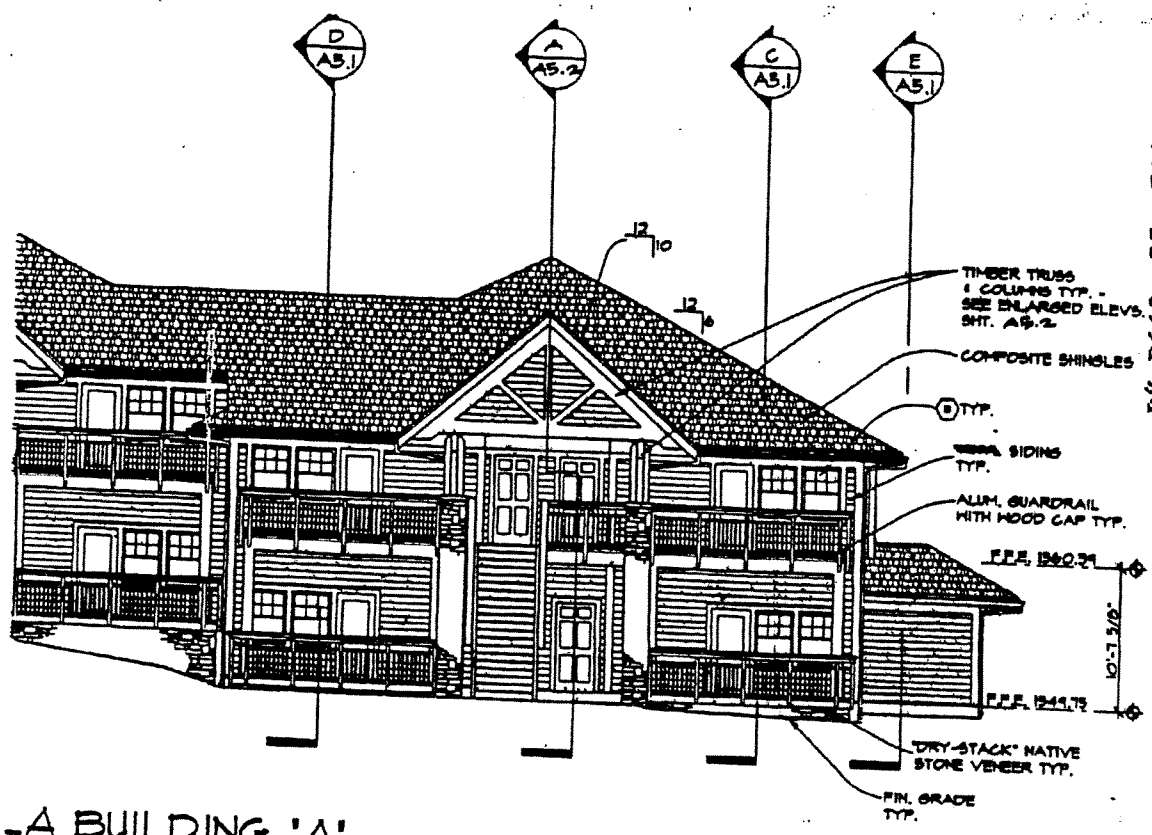
Exhibit G-5



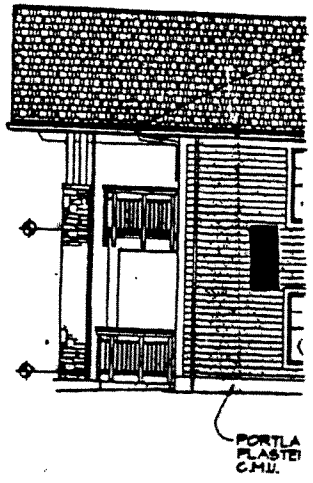
FRONT ELEVATION - VILLA BUILDING
1/8"=1'-0"

Phase 1
Villa Building 'A'

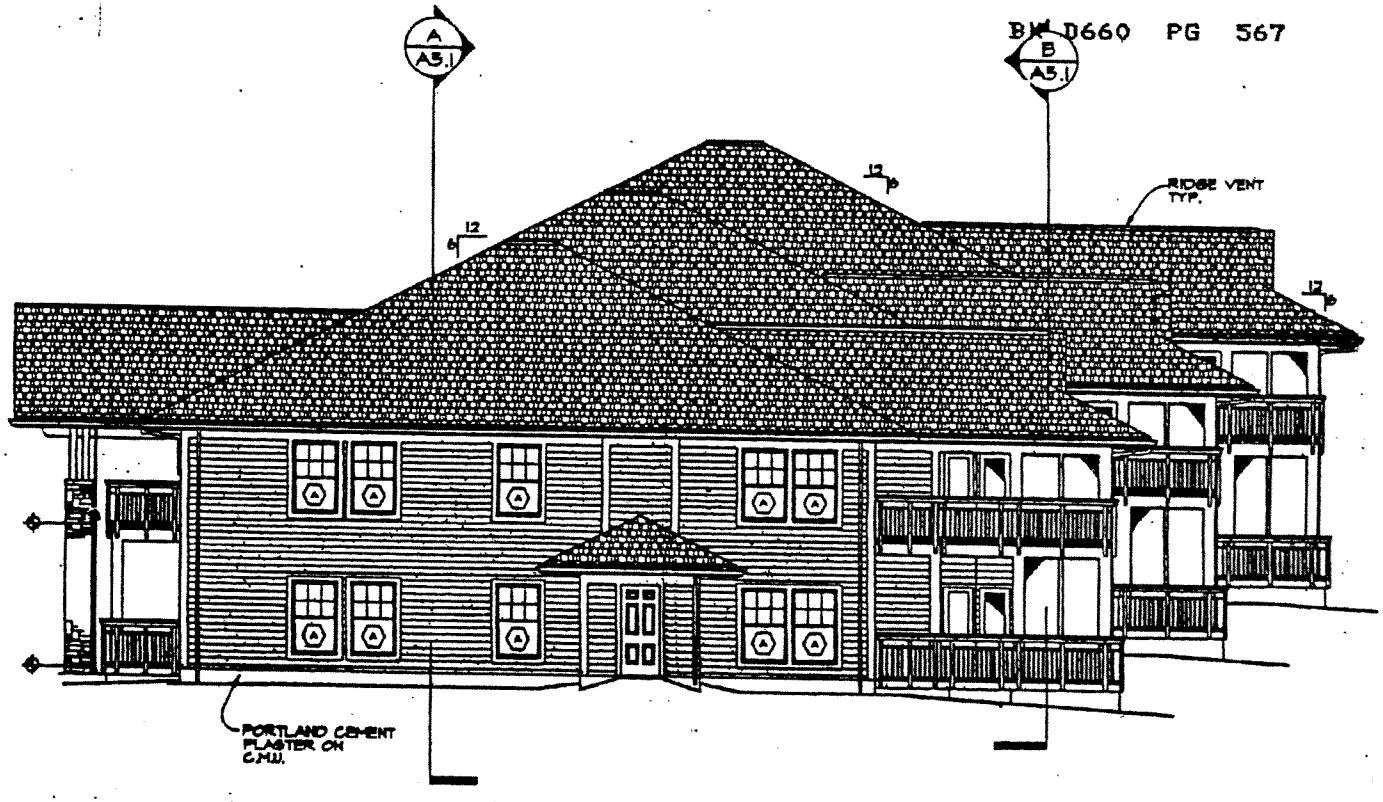
BK D660 PG 565



A BUILDING 'A'



BK D660 PG 566



RIGHT ELEVATION

1/8"=1'-0"

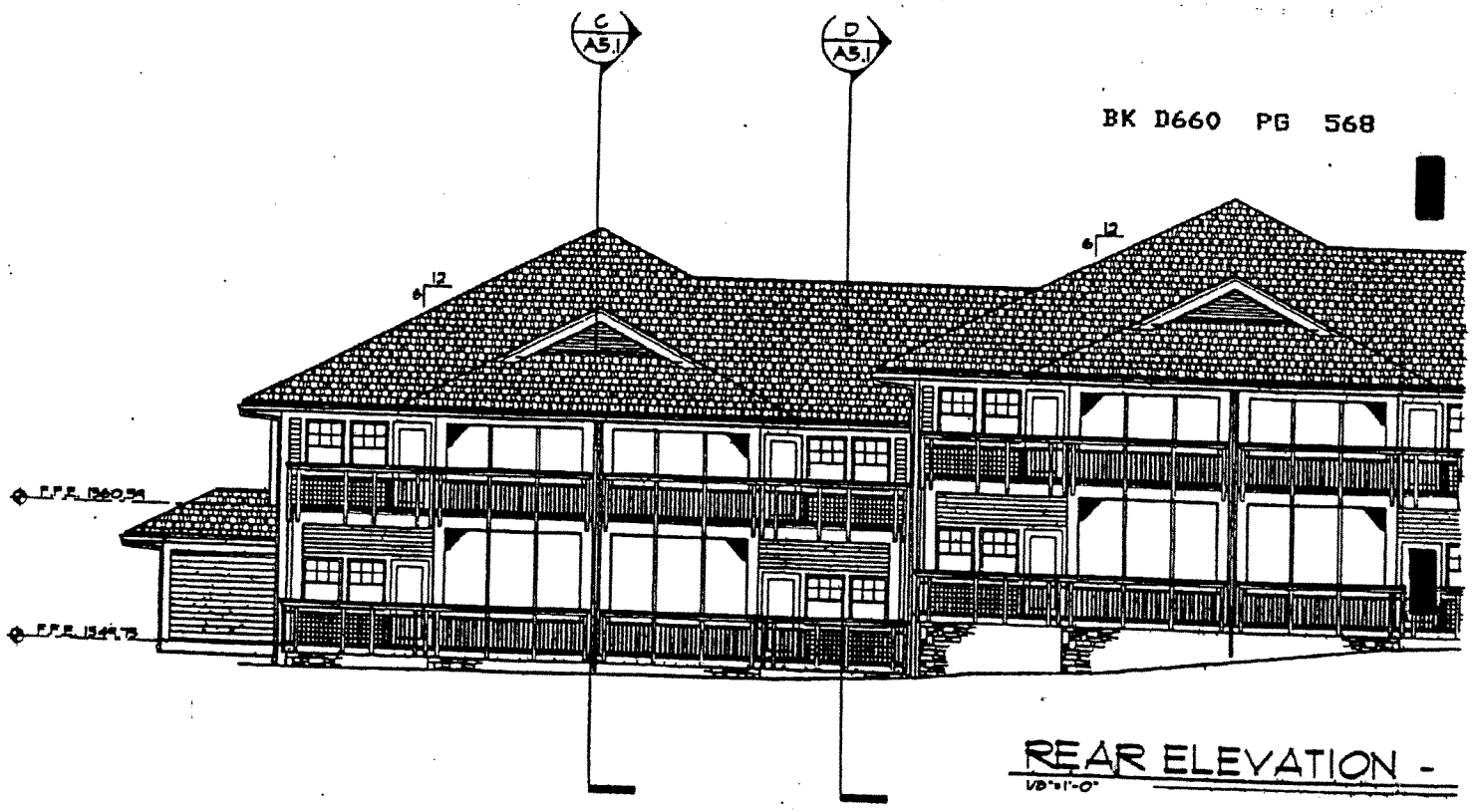
ELEVS.

NGLES

TYP.

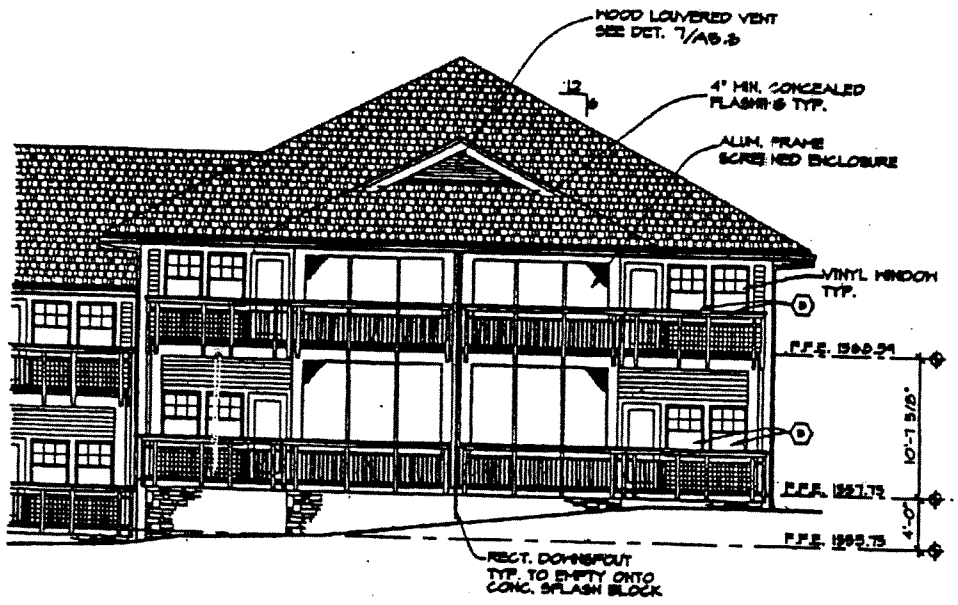
107'-7 3/8"

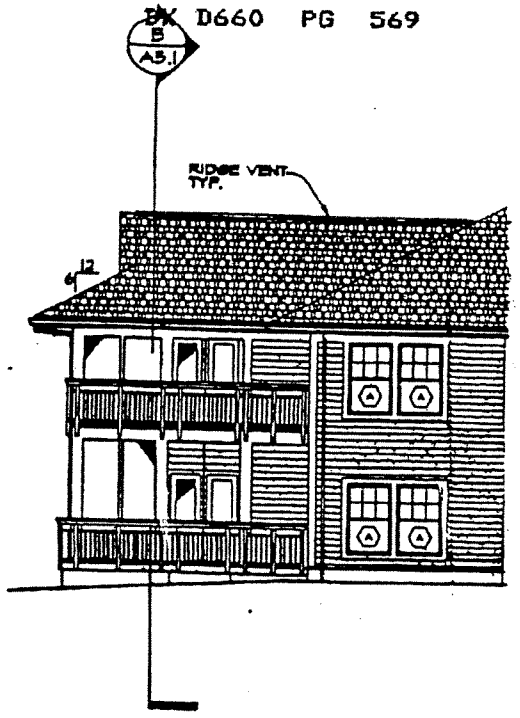
BK D660 PG 568



REAR ELEVATION -
1/8"=1'-0"

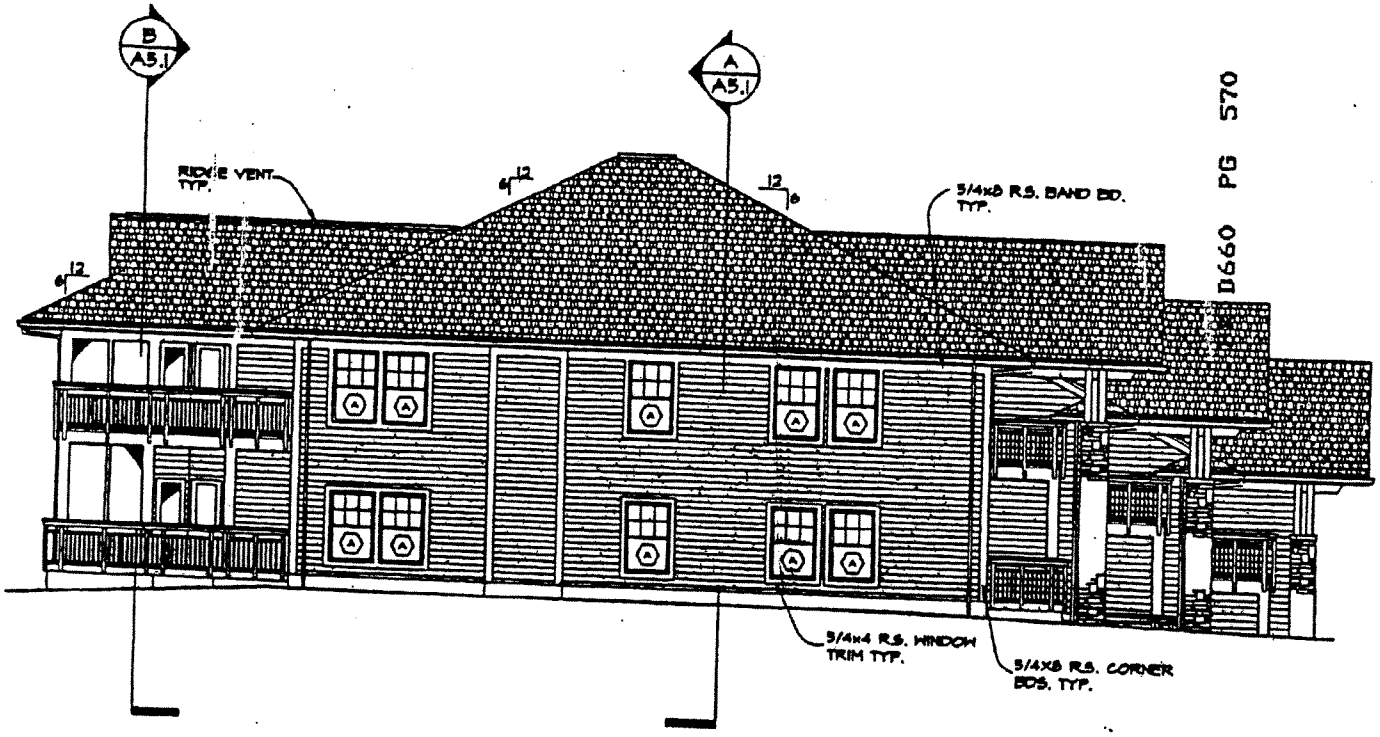
BK D660 PG 569





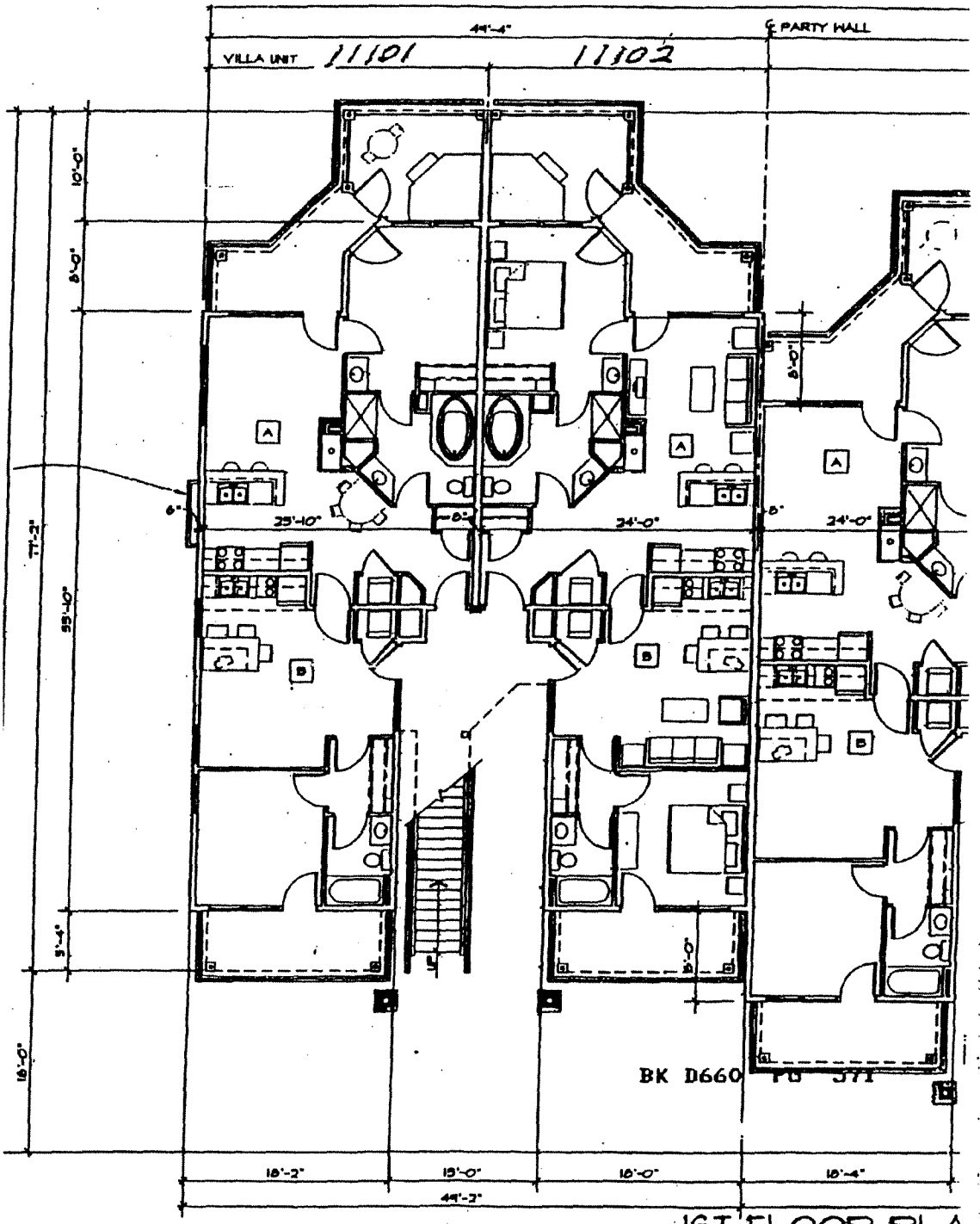
- VILLA BUILDING 'A'

LEF
1/8"=1'-0"



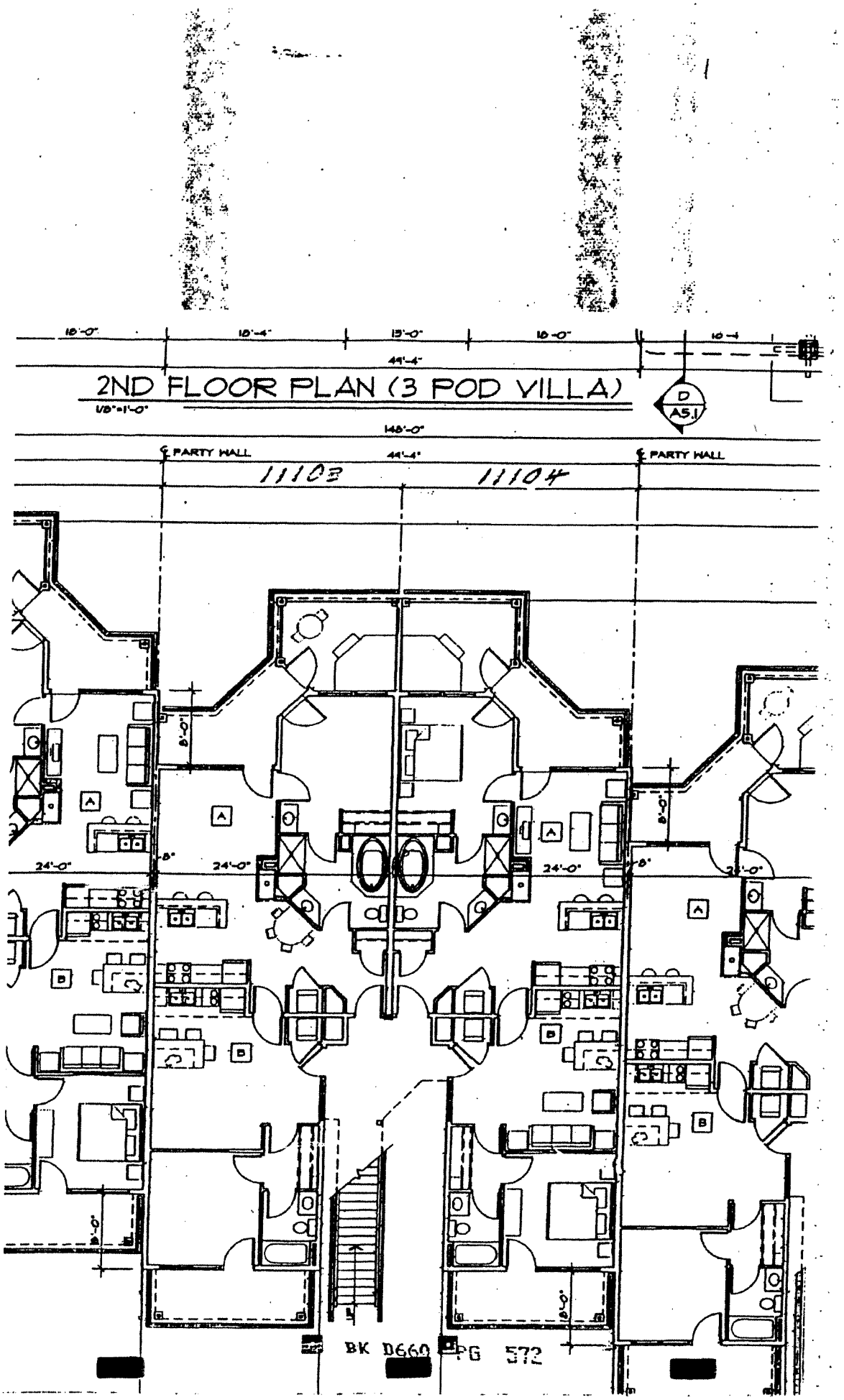
LEFT ELEVATION
1/8"=1'-0"

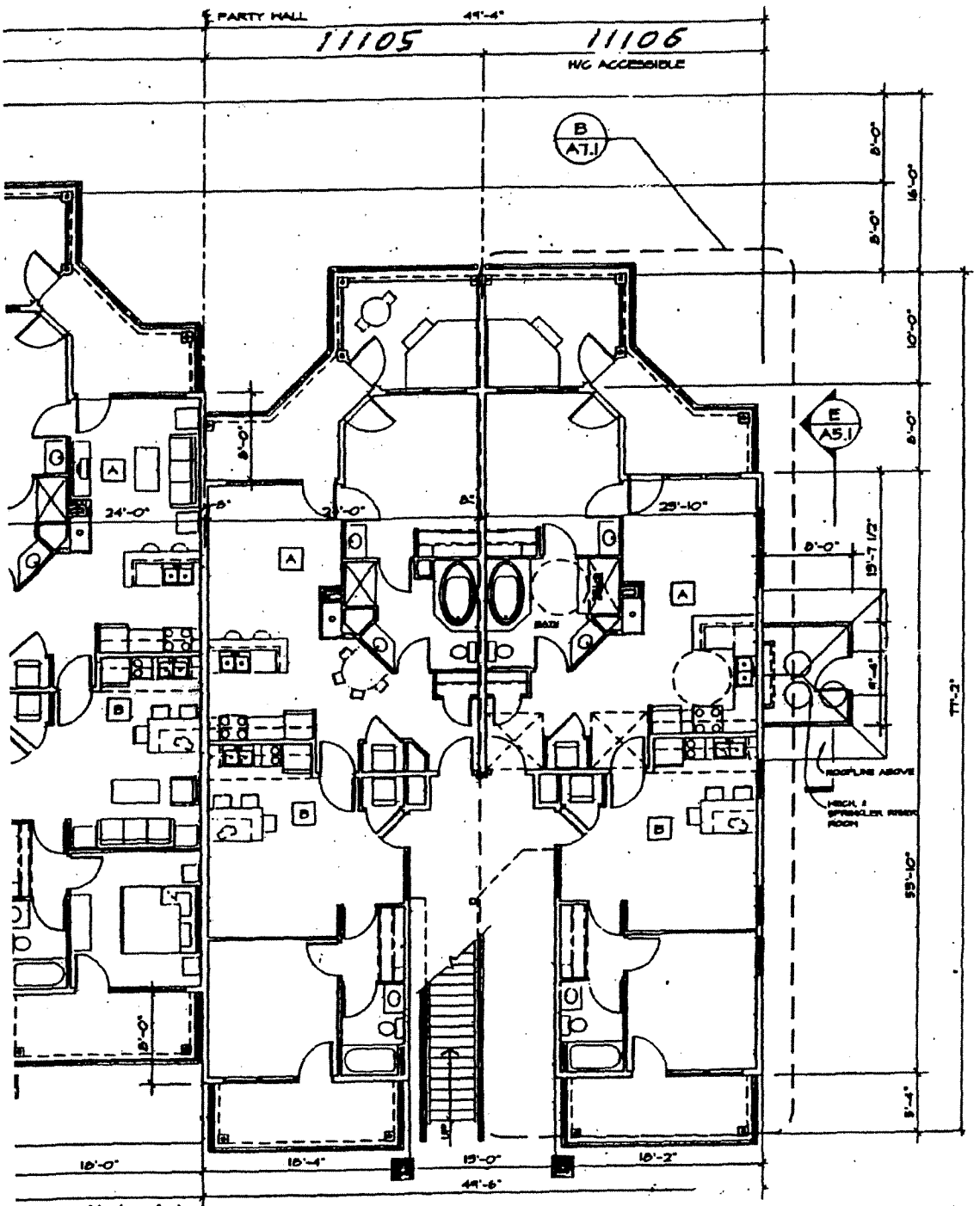
D660 PG 570



1ST FLOOR PLA

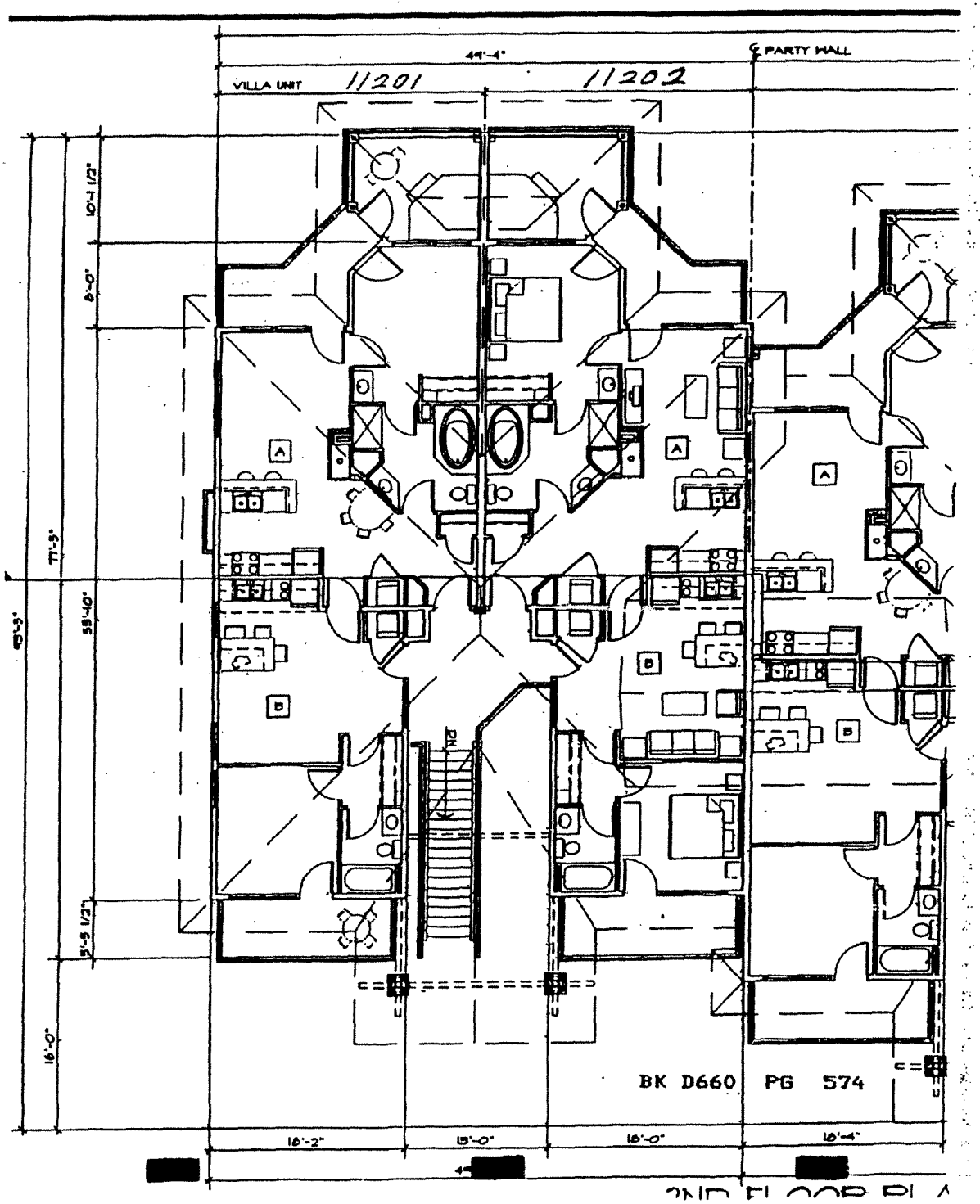
1/8"=1'-0"


2ND FLOOR PLAN (3 POD VILLA)
1/8"=1'-0"
D
A5.1
10'-0"
10'-4"
15'-0"
10'-0"
10'-4"
44'-4"
148'-0"
℄ PARTY WALL
44'-4"
℄ PARTY WALL
11103
11104
24'-0"
24'-0"
24'-0"
24'-0"
8'-0"
8'-0"
8'-0"
8'-0"
A
B
BK D660 PG 572



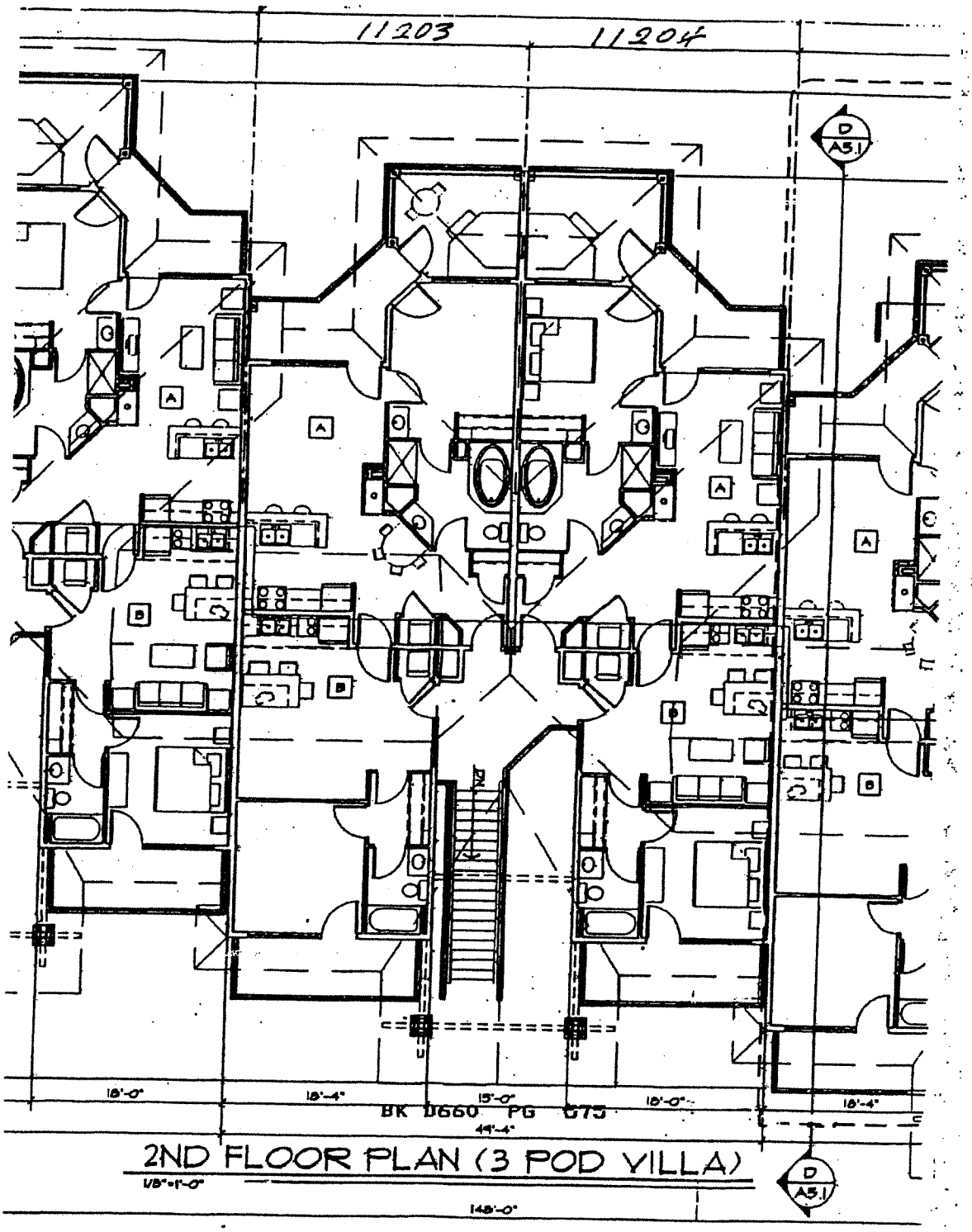
D VILLA)

BK D660 PG 573



BK D660 PG 574

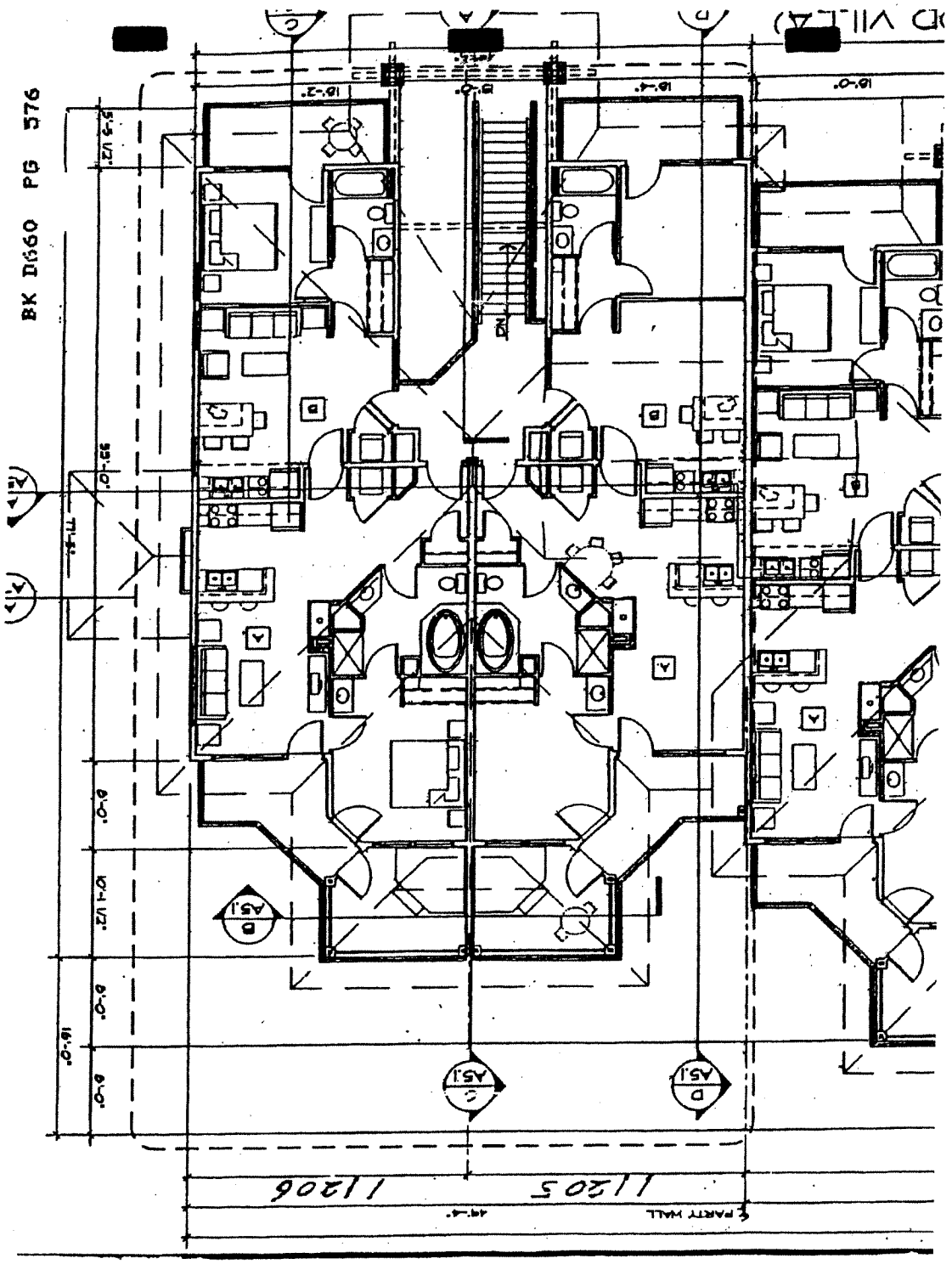
2ND FLOOR PLA

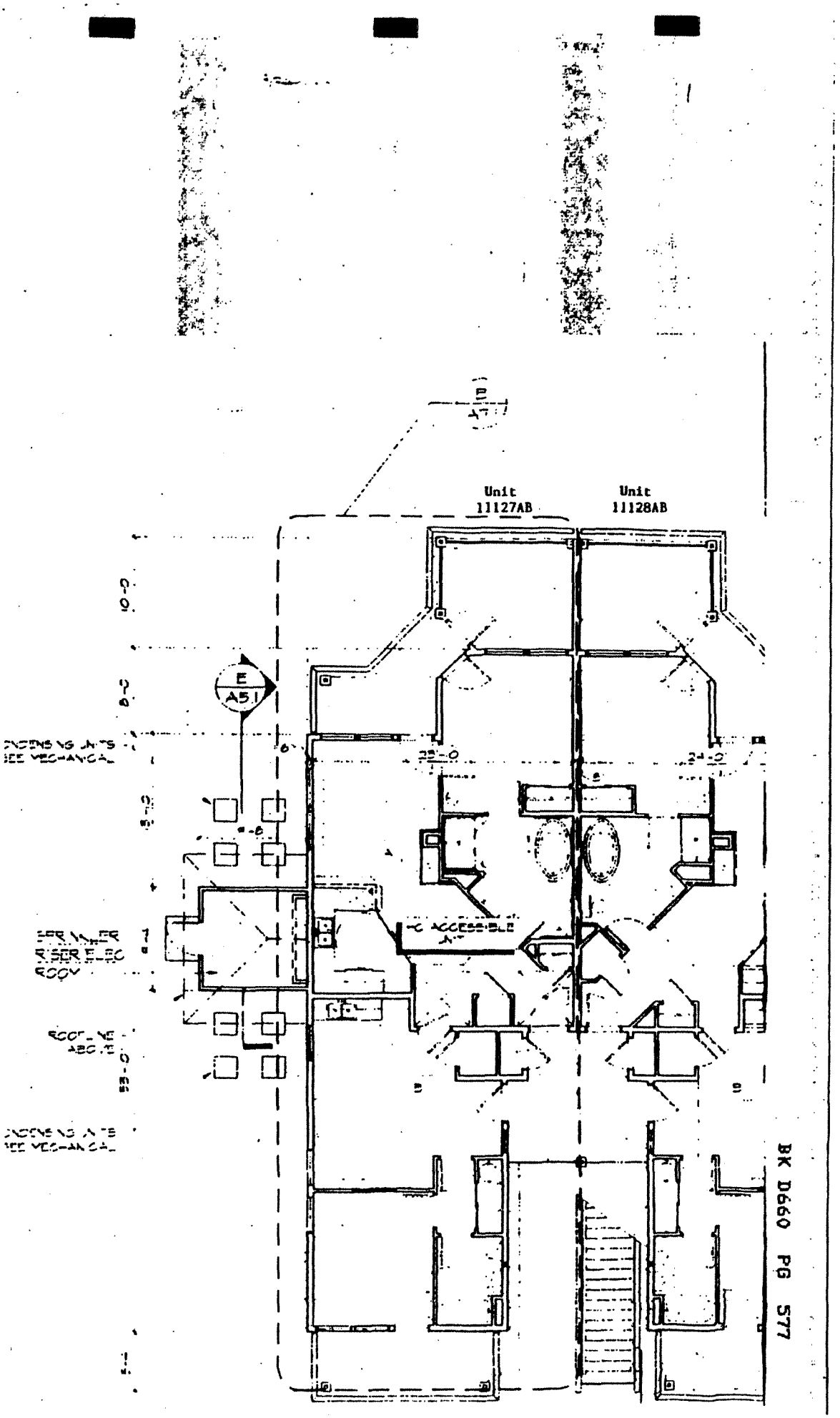


2ND FLOOR PLAN (3 POD VILLA)

