

COUNTY COUNCIL

OF

TALBOT COUNTY

2009 Legislative Session, Legislative Day No. : June 23, 2009

Resolution No.: 165 *AS AMENDED*

Introduced by: Mr. Foster, Mr. Duncan, Mr. Pack

A RESOLUTION TO AMEND THE TALBOT COUNTY COMPREHENSIVE WATER & SEWER PLAN, AS ADOPTED BY TALBOT COUNTY RESOLUTION 100, TO EXTEND THE SERVICE AREAS OF THE EASTON WATER AND WASTEWATER SYSTEMS TO CERTAIN AREAS THAT INCLUDE TAX MAP 17, PARCEL 39 AND TAX MAP 25, PARCELS 13 AND 17 AND PARCEL 207, LOTS 19-25 AS W-1 AND S-1, IN THE FIRST ELECTION DISTRICT, TALBOT COUNTY, MARYLAND; PURSUANT TO THE POWER AND AUTHORITY CONTAINED IN THE ENVIRONMENTAL ARTICLE, TITLE 9, SUBTITLE 5, OF THE ANNOTATED CODE OF MARYLAND

By the Council: June 23, 2009

Introduced, read the first time, and ordered posted, with Public Hearing scheduled on Tuesday, July 28, 2009 at 2:00 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

By order: Susan W. Moran
Secretary

A RESOLUTION TO AMEND THE TALBOT COUNTY COMPREHENSIVE WATER & SEWER PLAN, AS ADOPTED BY TALBOT COUNTY RESOLUTION 100, TO EXTEND THE SERVICE AREAS OF THE EASTON WATER AND WASTEWATER SYSTEMS TO CERTAIN AREAS THAT INCLUDE TAX MAP 17, PARCEL 39 AND TAX MAP 25, PARCELS 13 AND 17 AND PARCEL 207, LOTS 19-25 AS W-1 AND S-1, IN THE FIRST ELECTION DISTRICT, TALBOT COUNTY, MARYLAND; PURSUANT TO THE POWER AND AUTHORITY CONTAINED IN THE ENVIRONMENTAL ARTICLE, TITLE 9, SUBTITLE 5, OF THE ANNOTATED CODE OF MARYLAND

WHEREAS, the County Council of Talbot County, State of Maryland, by Resolution Number 100 has adopted the October 2002 Report of the Review of the Comprehensive Water and Sewerage Plan (the "Plan"); and

WHEREAS, the developed portion of Parcel 13 and Parcel 207, Lots 19-25 on Tax Map 25, in the First Election District, Talbot County, Maryland, are served by a community system that consists of a two-stage stabilization lagoon process that discharges to a failed bermed infiltration pond, with effluent pumped to the Hog Neck Golf Course to be spray irrigated on the fairways and greens; and

WHEREAS, Parcel 207, Lots 19-25 are improved by the Hyde Park Office, swimming pool and community clubhouse, but were inadvertently omitted from the maps showing the existing Hyde Park community sewerage system in the 2002 Report of the Review; and,

WHEREAS, the owner of Parcel 39 on Tax Map 17 and Parcels 13 and 17 and Lots 19-25 of Parcel 207 on Tax Map 25, in the First Election District, Talbot County, Maryland, is working with Talbot County to address on-going permit violations at the Hog Neck Golf Course and has agreed to the extension of the Easton Water and Wastewater Systems to serve its property; and

WHEREAS, Parcel 13 and Lots 19-25 of Parcel 207 on Tax Map 25 has a daily average wastewater flow of approximately 20,000 gallons per day; and

WHEREAS, Parcel 39 on Tax Map 17 is not improved with any residential dwellings, is not connected to the existing Hyde Park community wastewater system, and has no existing demand for water or wastewater service from the Easton Water or Wastewater System; and

WHEREAS, Parcel 17 on Tax Map 25 has a daily average wastewater flow of approximately 10,000 gallons per day; and

