

WILLIE MORGAN JOHNSON,

:: IN THE CIRCUIT COURT OF

Plaintiff

VS.

:: BALDWIN COUNTY, ALABAMA

EDWARD F. GOLDSMITH, M. D.,
Health Officer, and C. K.

ZEHNER, Inspector and employee
of the Board of Baldwin County
Health Department,

:: AT LAW

Defendants

:: CASE NO. _____

AFFIDAVIT

STATE OF ALABAMA

COUNTY OF MOBILE

Before me, the under signed authority in and for said State and County, personally appeared W. F. Chastain, who being by me first duly sworn to speak the truth, did depose and say as follows:

My name is W. F. Chastain. I reside at 305 McQueen Avenue, Mobile, Alabama. I was in 1965 a partner in the business of Chastain and Blass. Mr. Bill Bedsole of Bedsole Engineering Company had been employed by the subdividers of Wilson Heights, First Addition, to make the complete plat of the Wilson Heights Subdivision, First Addition. There was then a Second Addition of Wilson Heights Subdivision and I purchased all of the property known as Wilson Heights, Third Addition. I further certify that Chastain and Blass purchased these lots which were fourteen in number to build houses thereon; that at the time we purchased said lots we re-numbered said lots one through fourteen; that we employed Mr. Bedsole to make percolation tests of each of said lots so that same could be cleared to build houses and place septic tanks therein. The property was worthless to us unless we could build houses on these lots, including Lots 4 and 5, and all of these lots were approved except Lots 4 and 5. Mr. Bedsole had made these tests and the tests showed Lots 4 and 5 were suitable for septic tanks and submitted these percolation tests to Mr. C. K. Zehner of the Baldwin County Health Department. Mr. Zehner came to the site, examined the lots 4 and 5 for percolation tests and denied approval. We asked Mr. Zehner what it would take to make these lots suitable for septic tanks and

he told us by having an engineer to put down "French Drain Tile" which would properly drain said lots, and then we could get approval for our septic tanks. We employed Mr. Bedsole, who had previously surveyed said land and prepared the plat and had previously approved all lots for septic tanks. Mr. Bedsole then put down "French Drain Tile" on Lots 4 and 5, made extensive tests and called on the Baldwin County Health Department to examine these lots for approval for septic tanks. After we had gone through this expense, Mr. Zehner refused to approve these lots for septic tanks. We then employed Rester and Coleman, Engineers, to make additional tests to make sure that these lots actually were suitable for septic tanks and would pass the percolation tests. They made their independent tests and found that same was suitable for septic tanks and that the percolation tests were correct. We then made application to Mr. Zehner and the Baldwin County Health Department, Dr. Edward F. Goldsmith. They told us that these lots were not suitable and that, if we did certain things to the land, it would be suitable for septic tanks. Dr. Goldsmith gave us a letter to that effect. We asked many times for Mr. Zehner to come out and re-examine this land and re-inspect it and he did so, but he seemed to be angry about it and he would not accept these lots for septic tanks. However, Dr. Goldsmith said that he would do so if certain things were done on the land. Being confident that the land would be acceptable for septic tanks, we sold said lots to Mr. Willie Morgan Johnson, who had additional work done and we told him that we would pay for any additional work that needed to be done on said lots so that said land would be acceptable for septic tanks. Mr. L. R. Johnston of Johnston Drilling and Inspection Company, was hired to do these things and make these tests. He dug the proper holes and made the proper tests and his report showed that said land passed all regulations and requirements of the Alabama Public Health Department for septic tanks. However, I am informed and believe that C. K. Zehner has refused to accept these lots for septic tanks. I have

been trying to get these lots approved for septic tanks for ten years, but Mr. Zehner completely disapproves every one of them and completely ignores us and I believe that he is angry with us for some reason. We do not know why. However, I am at a loss to know what to do about it at this point, and I believe that the only action left to us is by a suit and mandamus to require him to do the job that he is employed to do. Attached to this affidavit and made a part hereof are the maps and plats of the First, Second and Third Units of Wilson Heights Subdivision.

W. F. Chastain
W. F. Chastain

Subscribed and sworn to before me on this 29 day of

November, 1971.

Alice H. Andrews
Notary Public, Mobile County, Alabama

FILED

DEC 28 1971

EUNICE B. BLACKMON CIRCUIT
CLERK

Clerk's Note:

Plats & map attached to Supplemental Transcript
of appeal

FILED

DEC 28 1971

EUNICE B. BLACKMON
CLERK

MOORE, MOORE, DOWNING & LAYDEN
LAWYERS

920 DAUPHIN STREET

P. O. BOX 4457

MOBILE, ALABAMA 36604

MOORE, MOORE, DOWNING & LAYDEN
LAWYERS

920 DAUPHIN STREET

P. O. BOX 4457

MOBILE, ALABAMA 36604

WILLIE MORGAN JOHNSON,

:: IN THE CIRCUIT COURT OF

Plaintiff

VS.

:: BALDWIN COUNTY, ALABAMA

EDWARD F. GOLDSMITH, M.D.,
Health Officer, and C. K.
ZEHNER, Inspector and employee
of the Board of Baldwin County
Health Department,

:: AT LAW

Defendants

:: CASE NO. 19,170

Order
TO: EDWARD F. GOLDSMITH, M.D., HEALTH OFFICER, BALDWIN COUNTY,
ALABAMA, AND C. K. ZEHNER, INSPECTOR AND AN EMPLOYEE OF THE
BOARD OF BALDWIN COUNTY HEALTH DEPARTMENT

Whereas, Willie Morgan Johnson has filed in this Court and
presented to the Honorable Telfair J. Mashbur, Judge thereof, a
Petition for an Alternative Writ of Mandamus commanding and ordering
as is hereinafter set forth and the said Judge of said Court has
ordered the issuance of the Alternative Writ so prayed for. You
are hereby ordered and commanded forthwith to approve the water
percolation of Lots 4 and 5, Wilson Heights Subdivision, Third
Unit, for septic tanks so that dwellings for human habitation may
be erected on said property or else appear before this Honorable
Court on the 7th day of February, 1972, at 9:00 o'clock A.M.,
and show cause why you should not do so.

WITNESS my hand on this 25th day of December, 1971.

Telfair J. Mashbur
Clerk of the Circuit Court of Baldwin
County, Alabama

STATE OF ALABAMA

COUNTY OF BALDWIN

TO: ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:

You are hereby commanded to serve a copy of the foregoing
Alternative Writ of Mandamus on Edward F. Goldsmith, Health Officer,

WILLIE MORGAN JOHNSON,

Plaintiff

VS.

EDWARD F. GOLDSMITH, M.D.,
Health Officer, and C. K.
ZEHNER, Inspector and employee
of the Board of Baldwin County
Health Department,

Defendants

:: IN THE CIRCUIT COURT OF

:: BALDWIN COUNTY, ALABAMA

:: AT LAW

:: CASE NO. 76-170

Order
TO: EDWARD F. GOLDSMITH, M.D., HEALTH OFFICER, BALDWIN COUNTY,
ALABAMA, AND C. K. ZEHNER, INSPECTOR AND AN EMPLOYEE OF THE
BOARD OF BALDWIN COUNTY HEALTH DEPARTMENT

Whereas, Willie Morgan Johnson has filed in this Court and presented to the Honorable Telfair J. Mashbur, Judge thereof, a Petition for an Alternative Writ of Mandamus commanding and ordering as is hereinafter set forth and the said Judge of said Court has ordered the issuance of the Alternative Writ so prayed for. You are hereby ordered and commanded forthwith to approve the water percolation of Lots 4 and 5, Wilson Heights Subdivision, Third Unit, for septic tanks so that dwellings for human habitation may be erected on said property or else appear before this Honorable Court on the 7th day of February, 1972, at 9:00 o'clock A.M., and show cause why you should not do so.

WITNESS my hand on this 25th day of December, 1971.

Telfair J. Mashbur
Clerk of the Circuit Court of Baldwin
County, Alabama

STATE OF ALABAMA

COUNTY OF BALDWIN

TO: ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:

You are hereby commanded to serve a copy of the foregoing Alternative Writ of Mandamus on Edward F. Goldsmith, Health Officer,

Baldwin County, Alabama, and C. K. Zehner, Inspector and an employee
of the Board of Baldwin County Health Department.

WITNESS MY hand on this 28th day of December, 1971.

Eunice B. Blackmon
Clerk of the Circuit Court of Baldwin
County, Alabama

FILED

DEC 28 1971

EUNICE B. BLACKMON CIRCUIT
CLERK

WILLIE MORGAN JOHNSON,

Plaintiff

:: IN THE CIRCUIT COURT OF

VS.

:: BALDWIN COUNTY, ALABAMA

EDWARD F. GOLDSMITH, M.D.,
Health Officer, and C. K.

ZEHNER, Inspector and employee
of the Board of Baldwin County
Health Department,

:: AT LAW

Defendants

:: CASE NO. 10,124

TO THE HONORABLE TELFAIR J. MASHBURN, JUDGE OF THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA:

The Plaintiff respectfully shows unto Your Honor as follows:

ONE

That your Petitioner is over the age of twenty-one years and is a resident of Mobile County, Alabama, and the Defendants, Edward F. Goldsmith, M.D. is the Health Officer of the Baldwin County Health Department, is over the age of twenty-one years and has his office in the City of Bay Minette, Baldwin County, Alabama, and the Defendant, C. K. Zehner, is an employee of the Baldwin County Health Department, is over the age of twenty-one years and is an inspector of said Department.

TWO

That the Plaintiff, Willie Morgan Johnson, is the owner of certain real property located in Baldwin County, Alabama, and more particularly described as follows:

Lots 4 and 5, Wilson Heights, Third Addition or Unit according to the plat thereof recorded in Map Book 5, page 184 of the records in the Office of the Judge of Probate Court of Baldwin County, Alabama.

THREE

That the Defendant, Edward F. Goldsmith, M.D., is a medical doctor and is the Health Officer in charge of the Baldwin County Health Department and the Defendant, C. K. Zehner, is employed by the Baldwin County Health Department and is charged with the duty of inspecting the sanitation facilities and the sewerage facilities in Baldwin County,

Alabama, and is specifically charged with determining when and how septic tanks are to be used by residents of Baldwin County and the issuing of permits to install septic tanks and field lines for the discharge of human sewerage or waste.

FOUR

That on August 15, 1962, said above described was owned by Chastain and Blass, a real estate company, whose principal office was 166 S. Wilson Avenue, Prichard, Alabama; that Chastain and Blass employed Bedsole Surveying Company of 2752 Springhill Avenue, Mobile, Alabama, to test said two lots for ground water percolation and to submit a water supply and sewer disposal report, which report was filed with the Defendants and although said report showed that said land percolated according to the rules and regulations of the Alabama Department of Public Health, the Defendants refused to approve said two lots for septic tanks, a copy of the report of Bedsole Surveying Company is attached hereto and made a part hereof and marked Exhibit "A".

On January 15, 1963, Bedsole Surveying Company again asked the Defendant, C. K. Zehner, to reinspect said two lots for approval, which approval was denied, a copy of the letter of W. L. Bedsole, Bedsole Surveying Company, is attached hereto and marked Exhibit "B"; that Bedsole Surveying Company was informed by the Defendants that, if Bedsole Surveying Company would place under the land of said two lots "French Drain Tile", said two lots could be approved; that by letter dated September 12, 1963, Mr. Bedsole informed Mr. C. K. Zehner that he had completed placing said "French Drain Tile" on said lots as recommended by the Baldwin County Health Department and attached to said letter a plat showing said drain tile, its location and the condition of said lots as to percolation and drainage and requested that said lots be reinspected for approval. The Defendants again refused to approve said lots for septic tanks, said letter and plat are attached hereto and made a part hereof as Exhibit "C".

On May 4, 1966, Rester and Coleman Engineers, Inc., 51 St. Michael Street, Mobile, Alabama, Registered Engineers and Surveyors, were employed to make percolation tests of said lots 4 and 5, Wilson Heights, Third Unit, which tests show that said lots percolated according to the rules and regulations of the Alabama Department of Public Health, and the Defendants were again requested to reinspect said lots for septic tanks. The Defendants again refused to accept said lots for septic tanks. The reports of Rester and Coleman Engineers, Inc. dated May 6, 1966, are attached hereto and made a part hereof as Exhibits "D" and "E".

FIVE

On August 16, 1967, the Defendant, Edward F. Goldsmith, M. D., Health Officer, Baldwin County Health Department, wrote a letter to Maurice A. Downing, Attorney for the owners of said Lots 4 and 5, setting out that the condition of the lots could be corrected by the method of a sub-surface drainage system, a copy of said letter is attached hereto and marked Exhibit "F"; that thereafter the owners of said lots did employ L. R. Johnston Drilling and Inspection Company, 2550 Government Street Extension, Mobile, Alabama, who are qualified and licensed soil testing boring specialists, who submitted a report dated May 28, 1971, whose report shows that after making all proper borings and tests that said lots passed all tests, rules and regulations as required by the Department of Public Health of the State of Alabama, said reports are attached hereto and marked Exhibits "G" and "H".

SIX

That the Plaintiff, the owner of said two lots, again went to the Defendant, C. K. Zehner, to have said lots reinspected; that the said Defendant, C. K. Zehner, refused to reinspect said lots and told the Plaintiff that he would never approve said two lots and that the Plaintiff could get some of his "big shot friends" to help him if he wanted to.

SEVEN

Plaintiff shows unto Your Honor and this Honorable Court that he has invested money in said two lots; that his predecessors in title have invested money in inspections, in the hiring of three engineering companies and testing and inspection company at a great expense; that the value of said lots are worthless except for the building of homes on said land; that your Plaintiff has done everything that he has been instructed to do and shows he will suffer a great loss if the said percolation tests are not approved by the Defendants; that the Plaintiff and his predecessors in title have done everything that they could to satisfy the requirements of the Defendants; that the refusal of the approval of said lots for septic tanks is a great abuse of the authority of the Defendants; that the failure or refusal by the said Defendants to approve said lots for septic tanks is arbitrary and constitutes a failure to perform a ministerial duty imposed on them by the statutes of the State of Alabama.

EIGHT

Your Petitioner comes to Court with clean hands showing unto Your Honor and this Honorable Court that he and his predecessors in title have done all things and performed all duties required of them under the Laws of the State of Alabama for a period of almost ten years and are unable to satisfy the capricious whims of the Defendants; that there is no suit or cause of action now pending dealing with the property above described herein and that the only remedy at law or in equity to require the Defendant to properly perform their duty is by this Petition for Mandamus.

WHEREFORE, the premises considered, the Plaintiff, your Petitioner, respectfully prays that Your Honor will grant an Alternative Writ of Mandamus or a Rule Ni Si directed to the said Edward F. Goldsmith, M.D., Health Officer of Baldwin County, Alabama, and C. K. Zehner, Inspector and employee of the Health Department of the State of Alabama, as said Health Officer and employee and Inspector in said Health Department respectively, returnable to the Circuit Court of Baldwin County, Alabama, ordering and commanding the said Edward F.

VOL 69 PAGE 579

Goldsmith, M. D. and C. K. Zehner, as such Health Officer and Inspector of the Health Department of Baldwin County and an employee of the Baldwin County Health Department, forthwith to approve the water percolation of Lots 4 and 5, Wilson Heights Subdivision, Third Unit, for septic tanks so that dwellings for human habitation may be erected on said property or to appear at a time to be designated by Your Honor and show cause why they should not do so; and the Petitioner respectfully prays for any other or further relief or for such other further orders and judgments to which he may be entitled under the facts above alleged.

