

**Town of Thompson's Station  
Board of Mayor and Aldermen  
Special Session Meeting Agenda  
March 9, 2017**

**Meeting Called To Order**

**Reports-**

**Town Report**

Documents:

[TA REPORT 03092017.PDF](#)

**Unfinished Business:**

**1. Right Of Way Purchase: Ferrari Property**

**New Business:**

**2. Transfer Of Wastewater Taps - Request By C&L Development, LLC To Transfer A Portion Of Existing Wastewater Tap Allocation To Alternative Site.**

Documents:

[CL DEV REQUEST.PDF](#)  
[WASTEWATER AGREEMENT MAY 2006.PDF](#)  
[WASTEWATER AGREEMENT NOV 2006.PDF](#)

**3. Personnel Matter - Amendment To The Town Administrator's Contract**

**4. Settlement Agreement - Case No. 3:16-Cv-02845**

**Adjourn**

*This meeting will be held at 6:30 p.m. at Thompson's Station Town Hall  
1550 Thompson's Station Road West*

Phone: (615) 794-4333  
Fax: (615) 794-3313  
www.thompsons-station.com



1550 Thompson's Station Road W.  
P.O. Box 100  
Thompson's Station, TN 37179

**DATE:** March 6, 2017  
**TO:** The Board of Mayor and Aldermen (BOMA)  
**FROM:** Joe Cosentini, Town Administrator  
**SUBJECT:** TA Report 3/9/2017

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Item #1. ROW Purchase – Ferrari Property:

I have received verbal approval from the property owner for the purchase of the remaining right-of-way necessary for the Critz Lane realignment. In late 2016, the Town had the property appraised at \$380,870. This offer was extended to the owners at which time they counter-offered at \$425,000. After evaluating the time necessary to proceed through a condemnation hearing and obtain ownership of the area needed for the realignment, a compromise at \$400,000 was agreed to subject to BOMA approval.

The Town has budgeted \$1.2M for the entire realignment project including ROW acquisition. \$325,900 was already used to purchase Track 1 and have estimated the construction cost at \$450,000.

**Staff recommends approval of the purchase of right-of-way through the Ferrari property at a cost of \$400,000.**

Item #2. Transfer of Wastewater Taps:

The Town has received a request from C&L Development, LLC (Roderick Place) to transfer an existing wastewater tap allocation to another property. In 2006, the Town entered in to wastewater agreements that allocated a specific number of taps for the associated developments (Tollgate = 943, Bridgemore = 490, Canterbury = 1,109, and Roderick = 385). These taps were in exchange for building our Regional Wastewater Facility by these development entities. Neither the agreements nor our ordinances contain provisions over the potential transfer of these taps. Therefore, any transfer would likely need to be treated as an amendment to the original agreements and be approved by the BOMA.

The agreements from 2006 also contain two conflicting provisions as follows:

The agreement from May, 2006 reads *“The guarantee of capacity made by virtue of this agreement unto Owner shall lapse fifteen (15) years from the date of the facilities are certified to be operational. In the event Owner has not utilized all of its allocation of capacity, upon lapse, the capacity shall revert to the Town.”*

Then, a separate agreement from November, 2006 reads *“The guarantee of capacity stated herein shall lapse fifteen (15) years from the date of this Agreement. In the event that Developer has not utilized all of its allocation of capacity, upon lapse, the unused capacity shall continue to be owned by the developer, but shall no longer be guaranteed by the Town.”*

The Town has adopted wastewater impact fees that include the following three components:

System Development Fee	\$2,500.00
Tap Fee	\$1,100.00
Effluent Disposal Fee	\$2,500.00
<b>TOTAL:</b>	<b>\$6,100.00</b>

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At present time, all new building permits that are issued within these subdivisions only pay the \$2,500.00 effluent disposal fee. The remaining portions of the fee are the offset for building the plant. If the BOMA approves the transfer of taps, we could potentially be giving up the ability to collect future system development and tap fees associated with these taps if/when they are set to expire in roughly four years. This is dependent on the ultimate interpretation of the conflicting provisions from the 2006 agreements.

**Staff is not making a recommendation at this time. We should discuss the issues and, if necessary, this item will be added to a future agenda for BOMA decision.**

Item #3. Personnel Matter:

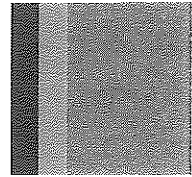
This item is the result of my recent performance evaluation. Information will be presented at the meeting by the Mayor.

