

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

WHISTLE STOP FARMS, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:16-cv-02934
)	Judge Crenshaw
THE TOWN OF THOMPSON'S)	Magistrate Judge Brown
STATION, TENNESSEE)	
)	
Defendant.)	JURY DEMAND

FIRST AMENDED COMPLAINT

Plaintiff Whistle Stop Farms, LLC (“Whistle Stop”) states as follows for its First Amended Complaint against Defendant the Town of Thompson’s Station, Tennessee:

INTRODUCTION

1. This lawsuit arises from Whistle Stop’s attempts to develop a multi-section residential subdivision within the Town of Thompson’s Station, Tennessee (the “Town”).
2. Throughout this process, Whistle Stop has diligently worked, in good faith, with the Town’s agents towards resolving certain issues surrounding the development at issue, most notably issues surrounding sewer and wastewater treatment systems.
3. Specifically, the Town has subjected Whistle Stop to a process in which previous properly-granted approvals to connect to the Town’s local wastewater treatment facility were revoked, the alternative wastewater treatment system suggested and approved by the Town was subsequently revoked, and approvals to connect to the Town’s regional wastewater facility, which has the necessary treatment capacity, were improperly withheld.

4. All of these actions have occurred contemporaneously with the Town granting necessary approvals to other similarly-situated parties.

5. Despite Whistle Stop's efforts, it has now become evident that under no set of circumstances will the Town allow Whistle Stop's development to proceed. These actions (i) reflect the Town's long-standing ill will and animus toward Whistle Stop and its managing member; and (ii) constitute continuing violations of Whistle Stop's constitutional rights to due process and equal protection under the law, all of which have damaged Whistle Stop.

PARTIES

6. Whistle Stop is a Tennessee limited liability company, having its principal place of business located at 144 Southeast Parkway, Suite 230, Franklin, Williamson County, Tennessee. Whistle Stop is in the business of owning, improving, and developing real property and is the owner of that certain real property that is the subject of this cause.

7. Defendant, the Town, is an incorporated, legal subdivision of the State of Tennessee, created and existing by virtue of the Constitution and laws of the state of Tennessee, and is empowered by the State to act through its governing body, its officials, employees, and official bodies. The Board of Mayor and Aldermen for Thompson's Station, Tennessee (the "Board") acts on behalf of the Town. The Board created the Thompson's Station Municipal Planning Commission (the "Planning Commission") and delegated to it the land use planning function of the Town pursuant to Tennessee Code Annotated § 13-4-101.

8. The Town may be served with process upon Corey Napier, Mayor of Thompson's Station, Tennessee, 2691 Pantall Road, Thompson's Station, Tennessee 37179 pursuant to Federal Rule of Civil Procedure 4(j)(2).

JURISDICTION AND VENUE

9. This action arises under the laws of the United States, and this Court possesses jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as this case presents a question of federal constitutional law and 28 U.S.C. § 1343 involving a deprivation of Whistle Stop's civil rights under color of state law.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), because the Defendant is located and the actions forming the subject matter of this lawsuit occurred in this district.

FACTUAL ALLEGATIONS

The Town's Prior Relationship With Whistle Stop's Managing Member, Jay Franks

11. Whistle Stop's managing member is Jesse N. (Jay) Franks III, who has been involved in other developments in the Town, including related to the construction and installation of the Town's regional wastewater system.

12. Former Town officials have confirmed that: (a) Mayor Napier despises and cannot stand Mr. Franks; (b) Mayor Napier's issues with Mr. Franks are personal; (c) Mayor Napier has regularly disparaged Mr. Franks; and (d) accordingly, Mr. Franks became "persona non grata" within the Town.

13. Mr. Napier has contended that a company—of which Mr. Franks and a former Town Mayor were members—"successfully lobbied" the Town "into approving an unproven/untested sewer system for our Tennessee topography" in the early 2000s.

14. The regional wastewater system referenced by Mayor Napier ultimately was conveyed to and accepted by the Town in or about 2006.

15. J. Todd Moore, the Town Attorney, sent a demand letter to Mr. Franks and others on July 27, 2010, arguing that the Town had investigated and discovered leaks in the Town's regional wastewater treatment plan and had concluded that they were the result of the construction of the lagoon and the installation of the liner. The Town Attorney contended in this correspondence that Mr. Franks' company and others were responsible parties and demanded that they work with the Town to remedy the situation.

16. On or about August 10, 2010, the Town had prepared a status report on the "potential responsible parties" related to the leak in the Town's regional wastewater facility and noted that the Town Attorney had met with Mr. Franks, who expressed a willingness to meet and for the purpose of coming up with a solution to help the Town. The status report noted that Mr. Franks denied responsibility. The status report reflected the majority of the other "potential responsible parties" had simply failed to respond to the Town's demand.

17. On October 12, 2010, Corey Napier and other Town officials authorized the Town Attorney to sue Mr. Franks' company, Enterprise Construction, if Mr. Franks did not individually execute a tolling agreement by October 15, 2010.

18. On October 13, 2010, Mr. Napier again expressed his desire to sue absent a tolling agreement and directed the filing of the lawsuit to "proceed."

19. Mr. Franks did not execute a tolling agreement individually or on behalf of any company. Despite Mr. Napier's express instructions to sue on October 15, 2010, the Town did not do so.

20. Mayor Napier was furious when the Town did not sue Mr. Franks and others over the regional wastewater system.

21. On December 4, 2012, Whistle Stop purchased real property consisting of approximately 142.47 acres located in the Town at 1565 Thompson's Station Road W., Thompson's Station, Tennessee 37179 (the "Property") for the purpose of developing a 343 lot, multi-section residential subdivision to be known as "Whistle Stop" (the "Development"). As noted, Mr. Franks is the managing member of Whistle Stop.

22. In October 2013, the Town Administrator was exploring acquisition of additional drip field to serve the Town's regional wastewater system via both condemnation and purchase of such land.¹

23. In discussing options with Mayor Napier, the Town Administrator acknowledged the issues the Town faced with providing sewer service to Whistle Stop. He proposed,

Understanding that I may not have a completely objective perspective on this, and were we to consider the condemnation/purchase of the entire property (110 Acres +/-), given a review appraisal and assuming the verification of acceptable soil areas, might this be an avenue by which to work out the Whistle Stop sewer issue? If they [Whistle Stop] were to agree to pay for the property and deed it to the Town (roughly \$1.1M) and we were to waive the effluent disposal fee (roughly \$600K) and the funding entity were to be able to claim and use a tax break (roughly \$400K) it could be a huge win. **Were Jay to throw in the 37 acres behind Homestead manor (and ultimately Homestead), might we not be able to work out a ton of issues and put some long standing grievances behind us?**

(emphasis supplied).