Willie Morgan Johnson
Willie Morgan Johnson

STATE OF ALABAMA

COUNTY OF MOBILE

Before me, Kenneth S. Donahoe, a Notary Public in and for said State and County, personally appeared Willie Morgan Johnson, whose name is signed to the foregoing petition and who is known to me, who upon oath deposes and says that the facts alleged and stated in the above petition are true and correct, except as to those allegations made on information and belief and as to those allegations, he believes them to be true.

Willie Morgan Johnson
Willie Morgan Johnson

Subscribed and sworn to before me on this 1th day of December, 1971.

Kenneth S. Donahoe
Notary Public, Mobile County, Alabama
My Commission Expires 8-15-73

Serve Defendants at
Baldwin County Health Department
Bay Minette, Alabama

FILED

DEC 28 1971

MOORE, MOORE, DOWNING & LAYDEN
Attorneys for Plaintiff

BY: Maurice A. Downing
Maurice A. Downing

EUNICE B. BLACKMON
CIRCUIT CLERK

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FILED

DEC 28 1971

EUNICE G. TINDAL, Register
Baldwin Co., Ala.

INDIVIDUAL WATER SUPPLY AND SEWAGE DISPOSAL REPORT
Alabama Department of Public Health
Bureau of Sanitation

Part I

(To be completed and signed by a Registered Engineer or Land Surveyor)

City or Beat No. Route 1, Spanish Fort, Daphne, Alabama Location: Sec. 28 T-4-S R-2-E
Owner Ghastain and Blane Owner's Address 166 E. Wilson Avenue, Prichard, Alabama
WILSON HEIGHTS SUBDIVISION
Subdivision WILSON HEIGHTS Block No. none Lot No. 4 Size lot 20,000 sq. ft.
Date: Subdivision recorded May 1962 Approved May 1962 Percent Developed 10%
Grease Trap: ☒ Yes ☐ No Garbage Grinder: ☐ Yes ☒ No Bdrms 3
Laundry Waste: ☒ Yes ☐ No
If other than residential property give estimated sewage flow per day RESIDENTIAL
Signature of Owner _____

Water Supply: ☐ Public ☐ Community ☒ Individual
Nearest Dist. to Sewer 15 miles ; To Public Water Supply 5 miles
Percolation Test: Test Hole 1 Stabilized Rate 12 minutes per inch Additional Tests
(See Back for Instructions) 2
Soil Borings: Type Soil 0.0' to 5.0' YELLOW SANDY CLAY
Water level in hole from surface of ground NO WATER ENCOUNTERED IN 5 FEET

A plot plan dated none and prepared by _____
showing layout of septic tank with reference to the topography, house, lot lines and existing or proposed wells is attached to and
made a part of this report.

Report made by: BEDSOLE SURVEYING COMPANY

Signature _____ Reg. No. 1911

Address 2752 Springhill Avenue, Mobile, Alabama Date 8-15-62

Part II

(For use by Health Authorities)

It is our opinion that the use of an individual septic tank system on the lot (☐ is suitable provided it conforms to) (☐ is
not suitable by reason of) the following conditions: _____

It is understood that the opinion rendered in this report does not cover the construction of the septic tank system. Accept-
ance will be based upon compliance with all health department requirements.

County Health Department

Signature and Title _____

Date _____

INSTRUCTIONS

1. Report, vicinity map and plot plan shall be prepared in duplicate by a registered engineer or land surveyor for submission to the County Health Department by the owner, requestor or his representative. Additional copies may be required in accordance with the needs of the county health department.
2. One copy of the report, vicinity map and plot plan may be retained by the County Health Department for its files.
3. One copy of the report and plot plan will be returned to the owner or requestor after Part II of the report has been properly completed and signed by the applicable health authority.
4. It is recommended that under Part II, the amount of field required in the installation be listed as a condition of acceptance.

IMPORTANT! County Health Departments Do Not Mail The Reports & Plot Plans To The FHA or VA or The State Health Department.

A PROCEDURE FOR MAKING PERCOLATION TESTS *

- A. Dig or bore the holes with horizontal dimensions of from 4 to 12 inches and vertical sides to the depth of the bottom of the proposed absorption device. Holes can be bored with 4 inch diameter post-hole type auger;
- B. Roughen or scratch the bottom and sides of the holes to provide a natural surface. Remove all loose materials from the hole. Place about 2 inches of coarse sand or fine gravel in the hole to prevent bottom scouring;
- C. Fill the hole with clear water to a minimum depth of 12 inches over the gravel. By refilling, if necessary, or by supplying a surplus reservoir of water (automatic siphon), keep water in hole for at least four hours, and preferably overnight. In sandy soils containing no clay, the above saturation procedure is not necessary and the test can be made after the water from one filling has seeped away;
- D. Percolation rate measurements should be made on the day following the saturation process, except in sandy soils;
- E. If water remains in the test hole after overnight saturation, adjust the depth to 6 inches over the gravel. From a fixed reference point, measure the drop in water level over a 30-minute period;
- F. If no water remains in the hole after overnight saturation, add clear water to a depth of about 6 inches over the gravel. From a fixed reference point, measure the height of the water surface at approximately 30-minute intervals over a 4 hour period, refilling the hole to a depth of 6 inches as necessary. The drop which occurs during the final 30-minute period is used to calculate the percolation rate;
- G. In sandy soils, or other soils in which the first six inches of water seeps away in less than 30 minutes, after the overnight saturation period, the time interval between measurements can be taken as 10 minutes and the test run over a period of one hour. The drop which occurs in the final 10 minute period is used to calculate the percolation rate.

* A minimum of one percolation test per individual lot is required.

January 15, 1963

Mr. C. K. Zehner
Health Department
Bay Minette, Alabama

Dear Mr. Zehner:

It would be appreciated if you would re-inspect lots
1, 3, 4, 5, WILSON BEIGHTS SUBDIVISION, THIRD UNIT and
would advise the undersigned if they pass your inspec-
tion for percolations.

Yours very truly,

REDSOLE SURVEYING COMPANY

W. L. Redsole

WLR/bn

September 12, 1963

Mr. G. A. Zehner
Sanitation Officer
Baldwin County Health Department
Bay Minette, Alabama

Dear Mr. Zehner:

We are enclosing herewith Percolation Reports on Lots 4 and 5, WILSON HEIGHTS SUBDIVISION, THIRD UNIT.

Also enclosed are several prints of said Lots 4 and 5, showing the layout of the "French Drain Tile" recently installed to alleviate the water table on these lots. It is our opinion that the drain tile as installed will serve the purpose intended.

For your information when we excavated for the drain tile, we found a strip of horizon approximately ten feet wide and four feet deep and approximately 1 foot thick extending across the southerly portion of these lots. We do not believe that this will be detrimental to any septic tank installation on the lots in question.

We would sincerely appreciate your favorable consideration.

Yours very truly,

BERGQUIST SURVEYING COMPANY

WLB/bh

cc Chestain and Blass
P. O. Box 10652
Friedrich, Alabama

Enclosures

*Copy of Map attached to Supplemental
Transcript & mailed to Ct. of Civil Appeals.*

(C483)

- Clerks. Note: It is impossible to reproduce this map - therefore the original is sent as supplemental Transcript to the Court.

Copy

INDIVIDUAL WATER SUPPLY AND SEWAGE DISPOSAL REPORT
Alabama Department of Public Health
Bureau of Sanitation

Part I

(To be completed and signed by a Registered Engineer or Land Surveyor)

City or Beat No. Spanish Fort, Ala Location: Sec. 28 T 4 S R 2 E
Owner T J Roster, Sr Owner's Address 205 Government St - Mobile, Ala.
Subdivision Wilson Heights, Third Unit Block No. 4 Lot No. 4 Size lot 20,165 sq. ft.
Date: Subdivision recorded May 11, 1962 Approved _____ Percent Developed 3
Grease Trap: ☒ Yes ☐ No Garbage Grinder: ☐ Yes ☒ No Bdrms _____
Laundry Waste: ☒ Yes ☐ No
If other than residential property give estimated sewage flow per day _____
Signature of Owner _____

Water Supply: ☒ Public ☐ Community ☐ Individual
Nearest Dist. to Sewer 2 miles ; To Public Water Supply _____
Percolation Test: Test Hole 1 Stabilized Rate 7.3 Additional Tests
(See Back for Instructions) 2
Soil Borings: Type Soil Red Clay

Water level in hole from surface of ground Dry @ 6'
A plot plan dated May 4, 1966 and prepared by Roster & Coleman Engineers, Inc.
showing layout of septic tank with reference to the topography, house, lot lines and existing or proposed wells is attached to and made a part of this report.
Report made by: Ronald F. Coleman Reg. No. 5121
Signature _____ Date May 6, 1966
Address 51 St Michael St - Mobile, Alabama

Part II

(For use by Health Authorities)

It is our opinion that the use of an individual septic tank system on the lot (☐ is suitable provided it conforms to) (☐ is not suitable by reason of) the following conditions: _____

It is understood that the opinion rendered in this report does not cover the construction of the septic tank system. Acceptance will be based upon compliance with all health department requirements.

County Health Department
Signature and Title _____
Date _____

San-3

Exhibit "D"

COPY

INDIVIDUAL WATER SUPPLY AND SEWAGE DISPOSAL REPORT
Alabama Department of Public Health
Bureau of Sanitation

Part I

(To be completed and signed by a Registered Engineer or Land Surveyor)

City or Beat No. Spanish Fort, Ala. Location: Sec. 28 T 4 S R 2 E
Owner T. J. Rester, Sr. Owner's Address 205 Government St - Mobile, Ala.
Subdivision Wilson Heights, Third Unit Block No. 5 Lot No. 5 Size lot 20,896 sq. ft.
Date: Subdivision recorded May 11, 1962 Approved _____ Percent Developed _____
Grease Trap: ☒ Yes ☐ No Garbage Grinder: ☐ Yes ☒ No Bdrms 3
Laundry Waste: ☒ Yes ☐ No
If other than residential property give estimated sewage flow per day _____
Signature of Owner _____

Water Supply: ☒ Public ☐ Community ☐ Individual
Nearest Dist. to Sewer 2 Miles ; To Public Water Supply _____
Percolation Test: (See Back for Instructions) Test Hole 1 Stabilized Rate 17.0 MPI Additional Tests _____
Soil Borings: Type Soil White Clay
Water level in hole from surface of ground Dry @ 6'
A plot plan dated May 4, 1966 and prepared by Rester & Coleman Engineers, Inc.
showing layout of septic tank with reference to the topography, house, lot lines and existing or proposed wells is attached to and made a part of this report.
Report made by: Donald F. Clemens Reg. No. 5121
Signature _____ Date May 6, 1966
Address 51 St Michael St - Mobile, Alabama

Part II

(For use by Health Authorities)

It is our opinion that the use of an individual septic tank system on the lot (☐ is suitable provided it conforms to) (☐ is not suitable by reason of) the following conditions: _____

It is understood that the opinion rendered in this report does not cover the construction of the septic tank system. Acceptance will be based upon compliance with all health department requirements.

County Health Department
Signature and Title _____
Date _____

San-3

VOL 69 PAGE 585

Exhibit "E"

BALDWIN COUNTY HEALTH DEPARTMENT

Post Office Box 150

BAY MINETTE, ALABAMA

August 16, 1967.

Hon. Maurice A. Downing
P. O. Box 4457
Mobile, Alabama 36604.

Dear Mr. Downing:

In regard to lots 1, 4 and 5
Wilson Heights Subdivision, 3rd Addition.

The above mentioned lots, as
they now stand, are not suitable for septic tank
installation because of high static ground water.

It is my considered opinion that
this condition can be corrected, but some method
of lowering this high water table other than a dry
well or cesspool must be used.

A frequently used method for this
is a subsurface drainage system, that would have
to be designed and installed under the supervision
of a civil or sanitary engineer.

Yours very truly,

Edward F. Goldenith
Edward F. Goldenith, M.D.
Health Officer.

EFG/I

Bedsale

478417.9

VOL 69 PAGE 586

Exhibit "F"

L. R. JOHNSTON DRILLING & INSPECTION CO.

2350 GOVERNMENT STREET EXTENSION

MOBILE, ALABAMA 36606

TEST BORING DATA

CORRECTED COPY

For W. F. Chastin

Report No. _____
Date 5-28-71

Our Order No. _____

Boring No. _____

Sheet No. _____ of _____

Location of Hole Lot # 4 Wilson Heights Subdivision
Third Addition

[illegible]

NOTES:

CORRECTED COPY

Samplers _____ W. R. Norton _____

 Weight of Hammer _____
 Size of Casing _____
 Length of Casing _____
 Type and Amount Mud _____

Ground Surface Elev. _____
 Water Level _____ at _____
 Water Level _____ at _____ Hrs. _____
 Weather _____
 Inspector _____
 Driller _____ Hrs. _____

VOL

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PAGE

E. R. JOHNSTON DRILLING & INSPECTION CO.

By _____

Exhibit "G"

L. R. JOHNSTON DRILLING & INSPECTION CO.
2650 GOVERNMENT STREET EXTENSION
MOBILE, ALABAMA 36606

CORRECTED COPY

Report No. _____
Date 5-28-71
Our Order No. _____
Boring No. 2
Sheet No. _____ of _____

Boring No. 2
Sheet No. _____ of _____

SOIL STRATA

SAMPLING

[illegible]

CORRECTED COPY

Ground Surface Elev. _____
 Water Level _____ at _____
 Water Level _____ at _____ Hrs. _____
 Weather _____
 Inspector _____
 Driller _____ Hrs. _____

69 PAGE 588 R. JOHNSTON DRILLING & INSPECTION CO.

By 9808 [Signature]

Exhibit "H"

10,170

Willie Morgan Johnson

vs.

Edward J. Goldsmith M.D.
Health Officer & C. K. Zehner
Inspector & employee.

FILED

DEC 28 1971

EUNICE B. BLACKMON
CIRCUIT CLERK

Moore, Moore Downing & Layden

Received 20 day of Dec 1971
and on 29 day of Dec 1971

I served a copy of the within Alternate writ of mandamus
on Edward J. Goldsmith M.D. &
C. K. Zehner, respondent & employee

By service on

TAYLOR WILKINS, Sheriff
W. C. Zehner

Sherriff claims

Ten Cents per mile

TAYLOR WILKINS
Deputy Sheriff

BY DEPUTY SHERIFF

03441

CONFIDENTIAL

NOTICE: ANYONE WHOSE NAME APPEARS ON THIS LIST IS NOT A MEMBER OF THE KKK

THE KKK IS A HATEFUL ORGANIZATION THAT BELIEVES IN THE SUPREMACY OF THE WHITE RACE

JAN 10 1973

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE COURT OF CIVIL APPEALS

OCTOBER TERM 1972-1973

Civ. 106

Edward F. Goldsmith, M.D., Health Officer, et al.

v.

Willie Morgan Johnson

Appeal From Baldwin Circuit Court

WRIGHT, Presiding Judge

This action was begun below by petition for writ of mandamus filed by Willie M. Johnson against Dr. Edward F. Goldsmith, Health Officer for Baldwin County, Alabama, and C. K. Zehner, inspector and employee of the Baldwin County Health Department. The prayer of the petition requested an alternative writ of mandamus or a rule nisi directed to Dr. Goldsmith as health officer, and Zehner as an employee of the Health Department, commanding them to forthwith approve Lots 4 and 5 of Wilson Heights subdivision, Third Unit, for installation of septic tanks so that residences might be constructed thereon or to appear and show cause why they should not do so.

