

Exhibit No. 401

Issue: Certificate of Convenience and Necessity

Witness: Carl Richard Mills

Sponsoring Party: Applicant

Type of Exhibit: Appendix to Rebuttal Testimony

Case No.: WA-2018-0370

Date Prepared: February 5, 2019

Exhibit 4

See Attached.

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Derald Morgan, Rick and Cindy Graver, William) and Gloria Phipps and David Lott,))	
Complainants,)	File No. WC-2017-0037
v.)	
Carl Richard Mills, Carriage Oaks Estates,) Distinctive Designs and Caring Americans Trust) Foundation, Inc. (f/k/a Caring Americans) Foundation, Inc.), Carriage Oaks Not-for-Profit) Water and Sewer Corporation,))	
Respondents)	

APPEARANCES

Appearing for the **Complainants:**

Karl Finkenbinder, Attorney, 100 Prairie Dunes Dr., Ste. 200, Branson MO 65616-6561,

Appearing for the **Respondents:**

Bryan Wade, Attorney, 901 St. Louis St., Suite 1800, Springfield MO 65806,

Whitney S. Smith, Attorney, 901 St. Louis St., Suite 1800 Springfield MO 65806,

Appearing for the **Staff of the Missouri Public Service Commission:**

Jacob Westen, Deputy Counsel, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.¹

Appearing for the **Office of the Public Counsel:**

Ryan Smith, Senior Counsel, Governor Office Building, 200 Madison Street, Suite 650, Post Office Box 2230, Jefferson City, Missouri 65102.²

REGULATORY LAW JUDGE: John T. Clark

¹ EFIS No. 63 (February 2, 2018) *Staff's Motion to be Excused* – Staff counsel requested to be excused from the evidentiary hearing which was granted.

² Public Counsel appeared at the evidentiary hearing, where he asked to be excused. The request was granted. Transcript, p. 25.

REPORT AND ORDER

I. Procedural History

On August 4, 2016, Derald Morgan, Rick Graver, Cindy Graver, William Phipps, Gloria Phipps, and David Lott (“Complainants”) filed a complaint with the Missouri Public Service Commission (“Commission”) against Carl Richard Mills, Carriage Oaks Estates Homeowners Association, Distinctive Designs, and Caring Americans Trust Foundation, Inc. (f/k/a Caring Americans Foundation, Inc. (“Respondents”). An amended complaint was filed on August 11, 2016. Complainants alleged primarily that Respondent Carl Mills caused ownership of water and sewer facilities to be transferred to Caring Americans Trust Foundation, Inc. a non-profit corporation not formed as a water and sewer company, of which Complainants are not members and in which they have no say as to control or operation. Complainant’s alleged that Caring Americans Trust Foundation, Inc. has not obtained a Certificate of Convenience and Necessity from the Commission.³

The complaint was filed in relation to both the water and sewer systems. On August 11, 2016, file numbers WC-2017-0037 and SC-2017-0039 were consolidated under file number WC-2017-0037 because both files address a single complaint.⁴ Additionally, both files involved the same complainants and respondents.

Respondents’ filed an answer to the amended complaint, stating that Complainants do not have an ownership interest in the water and sewer systems and therefore have no say in the operation or ownership of those systems. Respondents moved to dismiss the

³ The information provided in the Complaint also alleged the lack of a valid Operating Permit from the Missouri Department of Natural Resources, but that is outside the jurisdiction of the Commission

⁴ EFIS No. 3 (August 11, 2016) *Order of consolidation*

complaint for lack of Commission jurisdiction.⁵ An amended motion to dismiss was filed on February 14, 2017.⁶ That motion was denied by the Commission August 3, 2017.⁷

Complainants moved to add Carriage Oaks Not-for-Profit Water and Sewer Corporation as a party and respondent on September 14, 2017.⁸ The Commission treated this motion as a second amended complaint.⁹ Respondents filed a motion to dismiss the second amended complaint on October 24, 2017.¹⁰ Complainants filed a motion for partial summary determination on December 13, 2017.¹¹ The Commission denied both motions on January 23, 2018.¹²

Because there were material facts in dispute, the Commission held an evidentiary hearing on February 6, 2018, in Jefferson City, Missouri.¹³

II. Findings of Fact

Any finding of fact where it appears the Commission has made a determination between conflicting evidence indicates the Commission attributed greater weight to that evidence, and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

⁵ EFIS No. 10 (September 6, 2016) *Respondents' Motion to Dismiss Complainants' Amended Petition and Entry of Appearance*

⁶ EFIS No. 3 (February 14, 2016) *Respondents' Amended Motion to Dismiss*

⁷ EFIS No. 34 (August 3, 2017) *Order Denying Motion to Dismiss, Granting Motion to Strike, and Directing Filing of Procedural Schedule*

⁸ EFIS No. 37 (September 14, 2017) *Complainants' Motion to Add Carriage Oaks Not-For-Profit Water and Sewer Corporation as a Party*

⁹ EFIS No. 40 (October 10, 2017) *Order Deeming Motion an Amended Complaint and Notice of Complaint*

¹⁰ EFIS No. 46 (October 24, 2017) *Respondents' Motion to Dismiss Second Amended Complaint*