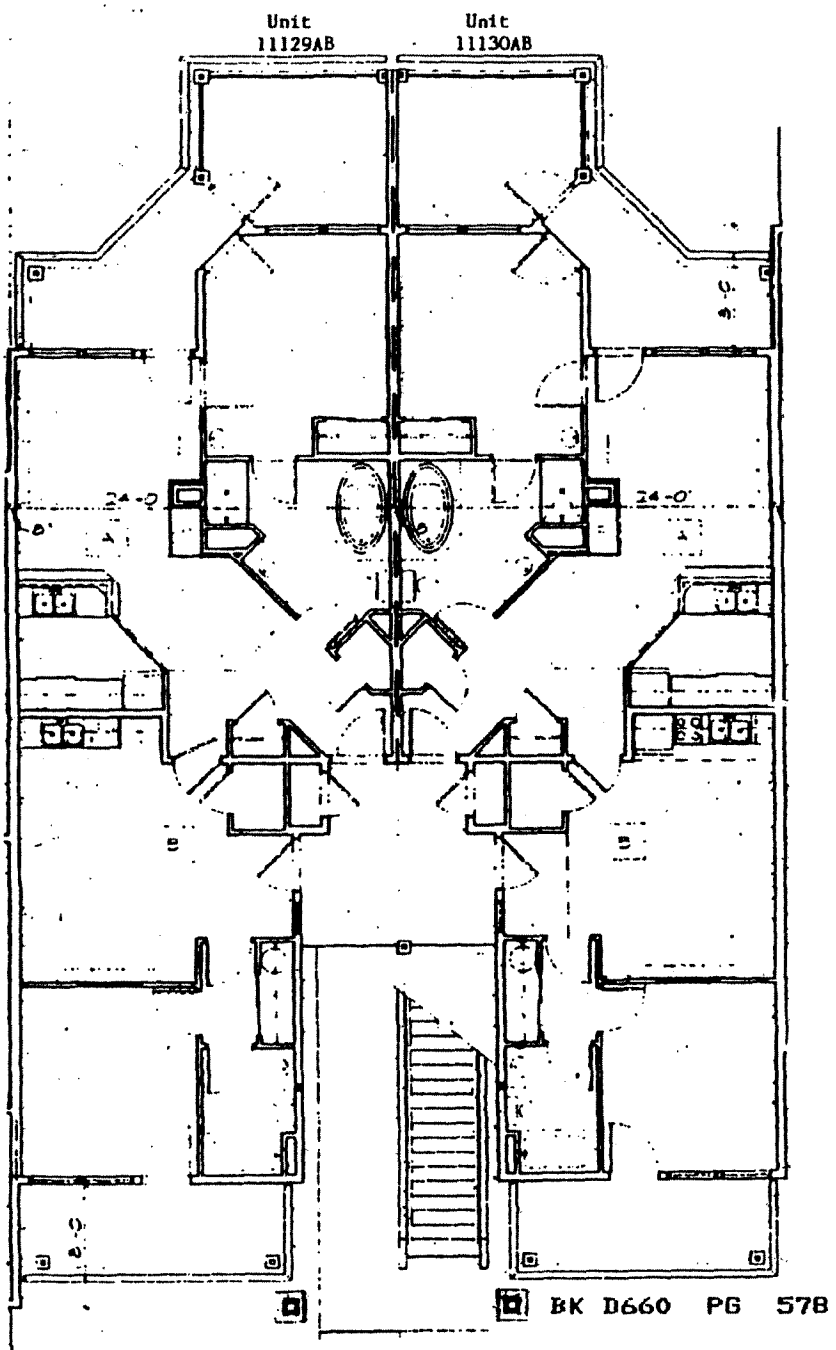
1/8"=1'-0"

BK 0660 PG 673

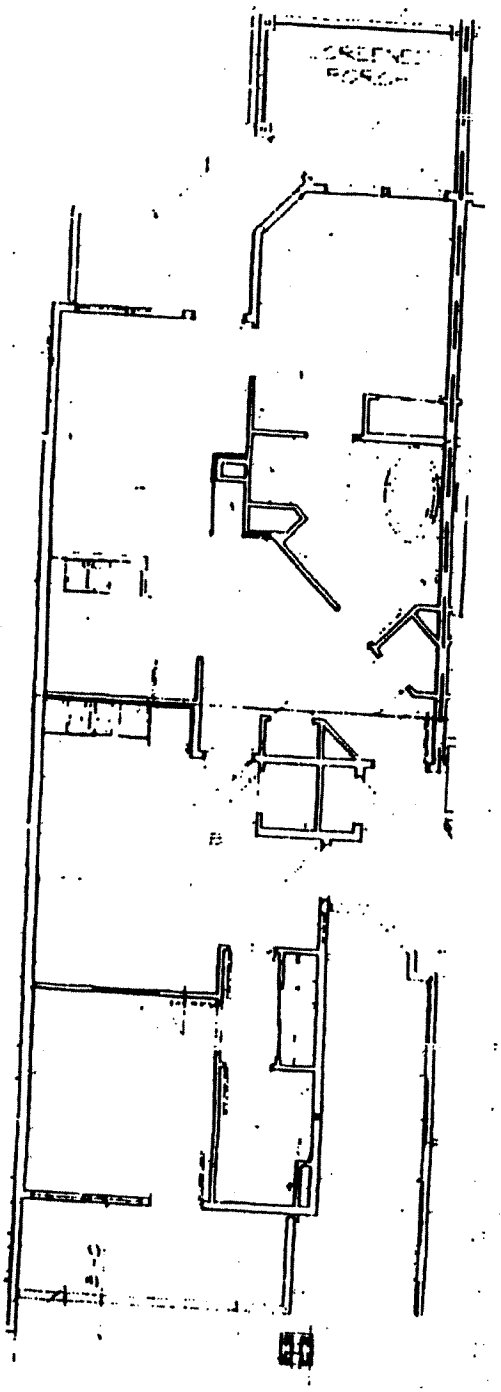

BK D660 PG 576
1120S
1120G
PARTY WALL
44'-4"
16'-0"
6'-0"
10'-1 1/2"
6'-0"
6'-0"
16'-0"
33'-0"
11'-4"
5'-5 1/2"
16'-0"
16'-4"
16'-0"
16'-2"
D
A5.1
C
A5.1
D
A5.1



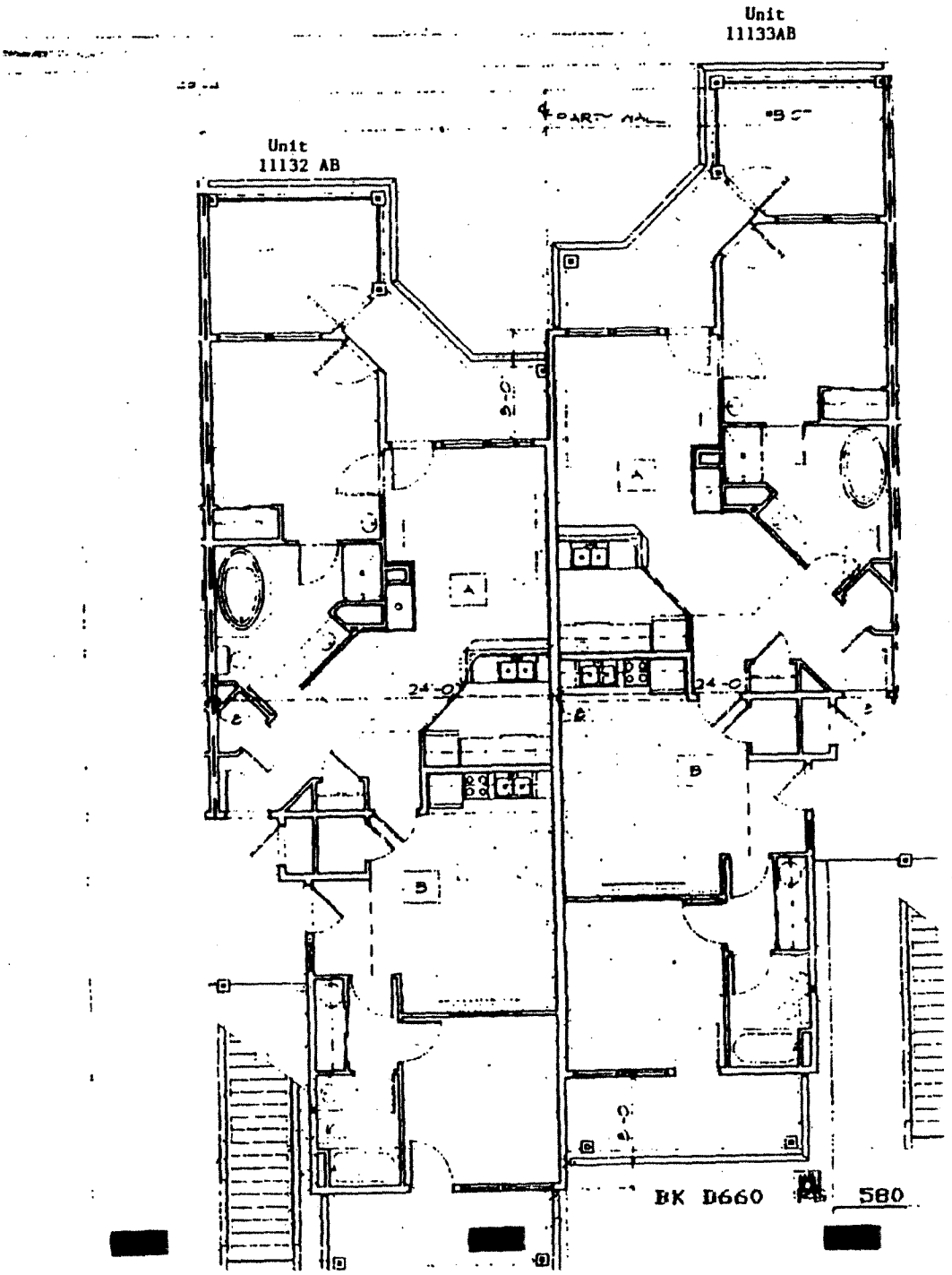
BK D660 PG 577

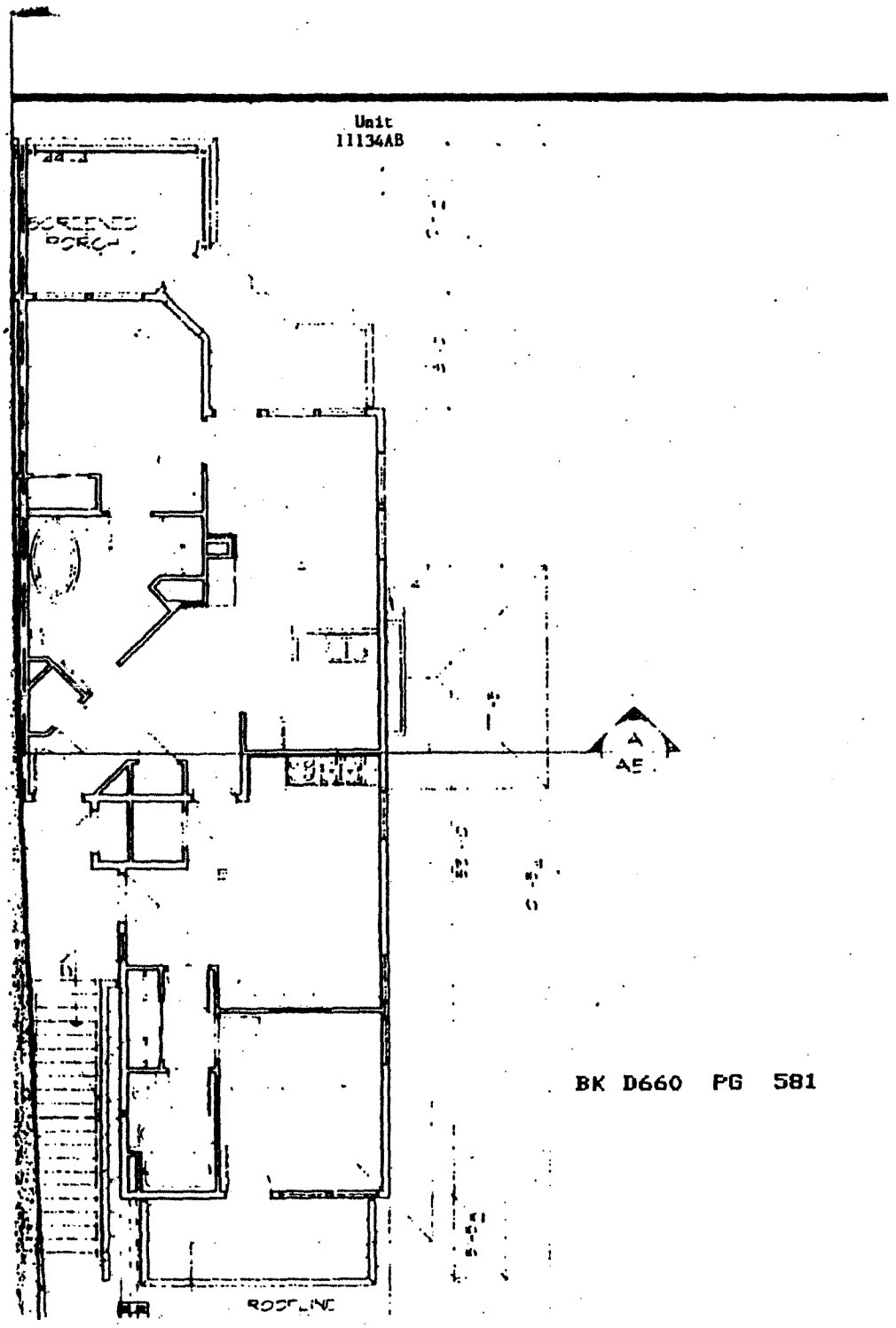

Unit
11129AB
Unit
11130AB
24-0
24-0
BK D660 PG 578

Unit
11131AB

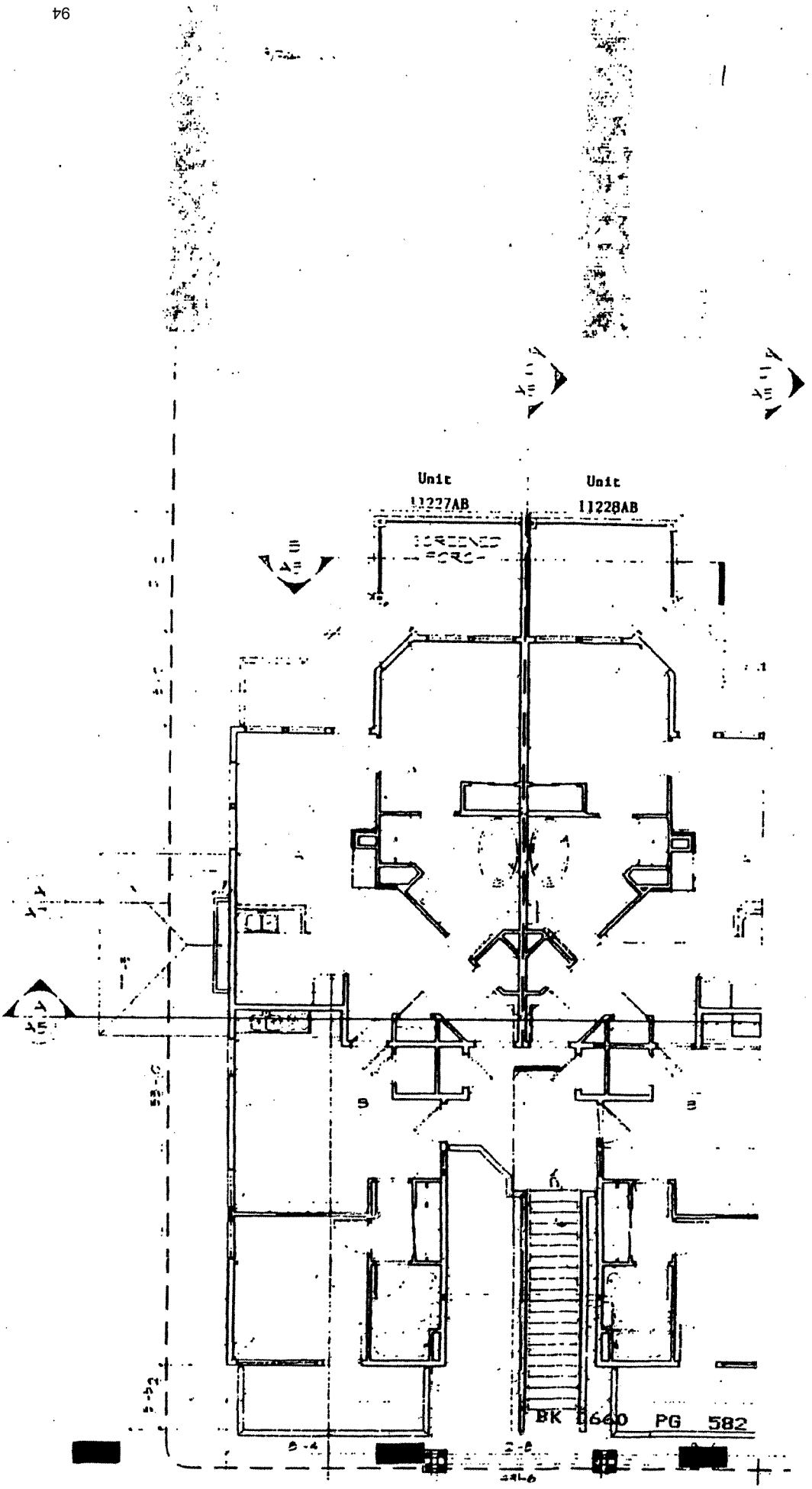


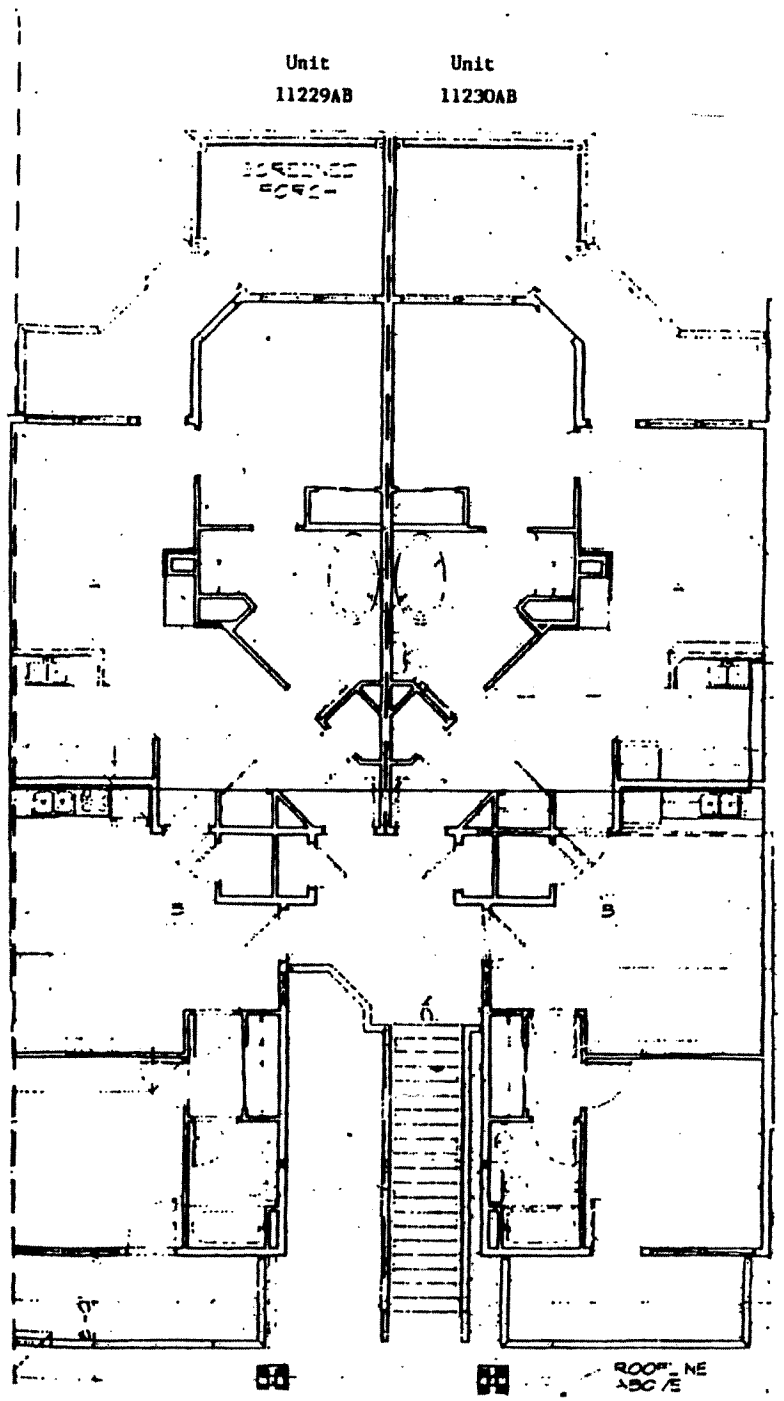
BK D660 PG 579


Unit
11133AB
Unit
11132 AB
24-0
24-0
BK D660
580

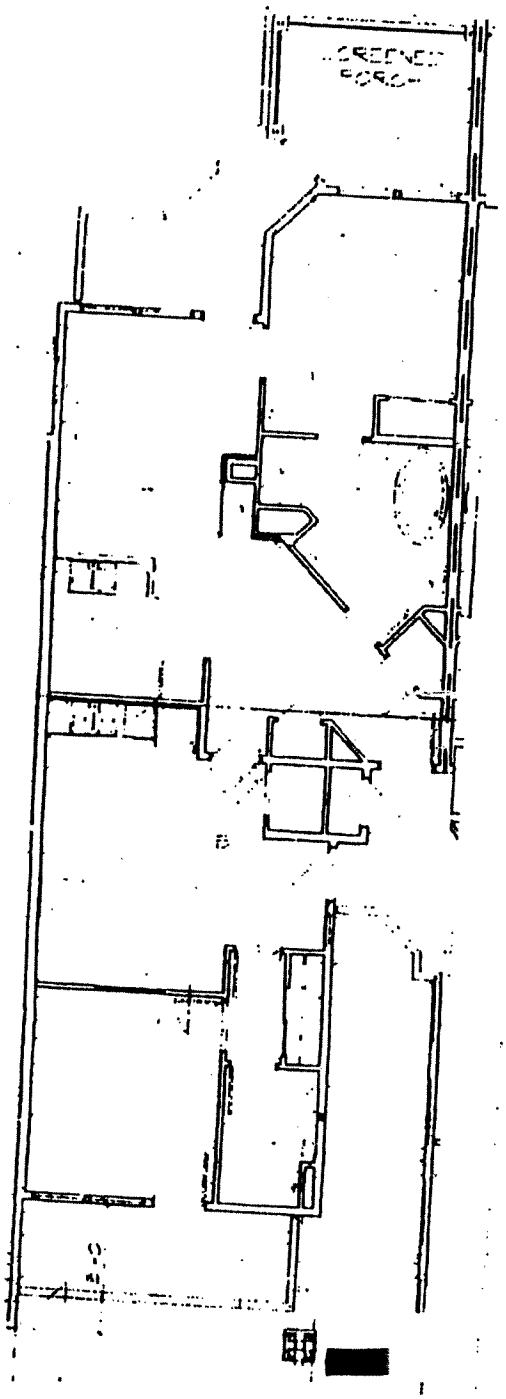


BK D660 PG 581


Unit
11227AB
Unit
11228AB
BK 1660 PG 582


Unit
11229AB
Unit
11230AB
ROOF LINE
ABOVE

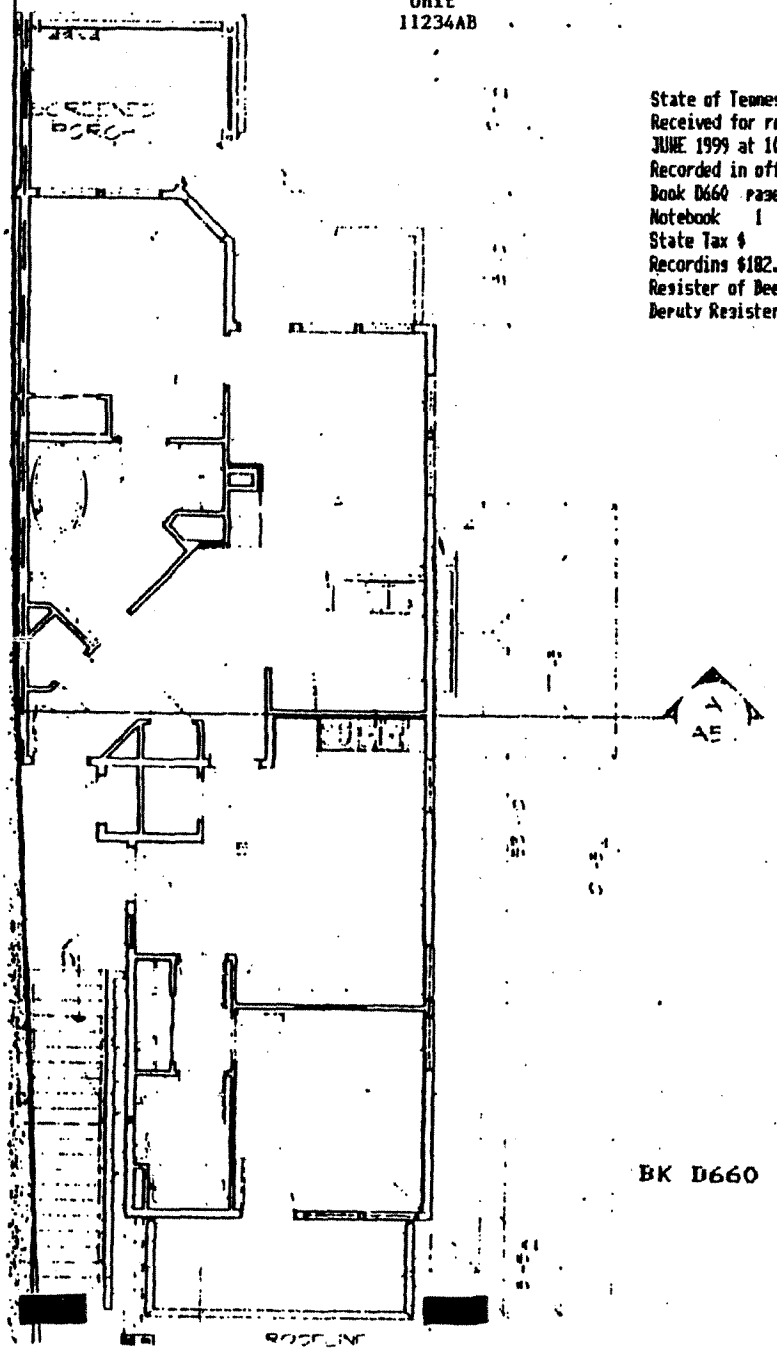
Unit
11231AB



BK D660 PG 584

BK D560 PG 585
Unit
11232AB
Unit
11233AB

Unit
11234AB



State of Tennessee, County of SEVIER
Received for record the 18 day of
JUNE 1999 at 10:00 AM. (REC# 16945)
Recorded in official records
Book D660 pages 542- 586
Notebook 1 Page 351
State Tax $ .00 Clerks Fee $ .00,
Recording $182.00, Total $ 182.00,
Register of Deeds SHERRY ROBERTSON
Deputy Register NONTIE

BK D660 PG 586

10-23-12

IN THE CHANCERY COURT FOR SEVIER COUNTY, TENNESSEE

BENT CREEK GOLF VILLAGE CONDOMINIUM ASSOCIATION, INC.,	)	
Petitioner,	)	
	)	**No. 11-5-225**
v.	)	
UTILITY MANAGEMENT REVIEW BOARD AND WEBB CREEK UTILITY DISTRICT,	)	
Respondents.	)	

RESPONDENTS' JOINT MOTION FOR REMAND

The Attorney General and Reporter, on behalf of Respondent Utility Management Review Board ("UMRB"), and Respondent Webb Creek Utility District ("Webb Creek"), pursuant to Tenn. R. Civ. P. 1, jointly move the Court for an order remanding this action to the UMRB for a redetermination of water rates for Petitioner Bent Creek Golf Village Condominium Association, Inc. ("Bent Creek") consistent with the Court of Appeals' decision in the companion case of *Outdoor Resorts at Gatlinburg, Inc. v. Utility Management Review Board*, 2012 WL 1267858 (Tenn. Ct. App. Apr. 13, 2012), *perm. app. denied* (Tenn. Sup. Ct. Sept. 18, 2012). The grounds for this motion are as follows:

1. On May 2, 2011, Bent Creek filed a Petition for Writ of Certiorari under Tenn. Code Ann. § 7-82-702 requesting this Court to review an order of the UMRB approving the water rates charged to it by Webb Creek.

2. Pursuant to Tenn. Code Ann. § 7-82-702(7), this Court's review of the UMRB's order is by common law certiorari.

EXHIBIT
B

3. On March 16, 2012, Bent Creek filed and served its Brief in Support of Bent Creek Golf Village Condominium Association, Inc.'s Petition for Writ of Certiorari. One prime argument raised by Bent Creek is that there is no material evidence in the Administrative Record to support the UMRB's decision that the water rates being charged to Bent Creek are reasonable. (Bent Creek Brief pp. 4-5, 8).

4. On April 13, 2012, the UMRB filed and served its Brief of Utility Management Review Board in Opposition to Petition for Writ of Certiorari by Bent Creek Golf Village Condominium Association, Inc. Relying on this Court's judgment in *Outdoor Resorts at Gatlinburg, Inc. v. Utility Management Review Board, et al.*, Case No. 9-11-501 (Sevier County Chancery Ct. June 6, 2011), the UMRB argued that the Rate Study conducted by Raftelis Financial Consultants, Inc. is material evidence supporting the UMRB's decision to find the water rates reasonable. (UMRB Brief pp. 15-17) (a copy of this Court's decision in *Outdoor Resorts* is attached as Exhibit E to the UMRB's Brief).

5. On April 16, 2012, Webb Creek filed and served its Brief of Webb Creek Utility District in Opposition to Petition for Writ of Certiorari by Bent Creek Village Condominium Association, Inc., wherein Webb Creek also argued that the Raftelis Rate Study constituted material evidence supporting the UMRB's decision in this case. (Webb Creek Brief pp. 9-10).

6. *Outdoor Resorts* is a companion case to this one involving a customer's complaint to the UMRB about the reasonableness of Webb Creek's sewer rates. On appeal from the UMRB, this Court denied Outdoor Resorts' petition for writ of certiorari after concluding that the Raftelis Rate Study constituted sufficient material evidence to affirm the UMRB's sewer rate decision in that case. Since the UMRB relied on the very same Raftelis Rate Study in making its rate decisions in both cases, the UMRB asserted that this Court should likewise conclude that the

Rate Study constitutes sufficient material evidence to affirm the UMRB's water rate decision in this case. (UMRB Brief p. 15).

7. The UMRB's brief noted that the *Outdoor Resorts* case was then under review by the Court of Appeals. (UMRB Brief p. 16 n. 4). After the brief was filed, the Eastern Section of the Court of Appeals released its opinion reversing this Court's decision in *Outdoor Resorts*. *See Outdoor Resorts at Gatlinburg, Inc. v. Utility Management Review Board*, 2012 WL 1267858 (Tenn. Ct. App. Apr. 13, 2012) (copy attached hereto as Exhibit A). The Court of Appeals held that the Raftelis Rate Study did not constitute "substantial and material evidence" to support the UMRB's decision. *Id.* at *5, *9.

8. Contrary to the UMRB's argument that it had no authority to order refunds of rate payments, the Court of Appeals further held in *Outdoor Resorts* that the UMRB is authorized to establish a temporary "pendente lite" rate and order payments of the difference between the temporary rate and a permanent rate established after its final hearing of a customer's rate protest under Tenn. Code Ann. § 7-82-702. *Id.* at *5-*6, *9. Like *Outdoor Resorts*, Bent Creek has also requested a refund of excess water rates charged to it by Webb Creek. (Petition, Prayer for Relief ¶ 4).

9. On May 17, 2012, the Court entered an order staying these proceedings pending the UMRB's application to the Tennessee Supreme Court for permission to appeal the Court of Appeals' decision in *Outdoor Resorts.* On September 18, 2012, the Tennessee Supreme Court denied the applications for permission to appeal filed by the UMRB and Webb Creek. A copy of that order is attached hereto as Exhibit B.

10. Accordingly, *Outdoor Resorts* has been remanded for redetermination of rates for Outdoor Resorts at Gatlinburg, Inc. in accordance with the Court of Appeals' decision.

11. In light of the Court of Appeals' holding in *Outdoor Resorts* regarding the insufficiency of the Raftelis Rate Study relied on by the UMRB in this case, as well as its holding delineating the scope of the UMRB's refund authority, the UMRB and Webb Creek request that this action also be remanded to the UMRB for redetermination of Bent Creek's water rates consistent with the Court of Appeals' decision in *Outdoor Resorts*.

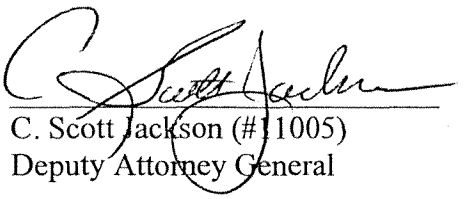
12. Under Tenn. R. Civ. P. 1, Tennessee courts are to exercise their civil jurisdiction and construe the rules "to secure the just, speedy, and inexpensive determination of every action." In common law certiorari actions, the reviewing court is generally limited to vacating the illegal decision and remanding the matter to the agency to make a legally supportable decision. *421 Corp. v. Metro. Gov't of Nashville and Davidson County*, 36 S.W.3d 469, 474 (Tenn. Ct. App. 2000). In light of the Court of Appeals' decision in *Outdoor Resorts* and the Tennessee Supreme Court's denial of the UMRB's application for permission to appeal that decision, the UMRB and Webb Creek are agreeing to such a remand of this action.

13. On establishing Bent Creek's water rate on remand, the UMRB will follow the Court of Appeals' instructions for remand of *Outdoor Resorts*, including, but not limited to, the Court of Appeals' instruction to treat the current rate approved by the UMRB as a temporary or "pendent lite" rate with Webb Creek refunding to Bent Creek the difference between the amount billed and the amount owed if the new rate determined on remand is lower than the temporary rate, or with Bent Creek paying Webb Creek the difference between the amount billed and the amount owed if the new rate determined on remand is higher than the temporary rate.

14. In support of this motion, the movants rely on the Administrative Record and all the pleadings and papers filed in this action.

Wherefore, the UMRB and Webb Creek request that this action be remanded to the UMRB for redetermination of Bent Creek's water rates consistent with the *Outdoor Resorts* decision.

Respectfully submitted,



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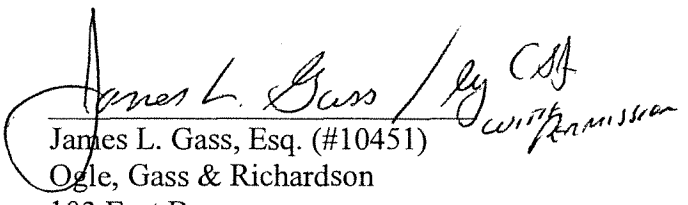

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CERTIFICATE OF SERVICE

I certify that an exact copy of the foregoing Motion was served by electronic mail and by first-class U.S. Mail, postage prepaid, upon the following:

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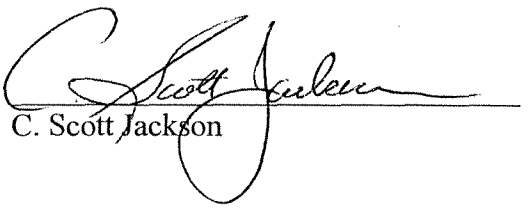
This 23rd day of October, 2012.



C. Scott Jackson

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Only the Westlaw citation is currently available.

SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee.
OUTDOOR RESORTS AT GATLINBURG, INC.
v.
UTILITY MANAGEMENT REVIEW BOARD et al.

No. E2011–01449–COA–R3–CV.
March 6, 2012 Session.
April 13, 2012.
Application for Permission to Appeal Denied by Supereme Court Sept. 18, 2012.

Appeal from the Chancery Court for Sevier County; No. 09–11–501; Telford E. Forgety, Jr., Chancellor.
L. Marshall Albritton and Jessica Van Dyke, Nashville, Tennessee, for the appellant, Outdoor Resorts at Gatlinburg, Inc.

Robert E. Cooper, Jr., Attorney General and Reporter; William E. Young, Solicitor General; Ann Louise Vix, Senior Counsel; and Joe Shirley, Senior Counsel, Nashville, Tennessee, for the appellee, Utility Management Review Board.

James L. Gass and Matthew L. Fink, Sevierville, Tennessee, for the appellee, Webb Creek Utility District.