24. In other words, the Town Administrator proposed to Mayor Napier that—if Whistle Stop purchased and gifted a \$1.1 million property to help solve *the Town's* deficient drip field capacity, and if Jay Franks gifted 37 acres of his own land (not Whistle Stop's) and

¹ As discussed *infra*, while the Town's wastewater treatment system has adequate capacity for treatment of wastewater, the Town lacks adequate drip field in which to disperse the treated wastewater. Mayor Napier has personally conceded that the Town's regional wastewater facility has treatment capacity of up to 1.3 million gallons per day.

ultimately gifted a highly-valued historic mansion he personally owned—then maybe that could “put some long standing grievances” with Mr. Franks behind them.

25. At least one former Town official has confirmed that Mayor Napier believed it was more important to “slap Jay around and stop development” than to do what was best for the Town.

26. Whistle Stop did not purchase the \$1.1 million property and gift it to the Town as the Town Administrator proposed to Mayor Napier, and Mr. Franks did not gift the Homestead Manor property to the Town.

27. In fact, in June 2014, when Homestead Manor was being developed into a premier restaurant and event property in Thompson’s Station, Mayor Napier evidenced his continued disdain for and suspicion as to Mr. Franks personally. In communications around a meeting about Homestead Manor, Mayor Napier questioned why Mr. Franks was not expected to attend. The Town Administrator concluded, “*Jay is probably afraid of us.*”

28. Years after directing the Town to sue over the Town’s regional wastewater system and then failing to follow through, Mayor Napier still held great personal ill will and animus towards Mr. Franks—as evidenced by Mr. Napier’s materials used when in his 2014 mayoral campaign. Mr. Napier’s website campaign materials published on or about September 10, 2014, maligned Mr. Franks by blaming him personally for the Town’s problems with its regional wastewater system.

29. Mr. Franks requested documentation of the factual allegations made by Mayor Napier in these materials, but none were provided.

30. Mr. Franks actively campaigned against Mr. Napier in the Town’s mayoral election. Mr. Franks prominently displayed campaign signs for Mr. Napier’s opponent on the

Homestead Manor property, which is in a highly-visible location in Thompson's Station. Mr. Franks also made personal contributions to Mr. Napier's opponent in the mayoral election.

31. Mr. Napier was successful in the Town's mayoral election.

The Whistle Stop Development

32. The Town Administrator and the Planning Commission regularly had authority to approve certain things in the zoning/development process, but when it came to Whistle Stop, Mayor Napier instructed the process to change.

33. In fact, it is reported that Mayor Napier threatened Planning Commission members—instructing them to deny the Whistle Stop Development.

34. The Development's concept plan had been unanimously approved by the Planning Commission for 343 lots on June 25, 2013. This approval was contingent on Whistle Stop working with the Town's staff to resolve issues surrounding density, access, slopes, and utilities prior to submittal of the preliminary plat.

35. On October 14, 2013, the Town, through its representative, then-Town Administrator Greg Langeliers, informed Whistle Stop that it must reserve capacity for the entire Development prior to its submittal of any preliminary plat.

36. On October 22, 2013, the Planning Commission considered and approved with certain contingencies the preliminary plat for Phase I of the Development. During this meeting, the Planning Commission specifically approved connection of the 46 lots in Phase I to connect to the Town's Heritage Commons wastewater treatment facility.

37. Wendy Deats is the current Town Planner and was the Town Planner at the time of the October 2013 Planning Commission meeting.

38. On November 15, 2013, Whistle Stop paid \$115,000.00 for sewer tap fees for Phase I's 46 lots in the Development, paid capacity allocation fees of \$3,430.00 for all 343 lots in the Development, and a preliminary plat fee of \$3,150.00. The Town accepted these fees and still retains them to the date of filing this First Amended Complaint.

39. Mayor Napier has stated serious concerns about Ms. Deats in her role as the Town Planner—both now and in 2013 when Whistle Stop was granted and paid for taps and capacity allocation from the Town. Mayor Napier has stated that there is a lack of clarity going into and out of Planning Commission meetings, that the Board and the Planning Commission are not getting the full story from Ms. Deats, and that they are left in an awkward place when voting needs to happen. In Mayor Napier's own words: "Bottom line, I don't feel Wendy shares our vision, is moving too quick and is over her head with many planning issues and placing us at a disadvantage in our dealings with outside parties and I get very nervous thinking about things like Two Farms."

40. Topping the list of the Mayor's "missed opportunities" and "things that have created way too much work for us all" are the tap allocations for Whistle Stop, which he admits were issued under the purview of Ms. Deats and the Town's prior Administrator, Greg Langeliers, in 2013.

41. Whistle Stop submitted its construction plans for Phase I, Section 1A to the Town on March 24, 2014, and two days later, requested to be on the agenda for the Planning Commission's April 22, 2014, meeting so that bond amounts required for issuance of Phase I's grading permit could be determined. The Town's representative, Wendy Deats, confirmed that this request met the deadline to be included on the Planning Commission's April 22, 2014, agenda.

42. Ms. Deats, on April 1, 2014, requested that Whistle Stop revise its already-approved Phase I preliminary plat to match the submitted construction plans. Whistle Stop provided revised construction plans on April 2, 2014.

43. Representatives from Whistle Stop met with Ms. Deats and current Town Administrator Joe Cosentini to discuss the location of the Development's proposed wastewater lift station.

44. Mr. Cosentini advised Whistle Stop on April 10, 2014, that he would seek a determination from the Board at its May 13, 2014, meeting regarding where the Development's off-site waterline should be located. Mr. Cosentini advised Whistle Stop, on April 16, 2014, that the lift station must be located where initially proposed without any further discussion.

45. Whistle Stop was not included on the Planning Commission's April 22, 2014, agenda. No explanation or excuse was provided by the Town as to Whistle Stop's exclusion despite having properly requested, and confirmed by Ms. Deats, to be on the agenda.

46. On April 29, 2014, Whistle Stop formally requested that the off-site sewer line, including the lift station, be routed down School Street which runs adjacent to the Development.

47. In another about-face, Mr. Cosentini advised Whistle Stop that the Town had no concern about the off-site waterline's location, and that any issue therewith should be addressed with Hillsboro, Burwood & Thompson's Station Utility District ("HB&TS").

48. On May 15, 2014, Mr. Cosentini forwarded a list of interview-style questions to Whistle Stop regarding the Development to which Whistle Stop provided sufficient responses. Representatives of Whistle Stop met with Mr. Cosentini on May 21, 2014, to review those previously-provided responses. During this meeting, representatives of Whistle Stop requested

issuance of a grading permit for Phase I of the Development. Mr. Cosentini indicated that he would need to consider the responses to his inquiries.

49. Mr. Cosentini provided, in writing, three additional items Whistle Stop must satisfy on May 23, 2014, in order for Whistle Stop to receive a grading permit for the Development.