¹¹ EFIS No. 52 (December 13, 2017) *Complainants' Motion for Partial Summary Judgment Against Respondents, Complainants' Statement of Uncontroverted Material Facts, and Complainants' Legal Memorandum in Support of their Motion for Partial Summary Judgment*

¹² EFIS No. 60 (January 23, 2018) *Order Denying Respondents' Motion To Dismiss and Order Denying Complainants' Motion For Partial Summary Determination*

¹³ Transcript, Volume 2 (hereinafter, "Tr."), In total, the Commission admitted the testimony of 2 witnesses and received 19 exhibits into evidence. Post-hearing briefs were filed on February 28, 2018, and the case was deemed submitted for the Commission's decision on that date when the Commission closed the record. "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

1. The Office of the Public Counsel (“Public Counsel”) “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.” Public Counsel “shall have discretion to represent or refrain from representing the public in any proceeding.” Public Counsel did not participate in the evidentiary hearing in this matter.

2. The Staff of the Missouri Public Service Commission (“Staff”) is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission. Staff participated as a party in this matter, though Staff was excused from the evidentiary hearing.¹⁴

3. Complainants are homeowners in the Carriage Oaks Estates subdivision.¹⁵ Under the Declaration of Restrictive Covenants and Easements all lots within the subdivision must receive water and sewer services from Respondent’s system.¹⁶

4. Mills Properties Group LTD is the developer of the subdivision. The sole member of Mills Properties Group is Carl Mills’ personal trust. This entity also does business under Distinctive Designs (a fictitious name) in Missouri.¹⁷ Distinctive Designs is a named respondent. Distinctive Designs constructed the subdivision including the water system, sewer system and all mains; the well was not constructed by Distinctive Designs.¹⁸

5. Carriage Oaks LLC was formed by Carl Mills after his wife’s death for the purpose of being able to sell part of his ownership interest in Carriage Oaks Estates.

¹⁴ EFIS No. 63 (February 2, 2018) *Staff’s Motion to be Excused*

¹⁵ Ex. 10, D. Morgan Direct, Page 3

¹⁶ Ex. 14, Declaration of Restrictive Covenants and Easements, Page 6

¹⁷ Tr., Pages 134-135

¹⁸ Tr., Page 123

Carriage Oaks LLC is not a named respondent. Carriage Oaks LLC is owned by Carl Mills' personal trust.¹⁹

6. Caring Americans Trust Foundation Inc. was established by Carl Mills September 11, 2012, for the purpose of supporting other charitable organizations.²⁰ Caring Americans Trust Foundation is a named respondent. It was formed as a non-profit, and is not owned by Mr. Mills,²¹ although he is on the board.²² No Complainants are members.²³

7. Carriage Oaks Not-for-Profit Water and Sewer Corp. was incorporated January 18, 2017.²⁴ Carriage Oaks Not-for-Profit Water and Sewer Corp. is a named respondent. Membership in the not-for-profit is comprised of all persons who own property that is or will be receiving water and sewer services. Each member is entitled to one vote per membership for the board of directors, though persons may hold multiple membership interests.²⁵

8. Carriage Oaks Estates Homeowners Association includes as members any person who owns a lot in the subdivision. Carriage Oaks Homeowners Association is a named respondent. Voting is apportioned by class, with Class A members having one vote per lot owned, and the Class B member (Developer) having ten votes per lot owned.²⁶

9. Carriage Oaks Estates is a subdivision in Stone County, Missouri, founded in 2001.²⁷ Carriage Oaks Estates is being developed in three phases; phase one has eight lots, phase two has an additional 24 lots, and phase three will have an additional 22 lots

¹⁹ Tr., Pages 75-76

²⁰ Ex. 24, Page 4

²¹ Tr., Page 136

²² Tr., Page 144

²³ Tr., Page 79

²⁴ EFIS No. 52 (December 13, 2017) *Complainants' Motion for Partial Summary Judgment Against Respondents, Complainants' Statement of Uncontroverted Material Facts, and Complainants' Legal Memorandum in Support of their Motion for Partial Summary Judgment*, Exhibit E, Articles of Incorporation of Carriage Oaks Not-for-Profit Water and Sewer Corporation

²⁵ Ex. 15, Page 1

²⁶ Ex. 14, Declaration of Restrictive Covenants and Easements, Pages 9-10

²⁷ Ex. 24, C. Mills Rebuttal, Page 5

(ground has not been broken on phase three).²⁸ Seven homes are currently developed in the subdivision.²⁹

10. Carl Richard Mills is the developer of Carriage Oaks Estates. Carl Mills is a named Respondent. His personal trust owns Mills Properties Group LTD, Distinctive Designs LTD, and Carriage Oaks LLC. He is the founder and member of the board of both Caring Americans Trust Foundation Inc. and Carriage Oaks Not-for-Profit Water and Sewer Corp. He is a member of Carriage Oaks Homeowners Association with Class B voting rights. Carl Mills owns approximately 23 lots in the Carriage Oaks Estates subdivision.³⁰