CHARLES D. SUSANO, JR., J., delivered the opinion of the Court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J., joined.

OPINION

CHARLES D. SUSANO, JR., J.

***1** Webb Creek Utility District ("WCUD") is a public utility district that, for the most part, furnishes potable water to its customers and processes their sewage. One of its customers is the plaintiff, Outdoor Resorts at Gatlinburg, Inc., the operator of a large campground for campers and recreational vehicles ("RVs"). Outdoor is somewhat unique in that it has its own water supply. It is a "sewer only" customer. From 1985 until 2008, the rate WCUD charged Outdoor was set by contract, which either party could terminate with sufficient notice. In 2008, WCUD terminated the contract and notified Outdoor that it would be charged based upon the number of campsites multiplied by a standard minimum rate per campsite. Outdoor objected to the rate. WCUD held a hearing and adopted the proposed rate over Outdoor's objection. Outdoor asked for a hearing before the Utility Management Review Board ("the UMRB"). While the matter was pending before the UMRB, WCUD conducted a rate study, following which it proposed still another rate for Outdoor that was less than the objected-to rate, but more than the rate Outdoor had been paying under the terminated contract. The UMRB approved the new rate. Outdoor demanded a refund of overpayments made by it under the higher rate; the UMRB denied Outdoor's request, stating that it lacked authority to order a refund. Outdoor also asked the UMRB to compel the individual who prepared the rate study to appear for a deposition. The UMRB denied the discovery request upon concluding that it did not have the authority to order such a deposition. Outdoor sought review in the trial court by way of a common law writ of certiorari on several grounds, including lack of material evidence to support the new rate, denial of due process in not compelling a deposition, and its characterization of UMRB's action as illegal and arbitrary. The trial court allowed Outdoor to take the deposition of the author of the rate study; the court later admitted the deposition testimony into evidence. Nevertheless, the court concluded that the UMRB's decision was supported by material evidence and dismissed Outdoor's complaint. Outdoor appeals. We hold that Outdoor was not denied due process, but we vacate the trial court's judgment because we hold that neither the first post-contract rate established by WCUD nor the newly adopted rate approved by the UMRB is supported by material evidence. Further, we conclude that the UMRB had authority to order a refund of the overpayments.

I.

Outdoor operates a vacation campground in Gatlinburg. There are 376 campsites in the campground. Each campsite has sewer access. In addition to the campsites, Outdoor has an estimated eight additional sewer feeds from the office and amenities for a total of 384. Until 1985, Outdoor processed its own sewage.

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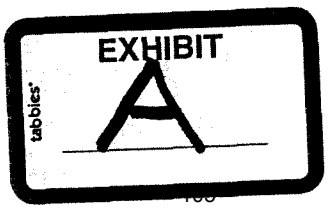

In 1985, Outdoor entered into a customer contract with WCUD. To achieve the connection, WCUD installed a manhole close to the boundary of the campground, and Outdoor ran a trunk-line from its existing system to the manhole. Outdoor is responsible for all maintenance on the system up to the point of connection to WCUD. There is no meter for the individual campsites, and there was no meter at the manhole until about the time this dispute began. Under the 1985 contract, Outdoor was billed for 400 campsites at a set rate per campsite. As of February 2008, the rate per site was $21.86 ("the Contract Rate"). Outdoor's monthly bill was $8,744.

*2 In February of 2008, WCUD gave Outdoor notice that it was terminating the 1985 contract. It is undisputed that WCUD had the right to do so. This dispute involves, rather, the legality of billing rates instituted by WCUD upon termination of the contract. WCUD began billing Outdoor at a rate of $45.54 per campsite, multiplied by 384 sites. The new rate was based on the minimum monthly rate charged to individual customers, such as residential customers, for a single sewer service. The effect was to increase Outdoor's monthly bill from $8,744 to $17,487.36, just 64 cents short of doubling the bill.

Outdoor objected to the new billing rate of $45.54 and asked for a hearing pursuant to Tenn.Code Ann. § 7–82–402(a)(1)(2011).[FN1] At Outdoor's request, WCUD's board of commissioners held a hearing on Outdoor's challenge. The proof at that hearing established that, at the time of the hearing, no "cost-of-service" or "rate study" had been performed for WCUD as a basis for its charges to customers. The rates had been adjusted in 2004 based on what was necessary to service WCUD's debt on its combined water and sewer operations. WCUD experienced losses in 2005 as a result of losing several large customers, partially as a result of the impact of a slowed economy on the local tourism industry. In that same time frame, WCUD was declared a "financially distressed" utility and instituted a new schedule of rates as part of a financial recovery plan.[FN2] Up until approximately six months before the hearing, there had been no measurements made of the flow into WCUD's sewer system from Outdoor's trunk-line. Because, Outdoor is a "sewer-only" customer, there is no way to determine its usage without measuring the flow into WCUD's system at the connection point. WCUD's consulting engineer admitted that the new rate was not based on usage. It was based on the belief that it was fair to charge Outdoor the same rate per campsite as the minimum rate for residential users.

FN1. The statute as codified in 2011 remains unchanged from 2008. It provides:

> Within thirty (30) days of the date on which the statement [of the water rates being charged] provided for in § 7–82–401 is published, any water user of the district may file with the commissioners of the district a protest, giving reasons why, in the opinion of the water user, the rates so published are too high or too low. Within a period of fifteen (15) days after the end of this thirty-day period during which such protest may be filed, the commissioners shall notify each such protestant of a hearing to be held by the commissioners on such protests as may have been filed within the thirty-day period prescribed. Upon the hearing date so fixed, which shall be some date within a period of sixty (60) days after giving such notices to the protestants, all such protests shall be heard together by the commissioners. After hearing and examining statements, exhibits and arguments of the protestants or their counsel, the commissioners shall make and spread upon the minutes of the commission their finding as to the reasonableness or unreasonableness of the published rates, and, at the same time, the commission may increase or decrease such rates upon a finding that they are too low or too high, as the case may be.

FN2. WCUD's consultant testified that upon becoming financially distressed, WCUD was legally required to formulate a recovery plan. *See* Tenn.Code Ann. § 7–82–403 (2011)(rates must be sufficient for the utility to pay expenses and debts).

Outdoor's expert testified that it was unfair to charge Outdoor the same rate for each campsite as for each residential user. Rather, because Outdoor's collection system is self-contained and maintained entirely by Outdoor, the expert testified that the rate should be a "wholesale" rate. Further, Outdoor's ex-

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pert testified that, in his professional opinion, a utility district cannot set a fair and reasonable rate without performing a cost-of-service study. Outdoor's expert also believed that the sewer-only customers were being charged unfairly to subsidize the water customers because the water operations had consistently lost money and the sewer operations, at least until 2004, had generated money. WCUD's commissioners voted to overrule Outdoor's challenge and continue billing at the rate of $45.54 per unit.

Outdoor exercised its statutory right, pursuant to Tenn.Code Ann. § 7-82-702(7)(2011),[FN3] to challenge WCUD's rate determination before the UMRB. The UMRB held its first of several hearings on February 5, 2009. It allowed each side 20 minutes to present its case. In addition to the evidence presented in the hearing before WCUD's commissioners, Outdoor presented evidence that it was being treated differently from other campgrounds. Arrow Creek Campground had 60 campsites, but it was charged only for three connections. It has three water meters. Smoky Bear Campground has 31 campsites, but it is charged based on two water meter connections. Outdoor's expert testified that, based upon the flow data gathered for Outdoor, it was being overcharged; it was receiving less than 50% of the service for which it was paying. One aspect of this was the nature of Outdoor's sewer usage through campsites that are often vacant, especially in the winter months. WCUD again admitted that no formal cost-of-service study had been performed but offered evidence of its budget constraints as justification for the rates being charged. WCUD also presented evidence that throughout Outdoor's existence, Outdoor had experienced "in-flow" problems, meaning that ground water flows into Outdoor's system during times of heavy rainfall. This water becomes part of WCUD's treatment burden. In fact, according to witnesses presented by WCUD, in-flow problems, including Outdoor's in-flow, was the reason WCUD's plant was forced to expand in 2004 and incur significant debt.

FN3. The statute grants the UMRB the

power and authority to:
* * *

Review any decision of any utility district under § 7-82-402 ... upon simple written request of any utility district customer or any member of the public within thirty (30) days after such decision, with any judicial review of any decision of the board thereon, to be held by common law certiorari within the county of the utility district's principal office.

*3 Based on the agreement of the parties, the UMRB voted to defer its decision and encouraged the parties to work toward a possible resolution, including the discussion of a rate study.

The parties next came before the UMRB on April 2, 2009. WCUD announced that it was proceeding with a rate study and that it had chosen a company to perform the study. Outdoor requested that the UMRB reinstate the Contract Rate while the study was being performed and that the UMRB direct the company conducting the rate study to consult with Outdoor's expert. The UMRB denied both requests and rescheduled the matter for its August meeting.

WCUD submitted its rate study in advance of the August meeting. Outdoor requested and was granted a continuance to allow its expert to review the rate study. The final hearing before the UMRB was held on October 1, 2009. The chairman announced that each side would be given 10 minutes to argue the merits of its position "so we don't re-litigate the case." Neither party objected to the time constraint. The focus of the hearing was the recently conducted rate study. The rate study recommended an increase in the minimum charge for *residential users* from $45.54 to $59.41 with an additional usage charge of $8.84 per thousand gallons for usage above 3000 gallons. The study determined that usage per unit by Outdoor was only approximately 62.5 % of the usage of a residential customer. Therefore, the study recommended treating Outdoor as a "luxury campground" to be billed at a new rate of $37.13 per month with an additional usage charge of $8.84 per thousand gallons for usage above 1,650 gallons.

Outdoor attacked the study as being based on flawed financial information and flawed usage data. The usage data for Outdoor's campground was based on readings from a flow meter WCUD installed in February 2008. The data included the time frame of February 2008 through May 2009. However, at the instruction of WCUD, the preparer of the study excluded five months of data that reflected the lowest

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usage for Outdoor, those being the months of November 2008 through March 2009. This was despite WCUD's determination, as stated in the minutes of its April 2009 meeting, that the meter was accurately reporting flow on 30 minute intervals. WCUD installed a new meter in May 2009 that began recording usage significantly higher than the previous meter. As to the financial figures underlying the rate study, Outdoor pointed out that there was no substantiation in the study of the fixed versus variable costs and of sewer versus water operations. Outdoor also objected to an unexplained financial reserve account created for the sewer operations. There was no such account created for the water operations. Outdoor further objected that it had asked to take the deposition of the consultant who had prepared the rate study but WCUD had refused to make the consultant available. Outdoor requested that the UMRB issue a subpoena compelling the consultant to appear and give a deposition. Outdoor did not ask that the expert be compelled by subpoena to appear at the hearing.

*4 To counter Outdoor's objections to the flow data, WCUD proposed that the UMRB approve the new rate structure but "delay the implementation of the volume charge based on the lack of sufficient, reliable historical flow data that would be necessary to implement such a charge." In the course of asking for the adoption of the new rate, WCUD acknowledged that the $45.54 rate was "arbitrary" but suggested that the Contract Rate was also arbitrary and that the proposed rate would be a step "in the right direction." Outdoor requested a return to the Contract Rate and for a refund of that portion of the payments made by it that exceeded the Contract Rate.

The UMRB denied Outdoor's request for a deposition. It stated:

> The UMRB is authorized to subpoena persons to appear at hearings before the UMRB; but the UMRB finds that it does not have the authority, when hearing a complaint under Tenn.Code Ann. § 7–82–702(7), to require the parties to participate in discovery, including to appear at depositions to be conducted outside the hearing.

Also, the UMRB found "that it does not have the authority to order refunds to customers in connection with its review of a protest under Tenn.Code Ann. § 7–82–702(7)." The UMRB approved the application of the new minimum rate of $37.13 to Outdoor effective January 1, 2010, and delayed "the adoption of the volume charge to [Outdoor] for wastewater flows until sufficient, reliable flow data can be obtained."

Outdoor filed a timely petition in the chancery court for a common law writ of certiorari. The chancery court allowed Outdoor to take the deposition of the consultant who prepared the rate study, "to discover any information that the [UMRB] acted arbitrarily, capriciously or illegally, not only information relating to bias or corruption." Outdoor took the deposition of the consultant, Mr. Bart Kreps. Mr. Kreps confirmed that the flow data was limited and that some data was excluded at the direction of WCUD. He also admitted that the rate study included large unexplained sewer cost increases. He also testified that the data underlying the study was not contained in the study itself, including any documentation regarding allocation of fixed and variable costs and allocation of costs between water and sewer operations. Further, Mr. Kreps testified that without reviewing additional data that was not contained in the rate study, a person could not determine that the rate set for Outdoor was just and reasonable.

The trial court dismissed Outdoor's petition in an order that incorporated a memorandum opinion transcribed from the court's bench ruling. Among other things, the court held that the denial of discovery did not violate procedural due process and that the rate study alone supplied material evidence to support the UMRB's decision. Outdoor filed a timely notice of appeal.

II.

The issue, as stated verbatim in Outdoor's brief is

> whether the Chancery Court ... erred when it failed to find that the [UMRB] acted illegally, arbitrarily, or without material evidence when it (1) affirmed sewer service rate increases charged by [WCUD] to [Outdoor], (2) failed to find that [Outdoor] had been charged an unjust and unreasonable rate for a period of time and was entitled to a refund, and (3) denied [Outdoor] the right to discover the underlying support and basis for the rate study that [WCUD] presented to the [UMRB] in support of its second rate study.

III.

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***5** The method of judicial review of a decision of the UMRB is "by common law certiorari." Tenn.Code Ann. § 7–82–702(7). In *Harding Academy v. Metropolitan Government of Nashville and Davidson County*, 222 S.W.3d 359 (Tenn.2007), the Supreme Court stated the following:

> This writ provides a limited scope of review by the courts. Review of [a board's] action in this case is limited to determining whether the board exceeded its jurisdiction, followed an unlawful procedure, acted illegally, arbitrarily, or fraudulently, or acted without material evidence to support its decision. In proceedings involving a common law writ of certiorari, illegal, arbitrary, or fraudulent actions include: 1) the failure to follow the minimum standards of due process; 2) the misrepresentation or misapplication of legal standards; 3) basing a decision on ulterior motives; and 4) violating applicable constitutional standards....
>
> Our review is limited to the record produced by the [board] unless the reviewing court has permitted the introduction of additional evidence on the issue of whether the board exceeded its jurisdiction or acted illegally, capriciously, or arbitrarily. We may not reweigh the evidence, examine the intrinsic correctness of the decision being reviewed, or substitute our judgment for that of the local officials. If no evidence supports the action of the administrative board, then that action is arbitrary....

Id. at 363 (citations omitted). An agency decision that is not supported by substantial and material evidence is, by definition, arbitrary and capricious. *Jackson Mobilphone Co. v. Tennessee Public Service Comm'n*, 876 S.W.2d 106, 110 (Tenn.Ct.App.1993)(*citing C.F. Indus., Inc. v. Tennessee Public Serv. Comm'n*, 599 S.W.2d 536, 540 (Tenn.1980); *Pace v. Garbage Disposal Dist. of Washington County*, 54 Tenn.App. 263, 266, 390 S.W.2d 461, 463 (1965)). We review an administrative agency's determination on an issue of law de novo, with no presumption of correctness. *Harding*, 222 S.W.3d at 363.

We must make a "searching and careful inquiry into the record" to determine whether the administrative decision is supported by substantial and material evidence. *Miller v. Tennessee Board of Nursing*, 256 S.W.3d 225, 229 (Tenn.Ct.App.2007). We may reject the administrative agency's "factual findings only if a reasonable person would necessarily draw a different conclusion from the record ." *Id.* Stated another way, we are allowed to consider all proof "that fairly detracts from the agency's decision," but we still may not reverse the agency if there is evidence "which a reasonable mind might accept to support a rational conclusion and which furnishes a reasonably sound basis for the action being reviewed." *Ruff v. Neeley*, No. W2006–01192–COA–R3–CV, 2006 WL 3734641 at *7 (Tenn. Ct.App. W.S., filed Dec. 20, 2006).

IV.

A.

We will begin with the issue of whether the trial court erred in affirming the UMRB's determination that it lacked authority to order a refund of overpayments. The question of whether the UMRB lacked authority to order a refund is a question of law that we review de novo. *See Harding Academy*, 222 S.W.3d at 363. We hold that the UMRB did, in fact, have authority to order a refund of overpayments made while Outdoor's challenge was pending.

***6** The legislature has explicitly granted the UMRB the "power and authority" to "[r]eview any decision of any utility district under § 7–82–402 [with regard to a utility district's rates and charges]." Tenn.Code Ann. § 7–82–702(7). It may "[e]xercise all the powers and take all the actions necessary, proper or convenient for the accomplishment of [that purpose]" and other enumerated purposes. *Id.* at (11). The only cases offered to support the proposition that the UMRB is without power to order a refund of over-billings are *A.A.R.P. v. Tenn. Public Service Comm'n*, 896 S.W.2d 127 (Tenn.Ct.App.1994) and *South Bell Telephone Co. v. Tenn. Public Service Comm'n*, 675 S.W.2d 718 (Tenn.Ct.App.1984). Both cases stand for the proposition that an administrative utilities board does not have authority "to order refunds *except* in very limited circumstances." *A.A.R.P.*, 896 S.W.2d at 134 (emphasis added) (*citing South Bell Telephone*, 675 S.W.2d at 718). The present case falls within one of those exceptions as it was explained in *South Bell Telephone*. A board retains inherent power over monies collected under rates that

> were made effective for the period while the case was pending before the board and before final judgment of the board. A similar order by a court would be termed a "pendente lite" order.

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South Bell Telephone, 675 S.W.2d at 719. The present matter first came before the UMRB on Outdoor's challenge of the $45.54 rate per campsite. Even though the UMRB did not approve the rate or explicitly adopt it as a "pendente lite" or "temporary" rate, by its deferral of action it allowed collections at that rate. There was never a time that Outdoor agreed to the $45.54 rate. Thus, we hold that this case falls within the powers explicitly granted to the UMRB and within a recognized exception to the general rule against refunds.

Outdoor seeks a refund of "the difference between the $45.54 rate and the rate that had been negotiated previously," *i.e.,* the Contract Rate. Even though the chairman of WCUD admitted that the $45.54 rate was arbitrary, UMRB argues that it was fair and reasonable to refuse a refund because it would not be fair and reasonable to order a refund based on the Contract Rate. We agree that any refund should not be based upon the Contract Rate. Once WCUD terminated the contract, Outdoor lost any right to pay based on that rate. Just as there is no evidence to support the fairness and reasonableness of the $45.54 rate, there is no evidence to support the fairness and reasonableness of the Contract Rate. The refund must be based upon a fair and reasonable rate, whatever that is determined to be.

B.

We move now to Outdoor's contention that it was denied due process by the Board's refusal to issue a subpoena compelling the deposition of Mr. Kreps. Outdoor concedes that due process is not necessarily a perfect, or error-free process, and agrees that the basic requirement is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)(*quoting Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965)). Outdoor asserts "[t]hat did not happen in this case." The process that is "due" varies with the situation. *Id.* at 334; *Phillips v. Board of Regents*, 863 S.W.2d 45, 50 (Tenn.1993). In *Phillips,* the Supreme Court noted:

> *7 In determining what process is due in a particular situation, three factors must be considered: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of the interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and finally, (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 50 (citing *Mathews*, 424 U.S. at 335). "Moreover, [the court may consider whether] the component parts of the process are designed to reach a substantively correct result. Elaborate procedures at one stage may compensate for deficiencies at other stages." *Id.* (citation omitted).

Under the above guidelines, it is clear to us that Outdoor's due process argument is without merit. First, we note that Outdoor could clearly have asked to have Mr. Kreps subpoenaed to appear and answer questions at the final hearing. It is true that the UMRB limited the parties to 10 minutes per side at the final hearing, but the record does not reflect any objection by Outdoor to the time limitation. Even though Outdoor was denied discovery before the UMRB, it was allowed discovery in the trial court. Both stages are part of the "process" defined by the statutory scheme; thus, the more elaborate procedures in the trial court ultimately allowed Outdoor to have its questions answered. Moreover, Outdoor does not have a vested interest in any particular rate structure. *Consumer Advocate Division v. Bissell*, No. 01-A-01-9601-BC00049, 1996 WL 482970 at *4 (Tenn. Ct.App. M.S., filed Aug 28, 1996). "Ratemaking is a legislative function." *Id.* The "private interest affected" for Outdoor is simply the right to a fair and reasonable rate based on material evidence subject to review as provided in Tenn.Code Ann. § 7-82-702(7). In short, without deciding whether or not the UMRB had the power to order Mr. Krebs to sit for a deposition, we hold that the failure to so order did not violate Outdoor's due process rights.

C.

We consider now the final question of whether or not the revised rate of $37.13 per site for 384 sites is based on material evidence. The parties agree that the rates set by a public utility must be "just and reasonable." *CF Industries v. Tennessee Public Service Comm'n*, 599 S.W.2d 536, 542 (Tenn.1980), *see* Tenn.Code Ann. § 7-82-403 ("district shall prescribe and collect reasonable rates"), § 7-82-702(19) (UMRB to review "the justness and reasonableness of fees or charges").

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The initial hearing before the UMRB, held on February 5, 2009, concerned only the reasonableness of the $45.54 rate per campsite. The new rate of $37.13 was strictly a product of the rate study. It was first considered by the UMRB in the October hearing. There was no testimony explaining the rate study. None of the underlying documentation was supplied to the UMRB. Thus, the UMRB's approval of the rate of $37.13 was necessarily based on the rate study alone. The trial court held that the rate study alone constitutes material evidence. We agree that this is normally true, but the record before us in this case will not allow that conclusion here. The person responsible for preparing the rate study, Mr. Kreps, made the following concessions in his deposition which we have paraphrased for brevity:

> ***8** It is not just and reasonable for a customer to be charged rates that exceed their cost-of-service or usage.
>
> The projected maintenance and operation costs of WCUD's sewer operations for 2010 reflect an increase of more than 50% from the costs recorded in 2009—$199,434 for 1999 versus $304,925 for 2010. There is nothing in the study to show that an increase of this magnitude is reasonable or reasonably allocated. The UMRB, or anyone reviewing the data for that matter, would have to assume that the increased costs were reasonably incurred and reasonably allocated.
>
> If he were doing a review for a customer to determine whether the rate being charged to the customer was just and reasonable, he would want supporting documentation for the rate study, including individual cost items. He would not be willing to simply assume that the underlying data justified the conclusions.
>
> The study supplied to the UMRB does not include enough information to allow a person reviewing the study alone to determine (1) the cost allocation between water and sewer, (2) the allocation of fixed and variable costs, and (3) budget items such as cost of labor, material, and insurance.
>
> The flow data supplied by WCUD was "one of the chief components for determining the rate" for Outdoor. It was the basis for concluding that Outdoor's usage was 62.5 percent of a residential customer. He was instructed by WCUD to exclude several months of flow data, including November and December 2008 and January 2009. He assumed that the exclusion was because of an in inaccurate meter but the data that was ultimately used came from the same meter. It would concern him to base a rate study on data obtained from an inaccurate flow meter. He was unwilling to testify that the nine months of data was sufficient basis for a rate study; it "would be reasonable [for a customer such as Outdoor] to want to see multiple years of data."
>
> Outdoor is the only "luxury campground" in the WCUD system. The 384 services for which it is being charged is greater than the number of total connections within WCUD's system. Outdoor is not receiving administrative, billing or maintenance services for the 384 campsites for which it is being billed. Outdoor is being treated different from other customers in that it is being billed for its "inflow and infiltration" from groundwater since it is being charged based on a meter that records flow into WCUD whereas other customers are being charged based on water usage and a system average.

In addition to these concessions, we note that other campgrounds are not being billed according to the number of campsites. Arrow Creek has approximately 60 campsites but it is receiving only 3 bills based on the number of water meters. Smokey Bear campground is being billed for two water meters even though it has over 30 campsites.

WCUD and the UMRB urge us to defer to the experience and expertise of the members of the UMRB. They suggest that, because of the collective experience and expertise of the members of the UMRB, they would know whether the figures used in the rate study are within the range of reasonable. "However, the observations of a regulatory board, even a board made up of persons with relevant expertise, cannot replace competent evidence." *Miller*, 256 S.W.3d at 231.

***9** We conclude that the decision of the UMRB to adopt the new rate of $37.13 for Outdoor effective January 1, 2010 is not supported by material evidence. The evidence that fairly detracts from the study includes the testimony of the preparer of the rate study which shows that any reasonable customer who has

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serious concerns about his or her sewer bill would not be satisfied without seeing the data that underlies the study. Further, it is clear that Mr. Kreps was not by any means comfortable with the limited flow data. WCUD virtually conceded that the flow data was unreliable and that more reliable data is needed. Further proceedings before the UMRB to determine a just and reasonable rate will be necessary after sufficient flow data is gathered. We are not holding that $37.13 per site is an unreasonable or unjust rate. That is not our responsibility in reviewing this case. We are simply holding that the rate study alone, which was the only evidence before the UMRB upon which the rate could have been confirmed, does not constitute material evidence in light of the evidence from the study's creator and other evidence, all of which detracts from accepting it at face value.

Our conclusion creates the need for some guidance as to what will happen with regard to billing until sufficient flow data is gathered to support a reliable rate study. We will address this issue pursuant to Tenn. R.App. P. 36(a) which allows us to "grant any relief" demanded by the case subject to some limitations not applicable here. The rate of $45.54 was arbitrary, as we have concluded, so Outdoor will not be billed based on this rate. We have further held that Outdoor will be entitled to a refund of the difference between the $45.54 rate and whatever is eventually determined to be a just and reasonable rate from the time it was instituted to the time WCUD adopted the rate of $37.13 on January 1, 2010.[FN4]

FN4. We are assuming that the new rate will be less than $45.54. In the event we are wrong, the UMRB may consider whether Outdoor will be responsible to pay the difference.

From January 1, 2010, until such time as the UMRB approves a new rate structure as just and reasonable, Outdoor shall be billed at the temporary, or "pendente lite" rate of $37.13. If the new rate approved by the UMRB is less than the temporary rate, WCUD shall refund to Outdoor the difference in the amount billed and the amount owed. If the new rate is higher than the temporary rate, Outdoor shall pay WCUD the difference in the amount billed and the amount owed.

V.

The judgment of the trial court is vacated. Costs on appeal are taxed to Webb Creek Utility District. This matter is remanded to the trial court for further proceedings consistent with this opinion.

Tenn.Ct.App.,2012.
Outdoor Resorts at Gatlinburg, Inc. v. Utility Management Review Bd.
Slip Copy, 2012 WL 1267858 (Tenn.Ct.App.)

END OF DOCUMENT

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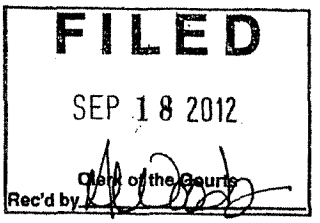
IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

OUTDOOR RESORTS AT GATLINBURG, INC. v. UTILITY MANAGEMENT REVIEW BOARD ET AL.

Chancery Court for Sevier County
No. 0911501



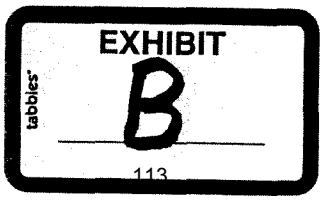
No. E2011-01449-SC-R11-CV

ORDER

Upon consideration of the applications for permission to appeal filed by both Utility Management Review Board and Webb Creek Utility District and the record before us, the applications are denied.

The opinion of the Court of Appeals is designated "Not For Citation" in accordance with Tennessee Supreme Court Rule 4(E).

PER CURIAM



IN THE CHANCERY COURT FOR SEVIER COUNTY, TENNESSEE

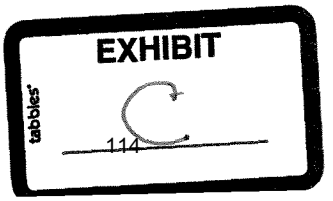
BENT CREEK GOLF VILLAGE CONDOMINIUM ASSOCIATION, INC.,	)	
Petitioner,	)	
	)	**No. 11-5-225**
v.	)	
UTILITY MANAGEMENT REVIEW BOARD AND WEBB CREEK UTILITY DISTRICT,	)	
Respondents.	)	

ORDER GRANTING RESPONDENTS' JOINT MOTION FOR REMAND

Before the Court is the Joint Motion for Remand filed by Respondent Utility Management Review Board ("UMRB") and Respondent Webb Creek Utility District ("Webb Creek"). The Court heard the Motion on December 7, 2012. Respondents request that this action be remanded to the UMRB for further proceedings to establish the water rates for Petitioner Bent Creek Golf Village Condominium Association, Inc. ("Bent Creek") in conformity with the Court of Appeals' decision in the companion case of *Outdoor Resorts at Gatlinburg, Inc. v. Utility Management Review Board, et al.*, No. E2011-01449-COA-R3-CV, 2012 WL 1267858 (Tenn. Ct. App. Apr. 13, 2012). Bent Creek did not oppose the Motion.

Based on the Motion, presentations of counsel, and the record as a whole, the Court finds that the Motion is well taken and should be granted. The Court therefore concludes that:

1. This action is hereby remanded to the UMRB for further proceedings to establish the water rates charged to Bent Creek by Webb Creek consistent with the Court of Appeals' decision in *Outdoor Resorts* and applicable law; and



2. The hearing of Bent Creek's Petition for Writ of Certiorari scheduled for May 15, 2013, is hereby canceled.

IT IS SO ORDERED.

TELFORD E. FORGETY, JR.
Chancellor

APPROVED FOR ENTRY:

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CHANCERY COURT
FILED
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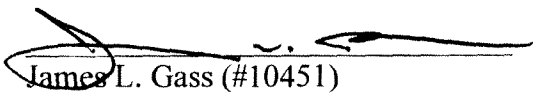

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UTILITY MANAGEMENT REVIEW BOARD

BENT CREEK GOLF VILLAGE	)
CONDOMINIUM ASSOCIATION, INC.	)
	)
v.	)
	)
WEBB CREEK UTILITY DISTRICT	)

BENT CREEK GOLF VILLAGE CONDOMINIUM ASSOCIATION, INC.'S PRODUCTION OF DOCUMENTS

Bent Creek Golf Village Condominium Association, Inc. ("Bent Creek"), by and through counsel, respectfully submits the following documents in support of its Complaint in accordance with the Scheduling Order set forth in correspondence dated August 20, 2013, from the State of Tennessee Comptroller of the Treasury, Office of General Counsel:

1. Fourth Amendment to Master Deed for Bent Creek Golf Village Horizontal Property Regime (Exhibit A to UMRB Complaint).

2. Respondent's Joint Motion for Remand in the lawsuit styled *Bent Creek v. Utility Management Review Board, et al.*, Sevier County Chancery Court Case No. 11-5-225 (Exhibit B to UMRB Complaint), including the Tennessee Court of Appeals Opinion in *Outdoor Resorts v. Utility Management Review Board, et al.*, No. E2011-01449-COA-R3-CV, 2012 WL 1267858 (Tenn. Ct. App. Sept. 18, 2012), which is attached as Exhibit A to the Motion for Remand.

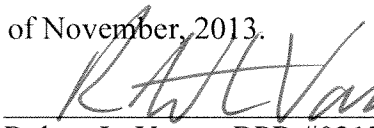
3. Order granting Respondents' Joint Motion for Remand in the lawsuit styled *Bent Creek v. Utility Management Review Board, et al.*, Sevier County Chancery Court Case No. 11-5-225 (Exhibit C to UMRB Complaint).

4. Cost of Service Analysis prepared by Richard W. Yarbrough, P.E. with C2RL, Inc. in Alcoa, Tennessee – attached hereto as collective Exhibit 4. Bent Creek reserves the right to supplement this document.

5. Bent Creek reserves the right to rely upon all documents produced and identified by Webb Creek.

6. Bent Creek reserves the right to supplements its production and identification of documents in accordance with the Scheduling Order.

Respectfully submitted this 15th day of November, 2013.



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Attorneys for Bent Creek Golf Village Condominium Association, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Complaint has been served upon the following counsel for the parties in interest herein via e-mail and by delivering same to the offices of said counsel, or by mailing same to the offices of said counsel by United States Mail with sufficient postage thereon to carry the same to its destination.

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Nashville, TN 37202-0207

This the 15th day of November, 2013.

Attorney

Webb Creek U. D. Water System Expenses
Base Allocation w/o Customer Costs

Expense Description	FY 2005	FY 2006	FY 2007	FY 2008	Base/Customer	Water Cost	
Operating Expenses							
Water System							
Water Purchase	$ 64,931	$ 59,267	$ 68,207	$ 69,102		$ 69,102	
Engineering	$ 637	$ 8,901	$ 1,542	$ 20,710	$ 20,710		
Truck	$ 4,676	$ 4,160	$ 5,552	$ 5,363	$ 5,363		
Maintenance	$ 13,262	$ 8,621	$ 7,477	$ 7,211	$ 7,211		
Rent	$ 1,570	$ 900	$ 900	$ 900	$ 900		
Salaries	$ 135,890	$ 146,500	$ 159,867	$ 129,127			
Meter servicing & reading Operations					$ 129,127		
Supplies	$ 9,285	$ 8,715	$ 17,098	$ 3,553	$ 3,553		
Utilities	$ 18,142	$ 14,554	$ 17,587	$ 20,082	$ 20,082		
General & Admin							
Health Insur & Retirement	$ 70,560	$ 78,220	$ 82,254	$ 83,530	$ 83,530		
General Insur	$ 21,250	$ 22,017	$ 23,105	$ 22,878	$ 22,878		
Legal & Acct	$ 16,687	$ 11,109	$ 13,357	$ 14,421	$ 14,421		
Office & Postage	$ 11,666	$ 8,831	$ 12,312	$ 9,443	$ 9,443		
Commissioners Fees	$ 2,211	$ 2,144	$ 4,221	$ 7,035	$ 7,035		
Licenses & Permits	$ 15,216	$ 16,583	$ 13,564	$ 12,416	$ 12,416		
Salaries	$ 25,524	$ 26,713	$ 27,453	$ 29,266	$ 29,266		
Misc	$ 7,284	$ 4,059	$ 11,936	$ 11,569	$ 11,569		
Depreciation	$ 60,075	$ 59,366	$ 52,779	$ 49,729	$ 49,729		
Nonoperating Expenses							
Interest	$ 3,892	$ 3,224	$ 1,329	$ -			
Amortization	$ 771	$ 771	$ 771	$ -			
Total Expenses	$ 483,529	$ 484,655	$ 521,311	$ 496,335	$ 427,233	$ 69,102	
Water Customers (year end)	404	446	477	536	536		
Cost per customer/mo				$ 77.17	$ 66.42		
Water Purchased (K gal)		30,690	32,471	33,026			
Cost per K gal				$ 15.03	$ 12.94	$2.09	
Water Sold (K gal)		26,247	27,680	27,691			
Cost per K gal				$ 17.92	$ 15.43		
Bent Creek cost/mo.				229.35	$ 1,394.88	$ 479.88	$ 1,874.76

EXHIBIT
4

Webb Creek U. D. Water System Expenses
Base Allocation with Customer Costs

Expense Description	FY 2005	FY 2006	FY 2007	FY 2008	Base/serv. unit	Customer Cost	Water Cost	
Operating Expenses								
Water System								
Water Purchase	$ 64,931	$ 59,267	$ 68,207	$ 69,102			$ 69,102	
Engineering	$ 637	$ 8,901	$ 1,542	$ 20,710	$ 20,710			
Truck	$ 4,676	$ 4,160	$ 5,552	$ 5,363	$ 3,000	$ 2,363		
Maintenance	$ 13,262	$ 8,621	$ 7,477	$ 7,211	$ 6,490	$ 721		
Rent	$ 1,570	$ 900	$ 900	$ 900	$ 900			
Salaries	$ 135,890	$ 146,500	$ 159,867	$ 129,127				
Meter servicing & reading						$ 20,000		
Operations					$ 109,127			
Supplies	$ 9,285	$ 8,715	$ 17,098	$ 3,553	$ 2,553	$ 1,000		
Utilities	$ 18,142	$ 14,554	$ 17,587	$ 20,082	$ 20,082			
General & Admin					$ -			
Health Insur & Retirement	$ 70,560	$ 78,220	$ 82,254	$ 83,530	$ 67,709	$ 15,821		
General Insur	$ 21,250	$ 22,017	$ 23,105	$ 22,878	$ 22,878			
Legal & Acct	$ 16,687	$ 11,109	$ 13,357	$ 14,421	$ 14,421			
Office & Postage	$ 11,666	$ 8,831	$ 12,312	$ 9,443	$ 6,000	$ 3,443		
Commissioners Fees	$ 2,211	$ 2,144	$ 4,221	$ 7,035	$ 7,035			
Licenses & Permits	$ 15,216	$ 16,583	$ 13,564	$ 12,416	$ 12,416			
Salaries	$ 25,524	$ 26,713	$ 27,453	$ 29,266	$ 19,266	$ 10,000		
Misc	$ 7,284	$ 4,059	$ 11,936	$ 11,569	$ 10,069	$ 1,500		
Depreciation	$ 60,075	$ 59,366	$ 52,779	$ 49,729	$ 44,756	$ 4,973		
Nonoperating Expenses					$ -			
Interest	$ 3,892	$ 3,224	$ 1,329	$ -	$ -			
Amortization	$ 771	$ 771	$ 771	$ -	$ -			
Total Expenses	$ 483,529	$ 484,655	$ 521,311	$ 496,335	$ 367,412	$ 59,821	$ 69,102	
Water Customers (year end)	404	446	477	536	577.9	536		
Cost per customer/mo				$ 77.17	$ 52.98	$ 9.30		
Water Purchased (K gal)		30,690	32,471	33,026				
Cost per K gal				$ 15.03		$ 1.81	$2.09	
Water Sold (K gal)		26,247	27,680	27,691				
Cost per K gal				$ 17.92		$ 2.16		
Bent Creek cost/mo.				229.35	$ 1,112.60	$ 9.30	$ 479.88	$ 1,601.78

Webb Creek U. D. Water System Expenses
Base Allocation w/o Customer Costs + Depreciation

Expense Description	FY 2005	FY 2006	FY 2007	FY 2008	Base/Customer	Water Cost	Deprec. Cost	
Operating Expenses								
Water System								
Water Purchase	$ 64,931	$ 59,267	$ 68,207	$ 69,102		$ 69,102		
Engineering	$ 637	$ 8,901	$ 1,542	$ 20,710	$ 20,710			
Truck	$ 4,676	$ 4,160	$ 5,552	$ 5,363	$ 5,363			
Maintenance	$ 13,262	$ 8,621	$ 7,477	$ 7,211	$ 7,211			
Rent	$ 1,570	$ 900	$ 900	$ 900	$ 900			
Salaries	$ 135,890	$ 146,500	$ 159,867	$ 129,127				
Meter servicing & reading								
Operations					$ 129,127			
Supplies	$ 9,285	$ 8,715	$ 17,098	$ 3,553	$ 3,553			
Utilities	$ 18,142	$ 14,554	$ 17,587	$ 20,082	$ 20,082			
General & Admin								
Health Insur & Retirement	$ 70,560	$ 78,220	$ 82,254	$ 83,530	$ 83,530			
General Insur	$ 21,250	$ 22,017	$ 23,105	$ 22,878	$ 22,878			
Legal & Acct	$ 16,687	$ 11,109	$ 13,357	$ 14,421	$ 14,421			
Office & Postage	$ 11,666	$ 8,831	$ 12,312	$ 9,443	$ 9,443			
Commissioners Fees	$ 2,211	$ 2,144	$ 4,221	$ 7,035	$ 7,035			
Licenses & Permits	$ 15,216	$ 16,583	$ 13,564	$ 12,416	$ 12,416			
Salaries	$ 25,524	$ 26,713	$ 27,453	$ 29,266	$ 29,266			
Misc	$ 7,284	$ 4,059	$ 11,936	$ 11,569	$ 11,569			
Depreciation	$ 60,075	$ 59,366	$ 52,779	$ 49,729	$ 43,764		$ 5,964.80	
Nonoperating Expenses								
Interest	$ 3,892	$ 3,224	$ 1,329	$ -				
Amortization	$ 771	$ 771	$ 771	$ -				
Total Expenses	$ 483,529	$ 484,655	$ 521,311	$ 496,335	$ 421,268	$ 69,102	$ 5,965	
Water Customers (year end)	404	446	477	536	536			
Cost per customer/mo				$ 77.17	$ 65.50			
Water Purchased (K gal)		30,690	32,471	33,026				
Cost per K gal				$ 15.03	$ 12.76	$2.09		
Water Sold (K gal)		26,247	27,680	27,691				
Cost per K gal				$ 17.92	$ 15.21			
Bent Creek cost/mo.				229.35	$ 1,375.41	$ 479.88	$ 497.07	$ 2,352.36

Webb Creek U. D. Water System.Expenses
Base Allocation with Customer Costs + Depreciation

Expense Description	FY 2005	FY 2006	FY 2007	FY 2008	Base/serv. unit	Customer Cost	Water Cost	Deprec. Cost	
Operating Expenses									
Water System									
Water Purchase	$ 64,931	$ 59,267	$ 68,207	$ 69,102			$ 69,102		
Engineering	$ 637	$ 8,901	$ 1,542	$ 20,710	$ 20,710				
Truck	$ 4,676	$ 4,160	$ 5,552	$ 5,363	$ 3,000	$ 2,363			
Maintenance	$ 13,262	$ 8,621	$ 7,477	$ 7,211	$ 6,490	$ 721			
Rent	$ 1,570	$ 900	$ 900	$ 900	$ 900				
Salaries	$ 135,890	$ 146,500	$ 159,867	$ 129,127					
Meter servicing & reading						$ 20,000			
Operations					$ 109,127				
Supplies	$ 9,285	$ 8,715	$ 17,098	$ 3,553	$ 2,553	$ 1,000			
Utilities	$ 18,142	$ 14,554	$ 17,587	$ 20,082	$ 20,082				
General & Admin					$ -				
Health Insur & Retirement	$ 70,560	$ 78,220	$ 82,254	$ 83,530	$ 67,709	$ 15,821			
General Insur	$ 21,250	$ 22,017	$ 23,105	$ 22,878	$ 22,878				
Legal & Acct	$ 16,687	$ 11,109	$ 13,357	$ 14,421	$ 14,421				
Office & Postage	$ 11,666	$ 8,831	$ 12,312	$ 9,443	$ 6,000	$ 3,443			
Commissioners Fees	$ 2,211	$ 2,144	$ 4,221	$ 7,035	$ 7,035				
Licenses & Permits	$ 15,216	$ 16,583	$ 13,564	$ 12,416	$ 12,416				
Salaries	$ 25,524	$ 26,713	$ 27,453	$ 29,266	$ 19,266	$ 10,000			
Misc	$ 7,284	$ 4,059	$ 11,936	$ 11,569	$ 10,069	$ 1,500			
Depreciation	$ 60,075	$ 59,366	$ 52,779	$ 49,729	$ 38,791	$ 4,973		$ 5,964.80	
Nonoperating Expenses					$ -				
Interest	$ 3,892	$ 3,224	$ 1,329	$ -	$ -				
Amortization	$ 771	$ 771	$ 771	$ -	$ -				
Total Expenses	$ 483,529	$ 484,655	$ 521,311	$ 496,335	$ 361,447	$ 59,821	$ 69,102	$ 5,964.80	
Water Customers (year end)	404	446	477	536	577.9				
Cost per customer/mo				$ 77.17	$ 52.12	$ 9.30			
Water Purchased (K gal)		30,690	32,471	33,026					
Cost per K gal				$ 15.03		$ 1.81	$2.09		
Water Sold (K gal)		26,247	27,680	27,691					
Cost per K gal				$ 17.92		$ 2.16			
Bent Creek cost/mo.				229.35	$ 1,094.54	$ 9.30	$ 479.88	$ 497.07	$ 2,080.79

WEBB CREEK UTILITY DISTRICT

FINAL REPORT

Water & Wastewater Rate & Cost of Service Study

July 16, 2009

RFC
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July 16, 2009

Mr. Robert Vick
Webb Creek Utility District
3625 Lindsey Mill Road
Gatlinburg, TN 37738

Dear Mr. Vick:

We are pleased to submit this water and wastewater report ("Report") summarizing the results of our rate and cost of service study to develop a financial plan that provides a forecast of revenues, expenses, and change in net assets over a five-year forecast period; conduct a rate structure evaluation; and provide a program of recommended rates.