Item #4. Settlement Agreement:

The BOMA authorized an offer of judgement on January 10, 2017 in the Dilks v. Town case. The offer included \$100.00 and reasonable attorneys' fees. The offer was accepted and the Town has received information from the Plaintiff's attorneys that fees and expenses total \$14,851.00

**Staff recommends approval of the fees and expenses per the offer of judgement.**

**C & L Development, LLC**  
PO Box 241, Thompson's Station, TN 37179



February 22, 2017

Via Email & Federal Express

Mr. Joe Cosentini  
Town Administrator  
Town of Thompson's Station  
1550 Thompson's Station Rd. - West  
Thompson's Station, TN

Re: Transfer of Sewer Capacity

Dear Mr. Joe Cosentini

As a follow-up to several emails we have exchanged, I would like to make a formal request of the Town to transfer approximately fifteen (15) of my sewer taps to my 12.7acre tract on Columbia Pike that is under contract to Tenn Thom Reality (Thompsons Machinery).

This request is conditioned on the Purchaser (Tenn Thom Reality) closing of the purchase of the Property, simultaneously with the Closing, the EDUs would be assigned to the Purchaser.

I appreciate your time in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Leon C. Heron, Jr.", written in a cursive style.

Leon C. Heron, Jr



AGREEMENT BETWEEN THE TOWN OF  
THOMPSON'S STATION, TENNESSEE AND TS BASIN BUILDERS, LLC

THIS AGREEMENT made and entered into on this the 24<sup>th</sup> day of May, 2006, by and between the Town of Thompson's Station, Tennessee, a municipal corporation, hereinafter referred to as "Town" and TS Basin Builders, LLC, a Tennessee Limited Liability Company and owner of certain facilities and real property described herein below, hereinafter referred to as "Owner", acknowledging, stating and agreeing as follows:

RECITALS

WHEREAS, it is recognized that Owner is the owner of the real property, together with adequate rights of ingress, egress and easement areas to the wastewater treatment facilities, which is more particularly described on Exhibit "A" hereto, the plat drawing of the tract of land owned by Owner, and identified on the legal description attached hereto as Exhibit "B", hereinafter, the "Property" and

WHEREAS, construction of the wastewater treatment facility has been undertaken by Owner upon the Property at the expense of Owner; and

WHEREAS, upon conveyance of the facilities by Owner to the Town will result in the Town having capacity to serve other properties located in the Town; and

WHEREAS, the Town recognizes the contributions, energies and efforts of Owner have resulted in an approvable system for the Town for which Owner is entitled to be compensated by guarantee of capacity in the treatment facilities transferred to the Town; and


WHEREAS, this Agreement is made and entered into to fully set forth the rights and obligations of the parties.

NOW, THEREFORE, in consideration of the recitals above which are incorporated herein by reference, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, to commit the facilities for municipal utility purposes, the Town and Owner do hereby agree as follows:

DEFINITIONS

The following definitions shall be applicable to this Agreement:

1. "Guarantee of Capacity" shall mean the irrevocable reservation or creation by Town of treatment capacity in the facilities transferred to Town utilizing an EDU factor of 350 gallons per day.
2. "EDU" is the TDEC approved design standard factor known as equivalent dwelling unit whereby a single-family residence is deemed to utilize 350 gallons per day of wastewater for treatment.
3. "Owner" is TS Basin Builders, LLC, a Tennessee Limited Liability Company.
4. "Facility" or "facilities" shall mean the wastewater treatment plant site, lagoons, easements thereto, ingress and egress rights, all mains, force mains, underground lines, utilities thereto, underground lines, utilities thereto, appurtenances and structures that collectively result in a functional wastewater treatment system.

  
Exhibit A

*RAH*

5. "Permit" shall mean State Operating Permit No. SOP-04058 issued by TDEC to the Town with authority to treat five hundred thousand (500,000) gallons per day of wastewater.
6. "Property," approximately thirty three (33) acres more or less, together with all easements thereto, including utility easements, rights of ingress and egress thereto, two treatment lagoons, equipment and equipments housing and area sufficient for construction by Town of a third lagoon as more accurately set forth on Exhibits "A" and "B" hereto.
7. "TDEC" is the Tennessee Department of Environment & Conservation, Division of Water Pollution Control.
8. "Site Plan Approval" is approval of a site development plan by the Town of Thompson's Station Municipal Planning Commission.
9. "Cost" is determined by dividing the actual cost, as affirmed by Owner and verified by Town, of the facility, by the constructed treatment capacity in EDUs.
10. "Town" is the Town of Thompson's Station, Tennessee, a municipal corporation.