11. The water system was initially comprised of a well capable of delivering 55 gallons per minute, five bladder tanks, a well house and four inch PVC water mains.³¹ The sewer system is comprised of a treatment plant with a tank, and mains.³²

12. Only seven lots are developed and connected to the water and sewer system.³³ Sewer mains run through phases one and two, with both phases ready for immediate connection to the sewer system.³⁴

13. All homeowners are required to connect to the water and sewer system.³⁵ All seven developed homes currently receive water service.³⁶

14. Mr. Mills has not sought a Certificate of Convenience and Necessity from the Commission for any water or sewer systems.³⁷

²⁸ Tr., Pages 79-80

²⁹ Tr., Page 81

³⁰ Tr., Page 150

³¹ Ex. 26, Page 1

³² Ex. 18, Page 1

³³ Tr., Page 154

³⁴ Tr., Page 82

³⁵ Ex. 14, Declaration of Restrictive Covenants and Easements, Page 6

³⁶ Tr., 154

³⁷ Tr., Page 78

15. Carl Mills and his wife originally owned the water and sewer assets through his personal trust. Upon his wife's death the water and sewer assets remained with his personal trust until approximately 2007, when Carriage Oaks LLC came into being.³⁸

16. Carriage Oaks LLC owned the water and sewer assets from 2007 until they were transferred to Caring Americans Trust Foundation Inc.³⁹

17. On April 2, 2016, Carriage Oaks LLC transferred ownership of the water and sewer assets to Caring Americans Trust Foundation Inc.⁴⁰

18. On January 27, 2017 Caring Americans transferred ownership of the water and sewer assets to Carriage Oaks Not-for-Profit Water and Sewer Corporation.⁴¹

19. Prior to 2014 homeowners were billed (through their annual homeowners assessment) for reimbursement of actual costs,⁴² chemicals, and testing for the water and sewer assets, but were not billed for maintenance and management performed by Distinctive Designs.⁴³

20. Carl Mills personally issued assessments for services to the Carriage Oaks Estates homeowners from the Carriage Oaks Homeowners Association.⁴⁴

21. Since 2014 Distinctive Designs has charged for maintenance and management of the water and sewer system.⁴⁵ Distinctive Designs invoiced the homeowners association for services provided⁴⁶ pursuant to a contract between Distinctive Designs and Carriage Oaks LLC,⁴⁷ and a contract between Distinctive Designs and the

³⁸ Tr., Page 74

³⁹ Tr., Pages 138-140

⁴⁰ Tr., Page 77

⁴¹ Tr., Page 77

⁴² Tr., Pages 120-127

⁴³ Ex. 24, C. Mills Direct, Page 7, also Ex. 11, Carriage Oaks Estates Property Owners Assessments

⁴⁴ Ex. 11, Pages 1-6

⁴⁵ Tr., Page 91

⁴⁶ Ex. 6 and Ex. 18, Invoices for services, also Tr., Page 129

⁴⁷ Tr., Page 120

homeowners association.⁴⁸ The homeowners association collects the water and sewer assessment used to reimburse Distinctive Designs from its members⁴⁹

III. Conclusions of Law

A. Complainants bear the burden of proof.⁵⁰ The burden of proof is the preponderance of the evidence standard.⁵¹ In order to meet this standard, Complainants must convince the Commission it is “more likely than not” that Respondents violated an applicable statute, rule, or provision of a Commission-approved tariff.⁵²

B. The issues for determination are whether the Commission has jurisdiction in this matter, and if so, whether Respondents have violated any state law, Commission rule, or company tariff.

C. The Commission has jurisdiction over this Complaint. Pursuant to Section 386.390, RSMo., “1. Complaint may be made ... by any person ... by petition in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law or of any rule or order or decision of the commission; ...”.

D. Whether the Commission has jurisdiction over Respondents, and when that jurisdiction attached, resolves most of the remaining issues in this matter.

⁴⁸ Tr., Page 125

⁴⁹ Ex. 11, and Ex. 18

⁵⁰ *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n of State of Mo.*, 116 S.W.3d 680, 693 (Mo. App. 2003).

⁵¹ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

⁵² *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

The Commission has jurisdiction over all water corporations⁵³ and sewer systems⁵⁴ Section 386.020(59), RSMo defines a water corporation: "Water corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water[.]" Section 386.020(49), RSMo defines a sewer corporation: "Sewer corporation" includes every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets[.]

E. Carl Mills owned plant or property for distributing water and for the treatment of sewage. He, through his personal trust, owned the water and sewer system from its construction through 2007 when it was transferred to Carriage Oaks LLC.

F. Carl Mills owned a water and sewer system devoted to the public use. Respondents assert that the Commission lacks jurisdiction over Respondents because the water and sewer system are not operated for the public use. While not listed as a requirement within the applicable statutes, Missouri courts have held that before the Commission has authority over a utility it must be devoted to a public use.⁵⁵

In *Hurricane Deck Holding Co. v. Pub. Serv. Comm'n*, the Western Court of Appeals determined that, "...Hurricane Deck could constitute a "public utility," even though its

⁵³ § 386.250(3), RSMo.

⁵⁴ § 386.250(4), RSMo.