This Report presents the proposed rate recommendations for the calendar year 2010, and provides a projection of utility rate adjustments required to meet the forecast of annual revenue requirements and recommendations related to implementing modifications to the sewer utility rate structure. We are hopeful that the Board will implement the rates recommended in our Report as they represent an equitable and justified basis for recovering costs, maintain pricing objectives of revenue sufficiency and revenue stability, and provide a plan for moving the sewer utility toward self sufficiency.

We have enjoyed the opportunity to provide this assistance to the Webb Creek Utility District ("District") and wish to acknowledge the significant efforts contributed by District staff in providing timely and accurate input during the project.

If you have any questions, comments, or concerns, please do not hesitate to contact me at (704) 373-1199.

Sincerely,
RAFTELIS FINANCIAL CONSULTANTS, INC.

Bart Kreps
Senior Consultant

I. Introduction

Located in eastern Tennessee, adjacent to the Great Smoky Mountains National Park, the Webb Creek Utility District ("District") provides water and sewer services within Sevier County, Tennessee near the City of Gatlinburg. Currently, the District serves 721 water customers and 702 sewer customers. However, due to its location and, more specifically, resort area attractions, the District's service population increases on a seasonal basis, particularly during the summer and fall.

Due to the seasonality of its customer base, the District faces a number of challenges related to financial planning and budgeting. Additionally, due to its small size, limited economies of scale, and significant capital costs associated with its wastewater treatment facility, the District faces numerous obstacles in attempting to minimize its rates and charges while providing its customers with efficient, high quality services.

II. Study Objectives

In April of 2009, the District engaged Raftelis Financial Consultants, Inc. ("RFC") to evaluate its current rate structure and make appropriate recommendations to address a number of financial and pricing objectives, including, but not limited to:

- Evaluating the revenue sufficiency and cost equity of the District's existing rate structure for providing water and sewer services;
- Identifying and prioritizing the District's pricing objectives for providing water and sewer services, such as revenue sufficiency, rate stability, and consistency with cost of service principles;
- Recommending cost justified water and sewer rates that are consistent with industry pricing standards and practices, and that fully support system operations and maintenance ("O&M"), repair and replacement, upgrades and expansion, debt service, and debt service coverage requirements; and
- Communicating the basis, implementation, and merits of the recommended changes to the water and sewer rates to District staff, the Board of Commissioners ("Board"), existing customers, and other relevant stakeholders.

As a major component of our analysis, RFC developed a financial planning rate model ("Rate Model") to forecast annual revenue requirements, rates under modified water and sewer rate structures, and revenues over a five-year planning period. The Rate Model incorporates a projection of O&M expenses based on the 2009 Operating Budget ("Budget") and capital costs based on pay-as-you-go cash funding, annual obligations on current debt and estimated debt for future capital needs, to produce a consolidated financial plan. The Rate Model also incorporates a financial planning component that includes the capital projects "proposed" over the planning

horizon. Finally, the Rate Model provides a module for analyzing the customer impacts of the recommended rate structures and the program of rate adjustments. The Rate Model was developed in Microsoft Excel and designed to be user friendly for continuing use by the District as a financial planning tool.

III. Operating & Maintenance Expenses

The District's 2009 Budget was used as the starting point for O&M costs. The forecast of O&M costs incorporates the assumptions to account for the effects of inflation, increases in demand, and increases in operating costs. RFC worked closely with District staff to determine the most appropriate basis for allocating certain shared departmental costs to the water utility and the sewer utility. For these shared costs, a specific allocation basis was identified that was designed to serve as an appropriate and reasonable mechanism for allocating costs to each utility. For example, the cost of the District's umbrella insurance policy on its fixed assets was allocated to the water utility and the sewer utility based on the current value of these assets. Other significant budgetary costs, such as salaries and benefits, required specific input from District staff related to the amount of time spent performing daily tasks to support each utility. Ultimately, an allocation basis was established for each individual budgetary category, and then these categorical costs were aggregated to form a basis for projecting O&M costs for the water utility and the sewer utility.

The specific assumptions used to forecast costs for the water system and the sewer system are discussed below.

A. Water System

RFC worked closely with District staff to identify appropriate escalation factors for each summary line item in the 2009 Budget allocated to the water system. Specifically, RFC considered the likely cost increases associated with personnel expenses and, in particular, health care expenses, insurance, utilities, and fuel that are projected to be above annual expectations for inflation. Additionally, based on input from District staff, incremental cost adjustments were assumed related to a new position (salary + benefits) and a small adjustment for supplemental laboratory testing expenses required by the State of Tennessee. RFC also assumed more general inflationary assumptions for most other operating cost categories, to provide a reasonable projection of O&M costs over the forecast period. Exhibit 1 presents the annual escalation assumptions for the cost categories identified in the 2009 Budget allocated to the water system.

Exhibit 1 - Water O&M Escalation Rates

Operating Cost Category	Annual Escalation (2010 - 2014)
Personnel Expenses	5.3%
Insurance (Umbrella)	6.0%
Materials & Supplies	3.0%
Vehicles & Equipment	5.0%
Contractual Services	3.0%
Repairs & Maintenance	3.0%
Utilities	6.0%
Other Utilities	4.0%
Water Purchase	4.5%
Capital Outlays	3.0%
Other	3.0%

Once the appropriate O&M escalation factors were identified, RFC developed a forecast of the District's water operating costs over the planning period (See Exhibit 2).

Exhibit 2 - Projected Water O&M Expenses (2010 - 2014)

	2010	2011	2012	2013	2014
Water O&M Expenses	$ 435,450	$ 456,647	$ 478,914	$ 502,306	$ 526,882
% Change		*4.9%*	*4.9%*	*4.9%*	*4.9%*

B. Sewer System

RFC also worked closely with District staff to identify appropriate escalation factors for each summary line item in the 2009 Budget allocated to the sewer system. Particular attention was paid to the likely cost increases associated with personnel expenses and, in particular, health care expenses, insurance, utilities, and fuel that are projected to be above annual expectations for inflation. Additionally, based on input from District staff, incremental cost adjustments were assumed related to a new position (salary + benefits) and a small adjustment for supplemental laboratory testing expenses required by the State of Tennessee. Exhibit 3 shows the annual escalation assumptions for the cost categories identified in the 2009 Budget allocated to the sewer system.

Exhibit 3 Sewer O&M Escalation Rates

Operating Cost Category	Annual Escalation (2010 - 2014)
Personnel Expenses	5.3%
Insurance (Umbrella)	6.0%
Materials & Supplies	3.0%
Vehicles & Equipment	5.0%
Contractual Services	3.0%
Repairs & Maintenance	3.0%
Utilities	6.0%
Other Utilities	4.0%
Capital Outlays	3.0%
Other	3.0%

Once the appropriate O&M escalation factors were identified, RFC developed a forecast of the District's sewer operating costs over the planning period (See Exhibit 4).

Exhibit 4 Projected Sewer O&M Expenses (2010 2014)

	2010	2011	2012	2013	2014
Total Sewer O&M Expenses	$ 304,925	$ 320,514	$ 336,928	$ 354,209	$ 372,407
% Change		*5.1%*	*5.1%*	*5.1%*	*5.1%*

IV. Capital Improvements & Financing Plan

One of the objectives of the rate study is to integrate capital planning needs into the process of developing appropriate utility rates and charges, and to assess the impact of the capital needs over the five-year planning period. The capital needs for both the water and sewer systems are discussed below along with their anticipated effects on the revenue requirements and utility rates and charges.

A. Water System Capital Improvements

The District is faced with several capital projects outlined in its Capital Improvements Plan ("CIP) to address water infrastructure repair and replacement needs and water pumping and storage improvements. These projects result in a $350 thousand, five-year water CIP. The District anticipates that the water CIP will be funded through revenues generated annually from rates and, if necessary, additional loans.

Exhibit 5 summarizes the District's 5-year water CIP.

Exhibit 5 Water CIP (2010 2014)

	2010	2011	2012	2013	2014	Total
Water Projects						
Water Storage Tank Painting (300,000 Gallons)	$ 75,000	$ -	$ -	$ -	$ -	$ 75,000
Butler Branch Water Project	-	62,500	62,500	-	-	125,000
Pine Top Tank (60,000 Gallons)	-	150,000	-	-	-	150,000
Total	$ 75,000	$ 212,500	$ 62,500	$ -	$ -	$ 350,000

B. Sewer System Capital Improvements

The District is also faced with one project outlined in its CIP to address sewer infrastructure repair and replacement needs, which results in a $30 thousand, five-year sewer CIP. The District anticipates that the sewer CIP will be funded through revenues generated annually from rates.

Exhibit 6 summarizes the District's 5-year sewer CIP.

Exhibit 6 Sewer CIP (2010 2014)

	2010	2011	2012	2013	2014	Total
Wastewater Projects						
Deer Path Lane Sewer Line Project	$ 30,000	$ -	$ -	$ -	$ -	$ 30,000
Total	$ 30,000	$ -	$ -	$ -	$ -	$ 30,000

V. Revenue Requirements

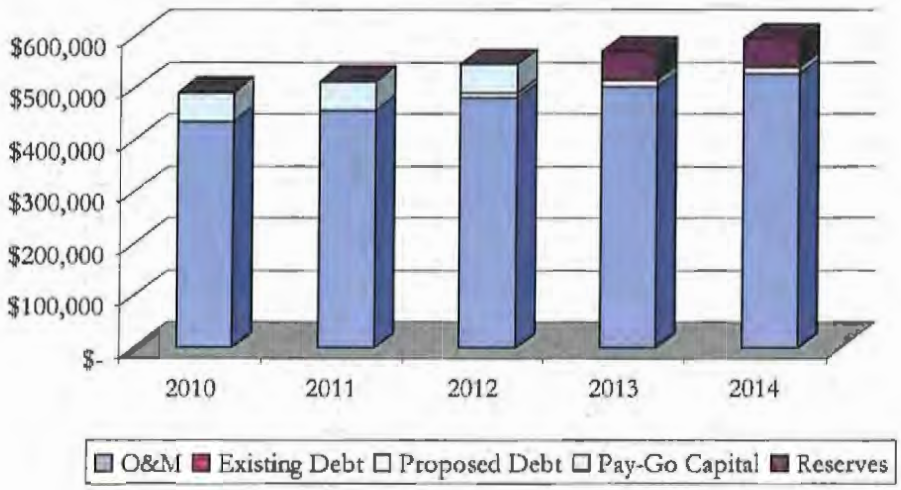
A major objective of this rate study is to determine rates and charges that will be sufficient to recover the projected revenue requirements over the five-year planning period. To address concerns related to revenue sufficiency and annual rate adjustments, a forecast of revenue requirements for water and sewer was developed based on the O&M costs discussed in Section III and the financial plan to address the CIP as identified above.

A. Water Revenue Requirements

The water revenue requirement forecast incorporates assumptions to account for the effects of inflation, increased demand, increased operating costs, and anticipated capital costs. The primary drivers of the water revenue requirements relate to operating cost increases; proposed debt service costs associated with planned funding for the CIP; and contributions to reserves to increase liquidity, mitigate operational risk, and provide a future funding source for asset repair and replacement.

Exhibit 7 summarizes the District's water revenue requirements.

Exhibit 7 – Water Revenue Requirements

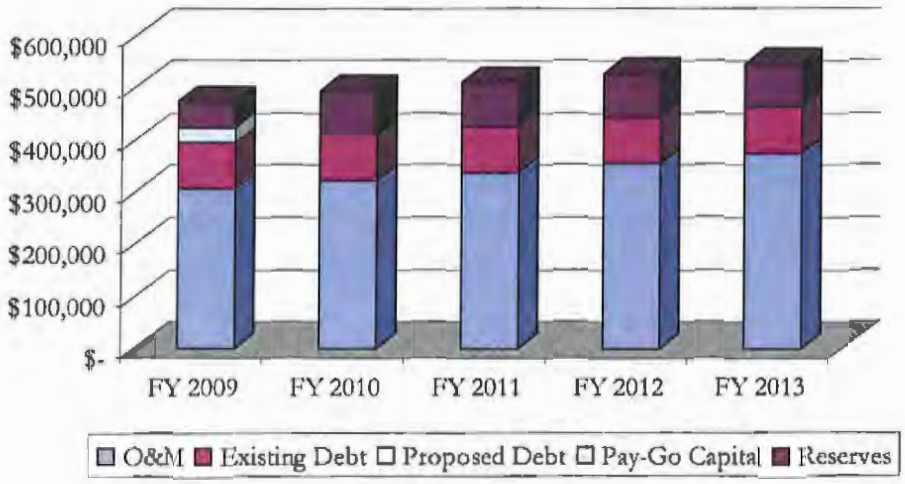


Once water revenue requirements are developed, other non-rate revenues, such as tap fees, late penalties and miscellaneous fees, are used to offset total water revenue requirements and determine net revenue requirements to be recovered from water rates.

B. Sewer Revenue Requirements

The sewer revenue requirement forecast incorporates assumptions to account for the effects of inflation, increased flows, increased operating costs, and anticipated capital costs. The primary drivers of the sewer revenue requirement forecast relate to operating cost increases and contributions to reserves to mitigate operational risk and provide a future funding source for asset repair and replacement. Exhibit 8 summarizes the forecast of sewer revenue requirements.

Exhibit 8 – Sewer Revenue Requirements



Once sewer revenue requirements are developed, other non-rate revenues, such as sewer tap fees, late penalties and miscellaneous fees, are identified and used to offset total sewer revenue requirements and determine net revenue requirements to be recovered from sewer rates.

VI. Existing Rate Structure

The following provides a summary of RFC's review of the District's existing user charges for water and wastewater services.

A. Water Rates

District water customers are assessed a minimum charge of $52.70 per month that includes the first 3,000 gallons of consumption. Water usage above 3,000 gallons is assessed a rate of $3.77 per 1,000 gallons (kgal).

Exhibit 9 presents the District's existing water rates.

Exhibit 9 – Existing Water Rates

	Current Rates	
Water Rates (Monthly Charges)		
Minimum Charge (Includes 3,000 Gallons)	$	52.70
Volume Charge (per kgal)	$	3.77

B. Sewer Rates

District sewer customers are charged $45.54 that includes the first 3,000 gallons of flows. These customers are also assessed a rate of $2.63 per kgal based on billed water consumption.

Exhibit 10 presents the District's existing sewer rates.

Exhibit 10 – Existing Sewer Rates

Sewer Rates (Monthly Charges)	Current Rates	
Minimum Charge (Includes 3,000 Gallons)	$	45.54
Volume Charge (per kgal)	$	2.63

C. Existing Rate Structure Review

The District's water and sewer rate structures have the advantage of simplicity in that they both utilize a single rate structure which does not differentiate between customer classes. The high minimum charges provide for revenue stability and more predictable cash flows. This is particularly important for a utility, such as the District, that is very small and serves a seasonal customer base, and it is the type of rate structure that is used frequently by other utilities of similar size and service area characteristics. A utility of this type must place considerable emphasis on revenue sufficiency and revenue stability as the majority of its customer demand occurs during seasonal periods of the year. A high fixed charge assessed on a monthly basis allows a small, seasonal utility to manage its cash needs to address its fixed cost obligations and ensure the long-term, efficient operation of the utility.

As part of the rate study process, RFC worked closely with District staff to determine an appropriate allocation of both water and sewer revenue requirements between fixed and variable components. Individual operating and capital cost line items were reviewed and allocation factors were identified to differentiate between costs that were inherently fixed and those that correlate to demand. Since the District operates with minimal staff and limited economies of scale, and since a large portion of its operating expenses are required to ensure adequate coverage and sufficient functionality of the system, it was determined that the majority of its operating costs are fixed. Additionally, the District has outstanding debt service obligations related to the recent upgrades to its wastewater treatment facility, and it is required by law to demonstrate funding of annual depreciation from its rates and charges.

These capital revenue requirements both represent fixed utility costs. As a result, it was determined that approximately 87% of the District's water revenue requirements are fixed and should be recovered from the fixed component of the monthly charge for water services. The remaining approximately 13% should be allocated for recovery from the water volumetric charge. Similarly, it was determined that approximately 94% of the District's sewer revenue requirements are fixed and should be recovered from the fixed component of the monthly charge for sewer services. The remaining approximately 6% should be allocated for recovery from the sewer volumetric charge. The additional allocation of fixed costs to the sewer utility relates predominantly to the recovery of debt service costs and annual depreciation of the wastewater treatment plant.

D. Rate Structure Options for Considerations

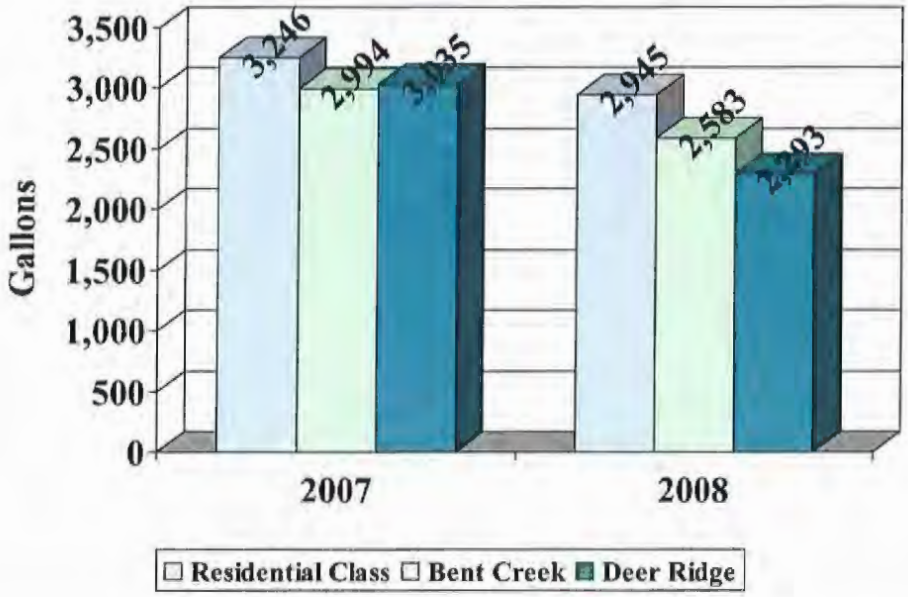
Although the existing rate structure provides certain advantages, such as revenue stability from the minimum charges, there are several opportunities for consideration that could provide, if warranted, additional customer class equity. Specifically, the District's customer base is predominantly residential; however, there are several sub-classifications of residential customers that may exhibit different usage patterns when compared to the residential class as a whole. As a result, RFC conducted a demand analysis that targeted the identification of monthly water and sewer demand for one Equivalent Residential Unit ("ERU") for comparison to various sub-classifications of residential customers including timeshares, condominiums, and luxury campgrounds. The purpose of the analysis was to determine a basis for any potential adjustments or modifications to the District's water and/or sewer rate structures that would incorporate additional customer class equity

Monthly Water Usage

RFC evaluated monthly billing data for calendar year 2007 and 2008 for the residential class as a whole, Deer Ridge, a large residential condominium customer and Bent Creek, a large residential timeshare customer. For comparison purposes, the analysis identified the average monthly water use for these customer types over the past two years.

Exhibit 11 presents the results of the historical monthly water usage analysis.

Exhibit 11 – Monthly Water Usage (Average)



In 2007, average water usage for the residential class was 3,246 gallons per month. Average water usage for Bent Creek (timeshare) was 2,994 gallons per month and for Deer Ridge (condominium) was 3,035 gallons per month. It should be noted that the average, monthly water use calculated for Bent Creek and Deer Ridge was based on 84 units, which is the current number of residential units in each complex being assessed a minimum charge for services. Non-residential units, such as amenity buildings, maintenance building, and laundries, were excluded from our analysis.

Based on the 2007 results, the District's existing minimum usage allowance of 3,000 gallons per month appears to be a reasonable estimate for the average monthly usage for one ERU. Although the residential customer class exhibits average demand that is slightly higher than 3,000 gallons per month, customers that use above the minimum allowance are required to pay for these flows based on the volumetric rate. In 2008, the residential class, Bent Creek, and Deer Ridge each exhibited a reduction in demand when compared to 2007 results. However, it is important to remember that the District's customer base is seasonal, and it is susceptible to broader macro-economic conditions that affect the level of vacation and travel. Additionally, it would seem reasonable that both timeshare and condominium customers would likely be impacted more severely by economic conditions than the residential class as a whole, which includes customers that are full-time residents. As such, due to the current recession, which began in December of 2007, it appears that the patterns of demand exhibited in 2007 likely presents a more accurate representation of the typical relationship between these residential customer sub-classifications. The current estimate of 3,000 gallons for one

ERU appears to be reasonable, and there does not appear to be a need for rate differentiation between residential timeshare and condominium customer sub-classifications.

Monthly Sewer Flows

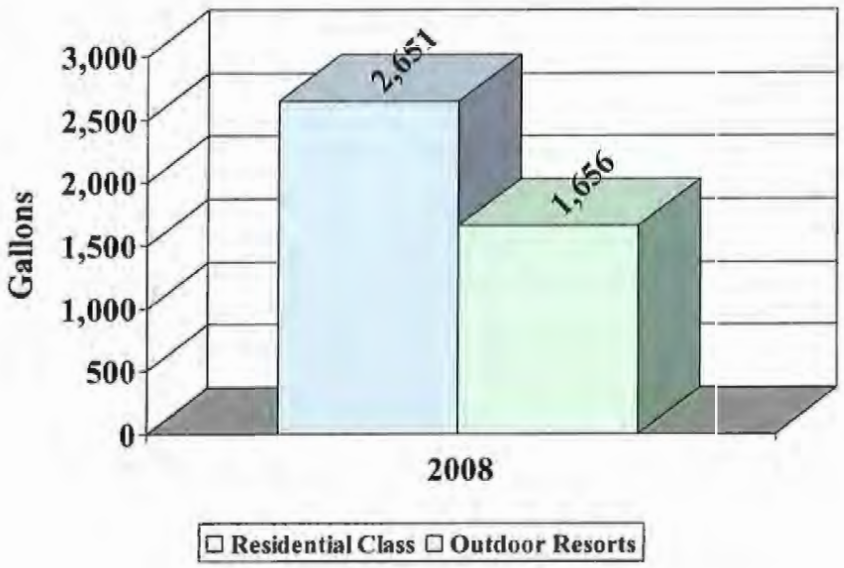
Since the residential sub-classifications evaluated above are billed for sewer services based on water meter readings, it was not necessary to conduct a similar evaluation for these customers related to average monthly sewer flows. However, it was determined that there was an additional customer sub-classification receiving sewer services only that required additional analysis. Specifically, the District provides sewer services to a luxury campground called Outdoor Resorts, Inc., ("OR") which is currently assessed a minimum charge based on the number of units identified in its facility.

In late January of 2008, the District installed a flow meter at OR's point of connection to measure the volume of wastewater being sent to the District for treatment and disposal. After careful review and discussions with District staff, it was determined that monthly data from this flow meter from February of 2008 through October of 2008 was reliable, and it could be used for analytical purposes. Anomalies identified in the data in November of 2008 through March of 2009 were sufficient to warrant the exclusion of these months from our analysis.

RFC estimated average, monthly sewer flows for the residential class as a whole in 2008 by assuming that 90% of the billed water flows were returned to the sewer system. This estimate is reasonable and consistent with industry standards. Average monthly flows for OR were based on actual flow meter readings for 9 months in 2008 (February – October).

Exhibit 12 presents the results of the historical monthly sewer flow analysis.

Exhibit 12 – Monthly Sewer Flows (Average)



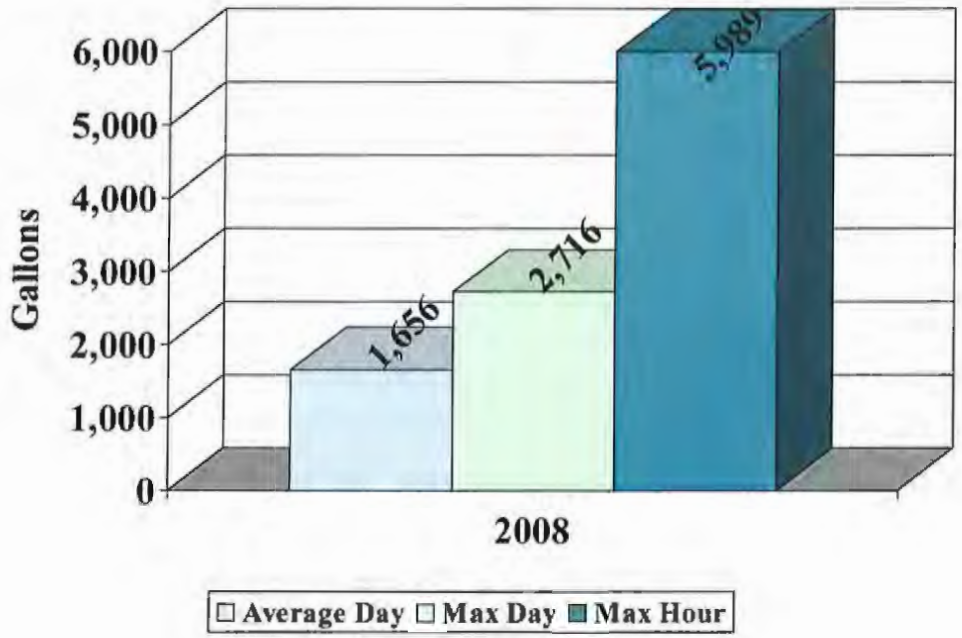
In 2008, average sewer flow for the residential class was 2,651 gallons per month. Average sewer flow for OR during the 9 months evaluated in 2008 was 1,656 gallons per month (per unit). It should be noted that the average, monthly sewer flow for OR was based on 376 units, which is the current number of residential units being assessed a minimum charge for sewer services. Non-residential units, such as amenity buildings and laundries, were excluded from our analysis.

Based on these results, it appears that OR flows (per unit), on average, are approximately 62.5% of the residential customer class or equivalent to approximately 0.625 ERUs. As such, the District may want to consider a proportional adjustment to the minimum charge as a means for injecting additional equity into the sewer rate structure. Ideally, it would be preferable to conduct this analysis with multiple years of flow data; however, the 9 months of data was all that was deemed reliable at this time. It would appropriate to re-conduct this analysis in the future when more data is available.

Although the flow analysis demonstrated that OR flows, on average, represent approximately 0.625 ERUs, RFC identified numerous data points in the hourly flow readings that indicated sizeable peak flows occurring at certain points during the day.

Exhibit 13 presents OR monthly flows on an average-day, maximum-day, and maximum-hour basis.

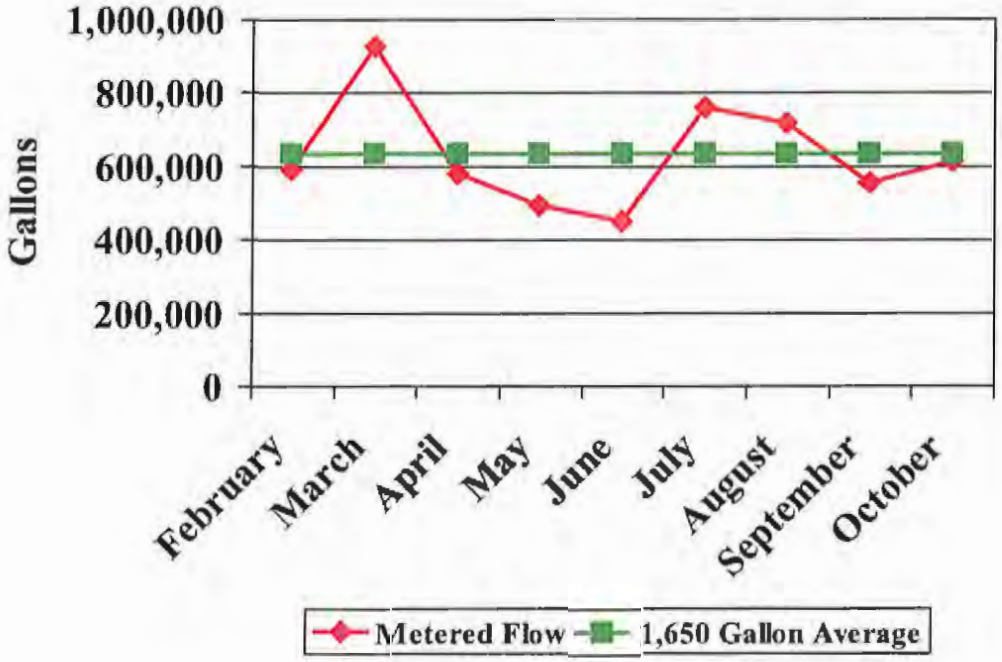
Exhibit 13 – Outdoor Resorts Monthly Sewer Flow Comparison



Due to the seasonality of OR's residential base, it is reasonable to expect that the maximum daily flows of 2,716 gallons, which likely occur during peak season, would be higher than average daily flows over the entire 9 months. However, maximum hourly flows of 5,989 gallons suggest a large amount of inflow and infiltration ("I&I") in the system during rainfall events. As a result, although it may be reasonable to adjust the minimum charge for OR by an equivalent of approximately 0.625 ERUs, it may also be reasonable to reduce the minimum flow allowance for OR to 1,650 gallons per month (per unit), and then require OR to pay the volumetric rate for flows above the minimum usage allowance to account for I&I. This would be consistent with the methodology of assessment for other sewer customers that are required to pay for flows above the minimum allowance of 3,000 gallons per month.

Exhibit 14 plots actual monthly flow readings for OR from February through October of 2008 against average flow for this same period (straight line).

Exhibit 13 – Outdoor Resorts Metered Monthly Flows (2008)



VII. Proposed Rate Structure Modifications and Projected Rates

The recommended water and sewer rate program is based on the projected revenue requirements in 2010; an updated allocation of costs between the water and sewer utilities; and certain modifications to the sewer rate structure designed to inject additional customer equity. We do not recommend any structural changes to the District's water rates, but we do

recommend the formal establishment of several classifications of customers consistent with the categories evaluated in the demand analysis as described in Section VI.

The recommended modifications to the sewer rate structure include:

- Reducing the sewer minimum charge for luxury campgrounds to 0.625 ERUs; and
- Establishing a minimum usage allowance for luxury campgrounds of 1,650 gallons per month (per unit).

We also recommend that the flow analysis for luxury campgrounds be re-conducted with a full year of reliable data or on an annual basis.

The recommended modifications to the sewer rate structure are designed to:

- Address customer equity and cost of service considerations; and
- Be easily understood and communicated to customers.

Although the sewer rate structure modifications will provide for additional rate equity, the District should still consider a sewer rate increase in 2010 to generate sufficient revenues to fund projected revenue requirements and begin moving the sewer utility towards self-sufficiency. Based on our allocation of revenue requirements in 2010, the District's water rates are sufficient to fund projected water revenue requirements, but its sewer rates are not sufficient to fund projected sewer revenue requirements. RFC recommends that the District implement a phasing approach to eliminate this subsidy from the water utility to the sewer utility by the year 2015. The phasing approach will provide the sewer utility more time to build its rates to a level sufficient to support its cost of service.

A. Projected Water Rates

As mentioned above, the District's water rates are sufficient to cover projected revenue requirements in 2010. Although the recommended phasing approach to reduce the support provided to the sewer utility will offset projected revenue requirements over the forecast period, as a result of increasing operating costs and planned projects in the water CIP, there may be a need for moderate rate increases in the volumetric rate beginning in 2011. It should be noted that the need for these potential rate increases are for planning purposes only, and they will likely be contingent on the timing and funding requirements of the capital program. The projected water rates also include the identification of two main classes of customers: residential and non-residential. The residential customer classification also includes three sub-classifications: single-family, timeshare, and condominium. The non-residential classification would include all other types of commercial and institutional customers.

Exhibit 14 presents the recommended water rates in 2010 and projected water rates over the forecast period.

Exhibit 14 – Projected Water Rates

	2009	2010	2011	2012	2013	2014
Minimum Charge (Includes 3,000 Gallons)*						
Residential Customers						
Single-Family	$ 52.70	$ 52.70	$ 52.70	$ 53.06	$ 53.35	$ 53.71
$ Change		*$ -*	*$ -*	*$ 0.36*	*$ 0.29*	*$ 0.36*
Timeshare	$ 52.70	$ 52.70	$ 52.70	$ 53.06	$ 53.35	$ 53.71
$ Change		*$ -*	*$ -*	*$ 0.36*	*$ 0.29*	*$ 0.36*
Condominium	$ 52.70	$ 52.70	$ 52.70	$ 53.06	$ 53.35	$ 53.71
$ Change		*$ -*	*$ -*	*$ 0.36*	*$ 0.29*	*$ 0.36*
Non-Residential Customers	$ 52.70	$ 52.70	$ 52.70	$ 53.06	$ 53.35	$ 53.71
$ Change		*$ -*	*$ -*	*$ 0.36*	*$ 0.29*	*$ 0.36*
Volume Charge (per kgal)						
All Customers	$ 3.77	$ 3.77	$ 4.03	$ 4.89	$ 5.08	$ 5.28
		$ -	*$ 0.26*	*$ 0.86*	*$ 0.19*	*$ 0.20*

* Minimum charge assessed per unit.

B. Projected Sewer Rates

The recommended adjustments to the sewer rate structure for luxury campgrounds will result in the need to generate additional revenues from all other customers. Additionally, sewer rates need to be increased in 2010 to ensure the adequate recovery of projected revenue requirements and begin the process of moving the utility toward self-sufficiency. Again, it should be noted that the rate increases projected in 2011 and beyond are for planning purposes only, but they are designed to reduce the subsidy from the water utility and move sewer rates to a level sufficient to recover the utility's cost of service. Similar to the water rates, the projected sewer rates also include the identification of two main classes of customers: residential and non-residential. The residential customer classification also includes four sub-classifications: single-family, timeshare, condominium, and luxury campgrounds. The non-residential classification would include all other types of commercial and institutional customers.

Exhibit 15 presents the projected sewer rates over the forecast period.

Exhibit 15 - Projected Sewer Rates

	2009	2010	2011	2012	2013	2014
Minimum Charge (Includes 3,000 Gallons)*						
Residential Customers						
Single-Family	$ 45.54	$ 59.41	$ 62.54	$ 65.07	$ 67.64	$ 70.25
$ Change		*$ 13.87*	*$ 3.13*	*$ 2.53*	*$ 2.57*	*$ 2.61*
Timeshare	$ 45.54	$ 59.41	$ 62.54	$ 65.07	$ 67.64	$ 70.25
$ Change		*$ 13.87*	*$ 3.13*	*$ 2.53*	*$ 2.57*	*$ 2.61*
Condominium	$ 45.54	$ 59.41	$ 62.54	$ 65.07	$ 67.64	$ 70.25
$ Change		*$ 13.87*	*$ 3.13*	*$ 2.53*	*$ 2.57*	*$ 2.61*
Luxury Campground (Includes 1,650 Gal)	$ 45.54	$ 37.13	$ 39.09	$ 40.67	$ 42.28	$ 43.91
$ Change		*$ (8.41)*	*$ 1.96*	*$ 1.58*	*$ 1.61*	*$ 1.63*
Non-Residential Customers	$ 45.54	$ 59.41	$ 62.54	$ 65.07	$ 67.64	$ 70.25
		$ 13.87	*$ 3.13*	*$ 2.53*	*$ 2.57*	*$ 2.61*
Volume Charge (per kgal)						
All Customers	$ 2.63	$ 8.84	$ 9.14	$ 9.45	$ 9.77	$ 10.10
$ Change		*$ 6.21*	*$ 0.30*	*$ 0.31*	*$ 0.32*	*$ 0.33*

* Minimum charge assessed per unit.

In 2010, the recommended sewer rates include an increase of the sewer minimum charge from $45.54 to $59.41 per month for residential single-family, residential timeshares, residential condominium, and non-residential customers. The recommended rate for residential luxury campground customers is $37.13, which is approximately 62.5% of the rate for other residential customer sub-classifications. The sewer volumetric rate includes an increase from $2.63 per kgal to $8.84 per kgal. Although this represents a substantial increase in the sewer volumetric rate, as mentioned previously, only approximately 6% of the sewer revenue requirements are allocated for recovery from the volumetric charge, and there are very limited amounts of flows, both existing and proposed, billed for sewer above the minimum usage allowances. As a result, the small adjustment in dollar terms to the revenue requirements allocated for recovery from the sewer volumetric charge necessitates a large increase in the rate. Because of the inherent volatility in this calculation it will be important to review this rate calculation on an annual basis and, in particular, when a full year of flow data for OR is available.

VIII. Customer Impacts

One of the most important aspects of the rate study was an evaluation of the impacts of the proposed rates on the monthly bills of water and sewer customers. RFC worked closely with

District staff to ensure that appropriate revenue requirements would be recovered while considering the resulting impacts on customers. As discussed in Section VII, the primary factors driving the projected sewer rate increases are the proposed rate structure adjustments and the goal for utility self-sufficiency.