The petition was filed on December 28, 1971, and the court issued an alternative writ on the same date. Defendants filed a motion to dismiss the petition which was

denied by the court on September 15, 1972. This appeal is taken from the denial of the motion to dismiss.

Though appellee has not raised the point on this appeal, we are constrained to take notice ex mero motu that the ruling of the trial court on the motion to dismiss the petition for mandamus is not such a judgment as will support an appeal. Title 7, § 761, Code of Alabama 1940.

Title 7, § 1074, Code of Alabama 1940. Ex parte Register, 257 Ala. 408, 60 So. 2d 41; State v. Kemp, 205 Ala. 201, 87 So. 836; Long v. Winona Coal Co. 206 Ala. 315, 89 So. 788.

The motion to dismiss, though not directed to either the petition or the alternative writ, from its content must be construed as directed to the petition. Such pleading, though designated as a motion to dismiss, is in effect nothing more than a demurrer and an intermediate pleading by the defendants. The order denying the motion is not a final judgment on either the merits of the petition or the jurisdiction of the court. Thus there is no provision for an appeal therefrom. Since the question is as to the jurisdiction of this Court to entertain the appeal, it is the duty of this Court to dismiss the appeal ex mero motu.

Long v. Winona Coal Co., supra; State v. Griffin, 281

Ala. 227, 201 So. 2d 100. The appeal will be dismissed.

APPEAL DISMISSED.

Bradley, J., Concur.
Holmes, J., Concur.

I, J. O. Sentell, Clerk of the Court of Civil Appeals of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court, *th*

Witness my hand this 10 day of Jan. 19 73

J. O. Sentell
Clerk, Court of Civil Appeals of Alabama

FILED

JAN 12 1973

EUNICE B. BLACKMON CIRCUIT CLERK

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT
THE COURT OF CIVIL APPEALS OF ALABAMA

October Term 1972-73

~~ExxxNox~~

CIV. 106

Edward F. Goldsmith, M.D., Health Officer, et al

Appellant

v.

Willie Morgan Johnson

Appellee

On appeal from Baldwin Circuit Court

To the Clerk ~~Register~~ of the foregoing stated Court, Greeting:

Whereas, the record and proceedings of the Court below, in the above cause, were brought before the Court of Civil Appeals by appeal taken pursuant to law,

Now, it is hereby certified that upon consideration thereof the Court of Civil Appeals of Alabama, on the 10th day of January, 1973 dismissed said appeal ex mero motu.

and ordered that appellant s, Edward F. Goldsmith, M.D., Health Officer,
and C. K. Zehner, Inspector and employee of the Board of Baldwin
County Health Department

and

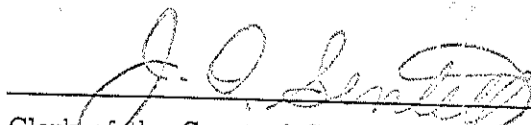
~~sureties for the costs of appeal,~~ pay the costs of appeal in this Court and in the Court below —
for which costs let execution issue.

~~- And it appearing that said parties have waived their rights of exemption under the laws of~~
~~Alabama, it was ordered that execution issue accordingly.~~

Witness, J. O. Sentell, Clerk of the Court of Civil Appeals of Alabama, at the Judicial Department Building, this the 10th day of January 1973.

FILED

JAN 12 1973


Clerk of the Court of Civil Appeals of Alabama.

UNICE B. BLACKMON CIRCUIT
CLERK

THE COURT OF CIVIL APPEALS
OF ALABAMA

October Term, 1972-73

Civ. 106

~~Div. IV~~

Edward F. Goldsmith, M.D.,

Health Officer, et al

Appellant,

v.

Willie Morgan Johnson

Appellee.

From Baldwin Circuit Court.

10,170

CERTIFICATE OF DISMISSAL

The State of Alabama,

County.

} Filed

this _____ day of _____, 19____

WILLIE MORGAN JOHNSON,

::

IN THE CIRCUIT COURT OF

Plaintiff

::

BALDWIN COUNTY, ALABAMA

VS.

EDWARD F. GOLDSMITH, M.D.,
Health Officer, and C. K.
Zehner, Inspector and employee
of the Board of Baldwin County
Health Department,

::

AT LAW

::

CASE NO. _____

Defendants

::

AFFIDAVIT

STATE OF ALABAMA

COUNTY OF MOBILE

Before me, the undersigned authority in and for said State and County, personally appeared Willie Morgan Johnson, who being by me first duly sworn to speak the truth, did depose and say as follows:

My name is Willie Morgan Johnson. I reside at 5786 Binghampton Drive, Mobile, Alabama. I am the owner of Lots 4 and 5, Wilson Heights Subdivision, Third Unit. I purchased said lots from Mr. W. F. Chastain, one of the original subdividers of Wilson Heights, First, Second and Third Units. I know that Edward F. Goldsmith, M. D., is the Health Officer of the Baldwin County Health Department; that C. K. Zehner is the Inspection Officer connected with Baldwin County Health Department, and that both Dr. Goldsmith and Mr. C. K. Zehner are over the age of twenty-one years. After purchasing the lots in question, I wanted to build houses on these lots and I understood that they would be approved for septic tanks. Mr. W. F. Chastain employed L.R. Johnston Drilling and Inspection Company for me to make percolation tests and soil tests on these two lots so that they could be approved. When these tests were made and the tests showed that the land percolated, I went to see Mr. C. K. Zehner about having these lots approved. Mr. Zehner said my predecessors in title or the previous owners had been trying to get this land to percolate for a long time and that he was not going to approve these lots for septic tanks, because in his opinion they did not percolate and he refused to re-examine these lots and told me that he was never going to approve these lots and he also

told me to get some of my "big shot friends" to help me, but that he was not going to approve these lots. He refused to go back on the lots although for many years my predecessors in title have been trying to get these lots approved for septic tanks. I have exhausted everything I know to do to get these lots to percolate. It seems to me that, if Lots 3 and 6 percolate and these two lots are on a slight incline at that point, surely the surface water would drain off and the soil is the same as it is on Lots 3 and 6; and that Mr. Zehner is being arbitrary and in my opinion it is a gross abuse of his power and authority over my property. There are three units in Wilson Heights. All the lots have been approved for septic tanks except these two lots. I can not believe that the soil under these two lots is so much different than on the lots around it and that all lots percolate except just these two. Three engineers have made reports that said lots percolate and Mr. Zehner, who is not an engineer, says they do not percolate. Underground french drain tile has been placed in these lots six feet deep and yet Mr. Zehner refuses to approve these lots for septic tanks. I believe this is a grave miscarriage of justice. I have got to have these lots to percolate or it will cost me a great deal of money.

Willie Morgan Johnson
Willie Morgan Johnson

Subscribed and sworn to before me on this 17th day of December,
1971.

Kenneth B. Dombroski
Notary Public, Mobile County, Alabama
My Commission Expires 8-15-73

FILED

DEC 28 1971

EUNICE B. BLACKMON CIRCUIT CLERK

WILLIE MORGAN JOHNSON,

::

IN THE CIRCUIT COURT OF

Plaintiff

VS.

::

BALDWIN COUNTY, ALABAMA

EDWARD F. GOLDSMITH, M.D.,

Health Officer, and C. K.

ZEHNER, Inspector and employee

of the Board of Baldwin County

Health Department,

::

AT LAW

Defendants

::

CASE NO.

AFFIDAVIT

STATE OF ALABAMA

COUNTY OF MOBILE

Before me, the undersigned authority in and for said State and County, personally appeared W. L. Bedsole, who being by me first duly sworn to speak the truth, did depose and say as follows:

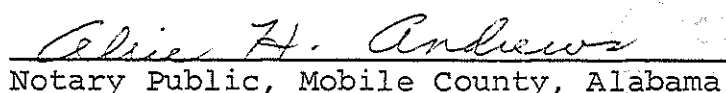
My name is W. L. Bedsole. I am a licensed surveyor. My registration number is 1911, State of Alabama. I am engaged in the surveying business and have been for 25 years. My principal place of business is 2752 Springhill Avenue, Mobile, Alabama. I do hereby state that, back in 1962, I made an inspection and run percolation tests on Lots 4 and 5, Wilson Heights Subdivision, Third Unit, for Chastain and Blass. These tests show that said land percolated and that they were suitable under the Laws of the State of Alabama for septic tanks. Originally, Baldwin County Health Department approved all of the Subdivision, but later refused to accept and approve lots 1, 3, 4, 5 and 13. Lots 1, 3 and 13 were later approved, but lots 4 and 5 have never been approved. Lots 4 and 5 are located on Marcella Avenue and are on an incline. Lots 3 and 6 have both been approved and there are houses on said lots and septic tanks are being used without any trouble whatsoever. I have made percolation tests on said property during every season of the year, spring, summer, autumn and winter, and at all times

said lots percolate and tests show that they meet all specifications for septic tanks. Since 1962, I have repeatedly attempted to have said lots approved but each time Mr. C. K. Zehner refuses to approve said lots. I, at the instruction of Mr. Zehner placed "French Drain Tile" 6.5' deep ten feet from the East property line of Lot 4 and Lot 5 and in the rear of Lots 5, 6 and part of Lot 4. I again attempted to get said lots 4 and 5 approved after placing said "French Drain Tile" in the ground on September 12, 1963, but again said approval was denied by the Baldwin County Health Department. I did everything recommended to me by the Health Department, but to no avail. For five years I ran tests on these two lots and at all times said lots percolated. In my opinion, there is no reason why these lots should not be approved.

WITNESS my hand on this 30 day of November, 1971.


W. L. Bedsole

Subscribed and sworn to before me on this 30 day of November
1971.


Notary Public, Mobile County, Alabama

FILED

DEC 28 1971

EUNICE B. BLACKMON

Vol 89-567

WILLIE MORGAN JOHNSON,

::

IN THE CIRCUIT COURT OF

Plaintiff

VS.

::

BALDWIN COUNTY, ALABAMA

EDWARD F. GOLDSMITH, M.D.,
Health Officer, and C. K.
Zehner, Inspector and employee
of the Board of Baldwin County
Health Department,

::

AT LAW

Defendants

::

CASE NO.

AFFIDAVIT

STATE OF ALABAMA

COUNTY OF MOBILE

Before me, the undersigned authority in and for said State and County, personally appeared Donald F. Coleman, who being by me first duly sworn to speak the truth, did depose and say as follows:

My name is Donald F. Coleman. I am associated with Rester and Coleman Engineers, Inc., I am a licensed surveyor holding registration number 5421. In May, 1966, we were employed by the owners of Lots 4 and 5, Wilson Heights, Third Unit, Baldwin County, Alabama, to run percolation tests and soil tests on said Lots 4 and 5 and found that both of said lots percolated at a rate that is suitable for septic tanks. My report was submitted on May 6, 1966, and shows that the holes in said lots were dry at six feet.

Donald F. Coleman
Donald F. Coleman

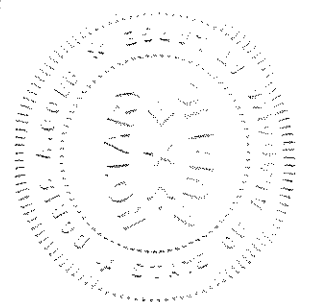
Subscribed and sworn to before me on this 9th day of Dec,
1971.

FILED

DEC 28 1971

EUNICE B. BLACKMON CIRCUIT CLERK

Doris A. Cobb
Notary Public, Mobile/County, Alabama/
State at Large



WILLIE MORGAN JOHNSON,

Plaintiff

:: IN THE CIRCUIT COURT OF

VS.

:: BALDWIN COUNTY, ALABAMA

EDWARD F. GOLDSMITH, M.D.,
Health Officer, and C. K.
ZEHNER, Inspector and employee
of the Board of Baldwin County
Health Department,

:: AT LAW

Defendants

:: CASE NO.

AFFIDAVIT

STATE OF ALABAMA

COUNTY OF MOBILE

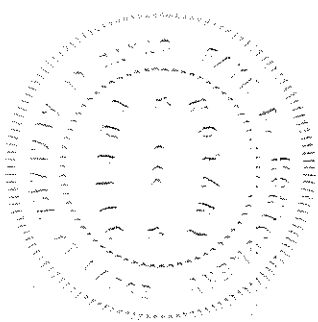
Before me, the undersigned authority in and for said State and County, personally appeared L. R. Johnston, who being by me first duly sworn to speak the truth, did depose and say as follows:

My name is L. R. Johnston. I am in the drilling and inspection business and my principal place of business is 2650 Government Street Extension, Mobile, Alabama. I have been in this business for thirty years. I am approved for soil testing, sampling and chemical analysis of soil by the United States Government, State of Alabama, and I am recognized in fourteen states in the United States where I have done business and made tests. I have represented the State of Alabama on many occasions in road construction, building construction, making soil and ground tests, percolation tests, water tests, sub-surface water and mineral tests of all types. I was employed in May, 1971, to make tests of soil and water and for percolation on Lots 4 and 5, Wilson Heights Subdivision, Third Unit. I made two borings on each lot, one boring six inches in diameter six feet deep and one twelve inches square thirty inches deep. My inspection showed that Lot 4 had top soil six inches deep, from six inches to three feet there was fine yellow sand and from three feet to six feet there was fine yellow sand with occasional clay. There was no water in the holes and the percolation tests showed that the water receded one inch

in two minutes. On Lot 5, the first six inches was top soil, from six inches to four feet was yellow fine sand with a little clay and from four feet to six inches there was fine yellow sand with some heavy clay. There was no water in the holes and the percolation showed one inch in three and one-half minutes. Both of these lots met all the specifications of the Alabama Department of Health for percolation and septic tanks. There is a natural drainage on these two lots as they are on a slight incline and I note that on both sides of these lots, being Lots 3 and 6, there are houses and septic tanks and there has been no trouble in either of these lots. It is my opinion based on my experience and education that both of these lots are suitable for septic tanks.

L. R. Johnston
L. R. Johnston

Subscribed and sworn to before me on this 6th day of Dec., 1971.



Faye B. Montgomery
Notary Public, Mobile County, Alabama

FILED
DEC 28 1971
EUNICE B. BLACKMON
CHIEF CLERK

WILLIE MORGAN JOHNSON,)
Plaintiff

IN THE CIRCUIT COURT OF

VS.)

BALDWIN COUNTY, ALABAMA

EDWARD F. GOLDSMITH, M.D.,
Health Officer, and C. K.
ZEHNER, Inspector and employee
of the Board of Baldwin County
Health Department,

AT LAW

Defendants

CASE NO. 10,120

MOTION TO DISMISS

Comes now the Defendants in the above styled cause acting by and through James A. Hendrix, the duly elected District Attorney for Baldwin County and makes this Motion To Dismiss and assigns as grounds therefor:


1. An action for Mandamus will not lie unless the agency or persons sued have no discretion but to take the action requested.

2. Issuance of a permit such as those set out in this suit are issued solely at the discretion of the Baldwin County Health Department.

3. The Baldwin County Health Department acting through its agents exercised lawful authority which rested in its discretion in the instant case.

4. The Mandamus will not lie to force an agency to do that which it has lawful authority and cause to refuse to do.

5. Sufficient grounds are not set out for the issuance of a Mandamus.


James A. Hendrix
District Attorney
Baldwin County, Alabama

2-24-72 This motion set down for hearing at 11:00 A.M.
on March 15, 1972.

