

IN THE CHANCERY COURT OF GARLAND COUNTY, ARKANSAS

BURCHWOOD BAY -- HIGHWAY 7 SOUTH
SEWER IMPROVEMENT DISTRICT NUMBER 20,
CARPENTER DAM-CATHERINE HEIGHTS SEWER
IMPROVEMENT DISTRICT NUMBER 24, LITTLE
MAZARN SEWER IMPROVEMENT DISTRICT NUMBER
27, HIGHWAY 70 WEST WATER IMPROVEMENT
DISTRICT NUMBER 31, MARION ANDERSON ROAD
WATER IMPROVEMENT DISTRICT NUMBER 37,
RANDY AND DEBORAH BURROUGHS, BOB AND
PATRICIA CHARLESWORTH, RAYMOND AND LOUISE
SCOTT, AND RON WILLIAMS

PLAINTIFFS

FILED	
NOV - 3 1994	
Time <u>1:58</u>	VICKIE THREASGILL
By <u>[Signature]</u>	D.C.

VS.

NO. 93-1639

TRICE ELLIS, PEGGY MARUTHER, PAT McCABE,
BOB MESSERSMITH, E. J. "PAT" PATTERSON,
HELEN SELIG AND DOYLE SHIRLEY, IN THEIR
CAPACITIES AS MEMBERS OF THE BOARD OF
DIRECTORS OF THE CITY OF HOT SPRINGS,
ARKANSAS

DEFENDANTS

EXHIBIT
<u>B</u>

CONSENT ORDER

Now on this date this matter comes before the Court and it appearing to the Court that the attorneys and the parties have reached a Consent Agreement as to all issues in this case and from a review of the pleadings, statement and stipulation of counsel, the agreement announced to the Court, a review of the applicable law and all other matters and things to come before the Court, THE COURT DOTH FIND AND ORDER:

1. Plaintiff Burchwood Bay -- Highway 7 South Sewer Improvement District Number 20 is an improvement district organized and existing under the laws of the State of Arkansas, and the area covered by the district lies within Garland County, Arkansas.

2. Plaintiff Carpenter Dam-Catherine Heights Sewer Improvement District Number 24 is an improvement district organized and existing under the laws of the State of Arkansas, and the area covered by the district lies within Garland County, Arkansas.

3. Plaintiff Little Mazarn Sewer Improvement District Number 27 is an improvement district organized under the laws of the State of Arkansas, and the area covered by the district lies within Garland County, Arkansas.

4. Plaintiff Highway 70 West Water Improvement District Number 31 is an improvement district organized and existing under the laws of the State of Arkansas, and the area covered by the district lies within Garland County, Arkansas.

5. Plaintiff Marion Anderson Road Water Improvement District Number 37 is an improvement district organized and existing under the laws of the State of Arkansas, and the area covered by the district lies within Garland County, Arkansas.

6. Plaintiffs Randy and Deborah Burroughs are residents of Garland County, Arkansas, and own real property within the boundaries of the Burchwood Bay -- Highway 7 South Sewer Improvement District Number 20, which property lies outside the corporate limits of the City of Hot Springs, Arkansas (hereinafter "the City").

7. Plaintiffs Bob and Patricia Charlesworth are residents of Garland County, Arkansas, and own real property within the boundaries of the Marion Anderson Road Water Improvement District Number 37, which property lies outside the corporate limits of the City, but within Garland County, Arkansas.

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8. Plaintiffs Raymond and Louise Scott are residents of Garland County, Arkansas, and own real property within Garland County, Arkansas, but outside the corporate limits of the City.

9. Plaintiff Ron Williams is a resident of Garland County, Arkansas, and owns real property which lies within the boundaries of the Lake Hamilton Water Improvement District Number 28, which property lies outside the corporate limits of the City, but lies within Garland County, Arkansas.

10. The Defendants are the duly elected and acting members of the Board of Directors of the City, a City of the first class organized and existing under the laws of the State of Arkansas, and lying within Garland County, Arkansas.

11. The Defendants in their capacities as members of the Hot Springs Board of Directors are the governing body of the City.

12. The lawsuit as originally filed named as Defendants the seven City Directors serving in that capacity on June 7, 1993, to-wit: Melinda Baran, Jay Chesshir, Bill Edwards, Trice Ellis, Elijah Harris, Bob Messersmith and Doyle Shirley. On that date, the City Directors, acting in their capacities as members of the Board of Directors, passed and enacted Resolution 2821. The Resolution was codified as Section 9-4-10 of the Hot Springs Code.

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13. Resolution 2821 referred to in paragraph number 12 above herein put into official form a set of practices that had been pursued by agents and employees of the City for some time prior to the enactment of the Resolution.