A. Water Customer Impacts

Since there are no recommended changes to the water rates in 2010, customer monthly bills will remain unchanged. As mentioned above, there may be moderate increase to water rates over the forecast period; however, these future increases are contingent on the timing and funding requirements of the water CIP.

Exhibit 16 presents the forecast of water customer impacts over the planning period.

Exhibit 16 – Projected Water Customer Impacts

		Actual	Projected				
		2009	2010	2011	2012	2013	2014
	Monthly Usage (Gallons)						
Single Family Residential							
Low Usage	1,000	$ 52.70	$ 52.70	$ 52.70	$ 53.06	$ 53.35	$ 53.71
$ Change			*$ -*	*$ -*	*$ 0.36*	*$ 0.29*	*$ 0.36*
Moderate Usage	3,000	$ 52.70	$ 52.70	$ 52.70	$ 53.06	$ 53.35	$ 53.71
$ Change			*$ -*	*$ -*	*$ 0.36*	*$ 0.29*	*$ 0.36*
High Usage	7,500	$ 69.67	$ 69.67	$ 70.84	$ 75.07	$ 76.21	$ 77.47
$ Change			*$ -*	*$ 1.17*	*$ 4.23*	*$ 1.15*	*$ 1.26*
Condominium	195,000	$ 4,637.60	$ 4,637.60	$ 4,637.60	$ 4,669.28	$ 4,694.80	$ 4,726.48
$ Change			*$ -*	*$ -*	*$ 31.68*	*$ 25.52*	*$ 31.68*
Timeshare	225,000	$ 4,690.30	$ 4,690.30	$ 4,690.30	$ 4,722.34	$ 4,748.15	$ 4,780.19
$ Change			*$ -*	*$ -*	*$ 32.04*	*$ 25.81*	*$ 32.04*

B. Sewer Customer Impacts

The proposed sewer rate recommendations are designed to target additional customer class equity and move the utility towards self-sufficiency. Most single-family, timeshare, and condominium residential customers will see their typical bill for 3,000 gallons of usage increase from $45.54 to $59.41. For customers that use more than 3,000 gallons during certain months of the year, their bill will see additional increases related to the higher volumetric sewer rate. Due to the rate structure change, residential luxury campground customers will see their average bill decrease from $17,487.36 to $14,258.40. However, during months where flows exceed their minimum usage allowance luxury campground customers will be assessed the volumetric rate for these flows. Going forward, the additional

projected impacts on sewer customers are related to a goal for the sewer utility to recover its full cost of service.

Exhibit 17 presents the forecast of sewer customer impacts over the planning period.

Exhibit 17 – Projected Sewer Customer Impacts

	Monthly Usage (Gallons)	Actual 2009	Projected 2010	2011	2012	2013	2014
Single Family Residential							
Low Usage	1,000	$ 45.54	$ 59.41	$ 62.54	$ 65.07	$ 67.64	$ 70.25
$ Change			*$ 13.87*	*$ 3.13*	*$ 2.53*	*$ 2.57*	*$ 2.61*
Moderate Usage	3,000	$ 45.54	$ 59.41	$ 62.54	$ 65.07	$ 67.64	$ 70.25
$ Change			*$ 13.87*	*$ 3.13*	*$ 2.53*	*$ 2.57*	*$ 2.61*
High Usage	7,500	$ 57.38	$ 99.19	$ 103.67	$ 107.60	$ 111.61	$ 115.70
$ Change			*$ 41.82*	*$ 4.48*	*$ 3.93*	*$ 4.01*	*$ 4.10*
Condominium	195,000	$ 4,007.52	$ 5,228.08	$ 5,503.52	$ 5,726.16	$ 5,952.32	$ 6,182.00
$ Change			*$ 1,220.56*	*$ 275.44*	*$ 222.64*	*$ 226.16*	*$ 229.68*
Timeshare	225,000	$ 4,053.06	$ 5,287.49	$ 5,566.06	$ 5,791.23	$ 6,019.96	$ 6,252.25
$ Change			*$ 1,234.43*	*$ 278.57*	*$ 225.17*	*$ 228.73*	*$ 232.29*
Luxury Campground	600,000	$ 17,487.36	$ 14,258.40	$ 15,009.60	$ 15,616.80	$ 16,233.60	$ 16,860.00
$ Change			*$ (3,228.96)*	*$ 751.20*	*$ 607.20*	*$ 616.80*	*$ 626.40*

VIIII. Proposed Revenue Adjustments

The proposed revenue forecast was calculated based on the recommended program of rate adjustments and a projection of customer accounts and billable flows over the planning period. Assumptions were made that annual water and sewer customer growth would be 2.0% and annual billable flows would be 1.0%, excluding sewer flows for luxury campgrounds which are assumed to be flat.

Exhibit 18 provides a summary forecast of the projected revenue adjustments, as well as projected change in net assets over the planning period.

Exhibit 18 - Proposed Revenue Adjustments and Change in Net Assets

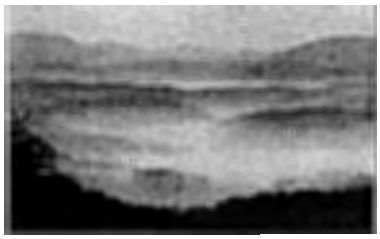
	2010	2011	2012	2013	2014
Operating Revenue					
Water	$ 518,784	$ 532,363	$ 558,233	$ 574,191	$ 591,333
Sewer	428,861	456,283	480,207	504,993	530,668
Other	17,135	17,135	17,135	17,135	17,135
Total Operating Revenue	$ 964,780	$ 1,005,781	$ 1,055,574	$ 1,096,319	$ 1,139,137
Operating Expenses					
O&M Expenses	$ 740,375	$ 777,161	$ 815,841	$ 856,516	$ 899,289
Depreciation	157,489	157,489	157,489	157,489	157,489
Total Operating Expenses	$ 897,864	$ 934,650	$ 973,330	$ 1,014,005	$ 1,056,778
Income/Loss From Operations	$ 66,916	$ 71,131	$ 82,244	$ 82,315	$ 82,358
Non-Operating Revenue (Expenses)					
Interest Income (1)	$ 5,949	$ 7,398	$ 8,972	$ 11,172	$ 13,998
Interest Expense	(66,129)	(65,149)	(64,305)	(63,059)	(61,937)
Total Non-Operating Expenses	$ (60,180)	$ (57,751)	$ (55,333)	$ (51,887)	$ (47,939)
Change in Net Assets	$ 6,735	$ 13,380	$ 26,911	$ 30,428	$ 34,420
Supplemental Information					
Water Customers	735	750	765	780	796
Sewer Customers	708	715	721	728	735
Flows Billed Above Minimum Allowance					
Water (kgal)	14,245	14,388	14,531	14,677	14,823
Sewer (kgal)	3,000	3,050	3,100	3,152	3,205

(1) Assumes 2.0% interest earned on unrestricted fund balances over the forecast period.

Appendix

Webb Creek Utility District

Water and Wastewater Rate Study



Webb Creek Utility District

Prepared By:

Raftelis Financial Consultants, Inc.

RFC

RAFTELIS FINANCIAL CONSULTANTS, INC.

Webb Creek Utility District

Water & Wastewater Rate Model

Section I: Forecast Inputs
O&M Cost Escalation
Capital Financing
Billable Flows
Customer Accounts
Revenue Offsets
Reserves

Section II: Rate & Customer Impacts
Schedule 1 Rate and Finance Summary
Schedule 2a Water Customer Impacts
Schedule 2b Sewer Customer Impacts
Schedule 2c Combined Customer Impacts

Section III: Capital Planning
Schedule 3a Water Capital Improvements Plan
Schedule 3b Sewer Capital Improvements Plan

Section IV: Revenue Requirements & Allocations
Schedule 4 Debt Service
Schedule 5a Combined Revenue Requirements
Schedule 5b Water Revenue Requirements
Schedule 5c Sewer Revenue Requirements
Schedule 6a Allocation of Revenue Requirements
Schedule 6b Water Revenue Requirements - % Allocations
Schedule 6c Water Revenue Requirements - $ Allocations
Schedule 6d Sewer Revenue Requirements - % Allocations
Schedule 6e Sewer Revenue Requirements - $ Allocations
Schedule 7 Revenue Offsets

Section V: Customer Accounts & Billable Flows
Schedule 8a Water Accounts
Schedule 8b Sewer Accounts
Schedule 9a Water Billable Flows
Schedule 9b Sewer Billable Flows

Section VI: Rate Calculations
Schedule 10a Water Minimum Charge
Schedule 10b Sewer Minimum Charge
Schedule 11a Water Volume Charge
Schedule 11b Sewer Volume Charge

Section VI: Utility Revenues & Fund Balance
Schedule 12a Revenue Proof
Schedule 13 Fund Balance

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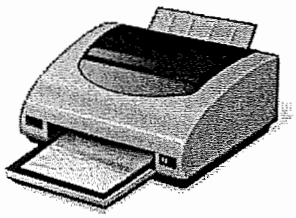
Print Schedules "Click Below"



Schedule 1
Webb Creek Utility District Water & Sewer Rate Study
Rate & Finance Summary

	2009	2010	2011	2012	2013	2014
	Actual	*Projected*	→			
Water Rates (Monthly Charges)						
Minimum Charge (Includes 3,000 Gallons)	$ 52.70	$ 52.70	$ 52.70	$ 53.06	$ 53.35	$ 53.71
% Change		*0.0%*	*0.0%*	*0.7%*	*0.5%*	*0.7%*
Volume Charge (per kgal)	$ 3.77	$ 3.77	$ 4.03	$ 4.89	$ 5.08	$ 5.28
% Change		*0.0%*	*6.9%*	*21.3%*	*3.9%*	*3.9%*
Sewer Rates (Monthly Charges)						
Minimum Charge (Includes 3,000 Gallons)	$ 45.54	$ 59.41	$ 62.54	$ 65.07	$ 67.64	$ 70.25
% Change		*30.5%*	*5.3%*	*4.0%*	*3.9%*	*3.9%*
Minimum Charge - Outdoor Resorts (Includes 1,500 Gallons)	$ 45.54	$ 37.13	$ 39.09	$ 40.67	$ 42.28	$ 43.91
% Change		*-18.5%*	*5.3%*	*4.0%*	*3.9%*	*3.9%*
Volume Charge (per kgal)	$ 2.63	$ 8.84	$ 9.14	$ 9.45	$ 9.77	$ 10.10
% Change		*236.1%*	*3.4%*	*3.4%*	*3.4%*	*3.4%*
Residential Customer Using 3,000 Gallons per Month						
Water Bill	$ 52.70	$ 52.70	$ 52.70	$ 53.06	$ 53.35	$ 53.71
% Change		*0.0%*	*0.0%*	*0.7%*	*0.5%*	*0.7%*
Sewer Bill	$ 45.54	$ 59.41	$ 62.54	$ 65.07	$ 67.64	$ 70.25
% Change		*30.5%*	*5.3%*	*4.0%*	*3.9%*	*3.9%*
Combined Bill	$ 98.24	$ 112.11	$ 115.24	$ 118.13	$ 120.99	$ 123.96
% Change		*14.1%*	*2.8%*	*2.5%*	*2.4%*	*2.5%*
Revenues & Costs						
Revenues						
User Charge Revenues						
Water	$ 509,133	$ 518,784	$ 532,363	$ 558,233	$ 574,191	$ 591,333
Sewer	378,634	428,861	456,283	480,207	504,993	530,668
Subtotal	$ 887,767	$ 947,645	$ 988,646	$ 1,038,439	$ 1,079,184	$ 1,122,002
Charges for Specific Services	$ 17,135	$ 17,135	$ 17,135	$ 17,135	$ 17,135	$ 17,135
Total Revenues	**$ 904,902**	**$ 964,780**	**$ 1,005,781**	**$ 1,055,574**	**$ 1,096,319**	**$ 1,139,137**
% Change		*6.6%*	*4.2%*	*5.0%*	*3.9%*	*3.9%*
Revenue Requirements						
Operating Expenses	$ 640,662	$ 740,375	$ 777,161	$ 815,841	$ 856,516	$ 899,289
Debt Service						
Existing	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468
Proposed	-	-	-	11,037	11,037	11,037
Subtotal	$ 87,468	$ 87,468	$ 87,468	$ 98,505	$ 98,505	$ 98,505
Other Non-Operating Expenses	$ 137,086	$ 136,150	$ 140,489	$ 140,489	$ 140,489	$ 140,489
Total Revenue Requirements	**$ 865,216**	**$ 963,993**	**$ 1,005,118**	**$ 1,054,836**	**$ 1,095,510**	**$ 1,138,284**
Surplus/Deficit	*$ 39,686*	*$ 787*	*$ 663*	*$ 739*	*$ 809*	*$ 853*
Financial Metrics						
Operating Reserves						
Average Fund Balance	$ 236,293	$ 272,104	$ 327,399	$ 406,088	$ 516,101	$ 657,421
Target - 180 Days O&M Expenses	135	134	154	182	220	267
Target - 90 Days O&M + Debt Service	118	120	138	162	197	240
Total Debt Service Coverage - Target 1.20x	3.02	2.57	2.61	2.43	2.43	2.43

Schedule 2a
Webb Creek Utility District Water & Sewer Rate Study
Customer Impacts

		2009	2010	2011	2012	2013	2014
		Budget	*Projected* →				
Water Customer Bills Impacts (Monthly Bills)							
Residential Customers							
Meter Size	Consumption (Gallons)						
3/4""	1,000	$ 52.70	$ 52.70	$ 52.70	$ 53.06	$ 53.35	$ 53.71
	% Change		*0.0%*	*0.0%*	*0.7%*	*0.5%*	*0.7%*
3/4""	3,000	$ 52.70	$ 52.70	$ 52.70	$ 53.06	$ 53.35	$ 53.71
	% Change		*0.0%*	*0.0%*	*0.7%*	*0.5%*	*0.7%*
3/4""	5,000	$ 60.24	$ 60.24	$ 60.76	$ 62.84	$ 63.51	$ 64.27
	% Change		*0.0%*	*0.9%*	*3.4%*	*1.1%*	*1.2%*
3/4""	7,500	$ 69.67	$ 69.67	$ 70.84	$ 75.07	$ 76.21	$ 77.47
	% Change		*0.0%*	*1.7%*	*6.0%*	*1.5%*	*1.7%*
3/4""	15,000	$ 97.94	$ 97.94	$ 101.06	$ 111.74	$ 114.31	$ 117.07
	% Change		*0.0%*	*3.2%*	*10.6%*	*2.3%*	*2.4%*
Commercial Customers							
Meter Size	Consumption (Gallons)						
1"	12,500	$ 88.52	$ 88.52	$ 90.99	$ 99.52	$ 101.61	$ 103.87
	% Change		*0.0%*	*2.8%*	*9.4%*	*2.1%*	*2.2%*
1"	25,000	$ 135.64	$ 135.64	$ 141.36	$ 160.64	$ 165.11	$ 169.87
	% Change		*0.0%*	*4.2%*	*13.6%*	*2.8%*	*2.9%*
Master-Meter Customers							
Meter Size	Consumption (Gallons) / Units						
2"	225,000 / 89 (Bent Creek)	$ 4,690.30	$ 4,690.30	$ 4,690.30	$ 4,722.34	$ 4,748.15	$ 4,780.19
	% Change		*0.0%*	*0.0%*	*0.7%*	*0.5%*	*0.7%*
4"	195,000 / 88 (Deer Ridge)	$ 4,637.60	$ 4,637.60	$ 4,637.60	$ 4,669.28	$ 4,694.80	$ 4,726.48
	% Change		*0.0%*	*0.0%*	*0.7%*	*0.5%*	*0.7%*

Schedule 2b
Webb Creek Utility District Water & Sewer Rate Study
Customer Impacts

			2009	2010	2011	2012	2013	2014
			Budget	*Projected* →				
Sewer Customer Bills Impacts (Monthly Bills)								
Residential Customers								
Meter Size	Consumption (Gallons)							
3/4""	1,000		$ 45.54	$ 59.41	$ 62.54	$ 65.07	$ 67.64	$ 70.25
	% Change			*30.5%*	*5.3%*	*4.0%*	*3.9%*	*3.9%*
3/4""	3,000		$ 45.54	$ 59.41	$ 62.54	$ 65.07	$ 67.64	$ 70.25
	% Change			*30.5%*	*5.3%*	*4.0%*	*3.9%*	*3.9%*
3/4""	5,000		$ 50.80	$ 77.09	$ 80.82	$ 83.97	$ 87.18	$ 90.45
	% Change			*51.8%*	*4.8%*	*3.9%*	*3.8%*	*3.8%*
3/4""	7,500		$ 57.38	$ 99.19	$ 103.67	$ 107.60	$ 111.61	$ 115.70
	% Change			*72.9%*	*4.5%*	*3.8%*	*3.7%*	*3.7%*
3/4""	15,000		$ 77.10	$ 165.49	$ 172.22	$ 178.47	$ 184.88	$ 191.45
	% Change			*114.6%*	*4.1%*	*3.6%*	*3.6%*	*3.6%*
Commercial Customers								
Meter Size	Consumption (Gallons)							
1"	12,500		$ 70.53	$ 143.39	$ 149.37	$ 154.85	$ 160.46	$ 166.20
	% Change			*103.3%*	*4.2%*	*3.7%*	*3.6%*	*3.6%*
1"	25,000		$ 103.40	$ 253.89	$ 263.62	$ 272.97	$ 282.58	$ 292.45
	% Change			*145.5%*	*3.8%*	*3.5%*	*3.5%*	*3.5%*
Master-Meter Customers								
Meter Size	Consumption (Gallons)	Units						
2"	225,000	89	(Bent Creek)	$ 4,053.06	$ 5,287.49	$ 5,566.06	$ 5,791.23	$ 6,019.96	$ 6,252.25
	% Change				*30.5%*	*5.3%*	*4.0%*	*3.9%*	*3.9%*
4"	195,000	88	(Deer Ridge)	$ 4,007.52	$ 5,228.08	$ 5,503.52	$ 5,726.16	$ 5,952.32	$ 6,182.00
	% Change				*30.5%*	*5.3%*	*4.0%*	*3.9%*	*3.9%*
Flow Meter	600,000	384	(Outdoor Resorts)	$ 17,487.36	$ 14,258.40	$ 15,009.60	$ 15,616.80	$ 16,233.60	$ 16,860.00
	% Change				*-18.5%*	*5.3%*	*4.0%*	*3.9%*	*3.9%*

Schedule 2c
Webb Creek Utility District Water & Sewer Rate Study
Customer Impacts

	2009	2010	2011	2012	2013	2014
	Budget	*Projected*	→			

Combined Customer Bills Impacts (Monthly Bills)

Residential Customers

Meter Size	Consumption (Gallons)	2009	2010	2011	2012	2013	2014
3/4""	1,000	$ 98.24	$ 112.11	$ 115.24	$ 118.13	$ 120.99	$ 123.96
	% Change		*14.1%*	*2.8%*	*2.5%*	*2.4%*	*2.5%*
3/4""	3,000	$ 98.24	$ 112.11	$ 115.24	$ 118.13	$ 120.99	$ 123.96
	% Change		*14.1%*	*2.8%*	*2.5%*	*2.4%*	*2.5%*
3/4""	5,000	$ 111.04	$ 137.33	$ 141.58	$ 146.81	$ 150.69	$ 154.72
	% Change		*23.7%*	*3.1%*	*3.7%*	*2.6%*	*2.7%*
3/4""	7,500	$ 127.04	$ 168.86	$ 174.51	$ 182.66	$ 187.82	$ 193.17
	% Change		*32.9%*	*3.3%*	*4.7%*	*2.8%*	*2.9%*
3/4""	15,000	$ 175.04	$ 263.43	$ 273.28	$ 290.21	$ 299.19	$ 308.52
	% Change		*50.5%*	*3.7%*	*6.2%*	*3.1%*	*3.1%*

Commercial Customers

Meter Size	Consumption (Gallons)	2009	2010	2011	2012	2013	2014
1"	12,500	$ 159.04	$ 231.91	$ 240.36	$ 254.36	$ 262.07	$ 270.07
	% Change		*45.8%*	*3.6%*	*5.8%*	*3.0%*	*3.1%*
1"	25,000	$ 239.04	$ 389.53	$ 404.98	$ 433.61	$ 447.69	$ 462.32
	% Change		*63.0%*	*4.0%*	*7.1%*	*3.2%*	*3.3%*

Master-Meter Customers

Meter Size	Consumption (Gallons)	Units		2009	2010	2011	2012	2013	2014
2"	225,000	89	(Bent Creek)	$ 8,743.36	$ 9,977.79	$ 10,256.36	$ 10,513.57	$ 10,768.11	$ 11,032.44
	% Change				*14.1%*	*2.8%*	*2.5%*	*2.4%*	*2.5%*
4"	195,000	88	(Deer Ridge)	$ 8,645.12	$ 9,865.68	$ 10,141.12	$ 10,395.44	$ 10,647.12	$ 10,908.48
	% Change				*14.1%*	*2.8%*	*2.5%*	*2.4%*	*2.5%*

Schedule 3a
Webb Creek Utility District Water & Sewer Rate Study
Water Capital Improvements

	2009	2010	2011	2012	2013	2014	Total
Water Projects							
Water Storage Tank Painting (300,000 gallons)	$ -	$ 75,000	$ -	$ -	$ -	$ -	$ 75,000
Butler Branch Water Project	-	-	62,500	62,500	-	-	125,000
Pine Top Tank (60,000 gallons)	-	-	150,000	-	-	-	150,000
Additional Repair & Replacement Projects	55,489	-	-	-	-	-	55,489
Total Water Capital Improvement Projects	**$ 55,489**	**$ 75,000**	**$ 212,500**	**$ 62,500**	**$ -**	**$ -**	**$ 405,489**
Funding Sources							
Water Capital Reserve (2)	$ -	$ 19,511	$ 7,011	$ 7,011	$ -	$ -	$ 33,533
Rate Funded Capital (1)	55,489	55,489	55,489	55,489	-	-	221,956
Grant Funds	-	-	-	-	-	-	-
Bank Note/Loan	-	-	150,000	-	-	-	150,000
USDA Revenue Bonds	-	-	-	-	-	-	-
Total Funding Sources	**$ 55,489**	**$ 75,000**	**$ 212,500**	**$ 62,500**	**$ -**	**$ -**	**$ 405,489**
Additional Funding Needs	*$ -*	*$ -*	*$ -*	*$ -*	*$ -*	*$ -*	*$ -*

(1) Represents revenue generated annually from rates to fund capital improvements.
(2) Funds used from the Water Capital Reserve.

Schedule 3b
Webb Creek Utility District Water & Sewer Rate Study
Sewer Capital Improvements

	2009	2010	2011	2012	2013	2014	Total
Sewer Projects							
Deer Path Lane Sewer Line Project	$ -	$ 30,000	$ -	$ -	$ -	$ -	$ 30,000
Additional Repair & Replacement Projects	81,597	-	-	-	-	-	81,597
Total Sewer Capital Improvement Projects	**$ 81,597**	**$ 30,000**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 111,597**
Funding Sources							
Sewer Capital Reserve (2)	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Rate Funded Capital (1)	81,597	30,000	-	-	-	-	111,597
Grant Funds	-	-	-	-	-	-	-
Bank Note/ Loan	-	-	-	-	-	-	-
USDA Revenue Bonds	-	-	-	-	-	-	-
Total Funding Sources	**$ 81,597**	**$ 30,000**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 111,597**
Additional Funding Needs	$ -	$ -	$ -	$ -	$ -	$ -	$ -

(1) Represents revenue generated annually from rates to fund capital improvements.
(2) Funds used from the Sewer Capital Reserve.

Schedule 4
Webb Creek Utility District Water & Sewer Rate Study
Debt Service

	2009	2010	2011	2012	2013	2014
Existing Debt Service						
USDA Revenue Bond - Series 1999						
Principal	$ 16,587	$ 17,348	$ 18,145	$ 18,831	$ 19,844	$ 20,756
Interest	54,525	53,764	52,967	52,281	51,268	50,356
Total	$ 71,112	$ 71,112	$ 71,112	$ 71,112	$ 71,112	$ 71,112
USDA Revenue Bond - Series 2002						
Principal	$ 3,816	$ 3,991	$ 4,174	$ 4,332	$ 4,565	$ 4,775
Interest	12,540	12,365	12,182	12,024	11,791	11,581
Total	$ 16,356	$ 16,356	$ 16,356	$ 16,356	$ 16,356	$ 16,356
Total Existing Debt	**$ 87,468**	**$ 87,468**	**$ 87,468**	**$ 87,468**	**$ 87,468**	**$ 87,468**
% Change		*0.0%*	*0.0%*	*0.0%*	*0.0%*	*0.0%*
Proposed Debt						
Other Bank Note/Loans (1)						
2009	$ -	$ -	$ -	$ -	$ -	$ -
2011	-	-	-	11,037	11,037	11,037
2013	-	-	-	-	-	-
Subtotal	$ -	$ -	$ -	$ 11,037	$ 11,037	$ 11,037
USDA Revenue Bonds (2)						
2009	$ -	$ -	$ -	$ -	$ -	$ -
2011	-	-	-	-	-	-
2013	-	-	-	-	-	-
Subtotal	$ -	$ -	$ -	$ -	$ -	$ -
Total Proposed Debt	**$ -**	**$ -**	**$ -**	**$ 11,037**	**$ 11,037**	**$ 11,037**
% Change		*#DIV/0!*	*#DIV/0!*	*#DIV/0!*	*0.0%*	*0.0%*
Total Debt Service	**$ 87,468**	**$ 87,468**	**$ 87,468**	**$ 98,505**	**$ 98,505**	**$ 98,505**
% Change		*0.0%*	*0.0%*	*12.6%*	*0.0%*	*0.0%*
Allocation of Debt Service						
Existing Debt						
Water	$ -	$ -	$ -	$ -	$ -	$ -
Sewer	87,468	87,468	87,468	87,468	87,468	87,468
Subtotal	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468
Proposed Debt						
Water	$ -	$ -	$ -	$ 11,037	$ 11,037	$ 11,037
Sewer	-	-	-	-	-	-
Subtotal	$ -	$ -	$ -	$ 11,037	$ 11,037	$ 11,037

(1) Proposed other bank notes/loans are assumed to be issued for 20 years at 4.0%.
(2) Proposed USDA revenue bonds are assumed to be issued for 38 years at 5.0% with 2.0% issuance costs.

Schedule 5a
Webb Creek Utility District Water & Sewer Rate Study
Combined Revenue Requirements

	2009	2010	2011	2012	2013	2014
	Budget	*Projected*	→			
Operating Expenses						
O&M Expenses (1)	$ 640,662	$ 740,375	$ 777,161	$ 815,841	$ 856,516	$ 899,289
Total Operating Expenses	$ 640,662	$ 740,375	$ 777,161	$ 815,841	$ 856,516	$ 899,289
% Change		*15.6%*	*5.0%*	*5.0%*	*5.0%*	*5.0%*
Non-Operating Expenses						
Debt Service						
Existing	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468
Proposed	-	-	-	11,037	11,037	11,037
Subtotal	$ 87,468	$ 87,468	$ 87,468	$ 98,505	$ 98,505	$ 98,505
Other Non-Operating Expenses						
Rate Funded Capital (2)	$ 137,086	$ 85,489	$ 55,489	$ 55,489	$ -	$ -
Contribution to Operating Reserve	-	50,661	85,000	85,000	140,489	140,489
Contribution to Capital Reserve	-	-	-	-	-	-
Subtotal	$ 137,086	$ 136,150	$ 140,489	$ 140,489	$ 140,489	$ 140,489
Total Non-Operating Expenses	$ 224,554	$ 223,618	$ 227,957	$ 238,994	$ 238,994	$ 238,994
% Change		*-0.4%*	*1.9%*	*4.8%*	*0.0%*	*0.0%*
Total Revenue Requirements	**$ 865,216**	**$ 963,993**	**$ 1,005,118**	**$ 1,054,836**	**$ 1,095,510**	**$ 1,138,284**
% Change		*11.4%*	*4.3%*	*4.9%*	*3.9%*	*3.9%*

(1) Includes all Operating and Maintenance expenses.
(2) Represents annual revenues generated from rates to fund capital projects.

Schedule 5b
Webb Creek Utility District Water & Sewer Rate Study
Water Revenue Requirements

	2009	2010	2011	2012	2013	2014
	Budget	*Projected*	→			
Operating Expenses						
Water O&M Expenses (1)	$ 441,228	$ 435,450	$ 456,647	$ 478,914	$ 502,306	$ 526,882
Total Water Operating Expenses	$ 441,228	$ 435,450	$ 456,647	$ 478,914	$ 502,306	$ 526,882
% Change		*-1.3%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*
Non-Operating Expenses						
Debt Service						
Existing	$ -	$ -	$ -	$ -	$ -	$ -
Proposed	-	-	-	11,037	11,037	11,037
Subtotal	$ -	$ -	$ -	$ 11,037	$ 11,037	$ 11,037
Other Non-Operating Expenses						
Rate Funded Capital (2)	$ 55,489	$ 55,489	$ 55,489	$ 55,489	$ -	$ -
Contribution to Operating Reserve	-	-	-	-	55,489	55,489
Contribution to Capital Reserve	-	-	-	-	-	-
Subtotal	$ 55,489	$ 55,489	$ 55,489	$ 55,489	$ 55,489	$ 55,489
Total Water Non-Operating Expenses	$ 55,489	$ 55,489	$ 55,489	$ 66,526	$ 66,526	$ 66,526
% Change		*0.0%*	*0.0%*	*19.9%*	*0.0%*	*0.0%*
Total Water Revenue Requirements	**$ 496,717**	**$ 490,939**	**$ 512,136**	**$ 545,440**	**$ 568,832**	**$ 593,408**
% Change		*-1.2%*	*4.3%*	*6.5%*	*4.3%*	*4.3%*

(1) Includes all Operating and Maintenance expenses allocated to the water utility.
(2) Represents annual revenues generated from rates to fund capital projects.

Schedule 5c
Webb Creek Utility District Water & Sewer Rate Study
Sewer Revenue Requirements

	2009	2010	2011	2012	2013	2014
	Budget	*Projected*	→			
Operating Expenses						
Sewer O&M Expenses (1)	$ 199,434	$ 304,925	$ 320,514	$ 336,928	$ 354,209	$ 372,407
Total Sewer Operating Expenses	$ 199,434	$ 304,925	$ 320,514	$ 336,928	$ 354,209	$ 372,407
% Change		*52.9%*	*5.1%*	*5.1%*	*5.1%*	*5.1%*
Non-Operating Expenses						
Debt Service						
Existing	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468
Proposed	-	-	-	-	-	-
Subtotal	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468
Other Non-Operating Expenses						
Rate Funded Capital (2)	$ 81,597	$ 30,000	$ -	$ -	$ -	$ -
Contribution to Operating Reserve	-	50,661	85,000	85,000	85,000	85,000
Contribution to Capital Reserve	-	-	-	-	-	-
Subtotal	$ 81,597	$ 80,661	$ 85,000	$ 85,000	$ 85,000	$ 85,000
Total Sewer Non-Operating Expenses	$ 169,065	$ 168,129	$ 172,468	$ 172,468	$ 172,468	$ 172,468
% Change		*-0.6%*	*2.6%*	*0.0%*	*0.0%*	*0.0%*
Total Sewer Revenue Requirements	**$ 368,499**	**$ 473,054**	**$ 492,982**	**$ 509,396**	**$ 526,677**	**$ 544,875**
% Change		*28.4%*	*4.2%*	*3.3%*	*3.4%*	*3.5%*

(1) Includes all Operating and Maintenance expenses allocated to the sewer utility.
(2) Represents annual revenues generated from rates to fund capital projects.

Schedule 6a
Webb Creek Utility District Water & Sewer Rate Study
Allocation of Revenue Requirements

	2009	2010	2011	2012	2013	2014
	Budget	*Projected* →				
Water Revenue Requirements						
Fixed Component (1)	$ 431,856	$ 426,928	$ 445,009	$ 475,040	$ 494,993	$ 515,957
Variable Component (2)	64,860	64,011	67,127	70,400	73,839	77,452
Total Water Revenue Requirements	$ 496,717	$ 490,939	$ 512,136	$ 545,440	$ 568,832	$ 593,408
Sewer Revenue Requirements						
Fixed Component (1)	$ 351,148	$ 446,526	$ 465,098	$ 480,083	$ 495,861	$ 512,476
Variable Component (2)	17,351	26,529	27,885	29,313	30,816	32,399
Total Sewer Revenue Requirements	$ 368,499	$ 473,054	$ 492,982	$ 509,396	$ 526,677	$ 544,875
Total Revenue Requirements	**$ 865,216**	**$ 963,993**	**$ 1,005,118**	**$ 1,054,836**	**$ 1,095,510**	**$ 1,138,284**
% Change		*11.4%*	*4.3%*	*4.9%*	*3.9%*	*3.9%*

(1) Represents costs allocated for recovery from the minimum charge.
(2) Represents costs allocated for recovery from the volumetric charge.

Schedule 6b
Webb Creek Utility District Water & Sewer Rate Study
Water Revenue Requirement - % Allocations

	2009	2010	2011	2012	2013	2014
	Budget	*Projected*	→			
Water O&M Expenses						
Fixed Component	85.3%	85.3%	85.3%	85.3%	85.3%	85.3%
Variable Component	14.7%	14.7%	14.7%	14.7%	14.7%	14.7%
Debt Service						
Fixed Component	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Variable Component	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Rate Funded Capital						
Fixed Component	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Variable Component	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Contribution to Operating Reserve						
Fixed Component	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Variable Component	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Contribution to Capital Reserve						
Fixed Component	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Variable Component	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Schedule 6c
Webb Creek Utility District Water & Sewer Rate Study
Water Revenue Requirement - $ Allocations

	2009	2010	2011	2012	2013	2014
	Budget	*Projected* →				
Water O&M Expenses						
Fixed Component	$ 376,367	$ 371,439	$ 389,520	$ 408,513	$ 428,467	$ 449,431
Variable Component	64,860	64,011	67,127	70,400	73,839	77,452
Total Water O&M Expenses	$ 441,228	$ 435,450	$ 456,647	$ 478,914	$ 502,306	$ 526,882
Debt Service						
Fixed Component	$ -	$ -	$ -	$ 11,037	$ 11,037	$ 11,037
Variable Component	-	-	-	-	-	-
Total Debt Service	$ -	$ -	$ -	$ 11,037	$ 11,037	$ 11,037
Rate Funded Capital						
Fixed Component	$ 55,489	$ 55,489	$ 55,489	$ 55,489	$ -	$ -
Variable Component	-	-	-	-	-	-
Total Rate Funded Capital	$ 55,489	$ 55,489	$ 55,489	$ 55,489	$ -	$ -
Contribution to Operating Reserve						
Fixed Component	$ -	$ -	$ -	$ -	$ 55,489	$ 55,489
Variable Component	-	-	-	-	-	-
Total Contribution to Operating Reserve	$ -	$ -	$ -	$ -	$ 55,489	$ 55,489
Contribution to Capital Reserve						
Fixed Component	$ -	$ -	$ -	$ -	$ -	$ -
Variable Component	-	-	-	-	-	-
Total Contribution to Capital Reserve	$ -	$ -	$ -	$ -	$ -	$ -

Schedule 6d
Webb Creek Utility District Water & Sewer Rate Study
Sewer Revenue Requirement - % Allocations

	2009	2010	2011	2012	2013	2014
	Budget	*Projected*	→			
Sewer O&M Expenses						
Fixed Component	91.3%	91.3%	91.3%	91.3%	91.3%	91.3%
Variable Component	8.7%	8.7%	8.7%	8.7%	8.7%	8.7%
Debt Service						
Fixed Component	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Variable Component	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Rate Funded Capital						
Fixed Component	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Variable Component	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Contribution to Operating Reserve						
Fixed Component	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Variable Component	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Contribution to Capital Reserve						
Fixed Component	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Variable Component	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Schedule 6e
Webb Creek Utility District Water & Sewer Rate Study
Sewer Revenue Requirement - $ Allocations

	2009	2010	2011	2012	2013	2014
	Budget	*Projected*	→			
Sewer O&M Expenses						
Fixed Component	$ 182,083	$ 278,397	$ 292,630	$ 307,615	$ 323,393	$ 340,008
Variable Component	17,351	26,529	27,885	29,313	30,816	32,399
Total Water O&M Expenses	$ 199,434	$ 304,925	$ 320,514	$ 336,928	$ 354,209	$ 372,407
Debt Service						
Fixed Component	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468
Variable Component	-	-	-	-	-	-
Total Debt Service	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468
Rate Funded Capital						
Fixed Component	$ 81,597	$ 30,000	$ -	$ -	$ -	$ -
Variable Component	-	-	-	-	-	-
Total Rate Funded Capital	$ 81,597	$ 30,000	$ -	$ -	$ -	$ -
Contribution to Operating Reserve						
Fixed Component	$ -	$ 50,661	$ 85,000	$ 85,000	$ 85,000	$ 85,000
Variable Component	-	-	-	-	-	-
Total Contribution to Operating Reserve	$ -	$ 50,661	$ 85,000	$ 85,000	$ 85,000	$ 85,000
Contribution to Capital Reserve						
Fixed Component	$ -	$ -	$ -	$ -	$ -	$ -
Variable Component	-	-	-	-	-	-
Total Contribution to Capital Reserve	$ -	$ -	$ -	$ -	$ -	$ -

Schedule 7
Webb Creek Utility District Water & Sewer Rate Study
Revenue Offsets

	2009	2010	2011	2012	2013	2014
	Budget	*Projected*	→			
Revenue Offsets						
Late Fees (1)	$ 10,950	$ 10,950	$ 10,950	$ 10,950	$ 10,950	$ 10,950
Water Taps	3,625	3,625	3,625	3,625	3,625	3,625
Sewer Taps	1,160	1,160	1,160	1,160	1,160	1,160
Miscellaneous Revenue (1)	1,400	1,400	1,400	1,400	1,400	1,400
Total Revenue Offsets	**$ 17,135**	**$ 17,135**	**$ 17,135**	**$ 17,135**	**$ 17,135**	**$ 17,135**
% Change		*0.0%*	*0.0%*	*0.0%*	*0.0%*	*0.0%*
Allocation of Revenue Offsets						
Water Fixed Component	$ 9,924	$ 9,924	$ 9,924	$ 9,924	$ 9,924	$ 9,924
Water Variable Component	-	-	-	-	-	-
Sewer Fixed Component	7,212	7,212	7,212	7,212	7,212	7,212
Sewer Variable Component	-	-	-	-	-	-
Total Revenue Offsets	**$ 17,135**	**$ 17,135**	**$ 17,135**	**$ 17,135**	**$ 17,135**	**$ 17,135**

(1) Allocated between water and sewer based on customer accounts.

Schedule 8a
Webb Creek Utility District Water & Sewer Rate Study
Water Accounts

	2008	2009	2010	2011	2012	2013	2014
Water Accounts							
Residential Units (1)	480	480	490	499	509	520	530
Condominiums Units (2)	213	213	217	222	226	231	235
Luxury Campgrounds Units	-	-	-	-	-	-	-
Commercial Units (3)	28	28	29	29	30	30	31
Total Water Units	721	721	735	750	765	780	796
% Change		*0.0%*	*2.0%*	*2.0%*	*2.0%*	*2.0%*	*2.0%*
Total Water Bills	**8,652**	**8,652**	**8,825**	**9,002**	**9,182**	**9,365**	**9,553**
Total Equivalent Water Bills	8,652	8,652	8,825	9,002	9,182	9,365	9,553

(1) Single-family residential customers.
(2) Includes both condominiums and time share units.
(3) Includes all commercial customers and accounts classified as other. Other accounts include, for example, churches, fire department, individual restrooms, and pools.

Schedule 8b
Webb Creek Utility District Water & Sewer Rate Study
Sewer Accounts

	2008	2009	2010	2011	2012	2013	2014
Sewer Accounts							
Residential Units (1)	75	75	77	78	80	81	83
Condominiums Units (2)	233	233	238	242	247	252	257
Luxury Campground Units (4)	384	384	384	384	384	384	384
Commercial Units (3)	10	10	10	10	11	11	11
Total Sewer Units	702	702	708	715	721	728	735
% Change		*0.0%*	*0.9%*	*0.9%*	*0.9%*	*0.9%*	*0.9%*
Total Sewer Bills	**8,424**	**8,424**	**8,500**	**8,578**	**8,658**	**8,739**	**8,821**
Total Equivalent Sewer Bills	8,424	8,424	6,772	6,850	6,930	7,011	7,093

(1) Single-family residential customers.
(2) Includes both condominiums and time share units.
(3) Includes all commercial customers and accounts classified as other. Other accounts include, for example, churches, fire department, individual restrooms, and pools.
(4) Outdoor resorts luxury campground units.