Jeffery J. Marshall
Judge

FILED

FEB 25 1972

IN THE CIRCUIT COURT OF

:: BALDWIN COUNTY, ALABAMA

EDWARD F. GOLDSMITH, M.D.,
Health Officer, and C. K.
ZEHNER, Inspector and employee
of the Board of Baldwin County
Health Department,

== AT LAW

== CASE NO. 10,170

The Motion to Dismiss filed by the Defendants on February 25, 1972, after due consideration by the Court is hereby denied.

DONE this 15th day of September, 1972.

Jeffrey N. Markleberry
JUDGE

FILED

SEP 15 1972

EUNICE B. BLACKMON CIRCUIT
CLERK

WILLIE MORGAN JOHNSON,

Plaintiff

VS.

EDWARD F. GOLDSMITH, M.D.,
Health Officer, and C. K.
ZEHNER, Inspector and employee
of the Board of Baldwin County
Health Department,

Defendants

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

CASE NO. 10,170

NOTICE OF APPEAL

Come now the Defendants in the above styled cause, acting by and through James A. Hendrix as District Attorney of Baldwin County, Alabama and gives notice of appeal from the order of the Court denying the Defendants' Motion To Dismiss.

Dated this 27th day of September, 1972.


District Attorney

FILED

SEP 27 1972

EUNICE B. BLACKMON CIRCUIT
CLERK

THE STATE OF ALABAMA
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA—GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the15th day of.....
 September ~~Monday~~ 19⁷², in a cer-
 tain cause in said Court wherein Willie Morgan Johnson
 Plaintiff, and Edward F. Goldsmith, M.D., Health Officer,
and C. K. Zehner, Inspector Defendant, a judgement was rendered against said
Edward F. Goldsmith, M.D., Health Officer, and C. K. Zehner, Inspector
 to reverse which Judgment the said Edward F. Goldsmith, M.D., Health
Officer, and C. K. Zehner, Inspector and employee of the Board of Baldwin County
Health Department
 applied for and obtained from this office an APPEAL, returnable to the next
 Court of Civil Appeals
 Term of our Court of the State of Alabama, to be held at Montgomery, on the
 day of 19..... next, and ~~the necessary~~ ^{no} bond
 having been given by the said Defendants
 with ~~sureties~~

Now, You Are Hereby Commanded, without delay, to cite the said Willie Morgan Johnson
 or Maurice Downing
 as attorney, to appear at the next Term of our
 Court of Civil Appeals
 said ~~Supreme Court~~, to defend against the said Appeal, if they think proper.

Eunice B. Blackmon
 Witness, ~~ALICE J. DICK~~ Clerk of the Circuit Court of said County, this 27th
 day of September A. D., 19⁷²

Attest:

Eunice B. Blackmon Clerk.

E410-11-72

MOBILE SHERIFF DEPT.
MOBILE COUNTY, ALA.

OCT 10 11 08 AM '72

BY _____

Dep

95-80

[Signature]

10,120

CIRCUIT COURT

Baldwin County, Alabama

Willie Morgan Johnson

Vs. {

Citation in Appeal

Edward J. Goldsmith
RECEIVED
et al

OCT 5 1972

TAYLOR WILKINS
SHERIFF

Issued _____ day of _____, 19____

serve Atty 10/11X.
Maurice Downing
920 Dauphin St
Mobile
Ala

EXECUTED
This *11* day of *Oct*, 19 *72*
by serving a copy of the within on
Maurice Downing
By *RAY D. BRIDGES*, Sheriff
J. Capinwa D.S.

Div. No. _____

CERTIFICATE OF APPEAL. (Civil Cases,)

No. 10,170

Baldwin County, Circuit Court.

WILLIE MORGAN JOHNSON

Plaintiff.
vs.

EDWARD F. GOLDSMITH, M.D., Health Officer,
and G. K. ZEHNER, Inspector
Defendants

I, Eunice B. Blackmon Clerk of Circuit Court,
of Baldwin County, Alabama, hereby certify that in the
cause of Willie Morgan Johnson plaintiff
vs.

Edward F. Goldsmith, M.D., Health Officer, and G. K. Zehner, Inspector defendant
which was tried and determined in this Court on the 15th day of
September 1972, in which there was ~~a judgment for~~ ^{an order denying Motion to Dismiss}
~~Dollars, in favor of the plaintiff,~~ (or judgment
for defendant,) the Defendants on the 27th day of
September 1972, took an appeal to the Court of Civil Appeals
Court
of Alabama to be holden of and for said State.

I further certify that No
~~filed~~ security for cost of appeal, to the Court of Civil Appeals Court, on
the _____ day of _____ 19_____, and that _____ was filed
~~are sureties on the appeal bond.~~

I further certify that notice of the said appeal was on the 11
day of Oct 1972, served on Maurice Downing
as attorney of record for said appellee, and that the ~~amount~~ ^{suit} sued for
was for Writ of Mandamus or Rule Ni Si for Defendants to approve water percolation
for septic tanks for dwellings. ~~Dollars. (or certain lands)~~
(~~or personal property.~~)

Witness my hand and the seal of this Court, this the 27th
day of September 1972.

Clerk of the Circuit Court of
Baldwin
County, Alabama.

WILLIE MORGAN JOHNSON,

:: IN THE CIRCUIT COURT OF

Plaintiff

VS.

:: BALDWIN COUNTY, ALABAMA

EDWARD F. GOLDSMITH, M. D.,
Health Officer, and C. K.

ZEHNER, Inspector and employee
of the Board of Baldwin County
Health Department,

:: AT LAW

Defendants

:: CASE NO. 10,176

AFFIDAVIT

STATE OF ALABAMA

COUNTY OF MOBILE

Before me, the under signed authority in and for said State and County, personally appeared W. F. Chastain, who being by me first duly sworn to speak the truth, did depose and say as follows:

My name is W. F. Chastain. I reside at 305 McQueen Avenue, Mobile, Alabama. I was in 1965 a partner in the business of Chastain and Blass. Mr. Bill Bedsole of Bedsole Engineering Company had been employed by the subdividers of Wilson Heights, First Addition, to make the complete plat of the Wilson Heights Subdivision, First Addition. There was then a Second Addition of Wilson Heights Subdivision and I purchased all of the property known as Wilson Heights, Third Addition. I further certify that Chastain and Blass purchased these lots which were fourteen in number to build houses thereon; that at the time we purchased said lots we re-numbered said lots one through fourteen; that we employed Mr. Bedsole to make percolation tests of each of said lots so that same could be cleared to build houses and place septic tanks therein. The property was worthless to us unless we could build houses on these lots, including Lots 4 and 5, and all of these lots were approved except Lots 4 and 5. Mr. Bedsole had made these tests and the tests showed Lots 4 and 5 were suitable for septic tanks and submitted these percolation tests to Mr. C. K. Zehner of the Baldwin County Health Department. Mr. Zehner came to the site, examined the lots 4 and 5 for percolation tests and denied approval. We asked Mr. Zehner what it would take to make these lots suitable for septic tanks and

he told us by having an engineer to put down "French Drain Tile" which would properly drain said lots, and then we could get approval for our septic tanks. We employed Mr. Bedsole, who had previously surveyed said land and prepared the plat and had previously approved all lots for septic tanks. Mr. Bedsole then put down "French Drain Tile" on Lots 4 and 5, made extensive tests and called on the Baldwin County Health Department to examine these lots for approval for septic tanks. After we had gone through this expense, Mr. Zehner refused to approve these lots for septic tanks. We then employed Rester and Coleman, Engineers, to make additional tests to make sure that these lots actually were suitable for septic tanks and would pass the percolation tests. They made their independent tests and found that same was suitable for septic tanks and that the percolation tests were correct. We then made application to Mr. Zehner and the Baldwin County Health Department, Dr. Edward F. Goldsmith. They told us that these lots were not suitable and that, if we did certain things to the land, it would be suitable for septic tanks. Dr. Goldsmith gave us a letter to that effect. We asked many times for Mr. Zehner to come out and re-examine this land and re-inspect it and he did so, but he seemed to be angry about it and he would not accept these lots for septic tanks. However, Dr. Goldsmith said that he would do so if certain things were done on the land. Being confident that the land would be acceptable for septic tanks, we sold said lots to Mr. Willie Morgan Johnson, who had additional work done and we told him that we would pay for any additional work that needed to be done on said lots so that said land would be acceptable for septic tanks. Mr. L. R. Johnston of Johnston Drilling and Inspection Company, was hired to do these things and make these tests. He dug the proper holes and made the proper tests and his report showed that said land passed all regulations and requirements of the Alabama Public Health Department for septic tanks. However, I am informed and believe that C. K. Zehner has refused to accept these lots for septic tanks. I have

been trying to get these lots approved for septic tanks for ten years, but Mr. Zehner completely disapproves every one of them and completely ignores us and I believe that he is angry with us for some reason. We do not know why. However, I am at a loss to know what to do about it at this point, and I believe that the only action left to us is by a suit and mandamus to require him to do the job that he is employed to do. Attached to this affidavit and made a part hereof are the maps and plats of the First, Second and Third Units of Wilson Heights Subdivision.

W. F. Chastain
W. F. Chastain

Subscribed and sworn to before me on this 29 day of

November 1971.

Alice H. Andrews
Notary Public, Mobile County, Alabama

● ●

Plaintiff

● ●

vs.

AT LAW

CASE NO. _____

22 23

COUNTY OF MOBILE

Drive, Mobile, Alabama. I am the owner of Lots 4 and 5, Wilson Heights Subdivision, Third Unit. I purchased said lots from Mr. W. F. Chastain, one of the original subdividers of Wilson Heights, First, Second and Third Units. I know that Edward F. Goldsmith, M. D., is the Health Officer of the Baldwin County Health Department; that C. K. Zehner is the Inspection Officer connected with Baldwin County Health Department, and that both Dr. Goldsmith and Mr. C. K. Zehner are over the age of twenty-one years. After purchasing the lots in question, I wanted to build houses on these lots and I understood that they would be approved for septic tanks. Mr. W. F. Chastain employed L.R. Johnston Drilling and Inspection Company for me to make percolation tests and soil tests on these two lots so that they could be approved. When these tests were made and the tests showed that the land percolated I went to see Mr. C. K. Zehner about having these lots approved. Mr. Zehner said my predecessors in title or the previous owners had been trying to get this land to percolate for a long time and that he was not going to approve these lots for septic tanks, because in his opinion they did not percolate and he refused to re-examine these lots and told me that he was never going to approve these lots and he also

told me to get some of my "big shot friends" to help me, but that he was not going to approve these lots. He refused to go back on the lots although for many years my predecessors in title have been trying to get these lots approved for septic tanks. I have exhausted everything I know to do to get these lots to percolate. It seems to me that, if Lots 3 and 6 percolate and these two lots are on an slight incline at that point, surely the surface water would drain off and the soil is the same as it is on Lots 3 and 6; and that Mr. Zehner is being arbitrary and in my opininn it is a gross abuse of his power and authority over my property. There are three units in Wilson Heights. All the lots have been approved for septic tanks except these two lots. I can not believe that the soil under these two lots is so much different than on the lots around it and that all lots percolate except just these two. Three engineers have made reports that said lots percolate and Mr. Zehner, who is not an engineer, says they do not percolate. Underground french drain tile has been placed in these lots six feet deep and yet Mr. Zehner refuses to approve these lots for septic tanks. I believe this is a grave miscarriage of justice. I have got to have these lots to percolate or it will cost me a great deal of money.

Willie Morgan Johnson
Willie Morgan Johnson

Subscribed and sworn to before me on this 7th day of December,
1971.

Kenneth G. Dombach
Notary Public, Mobile County, Alabama
My Commission Expires 8-15-73

A circular notary seal for Kenneth G. Dombach, Notary Public, Mobile County, Alabama. The seal contains the text "NOTARY PUBLIC" and "MOBILE COUNTY, ALABAMA" around the perimeter, with the name "KENNETH G. DOMBACH" in the center.

WILLIE MORGAN JOHNSON,

:: IN THE CIRCUIT COURT OF

Plaintiff

VS.

:: BALDWIN COUNTY, ALABAMA

EDWARD F. GOLDSMITH, M.D.,
Health Officer, and C. K.
ZEHNER, Inspector and employee
of the Board of Baldwin County
Health Department,

:: AT LAW

Defendants

:: CASE NO. _____

AFFIDAVIT

STATE OF ALABAMA

COUNTY OF MOBILE

Before me, the undersigned authority in and for said State and County, personally appeared W. L. Bedsole, who being by me first duly sworn to speak the truth, did depose and say as follows:

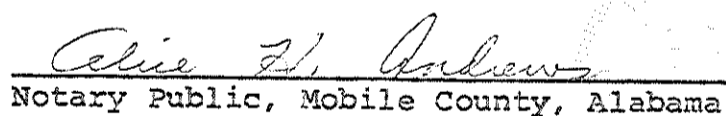
My name is W. L. Bedsole. I am a licensed surveyor. My registration number is 1911, State of Alabama. I am engaged in the surveying business and have been for 25 years. My principal place of business is 2752 Springhill Avenue, Mobile, Alabama. I do hereby state that, back in 1962, I made an inspection and run percolation tests on Lots 4 and 5, Wilson Heights Subdivision, Third Unit, for Chastain and Blass. These tests show that said land percolated and that they were suitable under the Laws of the State of Alabama for septic tanks. Originally, Baldwin County Health Department approved all of the Subdivision, but later refused to accept and approve lots 1, 3, 4, 5 and 13. Lots 1, 3 and 13 were later approved, but lots 4 and 5 have never been approved. Lots 4 and 5 are located on Marcella Avenue and are on an incline. Lots 3 and 6 have both been approved and there are houses on said lots and septic tanks are being used without any trouble whatsoever. I have made percolation tests on said property during every season of the year, spring, summer, autumn and winter, and at all times

said lots percolate and tests show that they meet all specifications for septic tanks. Since 1962, I have repeatedly attempted to have said lots approved but each time Mr. C. K. Zehner refuses to approve said lots. I, at the instruction of Mr. Zehner placed "French Drain Tile" 6.5' deep ten feet from the East property line of Lot 4 and Lot 5 and in the rear of Lots 5, 6 and part of Lot 4. I again attempted to get said lots 4 and 5 approved after placing said "French Drain Tile" in the ground on September 12, 1963, but again said approval was denied by the Baldwin County Health Department. I did everything recommended to me by the Health Department, but to no avail. For five years I ran tests on these two lots and at all times said lots percolated. In my opinion, there is no reason why these lots should not be approved.

WITNESS my hand on this 30 day of November, 1971.


W. L. Bedsole

Subscribed and sworn to before me on this 30 day of November
1971.


Notary Public, Mobile County, Alabama

IN THE CIRCUIT COURT OF

Plaintiff

WILLIE MORGAN JOHNSON,

BALDWIN COUNTY, ALABAMA

VS.

EDWARD F. GOLDSMITH, M.D.,
Health Officer, and C. K.

ZEHNER, Inspector and employee

of the Board of Baldwin County

Health Department;

Defendants

AT LAW

CASE NO. 10198

RETURN AND ANSWER

Come now the defendants, separately and severally,

and in response to the rule nisi heretofore issued show to the

Court as follows:

1. Defendants admit the averments of fact in Section

1 of the petition.

2. Defendants admit the averment of facts in Section

2 of the petition.

3. Defendants admit the averment of facts in Section

3 of the petition.

4. In answer and return to Section 4 of the petition,

defendants C. K. Zehner and E. F. Goldsmith allege as follows:

The developers of Wilson Heights, Unit 3, through

Bedsole Surveying Company, submitted a subdivision report some-

time prior to March 16, 1962. On March 16, 1962, defendant

C. K. Zehner wrote Bedsole Surveying Company and suggested that

he investigate the possibility of providing water from a public

supply source and also advised of certain conditions on 5 lots.

