

HARKERS ISLAND SEWER COMPANY

DOCKET NO. W-1274, SUB 7

**DIRECT TESTIMONY OF TIM RAGAN
ON BEHALF OF MRT-1, LLC.**

February 26, 2021

1. Q. PLEASE STATE FOR THE RECORD YOUR NAME, ADDRESS,
2. AND PRESENT POSITION.
3. A. My name is Tim Ragan. My address is 138 Lambe Drive, Lexington, North Carolina.
4. I am a Member and Manager of MRT-1, LLC, a North Carolina limited
5. liability company that invests in real estate projects in various stages of development. I am
6. also a licensed real estate broker, and a certified general real estate appraiser.
7. Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES WITH MRT-1 IN CONNECTION
8. WITH THE ACQUISITION AND DEVELOPMENT OF JAMES CREEK?
9. A. I have been tasked with determining what physical infrastructure has been installed in and
10. around the James Creek Subdivision, researching the permitting, outlining the documents
11. that have been filed with the Utilities Commission, and identifying options for expanding
12. capacity to provide wastewater treatment services to James Creek.
13. Q. DID YOU ENGAGE IN CONVERSATIONS WITH MICHAEL LAWS?
14. A. Yes.
15. Q. PLEASE DESCRIBE WHAT YOUR RESEARCH AND DISCUSSIONS
16. REVEALED.
17. A. Let's start with the infrastructure in Phase One of James Creek, as illustrated in Plat Book

1. 32, Page 403. My initial call with Mr. Laws was in the fall of 2019. In that call, Mr. Laws
2. Stated that the storm water permit had been satisfied, the electrical infrastructure had been
3. Installed in Phase One, water and sewer systems were in place for Phase One, but had not
4. Been connected to main sources, and Mr. Laws estimated that total cost to MRT-1 to
5. Establish sewer services to James Creek was \$1,200,000.00.

6. Q. DID MR. LAWS INDICATE WHAT THAT \$1,200,000.00 FIGURE
7. WOULD COVER?

8. A. He told me that the \$1,200,000.00 figure would be the cost for James Creek to acquire utility
9. services.

10. Q. DID MR. LAWS INDICATE THAT THE NEW PLANT WOULD BE TO
11. PROVIDE SERVICES TO JUST THE LOTS WITHIN JAMES CREEK,
12. OR WAS IT TO HAVE CAPACITY TO SERVE ADDITIONAL AREAS?

13. A. He did not provide me with what proportion of any new capacity created would benefit
14. MRT-1 versus new customers or HISCO's existing customer base. I was simply told that it
15. would cost \$1,200,000.00 for HISCO to provide wastewater treatment services to James
16. Creek.

17. Q. DID MR. LAWS PROVIDE YOU WITH AN OPTION OF BRINGING
18. THE WESTBAY TREATMENT PLANT ONLINE, OR REGARDING
19. EXPANDING CURRENT FLOW RATES AT THE HARKERS POINTE
20. PLANT TO ITS MAXIMUM PERMITTED CAPACITY?

21. A. No. That's never been an option.

22. Q. WHAT DID YOUR RESEARCH REVEAL ABOUT HISCO'S
23. CAPACITY, BOTH IN TERMS OF APPROVED TOTAL CAPACITY

1. AND EXISTING CONSTRUCTED CAPACITY?

2. A. My most recent numbers are as of July 31, 2019, but my understanding is they have not
3. Changed significantly since that time. My figures were obtained from the Department of
4. Health and Human Services, but the source is ultimately HISCO, that provided these
5. Figures. HISCO has total approved capacity of 80,160 gallons per day. 60,000 of those
6. Gallons are from the Harkers Pointe treatment plant, and 20,160 of those gallons are from
7. The West Bay treatment plant. That's total approved capacity – not total constructed
8. Capacity. Existing constructed capacity is 40,000 gallons for the Harkers Pointe treatment
9. plant, which is operational, and 10,080 gallons for the West Bay treatment plant, which is
10. Not operational.