⁵⁵ *State ex rel. M.O. Danciger & Co. v. Pub. Serv. Comm'n*, 275 Mo. 483, 205 S.W. 36, 40 (1918)

services were limited to the two subdivisions in which its water and sewer systems were located, where it offered service indiscriminately to all persons located within that service area.”⁵⁶ Respondents cite *Orler v. Folsom Ridge, LLC*, WC-2006-0082 for authority that providing water services to current and future subdivision residents did not amount to being a public utility. *Orler* is distinguishable from *Hurricane Deck* and the present matter because in *Orler* connecting to the water and sewer system was both optional for individuals within an area and was offered only to individuals in that area who became members of the Big Island Homeowners Association (a discrete group of people).⁵⁷

Here, all residents of Carriage Oaks Estates must be members of the Carriage Oaks Homeowners Association, and all residents must connect to the water and sewer system. Additionally, no evidence or testimony was introduced at the evidentiary hearing indicating water or sewer service was refused to any residents of the Carriage Oaks Estates subdivision. Therefore the water and sewer system owned by Carl Mills were devoted to the public use.

G. Carl Mills owned a utility operating for gain. Respondents also assert that the Commission lacks jurisdiction over Respondents because they are not operating a water or sewer system for gain. The definitions found at 386.020(49), RSMo and 386.020(59), RSMo require that utility services are being offered for gain. Respondents equate gain with making money or profit. Carl Mills stated multiple times at the evidentiary hearing that the water and sewer system had been provided for 14 years for free.⁵⁸ He testified that prior to 2014 the only expenses charged to homeowners were for chemicals and testing related to

⁵⁶ *Hurricane Deck Holding Co. v. PSC*, 289 S.W.3d 260, 266 (Mo. App., W.D. 2009)

⁵⁷ *Orler v. Folsom Ridge, LLC*, Report and Order, 16 Mo. P.S.C. 3d 28, 2007, Page 74

⁵⁸ Tr., Pages 89, 90, 93

the water and sewer system. Respondents' argument, from Mr. Mills' testimony, is that they did not make a profit, and in fact operated at a loss.⁵⁹

Providing water and sewer services for gain has been interpreted by the courts to mean providing water and sewer services for compensation.⁶⁰ The utility does not even need to receive compensation, issuing the bill is sufficient.⁶¹ *Hurricane Deck* addresses the potentiality of operating at a loss:

"...Hurricane Deck seeks — a legal rule exempting entities from PSC regulation unless and until the PSC first determined that the entity's "collections . . . are in excess of the expenditures necessary to operation of those systems."⁶²

The court found such a determination would be inconsistent with the overriding purpose of public utility regulatory laws. Therefore, because Carl Mills issued assessments to the homeowners for water and sewer services he was operating for gain.

H. Carl Mills is a person who owns a utility devoted to the public use, and operated for gain. Therefore, Carl Mills is a water corporation as defined by Section 386.020(59) RSMo. and is subject to the Commission's jurisdiction.

I. The Commission has no jurisdiction over the sewer system. Section 386.020(49) RSMo creates an exemption to the definition of sewer corporation. It states that, "except that the term shall not include sewer systems with fewer than twenty-five outlets[.]" Commission Rule 4 CSR 240-60.010(3)(K), defines (sewer) outlet as a service sewer connection to the collecting sewer. Commission Rule 4 CSR 240-60.010(3)(E), defines service sewers to customers as any sewer pipe extending from the customer's residence or other structure to the utility's collecting sewer. Commission Rule 4 CSR 240-

⁵⁹ Tr., Pages 122-124

⁶⁰ *Hurricane Deck Holding Co. v. PSC*, 289 S.W.3d 260, 267 (Mo. App., W.D. 2009)

⁶¹ *Id.*

⁶² *Id.* at 268

60.010(3)(D), defines collecting sewers as sewers, including force lines, gravity sewers, interceptors, laterals, trunk sewers, manholes, lamp holes and necessary appurtenances, including service wyes.

Seven lots are currently developed with houses in phase one.⁶³ Carl Mills testified that phase one and two are ready for immediate connection to the water and sewer system.⁶⁴ He also testified that there are sewer mains that run through phase one and two.⁶⁵ “Service sewers to customers” would be the line running from the sewer main to the house. No evidence was presented regarding the existence of those lines absent a house.

Additionally the Declaration of Restrictive Covenants and Easements states that, “[p]rior to utilizing the wastewater central collection and treatment facility, all property owners shall have installed an approved “on-site” plumbing system to transfer all wastewater generated by the subject property to the collection and treatment facility.”⁶⁶ Without a service sewer line there is no “service sewer connection to the collecting sewer.” Under that analysis there are seven sewer outlets, and the sewer system is outside the Commissions jurisdiction.

J. Carl Mills did not seek the Commission’s approval before transferring the water assets. Carl Mills transferred the water and sewer assets several times and for various purposes. The first transfer was from his personal trust to Carriage Oaks LLC. That transfer was done so that he might sell ownership interest in the subdivision. Having established that Carl Mills was under the jurisdiction of the Commission at the time he was providing water services to the subdivision for compensation; the Commission’s approval

⁶³ Tr., Page 30

⁶⁴ Tr., Page 82

⁶⁵ Tr., Page 82

⁶⁶ Ex. 14, Page 6

was required before the water assets could have been transferred or sold pursuant to Section 393.190.1, RSMo.