Copy of letter, marked Exhibit A, is attached.

Defendant C. K. Zehner received a reply from Bedsole

Surveying Company dated March 23, 1962, stating that securing

water from the suggested source was not feasible. Copy of letter,

marked Exhibit B, is attached.

The subdivision was again visited by defendant C. K.

Zehner on or about March 29, 1962, and test holes on lots 1,

4, and 5 still showed ground seep water above the acceptable

level. Lots 3 and 13 were approved at this time. Copy of

subdivision report is attached, marked Exhibit C.

Copies of letters to FHA and VA advising of status of Unit 3, Wilson Heights, are attached, marked Exhibit D and E.

On receipt of a new report from Bedsole Surveying Company dated August 15, 1962, defendant C. K. Zehner again made several visits to lots 4 and 5 and ground water above the acceptable minimum was still present, as stated in letter to Mr. Bedsole dated September 7, 1962. Copy of same, marked Exhibit F, is attached.

On receipt of subsequent requests to again inspect, defendant C. K. Zehner visited said lots and determined that said lots could not be approved under existing criteria.

During the course of a conference between defendant C. K. Zehner and Mr. Bedsole, along with the owners, the question was asked if defendant Zehner thought the lots could be drained. Mr. Bedsole and the owners were told by defendant that defendant knew of instances where lots or sites had been drained by the installation of (french drains) or sub-drains. They were advised at this time that whatever was done, the work should be under the constant supervision of an engineer or other knowledgeable person and that in any event, the proposed work would have to produce the desired results or the lots would still not be approved. Subsequently a contractor was employed by the owners to do the work. When defendant C. K. Zehner visited the job, it was evident that the sub-drain was installed without regard to soil stratas and it was defendant's voiced opinion at that time that desired results could not be obtained. In answer to question by defendant C. K. Zehner, he was advised that Mr. Bedsole came over and told them where to dig but did not advise them in any way regarding depth of penetration into chalk strata. Subsequent inspection by defendant C. K. Zehner showed that high ground-water still was a problem on said lots. Approval was denied for reasonable cause.

Following receipt of report from T. J. Restor, another inspection was made and high ground-water conditions were still

encountered and approval was again denied. Copies of reports with notations are attached and marked Exhibit G-1, G-2, G-3, G-4, G-5 and G-6.

5. In answer and return to Section 5 of the petition, defendants C. K. Zehner and E. F. Goldsmith allege as follows:

At the request of Mr. Downing, Attorney for Plaintiff, defendants Goldsmith and Zehner inspected said lots in January, 1967 and again found that lots could not be approved for septic tanks. Copy of letters to Mr. Downing, dated January 9 and January 30, are attached and marked Exhibits H and I.

Copy of a letter from defendant Goldsmith to Mr. Downing, dated June 5, 1967, advising against dry wells is attached, marked Exhibit J.

A copy of a letter marked Exhibit K, dated June 23 from James N. Garratt and Associates, to Mr. Downing, is attached. The method recommended by Mr. Garratt is illegal and dangerous as is shown in Mr. Beck's letter to Dr. Goldsmith, dated July 12, 1967. Copy of same, marked Exhibit L, is attached.

In Dr. Goldsmith's letter of August 16, 1967, he re-states what had already been discussed with the owner on a previous occasion.

Defendant did refuse to approve said lots for reasonable cause.

6. In answer and return to Section 6 of the petition, defendants C. K. Zehner and E. F. Goldsmith allege as follows:

Defendant C. K. Zehner did refuse to again inspect said lots at request of Mr. Johnson. Defendant does not recall making statement with reference to "big shot" friends.

7. In answer and return to Section 7 of the petition, defendants C. K. Zehner and E. F. Goldsmith allege as follows:

That said lots are worthless for the building of homes and further, that the evidence supports defendant's position; and that decisions by defendants are based on regulations and criteria adopted by the Alabama State Board of Health for the protection of the Public Health.

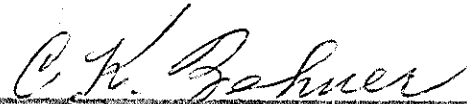
-4-

8. Defendants deny that the failure to approve said lots for installation of septic tanks is a failure to perform a ministerial duty imposed by statute; and for further answer aver that defendants' disapproval of said lots for installation of septic tanks was a decision involving the exercise of discretion and that such act was reasonable and in accordance with the statutes and rules and regulations of the State Committee of Public Health.

WHEREFORE, PREMISES CONSIDERED, and defendants having fully answered and made return to the rule nisi heretofore issued and having shown cause why defendants should not issue approval of permits to plaintiffs to install septic tanks upon said lots, pray that this Court will set this cause down for hearing and upon final hearing deny relief to petitioners.



E. F. GOLDSMITH, M. D.
HEALTH OFFICER OF BALDWIN COUNTY



C. K. ZEHNER
REGISTERED SANITARIAN
BALDWIN COUNTY HEALTH DEPARTMENT

STATE OF ALABAMA)

BALDWIN COUNTY)

Before me, the undersigned Notary Public in and for said county in said State, personally appeared E. F. Goldsmith and C. K. Zehner, whose names are subscribed to the foregoing return and answer, who are personally known to me as the Health Officer of Baldwin County and as a Sanitarian of the Baldwin County Health Department, respectively, and after being duly sworn depose and say that the matters averred in the foregoing return and answer are true and correct.

On this the _____ day of _____, 1973.

Notary Public

subdivision report is attached, marked Exhibit C.

Copies of letters to FHA and VA advising of status of Unit 3, Wilson Heights, are attached, marked Exhibit D and E.

On receipt of a new report from Bedsole Surveying Company dated August 15, 1962, defendant C. K. Zehner again made several visits to lots 4 and 5 and ground water above the acceptable minimum was still present, as stated in letter to Mr. Bedsole dated September 7, 1962. Copy of same, marked Exhibit F, is attached.

On receipt of subsequent requests to again inspect, defendant C. K. Zehner visited said lots and determined that said lots could not be approved under existing criteria.

During the course of a conference between defendant C. K. Zehner and Mr. Bedsole, along with the owners, the question was asked if defendant Zehner thought the lots could be drained. Mr. Bedsole and the owners were told by defendant that defendant knew of instances where lots or sites had been drained by the installation of (french drains) or sub-drains. They were advised at this time that whatever was done, the work should be under the constant supervision of an engineer or other knowledgeable person and that in any event, the proposed work would have to produce the desired results or the lots would still not be approved. Subsequently a contractor was employed by the owners to do the work. When defendant C. K. Zehner visited the job, it was evident that the sub-drain was installed without regard to soil stratas and it was defendant's voiced opinion at that time that desired results could not be obtained. In answer to question by defendant C. K. Zehner, he was advised that Mr. Bedsole came over and told them where to dig but did not advise them in any way regarding depth of penetration into chalk strata. Subsequent inspection by defendant C. K. Zehner showed that high ground-water still was a problem on said lots. Approval was denied for reasonable cause.

Following receipt of report from T. J. Restor, another inspection was made and high ground-water conditions were still

encountered and approval was again denied. Copies of reports with notations are attached and marked Exhibit G-1, G-2, G-3, G-4, G-5 and G-6.

5. In answer and return to Section 5 of the petition, defendants C. K. Zehner and E. F. Goldsmith allege as follows:

At the request of Mr. Downing, Attorney for Plaintiff, defendants Goldsmith and Zehner inspected said lots in January, 1967 and again found that lots could not be approved for septic tanks. Copy of letters to Mr. Downing, dated January 9 and January 30, are attached and marked Exhibits H and I.

Copy of a letter from defendant Goldsmith to Mr. Downing, dated June 5, 1967, advising against dry wells is attached, marked Exhibit J.

A copy of a letter marked Exhibit K, dated June 23 from James N. Garratt and Associates, to Mr. Downing, is attached. The method recommended by Mr. Garratt is illegal and dangerous as is shown in Mr. Beck's letter to Dr. Goldsmith, dated July 12, 1967. Copy of same, marked Exhibit L, is attached.

In Dr. Goldsmith's letter of August 16, 1967, he re-states what had already been discussed with the owner on a previous occasion.

Defendant did refuse to approve said lots for reasonable cause.

6. In answer and return to Section 6 of the petition, defendants C. K. Zehner and E. F. Goldsmith allege as follows:

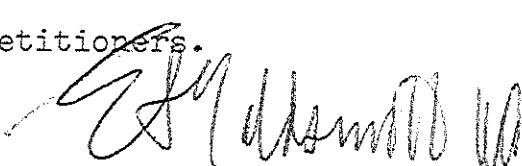
Defendant C. K. Zehner did refuse to again inspect said lots at request of Mr. Johnson. Defendant does not recall making statement with reference to "big shot" friends.

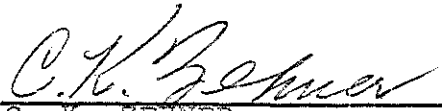
7. In answer and return to Section 7 of the petition, defendants C. K. Zehner and E. F. Goldsmith allege as follows:

That said lots are worthless for the building of homes and further, that the evidence supports defendant's position; and that decisions by defendants are based on regulations and criteria adopted by the Alabama State Board of Health for the protection of the Public Health.

8. Defendants deny that the failure to approve said lots for installation of septic tanks is a failure to perform a ministerial duty imposed by statute; and for further answer aver that defendants' disapproval of said lots for installation of septic tanks was a decision involving the exercise of discretion and that such act was reasonable and in accordance with the statutes and rules and regulations of the State Committee of Public Health.

WHEREFORE, PREMISES CONSIDERED, and defendants having fully answered and made return to the rule nisi heretofore issued and having shown cause why defendants should not issue approval of permits to plaintiffs to install septic tanks upon said lots, pray that this Court will set this cause down for hearing and upon final hearing deny relief to petitioners.


E. F. GOLDSMITH, M. D.
HEALTH OFFICER OF BALDWIN COUNTY


C. K. ZEHNER
REGISTERED SANITARIAN
BALDWIN COUNTY HEALTH DEPARTMENT

STATE OF ALABAMA)
BALDWIN COUNTY)

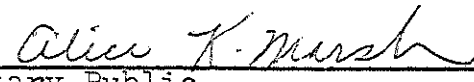
Before me, the undersigned Notary Public in and for said county in said State, personally appeared E. F. Goldsmith and C. K. Zehner, whose names are subscribed to the foregoing return and answer, who are personally known to me as the Health Officer of Baldwin County and as a Sanitarian of the Baldwin County Health Department, respectively, and after being duly sworn depose and say that the matters averred in the foregoing return and answer are true and correct.

On this the 5 day of March, 1973.

FILED

MAR 9 1973

EUNICE B. BLACKMON CIRCUIT
 CLERK


Notary Public

WILLIE MORGAN JOHNSON,
Plaintiff

IN THE CIRCUIT COURT OF

VS.

BALDWIN COUNTY, ALABAMA

EDWARD F. GOLDSMITH, M.D.,
Health Officer, and C. K.
ZEHNER, Inspector and employee
of the Board of Baldwin County
Health Department,
Defendants

AT LAW

CASE NO. 10,170

RETURN AND ANSWER

Come now the defendants, separately and severally,
and in response to the rule nisi heretofore issued show to the
Court as follows:

1. Defendants admit the averments of fact in Section
1 of the petition.

2. Defendants admit the averment of facts in Section
2 of the petition.

3. Defendants admit the averment of facts in Section
3 of the petition.

4. In answer and return to Section 4 of the petition,
defendants C. K. Zehner and E. F. Goldsmith allege as follows:

The developers of Wilson Heights, Unit 3, through
Bedsole Surveying Company, submitted a subdivision report some-
time prior to March 16, 1962. On March 16, 1962, defendant
C. K. Zehner wrote Bedsole Surveying Company and suggested that
he investigate the possibility of providing water from a public
supply source and also advised of certain conditions on 5 lots.
Copy of letter, marked Exhibit A, is attached.

Defendant C. K. Zehner received a reply from Bedsole
Surveying Company dated March 23, 1962, stating that securing
water from the suggested source was not feasible. Copy of letter,
marked Exhibit B, is attached.

The subdivision was again visited by defendant C. K.
Zehner on or about March 29, 1962, and test holes on lots 1,
4, and 5 still showed ground seep water above the acceptable
level. Lots 3 and 13 were approved at this time. Copy of

Ex. A.

March 16, 1962

Bedsole Surveying Company
2752 Springhill Ave.
Mobile, Alabama

Dear Mr. Bedsole:

I am returning your report for the
third unit of Wilson Heights.

There is a public water system owned
by Alabama Mineral Products Corporation which serves
Pineda Island. The well and pump are located in the area
of Fellowship Tabernacle - Mrs. Wilson can show you where
it is. We want your estimate of the cost for providing
mains from this system. Please break it down into supply
mains and service lines.

Also, I found water in test borings
at three and four feet on lots 1, 3, 4, 5, 13. These same
lots showed extensive rock formation at about five feet
level or above. You may wish to try another spot on the
lots.

Please inform Chastain and Bliss not
to sell and start building on any of these lots until the
area is approved. I am keeping one map for my file.

Yours very truly,

C. K. Zehner, R.S.
Sanitation Officer III.

encl.

B

BEDSOLE SURVEYING COMPANY

2752 SPRINGHILL AVENUE

MOBILE, ALABAMA

3-23-62

GENERAL LAND SURVEYING
SUBDIVISION LAYOUT

RES.: GREENWOOD 8-8244
EUS.: GREENWOOD 7-4179

Mr. C. K. Zehner,
Sanitation Officer,
Baldwin County Health Department,
Bay Minette, Ala.

Dear Mr. Zehner:

In accordance with your letter under date of March 16th, we are herewith re-submitting "Subdivision Supply and Sewage Disposal Report" on WILSON HEIGHTS SUBDIVISION, THIRD UNIT.

We have rechecked the percolations and water table on this unit and have found conditions to be favorable as shown on the above mentioned report.

We are submitting an estimated cost for the installation of a public water system for the Second and Third Unit and is of course based upon the supposition that we may be permitted to tie into the Pineda Island System that is located approximately one mile west of the Wilson Heights Subdivision and owned by the Alabama Mineral Products Corporation. It will be noted that our estimated cost is \$48,809.30 for the Second and Third Units only which will average \$1,109.30 per lot for both units. This cost is a very minimum estimate for both units.

We would like to call to your attention that we believe the system owned by the Alabama Mineral Products Corporation is a private system for the development of the Pineda Island project only, and is not a public system. The undersigned laid out this system in the field in its initial stage. We would also like to point out that at present this system does not meet F.H.A. requirements.

We also advise that the above mentioned Corporation, about six months ago, was contacted in reference to the possibility of making connection with their system, but to date no favorable reply has been received.

We would sincerely appreciate your taking these facts into consideration when reviewing the THIRD UNIT for approval.

Yours very truly,

BEDSOLE SURVEYING COMPANY,


W. L. Bedsole

WLB:jd

SUBDIVISION WATER SUPPLY AND SEWAGE DISPOSAL REPORT
ALABAMA DEPARTMENT OF PUBLIC HEALTH
BUREAU OF SANITATION

Part II

(For use by Health Authorities)

Name of Sponsor Chastain & Blass Real Estate Co. Address 166 S. Wilson Ave.
Pritchard, Ala.

Name of Subdivision Wilson Heights; Third Unit Location Spanish Fort, Ala.