#### TERMS OF THE AGREEMENT

1. Owner at its expense shall complete the facilities according to all requisite plans, specifications and TDEC approvals so as to become functionally operational. Owner shall perform so as to meet all necessary inspections so as to be in accordance with the Town's ordinances and resolutions. Upon completion, Owner shall at its expense certify to the Town by a licensed professional engineer that construction has been fully completed and in compliance with all of the foregoing standards.
2. Owner is here and now guaranteed capacity to serve the following developments, to wit Tollgate Village (not to exceed nine hundred forty three (943) EDUs), The Fields at Canterbury (not to exceed one thousand one hundred nine (1,109) EDUs), and Bridgemore Village (not to exceed four hundred ninety (490) EDUs). The owner shall also be guaranteed three hundred eighty five (385) EDUs for an, as yet, unidentified project. A project or projects utilizing at least two hundred eighty eight (288) EDUs, or seventy five percent (75%) of this capacity, must obtain site plan approval within three years of the execution of this agreement and a project or projects utilizing the remaining ninety six (96) EDUs must obtain site plan approval within five years of the execution of this agreement. Owner's failure to obtain said approval shall allow Town to purchase of said capacity from owner at cost.
3. Upon full performance and certification that the facility is or can be operational, the performance letter of credit will be released and replaced by a written warranty

*Handwritten initials/signature*

insurable by a bond or insurance policy of not less than two million (\$2,000,000) and assignment of all component warranty rights from Owner agreeing to repair or replace any failure of the facilities, or any part thereof, at Owner's expense for a period of one (1) year. If Owner has not completed the system within 90 days of the date of execution of this Agreement then deed to the facility and property will be held in escrow and monies set forth in item 8 herein. The detailed escrow agreement shall then be mutually agreed upon.

4. The Town will operate the facilities as a municipal utility in accordance with all regulatory standards for the benefit of the Town and facility users.
5. The guarantee of capacity made by virtue of this agreement unto Owner shall lapse fifteen (15) years from the date the facilities are certified to be operational. In the event Owner has not utilized all of its allocation of capacity, upon lapse, the capacity shall revert to the Town.
6. Upon completion of construction, Owner shall execute and place for record in the Register of Deeds office a notice of completion pursuant to Tennessee Code Annotated 66-11-143 setting forth that the Town shall be the party entitled to benefit thereunder.
7. Town agrees to pay Owner for the capacity guaranteed to Hood Development LLC and Bridgemore Development Group LLC. The amount of the payment is to be calculated by multiplying the estimated total cost of the system by 54.7%, which is agreed to be the portion of the capacity guaranteed to those developments. The final cost of the facility is to be determined upon completion and affirmed by owner. Payment for the unused portion of the facility shall be made at the time of conveyance of the system to the Town. Owner acknowledges that receipt of payment for that 54.7% portion of the capacity is conditioned upon receipt by the Town, of payment from Hood Development LLC for 1109 EDUs of wastewater treatment capacity and Bridgemore Development Group, LLC for 490 EDUs of wastewater treatment capacity.
8. Owner, at time of conveyance shall pay to the Town \$300,000 to assist in the costs of beginning operations and shall have no further obligation regarding operational costs of the system.
9. The terms and conditions of this Agreement shall be interpreted in accordance with the laws of the State of Tennessee and the Chancery or Circuit Court of Williamson County, Tennessee shall have exclusive jurisdiction and venue to enforce any of the terms and conditions and rights and obligations of this Agreement.
10. Either party to this Agreement shall have the right to seek enforcement, including, but not limited to, specific performance and damages arising under a breach or default of this Agreement. In the event of such action, the successful party shall be entitled to

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recover all costs incident to enforcing this Agreement, including, but not limited to, court costs and reasonable attorney's fees.

11. The terms, conditions, rights and obligations set forth in this Agreement shall be amended only by an agreement in writing between the parties.
12. In the event one or more of the provisions of this agreement shall be determined to be unenforceable, said determination shall not affect the validity of the remaining terms, conditions, rights and obligations set forth herein.

WITNESS the hands of the duly authorized parties in duplicate on the day and date first above written.

TOWN OF THOMPSON'S STATION, TENNESSEE

BY:   
CHERRY JACKSON, MAYOR

TS BASIN BUILDERS, LLC (Owner)

BY:   
LEON C. HERON, JR., CHIEF MANAGER



**AGREEMENT FOR ASSIGNMENT AND GUARANTEE  
OF SEWER CAPACITY**

This agreement is between C & L Development, LLC ("Developer") the Town of Thompson's Station, Tennessee ("Town") and TS Basin Builders, LLC ("Owner") to convey and allocate sanitary sewer capacity to Developer per the agreement between Owner and the Town.

WHEREAS, Developer is developing a residential subdivision which has not yet been named (the "Project") which has 385 lots ("EDU's").

WHEREAS, the Town has entered into an agreement (the "Sewer Agreement") dated May 24, 2006 with the Owner to build a Waste Water Sewer Plant ("WWTP") which will service the Project and this system is now complete.

WHEREAS, the Town agrees to provide 385 EDUs of capacity in the WWTP for the Developer's use in the Project. This reservation was originally contemplated and provided for in the Sewer Agreement between the Owner and the City for the construction of the WWTP.