WHEREAS, the Town of Easton, in the First Election District, Talbot County, Maryland, has previously classified Parcel 39 on Tax Map 17 and Parcels 13 and 17 and Lots 19-25 of Parcel 207 on Tax Map 25 as part of the Priority One Boundary Refinement Area for future annexation by the Town; and

WHEREAS, the Town of Easton, in the First Election District, Talbot County, Maryland, is working with Talbot County to process this request to extend the service area and program the water and sewer service designations of the Easton Water and Wastewater Systems; and

WHEREAS, after January 1, 2007, the new wastewater treatment facility consisting of Enhanced Nutrient Removal technologies for the Town of Easton was completed; and

WHEREAS, the Talbot County Council has considered the request, and hereby approves the same, subject to the terms of this Resolution and compliance with applicable design and technical requirements, rules, and regulations of all local, state, and federal authorities; and

NOW, THEREFORE, be it resolved by the County Council of Talbot County, Maryland as follows:

Section 1. The County Council is acting pursuant to Title 9, Subtitle 5, of the Environmental Article of the Annotated Code of Maryland.

Section 2. The Talbot County Comprehensive Water and Sewerage Plan shall be amended to show Parcel 39 on Tax Map 17 and Parcels 13 and 17 and Lots 19-25 of Parcel 207 on Tax Map 25 having the water and sewer classifications of W-1, S-1, immediate priority status, within the Easton Water and Wastewater Systems.

Section 3. Page 22 and Figure 15 will be removed from the Talbot County Comprehensive Water and Sewerage Plan when the Easton Water System has been extended to Parcel 39 on Tax Map 17 and Parcel 13 and Lots 19-25 of Parcel 207 on Tax Map 25.

Section 4. Page 25 and Figure 19 will be removed from the Talbot County Comprehensive Water and Sewerage Plan when the Easton Sewer System has been extended to Parcel 39 on Tax Map 17 and Parcel 13 and Lots 19-25 of Parcel 207 on Tax Map 25.

Section 5. The references to Hyde Park's wastewater treatment system shall be deleted from pages 28 and 31 of the Talbot County Comprehensive Water and Sewerage Plan when the Easton Wastewater System has been extended to Parcel 39 on Tax Map 17 and Parcel 13 and Lots 19-25 of Parcel 207 on Tax Map 25.

Section 6. The Amendment to include immediate priority for water and sewer utility extension shall be in accordance with the attached additions and changes and shall be

permanently entered into the Talbot County Comprehensive Water and Sewerage Plan as part of Chapters 1, 2, and 3.

Section 7. Inclusion of the proposed utility extension, planned for immediate priority in the Talbot County Comprehensive Water and Sewerage Plan, shall record capacity demand increases, as identified by the recitals herein, on the serving water and wastewater treatment facilities.

Section 8. Adoption of this amendment by the County Council of Talbot County shall authorize the construction of the projects in accordance with, and subject to, the approval of the Municipal, County, State, and/or federal agencies, as may be required, effective from the date of adoption. Actual extension of utility service shall be subject to all requirements of the Town of Easton and Easton Utilities.

Section 9. This Resolution shall not become effective unless and until the attached Declaration of Restrictive Covenant is duly executed and recorded by Jensen's, Inc. among the land records of Talbot County, and a certified copy of the same, as recorded, is appended to this Resolution.

Be It Further Resolved that this Resolution shall take effect immediately upon, but only upon, the occurrence of the conditions specified in Section 9.

PUBLIC HEARING

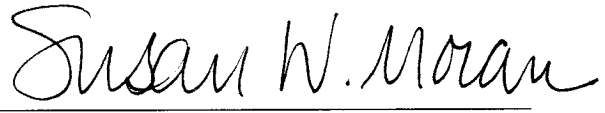
Having been posted and Notice, Time and Place of Hearing, and Title of Resolution No. 165 having been published, a public hearing was held on Tuesday, July 28, 2009 at 2:00 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland.