K. The controlling statute, 393.190(1), RSMo states:

No... water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage, or otherwise dispose of ... the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public... without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void.

Because Mr. Mills did not seek Commission approval before transferring the water assets to Carriage Oaks LLC, that transfer is void. Any subsequent transfer of water assets without Commission approval would be void as well.

L. Section 393.170(2), RSMo states:

No such corporation shall exercise any right or privilege under any franchise hereafter granted, or under an franchise heretofore granted but not heretofore actually exercised ... without first having obtained the permission and approval of the commission.

A Certificate of Convenience and Necessity is a mandate to provide service to the area covered by it.⁶⁷ Because Carl Mills falls under the Commission's jurisdiction as a water corporation he needs a certificate from the commission before he can lawfully provide water services to customers within the Carriage Oaks Estates subdivision.

IV. Discussion

Carl Mills established the Carriage Oaks Estates subdivision in 2001. His company Distinctive Designs constructed the subdivision and water and sewer system with the exception of the well. The water and sewer assets were owned by his personal trust which

⁶⁷ *State ex rel. Harline v. Pub. Serv. Comm'n of Mo.*, 343 S.W.2d 177 (Mo. Ct. App. 1960).

he controlled. Entities within his ownership, management, and control provided water and sewer services to the houses in the subdivision. The Declaration of Restrictive Covenants and Easements for Carriage Oaks Estates authorized Mr. Mills to transfer or sell the water and sewer assets without any approval from the homeowners association. His substantial voting power within the homeowners association meant that he could manage the water and sewer assets unchecked. Respondents have pointed out that the homeowners were all subject to the Declaration of Restrictive Covenants and Easements, and association bylaws upon purchasing their properties. This incorrectly assumes that the homeowners can contract away regulatory requirements through the agreement of private parties.

The record does not demonstrate any abuse by Carl Mills in regard to rates or safety. Carl Mills developed a subdivision and provided water and sewer services to the subdivision. He offered these services at cost for a period of time and appeared to provide safe service to the subdivision. What brings him within the Commission's jurisdiction for regulation is the fact that water corporations are required to obtain a certificate of convenience and necessity to provide water service to customers. The protections afforded the community by regulation are not just from actual abuse, but from potential abuse. Carl Mills started serving customers under an initial structure that should have been regulated so no service or transfers can occur without Commission approval.

Complainants allege that they have no say in the operation or management of the water or sewer system. Complainants ask that the water system and sewer system be placed with an entity where they have input in how the systems are managed. The Commission has no power to remove the water assets from their current owner, and it has no jurisdiction over the sewer system; this relief the Complainants request cannot be granted. However, in regard to the water system Respondents have engaged in a regulated

activity and are subject to the statutes governing that activity as well as the consequences for failing to comply with applicable statutes.

V. Decision

In making this decision, the Commission considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Carl Mills is a water corporation within the definition of 386.020(59) RSMo, and as such is subject to Commission jurisdiction.

Carl Mills' transfer of water assets to Carriage Oaks LLC, and any subsequent transfers are void under Section 393.190(1), RSMo.

Carl Mills does not have a Certificate of Convenience and Necessity to provide water for distribution within the state of Missouri. Carl Mills must apply for a Certificate of Convenience and Necessity to continue to operate that water system.

Complainants have failed to show by a preponderance of the evidence that there are more than 25 sewer outlets in the Carriage Oaks Estates subdivision. Therefore, Respondents are not a sewer corporation within the definition of Section 386.020(49) RSMo., and are currently outside the Commission's jurisdiction.

THE COMMISSION ORDERS THAT:

1. Any transfers of water assets made without Missouri Public Service Commission approval are void.

2. Carl Mills shall apply to the Missouri Public Service Commission for a Certificate of Convenience and Necessity.

3. Upon obtaining a Certificate of Convenience and Necessity, Carl Mills shall initiate a rate case with the Missouri Public Service Commission.

4. This order shall be effective May 14, 2018.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive style.

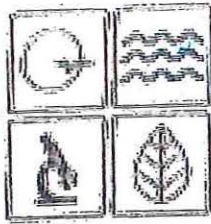
Morris L. Woodruff
Secretary

Hall, Chm., Kenney, Rupp, Coleman, and
Silvey, CC., concur.

Clark, Regulatory Law Judge

See Attached.

Exhibit 5



Missouri Department of drano-gay

NATURAL RESOURCES

Eric D. Greiner, Governor

Carol S. Combs, Director

FILED²

FEB 13 2018

Missouri Public
Service Commission

AUG 17 2017

Mr. Carl Mills, Director
Carriage Oaks Not-For-Profit Water and Sewer Corporation
209 Falling Leaf Court
Grandon West, MO 63737

Dear Mr. Mills:

The Articles of Incorporation and bylaws of Carriage Oaks Not-For-Profit Water and Sewer Corporation have been reviewed by the Missouri Department of Natural Resources General Counsel.