Schedule 9a
Webb Creek Utility District Water & Sewer Rate Study
Water Billable Flows

	2008	2009	2010	2011	2012	2013	2014
Water Billable Flows (kgal)							
Residential Customers (1)							
Minimum Charge (0 - 3,000 Gallons)	11,183	11,183	11,295	11,408	11,522	11,637	11,754
Block 1 (Above 3,000 Gallons)	14,103	14,103	14,244	14,387	14,531	14,676	14,823
Subtotal	25,287	25,287	25,540	25,795	26,053	26,313	26,577
Commercial Customers							
Minimum Charge (0 - 3,000 Gallons)	43	43	43	44	44	44	45
Block 1 (Above 3,000 Gallons)	1	1	1	1	1	1	1
Subtotal	43	43	44	44	45	45	46
Total Water Billable Flows (kgal)	**25,330**	**25,330**	**25,583**	**25,839**	**26,098**	**26,359**	**26,622**
% Change		*0.0%*	*1.0%*	*1.0%*	*1.0%*	*1.0%*	*1.0%*

(1) Includes Rate Code 5 (customers with two water connections) and Rate Code 11 (Deer Ridge).

Schedule 9b
Webb Creek Utility District Water & Sewer Rate Study
Billable Flows

	2008	2009	2010	2011	2012	2013	2014
Sewer Billable Flows (kgal)							
Residential Customers							
Minimum Charge (0 - 3,000 Gallons)	7,004	7,004	7,144	7,287	7,432	7,581	7,733
Block 1 (Above 3,000 Gallons)	2,444	2,444	2,493	2,543	2,594	2,645	2,698
Subtotal	9,448	9,448	9,637	9,829	10,026	10,226	10,431
Commercial Customers							
Minimum Charge (0 - 3,000 Gallons)	4	4	4	4	4	4	4
Block 1 (Above 3,000 Gallons)	0	0	0	0	0	0	0
Subtotal	5	5	5	5	5	5	5
Outdoor Resorts							
Usage (0 - 1,650 Gallons)	6,378	6,378	6,378	6,378	6,378	6,378	6,378
Above (1,650 Gallons)	507	507	507	507	507	507	507
Subtotal	6,885	6,885	6,885	6,885	6,885	6,885	6,885
Total Sewer Billable Flows (kgal)	**16,337**	**16,337**	**16,526**	**16,719**	**16,916**	**17,116**	**17,321**
% Change		*0.0%*	*1.2%*	*1.2%*	*1.2%*	*1.2%*	*1.2%*

Schedule 10a
Webb Creek Utility District Water & Sewer Rate Study
Water Minimum Charge

	2009	2010	2011	2012	2013	2014
	Actual	*Projected*	→			
Water Minimum Charge						
Minimum Charge Related Costs (1)	$ 431,856	$ 426,928	$ 445,009	$ 475,040	$ 494,993	$ 515,957
Plus:						
Transfer to Sewer	$ -	$ 37,000	$ 29,500	$ 22,000	$ 14,500	$ 7,000
Less:						
Revenue Offsets (2)	$ 9,924	$ 9,924	$ 9,924	$ 9,924	$ 9,924	$ 9,924
Net Revenue Requirements to be Recovered from Water Minimum Charge	$ 421,933	$ 454,004	$ 464,585	$ 487,116	$ 499,570	$ 513,033
Annual Equivalent Water Bills	8,652	8,825	9,002	9,182	9,365	9,553
Calculated Minimum Charge	$ 48.767	$ 51.445	$ 51.612	$ 53.054	$ 53.343	$ 53.707
Recommended Minimum Charge	**$ 52.70**	**$ 52.70**	**$ 52.70**	**$ 53.06**	**$ 53.35**	**$ 53.71**
% Change		*0.0%*	*0.0%*	*0.7%*	*0.5%*	*0.7%*
Water Minimum Charge (Includes 3,000 Gallons)	**$ 52.70**	**$ 52.70**	**$ 52.70**	**$ 53.06**	**$ 53.35**	**$ 53.71**

(1) From Schedule 6a: Allocation of Revenue Requirements. Includes all costs allocated to the fixed component of water revenue requirements.
(2) From Schedule 7: Revenue Offsets. Includes all revenues allocated to offset the fixed component of water revenue requirements.

Schedule 10b
Webb Creek Utility District Water & Sewer Rate Study
Sewer Minimum Charge

	2009	2010	2011	2012	2013	2014
	Actual	*Projected*	→			
Sewer Minimum Charge						
Minimum Charge Related Costs (1)	$ 351,148	$ 446,526	$ 465,098	$ 480,083	$ 495,861	$ 512,476
Less:						
Revenue Offsets (2)	7,212	7,212	7,212	7,212	7,212	7,212
Transfer from Water	-	37,000	29,500	22,000	14,500	7,000
Net Revenue Requirements to be Recovered from Sewer Minimum Charge	$ 343,937	$ 402,314	$ 428,386	$ 450,871	$ 474,150	$ 498,264
Annual Equivalent Sewer Bills	8,424	6,772	6,850	6,930	7,011	7,093
Calculated Minimum Charge	$ 40.828	$ 59.406	$ 62.537	$ 65.065	$ 67.634	$ 70.246
Recommended Minimum Charge	**$ 45.54**	**$ 59.41**	**$ 62.54**	**$ 65.07**	**$ 67.64**	**$ 70.25**
Sewer Minimum Charge (Includes 3,000 Gallons)	**$ 45.54**	**$ 59.41**	**$ 62.54**	**$ 65.07**	**$ 67.64**	**$ 70.25**
% Change		*30.5%*	*5.3%*	*4.0%*	*3.9%*	*3.9%*
Outdoor Resorts						
Sewer Minimum Charge (Includes 1,650 Gallons)	$ 45.54	$ 37.13	$ 39.09	$ 40.67	$ 42.28	$ 43.91
		-18.5%	*5.3%*	*4.0%*	*3.9%*	*3.9%*
Assumes Rate Effective 9/1/09	*$ 37.13*					

(1) From Schedule 6a: Allocation of Revenue Requirements. Includes all costs allocated to the fixed component of sewer revenue requirements.
(2) From Schedule 7: Revenue Offsets. Includes all revenues allocated to offset the fixed component of sewer revenue requirements.

Schedule 11a
Webb Creek Utility District Water & Sewer Rate Study
Water Volume Charge

	2009	2010	2011	2012	2013	2014
	Actual	*Projected*	→			
Water Volume Charge						
Volume Charge Related Costs (1)	$ 64,860	$ 64,011	$ 67,127	$ 70,400	$ 73,839	$ 77,452
Plus:						
Transfer to Sewer	-	-	-	-	-	-
Less:						
Revenue Offsets (2)	-	-	-	-	-	-
Surplus Deficit from Minimum Charge	34,028	11,075	9,796	58	64	32
Net Revenue Requirements to be Recovered from Water Volume Charge	$ 30,833	$ 52,936	$ 57,331	$ 70,342	$ 73,775	$ 77,420
Annual Billable Flows Above Minimum Allowance	14,104	14,104	14,245	14,388	14,531	14,677
Calculated Volume Charge	$ 2.186	$ 3.753	$ 4.025	$ 4.889	$ 5.077	$ 5.275
Recommended Volume Charge	**$ 3.77**	**$ 3.77**	**$ 4.03**	**$ 4.89**	**$ 5.08**	**$ 5.28**
% Change		*0.0%*	*6.9%*	*21.3%*	*3.9%*	*3.9%*
Water Volume Charge (All Customers) (per kgal)	**$ 3.77**	**$ 3.77**	**$ 4.03**	**$ 4.89**	**$ 5.08**	**$ 5.28**

(1) From Schedule 6a: Allocation of Revenue Requirements. Includes all costs allocated to the volume component of water revenue requirements.
(2) From Schedule 7: Revenue Offsets. Includes all revenues allocated to offset the volume component of water revenue requirements.

Schedule 11b
Webb Creek Utility District Water & Sewer Rate Study
Sewer Volume Charge

	2009	2010	2011	2012	2013	2014
	Actual	*Projected*	→			
Sewer Volume Charge						
Volume Charge Related Costs (1)	$ 17,351	$ 26,529	$ 27,885	$ 29,313	$ 30,816	$ 32,399
Less:						
Revenue Offsets (2)	-	-	-	-	-	-
Transfer from Water	-	-	-	-	-	-
Surplus Deficit from Minimum Charge	26,776	29	23	36	45	31
Net Revenue Requirements to be Recovered from Sewer Volume Charge	$ (9,426)	$ 26,499	$ 27,862	$ 29,277	$ 30,772	$ 32,368
Annual Billable Flows Above Minimum Allowance	2,444	3,000	3,050	3,100	3,152	3,205
Calculated Volume Charge	$ (3.857)	$ 8.834	$ 9.136	$ 9.443	$ 9.762	$ 10.099
Recommended Volume Charge	**$ 2.63**	**$ 8.84**	**$ 9.14**	**$ 9.45**	**$ 9.77**	**$ 10.10**
% Change		*236.1%*	*3.4%*	*3.4%*	*3.4%*	*3.4%*
Sewer Volume Charge (All Customers) (per kgal)	**$ 2.63**	**$ 8.84**	**$ 9.14**	**$ 9.45**	**$ 9.77**	**$ 10.10**

Assumes Rate Effective 9/1/09 *$ 8.84*

(1) From Schedule 6a: Allocation of Revenue Requirements. Includes all costs allocated to the volume component of sewer revenue requirements.
(2) From Schedule 7: Revenue Offsets. Includes all revenues allocated to offset the volume component of sewer revenue requirements.

Schedule 12
Webb Creek Utility District Water & Sewer Rate Study
Revenue Proof

	2009	2010	2011	2012	2013	2014
	Budget	*Projected*	→			
Revenues						
User Charge Revenues						
Water Rates and Charges						
Minimum Charge	$ 455,960	$ 465,080	$ 474,381	$ 487,174	$ 499,634	$ 513,065
Volume Charge	53,172	53,704	57,982	71,059	74,558	78,268
Subtotal Water User Charge Revenues	$ 509,133	$ 518,784	$ 532,363	$ 558,233	$ 574,191	$ 591,333
Sewer Rates and Charges						
Minimum Charge	$ 370,713	$ 402,344	$ 428,409	$ 450,907	$ 474,194	$ 498,295
Volume Charge	7,921	26,518	27,873	29,299	30,798	32,373
Subtotal Sewer User Charge Revenues	$ 378,634	$ 428,861	$ 456,283	$ 480,207	$ 504,993	$ 530,668
Total User Charge Revenues	$ 887,767	$ 947,645	$ 988,646	$ 1,038,439	$ 1,079,184	$ 1,122,002
% Change		*6.7%*	*4.3%*	*5.0%*	*3.9%*	*4.0%*
Charges for Specific Services						
Late Fees	$ 10,950	$ 10,950	$ 10,950	$ 10,950	$ 10,950	$ 10,950
Water Taps	3,625	3,625	3,625	3,625	3,625	3,625
Sewer Taps	1,160	1,160	1,160	1,160	1,160	1,160
Miscellaneous Revenue	1,400	1,400	1,400	1,400	1,400	1,400
Subtotal Charges for Specific Services	$ 17,135	$ 17,135	$ 17,135	$ 17,135	$ 17,135	$ 17,135
Total Revenues	**$ 904,902**	**$ 964,780**	**$ 1,005,781**	**$ 1,055,574**	**$ 1,096,319**	**$ 1,139,137**
% Change		*6.6%*	*4.2%*	*5.0%*	*3.9%*	*3.9%*
Revenue Requirements						
Operating Expenses	$ 640,662	$ 740,375	$ 777,161	$ 815,841	$ 856,516	$ 899,289
Non-Operating Expenses						
Debt Service						
Existing	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468
Proposed	-	-	-	11,037	11,037	11,037
Subtotal Debt Service	$ 87,468	$ 87,468	$ 87,468	$ 98,505	$ 98,505	$ 98,505
Other Non-Operating Expenses						
Rate Funded Capital	$ 137,086	$ 85,489	$ 55,489	$ 55,489	$ -	$ -
Contribution to Operating Reserve	-	50,661	85,000	85,000	140,489	140,489
Contribution to Capital Reserve	-	-	-	-	-	-
Subtotal Other Non-Operating Expenses	$ 137,086	$ 136,150	$ 140,489	$ 140,489	$ 140,489	$ 140,489
Total Non-Operating Expenses	$ 224,554	$ 223,618	$ 227,957	$ 238,994	$ 238,994	$ 238,994
Total Revenue Requirements	**$ 865,216**	**$ 963,993**	**$ 1,005,118**	**$ 1,054,836**	**$ 1,095,510**	**$ 1,138,284**
% Change		*11.4%*	*4.3%*	*4.9%*	*3.9%*	*3.9%*
Surplus/Deficit	*$ 39,686*	*$ 787*	*$ 663*	*$ 739*	*$ 809*	*$ 853*

Schedule 12 Con't
Webb Creek Utility District Water & Sewer Rate Study
Revenue Proof

	2009	2010	2011	2012	2013	2014
	Budget	*Projected*	→			
Debt Service Coverage Analysis						
User Charge Revenues	$ 887,767	$ 947,645	$ 988,646	$ 1,038,439	$ 1,079,184	$ 1,122,002
Other Revenues	17,135	17,135	17,135	17,135	17,135	17,135
Total Revenues Available for Debt Service	$ 904,902	$ 964,780	$ 1,005,781	$ 1,055,574	$ 1,096,319	$ 1,139,137
Less:						
Operating Expenses	$ 640,662	$ 740,375	$ 777,161	$ 815,841	$ 856,516	$ 899,289
Net Revenues Available for Debt Service	$ 264,240	$ 224,405	$ 228,620	$ 239,733	$ 239,804	$ 239,847
Debt Service						
USDA Revenue Bonds						
Existing	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468
Proposed	-	-	-	-	-	-
Subtotal USDA Revenue Bonds	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468	$ 87,468
Bank Notes/Loans						
Existing	$ -	$ -	$ -	$ -	$ -	$ -
Proposed	-	-	-	11,037	11,037	11,037
Subtotal SRF Loans	$ -	$ -	$ -	$ 11,037	$ 11,037	$ 11,037
Total Debt Service	$ 87,468	$ 87,468	$ 87,468	$ 98,505	$ 98,505	$ 98,505
Total Debt Service Coverage - Target 1.20x (1)	**3.02**	**2.57**	**2.61**	**2.43**	**2.43**	**2.43**

(1) Target debt service coverage ratio that is consistent with the Additional Bonds Test outlined in the District's Bond Resolution adopted for both outstanding USDA revenue bond issues.

Schedule 13
Webb Creek Utility District Water & Sewer Rate Study
Fund Balance

	2009	2010	2011	2012	2013	2014
	Budget	*Projected*	→			
Operating Reserve						
Beginning Balance	$ 216,450	$ 256,136	$ 288,073	$ 366,724	$ 445,452	$ 586,750
Sources						
Surplus/Deficit	$ 39,686	$ 787	$ 663	$ 739	$ 809	$ 853
Transfer from Water Rates	-	-	-	-	55,489	55,489
Transfer from Sewer Rates	-	50,661	85,000	85,000	85,000	85,000
Subtotal	$ 39,686	$ 51,448	$ 85,663	$ 85,739	$ 141,298	$ 141,342
Uses						
Transfer to Water Capital Reserve	$ -	$ 19,511	$ 7,011	$ 7,011	$ -	$ -
Transfer to Sewer Capital Reserve	-	-	-	-	-	-
Subtotal	$ -	$ 19,511	$ 7,011	$ 7,011	$ -	$ -
Ending Balance	$ 256,136	$ 288,073	$ 366,724	$ 445,452	$ 586,750	$ 728,092
Average Balance	$ 236,293	$ 272,104	$ 327,399	$ 406,088	$ 516,101	$ 657,421
Days O&M Expenses	135	134	154	182	220	267
Days O&M Expenses Plus Debt Service	118	120	138	162	197	240
Water Capital Reserve						
Beginning Balance	$ -	$ -	$ -	$ -	$ -	$ -
Sources						
Transfer from Rates	$ -	$ -	$ -	$ -	$ -	$ -
Transfer from Operating Reserve	-	19,511	7,011	7,011	-	-
Subtotal	$ -	$ 19,511	$ 7,011	$ 7,011	$ -	$ -
Uses						
Transfer to Water CIP	$ -	$ 19,511	$ 7,011	$ 7,011	$ -	$ -
Subtotal	$ -	$ 19,511	$ 7,011	$ 7,011	$ -	$ -
Ending Balance	$ -	$ -	$ -	$ -	$ -	$ -
Average Balance	$ -	$ -	$ -	$ -	$ -	$ -
Sewer Capital Reserve						
Beginning Balance	$ -	$ -	$ -	$ -	$ -	$ -
Sources						
Transfer from Rates	$ -	$ -	$ -	$ -	$ -	$ -
Transfer from Operating Reserve	-	50,661	85,000	85,000	85,000	85,000
Subtotal	$ -	$ 50,661	$ 85,000	$ 85,000	$ 85,000	$ 85,000
Uses						
Transfer to Sewer CIP	$ -	$ -	$ -	$ -	$ -	$ -
Subtotal	$ -	$ -	$ -	$ -	$ -	$ -
Ending Balance	$ -	$ 50,661	$ 85,000	$ 85,000	$ 85,000	$ 85,000
Average Balance	$ -	$ 25,331	$ 42,500	$ 42,500	$ 42,500	$ 42,500

RFC
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* *Rule 31 Listed Family & General Civil Mediator*

November 15, 2013

Tennessee Utility Management Review Board
C/O MS. JOYCE WELBORN
Office of the Comptroller of the Treasury
Division of Local Finance
505 Deaderick Street, Suite 1700
Nashville, TN 37243-0274

VIA: E-MAIL AND U.S. MAIL
(joyce.welborn@cot.tn.gov)

IN RE: Webb Creek Utility District vs. Bent Creek Golf Village Condominium Association, Inc.

Dear Ms. Welborn:

Please find the attached Brief of Webb Creek Utility District which is being submitted in accordance with the scheduling deadlines as set out in the August 20, 2013 correspondence of the State of Tennessee Comptroller of the Treasury, Office of General Counsel. I have also attached a PDF version of the rate study via my email correspondence of this message for your convenience.

Please do not hesitate to contact me with any questions or concerns regarding this submission.

Sincerely,

OGLE, GASS & RICHARDSON, P.C.

James L. Gass

Enclosure
CC: Joe Shirley, Esq
Rachel Newton, Esq.
Robert L. Vance, Esq.

UTILITY MANAGEMENT REVIEW BOARD

BENT CREEK GOLF VILLAGE CONDOMINIUM ASSOCIATION, INC.,

vs.

WEBB CREEK UTILITY DISTRICT.

BRIEF IN SUPPORT OF UPHOLDING THE CURRENT RATE STRUCTURE OF WEBB CREEK UTILITY DISTRICT

Comes now Webb Creek Utility District (hereinafter referred to as "Webb Creek" or "WCUD"), by and through counsel, and submits this brief in support of upholding the current rate structure established by Webb Creek Utility District.

STATEMENT OF THE FACTS

Webb Creek Utility District is a small utility district servicing only 721 water customers and 702 sewer customers. It is subject to the Utility District Law of 1937, codified at Tenn. Code Ann. 7-82-101, et seq., and has been before the UMRB (also hereinafter referred to as the "Board") as a financially distressed utility district under Tenn. Code Ann. §7-82-401 and §7-82-703. The district is characterized by its small and seasonal customer base, which creates the need for a specially designed rate structure to meet the District's financial needs and obligations year round and to prevent the District from suffering a severe decrease in cash flow during the off-season. This rate structure incorporates a high minimum bill, allowing each customer a specific gallon allotment per month, and an additional charge for water usage above that allotment.

Bent Creek Golf Village Condominium Association, Inc. (hereinafter referred to as "Bent Creek") is a customer of the Webb Creek Utility District and is a horizontal

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property regime subject to the Horizontal Property Act. It is a timeshare property, and many of its own occupants come in seasonal waves. In accordance with the rate structure described above, Bent Creek is billed a minimum charge each month for each of its units. However, the classification of the units on the Bent Creek property for utility billing purposes is a highly contested point in this matter. In 2008, a representative of WCUD personally visited Bent Creek to evaluate the property for the purpose of rate structuring. Upon review, the WCUD representative noted that many of the units were designed in such a way that they could be divided into two separate units, each with a kitchen and bathroom facilities, and a door to the outside. Further, these units were constructed with a "lockout door" so that each unit could function privately and independently from the other. This first-hand observation of the property resulted in a recommendation that the property be divided for billing purposes into Equivalent Residential Units (ERUs). This division was implemented by classifying nine two-bedroom golf villas and twenty-eight two-bedroom villas as two equivalent units each which in turn caused an increase in the number of minimum bills issued to Bent Creek from 47 to 84. This reclassification was met with much resistance on the part of Bent Creek, and Bent Creek protested the billing change and demanded a hearing before the board of commissioners. The board of commissioners held the initial hearing on this matter on July 11, 2008, and issued its opinion that the practice of using implementing the use of ERUs would be maintained on August 11, 2008.

Bent Creek then requested review of the board of commissioners' decision before the UMRB of September 2, 2008, and the matter was heard for the first time on February 5, 2009. In order to allow for discussion and completion of a rate study, the Board

deferred the matter until its April 2009 meeting, and Bent Creek agreed to this deferral. During the upcoming months, Webb Creek employed Raftelis Financial Consultants, Inc. (hereinafter referred to as "Rafetelis") to complete a rate study evaluating the current rate structure and suggesting recommended changes to ensure an equitable and justified method of recovering costs and ensuring an appropriate revenue stream. The Raftelis study not only examined the current rate structure for the district's water customers, but also the rate structure for the district's sewer customers. The Board ultimately deferred further hearing the matter until October 2009 to allow the rate study to be completed and allow the parties time to review its conclusions. On October 1, 2009, the UMRB upheld the water rates being used by Webb Creek, but delayed any final decision at the request of Bent Creek to give the parties time to negotiate a settlement. A year passed and the parties were unable to result in a settlement of the issues, and, on November 3, 2010, the matter was set for hearing at the request of counsel for Bent Creek for the Board's meeting on February 3, 2011. Upon completion of the hearing, the UMRB issued its decision on March 2, 2011 and reaffirmed its approval of the district's billing rates and classification of equivalent residential units for billing purposes.

On May 2nd, 2011, Bent Creek filed its petition requesting judicial review of the UMRB's order in the Chancery Court for Sevier County, Tennessee. During the pendency of this action in the Chancery Court, the Court of Appeals heard the case of *Outdoor Resorts at Gatlinburg, Inc. v. Utility Management Review Board, et al.*, 2012 Tenn. App. LEXIS 236 (Tenn. Ct. App. Apr. 13, 2012), in which Outdoor Resorts challenged the UMRB's decision to uphold the rate structure of the Webb Creek Utility District in relation to its sewage service based upon the conclusion of the very same rate

study performed by Raftelis in this matter. In reviewing the sufficiency of the study as a basis for implementing a rate structure, the Court of Appeals noted concern with the amount and reliability of evidence used to form the study's conclusions, and remanded the case back to the trial court, holding that the rate study did not constitute sufficient evidence in this case to support a rate change. Given that Webb Creek and the UMRB had filed briefs asserting that Bent Creek's request for a Writ of Certiorari be denied based upon the UMRB's hearing process and its final conclusion based on the rate study results, it became necessary for the UMRB to reconsider the evidence prior to judicial review. Further, in contrast with the UMRB's position that it did not have the authority to grant refunds of excess payments, the Court of Appeals held that it did have the authority to order payments of the difference between a pendente lite rate established during the pendency of a hearing and a permanent rate established after a final hearing. Therefore, on October 23, 2012, the UMRB and Webb Creek filed a joint motion for remand to allow the UMRB to reconsider the current WCUD water rate structure consistent with the holding of the Court of Appeals. On December 7, 2012 the Sevier County Chancery court entered an Order for Remand for this action to be reheard before this Board.

SUMMARY OF ARGUMENT

While much of the evidence in this matter has already been presented to this Board through numerous hearings, written statements, and a substantial amount of documentation, given the holding of the Tennessee Court of Appeals, it has become advisable to readdress the evidence in support of Webb Creek's rate structure before this Board. However, unlike the outcome in *Outdoor Resorts,* the Court of Appeals decision does overturn or in any way negatively impact the conclusion of the Raftelis rate study as

it relates to this case, and Webb Creek would show that the UMRB's decision remains an appropriate determination of the matter. The rate study and the evidence supporting its conclusion in relation to the water rate structure of WCUD are well-supported and sound.

Further, Bent Creek has provided no further evidence that the District's classification of Equivalent Residential Units was inappropriate or beyond the scope of its authority, and, as such, the UMRB's determination that the classification was appropriate should not be now overturned.

As such, the rates charged by Webb Creek during the pendency of this cause have been appropriate, and despite the UMRB's newfound authority to award refunds, none is due in this case.

ARGUMENT

As stated above, Webb Creek Utility District operates under the Utility District Law of 1937, codified at T.C.A. §7-82-101, et seq., which authorizes the District to "[f]ix, maintain, collect and revise rates and charges for any service." T.C.A. §7-82-403(a)(6). In addition, the District is in fact required to ensure that is rates are prescribed in such a way that the system remains self-supporting. See T.C.A. §7-82-403(a). If any customer takes issue with the rate structure prescribed by a district in accordance with these rules, it may request a hearing on the record with the District's Board of Commissioners, and may also appeal the commissioners' decision to this Board by written request. See T.C.A. §7-82-402(a)(1) and §7-82-402(a)(3). As was done in this case, if the customer also disagrees with the final determination by the UMRB, the case may be appealed by filing a petition for a writ of certiorari in the county of the district's principal office. In this case, a writ was filed in the Chancery Court for Sevier County,

Tennessee. However, this matter is back in front of the UMRB for determination on the evidence in accordance with the Court of Appeals' holding in *Outdoor Resorts.* It is now the duty of the UMRB to determine whether the rate structure applied by WCUD is just and reasonable, and in this case, whether WCUD presented substantial evidence to support said rate structure.

Ratemaking has long been held to be a legislative, not a judicial, function which is accorded great deference by the Court. The Court has addressed the appropriateness of rates by considering what is just and reasonable "under the proven circumstances," and with "regard to all relevant facts" and if such rates are within the "zone of reasonableness." See *Southern Bell Telephone & Telegraph Co. v. Tennessee Public Service Comm'n,*304 S.W.2d 640, 647-48 (Tenn. 1957). Further, courts recognize that ratemaking is a complex process carried out by administrative officials who exercise their own expertise, technical competence, and specialized knowledge. *CF Industries v. Tennessee Pub. Serv. Comm'n*, 599 S.W.2d, 536, 543-544 (Tenn. 1980). In this case, the Board issuing the first decision was a highly experienced conglomeration of capable professionals the majority of whom were themselves utility district commissioners and/or managers, and therefore great deference to their opinion is owed in this matter.

With this basis in mind, Webb Creek will address the three major issues raised by Bent Creek in its Complaint filed on October 15, 2013 which are to be decided by a rehearing of this matter before the UMRB and are as follows: (1) whether the classification of two bedroom units in the Bent Creek development as two separate ERUs for billing purposes is appropriate and permissible; (2) whether the rate study considered appropriate information and evidence in reaching its conclusion; and (3) whether the

Court of Appeals decision in *Outdoor Resorts* necessarily overrules the prior decision of the UMRB in this matter.

First, Bent Creek continues to argue that WCUD's classification of its two bedroom villas as two separate ERUs for billing purposes is not legally permissible. However, this issue has been addressed and readdressed and substantially argued before this very Board before, and Bent Creek does not now provide any further proof that its assertion is correct. Bent Creek again relies on the description of its villas in its master deed and states that, because they can only be sold as one unit, the utility district is acting outside of its authority in reclassifying the units are two ERUs. Further, without providing any specific language, Bent Creek argues that the Horizontal Property Act and/or the Time-Share Act prohibits the reclassification of property after it has been described in a master deed. However, neither Act contains any provision that would suggest an intent to limit regulation of a utility's billing practices. See Time-Share Act, Tenn. Code Ann. §§66-32-101 *et seq.*; Horizontal Property Act, Tenn. Code Ann. §§66-27-101 *et seq*. In fact, if these Acts allowed time-share communities to classify their units as they saw fit in master deeds and subsequently allowed those classifications to have precedence over that of a utility district, all time-share communities would simply classify their units in such a way to reduce utility billing to its lowest possible rate, and utility districts such as WCUD, who depend on revenue from time-share and resort communities, would not be able to establish rates sufficient to uphold their obligation to remain self-sufficient. Data over the years, as demonstrated by Exhibit "A" to Webb Creek Utility District's Answer filed on November 1, 2013, suggests that base billing on 84 units is appropriate given Bent Creek's average water consumption. If each two

bedroom villa was only classified as one ERU, the amount of water consumed would far exceed the base charges of 3,000 gallons per month at a base rate $52.70 for each unit. Furthermore, given that Bent Creek admits that each of these units can be rented as two distinct units, regardless of their ability to be sold as such, water usage based on two separate units is far more fitting of the Units' use, as two families using the villa will consume substantially more water than one.

Next, Bent Creek argues that the lack of consideration for Webb Creek's cost of providing water to Bent Creek and for the proportionality of customers' use of water versus the percentage of revenue they are required to pay invalidates the conclusion of the study. However, this information should not be the sole basis for a rate structure. Moreover, its use is not even required. In *CF Industries* the Court held that,

> "Specifically, there is no requirement in any rate case that the Commission receive and consider cost of service data, or that such data, in in the record, are to be accorded exclusivity. It is self-evident that cost of service is of great significants in the establishment of rates, *but it is of lesser value when arriving at a rate design.*" (emphasis added).

CF Industries, 599 S.W.2d. at 542. Further, while Bent Creek has tirelessly complained about the quantity of water it uses, this is not the sole criterion in arriving at a reasonable rate.

> "The quantity of water used by each consumer is not the sole criterion of the reasonableness of the rate. There must also be considered the nature of the use, the benefit obtained therefrom, the number of persons who want the water for such use, and the effect of a certain method of determining prices upon revenues to be obtained, and upon the interests of the property holders."

94.C.J.S. *Waters* §680(citations omitted).

Here, the utility board is unique in its small size and seasonal customer base, these factors must be taken into account when arriving at an appropriate rate structure. In

contrast to the argument of Bent Creek, a simple formula of cost of service multiplied by water used is not an appropriate way of arriving at a rate that will result in a self-sufficient utility district as applied by law. If WCUD operated is district in that manner, it would certainly not have a revenue stream sufficient to keep it afloat during the months of off-season. Instead, WCUD considered many important factors when arriving at a rate structure, and using all the evidence and information before it, created a just and reasonable rate structure based on its customer base and district characteristics. Therefore, Bent Creek's argument that the rate structure is not based on sufficient evidence is invalid and unfounded.

Finally, Bent Creek argues that, because the rate study performed by Raftelis with regard to the district's sewage rates was overturned by the Court of Appeals in *Outdoor Resorts*, the rate study result must be thrown out with regard to the conclusion regarding the water rate structure as well, which would then create a lack of sufficient evidence to support the district's rate structure design. However, their argument is flawed on multiple fronts. First, the rate study used two entirely different pools of evidence to draw its conclusions regarding the sewer structure and the water structure. Admittedly, the flow meter used to gather data regarding sewer usage was malfunctioning during a significant period of time while Raftelis was using it to gather evidence. This malfunction resulted in the exclusion of many months of data, leaving Raftelis with less than a year's worth of data to use in forming its basis for a rate design. In fact, the Court of Appeals specifically stated, "The trial court held that the rate study alone constitutes material evidence. *We agree that this is normally true*, but the record before us in this case will not allow that conclusion here." (emphasis added) *Outdoor Resorts*, 2012 Tenn App. LEXIS at *23.

The court of appeals then went on to lament the tainted data produced by the flow meter, and the resulting unsure conclusion of the study. *Id.* at *23-28. However, the data used by the study in relation to the water rate had no connection with the malfunctioning flow meter. In fact, the data used was a compilation of two years' worth of billing data for 2007 and 2008 for the residential class as a whole, Deer Ridge, a large residential condominium customer, and Bent Creek, a large residential timeshare customer. Therefore, in contrast to just months of data used to conclude appropriate sewage rates, a full two years of data was analyzed to determine proper water rates. Moreover, the new sewage rate at issue in *Outdoor Resorts* was solely based on the rate study's conclusion. *Id.* at *23. However, that is not the case in this matter. The base rate of $52.70 a month for a base of 3,000 gallons plus a charge of $3.77 for each additional $1,000 gallons used in that month was already in place before the inception of the study. This rate structure was established by WCUD using sound evidence such as the nature of its customer base, the size of its district, the needs of the water system and the classification of customer units. In fact, the designation of two ERUs for every one two bedroom villa in the Bent Creek complex was not a product of the rate study. Instead, it was a product of careful consideration and review by the District. Therefore, unlike in *Outdoor Resorts,* the rate study merely reinforced the just and reasonable nature of the Districts classification system and rates, but did not provide the basis for a rate change.

In addition to these differences, it is also important to note that in *Outdoor Resorts*, the Court of Appeals explains that there was no testimony or evidence offered to support the conclusion of the rate study and the study was not explained at the hearing. *Id.* at *23. Therefore, the only evidence before the Board in that case was the rate study

itself. *Id* Here, the rate study was presented and used as evidence of the appropriate nature of the rate study, and it was also supported by documentation and witness testimony. Therefore, the rate study was not the only evidence before the Board, as substantial evidence in addition to the study was also provided for the Board's consideration.

In light of these circumstances, Webb Creek would assert that there is no basis for a reversal in the Board's previous determination that the rate structure of WCUD is just and reasonable. As such, there is no need to discuss the argument that a refund be issued to Bent Creek based on alleged overpayment.

THEREFORE, PREMESIS CONSIDERED, WEBB CREEK UTILITY DISTRICT RESPECTFULLY PRAYS:

1. That all relief sought by Bent Creek in this matter be denied.
2. That the current rate structure of WCUD be approved as a just and reasonable rate structure.
3. That the current classification of ERUs be approved as an appropriate classification system in light of the Districts authority to determine a rate plan.
4. That no refund be awarded to Bent Creek as the current rates are appropriate, just and reasonable.
5. That WCUD be granted such further and general relief to which it may be entitled.

RESPECTFULLY SUBMITTED THIS THE 15 DAY OF November 2013.

WEBB CREEK UTILITY DISTRICT

BY: _____

JAMES L. GASS
BPR #: 010451
Attorney for Webb Creek Utility District
OGLE, GASS & RICHARDSON, P.C.
103 Bruce Street
Sevierville, TN 37862
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CERTIFICATE OF SERVICE

I, **James L. Gass**, hereby certify that a true and exact copy of the foregoing BRIEF was served upon the following counsel via e-mail and by delivering the same by U.S. Mail, with sufficient postage thereon to carry the same to its destination:

Robert L. Vance, Esq.
Woolf, McClane, Bright, Allen & Carpenter, PLLC
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bvance@wmbac.com

Joe Shirley, Esq.
Assistant Attorney General
Office of the Attorney General, Financial Decision
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Nashville, TN 37202-0207
Joe.Shirley@ag.tn.gov

A true and exact copy of the foregoing Brief was also served upon Rachel Newton, Esq. via e-mail only by submitting the same to Rachel.Newton@cot.tn.gov.

This the 15th day of November, 2013.

_____
JAMES L. GASS

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W. HENRY OGLE
(1921 - 1980)

** Rule 31 Listed Family & General Civil Mediator*

November 1, 2013

Tennessee Utility Management Review Board
C/O MS. JOYCE WELBORN
Office of the Comptroller of the Treasury
Division of Local Finance
505 Deaderick Street, Suite 1700
Nashville, TN 37243-0274

VIA: E-MAIL AND U.S. MAIL
(joyce.welborn@cot.tn.gov)

IN RE: Webb Creek Utility District vs. Bent Creek Golf Village Condominium Association, Inc.

Dear Ms. Welborn:

Please find the attached Answer of Webb Creek Utility District which is being submitted in accordance with the scheduling deadlines as set out in the August 20, 2013 correspondence of the State of Tennessee Comptroller of the Treasury, Office of General Counsel.

Please do not hesitate to contact me with any questions or concerns regarding this submission.

Very truly yours,

OGLE, GASS & RICHARDSON, P.C.

James L. Gass

Enclosure
CC: Joe Shirley, Esq
Rachel Newton, Esq.
Robert L. Vance, Esq.

UTILITY MANAGEMENT REVIEW BOARD

BENT CREEK GOLF VILLAGE
CONDOMINIUM ASSOCIATION, INC.,

vs.

WEBB CREEK UTILITY DISTRICT.

ANSWER

Comes Webb Creek Utility District, by and through counsel, and, in accordance with the Scheduling Order set forth in correspondence dated August 20, 2013 from the State of Tennessee Comptroller of the Treasury, Office of General Counsel, would answer the Complaint filed by Bent Creek Golf Village Condominium Association, Inc. ("Bent Creek") as follows:

1. The allegations in Section 1, Paragraphs 1 and 2, are admitted.

2. The allegations in Section 2, Paragraph 3 are denied and strict proof is demanded thereof.

3. The allegations in Section 2, Paragraph 4 are denied and strict proof is demanded thereof. The estimated costs of service alleged therein are based on an analysis completed by Mr. Richard Yarbrough, a witness for Bent Creek, which was shown to be based on limited, unsubstantiated data and the use of the AWWA M1 model which, in the case of Webb Creek, would result in a rate schedule that did not meet the District's financial needs and would likely render WCUD insolvent.

4. The allegations in Section 2, Paragraph 5 are denied and strict proof is demanded thereof.

5. The allegations contained in Section 2, Paragraph 6 are denied and strict proof is demanded thereof. Bent Creek has not provided any documentation in support of these allegations, and these claims are unsubstantiated. In fact, in 2010, Bent Creek purchased 11.9% of the total water sold by WCUD and only paid 11.6% of the total water revenue. In 2011, Bent Creek purchased 12.2% of the total water sold, and only paid 11.5% of the total water revenue, and in 2012, Bent Creek purchased 11.8% of

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the total water sold, and only paid 11.1% of the total water revenue. (See chart detailing the Annual Ratio of Water Purchase and Payment for the years 2006-2012 attached as Exhibit "A"). These figures would tend to show that Bent Creek is in actuality paying less than its fair share of the total water revenue, instead of more as it has claimed in its Complaint.

6. The allegations in Section 2, Paragraph 7 are denied and strict proof is demanded thereof. Webb Creek does not deny that units within Ben Creek were reclassified in 2008 for rate structure purposes; however, the remaining allegations regarding the supposed illegality and improper nature of the actions taken by Webb Creek are denied, as Webb Creek acted well within its authority when classifying units for billing purposes.

7. The allegations in Section 2, Paragraph 8 of the Complaint are admitted in part and denied in part. Webb Creek does not dispute that a rate study was completed by Raftelis Financial Consultants, Inc. (heretofore referred to as "Raftelis"), or that Webb Creek hired Raftelis to complete said study. However, Webb Creek would assert that the study was not completed solely for the purpose of supporting the rate structure already adopted as Bent Creek suggests in its Complaint. The study was meant to serve as an honest determination of an appropriate rate structure which would be just and reasonable while also meeting WCUD's obligation to remain solvent.

8. The allegations in Section 2, Paragraphs 9 and 10 of the Complaint are irrelevant, as data relating to cost of supplying utilities to a certain customer is not even required and, in the very least, cannot alone form the basis of a rate structure as Bent Creek would suggest. In *CF Industries v. Tennessee Public Service Commission*, the Tennessee Supreme Court held that, "Specifically, there is no requirement in any rate case that the Commission receive and consider cost of service data, or that such data, if in the record, are to be accorded exclusivity. It is self-evident that cost of service is of great significance in the establishment of rates, *but it is of lesser value in arriving at a rate design*." (emphasis added) *CF Industries v. Tennessee Pub. Serv. Comm'n*, 599 S.W.2d, 536, 542 (Tenn. 1980). As such, the cost of providing water to Bent Creek is only one factor to be considered when determining the validity of a rate structure. Likewise, the proportionality of water usage is also only one factor in determining a rate

structure, and is not directly correlated to the structure's design. The Commission is given great deference in determining a rate structure based on the specific and unique characteristics of the district at issue, and proportionality may not be a deciding factor under the circumstances. Therefore, even if neither the cost of provision nor the proportionality of Bent Creek's water usage were included in the study as Bent Creek has alleged, given the facts of this case, the exclusion of such information would not result in an invalid rate study result. Furthermore, as shown by "Exhibit A" previously referenced herein, the proportions of Bent Creek's water usage versus the percentage of total water revenue they pay each year are very closely aligned and actually support the rate study's final conclusion.