BY THE COUNCIL

Read the second time:

Enacted: August 25, 2009 * AS AMENDED*

By Order:



Secretary

Foster - Aye

Pack - Aye

Duncan - Nay

Bartlett - Aye

Harrison - Aye

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT ("Declaration") made this 17th day of September, 2009, by and between JENSEN'S, INC., a Connecticut corporation ("Declarant") and TALBOT COUNTY, MARYLAND, a body corporate and politic of the State of Maryland ("Talbot County").

WHEREAS, the Declarant owns and operates an approximately 241 unit single-family manufactured housing community known as "Hyde Park" that is located northeast of but immediately adjacent to and contiguous with the present municipal limits of the Town of Easton on properties designated as Parcels 13 and 207 (lots 19 through 25) of Talbot County Tax Map 25 (collectively, the "Hyde Park Community");

WHEREAS, the Hyde Park Community's wastewater needs are currently served by a private wastewater treatment facility that discharges to Talbot County's Hog Neck Golf Course;

WHEREAS, Declarant and Talbot County desire to have the Hyde Park Community annexed by the Town of Easton as soon as possible to facilitate the extension of Easton Utilities' sewer system and the discontinuance of operation of and discharges from the Hyde Park Community wastewater treatment plant;

WHEREAS, Declarant owns a separate, parcel of land containing approximately 23.5 acres located adjacent to the Hyde Park Community, which parcel is unimproved except for a maintenance facility for the Hyde Park Community and is identified among the Talbot County Tax Records as Parcel 39 of Tax Map 17 ("Parcel 39"). Parcel 39 is more particularly described as all that lot or parcel of land, situate, lying and being in the First Election District, Talbot County, Maryland, situated north of Maryland Route 309, east of Route 50 and being the parcel of real property described as "Parcel No. One" and conveyed unto the Declarant by deed dated November 26, 1991 and recorded among the Land Records of Talbot County, Maryland in Liber 715, folio 740; and

WHEREAS, Declarant desires to cause all of the parcels comprising the Hyde Park Community and Parcel 39 to be designated as Town of Easton S-1/W-1 in the Talbot County Comprehensive Water and Sewer Plan ("CWSP") for the purposes of: (i) having the Hyde Park Community served by Easton Utilities' sewer and water systems, and (ii) thereafter, accommodating the development of additional age-restricted, manufactured housing;

WHEREAS, the development of any additional housing units is intended to incur only after adequate public sewer service is extended to the Declarant's properties and the Hyde Park Community's wastewater treatment plant operations and discharges to the Hog Neck Golf Course are discontinued;

WHEREAS, establishment of the Town of Easton S-1/W-1 designation for Parcel 39 is critical to Declarant's financing of anticipated capital charges and infrastructure costs associated with extending public sewer service to the Hyde Park Community;

WHEREAS, Talbot County is willing to grant such CWSP amendment to facilitate financing of improvements for existing residents in the Hyde Park Community and to allow future development of additional age-restricted housing after the Hyde Park Community is served by Easton Utilities' sewer only on the condition that Declarant establish a legally enforceable restrictive covenant that prohibits the construction of residences or other uses requiring wastewater service on Parcel 39 until the Hyde Park Community is connected to and served by Easton Utilities.

NOW, THEREFORE, THIS DECLARATION OF RESTRICTIVE COVENANTS, WITNESSETH: the Declarant does hereby impose the following covenants, conditions and restrictions, which shall run with the land and shall be binding upon all persons owning said Parcel 39, their heirs, personal representatives, successors and assigns, for the duration and subject to the conditions set forth below:

1. Effective Date; Term. This Declaration shall become effective immediately and only upon the final, nonappealable approval by Talbot County and the Maryland Department of the Environment of an amendment to the CWSP to designate the Hyde Park Community and Parcel 39 as S-1/W-1 for immediate sewer and water service by the Town of Easton (the "Effective Date").