50. A representative for Whistle Stop provided the items requested by Mr. Cosentini on May 28, 2014.

51. On May 29, 2014, the Town Administrator wrote to his team regarding the draft Whistle Stop development agreement, “The sewer issue is a pain in the ass. I have no earthly idea as to why this development received any approvals without a clear wastewater service plan. That being said, I don’t know what we can do at this point other than to add the language that you recommend below since phase 1 has been approved by the Planning Commission. I also think we need to have BOMA approve the wastewater allocation prior to final plat since PC doesn’t have the authority to approve those requests. Not sure what happens if BOMA refuses to grant capacity but we should discuss prior to communicating that to the applicant.”

52. The Town flatly admits Whistle Stop was not officially advised of this new, purported need to go before BOMA for wastewater allocation until a Planning Commission meeting in August 2014—long after the grading permit had issued to Whistle Stop.

53. A representative for Whistle Stop inquired as to the status of the Development’s grading permit on June 2, 3, and 5, 2014, to which no response was provided.

54. On June 10, 2014, Mr. Cosentini responded to Whistle Stop’s inquiries with revisions that must be made to the Development’s construction plans in order for a grading permit to be issued.

55. Whistle Stop made the requested revisions and provided revised construction documents to the Town on June 26, 2014. Despite conflicting statements and representations from various members of the Town's staff, a representative of Whistle Stop received a validly-issued grading permit for Phase I of the Development from the Town on June 30, 2014.

56. The Tennessee Department of Environment and Conservation Division of Water Pollution Control ("TDEC") considered and approved Phase I's Development Plans for construction.

57. Whistle Stop then commenced work on the Property in furtherance of the Development and in reliance upon all the previous approvals granted by the Town including, but not limited to, the approval of the preliminary plat, the approval of sewer allocations for the Development, the approval of the sewer connections for Phase I, and the issuance of the grading permit. Based on this reliance, Whistle Stop incurred costs, expenses, and obligations associated with the Development in the approximate amount of \$1,765,269.71.

58. The Town has admitted that once a permit issues and the permit holder breaks ground, the Town "can't realistically expire (revoke) the site plan approval or permit (notwithstanding the zoning ordinance language)."

59. On or about July 22, 2014, Mr. Franks' attorney requested a meeting with the Town Administrator, Joe Cosentini, and the Town Planner, Wendy Deats, to discuss the Whistle Stop Development. The Town Administrator responded, "Oh, goodie!" Mr. Cosentini then stated his preference for a lawsuit and specifically plotted to exclude Ms. Deats from the proposed meeting, indicating he wanted to hear what Mr. Franks had to say "before we unleash Wendy."²

² The Chancery Court for Williamson County, Tennessee, previously held that Ms. Deats, as Town Planner, improperly refused to issue a grading permit and exceeded her authority by interfering with

60. That same month, certain Town staff members advised Whistle Stop that the Development's approvals to date were improperly issued and Whistle Stop would not be allowed to continue without getting a revised concept plan approved by the Town. Whistle Stop representatives then met with Mr. Cosentini and Todd Moore, the Town's counsel, on July 28, 2014, to discuss the status of the Development's approvals.

61. Mr. Moore then confirmed to Whistle Stop's counsel, on August 8, 2014, that after reviewing the Development's history, the Town determined Whistle Stop's concept plan had been properly approved in 2013 and that there was no need to submit the concept plan for approval by the Board after all. In fact, Mr. Moore's email did not identify any deficiencies in the Development's history or prior approvals.

62. The Town has admitted that it cannot truthfully say Whistle Stop was advised—before the Town issued the grading permit on June 30, 2014—that a condition of final plat approval would be to obtain a wastewater allocation from BOMA. This is especially true given that Whistle Stop had already paid its wastewater allocation fees for all 343 lots in the Development the year before. The Town flatly admits Whistle Stop was not officially advised of the purported need to go before BOMA for wastewater allocation until at a Planning Commission meeting in August 2014.

63. The Town Administrator joked, “If we end up losing this one because we didn't tell them before the grading permit was issued then we can just chalk it up to the fact I had not figured out all the goofy history of this project within my first two months.”

64. Consistent with this, in late October 2014, the Town Attorney expressly admitted that Whistle Stop does have vested rights in Phase 1 of the Development, admitting “our position

grading on another project. *See State of Tennessee, ex rel., Shaw Enterprises v. The Town of Thompson's Station and Wendy Deats*, Williamson Chancery Court, Case No. 44856, Memorandum and Order entered on March 16, 2016.

is that Whistlestop has no vested rights *other than for the first phase.*” He then proposed ordinance amendments to help bolster the Town’s after-the-fact argument that Whistle Stop could have no vested rights in the rest of the Development. In doing so, he expressly conceded, “the law is not clear how [vested rights] applies to previously approved (in our case) site development plans.”

65. At this same time, alarmed that Whistle Stop was getting traction on its sewer connection through HB&TS’s lines, the Town Administrator plotted, “[T]he amount of engineering backup the Town would require before letting someone use [the HB&TS connection] would probably make it cost prohibitive.” He then concluded, “That’s one way to keep development off of 31!”

66. The Town Attorney acknowledged, “[I]t definitely sounds like [Whistle Stop is] trying to put themselves in a position where we have to allow them to access the [regional wastewater system] or declare some sort of moratorium.”

67. Of course, earlier in 2014, Mr. Cosentini had expressly disclaimed any moratorium on wastewater, noting that the “Town regularly hooks up new homes ... which would not be happening if a moratorium were in place.”

68. In January 2015—prompted by Mayor Napier—the Town persisted when Mr. Cosentini advised Whistle Stop that it was, in fact, the Town’s position that Whistle Stop would be required to re-submit its already-approved sewer connection to the Board. On January 15, 2015, Whistle Stop submitted a letter to Mr. Cosentini, at his request, to be heard at the next Board meeting requesting “re-approval” of the Development’s previously-granted and confirmed approvals. Mr. Cosentini assured Whistle Stop that this Board meeting was simply a formality to

correct an alleged procedural oversight by the Town and that the Board would “re-approve” those prior approvals.

69. The timing of the Town’s stark change in course—which stands in direct contradiction to the express party admissions of the Town’s own attorney on vested rights—coincides with Mayor Napier’s decision to call a secret meeting to again rehash bringing “new litigation directed at the builders, the contractor and other related parties”—claims that the Town had “not been given a complete sewer system as per our agreement with the original sewer developers.” Like his direction to the Town Attorney to bring these claims back in 2010, Jay Franks undoubtedly was one of Mayor Napier’s targets.

70. Mayor Napier was emphatic about the secrecy of this January 2015 meeting, “Given the sensitivity of this, I do not want this discussed with anyone, including Bruce Meyer, until after we meet and determine a next step and general course of action. I mention Bruce since his company could possibly be a defendant if we were to go the litigation route. Bruce is a great Town resource but we need to keep him out of it for the time being.” Bruce Meyer is the Town’s own wastewater engineer.