9. The allegations in Section 2, Paragraph 11 are admitted in part and denied in part. While the Tennessee Court of Appeals did hold in *Outdoor Resorts at Gatlinburg, Inc. v. Utility Management Review Board,* 2012 Tenn. App. LEXIS 236 (Tenn. Ct. App. 2012) that the rate study at issue did not present enough evidence in and of itself to establish a rate structure for sewage service in the Webb Creek Utility District, the Court of Appeals did not invalidate the study as a whole. In its opinion, the Court specifically focused on the evidence supporting the conclusion of the study in regard to the sewer charges only, and the Court did not pass judgment on the sufficiency of evidence supporting the study's conclusion with regard to rates established for water usage. Further, unlike the rate structure at issue in *Outdoor Resorts*, the rate structure established by WCUD for its water service was not based solely on the final report of the rate study, but was instead based on additional evidence and information which indicated that the rates being charged were just and reasonable. (See attached "Exhibit B" for the Court's holding in *Outdoor Resorts*).

10. The allegations in Section 2, Paragraph 12 are admitted.

11. The allegations in Section 2, Paragraph 13 are admitted as to the content of the Horizontal Property Act, but Webb Creek would take objection to the allegation that "any attempt to define or describe the units in a manner which is not consistent with the Master Deed thus contradicts Tennessee Law" as that statement would apply to a party other than Bent Creek. It is clearly in Webb Creek's authority to define units for the purpose of establishing utility rates, and there is no law to support

the contention that the definition of a unit for that purpose must match the description of a unit used by a party in its Master Deed.

12. The allegations in Section 2, Paragraph 15 as to the classification of units according to the Bent Creek Master Deed are admitted. Webb Creek does not have sufficient knowledge to either admit or deny that an individual is not permitted to split a unit for resale, and would clarify that each single unit as defined in the Master Deed can be rented as two separate units, even if they cannot be sold as such. Again, Webb Creek would assert that it is entirely in its authority to define or classify units for purposes establishing utility rates in a way that does not perfectly match the definition of such units which may be included in a Master Deed.

13. The allegations in Section 2, Paragraph 16 are admitted in that Bent Creek was assessed for 47 units prior to Webb Creek's examination of the property in 2008, during which it was discovered that many of the forty-seven units could actually be used and rented as two stand-alone portions.

14. The allegations in Section 2, Paragraph 17 are admitted only in that, upon examination and reevaluation of the Bent Creek property, it was determined that each of the units at issue could be separated into two self-sufficient units with access to the outside. Upon said determination, the rate structure was altered to more accurately reflect the unit usage in the Bent Creek development.

15. The allegations in this Section 2, Paragraphs 18-20 are again irrelevant in that a Master Deed's description does not bind the Utility Board in its classification of any one property for the purposes of establishing a rate structure, and regardless of restrictions on resale, the units at Webb Creek can be divided into two separate units for purposes of rental and usage.

16. The allegations in Section 2, Paragraph 21 are denied, and strict proof thereof is demanded. The definition of a "Single Residential Unit" which has also been referred to in the record as an "Equivalent Residential Unit," does apply to units in the Bent Creek Condominium community, but it also applies to numerous other existing WCUD customers who meet the adopted definition for this type of unit classification.

17. The allegations in Section 2, Paragraph 22 are admitted.

18. The allegations in Section 2, Paragraph 23 are denied, and strict proof is demanded thereof.

19. The allegations in Section 2, Paragraph 24 are denied, as previously explained hereinabove.

20. The allegations in Section 2, Paragraphs 25-29 are admitted.

21. The allegations in Section 2, Paragraph 30 are admitted, but Webb Creek would assert that the Court in *Outdoor Resorts* was merely addressing the rate study's sufficiency as it related to WCUD's rate structure for its sewage services and did not address the sufficiency of the evidence used to support the study's conclusion as to WCUD's rate structure for its water service.

22. The allegations in Section 2, Paragraphs 31-33 are admitted.

23. Webb Creek herein denies that Bent Creek is entitled to any of the relief sought in Section III.

WHEREFORE PREMESIS CONSIDERED, WEBB CREEK UTILITY DISTRICT RESPRECTFULLY PRAYS:

1. That all relief sought by Bent Creek in its Complaint before this Board be denied.

2. That the Board reaffirm its decision that the rate structure established by Webb Creek Utility District was a just and reasonable rate structure which was appropriate given the unique factors affecting the district's customer base and revenue stream.

3. That the Board uphold WCUD's classification and definition of "Single Residential Units" or "Equivalent Residential Units" as is applicable to said units which make up the Bent Creek Condominiums.

4. That the Board decline to award any monetary "refund" as requested by Bent Creek, as the rate structure at issue in this cause is just, reasonable, and substantiated by sufficient material evidence.

5. That Webb Creek Utility District be granted such further and general relief to which it may be entitled.

RESPECTFULLY SUBMITTED this the 1st day of November, 2013.

WEBB CREEK UTILITY DISTRICT

BY: _____

JAMES L. GASS
BPR #: 010451
Attorney for Webb Creek Utility District
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(865) 453-2866

CERTIFICATE OF SERVICE

I, **James L. Gass**, hereby certify that a true and exact copy of the foregoing ANSWER was served upon the following counsel via e-mail and by delivering the same by U.S. Mail, with sufficient postage thereon to carry the same to its destination:

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Joe Shirley, Esq.
Assistant Attorney General
Office of the Attorney General, Financial Decision
P.O. Box 20207
Nashville, TN 37202-0207
Joe.Shirley@ag.tn.gov

A true and exact copy of the foregoing ANSWER was also served upon Rachel Newton, Esq. via e-mail only by submitting the same to Rachel.Newton@cot.tn.gov.

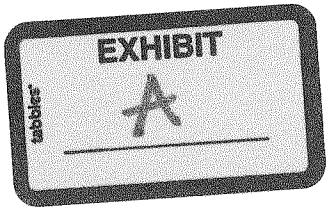
This the 1st day of November, 2013.

_____
JAMES L. GASS

BENT CREEK RESORT GOLF VILLAGE
ACCOUNT NO. 482
ANNUAL RATIO OF WATER PURCHASE AND PAYMENT
October-2013

Webb Creek Utility District	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**
Total System Water Purchased	30,720,380	32,699,550	32,783,370	34,861,000	35,457,110	33,158,760	32,657,120
Total System Water Sold	26,298,540	27,679,560	27,691,200	27,803,440	27,377,380	27,155,520	27,863,320
Total System Non-Revenue Water Loss	14.4%	15.4%	15.5%	20.2%	22.8%	18.1%	14.7%
Total System Wastewater Treated	43,085,000	40,858,000	44,667,000	58,894,000	51,682,000	58,872,000	51,508,000
Total System Water Revenue	$417,914	$443,932	$479,836	$505,058	$488,033	$491,663	$603,253
Bent Creek Golf Village							
Bent Creek Water Purchased (minimum bill differential)	3,358,700	3,528,780	3,276,600	3,338,700	3,265,600	3,303,700	3,294,600
Bent Creek Water Used	2,775,400	3,088,300	2,752,200	2,749,600	2,677,800	2,784,000	2,904,800
Total Bent Creek Water Payment	$56,867	$57,508	$56,557	$56,791	$56,516	$56,685	$66,733
Ratio of Bent Creek to Total System							
Bent Creek Water Purchased/Total Water System Sold	12.8%	12.7%	11.8%	12.0%	11.9%	12.2%	11.8%
Bent Creek Water Payments/Total Water Revenue	13.6%	13.0%	11.8%	11.2%	11.6%	11.5%	11.1%
Differential between Water Purchased and Water Payment	0.8%	0.2%	0.0%	-0.8%	-0.3%	-0.6%	-0.8%

The ratio of the amount of water purchased by Bent Creek to the total amount of water sold to all WCUD customers, and the amount of payment for water by Bent Creek to the amount of revenue from all WCUD customers is within 1% in the seven years presented. This appears to confirm the fairness in the water rate structure in place during these years.



OUTDOOR RESORTS AT GATLINBURG, INC. v. UTILITY MANAGEMENT REVIEW BOARD ET AL.

No. E2011-01449-COA-R3-CV

COURT OF APPEALS OF TENNESSEE, AT KNOXVILLE

2012 Tenn. App. LEXIS 236

March 6, 2012, Session
April 13, 2012, Filed

NOTICE: ORDERED NOT FOR CITATION. PLEASE CONSULT THE TENNESSEE SUPREME COURT RULES

SUBSEQUENT HISTORY: Ordered Not for Citation September 18, 2012.
Review denied and ordered not published by *Outdoor Resorts at Gatlinburg, Inc. v. Util. Mgmt. Review Bd., 2012 Tenn. LEXIS 662 (Tenn., Sept. 18, 2012)*

PRIOR HISTORY: [*1]
Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated; Case Remanded with Instructions. Appeal from the Chancery Court for Sevier County. No. 09-11-501. Telford E. Forgety, Jr., Chancellor.

DISPOSITION: Judgment of the Chancery Court Vacated; Case Remanded with Instructions.

COUNSEL: L. Marshall Albritton and Jessica Van Dyke, Nashville, Tennessee, for the appellant, Outdoor Resorts at Gatlinburg, Inc.

Robert E. Cooper, Jr., Attorney General and Reporter; William E. Young, Solicitor General; Ann Louise Vix, Senior Counsel; and Joe Shirley, Senior Counsel, Nashville, Tennessee, for the appellee, Utility Management Review Board.

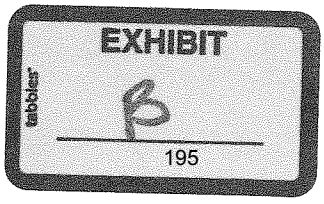
James L. Gass and Matthew L. Fink, Sevierville, Tennessee, for the appellee, Webb Creek Utility District.

JUDGES: CHARLES D. SUSANO, JR., J., delivered the opinion of the Court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J., joined.

OPINION BY: CHARLES D. SUSANO, JR.

OPINION

Webb Creek Utility District ("WCUD") is a public utility district that, for the most part, furnishes potable water to its customers and processes their sewage. One of its customers is the plaintiff, Outdoor Resorts at Gatlinburg, Inc., the operator of a large campground for campers and recreational vehicles [*2] ("RVs"). Outdoor is somewhat unique in that it has its own water supply. It is a "sewer only" customer. From 1985 until 2008, the rate WCUD charged Outdoor was set by contract, which either party could terminate with sufficient notice. In 2008, WCUD terminated the contract and notified Outdoor that it would be charged based upon the number of campsites multiplied by a standard minimum rate per campsite. Outdoor objected to the rate. WCUD held a hearing and adopted the proposed rate over Outdoor's objection. Outdoor asked for a hearing before the Utility Management Review Board ("the UMRB"). While the matter was pending before the UMRB, WCUD conducted a rate study, following which it proposed still another rate



for Outdoor that was less than the objected-to rate, but more than the rate Outdoor had been paying under the terminated contract. The UMRB approved the new rate. Outdoor demanded a refund of overpayments made by it under the higher rate; the UMRB denied Outdoor's request, stating that it lacked authority to order a refund. Outdoor also asked the UMRB to compel the individual who prepared the rate study to appear for a deposition. The UMRB denied the discovery request upon concluding [*3] that it did not have the authority to order such a deposition. Outdoor sought review in the trial court by way of a common law writ of certiorari on several grounds, including lack of material evidence to support the new rate, denial of due process in not compelling a deposition, and its characterization of UMRB's action as illegal and arbitrary. The trial court allowed Outdoor to take the deposition of the author of the rate study; the court later admitted the deposition testimony into evidence. Nevertheless, the court concluded that the UMRB's decision was supported by material evidence and dismissed Outdoor's complaint. Outdoor appeals. We hold that Outdoor was not denied due process, but we vacate the trial court's judgment because we hold that neither the first post-contract rate established by WCUD nor the newly adopted rate approved by the UMRB is supported by material evidence. Further, we conclude that the UMRB had authority to order a refund of the overpayments.

OPINION

I.

Outdoor operates a vacation campground in Gatlinburg. There are 376 campsites in the campground. Each campsite has sewer access. In addition to the campsites, Outdoor has an estimated eight additional sewer [*4] feeds from the office and amenities for a total of 384. Until 1985, Outdoor processed its own sewage. In 1985, Outdoor entered into a customer contract with WCUD. To achieve the connection, WCUD installed a manhole close to the boundary of the campground, and Outdoor ran a trunk-line from its existing system to the manhole. Outdoor is responsible for all maintenance on the system up to the point of connection to WCUD. There is no meter for the individual campsites, and there was no meter at the manhole until about the time this dispute began. Under the 1985 contract, Outdoor was billed for 400 campsites at a set rate per campsite. As of February 2008, the rate per site was $21.86 ("the Contract Rate"). Outdoor's monthly bill was $8,744.

In February of 2008, WCUD gave Outdoor notice that it was terminating the 1985 contract. It is undisputed that WCUD had the right to do so. This dispute involves, rather, the legality of billing rates instituted by WCUD upon termination of the contract. WCUD began billing Outdoor at a rate of $45.54 per campsite, multiplied by 384 sites. The new rate was based on the minimum monthly rate charged to individual customers, such as residential customers, [*5] for a single sewer service. The effect was to increase Outdoor's monthly bill from $8,744 to $17,487.36, just 64 cents short of doubling the bill.

Outdoor objected to the new billing rate of $45.54 and asked for a hearing pursuant to *Tenn. Code Ann. § 7-82-402(a)(1)*(2011).[1] At Outdoor's request, WCUD's board of commissioners held a hearing on Outdoor's challenge. The proof at that hearing established that, at the time of the hearing, no "cost-of-service" or "rate study" had been performed for WCUD as a basis for its charges to customers. The rates had been adjusted in 2004 based on what was necessary to service WCUD's debt on its combined water and sewer operations. WCUD experienced losses in 2005 as a result of losing several large customers, partially as a result of the impact of a slowed economy on the local tourism industry. In that same time frame, WCUD was declared a "financially distressed" utility and instituted a new schedule of rates as part of a financial recovery plan.[2] Up until approximately six months before the hearing, there had been no measurements made of the flow into WCUD's sewer system from Outdoor's trunk-line. Because, Outdoor is a "sewer-only" customer, there [*6] is no way to determine its usage without measuring the flow into WCUD's system at the connection point. WCUD's consulting engineer admitted that the new rate was not based on usage. It was based on the belief that it was fair to charge Outdoor the same rate per campsite as the minimum rate for residential users.

1 The statute as codified in 2011 remains unchanged from 2008. It provides:

> Within thirty (30) days of the date on which the statement [of the water rates being charged] provided forin *§ 7-82-401* is published, any water user of the

district may file with the commissioners of the district a protest, giving reasons why, in the opinion of the water user, the rates so published are too high or too low. Within a period of fifteen (15) days after the end of this thirty-day period during which such protest may be filed, the commissioners shall notify each such protestant of a hearing to be held by the commissioners on such protests as may have been filed within the thirty-day period prescribed. Upon the hearing date so fixed, which shall be some date within a period of sixty (60) days after giving such notices to the protestants, all such protests shall be heard together by the commissioners. [*7] After hearing and examining statements, exhibits and arguments of the protestants or their counsel, the commissioners shall make and spread upon the minutes of the commission their finding as to the reasonableness or unreasonableness of the published rates, and, at the same time, the commission may increase or decrease such rates upon a finding that they are too low or too high, as the case may be.

2 WCUD's consultant testified that upon becoming financially distressed, WCUD was legally required to formulate a recovery plan. *See Tenn. Code Ann. § 7-82-403* (2011)(rates must be sufficient for the utility to pay expenses and debts).

Outdoor's expert testified that it was unfair to charge Outdoor the same rate for each campsite as for each residential user. Rather, because Outdoor's collection system is self-contained and maintained entirely by Outdoor, the expert testified that the rate should be a "wholesale" rate. Further, Outdoor's expert testified that, in his professional opinion, a utility district cannot set a fair and reasonable rate without performing a cost-of-service study. Outdoor's expert also believed that the sewer-only customers were being charged unfairly to subsidize the [*8] water customers because the water operations had consistently lost money and the sewer operations, at least until 2004, had generated money. WCUD's commissioners voted to overrule Outdoor's challenge and continue billing at the rate of $45.54 per unit.

Outdoor exercised its statutory right, pursuant to *Tenn. Code Ann. § 7-82-702(7)*(2011),[3] to challenge WCUD's rate determination before the UMRB. The UMRB held its first of several hearings on February 5, 2009. It allowed each side 20 minutes to present its case. In addition to the evidence presented in the hearing before WCUD's commissioners, Outdoor presented evidence that it was being treated differently from other campgrounds. Arrow Creek Campground had 60 campsites, but it was charged only for three connections. It has three water meters. Smoky Bear Campground has 31 campsites, but it is charged based on two water meter connections. Outdoor's expert testified that, based upon the flow data gathered for Outdoor, it was being overcharged; it was receiving less than 50% of the service for which it was paying. One aspect of this was the nature of Outdoor's sewer usage through campsites that are often vacant, especially in the winter months. [*9] WCUD again admitted that no formal cost-of-service study had been performed but offered evidence of its budget constraints as justification for the rates being charged. WCUD also presented evidence that throughout Outdoor's existence, Outdoor had experienced "in-flow" problems, meaning that ground water flows into Outdoor's system during times of heavy rainfall. This water becomes part of WCUD's treatment burden. In fact, according to witnesses presented by WCUD, in-flow problems, including Outdoor's in-flow, was the reason WCUD's plant was forced to expand in 2004 and incur significant debt.

3 The statute grants the UMRB the

power and authority to:

* * *

Review any decision of any utility district under *§ 7-82-402* . . . upon simple written request of any utility district customer or any member of the public within thirty

> (30) days after such decision, with any judicial review of any decision of the board thereon, to be held by common law certiorari within the county of the utility district's principal office.

Based on the agreement of the parties, the UMRB voted to defer its decision and encouraged the parties to work toward a possible resolution, including the discussion of a rate study.

The [*10] parties next came before the UMRB on April 2, 2009. WCUD announced that it was proceeding with a rate study and that it had chosen a company to perform the study. Outdoor requested that the UMRB reinstate the Contract Rate while the study was being performed and that the UMRB direct the company conducting the rate study to consult with Outdoor's expert. The UMRB denied both requests and rescheduled the matter for its August meeting.

WCUD submitted its rate study in advance of the August meeting. Outdoor requested and was granted a continuance to allow its expert to review the rate study. The final hearing before the UMRB was held on October 1, 2009. The chairman announced that each side would be given 10 minutes to argue the merits of its position "so we don't re-litigate the case." Neither party objected to the time constraint. The focus of the hearing was the recently conducted rate study. The rate study recommended an increase in the minimum charge for *residential users* from $45.54 to $59.41 with an additional usage charge of $8.84 per thousand gallons for usage above 3000 gallons. The study determined that usage per unit by Outdoor was only approximately 62.5 % of the usage of a [*11] residential customer. Therefore, the study recommended treating Outdoor as a "luxury campground" to be billed at a new rate of $37.13 per month with an additional usage charge of $8.84 per thousand gallons for usage above 1,650 gallons.

Outdoor attacked the study as being based on flawed financial information and flawed usage data. The usage data for Outdoor's campground was based on readings from a flow meter WCUD installed in February 2008. The data included the time frame of February 2008 through May 2009. However, at the instruction of WCUD, the preparer of the study excluded five months of data that reflected the lowest usage for Outdoor, those being the months of November 2008 through March 2009. This was despite WCUD's determination, as stated in the minutes of its April 2009 meeting, that the meter was accurately reporting flow on 30 minute intervals. WCUD installed a new meter in May 2009 that began recording usage significantly higher than the previous meter. As to the financial figures underlying the rate study, Outdoor pointed out that there was no substantiation in the study of the fixed versus variable costs and of sewer versus water operations. Outdoor also objected to [*12] an unexplained financial reserve account created for the sewer operations. There was no such account created for the water operations. Outdoor further objected that it had asked to take the deposition of the consultant who had prepared the rate study but WCUD had refused to make the consultant available. Outdoor requested that the UMRB issue a subpoena compelling the consultant to appear and give a deposition. Outdoor did not ask that the expert be compelled by subpoena to appear at the hearing.

To counter Outdoor's objections to the flow data, WCUD proposed that the UMRB approve the new rate structure but "delay the implementation of the volume charge based on the lack of sufficient, reliable historical flow data that would be necessary to implement such a charge." In the course of asking for the adoption of the new rate, WCUD acknowledged that the $45.54 rate was "arbitrary" but suggested that the Contract Rate was also arbitrary and that the proposed rate would be a step "in the right direction." Outdoor requested a return to the Contract Rate and for a refund of that portion of the payments made by it that exceeded the Contract Rate.

The UMRB denied Outdoor's request for a deposition. [*13] It stated:

> The UMRB is authorized to subpoena persons to appear at hearings before the UMRB; but the UMRB finds that it does not have the authority, when hearing a complaint under *Tenn. Code Ann. § 7-82-702(7)*, to require the parties to participate in discovery, including to appear at depositions to be conducted outside the hearing.

Also, the UMRB found "that it does not have the authority to order refunds to customers in connection with its review of a protest under *Tenn. Code Ann. §*

7-82-702(7)." The UMRB approved the application of the new minimum rate of $37.13 to Outdoor effective January 1, 2010, and delayed "the adoption of the volume charge to [Outdoor] for wastewater flows until sufficient, reliable flow data can be obtained."

Outdoor filed a timely petition in the chancery court for a common law writ of certiorari. The chancery court allowed Outdoor to take the deposition of the consultant who prepared the rate study, "to discover any information that the [UMRB] acted arbitrarily, capriciously or illegally, not only information relating to bias or corruption." Outdoor took the deposition of the consultant, Mr. Bart Kreps. Mr. Kreps confirmed that the flow data was limited and [*14] that some data was excluded at the direction of WCUD. He also admitted that the rate study included large unexplained sewer cost increases. He also testified that the data underlying the study was not contained in the study itself, including any documentation regarding allocation of fixed and variable costs and allocation of costs between water and sewer operations. Further, Mr. Kreps testified that without reviewing additional data that was not contained in the rate study, a person could not determine that the rate set for Outdoor was just and reasonable.

The trial court dismissed Outdoor's petition in an order that incorporated a memorandum opinion transcribed from the court's bench ruling. Among other things, the court held that the denial of discovery did not violate procedural due process and that the rate study alone supplied material evidence to support the UMRB's decision. Outdoor filed a timely notice of appeal.

II.

The issue, as stated verbatim in Outdoor's brief is

> whether the Chancery Court . . . erred when it failed to find that the [UMRB] acted illegally, arbitrarily, or without material evidence when it (1) affirmed sewer service rate increases charged by [WCUD] to [Outdoor], [*15] (2) failed to find that [Outdoor] had been charged an unjust and unreasonable rate for a period of time and was entitled to a refund, and (3) denied [Outdoor] the right to discover the underlying support and basis for the rate study that [WCUD] presented to the [UMRB] in support of its second rate study.

III.

The method of judicial review of a decision of the UMRB is "by common law certiorari." *Tenn. Code Ann. § 7-82-702(7)*. In ***Harding Academy v. Metropolitan Government of Nashville and Davidson County***, *222 S.W.3d 359 (Tenn. 2007)*, the Supreme Court stated the following:

> This writ provides a limited scope of review by the courts. Review of [a board's] action in this case is limited to determining whether the board exceeded its jurisdiction, followed an unlawful procedure, acted illegally, arbitrarily, or fraudulently, or acted without material evidence to support its decision. In proceedings involving a common law writ of certiorari, illegal, arbitrary, or fraudulent actions include: 1) the failure to follow the minimum standards of due process; 2) the misrepresentation or misapplication of legal standards; 3) basing a decision on ulterior motives; and 4) violating applicable constitutional [*16] standards. . . .
>
> Our review is limited to the record produced by the [board] unless the reviewing court has permitted the introduction of additional evidence on the issue of whether the board exceeded its jurisdiction or acted illegally, capriciously, or arbitrarily. We may not reweigh the evidence, examine the intrinsic correctness of the decision being reviewed, or substitute our judgment for that of the local officials. If no evidence supports the action of the administrative board, then that action is arbitrary. . . .

Id. at 363 (citations omitted). An agency decision that is not supported by substantial and material evidence is, by definition, arbitrary and capricious. ***Jackson Mobilphone Co. v. Tennessee Public Service Comm'n***, *876 S.W.2d 106, 110 (Tenn. Ct. App. 1993)(citing* ***C.F. Indus., Inc. v. Tennessee Public Serv. Comm'n***, *599 S.W.2d 536, 540*

(Tenn. 1980); ***Pace v. Garbage Disposal Dist. of Washington County**, 54 Tenn. App. 263, 266, 390 S.W.2d 461, 463 (1965))*. We review an administrative agency's determination on an issue of law de novo, with no presumption of correctness. ***Harding**, 222 S.W.3d at 363.*

We must make a "searching and careful inquiry into the record" to determine whether [*17] the administrative decision is supported by substantial and material evidence. ***Miller v. Tennessee Board of Nursing**, 256 S.W.3d 225, 229 (Tenn. Ct. App. 2007)*. We may reject the administrative agency's "factual findings only if a reasonable person would necessarily draw a different conclusion from the record." ***Id.*** Stated another way, we are allowed to consider all proof "that fairly detracts from the agency's decision," but we still may not reverse the agency if there is evidence "which a reasonable mind might accept to support a rational conclusion and which furnishes a reasonably sound basis for the action being reviewed." ***Ruff v. Neeley**, No. W2006-01192-COA-R3-CV, 2006 Tenn. App. LEXIS 805, 2006 WL 3734641 at *7 (Tenn. Ct. App. W.S., filed Dec. 20, 2006)*.

IV.

A.

We will begin with the issue of whether the trial court erred in affirming the UMRB's determination that it lacked authority to order a refund of overpayments. The question of whether the UMRB lacked authority to order a refund is a question of law that we review de novo. *See **Harding Academy**, 222 S.W.3d at 363*. We hold that the UMRB did, in fact, have authority to order a refund of overpayments made while Outdoor's challenge was pending.

The legislature [*18] has explicitly granted the UMRB the "power and authority" to "[r]eview any decision of any utility district under *§ 7-82-402* [with regard to a utility district's rates and charges]." *Tenn. Code Ann. § 7-82-702(7)*. It may "[e]xercise all the powers and take all the actions necessary, proper or convenient for the accomplishment of [that purpose]" and other enumerated purposes. ***Id.*** at *(11)*. The only cases offered to support the proposition that the UMRB is without power to order a refund of over-billings are ***A.A.R.P. v. Tenn. Public Service Comm'n**, 896 S.W.2d 127 (Tenn. Ct. App. 1994)* and ***South Bell Telephone Co. v. Tenn. Public Service Comm'n**, 675 S.W.2d 718 (Tenn. Ct. App. 1984)*. Both cases stand for the proposition that an administrative utilities board does not have authority "to order refunds *except* in very limited circumstances." ***A.A.R.P.**, 896 S.W.2d at 134* (emphasis added) (*citing **South Bell Telephone**, 675 S.W.2d at 718*). The present case falls within one of those exceptions as it was explained in ***South Bell Telephone***. A board retains inherent power over monies collected under rates that

> were made effective for the period while the case was pending before the board and before final [*19] judgment of the board. A similar order by a court would be termed a "pendente lite" order.

***South Bell Telephone**, 675 S.W.2d at 719*. The present matter first came before the UMRB on Outdoor's challenge of the $45.54 rate per campsite. Even though the UMRB did not approve the rate or explicitly adopt it as a "pendente lite" or "temporary" rate, by its deferral of action it allowed collections at that rate. There was never a time that Outdoor agreed to the $45.54 rate. Thus, we hold that this case falls within the powers explicitly granted to the UMRB and within a recognized exception to the general rule against refunds.

Outdoor seeks a refund of "the difference between the $45.54 rate and the rate that had been negotiated previously," *i.e.*, the Contract Rate. Even though the chairman of WCUD admitted that the $45.54 rate was arbitrary, UMRB argues that it was fair and reasonable to refuse a refund because it would not be fair and reasonable to order a refund based on the Contract Rate. We agree that any refund should not be based upon the Contract Rate. Once WCUD terminated the contract, Outdoor lost any right to pay based on that rate. Just as there is no evidence to support the fairness [*20] and reasonableness of the $45.54 rate, there is no evidence to support the fairness and reasonableness of the Contract Rate. The refund must be based upon a fair and reasonable rate, whatever that is determined to be.

B.

We move now to Outdoor's contention that it was denied due process by the Board's refusal to issue a subpoena compelling the deposition of Mr. Kreps. Outdoor concedes that due process is not necessarily a perfect, or error-free process, and agrees that the basic requirement is the opportunity to be heard "at a

meaningful time and in a meaningful manner." ***Mathews v. Eldridge**, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)(quoting **Armstrong v.Manzo**,380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965))*. Outdoor asserts "[t]hat did not happen in this case." The process that is "due" varies with the situation. ***Id.** at 334*; ***Phillips v. Board of Regents**, 863 S.W.2d 45, 50 (Tenn. 1993)*. In ***Phillips***, the Supreme Court noted:

> In determining what process is due in a particular situation, three factors must be considered: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of the interest through the procedures used and the probable value, if any, of additional or substitute procedural [*21] safeguards; and finally, (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id.** at 50* (citing ***Mathews**, 424 U.S. at 335*). "Moreover, [the court may consider whether] the component parts of the process are designed to reach a substantively correct result. Elaborate procedures at one stage may compensate for deficiencies at other stages." ***Id. (citation omitted).

Under the above guidelines, it is clear to us that Outdoor's due process argument is without merit. First, we note that Outdoor could clearly have asked to have Mr. Kreps subpoenaed to appear and answer questions at the final hearing. It is true that the UMRB limited the parties to 10 minutes per side at the final hearing, but the record does not reflect any objection by Outdoor to the time limitation. Even though Outdoor was denied discovery before the UMRB, it was allowed discovery in the trial court. Both stages are part of the "process" defined by the statutory scheme; thus, the more elaborate procedures in the trial court ultimately allowed Outdoor to have its questions answered. Moreover, Outdoor does [*22] not have a vested interest in any particular rate structure. ***Consumer Advocate Division v. Bissell**, No. 01-A-01-9601-BC00049, 1996 Tenn. App. LEXIS 528, 1996 WL 482970 at *4 (Tenn. Ct. App. M.S., filed Aug 28, 1996)*. "Ratemaking is a legislative function." ***Id.*** The "private interest affected" for Outdoor is simply the right to a fair and reasonable rate based on material evidence subject to review as provided in *Tenn. Code Ann. § 7-82-702(7)*. In short, without deciding whether or not the UMRB had the power to order Mr. Krebs to sit for a deposition, we hold that the failure to so order did not violate Outdoor's due process rights.

C.

We consider now the final question of whether or not the revised rate of $37.13 per site for 384 sites is based on material evidence. The parties agree that the rates set by a public utility must be "just and reasonable." ***CF Industries v. Tennessee Public Service Comm'n**, 599 S.W.2d 536, 542 (Tenn. 1980)*, *see Tenn. Code Ann. § 7-82-403* ("district shall prescribe and collect reasonable rates"), *§ 7-82-702(19)*(UMRB to review "the justness and reasonableness of fees or charges").

The initial hearing before the UMRB, held on February 5, 2009, concerned only the reasonableness of the $45.54 [*23] rate per campsite. The new rate of $37.13 was strictly a product of the rate study. It was first considered by the UMRB in the October hearing. There was no testimony explaining the rate study. None of the underlying documentation was supplied to the UMRB. Thus, the UMRB's approval of the rate of $37.13 was necessarily based on the rate study alone. The trial court held that the rate study alone constitutes material evidence. We agree that this is normally true, but the record before us in this case will not allow that conclusion here. The person responsible for preparing the rate study, Mr. Kreps, made the following concessions in his deposition which we have paraphrased for brevity:

> It is not just and reasonable for a customer to be charged rates that exceed their cost-of-service or usage.
>
> The projected maintenance and operation costs of WCUD's sewer operations for 2010 reflect an increase of more than 50% from the costs recorded in 2009 - $199,434 for 1999 versus $304,925 for 2010. There is nothing in the study to show that an increase of this magnitude is reasonable or reasonably allocated. The UMRB, or anyone reviewing the data for that matter, would have to assume that the increased [*24] costs were reasonably incurred and reasonably allocated.
>
> If he were doing a review for a

customer to determine whether the rate being charged to the customer was just and reasonable, he would want supporting documentation for the rate study, including individual cost items. He would not be willing to simply assume that the underlying data justified the conclusions.

The study supplied to the UMRB does not include enough information to allow a person reviewing the study alone to determine (1) the cost allocation between water and sewer, (2) the allocation of fixed and variable costs, and (3) budget items such as cost of labor, material, and insurance.

The flow data supplied by WCUD was "one of the chief components for determining the rate" for Outdoor. It was the basis for concluding that Outdoor's usage was 62.5 percent of a residential customer. He was instructed by WCUD to exclude several months of flow data, including November and December 2008 and January 2009. He assumed that the exclusion was because of an in inaccurate meter but the data that was ultimately used came from the same meter. It would concern him to base a rate study on data obtained from an inaccurate flow meter. He [*25] was unwilling to testify that the nine months of data was sufficient basis for a rate study; it "would be reasonable [for a customer such as Outdoor] to want to see multiple years of data."

Outdoor is the only "luxury campground" in the WCUD system. The 384 services for which it is being charged is greater than the number of total connections within WCUD's system. Outdoor is not receiving administrative, billing or maintenance services for the 384 campsites for which it is being billed. Outdoor is being treated different from other customers in that it is being billed for its "inflow and infiltration" from groundwater since it is being charged based on a meter that records flow into WCUD whereas other customers are being charged based on water usage and a system average.

In addition to these concessions, we note that other campgrounds are not being billed according to the number of campsites. Arrow Creek has approximately 60 campsites but it is receiving only 3 bills based on the number of water meters. Smokey Bear campground is being billed for two water meters even though it has over 30 campsites.

WCUD and the UMRB urge us to defer to the experience and expertise of the members of the [*26] UMRB. They suggest that, because of the collective experience and expertise of the members of the UMRB, they would know whether the figures used in the rate study are within the range of reasonable. "However, the observations of a regulatory board, even a board made up of persons with relevant expertise, cannot replace competent evidence." ***Miller**, 256 S.W.3d at 231.*

We conclude that the decision of the UMRB to adopt the new rate of $37.13 for Outdoor effective January 1, 2010 is not supported by material evidence. The evidence that fairly detracts from the study includes the testimony of the preparer of the rate study which shows that any reasonable customer who has serious concerns about his or her sewer bill would not be satisfied without seeing the data that underlies the study. Further, it is clear that Mr. Kreps was not by any means comfortable with the limited flow data. WCUD virtually conceded that the flow data was unreliable and that more reliable data is needed. Further proceedings before the UMRB to determine a just and reasonable rate will be necessary after sufficient flow data is gathered. We are not holding that $37.13 per site is an unreasonable or unjust rate. That [*27] is not our responsibility in reviewing this case. We are simply holding that the rate study alone, which was the only evidence before the UMRB upon which the rate could have been confirmed, does not constitute material evidence in light of the evidence from the study's creator and other evidence, all of which detracts from accepting it at face value.

Our conclusion creates the need for some guidance as to what will happen with regard to billing until sufficient flow data is gathered to support a reliable rate study. We will address this issue pursuant to *Tenn. R. App. P. 36 (a)* which allows us to "grant any relief"

demanded by the case subject to some limitations not applicable here. The rate of $45.54 was arbitrary, as we have concluded, so Outdoor will not be billed based on this rate. We have further held that Outdoor will be entitled to a refund of the difference between the $45.54 rate and whatever is eventually determined to be a just and reasonable rate from the time it was instituted to the time WCUD adopted the rate of $37.13 on January 1, 2010.[4] From January 1, 2010, until such time as the UMRB approves a new rate structure as just and reasonable, Outdoor shall be billed at [*28] the temporary, or "pendente lite" rate of $37.13. If the new rate approved by the UMRB is less than the temporary rate, WCUD shall refund to Outdoor the difference in the amount billed and the amount owed. If the new rate is higher than the temporary rate, Outdoor shall pay WCUD the difference in the amount billed and the amount owed.

4 We are assuming that the new rate will be less than $45.54. In the event we are wrong, the UMRB may consider whether Outdoor will be responsible to pay the difference.

V.

The judgment of the trial court is vacated. Costs on appeal are taxed to Webb Creek Utility District. This matter is remanded to the trial court for further proceedings consistent with this opinion.

CHARLES D. SUSANO, JR., JUDGE

Clearfork Utility District

115 rogerston rd.
p.o. box 63
clairfield, tennessee 37715
phone: 784-7039
784-4322

January 28, 2014

JAN 31 2014

Joyce Welborn
Utility Management Review Board
505 Deaderick St., Suite 1500
James K Polk State Office Bldg.
Nashville TN 37243-1402

Dear Joyce:

In response to your letter of December 12, 2013 regarding your request for additional information on our water loss here is the additional information:

2. Are you accounting for the water used by the water and/or sewer department?
   We do not have a meter on the feed line to the office or chlorinators.

4. Do you have a recalibration policy and procedure in place?
   Yes - We have the raw and finished water calibrated about every other year.

6. Do you have a process to inspect for unauthorized consumption? What are the consequences if unauthorized consumption is discovered?
   If we find a meter turned back on after being turned off, we remove the meter and plug the line. If a shunt is put into the box where the meter was we have a sheriff's deputy watch us disconnect the shunt. If it happens again we have them arrested for theft of services.

10. Is your system "zoned" to isolate water loss?
    Yes. The Clearfork is fed by a 100,000 gallon tank and a 150,000 gallon tank. White Oak is fed by a 100,000 gallon tank. Roses Creek is served by two 5,000 gallon pressure tanks.

12. Do you or can you control pressure surges?
    No. We have a pressure surge when the high service pumps are turned on or shut off.

17. What is the monetary value of the lost water?
    Do not know.

The reason the validity score decreased from 73 to 59 is we let TAUD do our assessment and feel this was a more accurate score. Based on their recommendation we will replace all meter in 2014. This should bring our score back up.

If you have further questions please call at 423-784-4322.

Sincerely,

Roy Price

Roy Price, Manager

Joyce Welborn

From: Rachel Newton
Sent: Tuesday, January 28, 2014 5:44 PM
To: Joyce Welborn
Subject: Approved Commissioner Training
Attachments: Cost of Service Webinars Parts I and II.pptx

fyi

From: Rachel Newton
Sent: Tuesday, January 28, 2014 5:42 PM
To: Ben Andrews
Subject: RE: Cost of Service Webinars Parts I and II.pptx

Ben,

The webinar, including the attached presentation, has been approved for one (1) hour of commissioner training for the commissioners of Oak Ridge Utility District. I have approved one (1) hour because you indicated that you anticipate the materials will be condensed to cover only one hour of time. If you have any questions or concerns, please let me know.

Thanks.

Rachel

Rachel Newton
Assistant General Counsel
Comptroller of the Treasury
Office of General Counsel
615-401-7887 phone
615-741-1551 fax
Rachel.Newton@cot.tn.gov

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From: Ben Andrews [mailto:bpa@orud.org]
Sent: Wednesday, January 08, 2014 12:33 PM
To: Rachel Newton
Subject: RE: Cost of Service Webinars Parts I and II.pptx

We plan to have it after our February 26th Board Meeting after Dwight presents our audit.

Ben

Hope all is well and you are staying warm.
Attached is a presentation the Oak Ridge Utility District requests approval for one hour of Commissioner Training to be presented by Dwight Work of Frazier and Deeter.
The attached presentation will be presented as a Webcast for the American Public Gas Association over two hours. We anticipate it be modified to cover only one hour but the basic information will be maintained.
Oak Ridge Utility District is a "gas only" district created by a Private Act. No credit will be offered to commissioners of any other district.
Greg, I know the approval duties have moved around a bit. Please pass this request on if you no longer take care of approvals or let me know the proper person.
Thanks in advance for your consideration.