14. Resolution 2821 and City policies based on it required that before any future water or sewer service would be provided to property lying outside the corporate limits of the City, the owners of the property must do the following:

- (a) File a petition to annex the property to the City with the Garland County Court if the property is contiguous to the city boundaries.
- (b) File a "pre-annexation agreement" with the City if the property is not contiguous to the City's boundaries, and also execute and deliver to the City a "Bill of Assurance". The intended effect of these documents was to bind the property owner, or any future owner, to voluntarily petition to annex the property to the City at such time in the future that it is contiguous with the boundaries of the City.

15. After the enactment of Resolution 2821, many petitions to annex, pre-annexation agreements, and bills of assurance were executed, and filed or delivered to agents and employees of the

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City by residents of Garland County, Arkansas, in order to obtain water and sewer service from the City for properties they own which lie outside the corporate boundaries of the City.

16. Resolution 2821 and City policies and actions resulting therefrom violated Article 3, Section 2 of the Constitution of the State of Arkansas in that citizens' rights to vote on annexation to the City were impaired and forfeited by these practices of the City.

17. Resolution 2821 and City policies and actions resulting therefrom violated numerous agreements previously entered into between the City or its previously autonomous Water Commission and Sewer Committee on the one hand and the various water and sewer improvement districts formed in Garland County on the other. These agreements obligated the City to provide water or sewer service to property owners in the districts upon request. The Plaintiffs and other property owners in Garland County have reasonably relied on these agreements in the past and have the right to enforce these agreements against the City.

18. Some Plaintiffs and other property owners in Garland County have for years paid improvement district taxes to construct the distribution and collection systems of the various water and sewer improvement districts. These districts were formed and the taxes were paid in reasonable reliance on the City's promises and past practices of allowing connection to the city water and sewer system with no other prerequisites required. The Defendants are

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now estopped from requiring property owners to either annex to the City or promise to do so in the future in order to obtain city water and sewer service.

19. Resolution 2821 and the City's policies and actions resulting therefrom, insofar as they relate to sewer service, violated agreements made in the early 1970s between the City and the United States Environmental Protection Agency. The City guaranteed, in exchange for a grant from the federal government used to construct new sewage treatment facilities, that the sewer system would be a regional one. That is, it would accept connections and provide service to property outside the City limits. No mention was made of any preconditions, and the City cannot be allowed to add such now.

20. The Plaintiffs and other citizens and property owners of Garland County, Arkansas, have reasonably relied on the City's promises described in paragraph 19 above herein, and now can enforce these promises against the City as third-party beneficiaries of the agreement.

21. During the period of time that the present sewer system was being constructed various sewer improvement districts entered into agreements with the City to loan the City money to finance parts of the sewer collection system which were the City's obligations. In doing so, the districts and property owners within them relied on the City's promises to allow connection to the sewer system when completed without further prerequisites. The City is

now enjoined from violating those agreements by requiring annexation or promises to annex in the future as a precondition to sewer service.

22. By Resolution 2977 adopted March 21, 1994, the present Defendants, members of the Board of Directors of the City of Hot Springs, Arkansas, repealed Resolution 2821 which is the subject matter of this lawsuit.

23. The Defendants, as representatives of the City of Hot Springs, and agents and employees of the City are permanently enjoined from doing any of the following:

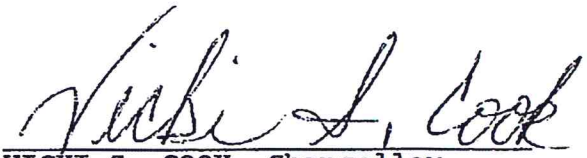
(a) Requiring as a condition of receiving hook-ups to the city sewer system the execution of an annexation or pre-annexation agreement by any property owner or other individual;

(b) Refusing to provide sewer service to any property either inside or outside the City limits of the City of Hot Springs, in the Greater Hot Springs area covered in the Master Plan for a sanitary sewerage system dated December, 1970, as prepared by Albert Switzer and Associates, Consulting Engineers, when the owner or owners of said property provide, at the cost of the owner or owners, suitable lines to connect to the existing sewer system, and further provided that the sewer system has the capacity to service the additional customer(s).

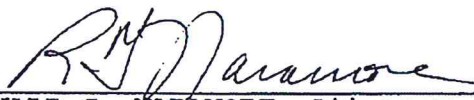
24. The Court hereby orders that all petitions for annexation and all pre-annexation agreements and all bills of assurance mentioned in paragraph 15 above herein which were executed as a result of the requirements of Resolution 2821 are void ab initio.

25. The City of Hot Springs is hereby ordered and directed to pay a Seven thousand and 00/100 Dollars (\$7,000.00) attorney's fee and the costs incurred by Plaintiffs in this action to Ronald G. Naramore, the attorney for the Plaintiffs and to pay same within thirty (30) days after entry of this Order.

IT IS SO ORDERED.


VICKI S. COOK, Chancellor
DATE: November 3, 1994

APPROVED AS TO FORM
AND SUBSTANCE:


RONALD G. NARAMORE, Attorney
for Plaintiffs


DAVID WHITE, Attorney for
Defendants

Date November 3, 1994
Jury Trial
Bench Trial
Non Trial