71. Immediately thereafter, Mr. Cosentini wrote to the Board via letter dated February 4, 2015, recommending the “re-approval” of the Development’s approvals, stating that it “is reasonable to allow a temporary connection to the Heritage Commons facility in order for phase 1 to continue *as approved by the Town.*” (emphasis supplied)

72. The Board, at its February 10, 2015, meeting purported to revoke the approval for 46 taps in Phase I of the Development and stated that it wanted to “start all over from the top on Whistle Stop.”

73. Following the Board's improper decision to revoke the Development's approvals, Whistle Stop filed a Petition for Writ of Certiorari and Writ of Supersedeas (the "Certiorari Action") in the Chancery Court for Williamson County, Tennessee. In the Certiorari Action, Whistle Stop sought judicial review of whether the Board lacked authority or exceeded its jurisdiction and acted unlawfully when it revoked the Development's approvals on February 10, 2015. In the alternative, the Certiorari Action sought a determination of whether the Board's decision was arbitrary, capricious, or unsupported by material evidence.

74. The Town has admitted that the Town only has "a realistic shot of the court granting us summary judgment on the issue of the BOMA having the authority to approve connections" in the Certiorari Action. Despite this concession, the Town admitted that it still wanted "to make [Whistle Stop] state a case for why the BOMA's decision was arbitrary."

75. In connection with its summary judgment briefing in the Certiorari Action, the Town submitted the affidavit of Mr. Cosentini. When asked if he could swear to the contents of the affidavit, Mr. Cosentini responded, "I can swear to or at just about anything!"

76. During the course of the Certiorari Action, Whistle Stop and the Town agreed to stay those proceedings so that a mutually-beneficial resolution might be explored. Little did Whistle Stop know the Town was to use this process to continue advancing Mayor Napier's ill will and animus towards Jay Franks and any project with which he is associated.

77. Internally, just weeks before, Mr. Cosentini had lamented his desire to purposefully deny another developer's application solely because that developer had filed suit against the Town to preserve its rights—just like Whistle Stop had done. In response to learning this other developer's lawsuit had been filed, Mr. Cosentini stated, "Makes me want to try and

deny [the application] just so they don't think the lawsuit had anything to do with our approval recommendation. Punks.”

78. Similarly, Mayor Napier specifically said he wanted a pending lawsuit on another project dropped when he voted against the project. The Town Administrator admitted, “Fairly sure that is not a legitimate reason for voting against a development”

79. As part of the going-forward process, Whistle Stop and the Town began meeting in order to consider possible alternative on-site sewer systems for the Development.

80. Sewer issues were discussed at the Board's September and October 2015 meetings. Since the Town claimed on-site sewer systems were now being required by the Town, the Town argued the design of the Development would need to be completely reworked. The concept of an on-site sewer system was suggested by Aldermen Graham Shepard and Sarah Benson.

81. Whistle Stop worked tirelessly with the Town and its staff in order to develop a revised concept plan for the Development that addressed all of the Town's concerns and allowed the wastewater treatment, including dispersing the treated effluent, to remain on-site.

82. Whistle Stop proposed a well-established and widely-used recirculating sand filtration system as the best and least-expensive option available. The Town rejected this option out of hand, instead insisting on the SABRE Sequencing Batch Reactor (“SBR”) onsite wastewater system for the Development.

83. This revised concept plan necessarily greatly reduced the number of lots in the Development to accommodate the on-site sewer system—taking the Development from 343 lots down to 164 lots.

84. Meanwhile, Mr. Cosentini was hypothesizing about getting the Whistle Stop matter resolved with an onsite sewer system—based on a claim of lack of capacity in the Town’s regional wastewater facility—while simultaneously awaiting a report that actually would prove to TDEC that the system had *more* capacity. Mr. Cosentini stated,

Let’s say the Whistle Stop thing moves forward as proposed and the case is dismissed. Then in September/October the Town receives a plan for the corners at TS Road and Rt. 31 which calls for 200+ taps and our report comes back from SSR saying we have adequate wastewater capacity at the regional plant. Other than being mad, would Whistle Stop have any legal argument to service at the regional plant?

85. Despite Whistle Stop’s 2013 payment of allocation reservation fees for the entire development in the regional wastewater system and payment of all tap fees for Phase 1, the Town continued to hypothesize

I assume their argument would be ‘we requested a connection first.’ I don’t think this is a very strong position. As long as the Town has a good (not arbitrary) reason for denying or approving a connection request, I do not think a court could or would reverse the decision.

I would argue that Whistle Stop has not requested to connect to the Regional plant. But if they get past that argument, I think the fact that the Town did not know whether we had capacity in the Regional plant when it was requested justified the denial.

Moving forward, the BOMA could decide not to allow any more connections even if there is capacity. More likely, the BOMA could say that based on the SSR report we have x number of taps in capacity at the Regional facility and we have (sic) decided to prioritize them as follows: ex. (sic) for commercial development along Columbia Pike (they could reserve it all for Tollgate if they wanted). I don’t think they necessarily have to adopt a formal policy, but can evaluate each project individually and award or deny capacity accordingly. I would certainly argue that the BOMA has no obligation to award capacity on a first come, first serve basis.

86. Despite the fact additional capacity was expected to be confirmed and despite the allocation reservation and tap fees already paid to the Town by Whistle Stop in 2013 for access

to the Town's regional wastewater facility, on October 13, 2015, the Board authorized the Town staff to pursue approval from TDEC of the SBR onsite wastewater system for the Development.

87. The Town Attorney advised HB&TS on October 14, 2015 that "the Town's BOMA approved a motion to "allow the developer (Whistle Stop) to move forward' with proposed plans for an alternative wastewater system at its meeting last night." The Town Attorney inquired as to whether HB&TS was still willing to move forward with the joint water/sewer line relocation project.

88. Much like how Whistle Stop was treated, in analyzing another project, Mayor Napier criticized Ms. Deats' handling of the process, arguing that "[i]t should have expired and go through *the evil process* again." (emphasis supplied.) Mayor Napier advocated that the Town "require the developer to resubmit the whole thing under our new reqs."

89. The Town staff reported to the Planning Commission at its October 27, 2015, meeting that:

The development will be connected *to a sewer system recently approved by the Board of Mayor and Aldermen*. However, plans for sewer are still under development and must be reviewed and *approved by the State of Tennessee*. Staff recommends that all sewer approvals be obtained *prior to final plat submittals*. (emphasis supplied)

The Planning Commission was not required to take any action on Whistle Stop's revised concept plan at the October 27, 2015, meeting, but Ms. Deats recommended that approval of all construction documents for the on-site sewer system should be approved by the Town and TDEC prior to submittal for *final* plat approval.

90. Mr. Cosentini memorialized the Board's approval of the SABRE SBR system via correspondence dated November 6, 2015, to Greg Gamble, Whistle Stop's land planner, which stated:

The [Town] has reviewed your request for the use of the SABRE SBR wastewater system for the Whistle Stop subdivision. The [Board] voted at their October 13th meeting *to allow the treatment system*. As with *any new wastewater system*, the Tennessee Department of Environment and Conservation (TDEC) *must also review and approve the proposal*.