It has been determined that the Articles of Incorporation are consistent with the legal requirements of §393.825.2, RSMo. Additionally, the bylaws sufficiently demonstrate how the organization will be governed. Both documents are compliant with statutory requirements of §393.825 to §396.861, RSMo.

Please note that should the Carriage Oaks Not-for-Profit Water and Sewer Corporation choose to dissolve at a later date, dissolution requirements as outlined in §393.855, RSMo, shall be followed. Additionally, Carriage Oaks Not-For-Profit Water and Sewer Corporation shall notify the Department within 30 days of dissolution.

If you were adversely affected by this decision, you may be entitled to an appeal before the Administrative Hearing Commission (AHC) pursuant to 10 CSR 20-1.020 and Section 621.250, RSMo. To appeal, you must file a petition with the AHC within thirty days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the AHC. Contact information for the AHC is: Administrative Hearing Commission, United States Post Office Building, 3rd Floor, 131 West High Street, P.O. Box 1557, Jefferson City, Missouri 65102. Phone: 573-751-2422, Fax: 573-751-5018, and Website: www.mo.gov/ahe.



Complaint Exhibit No. 8
Date 2/6/18 Reporter UC
File No. WC-2017-0037



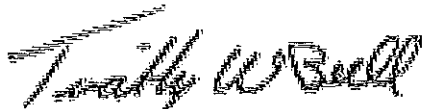
Mr. Carl Mills, Director

Page Two

If you have any questions concerning this permit, please do not hesitate to contact
Ms. Samantha Osmond at the Department of Natural Resources, Water Protection Program,
P.O. Box 176, Jefferson City, MO 65102-0176 or by phone at 573-526-2445.

Sincerely,

WATER PROTECTION PROGRAM



Timothy W. Bell
Operating Permits Section

TWB/sm

c: Mr. Kevin Hess, Southwest Regional Office
Mr. James Meriel, Missouri Public Service Commission

See Attached.

Exhibit 6

Carriage Oaks Estates

HOME OWNERS ASSOCIATION

Est. October 20, 1999

FILED²

FEB 13 2018

Carriage Oaks Estates HOA
Homeowners meeting minutes
Date of mtg. 6-29-14, 4:00 PM

Missouri Public
Service Commission

Those in attendance were Bill & Gloria Phipps, Rick & Cindy Graver, Shirley Funk & Dick Mills. Absent were the Lott's & the Morgan's, and Bob & Billy Sykes??? well kind of, sort of, read on for a surprise.

Items on the agenda were reduced to only three things.

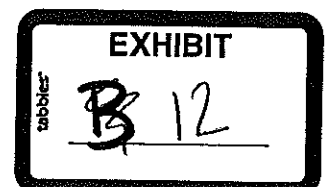
- a) Need for the water storage tank due to watering.
- b) Need for some road repairs and re-sealing.
- c) Need to pump out all septic tanks at the same time every three years to preserve the sand filter from prematurely being polluted needlessly, causing much greater expense later.

Item (a), had been discussed before with considerable misunderstanding as to how it would work. Mills presiding over the meeting and explained the reasons it was critical, considering the damage that was being done trying to water with five small accumulators to back up that amount of water usage. The damage, was explained two years ago would happen, did happen. Starting and stopping a 480 volt motor, about every 5 minutes, while massive watering is going on for hours reached its peak, then failed, with an \$8,600 price tag to replace the pump, motor and wire of 570 feet.

In order to substantially reduce this problem is, to install a storage tank to stop the on/off dilemma. Mills has researched the costs for this to be \$32,000 to \$35,000 with engineering, tank manufacturing and piping approved by the DNR of course. Mills has agreed as the Developer to Pay for the initial cost of installation, like all of the other utilities, and with a interest free loan to the HOA, over a reasonable time required to repay the loan, for the expanded equipment.

There was comment about the possibility of a special assessment or a substantial increase in assessments in order to pay for it, from Bill Phipps. Mills felt that notwithstanding, another major failure of the water or sewer facilities, the storage tank would help immensely. And of course any action by electrical storms, wind or tornados, the current assessment should work, with little or no increase. The last failure hurt badly because it took out about 2/3 of the 2013 assessment to fix it.

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Date 2/6/18 Reporter MW
File No. WC-2017-6037



Item (b) the regular sealing of falling leaf court, is needed now, but may have to wait till fall to see how far we can financially stretch, there were also some comments that pot holes trying to form on several areas on Falling Leaf Ct., if they are not attended to soon they will grow into a repaving requirement. This item is on hold.

Item (c) Mills brought up the need for having all the septic tanks in the HOA to be pumped out every three years to preserve and extend the filter bed life, which would be very expensive to replace all the piping and gravel used in the filter bed by holding down the fecal material as much as possible. This could rank right up there with the well failure.

The request was meet with favorably, and all agreed this was a good idea so it will be put in the works very soon, we will need to contact everyone to see where their tank openings are located.

Extra comments: A new "first" took place at the meeting, in that Bob Sykes participated in the meeting by phone from their home in Italy. His only problem was that on his time the meeting started at about 11:00 PM and finished about 2:00 AM, way to go Bob.