The covenants and restrictions set forth herein shall become effective on the Effective Date and shall remain in effect only for so long as the CWSP designation described in the foregoing sentence remains effective or until a permanent connection to the Easton Utilities sewer system is connected to the Hyde Park Community. Upon the earlier of: (i) action by Talbot County to modify or terminate the aforementioned Town of Easton S-1/W-1 service designation for Parcel 39 or the Hyde Park Community, or (ii) permanent connection of the Hyde Park Community to the Town of Easton sewer system and cessation of operation of the existing Hyde Park wastewater treatment plant, this Declaration shall become void, terminated and be of no further effect. The duration of this restriction defined by this Section shall be referred to hereinafter as the "Restriction Term". If the County does not approve such CWSP Amendment prior to September 30, 2009, this Declaration shall be void and of no effect.

Within 30 days of termination of this Declaration, Talbot County shall, at no cost, execute and deliver to the Declarant a memorandum for recordation among the Land Records of Talbot County confirming the termination and release of this Declaration.

2. Restriction. For a period commencing on the Effective Date and running only during the Restriction Term, no residence may be constructed on Parcel 39 nor may any other use that requires wastewater service be constructed or commenced on Parcel 39 until such time as the Hyde Park Community is permanently connected to and served by the Easton Utilities sewer system.

3. Unrestricted Uses. Notwithstanding anything to the contrary herein, this Declaration is not intended and shall not be interpreted or applied to limit or restrict the following uses of or on Parcel 39:

- a. Continued use and operation of the existing Hyde Park Community operation and maintenance facility;
- b. Agricultural uses and operations; or
- c. Pump stations, force mains, and other uses, appurtenances, structures and equipment related to the Hyde Park Community's wastewater treatment system.

4. Notices. Any notice required or provided for in this Declaration shall be in writing and delivered via: (i) personal hand delivery, (ii) overnight courier (*i.e.*, Federal Express, Airborne, UPS, etc.), or (iii) first-class, registered or certified mail, return receipt requested, postage prepaid. Such notices shall be deemed to have been given: (i) when received if by personal hand delivery; (ii) one (1) business day after the date sent if by overnight courier; or (iii) on the third (3rd) business day after it is deposited in the United States mail, as set forth above, as the case may be. The addresses for service of notices on Declarant and Talbot County, Maryland are as follows:

If to Declarant:

Jensen's, Inc.
246 Redstone Street
P.O. Box 608
Southington, CT 06489

With a copy to:

Ryan D. Showalter, Esq.
Miles & Stockbridge P.C.
101 Bay Street, Suite 2
Easton, MD 21601

If to Talbot County:

County Council President
Talbot County Council
11 N. Washington Street
Easton, MD 21601

With a copy to:

Michael L. Pullen, Esquire
Talbot County Office of Law
11 N. Washington Street
Easton, MD 21601

Any party hereto may, at any time by giving five (5) days written notice to the other party hereto, designate any other address in substitution of the foregoing addresses to which such notice shall be given and other parties to whom copies of all notices hereunder shall be sent.

5. Severability. Invalidation of any one or more of these covenants by judgment or court order shall in no way affect any of the other covenants contained herein, which shall remain in full force and effect.

6. Binding Effect During Term. These covenants are to run with Parcel 39 and shall be binding on all the parties and all persons claiming under them commencing on the Effective

Date and terminating automatically on the expiration of the Restriction Term unless earlier terminated by written consent of the parties.

7. Beneficiaries; Enforcement. This Declaration is intended to benefit and burden only the fee simple title holders of Parcel 39 and Talbot County as owner of the Hog Neck Golf Course, their successors and assigns. No other individuals or entities are intended to benefit from or may bring any action to interpret or enforce this Declaration. Enforcement of these covenants shall be by proceeding at law or in equity against the person or entity violating or attempting to violate any covenant, restriction or agreement herein contained. The provisions of Section 8 be a condition of and shall constitute binding and enforceable obligations on any person or persons who brings an action or proceeding to enforce, interpret or otherwise resolve any controversy, claim or dispute related to this Declaration.