Size: Acres 7; Min. Lot 20,000 Sq. Ft. Number of Lots 14 Max. Bedrooms Per Lot 3

It is our opinion that the area as a whole is suitable for the use of individual septic tank systems; provided the tract, or portions of the tract designated, conforms to the following conditions: Approval is withheld on lots

1, 4 and 5 because water in the test holes is only 4" from the surface.

All septic tank installations shall be in accordance with existing regulations.

It is our opinion that the area as a whole is unsuitable for the use of individual septic tank systems for the following reasons: _____

Suggested alternate methods of sewage disposal are: _____

It is understood that the conclusions rendered in this report do not cover the installation of the individual septic tank systems. The installation of each system shall be based upon specific conditions affecting each building lot.

Signature and Title E. K. Zuber Baldwin County Health Department Sanitation Officer

Date March 29, 1962

We concur in action taken by the Baldwin County

Health Department. Our approval is based upon the area conforming to the following additional conditions: _____

Signature and Title Arthur N. Beck Alabama Department of Public Health
Date April 12, 1962 Arthur N. Beck, Chief Engineer and Director, Bureau of Sanitation

**Test Borings
(Six Feet in Depth)**

| Test Hole | Type Soil and Water Level in Hole | Test Hole | Type Soil and Water Level in Hole | Test Hole | Type Soil and Water Level in Hole | Test Hole | Type Soil and Water Level in Hole |
|-----------|-----------------------------------|-----------|-----------------------------------|-----------|-----------------------------------|-----------|-----------------------------------|
| 1 | No Water | 6 | No Water | 11 | No Water | 16 | |
| 2 | No Water | 7 | No Water | 12 | No Water | 17 | |
| 3 | Water at 5'6" | 8 | No Water | 13 | No Water | 18 | |
| 4 | Water at 5'3" | 9 | No Water | 14 | No Water | 19 | |
| 5 | No Water | 10 | No Water | 15 | | 20 | |

Attach Additional Sheets Where Necessary.

SOIL CHARACTERISTICS

0.0' to 1.0' Topsoil

1.0' to 6.0' Tan and Red Clay and Sand.

Is a Vicinity Map Provided? Yes

Does the Plot Plan Show:

1. Dimensioned Layout of lots, Streets and easements? Yes
2. Block and lot numbers? Yes
3. Topography of area with drains, original and finished grades, where changes are anticipated and needed? Yes
4. Location and identification of percolation test holes and borings? Yes

Is an adequate drainage plan provided? Yes

If Septic tanks and fields are recommended, what are your conclusions (based on percolation tests, soil borings and other conditions) as to the suitability of the soil in all representative parts of this subdivision for such installations? (Use an attached sheet if necessary)

Favorable for septic tank installation.

Does the proposed subdivision meet all the requirements set forth in Section V of the Subdivision Criteria: "Requirements for Approval"? Yes X No If answer is No, please outline items not in compliance (use on attached sheet if necessary)

Are all materials submitted in quadruplicate? Yes

Report made by: BEDSOLE SURVEYING COMPANY

Signature [Signature]

Reg. No. 1911

2752 Springhill Ave., Mobile, Ala.

Date 3-23-62

SUBDIVISION WATER SUPPLY AND SEWAGE DISPOSAL REPORT
ALABAMA DEPARTMENT OF PUBLIC HEALTH
BUREAU OF SANITATION
PART I

(To be completed and signed by a Registered Engineer)

Name of Sponsor Chastain & Blass Real Est. Co. Address 166 S. Wilson Avenue
Priest, Ala.

Name of Subdivision WILSON HEIGHTS SUBDIVISION Location Rt. 1, Daphne, Ala.
THIRD UNIT

Size: Acres 7.0; Min. Lot 20,000 Sq. Ft. Number of Lots 14 Max. Bedrooms Per Lot 3
Chastain and Blass Real Est. Co.

Signature of Sponsor By: [Signature]

Proposed Source: ☐ Public System ☐ Community System ☒ Individual Wells

If a Public or Community Water Supply System is to be used, completion of following items under Water Supply may be omitted.

Distance to Nearest Public Main 1 mi.; Size of Nearest Public Main 6"
 (For Second & Third Units) \$ 48,809.30
 Cost of Connecting _____ Total estimated cost* _____ Cost/lot of connecting \$1,109.30

\$4,900.00
 Estimated Cost of Individual Supply 350.00 per lot Connection to public main feasible? No

If public connection not feasible Is Community System Feasible? No

Sewage Disposal

Proposed System: ☐ Public Sewer ☐ Community System ☒ Individual Septic Tanks

If a Public or Community System is to be used, the following items on sewage disposal may be omitted.

Distance to Nearest City Sewer 15 miles Size 8" Connection by Gravity? No

Total Estimated Cost of Connection to Sewer including manholes, Pumping Station (if necessary), etc.

*\$ NOT FEASIBLE; Cost per lot for Connection \$ -----
 (Third Unit Only)

Cost of installing a Community Sewer & Treatment \$* 38,557.60 Cost per Lot \$ 2,754.11

\$4,200.00
 Cost of Individual Septic Tank System \$* 300.00 per lot Based upon the above comparative costs,

List your recommendations concerning Sewage disposal Method to be used: _____

Individual Septic Tanks recommended.

* Attach an itemized statement of Cost of various parts of System.

Where a connection to a public sewer or Community System is not feasible, percolation tests will be made in accordance with instructions for such tests. Results of these tests and for borings shall be recorded in the space provided below.

Percolation Test Results

| Test Hole | Stabilized Rate | Test Hole | Stabilized Rate | Test Hole | Stabilized Rate | Test Hole | Stabilized Rate | Test Hole | Stabilized Rate | Test Hole | Stabilized Rate |
|-----------|-----------------|-----------|-----------------|-----------|-----------------|-----------|-----------------|-----------|-----------------|-----------|-----------------|
| 1 | 15 min. | 6 | 11 min. | 11 | 12 min. | 16 | | 21 | | 26 | |
| 2 | 12 min. | 7 | 10 min. | 12 | 11 min. | 17 | | 22 | | 27 | |
| 3 | 16 min. | 8 | 12 min. | 13 | 11 min. | 18 | | 23 | | 28 | |
| 4 | 16 min. | 9 | 12 min. | 14 | 11 min. | 19 | | 24 | | 29 | |
| 5 | 15 min. | 10 | 10 min. | 15 | | 20 | | 25 | | 30 | |

(Over)

State of Alabama
Department of Public Health
State Office Building
Montgomery 4, Alabama
Montgomery 4, Alabama

D. G. GILL, M. D.
STATE HEALTH OFFICER
D. G. GILL, M. D.
STATE HEALTH OFFICER

April 12, 1962

April 12, 1962

Mr. Abner C. Johnson
State Director, Acting Chief
Federal Housing Administration
Birmingham, Alabama

Dear Mr. Johnson:

We are enclosing a copy of our Subdivision Water Supply and Sewage Disposal Report, together with a map in reference to the Wilson Heights Subdivision, Third Unit, sponsored by Chastain & Elsass Real Estate Company, 166 S. Wilson Avenue, Prichard, Alabama.

Our concurrence in action taken by the Baldwin County Health Department in this matter is indicated on Part II of the report.

Very truly yours,
Arthur N. Beck

Arthur N. Beck
Chief Engineer and Director
Bureau of Sanitation

Chief Engineer and Director
Bureau of Sanitation

AND/EVB/m2

Encl. VB/m2

cc: Dr. W. B. Nelson

cc: Mr. W. L. Ebdale

Chastain & Elsass Real Estate Company

Chastain & Elsass Real Estate Company

State of Alabama
Department of Public Health
State Office Building
Montgomery 4, Alabama

D. G. GILL, M. D.
STATE HEALTH OFFICER

April 12, 1962

E

Mr. Wheeler Melton, Acting Chief
Appraisal Section
Veterans Administration
400 Lee Street
Montgomery, Alabama

Dear Mr. Melton:

We are enclosing a copy of our Subdivision Water Supply and Sewage Disposal Report, together with a map in reference to the Wilson Heights Subdivision, Third Unit, sponsored by Chastain & Blass Real Estate Company, 166 S. Wilson Avenue, Prichard, Alabama.

Our concurrence in action taken by the Baldwin County Health Department in this matter is indicated on Part II of the report.

Yours very truly,



Arthur N. Beck
Chief Engineer and Director
Bureau of Sanitation

ANB/RVB/ml

Encl.

cc: Dr. W. B. Nelson

Mr. W. L. Bedsole

Chastain & Blass Real Estate Company

ESTIMATED COST
COMMUNITY SEWAGE SYSTEM

WILSON HEIGHTS SUBDIVISION

THIRD UNIT

| | |
|--|--------------|
| Disposal Plant (Compact Unit) | \$ 22,500.00 |
| 900 L. F. 8" V. C. Pipe @ \$3.65 per L. F. | 3,285.00 |
| 4 Manholes @ \$275.00 Each | 1,100.00 |
| 14 Each 8"x8"x6" Wyes @ \$3.90 Each | 54.60 |
| 560 L. F. 6" Sewer Laterals @ \$2.80 per L. F. | 1,568.00 |
| Cypress Running Board, 100 L. F. @ .20¢ | 20.00 |
| Reef Shell, 10 C. Y. @ \$3.00 per C. Y. | 30.00 |
| Area for Disposal Unit (Less in 4 Lots) | 10,000.00 |

TOTAL ESTIMATED COST \$ 38,557.60

14 Lots at \$2,754.11 per lot.

BRIDGES SURVEYING COMPANY

ESTIMATED COST FOR PUBLIC WATER SYSTEM

WILSON HEIGHTS

2ND & 3RD UNITS

| | |
|--|--------------|
| 9109 L. F. 6" Main @ \$3.90 per L. F. | \$ 35,525.10 |
| 4 Each 45° Bends @ \$25.00 Each | 100.00 |
| 5 Each Fire Hydrants @ \$185.00 Each | 925.00 |
| 4 Each 6" Plugs @ \$5.00 Each | 20.00 |
| 9 Each 6" Tees @ \$10.00 Each | 90.00 |
| 17 Each 6" Gate Valves @ \$80.00 Each | 1,360.00 |
| 44 Each 5/8" Curb Cocks @ \$6.95 Each | 305.80 |
| 88 Each 5/8" Flare Fittings @ \$6.95 Each | 611.60 |
| 44 Each 5/8" Close-out Valves @ \$6.95 Each | 305.80 |
| 1760 L.F. 3/4" Type "K" Copper Tubing @ \$1.35 per L. F. | 2,376.00 |
| 1 Wet Connection | 350.00 |
| Remove and Replace Pavement for Laterals and Mains | 2,000.00 |
| 44 Meters @ \$85.00 Each | 3,740.00 |
| 44 Meter Boxes @ \$25.00 Each | 1,100.00 |

ESTIMATED TOTAL MINIMUM COST \$48,809.30

\$1,109.30 Per Lot

The above estimated cost is based upon the contention that Alabama Mineral Products Corporation which owns the private system one mile west of Wilson Heights will agree to the connection, and also upon the provision that said Alabama Mineral Products Corporation will install the necessary pumps and filters to meet F.H.A. requirements.

STATE OF ALABAMA
DEPARTMENT OF PUBLIC HEALTH
STATE OFFICE BUILDING
MONTGOMERY 4, ALABAMA

D. G. GILL, M. D.
STATE HEALTH OFFICER

April 11, 1962

BUREAU OF SANITATION
ARTHUR N. BECK,
DIRECTOR

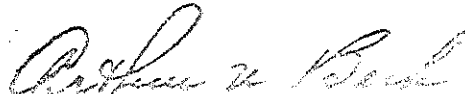
To The County Health Officer:

Dear Doctor:

We are enclosing copies of a letter to the planning agency in your county under whose jurisdiction the described subdivision might fall. It is felt that advising the planning commission of our approval of the project will assist in keeping all interested parties more fully informed and will result in closer cooperation.

We suggest that you might forward the enclosed letter to the interested agency. If there is no planning commission involved you might forward it to the sponsor, keep it for your files or dispose of it in any manner you deem advisable.

Yours very truly,


Arthur N. Beck
Chief Engineer and Director
Bureau of Sanitation

ANB/RVB/ml

Encl.

STATE OF ALABAMA
DEPARTMENT OF PUBLIC HEALTH
STATE OFFICE BUILDING
MONTGOMERY 4, ALABAMA

D. G. GILL, M. D.
STATE HEALTH OFFICER

April 12, 1962

BUREAU OF SANITATION
ARTHUR N. BECK,
DIRECTOR

To The Official
Planning Agency

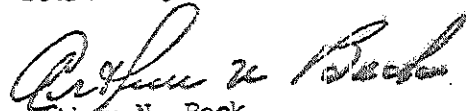
Subdivision Wilson Heights, Third Unit
Location Baldwin County
Sponsor Chastain & Blass Real Estate Co.
Address 166 S. Wilson Avenue
Date Approved April 12, 1962

Dear Sirs:

The method of sewage disposal for the subdivision described herein has been approved by the County and State Health Departments contingent upon the following conditions: Approval is withheld on lots 1, 4 and 5 because water in the test holes is only 4' from the surface. All septic tank installations shall be in accordance with existing regulations.

If we can give assistance on our mutual problems, please feel free to call on us.

Yours very truly,


Arthur N. Beck
Chief Engineer and Director
Bureau of Sanitation

ANB/RVB/ml

cc: Mr. Russell B. Johnson

Ex. J.

August 16, 1967.

Hon. Maurice A. Downing
P. O. Box 4457
Mobile, Alabama 36604.

Dear Mr. Downing:

In regard to lots 1, 4 and 5
Wilson Heights Subdivision, 3rd Addition.

The above mentioned lots, as
they now stand, are not suitable for septic tank
installation because of high static ground water.

It is my considered opinion that
this condition can be corrected, but some method
of lowering this high water table other than a dry
well or cesspool must be used.

A frequently used method for this
is a subsurface drainage system, that would have
to be designed and installed under the supervision
of a civil or sanitary engineer.

Yours very truly,

Edward F. Goldsmith, M.D.
Health Officer.

EFG/1

September 7, 1942.

Reichle Surveying Company
2728 Springhill Ave.
Mobile, Alabama

Dear Mr. Reichle:

I do not feel that there has been any change in the condition which causes the high groundwater on the three lots in Wilson Heights, therefore I am not going to approve these lots at this time. I will hold the reports and examine them during the fall or winter period.

Yours truly,

C. E. Zehner, R.S.
Sanitation Officer III.

T. J. RESTER
205 GOVERNMENT STREET
P. O. BOX 1101
MOBILE, ALABAMA

B.

July 12, 1966

Mr. Chas. E. Zehner,
Health Department,
Bay Minette, Ala.

Dear Mr. Zehner:

I am enclosing engineer's report on lots one, four and five, Third Unit, Wilson Heights.

It was my intention to get this to you sooner, but misplaced it. I have some prospective builders interested over there and shall be awaiting your report.