At this time, it is the understanding of the Town that the applicant should begin the necessary engineering in order to submit the proper information to TDEC for their comment. (emphasis supplied)

91. Mr. Cosentini's November 6, 2015, correspondence makes no mention of the Town needing to approve the SABRE SBR system once again in the event it was approved by TDEC.

92. Even though typically not required, since it constituted an amendment to a planned zone, Whistle Stop submitted its revised concept plan to the Board—which now called for 163 single-family lots and one commercial lot. The Board approved it on first reading of Ordinance 2016-001 at its January 12, 2016, meeting.

93. The Planning Commission unanimously recommended to the Board that it grant final approval of the Development's modified concept plan at its January 26, 2016, meeting.

94. The Board, consistent with the recommendation of the Town staff and Planning Commission, approved Ordinance 2016-001 on second reading at its February 9, 2016, meeting.

95. Ordinance 2016-001 states:

Section 1. That the concept plan for Whistle Stop Zoning Map of the Town of Thompson's Station, Tennessee is hereby revised and amended by repealing the previously approved plans, and replacing them with concept plan attached hereto as Exhibit A and incorporated herein by reference. The zoning for this territory shall remain Planned Neighborhood (PN).

Section 2. The approval of this ordinance is conditioned upon the developer, Whistle Stop Farms, LLC meeting all of the Town's requirements for approval of Whistle Stop, including final approval of its proposed wastewater system, and upon dismissal of developer's pending litigation against the Town (Whistle Stop Farms, LLC v. Town of Thompson's Station). Therefore, this ordinance shall

take effect only after the dismissal of this case with prejudice and publication of the caption in a newspaper of general circulation, the public welfare requiring it.

96. Accordingly, based upon the plain language of Ordinance 2016-001 and the prior statements by the Town, through its staff, Planning Commission, and Board, final approval of the Development's wastewater system was to occur before the Development's final plat stage.

97. During this same February 2016 meeting, the Board also voted, via Resolution 2016-003 and consistent with Mr. Cosentini's recommendation, to "transfer" seventy-five (75) taps to the Town's wastewater system from the current developer of another development, Bridgemore Village, to Williamson County Schools ("WCS"). Resolution 2016-003 also approved an additional seven (7) taps to WCS and an additional sixty-nine (69) taps for the completion of the Bridgemore Village development. While these approvals were conditioned on the Town having adequate treatment and disposal capacity *at the time of the proposed construction*, they were still approved.

98. In fact, Mr. Cosentini had written to a representative of Bridgemore Village regarding this proposed transfer of taps via email on November 6, 2015, asking whether Bridgemore Village would "be willing to accept the additional allocation with a condition that plats would not be approved until TDEC signs off on additional disposal land for Town use?"

99. This is much like the Town's approval (two years earlier) of sewer capacity allocation for Whistle Stop. That allocation also came at a time when certain of the capacity was not yet available, but would become available in the future.

100. Moving forward, Whistle Stop proceeded with preparation of its preliminary plat for the Development consistent with the now-approved revised concept plan.

101. Whistle Stop submitted its preliminary plat to the Planning Commission for consideration at its April 26, 2016, meeting and was deferred. Therefore, the preliminary plat

was considered at the Planning Commission's May 24, 2016, meeting. The preliminary plat was consistent with all prior approvals of the Board and the Planning Commission, as well as Ordinance 2016-001.

102. The day after the April 26, 2016 meeting, the Town Administrator reviewed the Town Attorney's timeline for actions necessary to complete a resolution of the Whistle Stop issues, but flatly rejected the proposed process. Mr. Cosentini stated, "I think the steps you put together would have been fine ... [n]ot sure we gain anything by giving them a conditional approval."

103. The Town Attorney responded, "You're probably right. I was really trying to think through how it could work. *And if we were dealing with another developer, how it might work.* But considering that it is still likely that all Jay [Franks] really wants to get [is] a vested approval, that makes sense." (emphasis supplied.)

104. At the May 24, 2016, meeting, Ms. Deats stated that it was the Town staff's recommendation to deny Whistle Stop's preliminary plat based on the need to obtain wastewater approval and meet the conditions set forth within Ordinance 2016-001. The Planning Commission accepted Ms. Deats' recommendation and unanimously denied Whistle Stop's preliminary plat.

105. The Planning Commission had absolutely no basis to deny Whistle Stop's preliminary plat at that time since approval of the wastewater system was to occur prior to final plat, and the prerequisites to Ordinance 2016-001 being operational had not yet occurred.

106. Despite these setbacks, Whistle Stop continued in good-faith to work with the Town to resolve the Development's sewer issues.

107. Ms. Deats committed to the Planning Commission to take the issue regarding the interpretation and intent of Ordinance 2016-001 to the Board at its next meeting. Despite this, Town staff refused to place this issue on the Board's agenda, and the Board declined to address the issue at that meeting.

108. Prior to the June 2016 BOMA meeting, a neighborhood meeting was held in the same location. During that neighborhood meeting, Mayor Napier said that he had been looking "for a big stick" to use against the developer for a long time. That developer was Jay Franks.

109. On July 7, 2016, Brad C. Harris, P.E. of TDEC communicated via email to Bob Ramsey and Mr. Cosentini that TDEC intended to proceed with approval of the SABRE SBR system—which, of course, was required by the Town—stating:

SBR's are proven technology and can be used effectively, however we do not have any experience or data from anyone associated with a system this size and configuration over two years old that gives us any confidence in the long term O&M of an SBR without visual input. We strongly recommend that the town, their engineering group, and their designated operator fully research this approach until they are technically confident.

110. On or about July 14, 2016, the Town Attorney reported, "Now that TDEC has conditionally approved the system that the Town recommended – not the system Whistle Stop proposed – [Whistle Stop's counsel] wanted to have a meeting with the Town (including the Mayor) to see if there was a path forward. He specifically said that since the Town was asking for more capacity at the regional system that his client wondered if there might be an opportunity to connect to the Town's sewer in 2017."

111. Thereafter, it was reported to Whistle Stop that Mr. Cosentini was changing course and expressing concerns regarding the system the Town had applied to TDEC for approval for use in the Development.

112. Given this now-stated intent on the part of TDEC to approve the Development's SABRE SBR system—as required by the Town—counsel for Whistle Stop wrote to Mr. Moore on July 18, 2016, regarding reports that Mr. Cosentini was now expressing some concerns regarding the SABRE SBR system. The letter reminded Mr. Moore that: (i) the choice to proceed with an SABRE SBR system was made by the Town; (ii) Whistle Stop had preferred to proceed with “one of the well-accepted and routinely-approved sand filtration systems” or by connecting to the Town's existing sewer system as contemplated and previously approved by the Town; and (iii) if the Town now wished to abandon its suggested SABRE SBR system, that it identify which of the two remaining options the Town would accept.