8. Attorneys' Fees and Costs. The prevailing party in any suit or other proceeding brought to enforce or interpret any provision of this Declaration, or brought to resolve any controversy, claim or dispute between the Declarant and Talbot County, whether arising out of or relating to this Declaration or not, shall be entitled to receive from the other party, on demand, all reasonable attorneys fees and court costs incurred by the prevailing party to enforce or interpret this Agreement or to resolve such controversy, claim or dispute.

9. Incorporation, Integration. The recitals are incorporated herein as material terms of this Declaration. This Declaration contains the complete and entire terms related to the voluntary use restrictions on Parcel 39 and no declaration, restriction, promise, inducement or agreement not herein expressed has been made. Parcel 39 shall not be subject to any restrictions or encumbrances other than those: (i) established herein, (ii) imposed by law, (iii) existing of record as of the date hereof, or (iv) established in the future by written instrument signed by the then owner of such property and recorded among the Land Records of Talbot County.

10. No Presumption Against Drafter. The Declarant and Talbot County were represented by counsel in the negotiation and execution of this Declaration, and therefore, in the case of any vagueness or ambiguity with regard to any provision of this Declaration, there shall be no presumption of construction against the drafter of such provision, but instead this Declaration shall be interpreted in accordance with a fair construction of the law.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date first above written.

SIGNATURES ON FOLLOWING PAGE

WITNESS:

Horraine C. Maden
Horraine C. Maden

DECLARANT

Kristian Jensen III - President
JENSEN'S, INC.
By: Kristian Jensen, III, President

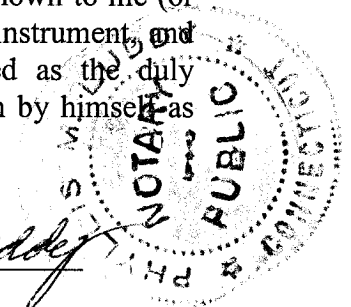


STATE OF Connecticut, COUNTY OF Hartford, TO WIT:

I HEREBY CERTIFY, that on this 17th day of Sept., 2009, before me, the undersigned Notary Public of said State, personally appeared KRISTIAN JENSEN, III, who acknowledged himself to be the President of JENSEN'S, INC., a corporation, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized President of said corporation by signing the name of the corporation by himself as President.

WITNESS my hand and Notarial Seal.

Regina M. Luedde
Notary Public
My Commission Exp. Oct. 31, 2012



WITNESS:

Susan W. Moran

TALBOT COUNTY

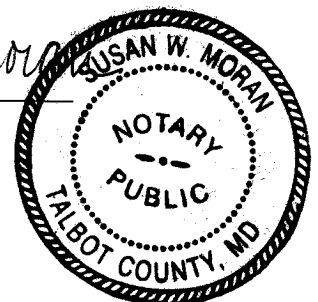
Philip Carey Foster (SEAL)
TALBOT COUNTY, MARYLAND
By: Philip Carey Foster, President
Talbot County Council

STATE OF MARYLAND, COUNTY OF Talbot, TO WIT:

I HEREBY CERTIFY, that on this 23rd day of September, 2009, before me, the subscriber, a Notary Public of the aforesaid State, personally appeared Philip Carey Foster, who acknowledged himself to be the President of the Talbot County Council, and that as such Officer of the Talbot County Council, being authorized to do so, executed the foregoing Declaration for the purposes therein contained by signing his name.

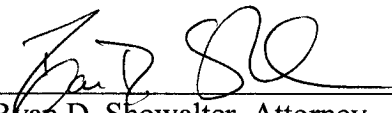
WITNESS my hand and Notarial Seal.

Susan W. Moran
Notary Public



My commission expires: 3/6/2013

This instrument has been prepared under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.



Ryan D. Showalter, Attorney