Thanking you, I am

Sincerely yours,

T. J. Rester
T. J. Rester

TJR/W

INDIVIDUAL WATER SUPPLY AND SEWAGE DISPOSAL REPORT
Alabama Department of Public Health
Bureau of Sanitation

2-1

Part I

(To be completed and signed by a Registered Engineer or Land Surveyor)

City or Beat No. Spanish Fort, Ala. Location: Sec. 28 T 4 S R 2 E
Owner T. J. Rester, Sr Owner's Address 205 Government St - Mobile, Ala.
Subdivision Wilson Heights, Third Unit Lot No. 1 Size lot 20,125 sq. ft.
Date: Subdivision recorded May 11, 1962
Grease Trap: ☒ Yes ☐ No Approved _____ Percent Developed _____
Laundry Waste: ☒ Yes ☐ No Garbage Grinder: ☐ Yes ☒ No Bdrms 3

If other than residential property give estimated sewage flow per day _____

Signature of Owner _____

Water Supply:

☒ Public

☐ Community

☐ Individual

Nearest Dist. to Sewer 2 Miles

To Public Water Supply _____

Percolation Test:
(See Back for
Instructions)

Test Hole
1
2

Stabilized Rate
9.9 MPI

Additional Tests _____

Soil Borings:

Type Soil Red Clay

Water level in hole from surface of ground Dry @ 6'

A plot plan dated May 4, 1966

and prepared by Rester and Coleman Engineers, Inc.

showing layout of septic tank with reference to the topography, house, lot lines and existing or proposed wells is attached to and
made a part of this report

Report made by:

Signature

Donald F. Coleman

Reg. No. 5421

Address 51 St Michael St - Mobile, Alabama

Date May 6, 1966

Part II

(For use by Health Authorities)

It is our opinion that the use of an individual septic tank system on the lot (☐ is suitable provided it conforms to) (☐ is
not suitable by reason of) the following conditions: _____

It is understood that the opinion rendered in this report does not cover the construction of the septic tank system. Accept-
ance will be based upon compliance with all health department requirements.

Signature and Title _____ County Health Department

Date _____

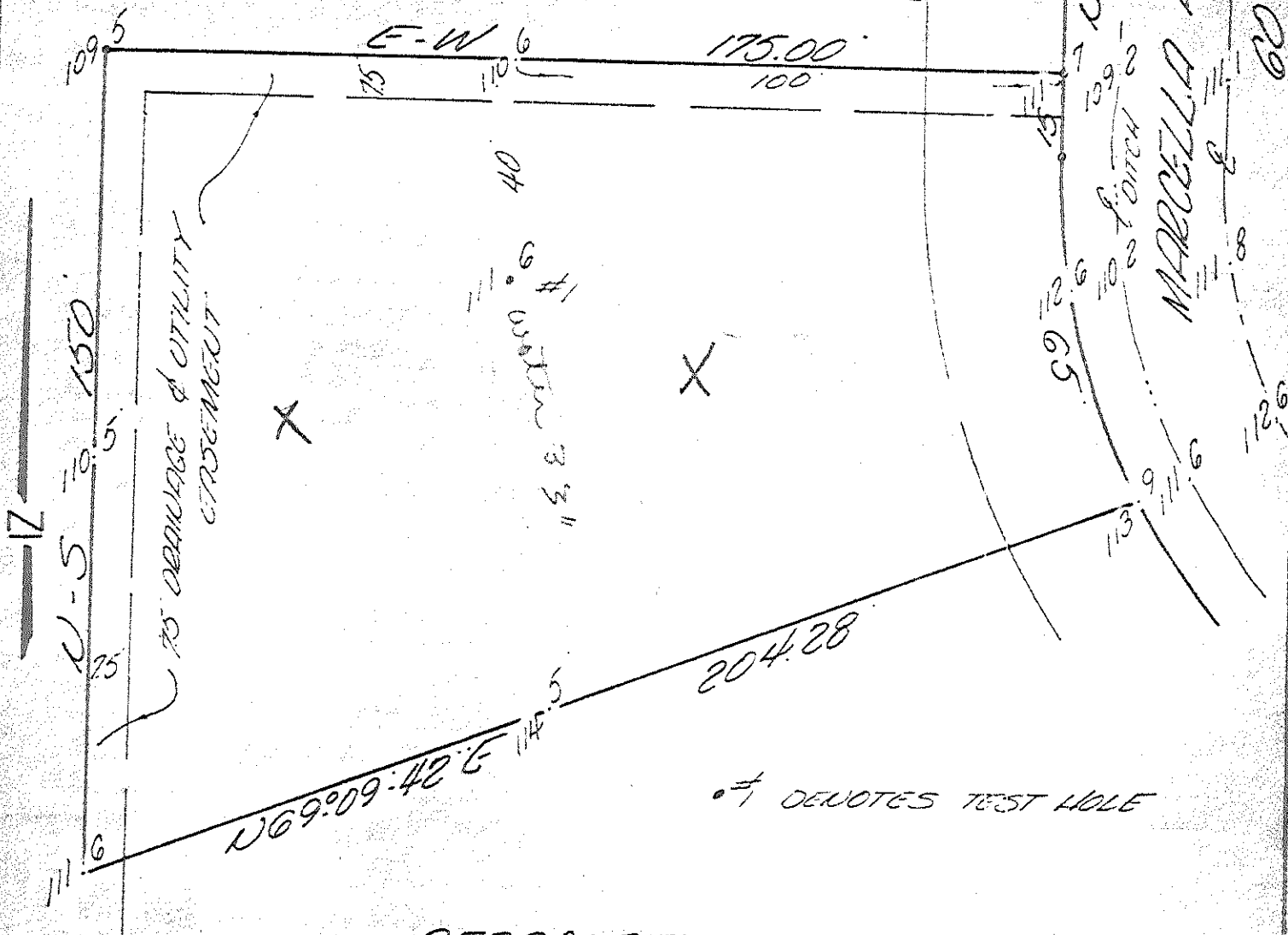
DENISE LAINE

Y-2

ASSUMED H/I = 120.0

25' MIN. BUILDING
SETBACK LINE

R=25
T=25



INDIVIDUAL WATER SUPPLY AND SEWAGE DISPOSAL REPORT
Alabama Department of Public Health
Bureau of Sanitation

Y-3

Part I

(To be completed and signed by a Registered Engineer or Land Surveyor)

City or Beat No. Spanish Fort, Ala Location: Sec. 28 T 4 S R 2 E
Owner T J Rester, Sr Owner's Address 205 Government St - Mobile, Ala.
Subdivision Wilson Heights, Third Unit Block No. Lot No. 4 Size lot 20,165 sq. ft.
Date: Subdivision recorded May 11, 1962 Approved Percent Developed 3
Grease Trap: ☒ Yes ☐ No Garbage Grinder: ☐ Yes ☒ No Bdrms
Laundry Waste: ☒ Yes ☐ No

If other than residential property give estimated sewage flow per day

Signature of Owner

Water Supply: ☒ Public ☐ Community ☐ Individual
Nearest Dist. to Sewer 2 Miles ; To Public Water Supply
Percolation Test: (See Back for Instructions) Test Hole 1 Stabilized Rate 7.3 Additional Tests
Soil Borings: Type Soil Red Clay

Water level in hole from surface of ground Dry @ 6'

A plot plan dated May 4, 1966 and prepared by Rester & Coleman Engineers, Inc.
showing layout of septic tank with reference to the topography, house, lot lines and existing or proposed walls is attached to and
made a part of this report.

Report made by: Donald F. Coleman
Signature Reg. No. 5421
Address 51 St Michael St - Mobile, Alabama Date May 6, 1966

Part II

(For use by Health Authorities)

It is our opinion that the use of an individual septic tank system on the lot (☐ is suitable provided it conforms to) (☐ is
not suitable by reason of) the following conditions:

It is understood that the opinion rendered in this report does not cover the construction of the septic tank system. Accept-
ance will be based upon compliance with all health department requirements.

County Health Department
Signature and Title
Date

SEWAGE LAINE

Field notes 1282

A-4

MARCELLA AVENUE 60' W

ASSUMED H₁ = 120.0

#1 DEVOES TEST
HOLE

25 MIN. BLOG
SETBACK LINE

50 113.9 #1

7.5 ORDNANCE &
UTILITY EASEMENT

PERCOLATION TEST

LOT 4, WILSON HEIGHTS SUBDIVISION, THIRD UNIT
MAY 4, 1966

Water at 4.2"

30

see lot 5
plain

H-5

INDIVIDUAL WATER SUPPLY AND SEWAGE DISPOSAL REPORT
Alabama Department of Public Health
Bureau of Sanitation

Part I

(To be completed and signed by a Registered Engineer or Land Surveyor)

City or Beat No. Spanish Fort, Ala. Location: Sec. 28 T 4 S R 2 E
Owner T. J. Rester, Sr. Owner's Address 205 Government St -- Mobile, Ala.
Subdivision Wilson Heights, Third Unit Block No. 5 Lot No. 5 Size lot 20,896 sq. ft.
Date: Subdivision recorded May 11, 1962 Approved _____ Percent Developed _____
Grease Trap: ☒ Yes ☐ No Garbage Grinder: ☐ Yes ☒ No Bdrms 3
Laundry Waste: ☒ Yes ☐ No
If other than residential property give estimated sewage flow per day _____

Signature of Owner _____

Water Supply: ☒ Public ☐ Community ☐ Individual
Nearest Dist. to Sewer 2 Miles ; To Public Water Supply _____
Percolation Test: Test Hole 1 Stabilized Rate Additional Tests
(See Back for 2 17.0 MPI Instructions)
Soil Borings: Type Soil White Clay

Water level in hole from surface of ground Dry @ 6'

A plot plan dated May 4, 1966 and prepared by Rester & Coleman Engineers, Inc.
showing layout of septic tank with reference to the topography, house, lot lines and existing or proposed wells is attached to and made a part of this report.

Report made by: Donald F. Coleman Reg. No. 5421
Signature _____ Date May 6, 1966
Address 51 St Michael St - Mobile, Alabama

Part II

(For use by Health Authorities)

It is our opinion that the use of an individual septic tank system on the lot (☐ is suitable provided it conforms to) (☐ is not suitable by reason of) the following conditions: _____

It is understood that the opinion rendered in this report does not cover the construction of the septic tank system. Acceptance will be based upon compliance with all health department requirements.

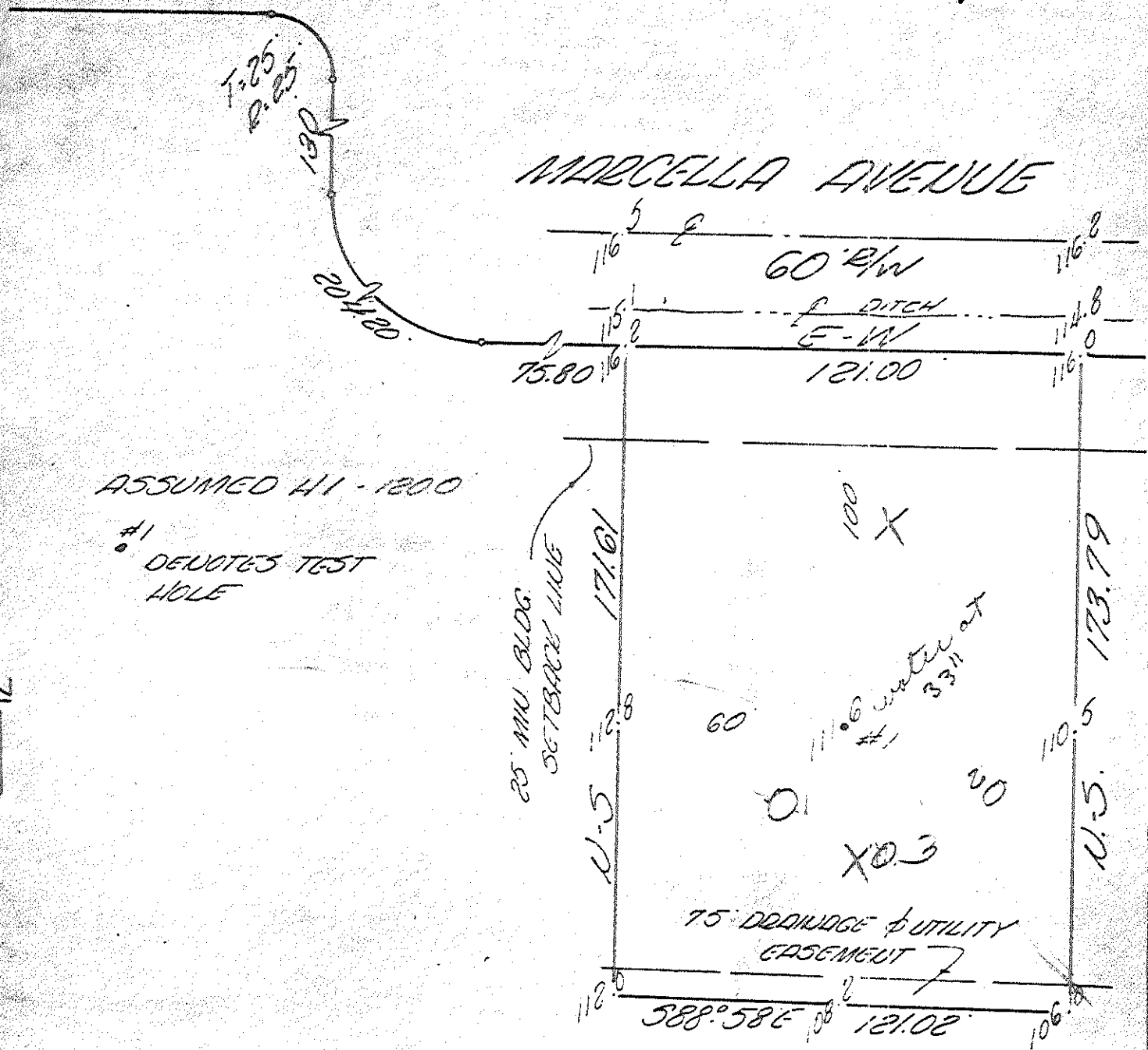
County Health Department

Signature and Title _____

Date _____

DEVISE LANE

Y-6



PERCOLATION TEST

LOT 5, WILSON HEIGHTS SUBDIVISION THIRD UNIT
MAY 4, 1966

| | | |
|-----------------|--------|--------------|
| Hit water in #1 | at 42" | 30 min later |
| " #2 | 60" | 39" |
| " #3 | 60" | 39" |

Lot

E4 H

January 9, 1967.

Mr. Maurice H. Downing
920 Dauphin St.
Mobile, Alabama.

Dear Mr. Downing:

On 6 January 1967, we went to Wilson Heights Subdivision, Third Unit, and checked lots No. 1, No. 4 and No. 5.

On Lot No. 1, water was 33 inches below ground level.

On Lot No. 4, water was 42 inches below ground level.

On Lot No. 5, water was 33 inches below ground level.

On the basis of the above, this office cannot approve these lots for a septic tank and drain field.

These lots will be rechecked by this office two weeks after the last rainfall, in that area, and if any or all lots are acceptable, you will be so notified.

Yours very truly,

Edward F. Goldsmith, M.D.
Health Officer.

EFG/I

Ex. I

9

January 30, 1967.

Hon. Maurice Downing
920 Dauphin St.
Mobile, Ala.

Dear Mr. Downing:

On 26 January 1967, this office again reviewed lots 1, 4 and 5 in Unit No. 3 Wilson Heights Subdivision. We found:

ground water was 42" on lot No. 1
ground water was 56" on lot No. 4
ground water was 33" on lot No. 5.

These lots were disapproved in 1962. They were resubmitted in 1964 and 1966 and have been disapproved on each resubmittance.

As these lots now stand, this department cannot approve these lots for subsurface human waste disposal, now or in the future.

Yours very truly,

Edward F. Goldsmith, M.D.
Health Officer.

EFG/I

cc: Mr. Arthur N. Beck
V.A.
F.N.A.

E+J

June 5, 1967.

Hon. Maurice H. Downing
920 Dauphin St.
Mobile, Alabama.

Dear Mr. Downing:

The advice I get from Sanitary Engineers is that it is dangerous to drain even ground water into a sand strata underground. It would be even more dangerous to allow a septic tank drain field to connect into a drain leading to underground sand strata. This is in fact a cesspool which is not allowed in this county.