113. Less than 10 days later, the Town Attorney suggested Whistle Stop could just ask to be deannexed from the Town. Mr. Cosentini responded, “Wexit. I could propose a referendum.”

114. Mr. Cosentini's attitude and treatment of Whistle Stop is consistent with furthering Mayor Napier's personal animus and ill will toward Jay Franks and entities with which he is involved as a principal. It is also consistent with Mr. Cosentini's own philosophy toward his role as a governmental officer: “It's government ... ‘gotcha’ is our bread and butter.”

115. On August 16, 2016, Mr. Cosentini advised Mr. Gamble that he was unsure if the SABRE SBR system—which the Town required of Whistle Stop and applied for to TDEC—would ultimately be “approved” by the Board. He made this statement despite his November 6, 2015, correspondence to Mr. Gamble clearly showing that the Town was fully aware that SABRE SBR technology was new when the Board voted to approve it on October 13, 2015.

116. Upon this representation, counsel for Whistle Stop wrote to Mr. Moore, Mr. Cosentini, and the Board on August 26, 2016, formally requesting to be placed on the agenda for

the Board's September 13, 2016, meeting for approval or disapproval by the Board to proceed with the Development using the SABRE SBR system.

117. In the alternative, the August 26, 2016, letter formally requested that the Board issue its approval or disapproval as to whether the Development could connect to the Town's existing regional wastewater treatment system.

118. The August 26, 2016, letter detailed that: (i) the regional wastewater treatment system had necessary treatment capacity for the Development, as confirmed by Mr. Cosentini; (ii) Whistle Stop proposed to allocate the necessary drip area sufficient to handle the disbursement of all treated wastewater within the Development; (iii) TDEC had confirmed that it would permit the necessary sewer and reuse lines and easements to and from the Development; (iv) sufficient capacity existed in current wastewater lines to handle the Development's proposed 164 lots; and (v) Whistle Stop would agree to be responsible for all "System Development, Access/Tap and Effluent Disposal Fees," of which a total of 46 had previously been paid in November 2013.

119. Mr. Cosentini responded on August 29, 2016, arguing that Whistle Stop had elected to pursue the SABRE SBR system and that the Town was "still very open to looking at different types of SBR systems for Whistle Stop." In fact, the Town: (i) mandated that Whistle Stop pursue the SBR system—while Whistle Stop's desire to connect to the Town's regional facility was constant and unwavering; and (ii) approved the specific SABRE SBR system applied for by the Town.

120. Finally, Mr. Cosentini's email stated that connection to the Town's regional facility actually was "possible and likely preferable." However, he stated without explanation that no connections to the Town's regional facility could be accomplished for the Development

until the Town acquired drip land capacity for those developments already allocated—even if Whistle Stop provided the drip land for the Development. Of course, Whistle Stop had already been allocated and reserved capacity for 343 lots in 2013. Mr. Cosentini’s email concluded by stating that “a specific timeline for this acquisition [of drip field capacity] is not set.”

121. On September 7, 2016, Mr. Cosentini wrote to the Board regarding Whistle Stop’s proposed SBR system—which the Board had previously approved as indicated by the Town staff’s October 27, 2015, Planning Commission report—stating:

We were not able to obtain information regarding the long term maintenance of [SABRE SBR] systems due to the fact that we could not identify a system like the one being proposed for Whistle Stop that had been operating at capacity for two or more years. Staff still believes that SBR technology is appropriate for the Whistle Stop development. However, a different type of SBR should be considered that has more of a performance history that can be better evaluated.

[Counsel for Whistle Stop] is also requesting the potential connection to the Town’s regional wastewater system. ***This would be an agreeable solution as the Town does have treatment capacity at the regional plant based on our existing allocation.*** That said, our existing amount of drip land available for disposal of treated wastewater is not adequate. Connection to the regional facility would be supported if Whistle Stop is willing to wait until necessary land is acquired by the Town for our existing allocation levels. We do not have a firm timetable for this acquisition. (emphasis supplied)

122. Counsel for Whistle Stop wrote to the Board regarding these issues on September 11, 2016. Among other things, the September 11, 2016, letter made the following points:

- (a) Whistle Stop appreciated Mr. Cosentini’s clarification as to the communication with other SABRE SBR operators and looked forward to receiving the details on those communications;
- (b) The SABRE SBR system was presented to the Town staff, as required, and approved by them. Further, Mr. Cosentini certified, under penalty of perjury, that the TDEC application for the SABRE SBR system was prepared under his direction or supervision. Finally, Whistle Stop was not interested in pursuing serial approvals of other types of SBR systems now that TDEC had approved the SABRE system, especially in light of the Town’s now express stated preference to connect the Development to the regional facility;

- (c) Whistle Stop's preference from the outset has been the connection to the regional facility, as previously approved, and it appreciated the Town's confirmation of its preference;
- (d) Whistle Stop could not reconcile Mr. Cosentini's position that—if Whistle Stop is willing to provide its own drip area and the Town has no treatment capacity issues—Whistle Stop must wait until drip area is obtained by the Town for other developments before connecting to the Town's regional facility. Whistle Stop had, in fact, offered to provide drip area sufficient to cover the Development—and then some (hence the drastic decrease in proposed lots); and
- (e) Whistle Stop had repeatedly requested a meeting with the Mayor and Town staff, to which no response was ever provided.

123. The September 11, 2016, letter also contained a detailed analysis of the Town's drip field capacity issues based on the Town's operative TDEC permit, as discussed *infra*.

124. At the September 13, 2016, Board meeting, Mr. Cosentini recommended that Whistle Stop select an alternative SBR system despite the fact that the SABRE system had been approved by the Town and TDEC. In the alternative, Mr. Cosentini recommended Whistle Stop submit a request to connect to the Town's regional facility *when adequate drip field capacity had been acquired*, despite the fact that Whistle Stop's revised concept plan had clearly allocated more than enough drip field capacity for the Development. In other words, Mr. Cosentini's position was Whistle Stop could not even apply until the Town had actually acquired sufficient drip field.

125. Mr. Cosentini's statements and the Town's actions are directly contrary to the transfer and approval of additional taps granted to Bridgemore Village and WCS, despite the fact that the Town possessed the exact same level of drip field capacity in September of 2016 as it did when Resolution 2016-003 was passed in February of 2016. Unlike Bridgemore Village and

WCS, Whistle Stop's proposal was rejected outright even though the Development would actually *increase* the amount of drip field capacity available to the Town.