WHEREAS, the cost that the Developer has agreed to pay for the 385 EDU's is \$2,425 per EDU. Furthermore the Developer agrees to prepay this amount which shall represent full payment for capacity, access and use of the WWTP relative to the Developer's use of the same in the Project.

**Definitions**

1. "Sewer Agreement" shall mean the agreement between the Town of Thompson's Station, Tennessee and TS Basin Builders, LLC dated May 24, 2006.
2. "Guarantee of Capacity" shall mean the irrevocable reservation or creation by Town of treatment capacity in the facilities transferred to Town utilizing an EDU factor of 350 gallons per day.
3. "Owner" is TS Basin Builders, LLC, a Tennessee Limited Liability Company.
4. "Facility" or "WWTP" shall mean the wastewater treatment plant site, lagoons, easements thereto, ingress and egress rights, all mains, force mains, underground lines, utilities thereto, underground lines, utilities thereto, appurtenances and structures that collectively result in a functional wastewater treatment system, all as described in the Sewer Agreement.
5. "TDEC" is the Tennessee Department of Environment & Conservation, Division of Water Pollution Control.
6. "Cost" is determined by dividing the actual cost of the facility by the constructed treatment capacity in EDUs.
7. "Town" is the Town of Thompson's Station, Tennessee, a municipal corporation.

**Exhibit E**

THEREFORE, the Developer, Town and Owner agree to the following:

1. The Developer agrees to pay \$2,425 per EDU for a total of \$933,625.00 to the Town. Such funds shall be held in escrow by the Town until such time that the sewer system is deeded and conveyed to the Town, with capacity sufficient to satisfy the obligations to the Developer pursuant to paragraph 2 below. The payment shall be the total sewer fee required for the 385 EDU's for the Project. In no event shall any additional amounts be due and owing by the Developer, any builder or any other party for the rights described in paragraph 2 below, exclusive of effluent irrigation disposal costs and/or fees.

2. The Town and Owner do hereby assign, convey and allocate capacity rights under the Sewer Agreement to provide immediate guaranteed capacity of 385 EDU's in the WWTP to the Developer for use in the Project. The Town and Owner acknowledge and agree that such rights may be assigned, in whole or in part, by Developer to any other person or entity acquiring all or a part of the Project development property. Developer shall give notice to the Town of any such assignment. The foregoing rights are irrevocably vested in Developer, shall not be adversely affected by any future action of Owner and may be specifically enforced by Developer against Town.

3. The Town agrees to and does hereby provide a Guarantee of Capacity for 385 EDU's that have been assigned and allocated to the Developer for use in the Project pursuant to paragraph 2 above. The guarantee of capacity stated herein shall lapse fifteen (15) years from the date of this Agreement. In the event that Developer has not utilized all of its allocation of capacity, upon lapse, the unused capacity shall continue to be owned by the developer, but shall no longer be guaranteed by the Town. Additionally, the Developer agrees that this Guarantee of Capacity is conditioned upon Developer obtaining site plan approval for the Project within the time frames outlined in the Sewer Agreement. The Town and Developer confirm their understanding and agreement that the Town shall have the right and option to repurchase such capacity from the Developer at a cost of \$2,425.00 per EDU in the event that (a) Developer has not obtained site plan approval for at least 223 EDUs (or 58% of the Project) on or before May 24, 2009, and (b) Developer has not obtained site plan approval for the remainder of the Project on or before May 24, 2011. In the event that the Developer fails to obtain site plan approval for at least 223 EDUs (or 58% of the Project) on or before May 24, 2009, then from and after May 25, 2009, the Town shall have the right and option to repurchase all or any portion of the said 223 EDUs. Additionally, in the event that the Developer fails to obtain site plan approval for the remainder of the Project on or before May 24, 2011, then from and after May 25, 2011, the Town shall have the right and option to repurchase all or any remaining EDUs of the said 223 EDUs, together with the balance of the original 385 EDUs.

4. If the Board of Mayor and Alderman determine to inspect the financial records of TS Basin Builders, LLC for the actual costs of construction of the WWTP and it is determined that the cost of the WWTP is less than stated, then a proportionate refund shall be due the Developer. In the event that TS Basin Builders, LLC is dissolved prior to the completion of the inspection and cost are agreed, any refund shall be paid to the Developer from the individual entities that made up TS Basin Builders, LLC.

THIS AGREEMENT IS EXECUTED ON THIS 20<sup>th</sup> DAY OF November, 2006.

The Town of Thompson's Station, Tennessee

Cherry Jackson  
By: Cherry Jackson, Mayor

C & L Development, LLC

Leon C. Heron, Jr.  
By: Leon Heron C. Heron, Jr.,  
Chief Manager JCH

TS BASIN BUILDERS, LLC (Owner)

Leon C. Heron, Jr.  
By: Leon Heron C. Heron, Jr., Chief Manager  
JCH