I can only suggest you get a good civil engineer to advise you and this office ^{to} eliminate the high ground water on these lots. *new*

Yours very truly,

Edward F. Goldsmith, M.D.
Health Officer.

EFG/I

E4. K

June 23, 1967

Mr. Maurice A. Downing
920 Dauphin Street
Mobile, Alabama

Re: Lots 1, 4 & 5, Wilson
Heights Subdivision, Third
Unit, Disposal Fields

Dear Mr. Downing:

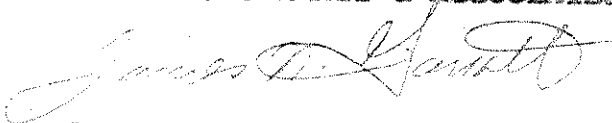
Mr. L.R. Johnston has contacted us in regards to the unsatisfactory soil conditions on the above referenced lots. After examining the log of test boring made by Mr. Johnston, it is our recommendation that disposal wells be constructed at the outfall end of each field line to a depth extending into the strata of yellow & pink sand as indicated on the log. We attach a cross-section of one of these disposal wells.

We have installed these wells in several locations where the percolation is unsatisfactory and where public water systems are used and they have been highly successful.

This method of disposal will of course have to be approved by the Baldwin County Board of Health.

Sincerely,

JAMES N. GARRATT & ASSOCIATES



James N. Garratt
President

JNG/jr

Ex L



State of Alabama
Department of Public Health
 State Office Building
 Montgomery, Alabama 36104



July 12, 1967

IRA L. MYERS, M. D.
 STATE HEALTH OFFICER

Dr. Edward F. Goldsmith
 County Health Officer
 Baldwin County Health Department
 Box 150
 Bay Minette, Alabama

Dear Dr. Goldsmith:

This will acknowledge receipt of your recent letter and attachments in regard to sewage disposal for lots 1, 4 and 5 in unit 3 of the Wilson Heights Subdivision.

First let me say that the primary function of a septic tank is to liquify the solid materials entering it and not to purify the sewage. It is true, however, that some bacteria are trapped and die off in the tank.

The proposed construction has never, to my knowledge, been approved in this state for the use intended. It could under the proper circumstances become a direct hazard to the public health. The potential of such a hazard is too great to sanction such an installation under any circumstance. We have in this construction the elements of a cess pool, which is prohibited by Section 15 of our sanitation regulations.

The use of a public water supply might protect the installers or users of the proposed system, but there is no assurance that users of private wells in adjacent areas will be protected. Also, we do not know of any requirements which would prevent home owners within the area in question from installing their own private water wells, should they choose. This is being done even in the larger cities.

Yours very truly,

Arthur N. Beck
 Chief Engineer and Director
 Bureau of Environmental Health

ANB/ml

MOORE, MOORE, DOWNING & LAYDEN
LAWYERS AND PROCTORS
220 DAUPHIN STREET
P. O. BOX 4457
MOBILE, ALABAMA 36604

GEORGE J. MOORE
JAMES E. MOORE
MAURICE A. DOWNING
LIONEL L. LAYDEN

CABLE ADDRESS: LAWYER
TEL. NO.: 432-5641

August 30, 1967

Dr. Edward F. Goldsmith
Health Officer
Baldwin County Health Department
P. O. Box 150
Bay Minette, Alabama

RE: Lots 1, 4 and 5
Wilson Heights Subdivision

Dear Dr. Goldsmith:

As you know, I have been unable to come by your office for sometime because I have been in the Legislature. Since January, we have been in almost continuous session and I have put off writing you because I thought that I would be able to get by and talk to you.

I received your letter dated the 16th day of August, 1967, in which you set out that said land is unsuitable for a septic tank. I understood from Mr. Beck that, under the septic tank field lines if the hard crust was broken and gravel placed thereon to the proper height and the field lines placed on top of said gravel and the top soil or earth placed over same, that said septic tank lines would meet the requirements. I know that I have not worded that exactly right, but I do not want these people to misunderstand what we have in mind at some future date should they desire to build.

Therefore, I ask that you please state in a letter that the only way you will approve this septic tank is that said hard crust be broken and gravel placed thereon etc.

-2-

Dr. Edward F. Goldsmith
Page Two
August 30, 1967

This week our session will be over, I hope, and I hope we will not have any more special sessions this year. If not, I will drop by to see you.

I want to thank you for your cooperation in this matter and hope that I may be able to be of service to you in the future.

Very truly yours,

MOORE, MOORE, DOWNING & LAYDEN

Maurice A. Downing
Maurice A. Downing

MAD:aa

over

Copy

July 14, 1967.

Hon. Maurice A. Downing
P. O. Box 4457
Mobile, Alabama 36604.

Dear Mr. Downing:

Am enclosing a copy of a letter
from the State Health Department Chief Engineer.

This office cannot approve your
proposed disposal system for lots 1, 4 and 5 in
Unit 3 of the Wilson Heights Subdivision.

Yours very truly,

Edward F. Goldsmith, M.D.
Health Officer.

EFG/i
encl.

INDIVIDUAL WATER SUPPLY AND SEWAGE DISPOSAL REPORT
Alabama Department of Public Health
Bureau of Sanitation

Part I

(To be completed and signed by a Registered Engineer or Land Surveyor)

City or Beat No. Spanish Fort, Ala. Location: Sec. 28 T 4 S R 2 E
Owner T. J. Rester, Sr Owner's Address 205 Government St - Mobile, Ala.
Subdivision Wilson Heights, Third Unit Lot No. 1 Size lot 20,125 sq. ft.
Date: Subdivision recorded May 11, 1962 Approved _____ Percent Developed _____
Grease Trap: ☒ Yes ☐ No Garbage Grinder: ☐ Yes ☒ No Bdrms 3
Laundry Waste: ☒ Yes ☐ No
If other than residential property give estimated sewage flow per day _____

Signature of Owner _____

Water Supply: ☒ Public ☐ Community ☐ Individual
Nearest Dist. to Sewer 2 Miles ; To Public Water Supply _____
Percolation Test: (See Back for Instructions) Test Hole 1 Stabilized Rate 9.9 MPI Additional Tests 2
Soil Borings: Type Soil Red Clay

Water level in hole from surface of ground Dry @ 6'

A plot plan dated May 4, 1966 and prepared by Rester and Coleman Engineers, Inc.
showing layout of septic tank with reference to the topography, house, lot lines and existing or proposed wells is attached to and
made a part of this report.

Report made by: Donald F. Cleve Reg. No. 5421
Signature _____ Date May 6, 1966
Address 51 St Michael St - Mobile, Alabama

Part II

(For use by Health Authorities)

It is our opinion that the use of an individual septic tank system on the lot (☐ is suitable provided it conforms to) (☐ is
not suitable by reason of) the following conditions: _____

It is understood that the opinion rendered in this report does not cover the construction of the septic tank system. Accept-
ance will be based upon compliance with all health department requirements.

County Health Department

Signature and Title _____

Date _____

ASSUMED H.I. = 120.0

25' MIN. BUILDING SETBACK LINE

175.00

109.5

75' DRAINAGE & UTILITY EASEMENT

204.28

N 69° 09' 42" E

•#1 DENOTES TEST HOLE

MARCELLA AVENUE

60' DW

LOT 1, WILSON HEIGHTS SUBDIVISION, THIRD UNIT
MAY 4, 1966

Height of 48"

copy

June 5, 1967.

Hon. Maurice H. Downing
920 Dauphin St.
Mobile, Alabama.

Dear Mr. Downing:

The advice I get from Sanitary Engineers is that it is dangerous to drain even ground water into a sand strata underground. It would be even more dangerous to allow a septic tank drain field to connect into a drain leading to underground sand strata. This is in fact a cesspool which is not allowed in this county.

I can only suggest you get a good civil engineer to advise you and this office who to eliminate the high ground water on these lots.

Yours very truly,

Edward F. Goldsmith, M.D.
Health Officer.

EFG/1

9

MOORE, MOORE, DOWNING & LAYDEN
LAWYERS AND PROCTORS
820 DAUPHIN STREET
P. O. BOX 4487
MOBILE, ALABAMA 36604

GEORGE J. MOORE
JAMES E. MOORE
MALCOLM A. DOWNING
MICHAEL L. LAYDEN

MAILING ADDRESS: LAWYER
TEL. NO. 433-0641

July 5, 1967

Edward F. Goldsmith, M.D.
Health Officer
Baldwin County Health Department
P. O. Box 150
Bay Minette, Alabama

RE: Lots 1, 4 and 5 in Unit 3,
Wilson Heights Subdivision

Dear Dr. Goldsmith:

As you know, we have employed L. R. Johnston Inspection Company to make drillings on Lots 1, 4 and 5 of the above unit with the idea and goal to make said property suitable for septic tanks.

I am enclosing herewith a drawing of the findings of L. R. Johnston Inspection Company and an examination thereof by James N. Garratt and Associates, Inc., consulting engineers and land surveyors, 2468 Commercial Park Drive, Mobile, Alabama. You will note from said drawings that a thirty-inch bit was used to go down twenty-seven feet; that the first five feet was top soil and clay, the next one-half foot was red clay with sand, the next foot was rock with clay (hard pan), then you had gray clay down to the twenty foot mark and after that you had seven foot of yellow and pink sand. This sand, by the way, is dry sand.

I have a letter from Garratt and Associates that sets out that they have examined the findings of L. R. Johnston Inspection Company and what is proposed is filling the thirty-inch hole at the end of each field line with gravel into the sand some twenty-four feet below the surface, which they say will work as they have done so on many occasions.

With this in mind, we hereby make application to you to allow us to put in septic tanks on said lots by boring thirty-inch wells at the end of each field line and fill same with gravel as indicated on the chart.

In my conversation with Mr. Johnston and Mr. Garratt, I understand that this will work because the field lines only carry the overflow from the septic tank and by the time it gets to the sand twenty seven feet below it is almost pure water at that point and the sand is not wet sand, it is dry sand which will filter any matter coming into it that has not already been filtered. There is a water system located in said unit and no wells are necessary.

Your cooperation in this matter is appreciated.

Very truly yours,

MOORE, MOORE, DOWNING & LAYDEN


Maurice A. Downing

MAD:aa

Enclosure

September 6, 1967.

Mr. Maurice A. Downing
Moore, Moore, Downing & Layden
Lawyers and Proctors
P. O. Box 4457
Mobile, Alabama 36604.

Re: Lots 1, 4 and 5
Wilson Heights Subdivision

Dear Mr. Downing:

A subdrain would be acceptable only if it lowers the ground water table. This is accomplished by diverting the water away from drain fields. This is a separate and distinct installation from drain fields. In fact no drain field for a septic tank can be placed closer than ten (10) feet to a subsurface drain.

As you recall the original owner installed some type of a subsurface drain system; but this system that was used, did not lower the water table, either from improper installation, or improper positioning of the drains.

I believe an engineer could explain to you the difference between a septic tank drain field, and a high water level subsurface drain.

Yours very truly,

Edward F. Goldsmith, M.D.
Health Officer.

EFG/1

T. J. RESTER
205 GOVERNMENT STREET
P. O. BOX 1101
MOBILE, ALABAMA

Copy

July 12, 1966

Mr. Chas. K. Zehner,
Health Department,
Bay Minette, Ala.

Dear Mr. Zehner:

I am enclosing engineer's report on lots one, four and five, Third Unit, Wilson Heights.

It was my intention to get this to you sooner, but misplaced it. I have some prospective builders interested over there and shall be awaiting your report.

Thanking you, I am

Sincerely yours,


T. J. Rester

TJR/W

August 16, 1967.

Mr. J. M. Bell
Director, Dept. of Health
Mobile, Alabama
P. O. Box 4457
Mobile, Alabama 36604

Hon. Maurice A. Downing
P. O. Box 4457
Mobile, Alabama 36604.

Dear Mr. Downing:

In regard to lots 1, 4 and 5
Wilson Heights Subdivision, 3rd Addition.

The above mentioned lots, as
they now stand, are not suitable for septic tank
installation because of high static ground water.

It is my considered opinion that
this condition can be corrected, but some method
of lowering this high water table other than a dry
well or cesspool must be used.

A frequently used method for this
is a subsurface drainage system, that would have
to be designed and installed under the supervision
of a civil or sanitary engineer.

Yours very truly,

Edward F. Goldsmith, M.D.
Health Officer.

EFG/I

July 14, 1967.

Hon. Maurice A. Downing
P. O. Box 4457
Mobile, Alabama 36604.

Dear Mr. Downing:

Am enclosing a copy of a letter
from the State Health Department Chief Engineer.

This office cannot approve your
proposed disposal system for lots 1, 4 and 5 in
Unit 3 of the Wilson Heights Subdivision.

Yours very truly,

Edward F. Goldsmith, M.D.
Health Officer.

EFG/I
encl.

INDIVIDUAL WATER SUPPLY AND SEWAGE DISPOSAL REPORT
Alabama Department of Public Health
Bureau of Sanitation

Part I

(To be completed and signed by a Registered Engineer or Land Surveyor)

City or Beat No. Spanish Fort, Ala. Location: Sec. 28 T 4 S R 2 E
Owner T. J. Rester, Sr. Owner's Address 205 Government St - Mobile, Ala.
Subdivision Wilson Heights, Third Unit Block No. 5 Lot No. 5 Size lot 20,896 sq. ft.
Date: Subdivision recorded May 11, 1962 Approved _____ Percent Developed _____
Grease Trap: ☒ Yes ☐ No Garbage Grinder: ☐ Yes ☒ No Bdrms 3
Laundry Waste: ☒ Yes ☐ No
If other than residential property give estimated sewage flow per day _____

Signature of Owner _____

Water Supply: ☒ Public ☐ Community ☐ Individual
Nearest Dist. to Sewer 2 Miles ; To Public Water Supply _____
Percolation Test: (See Back for Instructions) Test Hole 1 Stabilized Rate 17.0 MPI Additional Tests 2
Soil Borings: Type Soil White Clay

Water level in hole from surface of ground Dry @ 6'

A plot plan dated May 4, 1966 and prepared by Rester & Coleman Engineers, Inc.
showing layout of septic tank with reference to the topography, house, lot lines and existing or proposed wells is attached to and made a part of this report.

Report made by: Ronald F. Coleman Reg. No. 5421
Signature _____ Date May 6, 1966
Address 51 St Michael St - Mobile, Alabama

Part II

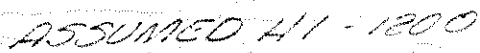
(For use by Health Authorities)

It is our opinion that the use of an individual septic tank system on the lot (☐ is suitable provided it conforms to) (☐ is not suitable by reason of) the following conditions: _____

It is understood that the opinion rendered in this report does not cover the construction of the septic tank system. Acceptance will be based upon compliance with all health department requirements.

County Health Department
Signature and Title _____
Date _____

Z



#1
DENOTES TEST
HOLE

LOT 5, WILSON HEIGHTS SUBDIVISION THIRD UNIT
MAY 4, 1966

Hot water in #1 at 42"
" " #2 60"
" " #3 60"

gomma latex

394

3941

3911

Bay Minette, Ala., 10-5 1922

To the Sheriff of Mobile County, Mobile, Alabama

I enclose herewith a Cit. on Appeal for
service on Maurice Dowling,
Attorney at Law, 920 Dauphin St.,
Mobile, Alabama. Thanks

Please serve and return as early as possible.

Taylor Wilkins
Sheriff, Baldwin County, Alabama

(If not found in your county, please advise promptly giving information as to present location if possible)