126. Inexplicably, the Town rejected Whistle Stop's proposal to provide drip area in order to connect to the Town's wastewater system—despite Mr. Cosentini expressly stating that this was a viable option for Bridgemore Village and WCS the year before. For example, Mr. Cosentini wrote to Kevin Fortney, Director of Facilities and Construction for WCS, on July 10, 2015, stating:

I apologize for the delay, but our wastewater position is not the easiest to navigate at the present time. The Town does not currently have a discharge permit for our wastewater operation and must land apply all of our treated wastewater per Tennessee Department of Environment and Conservation. We have to show TDEC that we have the land application capability when we agree to new connections. ***At the present time our current commitments to the developing communities in Thompson's Station have maxed out our existing disposal capacity. However, if we are able to show TDEC that we have available land then the connection of a new school to our wastewater system should be no problem.*** We've discussed before the possibility of the property to the West of Independence High School as a potential source of drip disposal land. ***If this property, or a portion thereof, can be transferred to the Town and used for disposal purposes then I'm sure TDEC will allow us to allocate capacity.*** (emphasis supplied)

127. Following a response from Jason Golden, Deputy Superintendent and General Counsel for WCS, Mr. Cosentini reiterated the Town's sewer-allocation-for-drip-field position stating:

I completely understand the frustration. The Town is happy to look at all the property available that is not being considered for other uses. ***Obviously we would be willing to compensate [WCS] for all property beyond what is necessary for the proposed school.*** Would we be able to schedule a time to look at the property and do soil sampling? Who can we contact to schedule and get access? (emphasis supplied)

128. Therefore, not only was the Town willing to allocate additional sewer capacity for WCS's proposed school so long as the net effect on drip field capacity was positive for the Town, the Town *was offering to compensate WCS for any excess drip field.*

129. Whistle Stop's sewer request, on the other hand, was rejected outright as not viable even though it: (i) completely provided sufficient drip field capacity to cover the Development; (ii) offered the excess drip field capacity to the Town; and (iii) offered this excess drip field capacity to the Town for free.

130. In response, Whistle Stop advised that it wanted to connect all 343 original lots to the Town's wastewater system once the Town became compliant with the Compliance Schedule in its TDEC permit requiring the Town to acquire more drip field capacity, as discussed *infra.*

131. At the September 13, 2016, Board meeting, Mayor Napier stated that "There's no guarantee that there's going to be ever any additional capacity for Whistle Stop or anybody else that comes around." The Board then made a motion, which was unanimously approved, to direct Whistle Stop to select an alternative SBR system.

132. Mayor Napier's comments are directly contrary to mandates issued by TDEC which required the Town to double its wastewater treatment capacity by March 1, 2017.

133. Consistent with his utter disregard and failure to acknowledge the Compliance Schedule in the TDEC permit, Mayor Napier has shown disdain for any authority—"flabbergasted" when the Williamson Chancery Court ruled that Ms. Deats (whom he has heavily criticized himself) exceeded her authority in her role as Town Planner. And being equally "flabbergasted" that "a developer *would even try* to file a TRO against us."

134. At this point, it became glaringly obvious that under no circumstances would Whistle Stop be allowed to proceed with the Development: (i) with the SABRE SBR system; (ii) by connecting to the regional facility; or (iii) via any other means.

135. The Town, through the actions of the Board, acted arbitrarily and without reasonable justification in continuously denying Whistle Stop's applications based on alleged sewer availability issues, despite a myriad of statements and actions by the Town to the contrary.

136. With respect to a rezoning application for another development project that Mr. Franks is centrally involved with, the Town Administrator internally joked that the Town's process is a "game" and indicated that Mr. Franks' entity could only win if it chose not to play. In other words, if it chose to stay out of Thompson's Station. Mr. Cosentini quipped:

'A strange game. *The only winning move is not to play.* How about a nice game of chess?'

Kinda hope they try to make that argument tonight just so we can recommend unfavorably to test their theory.

137. The Town's ill will, personal animus and self-proclaimed government "gotcha" cannot stand. Without relief from this Court, Whistle Stop is denied its rights as the record owner of the valuable real property it owns in Thompson's Station.

The Town's TDEC Permit

138. As a condition of its operation of any sewage treatment facility, the Town was issued State Operation Permit No. 04058 ("SOP No. 04058") by TDEC.

139. As a condition and requirement under SOP No. 04058, the Town must meet a three-phase Compliance Schedule related to reuse, requiring upgrades and expansion of its wastewater treatment system.

140. Phase One of the Compliance Schedule required the Town, on or before September 1, 2015, to among other things: evaluate existing wastewater treatment plant operations; determine necessary upgrades to increase treatment capacity from 500,000 gallons per day (“GPD”) to 1,000,000 GPD; identify potential irrigation sites for disposal and reuse; and develop an implementation plan.

141. Phase Two of the Compliance Schedule required the Town, on or before March 1, 2016, to begin its implementation of the required wastewater treatment plant upgrades referenced in Phase One.

142. Phase Three of the Compliance Schedule requires the Town, on or before March 1, 2017, to complete to fully operational status all required wastewater treatment plant upgrades referenced in Phase One, including the procurement of all necessary irrigation land base.

143. Currently the Town has 3,410 total taps allocated to the Town’s wastewater system. This figure includes the Development’s original 343 lots, as reserved by Whistle Stop’s full payment of sewer capacity fees. Mr. Ramsey, Whistle Stop’s engineering consultant, conservatively estimates that these 3,410 total taps produce 300 GPD for a total of 1,023,000 GPD if every single requested tap connects to the Town’s system.

144. Of course, the Development would not have connected all of its taps to the Town’s wastewater system until after the Compliance Schedule’s March 1, 2017, deadline by which the Town must expand its capacity to 1,000,000 GPD.

145. In actuality, the total tap allocations are significantly lower as a result of: (i) expiration dates in allocation agreements; and (ii) double counting of taps allocated to the Fields of Canterbury development and Mars, Incorporated’s headquarters for the exact same land which has been sold by the former to the latter.

146. There is no issue with capacity should the Town adhere to its Compliance Schedule as mandated by SOP No. 04058.

147. SOP No. 04058 also required the Town to acquire sufficient drip field capacity to handle 1,000,000 GPD by March 1, 2017.

148. As a result, Mr. Cosentini's statement that there is no "specific timeline" for procurement of drip field capacity is simply not accurate.

149. The Town currently then had an estimated 20 acres of drip fields installed (which can disburse 200,000 GPD), with an additional 8 acres allocated in the Tollgate Village development and an additional 20 acres available in the Fields of Canterbury development.

150. The Town did not procure enough drip field capacity to meet the Compliance Schedule's March 1, 2017, deadline.

151. Mr. Cosentini has joked about the leniency in TDEC's permitting process, stating "TDEC really should get serious about their permitting process. I was a little surprised about how little was required when requesting an SOP."

152. When the Town did not meet the Compliance Schedule's March 1, 2017 deadline, TDEC extended the Compliance Schedule's March 1, 2017 deadline by one year—through and including March 1, 2018.