11. WHAT PERCENTAGE OF HISCO'S PERMITTED CAPACITY HAS
12. BEEN ALLOCATED?

13. I believe all of it has been allocated. As of August 2019, it appeared
14. As though 75,475 gpd had been allocated, and HISCO has around
15. 4,685 gpd that was considered excess un-allocated capacity. This
16. Coincides with a call I had with Mr. Laws at the beginning of 2020,
17. In which he indicated that he had about 10 sewer taps available at
18. \$2,500 per tap. If we're looking at approximately 360 gpd per three
19. Bedroom residential house, at the time he had about 3600 gpd excess
20. Capacity. Today, Mr. Laws indicates that he has zero taps left. Recent
21. Communications sent to HISCO from DHHS (which we received in
22. Discovery) appears to confirm that Mr. Laws has zero excess capacity.
23. Q. OF THE APPROXIMATELY 80,000 GALLONS PER DAY OF TOTAL

1. FLOW ALLOCATED, ARE ANY OF THE LOTS WITHIN JAMES
2. CREEK INCLUDED OR CONTEMPLATED?

3. A. I believe so, yes. I believe Phase One of James Creek is already allocated in those figures.

4. In the spreadsheet provided by DHHS, there are 48 lots allocated pursuant to HISCO Phase
5. I/West Bay Service Areas. The West Bay permit identifies a limited number of lots within
6. West Bay and James Creek as part of that allocation. That same chart totals the flow from
7. those 48 lots at 17,280 gallons per day. Again, at 360 gallons per day per three bedroom
8. residential house, James Creek Phase One appears to be allocated in HISCO's total permitted
9. and approved capacity.

10. Throughout this civil action before the Utilities Commission, HISCO
11. Has pointed to NCUC Rule 10-12(c) as justification for a requirement that MRT construct a
12. new treatment facility. The relevant paragraph states that "*An applicant for a sewer
13. collection system extension to serve a new subdivision, tract, housing project, industrial, or
14. residential development, or organized service district shall be required to advance to the
15. utility before construction is commenced the estimated reasonable cost of installation of such
16. facilities, including the estimated reasonable cost associated with the installation of any
17. reasonable and prudent amount of excess capacity, if any, upon approval by the
18. Commission. If additional facilities are required specifically to provide service exclusively
19. for the service requested, the cost of such facilities may be included in the advance upon
20. approval by the Commission.*" However, with respect to the phrase "sewer collection system
21. extension...", that infrastructure is in place at James Creek along with, according to Mr.
22. Laws, a force main connection to West Bay wastewater treatment plant, so that issue has

1. been completed. Additionally, with respect to the other issue relating to the cost of excess
2. capacity, James Creek Phase One, as platted, appears to already be allocated into HISCO's
3. total permitted capacity. MRT is not merely an applicant to serve a new subdivision – it's
4. an existing subdivision within HISCO's franchise territory, and is contemplated in HISCO's
5. allocated permitted capacity. Perhaps there are additional costs associated with making West
6. Bay operational (such as having it certified for operation), and we would consider those
7. reasonable and prudent costs, but HISCO is obligated as a utility to provide services to its
8. customers who may reasonably be served under the General Statutes. Requiring MRT to
9. construct a \$1.1 - \$1.2 Million facility is altogether unreasonable and discriminatory,
10. especially considering that flows from James Creek Phase One appear to be already allocated
11. within HISCO's total permitted capacity.

12. Q. HAVE YOU IDENTIFIED ANY OTHER AVAILABLE METHODS TO ALLOW HISCO
13. TO PROVIDE REASONABLE UTILITY SERVICES TO JAMES CREEK?

14. A. Yes, we believe so, through Harkers Pointe treatment facility. The public records
15. confirm that Harkers Pointe has 60,000 gallons per day of permitted capacity, but
16. only 40,000 gallons per day of constructed capacity. It appears as though there is room for a
17. 4th drainfield on that site that is not being utilized. I do not know if construction of that
18. drainfield would increase the constructed capacity from 40,000 gallons per day to 60,000
19. gallons per day, or if it is mechanically possible to engineer plant facility additions to that
20. aged facility, but we believe it would certainly increase that plant's capacity to some degree.