Ben Andrews

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Cost of Service Study

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Cost of Service Study

- Objectives
  - Overview of cost of service study process
  - Test period
  - Common categories for functionalizing costs
  - Classification
  - Allocation factors
  - Cost of Service
  - Rate design

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CPAs & ADVISORS

Cost of Service Study

- General
  - Determination of cost of service by customer classification is a three-step process involving:
    - Grouping of costs by function (functionalization)
    - Segregation of functionalized costs by causation or service characteristics (classification)
    - Proration of classified costs to customer classes (allocation)

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Cost of Service Study

- General – Continued
  - A cost of service study is more of an art than a science
  - Many decisions must be made throughout the study
  - This presentations will provide general concepts.
  - It is not meant to be specific to every utility that views it

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Cost of Service Study

- Test Period
  - Select an appropriate test period
    - Twelve-month period
      - Includes an entire cycle in the operations of a natural gas utility
    - May be an historical period
      - Usually the most recent fiscal year
    - May be based on projected data

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Cost of Service Study

- Test Period – Continued
  - Will the study cover all segments of the business, e.g., natural gas, propane, appliance, CNG
  - If not, balance sheet and Statement of Revenues, Expenses, and Changes in Net Position ("SRECNP") items related to non-covered segments will have to be removed

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Cost of Service Study

- Test Period – Continued
  - Review the operating and financial results to determine if adjustments should be made
    - Major customer additions or losses
    - Weather warmer or colder than normal
    - Expenses incurred that should not be recovered from ratepayers

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Cost of Service Study

- Test Period – Continued
  - Review the operating and financial results – continued
    - Will expenses be incurred that were not incurred during test period
    - Will there be changes to rate classifications
      - Customers changing from firm to interruptible or vice versa
      - Customers changing from a rate schedule subject to a PGA to an index-based rate schedule

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Cost of Service Study

- Test Period – Continued
  - Review the operating and financial results – continued
    - Customers changing to/from sales to transport
    - Are there any contract customers whose rates cannot be changed
    - Is there plant in service that is devoted solely to one customer or group of customers

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Cost of Service Study

- Test Period – Continued
  - Review the operating and financial results – continued
    - After all adjustments are made
      - Is the net operating income ("NOI") appropriate
      - The NOI should be high enough to generate an increase in net position and also high enough to generate cash to pay debt principal, recurring capital expenditures, and maybe increase cash balance
      - Example

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Cost of Service Study

- Test Period – Continued
  - Review the operating and financial results – continued
    - Utility has
      - $19,300,000 in operating expenses of which $1,400,000 is depreciation
      - $1,000,000 principal payment on debt
      - $480,000 in interest expense
      - $1,000,000 in recurring capital expenditures
      - Average net position of $33,350,000

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Cost of Service Study

- Test Period – Continued
  - Review the operating and financial results – continued
    - Utility needs rates to generate $2,480,000 in cash
    - Depreciation generates $1,400,000 of the cash
    - The net cash requirement is $1,080,000, which corresponds to the NOI

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Cost of Service Study

- Test Period – Continued
  - Review the operating and financial results – continued
    - $480,000 of this amount pays the interest expense
    - The increase in net position will be $600,000
    - Dividing the NOI of $1,080,000 by the average net position of $33,350,000 produces a rate of return of 3.24 percent

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Cost of Service Study

- Functionalization
  - Amounts should be recorded by function
  - Major functions may include
    - Production
    - Storage
    - Transmission
    - Distribution
    - General

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Cost of Service Study

- Functionalization – Continued
  - Production Plant
    - Manufactured Gas Production Plant
  - Storage Plant
    - Underground Storage Plant
    - Other Storage Plant (e.g., LNG Plant)
  - Transmission Plant

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Cost of Service Study

- Functionalization – Continued
  - Distribution Plant
    - Land and Land Rights
    - Structures and Improvements
    - Mains
    - Compressing Station Equipment
    - M&R Station Equipment – General
    - M&R Station Equipment – City Gate Check Stations

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Cost of Service Study

- Functionalization – Continued
  - Distribution Plant – Continued
    - Services
    - Meters
    - Meter Installations
    - House Regulators
    - House Regulator Installations
    - M&R Station Equipment – Industrial

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Cost of Service Study

- Functionalization – Continued
  - Distribution Plant – Continued
    - Other Property on Customers' Premises
    - Other Equipment

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Cost of Service Study

- Functionalization – Continued
  - General Plant
    - Land and Land Rights
    - Structures and Improvements
    - Office Furniture and Equipment
    - Transportation Equipment
    - Stores Equipment
    - Tools, Shop, and Garage Equipment

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Cost of Service Study

- Functionalization – Continued
  - General Plant – Continued
    - Laboratory Equipment
    - Power Operated Equipment
    - Communications Equipment
    - Miscellaneous Equipment
    - Other Tangible Property

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Cost of Service Study

- Functionalization – Continued
  - Production Expenses
    - Manufactured Gas Production - Operations
    - Manufactured Gas Production – Maintenance
  - Storage Expenses
    - Underground Storage Expenses – Operations
    - Underground Storage Expenses – Maintenance

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Cost of Service Study

- Functionalization – Continued
  - Storage Expenses – Continued
    - Other Storage Expenses – Operations
    - Other Storage Expenses – Maintenance
  - Transmission Expenses
    - Operation
    - Maintenance

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Cost of Service Study

- Functionalization – Continued
  - Distribution Expenses – Operation
    - Distribution Load Dispatching
    - Compressor Station Labor and Expenses
    - Compressor Station Fuel and Power
    - Mains and Services Expense
    - M&R Station Expense – General
    - M&R Station Expense - Industrial

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Cost of Service Study

- Functionalization – Continued
  - Distribution Expenses – Operation – Continued
    - M&R Station Expenses – City Gate Check Stations
    - Meter and House Regulator Expenses
    - Customer Installations Expenses
    - Other Expenses
    - Rents

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Cost of Service Study

- Functionalization – Continued
  - Distribution Expenses – Maintenance
    - Maintenance Supervision and Engineering
    - Maintenance of Structures and Improvements
    - Maintenance of Mains
    - Maintenance of Compressor Station Equipment
    - Maintenance of M&R Station Equipment – General
    - Maintenance of M&R Station Equipment - Industrial

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Cost of Service Study

- Functionalization – Continued
  - Distribution Expenses – Maintenance – Continued
    - Maintenance of M&R Station Equipment – City Gate Check Stations
    - Maintenance of Services
    - Maintenance of Meters and House Regulators
    - Maintenance of Other Equipment

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Cost of Service Study

- Functionalization – Continued
  - Customer Accounts Expenses – Operation
    - Supervision
    - Meter Reading Expenses
    - Customer Records and Collection Expenses
    - Miscellaneous Customer Accounts Expenses

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Cost of Service Study

- Functionalization – Continued
  - Customer Service and Informational Expenses – Operation
    - Supervision
    - Customer Assistance Expenses
    - Informational and Instructional Advertising Expenses
    - Miscellaneous Customer Service and Informational Expenses

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Cost of Service Study

- Functionalization – Continued
  - Sales Expenses – Operation
    - Supervision
    - Demonstration and Selling Expenses
    - Advertising Expenses
    - Miscellaneous Sales Expenses

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Cost of Service Study

- Functionalization – Continued
  - Administration and General Expenses – Operation
    - Administrative and General Salaries
    - Office Supplies and Expenses
    - Administrative Expenses Transferred - Credit
    - Outside Services Employed
    - Property Insurance

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Cost of Service Study

- Functionalization – Continued
  - Administration and General Expenses – Operation – Continued
    - Injuries and Damages
    - Employee Pensions and Benefits
    - Franchise Requirements
    - Regulatory Commission Expenses
    - Duplicate Charges - Credit

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Cost of Service Study

- Functionalization – Continued
  - Administration and General Expenses – Operation – Continued
    - General Advertising Expenses
    - Miscellaneous General Expenses
    - Rents

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Cost of Service Study

- Functionalization – Continued
  - Administration and General Expenses – Maintenance
    - Maintenance of General Plant

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Cost of Service Study

- Functionalization – Continued
  - Review schematics of transmission and distribution system to identify facilities used to serve a specific customer or group of customers
  - If there are any, the facilities will be directly assigned to the customer or customer group

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Cost of Service Study

- Functionalization – Continued
  - Prepare a schedule of O&M expense showing (1) Salaries and Wages and (2) Other charged to each expense account

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Cost of Service Study

- Functionalization – Continued
  - Decision
    - Use average balance sheet amounts or EOY
    - Best matching is average but either will do
  - Prepare schedule of balance sheet amounts (average or EOY) from the trial balance

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Cost of Service Study

- Classification
  - General
    - Once the balance sheet and SRECNP amounts are functionalized, they are classified as either demand, volumetric, or customer
    - Demand cost component includes those costs that vary with changes in customer demand

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Cost of Service Study

- Classification – Continued
  - General – Continued
    - Volumetric cost component includes those costs that vary with the volume of gas purchased or consumed
    - Customer cost component includes those costs that vary with the number of customers served

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Cost of Service Study

- Classification – Continued
  - General – Continued
    - A SRECNP schedule, rate base schedule, and supporting schedules should be prepared showing the classification of costs to demand, volumetric, and customer

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Cost of Service Study

- Classification – Continued
  - Rate Base
    - Is a term used in regulation of investor-owned utilities
    - Defined as net assets, financed by the debt and equity investor, that are used and useful in providing utility service
    - For this presentation, rate base will equal net position

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Cost of Service Study

- Classification – Continued
  - SRECNP should look something like this

Operating Expenses:	**Amount**	**Demand**	**Volumetric**	**Customer**
Manufactured gas production – operations				
Manufactured gas production – maintenance				
Natural gas storage – operations				
Natural gas storage – maintenance				
Transmission – operations				
Transmission – maintenance				
Distribution – operations				
Distribution – maintenance				

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Cost of Service Study

- Classification – Continued
  - SRECNP should look something like this

Operating Expenses – Continued:	**Total**	**Demand**	**Volumetric**	**Customer**
Customer accounts				
Customer service				
Sales				
Administrative and general – operations				
Administrative and general – maintenance				
Depreciation				
Taxes other than income taxes				
Total operating expenses				

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Cost of Service Study

- Classification – Continued
  - SRECNP should look something like this

Other Operating Revenue:	**Total**	**Demand**	**Volumetric**	**Customer**
Forfeited discounts				
Miscellaneous service revenues				
Transportation revenue				
Uncollectible accounts				
Total other operating revenue				

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Cost of Service Study

- Classification – Continued
  - SRECNP should look something like this

Non-Operating Revenue (Expense):	Total	Demand	Volumetric	Customer
Interest income				
Gain (loss) on disposal of assets				
Interest expense				
Total non-operating revenue (expense)				
Contributions in aid of construction				
Return component				
Non-gas expenses to be recovered				
Cost of gas				
Total revenue				

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Cost of Service Study

- Classification – Continued
  - SRECNP should look something like this

	Total	Demand	Volumetric	Customer
Rate base				
Rate of Return				
Equalized return component				
Equalized rate of return				

  - All but a few of the line items will have supporting schedules showing the classification of subaccounts

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Cost of Service Study

- Classification – Continued
  - Rate Base should look something like this

	Total	Demand	Volumetric	Customer
Additions:				
Utility plant in service				
Construction work in progress				
Fuel stock				
Materials and supplies				
Gas inventory				
Prepaid expenses				
Deferred debits				
Working capital				

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Cost of Service Study

- Classification – Continued
  - Rate Base should look something like this

	Total	Demand	Volumetric	Customer
Additions:				
Over(Under)-Recovered PGA				
Cash and investments				
Total additions				
Deductions:				
Accumulated depreciation				
Retirement work in progress				
Customer deposits				
Unfunded OPEB				

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Cost of Service Study

- Classification – Continued
  - Rate Base should look something like this

	Total	Demand	Volumetric	Customer
Deductions:				
Unfunded pension liability				
Total deductions				
Rate base				

  - Each line item may have supporting schedules showing the derivation and classification of the amounts

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Cost of Service Study

- Classification – Continued
  - Rate Base – Continued
    - Production and Storage Plant
      - Production Plant
        - Liquefied Petroleum Gas
      - Storage Plant
        - Liquefied Natural Gas
    - Normally classified 100% to the demand component

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Cost of Service Study

- Classification – Continued
  - Rate Base – Continued
    - Transmission Plant
      - Most governmental distribution systems will not have transmission plant as defined by the FERC or NARUC Uniform System of Accounts
      - If it has
        - Usually classified 50% to the demand component and 50% to the volumetric component

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Cost of Service Study

- Classification – Continued
  - Rate Base – Continued
    - Distribution Plant
      - Mains
        - Zero-Inch Methodology
          - Allocates cost of a theoretical main of zero-inch diameter to the customer component, and allocates the remaining costs to the demand component
        - Minimum Size Methodology
          - Cost of smallest main installed is assigned to the customer component, with the remaining book cost of mains assigned to the demand component

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Cost of Service Study

- Classification – Continued
  - Rate Base – Continued
    - Distribution Plant – Continued
      - Mains – Continued
        - Allocation between the demand cost component and the volumetric cost component
        - Modified version of first two that allocates mains to all three components

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Cost of Service Study

- Classification – Continued
  - Rate Base – Continued
    - Distribution Plant – Continued
      - Compressor Station Equipment; Measuring and Regulating Station Equipment – General; Measuring and Regulating Station Equipment – City Gate Check Stations
        - Add the percentages of mains classified to demand component and the volumetric component
        - Calculate the percentages classified to the demand and volumetric components
        - Classify the amounts to the demand component and the volumetric component using these percentages

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Cost of Service Study

- Classification – Continued
  - Rate Base – Continued
    - Distribution Plant – Continued
      - Services; Meters; Meter Installations; House Regulators; House Regulator Installations; Industrial Measuring and Regulating Station Equipment; Other Property on Customers' Premises
        - These amounts are classified to the customer component

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Cost of Service Study

- Classification – Continued
  - Rate Base – Continued
    - Distribution Plant – Continued
      - Land and Land Rights; Structures and Improvements; Other Equipment
        - These amounts are classified based on the composite classification of all other distribution plant

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Cost of Service Study

- Classification – Continued
  - Rate Base – Continued
    - General Plant
      - These amounts are classified using the composite classification of production plant, transmission plant, and distribution plant

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Cost of Service Study

- Classification – Continued
  - Rate Base – Continued
    - Gas Inventory
      - Includes Propane, LNG, and Natural Gas in Storage
        - Classification depends on how Gas Inventory is used
        - If Propane and LNG are used only on a peak day, then the amounts are classified to the demand component
        - Natural Gas in Storage is typically used at least in the winter months, if not year around. Classify to the volumetric component

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Cost of Service Study

- Classification – Continued
  - Rate Base – Continued
    - Working Capital
      - Includes all current assets and current liabilities that are not individually included in the calculation of rate base
      - Accounts receivable – classified in the same manner as revenues or O&M expense plus cost of gas
      - General accounts payable – classified in the same manner as O&M expense
      - Accounts payable related to gas purchases – classified in the same manner as cost of gas

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Cost of Service Study

- Classification – Continued
  - Rate Base – Continued
    - Working Capital – Continued
      - Accrued wages, annual leave, sick leave, etc. – classified in the same manner as salaries and wages
      - Accrued interest – classified in the same manner as utility plant in service

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Cost of Service Study

- Classification – Continued
  - Rate Base – Continued
    - Over(Under)-Recovered Purchased Gas Costs
      - If they are recorded by component, then they are classified to the demand and volumetric components as recorded
      - If not, they are classified in the same manner as cost of gas

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Cost of Service Study

- Classification – Continued
  - Rate Base – Continued
    - Cash and Investments
      - Cash held for payroll is classified in the same manner as salaries and wages
      - Cash held for debt service or construction is classified in the same manner as utility plant in service
      - General cash is classified in the same manner as revenue or O&M expense plus cost of gas

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Cost of Service Study

- Classification – Continued
  - Rate Base – Continued
    - Accumulated Depreciation
      - Accumulated depreciation recorded for each subaccount is classified in the same manner as the corresponding plant subaccount

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Cost of Service Study

- Classification – Continued
  - Rate Base – Continued
    - Unfunded OPEB and Pension Liability are classified in the same manner as salaries and wages

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Cost of Service Study

- Classification – Continued
  - O&M Expense – Continued
    - Distribution Operations Expense – Continued
      - Mains and Services Expenses
        - Add the amounts classified to the three components in the mains plant account and the services plant account
        - Compute the percentage classified to each component
        - Classify to the three components using these percentages

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Cost of Service Study

- Classification – Continued
  - O&M Expenses – Continued
    - Administration & General Operations Expense
      - A&G Salaries; Employee Pensions and Benefits; Salary Portion of Administrative Expenses Transferred – Credit; Portion of Injuries and Damages Related to Employees
        - Add the O&M salaries and wages classified to the three components
        - Compute the percentage classified to each component
        - Classify using these percentages

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Cost of Service Study

- Classification – Continued
  - O&M Expenses – Continued
    - A&G Operations Expense – Continued
      - Property Insurance; Portion of Injuries and Damages Related to Property
        - Classified in the same manner as utility plant in service

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Cost of Service Study

- Classification – Continued
  - O&M Expenses – Continued
    - A&G Operations Expense – Continued
      - Office Supplies and Expense; Non-Salary Portion of Administrative Expenses Transferred – Credit; Outside Services Employed; Franchise Requirements; Regulatory Commission Expense; Duplicate Charges – Credit; General Advertising Expenses; Miscellaneous General Expense; Rents
        - Add the non-salary amounts classified to the three components for the storage, transmission, distribution, customer accounts, customer service, and sales expenses
        - Compute the percentage classified to each component
        - Classify using these percentages

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Cost of Service Study

- Classification – Continued
  - O&M Expenses – Continued
    - A&G Maintenance Expense
      - Maintenance of General Plant is classified using the percentages used to classify general plant

Cost of Service Study

- Classification – Continued
  - Taxes Other Than Income Taxes
    - Payroll Taxes are classified in the same manner as salary and wages
    - In Lieu of Tax Payments
      - Classification depends on the items included by state law

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Cost of Service Study

- Classification – Continued
  - Interest Charges
    - Interest on Debt is classified using the same percentages as rate base or utility plant in service
    - Interest on Customer Deposits is classified to the customer component

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Cost of Service Study

- Classification – Continued
  - Cost of Gas
    - Reservation/Demand charges are classified to the demand component
    - Gas, Commodity, and Storage charges are classified to the volumetric component unless Storage is used only for peak day

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Cost of Service Study

- Classification – Continued
  - Prepare a new classified SRECNP by equalizing the net position amount for each component
    - Multiply the rate base classified to each component by the system rate of return
    - Subtract from this amount the total interest charges classified to each component

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Cost of Service Study

- Allocation
  - General
    - Final step is allocation of functionalized and classified costs to customer classes
    - Develop allocation factors for the demand, volumetric, and customer components
    - Separate SRECNP, rate base, and supporting schedules developed for each component showing the allocation of costs to the customer classes

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Cost of Service Study

- Allocation – Continued
  - General – Continued
    - Demand costs are usually allocated using one of three methods
      - Coincident Demand Method
        - Measures demands of customer classes at the time of system peak
        - System peak may be a design day (e.g., 60 HDD) or actual test year system peak
        - Favors high load factor customers over customers whose consumption is greatest during the system peak
        - No allocation to interruptible customers or transport customers
        - Demand component of cost of gas is usually allocated using this method

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Cost of Service Study

- Allocation – Continued
  - General – Continued
    - Demand – Continued
      - Non-coincident demand method
        - Each customer class is allocated demand costs based on their actual test year peak, regardless of when it occurred
        - Allocation would be made to interruptible customers and transport customers
        - Demand portion of distribution and transmission mains may be allocated using this method

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Cost of Service Study

- Allocation – Continued
  - General – Continued
    - Demand – Continued
      - Average and Peak Demand Method
        - Compromise between the coincident and non-coincident methods
        - Multiply total demand costs by system load factor
        - Allocate result to customer classes using an annual volumetric basis
        - Remaining costs are allocated using coincident peak demand

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Cost of Service Study

- Allocation – Continued
  - General – Continued
    - Volumetric costs may be allocated using
      - Normalized or actual annual sales volumes
      - Normalized or actual annual throughput
      - Normalized or actual winter period volumes

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Cost of Service Study

- Allocation – Continued
  - General – Continued
    - Customer costs
      - Actual or weighted customers
      - Bills

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Cost of Service Study

- Allocation – Continued
  - Rate Base
    - Production and Storage Plant
      - Allocated to each customer class based on coincident demand method

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Cost of Service Study

- Allocation – Continued
  - Rate Base – Continued
    - Transmission Plant
      - Costs classified as demand are allocated to customer classes based on non-coincident demand method
      - Costs classified as volumetric are allocated based on normalized annual throughput

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Cost of Service Study

- Allocation – Continued
  - Rate Base – Continued
    - Distribution Plant
      - Mains
        - Costs classified to the demand component are allocated to customer classes based on non-coincident demand method
        - Costs classified to the volumetric component are allocated based on normalized annual throughput
        - Costs classified to the customer component are allocated based on number of bills

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Cost of Service Study

- Allocation – Continued
  - Rate Base – Continued
    - Distribution Plant – Continued
      - Compressor Station Equipment; M&R Station Equipment – General; M&R Station Equipment – City Gate Check Stations
        - Costs classified to the demand component are allocated based on the non-coincident demand method
        - Costs classified to the volumetric component are allocated based on normalized annual throughput

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Cost of Service Study

- Allocation – Continued
  - Rate Base – Continued
    - Distribution Plant – Continued
      - Services
        - Determine the average length of service line to each customer classification
        - Determine the current cost of installing an average length service line to each customer classification
        - For each customer classification, multiply the average length by current cost by number of customers in each customer class to obtain the weighted service line cost
        - Divide the weighted service line cost for each customer class by the total weighted service line cost
        - This is the **Services Allocation Factor**
        - Use these percentages to allocate the customer cost

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Cost of Service Study

- Allocation – Continued
  - Rate Base – Continued
    - Distribution Plant – Continued
      - Meters; Meter Installations
        - Determine the number of meters for each customer classification
        - Determine the current cost of a meter and installation of a meter to each customer class
        - Multiply the cost by the number of meters to obtain the weighted cost for each customer class
        - Divide weighted cost for each customer class by total weighted cost
        - This is the **Meters Allocation Factor**
        - Use the percentages to allocate the customer cost

Cost of Service Study

- Allocation – Continued
  - Rate Base – Continued
    - Distribution Plant – Continued
      - House Regulators; House Regulator Installations
        - Determine the number of house regulators for each customer classification
        - Determine the current cost of a house regulator and installation of a house regulator to each customer class
        - Multiply the cost by the number of house regulators to obtain the weighted cost for each customer class
        - Divide weighted cost for each customer class by total weighted cost
        - This is the **House Regulator Allocation Factor**
        - Use the percentages to allocate the customer cost

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Cost of Service Study

- Allocation – Continued
  - Rate Base – Continued
    - Distribution Plant – Continued
      - Industrial Measuring and Regulating Station Equipment
        - Determine the customer group for whom equipment is built and allocate costs to that customer group

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Cost of Service Study

- Allocation – Continued
  - Rate Base – Continued
    - General Plant
      - Add the demand costs allocated to each customer class for production and storage plant, transmission plant, and distribution plant
      - Compute the percentage allocated to each customer class
      - This is the **Plant in Service Demand Allocation Factor**
      - Allocate general plant demand costs to each customer class using this factor

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Cost of Service Study

- Allocation – Continued
  - Rate Base – Continued
    - General Plant
      - Add the volumetric costs allocated to each customer class for production and storage plant, transmission plant, and distribution plant
      - Compute the percentage allocated to each customer class
      - This is the **Plant in Service Volumetric Allocation Factor**
      - Allocate general plant volumetric costs to each customer class using this factor

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Cost of Service Study

- Allocation – Continued
  - Rate Base – Continued
    - General Plant
      - Add the customer costs allocated to each customer class for production and storage plant, transmission plant, and distribution plant
      - Compute the percentage allocated to each customer class
      - This is the **Plant in Service Customer Allocation Factor**
      - Allocate general plant customer costs to each customer class using this factor

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Cost of Service Study

- Allocation – Continued
  - Rate Base – Continued
    - Gas Inventory
      - Classified demand costs are allocated using the Coincident Demand Method
      - Classified volumetric costs
        - If inventory is used only during winter months, then allocate using normalized winter period sales volumes
        - If inventory is used all year, then allocate using normalized annual sales volumes

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Cost of Service Study

- Allocation – Continued
  - Rate Base – Continued
    - Prepaid Expenses; Deferred Debits; Working Capital
      - Allocate the classified demand costs to customer classifications using the same factor as used for the expense portion
      - Allocate the classified volumetric costs to customer classifications using the same factor as used for the expense portion
      - Allocate the classified customer costs to customer classifications using the same factor as used for the expense portion

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Cost of Service Study

- Allocation – Continued
  - Rate Base – Continued
    - Over(Under)-Recovered Purchased Gas Costs
      - Allocate classified demand costs using the coincident demand method
      - Allocate classified volumetric costs using normalized annual sales volumes

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Cost of Service Study

- Allocation – Continued
  - Rate Base – Continued
    - Accumulated Depreciation
      - Allocate each subaccount of accumulated depreciation in the same manner as the corresponding plant subaccount

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Cost of Service Study

- Allocation – Continued
  - Rate Base – Continued
    - Unfunded OPEB and Pension Liability
      - Allocate the classified demand costs using the **S&W Demand Allocation Factor**
      - Allocate the classified volumetric costs using the **S&W Volumetric Allocation Factor**
      - Allocate the classified customer costs using the **S&W Customer Allocation Factor**

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Cost of Service Study

- Allocation – Continued
  - Operation and Maintenance Expenses
    - Manufactured Gas Expense
      - Allocate the classified demand cost using the **Coincident Demand Method**
    - Transmission Expenses
      - Allocate the classified demand cost using the **Non-Coincident Demand Method**
      - Allocate the classified volumetric cost using the **Normalized Annual Throughput Allocation Factor**

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Cost of Service Study

- Allocation – Continued
  - O&M Expenses – Continued
    - Distribution Operations Expense – Continued
      - Mains and Services Expenses
        - Add the amounts allocated to each customer class for the mains plant account and the services plant account
        - Compute the percentages allocated to each customer class
        - Allocate using these percentages

Cost of Service Study

- Allocation – Continued
  - O&M Expenses – Continued
    - Distribution Operations Expense – Continued
      - Meter and House Regulator Expenses
        - Add the customer costs allocated to each customer classification in the meters, meter installations, house regulators, and house regulator installations plant accounts
        - Compute the percentage allocated to each customer classification
        - This is the **Meters and House Regulators Allocation Factor**
        - Allocate meter and house regulator expenses to each customer classification using this factor

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Cost of Service Study

- Allocation – Continued
  - O&M Expense – Continued
    - Distribution Maintenance Expense
      - Mains; Compressor Station Equipment; M&R Station Equipment – General; M&R Station Equipment – City Gate Check Stations; Services; Meters and House Regulators; M&R Station Equipment - Industrial
        - Allocate in the same manner as the corresponding plant accounts

Cost of Service Study

- Allocation – Continued
  - O&M Expenses – Continued
    - Customer Accounts Expense
      - Allocate the customer accounts expense to each customer classification using the **Meters Allocation Factor**

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Cost of Service Study

- Allocation – Continued
  - O&M Expenses – Continued
    - Administrative and General Operations Expense
      - A&G Salaries; Employee Pensions and Benefits; Salary Portion of Administrative Expenses Transferred – Credit; Portion of Injuries and Damages Related to Employees
        - Demand Costs
          - Add the O&M S&W demand costs allocated to each customer classification
          - Compute the percentage allocated to each customer classification
          - This is the **Salary and Wage Demand Allocation Factor**
          - Allocate using this factor

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Cost of Service Study

- Allocation – Continued
  - O&M Expenses – Continued
    - Administrative and General Operations Expense – Continued
      - A&G Salaries; Employee Pensions and Benefits; Salary Portion of Administrative Expenses Transferred – Credit; Portion of Injuries and Damages Related to Employees – Continued
        - Volumetric Costs
          - Add the O&M S&W volumetric costs allocated to each customer classification
          - Compute the percentage allocated to each customer classification
          - This is the **Salary and Wage Volumetric Allocation Factor**
          - Allocate using this factor

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Cost of Service Study

- Allocation – Continued
  - O&M Expenses – Continued
    - Administrative and General Operations Expense – Continued
      - A&G Salaries; Employee Pensions and Benefits; Salary Portion of Administrative Expenses Transferred – Credit; Portion of Injuries and Damages Related to Employees – Continued
        - Customer Costs
          - Add the O&M S&W customer costs allocated to each customer classification
          - Compute the percentage allocated to each customer classification
          - This is the **Salary and Wage Customer Allocation Factor**
          - Allocate using this factor

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Cost of Service Study

- Allocation – Continued
  - **Operating Expenses:** **Demand** **Rate 1** **Rate 2** **Rate3**
  - Manufactured gas production – operations
  - Manufactured gas production – maintenance
  - Natural gas storage – operations
  - Natural gas storage – maintenance
  - Transmission – operations
  - Transmission – maintenance
  - Distribution – operations
  - Distribution – maintenance

309

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Cost of Service Study

- Allocation – Continued
  - **Operating Expenses:** **Volumetric** **Rate 1** **Rate 2** **Rate3**
  - Manufactured gas production – operations
  - Manufactured gas production – maintenance
  - Natural gas storage – operations
  - Natural gas storage – maintenance
  - Transmission – operations
  - Transmission – maintenance
  - Distribution – operations
  - Distribution – maintenance

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Cost of Service Study

- Allocation – Continued
  - **Operating Expenses:** **Customer** **Rate 1** **Rate 2** **Rate3**
  - Manufactured gas production – operations
  - Manufactured gas production – maintenance
  - Natural gas storage – operations
  - Natural gas storage – maintenance
  - Transmission – operations
  - Transmission – maintenance
  - Distribution – operations
  - Distribution – maintenance

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Cost of Service Study

- Allocation – Continued
  - Schedule of rate base demand components allocated to each customer classification
  - Schedule of rate base volumetric components allocated to each customer classification
  - Schedule of rate base customer components allocated to each customer classification

Cost of Service Study

- Cost of Service
  - Compile schedule for each rate classification showing the demand, volumetric, and customer amounts allocated
  - Schedule is similar to the one discussed in the Classification section of this presentation

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Cost of Service Study

- Cost of Service – Residential

	Demand	Volumetric	Customer	Total
Total operating expenses				
Less other operating revenues				
Plus non-operating revenue(expense)				
Less contributions in aid of construction				
Plus return component				
Non-gas expenses to be recovered				
Cost of gas				
Total revenue				
Rate base				
Rate of return				
Equalized return component				
Equalized rate of return				

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Cost of Service Study

- Rate Design – Residential
  - Assume
    - Non-gas expenses to be recovered
      - Demand - $1,547,000
      - Volumetric - $465,000
      - Customer - $6,257,000
      - Total - $8,268,904

Frazier & Deeter
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Cost of Service Study

- Rate Design – Residential
  - Assume
    - Number of bills – 312,000
    - Normalized sales in Ccf – 17,490,000
    - Flat rate

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Cost of Service Study

- Rate Design – Residential
  - Customer charge - $6,257,000 divided by number of bills 312,000 = $20.05
  - Volumetric charge - $1,547,000 plus $465,000 = $2,012,095 divided by 17,490,000 = $0.1150 per Ccf

Frazier & Deeter
CPAs & ADVISORS

Contact Information

Name Dwight S. Work

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- Address: 401 Commerce Street
  Suite 920
  Nashville, TN 37219

Name

- Email
- Phone
- Address

UTILITY DISTRICT COMPLAINT LOG						
Date	*staff*	*Name of Complainant*	*Phone Number*	*Utility District*	*Nature of Complaint*	*Details of Complaint*
12/5/2013	jw	Robert Williams	904-626-9074	Clay Gas UD	gas meter pulled re: dogs	explained UMRB procedures
12/9/2013	jw	Johnny Birchfield	423-306-6390	Siam UD	by construction. Wants cash refund. UD want	explained UMRB procedures
12/18/2013	jw	Roger Carter	not given	Chuckey UD	wants to file ouster petition	sent section of code and explained UMRB procedures
12/20/2013	jw	not given	246-1241	Pleasant View UD	water quality issue	referred to Nashville EFO
2014						
1/2/2014	jw	Rachel Clark	423-665-3331	Calhoun-Charleston	high bill w/o high usage	explained UMRB procedures - suggested she go sit down with the UD and get them to explain why charged in 2009 and 2012 w/o living there and the increasing amts.
1/9/2014	jw	not given	319-512-8741	Tarpley Shop UD	rude, won't take payment card, don't want you at the office, $35 reconnection fee	explained UMRB procedures, she wants to put in a well
1/10/2014	jw	Shirley Underwood	423-627-7763	Plateau UD	out of water this am - doesn't pay for water/ consistently low pressure	explained UMRB procedures/referred to Knox FO
1/13/2014	jw	Tina Ridgeway	889-6833	West Wilson UD	UD wants easement but won't tell why - water already on the road	Told her to contact UD again and push for answers. They are a local gov't and can condemn
1/5/2014	jw	Hester Bobbitt	829-1140	White House UD	meters not read - hers cannot be correct	explained UMRB procedures

1/21/2014	jw	Jerome Lynch	email	Consolidated UD	straight piped to bypass frozen meter Ud charged $1000	explained UMRB procedures UD handled the problem
1/21/2014	jw	b cline	COT web	DeKalb UD	City increased UD wholesale rate by 144%	wanted investigation of City explained UMRB procedures/no state appeal of city
2/4/2014	jw	Keith Coleman	not given	DeKalb UD	UD increased rates 140% to offset City increase	explained UMRB procedures
2/8/2014	jw	Carolyn Tester	email	First UD of Carter	wants list of chemicals in water	referred to Gay Irwin in TDEC JCFO
2/10/2014	jw	Joseph Heath	423-802-5121	Savannah Valley UD	wouldn't provide customer with info re personal acct.	Matter resolved
2/11/2014	jw	Jonathan Rogers	931-316-3184	Quebeck Walling UD	$600 water bill UD won't adjust	explained UMRB procedures & sent him to the UD Board/
2/25/2014	jw	Bill Hetrick	865-339-3329	Bean Station UD	water bills going up	explained UMRB procedures/sent back to UD for explanation of any changes happening/rates/ meter change etc.
3/4/2014	jw	Sam Pendergrass	931-265-5284	West Overton UD	wants water	UD is requiring him to install a 6" lin next to the current 2" line to provide water to him. He is 1500' from the end of the current line. UMRB cannot force a UD to provide water service to a customer.

3/4/2014	jw	Randy Collins	931-636-8325	Belvedere Rural	Only 2 of 5 commissioners in place wants to know what how to resolve issue	John Hall referred me to Don Scholes - current atty - to resolve the issue. Hopefully Don will call Mr. Collins.
3/5/2014	jw	Rick Newport	423-346-6585	Plateau UD	water main break caused damage to home	UD insurance co won't pay, and owner's insurance won't pay, owner stuck in middle
3/14/2014	jw	Carl Kirby	865-609-1402	Knox Chapman UD	trying to get service.	sewer line been run in front of house for 4 years, but connection never made. UD won't provide answers. Referred to John West Knx EFO
3/17/2014	jw	Grace Hash	865-573-6063	Knox Chapman UD	wants to pay by credit card over the phone UD says no	explained that it is the UD decision but could appeal to the UD mgr or Bd of Commissioners

Utility Management Review Board

Compliance Reports

April 3, 2014

Bean Station Utility District

August 31, 2013 Validity Score 85

Non revenue water 15.1%

Change in net position $261,838 (grant $71,240)

Bloomingdale Utility District

June 30, 2013 Validity Score 92

Non-revenue water 5.5%

Change in net position $ 3,093

Chuckey Utility District

June 30, 2013 Validity Score 81

Non-revenue water 13.1%

Change in net position $438045 (capital contributions $431,812)

Cross Anchor Utility District

June 30, 2013 Validity Score 81

Non-revenue water 16.5%

Change in net position $272,016 (capital contributions $224,834)

Hampton Utility District

November 30, 2013 Validity Score 79

Non-revenue water 8.0%

Change in net position $70,587

Northwest Utility District

August 31, 2013 Validity Score 75

Non-revenue water 5.6%

Change in net position $201,971

Northwest Henry County Utility District

June 30, 2013 Validity Score 72:

Non-Revenue water 8.3%

Change in net position $7,461

Shady Grove Utility District

September 30, 2013 Validity Score 84

Non-revenue water 11.6%

Change in net position $705,271

Sylvia-Tennessee City-Pond Utility District

December 31, 2013 Validity Score 87

Non-revenue water 14.5%

Change in net position $65,263

Tarpley Shop Utility District,

June 30, 2013 Validity Score 83;

Non Revenue water23.1%

Change in net positon ($40,780) First year

West Cumberland Utility District,

June 30, 2013 Validity Score 86;

Non Revenue water 13.0%

Change in net position $6,994

SYSTEMS UNDER THE UMRB APRIL 2014			
DISTRICT		**COUNTY**	**LAST AUDIT**
Bedford County UD		Bedford	June-13
Carderview UD		Johnson	June-12
Cherokee Hills UD	WL	Polk	December-12
Clay Gas UD		Clay	August-12
Clearfork UD	WL	Claiborne	December-12
East Sevier UD	WL	Sevier	June-12
Haywood County UD		Haywood	June-13
Intermont UD		Sullivan	December-12
Iron City UD		Lawrence	December-12
Lone Oak UD		Sequatchie	December-12
Minor Hill UD	WL	Giles	December-11
Mooresburg UD	WL	Hawkins	December-12
Natural Gas UD of Hawkins Co		Hawkins	March-13
Roan Mountain UD	WL	Carter	March-13
Samburg UD		Obion	January-13
Sneedville UD		Hancock	March-12
Spring Creek UD	WL	Hardeman	June-13
Surgoinsville UD		Hawkins	April-13
Tansi Sewer UD		Cumberland	February-13
Unicoi Water UD		Unicoi	September-13
Webb Creek UD		Sevier	December-11

WATER LOSS STATUS

District	original referral %	original audit referral date	subsequent review %	subsequent review date	subsequent review %	subsequent review date		
Cherokee Hills	100.000%	12/31/2010	100.00%	12/31/2011	not given	12/31/2012		
Clearfork	73/10.8%	12/31/2010	59/16.6%	12/31/2012				
East Sevier	75.000%	6/30/2010	72.00%	6/30/2011	58/52.5%	6/30/2012		
Intermont	35.11%	12/31/2010	41.75%	12/31/2011	83/15.1%	12/31/2012		
Minor Hill	37.706%	12/31/2010	37.87%	12/31/2011				
Mooresburg	68.623%	12/31/2009	56.23%	12/31/2010	61.686%	12/31/2011	59.83%	12/31/2012
Northeast Henry	35.000%	6/30/2010	41.52%	6/30/2011	36.966%	6/30/2012		
Roan Mountain	63/40.9%	3/31/2013						
Samburg	51.632%	1/31/2012	65/32.5%	1/31/2013				

not provide	12/31/2012

rUMRB MEMBERS	PHONE	E-MAIL	REPRESENTING	Term Ends	RECOMMENDATION PROCESS
Ann Butterworth James K. Polk Building, 17th Floor Nashville, TN 37243-1402	615-401-7910	Ann.Butterworth@cot.tn.gov	Designee, Comptroller	No Term Limits	Appointed by the Comptroller
Pat Riley P. O. Box 350 Trenton, TN 38382-0350	731-855-1441	pat@gcud.net	Utility District Manager	10-31-2016	Governor appoints upon consultation with the Tennessee Association of Utility Districts
Vacant by resignation			Utility District Manager	10-31-2014	Governor appoints upon consultation with the Tennessee Association of Utility Districts
Rebecca Hunter, Commissioner TN Dept of Human Resources 505 Deaderick St, Ste 300 Nashville, TN 37243-1402	615-741-2958	Rebecca.Hunter@tn.gov	Utility District Commissioner	10-31-2015	Governor appoints upon consultation with the Tennessee Association of Utility Districts
Jason West Pinnacle Financial Partners 150 3rd Ave South Nashville, TN 37201-2011	615-491-4895	Jason.West@pnfp.com	Utility District Commissioner	10-31-2015	Governor appoints upon consultation with the Tennessee Association of Utility Districts
Tom Moss Department of Environment & Conservation 6th Floor, L & C Tower Nashville, TN 37243	615-532-0170	Tom.Moss@tn.gov	Dept. of Environment & Conservation	No Term Limits	Appointed by the TDEC Commissioner
Loyal Featherstone 3317 Kirby Parkway Memphis, TN 38115	901-756-1199 901-360-0201	loyalfeatherstone@yahoo.com	Consumer member	10-31-2013	Governor appoints upon consultation with the Tennessee Association of Utility Districts
Jim Hunter 4099 North Mount Juliet Road Mount Juliet, TN 37122-3049	615-758-5627 615-300-8067	Hunterj5@nationwide.com	Utility District Commissioner	10-31-2017	Governor appoints upon consultation with the Tennessee Association of Utility Districts
Donald Stafford Eastside Utility District PO Box 22037 Chattanooga, TN 37422	423-892-2890	eud@vol.com	Utility District Manager	10-31-2014	Governor appoints upon consultation with the Tennessee Association of Utility Districts