The Two Farms Development

153. Toward the end of 2015, while Whistle Stop was working in good faith to proceed with the Development, the Town began the process of annexing nearly 2,000 acres of unincorporated land, outside its Urban Growth Boundary, for the purpose of developing a mixed-use community known as "Two Farms." This development was to include residential, commercial and recreational uses.

154. On or about July 12, 2016, Williamson County, Tennessee, approved funds to investigate and potentially pursue litigation against the Town to challenge the annexation of the Two Farms property.

155. Two Farms is to include roughly eight hundred (800) residences, as well as a golf course designed by professional golfer, Tiger Woods.

156. On October 27, 2015, the Planning Commission, upon recommendation of Ms. Deats, unanimously recommended to the Board that it annex the land upon which Two Farms is to be developed.

157. The Board, over the objections of multiple citizens and Williamson County Commissioners, annexed the land upon which Two Farms is to be developed on November 10, 2015, by resolution.

158. Portions of the Two Farms property were zoned Transect Community (“TC”) and T2 – Rural by the Board at its January 12, 2016, meeting—once again over concerns of multiple members of the community who spoke against the development.

159. Multiple members of the Board spoke favorably of the Two Farms development and its developer stating that the developer “is of high caliber and not a track home builder.”

160. Several conditions were attached to the Two Farms rezoning, one of which is that the on-site wastewater treatment facility must be located in an area at least 1,000 feet from any existing adjacent residential structure.

161. On January 27, 2016, Alderman Graham Shepard wrote, via email, to Mr. Cosentini that the Board would be invited to attend an event “when Tiger Woods comes to town and makes the announcement. This event will be big news and great publicity for us. We probably have much advance planning work to do for this.”

162. The Two Farms property was again rezoned by action of the Board on May 10, 2016, once again in the face of multiple objections from citizens who spoke at the public hearing.

163. Two Farms has proceeded, and continues to proceed, through all levels of the approval process with the Town without any of the resistance Whistle Stop and the Development have faced.

164. Upon information and belief, Town staff has willingly assisted Two Farms in securing sought after approvals. By way of example only, on March 24, 2016, Mr. Cosentini sent an email essentially directing Dan Ford, Two Farms' designer, how to respond to concerns raised by Alderman Shepard so that Two Farms would not face resistance at the upcoming April 12, 2016, Board meeting. This stands in stark contrast to the Town's active plotting of ways to block Whistle Stop and its Development.

165. Upon information and belief, Two Farms plans to dedicate significant open space, namely the area to be occupied by the golf course, to the Town so that it may be used as a drip field or for spray disbursement.

166. This is dissimilar to Whistle Stop, whose offer to provide excess drip field area to the Town was summarily rejected.

167. The Two Farms area to be utilized for drip field capacity far exceeds what would be needed for the Two Farms development.

168. Accordingly, the Two Farms development appears to be the desired solution to the Town's lingering problem of securing adequate drip field capacity requirements under SOP No. 04058.

169. Mr. Cosentini recently confirmed the Town's plans to utilize the Two Farms development as a solution to its lingering drip field problem. In a filing with TDEC dated October 24, 2016, Mr. Cosentini states:

Earlier this year the Town was presented a proposed development opportunity that included a substantial amount of flood plain and open space. These areas were to be dedicated for the purpose of adequately addressing the remaining areas the Town needed to dispose of 1,000,000 GPD of treated wastewater. The project also proposed a golf course where a significant amount of reuse water would be necessary for irrigation purposes. The plan called for an onsite facility that would provide for additional treatment of the wastewater generated at the Town's regional facility. . . . At present, this project is still in the planning phases with no specific timeline on beginning.

The Town has been in conversation with one other property owner for the purchase of a 130-acre tract of land. This property was evaluated for disposal purposes and 40 acres was found to be suitable. Negotiations on a potential purchase were put on hold due to significant purchase price divide and the emergence of the golf course project previously mentioned.

170. It is now abundantly clear that the Town was relying on the Two Farms development in order to meet the Compliance Schedule's March 1, 2017, deadline which was fast approaching.

171. As a result, Two Farms has received unequal, beneficial treatment from the Town.

172. Whistle Stop and the Development have not received this same level of treatment by the Town.

COUNT I – VIOLATION OF 42 U.S.C. § 1983 – DUE PROCESS

173. Whistle Stop incorporates the proceeding paragraphs as if fully restated herein.

174. Whistle Stop is entitled to substantive and procedural due process in the treatment of the Development and securing all necessary approvals therewith under the United States Constitution and Tennessee Constitution.

175. The Town has arbitrarily denied Whistle Stop of its rights to substantive and procedural due process under color of state law all in violation of 42 U.S.C. § 1983.

176. The Town's actions during the Development's approval process, in which Whistle Stop was denied procedural and substantive due process, shock the conscience.

177. Whistle Stop has been damaged by the Town's deprivation of its rights to substantive and procedural due process under color of state law.

COUNT II – VIOLATION OF 42 U.S.C. § 1983 – EQUAL PROTECTION

178. Whistle Stop incorporates the proceeding paragraphs as if fully restated herein.

179. Whistle Stop is similarly situated to other parties appearing before the Planning Commission and Board for their respective developments and/or sewer approvals.

180. Whistle Stop has been repeatedly rejected and/or denied by the Town for reasons inconsistent with positions taken by the Town with respect to those other similarly situated parties.

181. By way of example only, upon information and belief, Whistle Stop has received unequal treatment from Two Farms because Two Farms' development is seen as a solution to the Town's lingering drip field capacity problems.

182. No rational basis exists for the Town's denials and obstruction of the Development in light of the Town's treatment of other similarly situated parties.

183. The Town has been motivated by personal animus and ill will towards Whistle Stop and its representatives.

184. The Town has acted intentionally, fraudulently, maliciously, and/or recklessly in its arbitrary and baseless denials of Whistle Stop's Development.

185. The Town's actions constitute violations of Whistle Stop's constitutional right to equal protection under the law all in violation of 42 U.S.C. § 1983.

186. Whistle Stop has been damaged by the Town's violations of its constitutional right to equal protection.

PRAYER FOR RELIEF

WHEREFORE, Whistle Stop sues the Town of Thompson's Station, Tennessee, and prays that:

1. Process issue and the Defendant be required to answer this First Amended Complaint;
2. That a jury be empaneled to try the issues in this case;
3. That a judgment be entered in favor of Whistle Stop and against the Defendant awarding damages in an amount to be determined at trial for its violation of Whistle Stop's constitutional right to due process;
4. That a judgment be entered in favor of Whistle Stop and against the Defendant awarding damages in an amount to be determined at trial for its violation of Whistle Stop's constitutional rights to equal protection;
5. That Whistle Stop be awarded its reasonable attorneys' fees incurred in bringing this action, pursuant to 42 U.S.C. § 1988;
6. That the costs of this cause be taxed to Defendant; and
7. That Whistle Stop be awarded all such other and further relief to which it may be entitled.

Respectfully submitted,

/s/ Joshua R. Denton

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