The meeting went into unexpected overtime do to an announcement by Mills that it was his intention to sell/give Carriage Oaks LLC to his relatively new 501(c)(3) Public Charity he established around 2011, called Caring Americans Trust Foundation Inc. or left by him in his Revocable Trust established in 1976. Which would be ran by the board of directors of said charity.

This was meet with considerable surprise, and instant speculation, comments were flying as to what impact this was going to have on Carriage Oaks Estates itself?

By way of explanation it will have a very positive impact on the development, in that the board of directors and myself will still be there as always, doing what I would do if I did not have any extra help doing the same thing I do now. We would still sell lots the same way, manage it the same way, use the same Deed Restrictions as always, in fact we need to make some changes in that with the homeowners input of things it needs right now. No major changes would ever take place that would have a negative impact on the overall development, "ever". In fact that needs to be put into the Restrictions as well.

Please do not make any prejudgments of the capabilities of the Charity, and its board, these are dedicated people giving their personal time and talents for free. These are successful people wanting to give back to others, who need help and have not been as successful. The mission statement is "Caring Americans help people who change lives."

We are a charity that help other charities, who are very good at what they do but, are not always financially practical and may go under for that reason alone, and they need help.

I will enclose a brochure of Caring Americans for you to look over, we have operated in Missouri only so far, but if success smiles on us we will go nation wide with our scope.

I apologize if this scared or upset anyone, but I think you will be very comfortable and as pleased as I am with its cause.

I have invited one of the homeowners to visit our next board meeting of Caring Americans on July 25th, to meet some of the board members and the CEO that will be running his part of the program under the direction of the board.

When Caring Americans takes over Carriage Oaks LLC, we will probably want one of the homeowners to set on the board to see what goes on, and offer any suggestions they feel would improve Carriage Oaks Estates. By then we may even pick up a developer to put on the board, that may want develop phase III for expenses only.

There are many great possibilities ahead, I hope you will become as enthused as I am.

Have a Great Day

Dick Mills

Any further comments by anyone are appreciated, or if I have left out, or forgotten anything, please advise. Sorry my English Teacher friend is not here to edit all my errors.

Carriage Oaks Estates

HOME OWNERS ASSOCIATION

Est. October 20, 1999

July 18, 2014

Carriage Oaks Estates HOA

Homeowners additional Meeting Minutes
of Meeting on 6-29-14 by Bob Sykes

After the above meeting was concluded, I was a little taken back by the speculation responses, so rather than write up the minutes right away I called Bob back and asked if he had heard the responses over the phone as they were in progress. He said that he had, so I asked him to write up the minutes as he felt he heard them, that perhaps I was a little too close to the subject to be objective, and he said he thought he could. Then after a day or so, I felt bad that I had put this into Bob's lap, and went ahead and wrote up the minutes as I saw them.

Now Bob has emailed his minutes, to me with some personal comments he had written in red print, with the additional comment, that I could erase those if I wanted. I am leaving them in, as they are dead on correct, and I appreciate the analysis taken by someone who was at least, verbally at the meeting, while not in person. The only corrections I have of Bob's minutes would be the attendees, in that the Lott's were not there nor the Morgan's of Lots 3A&4A, not 5A&6A. If anyone else who was there wants to weigh in on my comments or Bob's, they would be received and appreciated regardless.

Additional news, I have contacted Tillman, also Boerman Haulers of sewage, Tillman said they were too busy, Boerman has not called back yet, but intends to. These are the only reputable known Haulers in this area.

I also have a call in for Joe Montgomery, of Montgomery tanks for an appointment to get his input and quote for the storage water tank we need, also I have a quote from a Consulting Engineer, for engineering services.

So thanks again Bob for your input and observation, anyone else have any input, please do, this is the appropriate time to do so. Hope everyone is well.

Dick Mills

Carriage Oaks Estates LLC

Subject: Draft Minutes of the Home Owners Association Meeting of June 29, 2014

Attendees:

Lot 1: Cindy
Lot 2: Ms Funk
Lot 3: Bill & Gloria Phipps
Lot 4: Bob Sykes (by phone)
Lot 5: Dick Mills (LLC Owner and President)
Lot 6: David & Melody Lott
Lots 5a&6a: Did not attend

Topic: Water storage tank

Dick explained the need for a water storage tank to prevent excessive wear and premature failure of the well pump and motor (as we recently experienced). This wear and tear is caused by the unanticipated higher demand for water for non-household use (sprinklers, pools, water features, etc.) which require activation of the pump much more frequently than it is designed for. The recent failure of the equipment cost the HOA \$8,600, or about 2/3 of the annual HOA income from member assessments. A storage tank will significantly reduce pump demand, thereby extending its useful life.

Dick said a 15K gallon tank, constructed on site by Montgomery Tanks in Springfield, MO, costs about \$30K. Gloria said that estimate was the same as the HOA at The Point was given. Dick also said that to add a 6 foot section for a total of a 24K gallon tank, only costs about \$3K more. With only 7 houses constructed so far, it appears the larger tank is the better investment. Dick said he will front the money for the tank which will be repaid gradually through our annual assessments and those of new owner-members. Dick also said that our annual assessments would not be increasing due to the storage tank. All present were in favor of building the new water storage tank.