21. Q. HOW MUCH CAPACITY DOES MRT NEED TO ESTABLISH UTILITY SERVICES
22. AT JAMES CREEK?

1. A. We're obviously examining a number of options. We have conducted some initial
2. examination relating to the options available to us, but given that, at present, HISCO and
3. Mr. Laws has taken the position that MRT-1 should not be afforded the right to construct or
4. establish its own capacity. Mr. Laws has taken the position, incorrectly in my opinion, that
5. because we're in HISCO's franchise territory, we are not allowed to create our own capacity
6. and thereafter turn it over; rather, Mr. Laws has insisted that we simply provide HISCO with
7. the funding to establish such capacity. To a certain extent, we need the NCUC to confirm
8. that if a new plant is required to be constructed, that we can establish such a plant ourselves,
9. and then turn operations over to HISCO. Still, we have begun looking at several scenarios.
10. There's a scenario where we limit Development of James Creek to eight to ten lots,
11. there's a scenario where we develop Phase one only, and there's a full buildout scenario.
12. Our primary focus has been to gauge costs necessary to develop as few as eight of the lots,
13. or to limit development of James Creek to Phase One solely, since those lots
14. (i) are within HISCO's franchise territory, And (ii) appear to have already been allocated
15. into HISCO's permitted Capacity. At 360 gallons per day and at the presently platted
16. 21 lots, we'd need to establish around 7,560 gallons per day of capacity. We believe West
17. Bay has the current constructed capacity to take those flows, and we believe
18. Harkers Pointe would easily increase its constructed capacity by developing that
19. fourth drainfield to accept those flows as well. Those are costs we'd be happy to contribute
20. to, because they would increase HISCO's constructed capacity solely to
21. benefit increased wastewater flows from James Creek, but
22. we believe taking the position that constructing a new treatment plant at a cost of \$1.1

1. to \$1.2 Million is disingenuous. We do not believe we're being provided adequate or
2. complete information in good faith by HISCO. We also do not believe such costs would be
3. limited to establishing wastewater capacity solely for James Creek; we believe such a plant
4. would benefit HISCO's existing customer base.

5. With regard to West Bay, there may be some concern about ramping up to adequate flow
6. rates. That's not a concern of ours. We can bring a number of houses on line in an extremely
7. short period of time to accommodate requisite flow rates. I believe that is an inadequate
8. reason to deny us the potential use of the West Bay facility for waste water services. Also
9. with regard to West Bay, I have reviewed communications submitted by HISCO to the
10. NCUC, and have seen an email filed July 17, 2015 from Mr. Laws to the NCUC. In that
11. email, Mr. Laws outlines his long term preference to operate one facility at one location. I
12. also believe this is an inadequate reason to deny our potential use of West Bay as an option
13. for waste water treatment purposes.

14. Q. WHAT ELSE DID YOUR RESEARCH REVEAL?

15. A. We need to have address the infrastructure that has been installed in James Creek.
16. Water and sewer systems have been physically installed, but I have been unable to locate
17. a permit authorizing the installation. At this time, it's unclear if we'd need
18. to rip it out and re-install it under a properly issued permit. This is one of the reasons why
19. we're examining a development with fewer lots. This is also why, if we have to establish
20. our own capacity by constructing our own treatment plant, we need to be able to do so
21. entirely for ourselves, including recover all tap fees for ourselves, and thereafter turn
22. ownership and control over to a utility – HISCO if need be.

23. Q. CAN YOU RECALL ANY ADDITIONAL DETAILS FROM YOUR

1. CONVERSATIONS WITH MR. LAWS?
2. A. We spoke about a 55,000 GPD package plant that he located. We've spoken to the seller –
3. it would cost about \$600,000.00 to purchase it, install it, and get it properly permitted and
4. online. Of course, if we are going to establish our own capacity by building a plant, we'd
5. buy it for ourselves and recover all of the tap fees ourselves, to reduce the cost of the plant.
6. We'd never buy such a thing for HISCO – there would be no way we could ensure we were
7. not paying to benefit other customers on the Island, or that we'd be able to recover all of
8. the tap fees. One thing of note is that Mr. Laws stated outright that we could never place the
9. package plant on the James Creek Site. He did not indicate why, but I suspect he knows that
10. timbering the property immediately prior to completion of the foreclosure seriously damaged
11. the property, created ponding where none previously existed, and disrupted
12. runoff/infiltration matrix patterns of the existing surface drainage network.
13. Q. DOES THIS COMPLETE YOUR TESTIMONY AT THIS TIME?
14. A. Y e s .

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing Testimony on the parties of record by electronic mail, properly addressed to the following:

I. CLARK WRIGHT, JR.
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Attorney for Respondent HISCO

This the 26th day of February, 2021.

Electronically submitted

/s/ Andrew D. Irby, NCSB # 35353
Attorney for MRT-1, LLC

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