Topic: Homeowner septic tanks need their sludge pumped out every 3 years.

Dick explained that if owners did not have their septic tanks pumped out every 3 years, the demand on the sand filtration field would cause it to fail at a substantial unbudgeted expense. It was agreed that local vendors would be asked for bids to pump out everyone's septic tank at the same time so we would get lower prices through volume discounts. Homeowners would pay their portion of the bill.

Rusty water

The high concentration of rust in the water was brought up. Homeowners have to replace their relatively expensive filters at least twice a year, if not more frequently. One suggestion was to look into master filters for the well or the new storage tank. Another thought was that the rust in the storage tank may settle to the bottom and be able to be cleaned out from there. These potential options will be investigated.

Volunteers

Dick asked if anyone would like to volunteer to help with some of the work of the LLC. Most urgently, he said he would appreciate if someone could review the books for the last 5 years, and help with the bookkeeping going forward. Recognizing that it would cost the LLC some money, members urged him to have a professional accountant audit the books and ensure they were current before one of the members became the bookkeeper.

Ownership and potential disposition of the Carriage Oaks Estates LLC

With all that Dick Mills has done to keep the utility infrastructure, roads, front gate, common areas, etc. maintained and operating correctly, a discussion ensued as to what would happen if Dick was no longer here (due to selling out or his demise). Where would we turn, who would take over? To save the LLC money, Dick has done as much as he could himself with his tractor, bull dozer, and riding mower. He only contracted with others when their expertise and capabilities were needed. Dick acknowledged that none of us were going to live forever, and explained that he had already made provisions for a charitable trust (Caring Americans Trust Foundation LLC-which he founded) to take over the ownership and operation of the LLC in perpetuity. This news was surprising to most of the homeowners, with several expressing concerns about the potential negative effect of this transition on their property values. Dick tried to reassure the homeowners that having a quality organization with trained individuals managing the LLC in accordance with the written by-laws would be the best way to ensure there was no negative impact to property values. As the meeting broke up, there were still significant concerns about this issue.

Additional thoughts by Bob Sykes for consideration by members: It was important to get this issue on the table so HOA members could think about it in the comfort of their homes, and hopefully realize the benefits of Dick's thoughtful planning. Dick will live here for the rest of his life with no intentions of selling the LLC. As the owner of the LLC, Dick has the legal right to transfer/sell/dispose of the LLC to whomever he desires. We are fortunate that his vision is for a prosperous, well cared for LLC. A far worse alternative would be if Dick left the LLC in his will to an individual who could dispose of it at any time and to anyone in order to cash out for their personal gain, leaving the LLC and the HOA members at the mercy of other uncaring owners.

Minutes drafted by Bob Sykes, edited by Dick Mills, submitted to HOA members for approval.

See Attached.

Exhibit 7

FILED²

FEB 13 2018

Missouri Public
Service Commission

Michael Stalzer, P.E.
210 S. 3rd Street
Branson, MO 65616
417-334-8820

September 18, 2015

Carriage Oaks Estates
Homeowners Association
c/o Dick Mills
209 Falling Leaf Court
Branson West, MO 65737

RE: Water Distribution System Review

Mr. Mills:

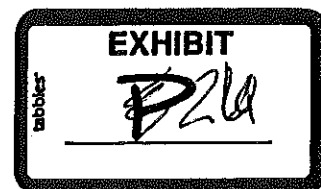
As I understand, Phase One of the subdivision was completed approximately fifteen years ago. As part of the process of final plat approval, the developer would have been required by Stone County Planning and Zoning to obtain all necessary construction permits from the Missouri Department of Natural Resources. Typically, upon completion of the improvement or expiration of the construction permit the MDNR would inspect the permitted feature for compliance wherein any and all deficiencies would need to be corrected prior to the issuance of any operating permit. Currently both the water system and the wastewater treatment facility are operational and in compliance with applicable MDNR requirements.

That being said, most developments of this type construct needed infrastructure in phases to accommodate estimated build out rates. The development was platted in two phase resulting in a total of 33 lots. As of today there are 7 estate style homes constructed and occupied.

Prior to the recent water system upgrade, the system consisted of a deep well capable of delivering fifty five gallons per minute, five bladder tanks, necessary controls, well house, 4" PVC water main and necessary appurtenances. The system upgrade added a 30,000 gallon ground level storage tank, two 7.5 horse power high service pumps and necessary controls.

In order to answer your question as to the adequacy of the current system, my response is based on the recommendations of the Missouri Department of Natural Resources Design Guide for Community Water Systems, effective date August 29, 2003.

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Domestic Demand:

33 lots x 3 persons/lot x 80 gallons a day/person = 7,920 gallons
Irrigation demand for estate style homes:

2 gallons per minute per connection. Assume each lot will irrigate for 60 minutes a day.

2 gpm/ lot x 33 lots x 60 min/lot = 3,960 gallons per day.

The ground level storage tank should be sized to accommodate one day water use.

One day water use = 7,920 + 3,960 = 11,880 gallons

Well Capacity:

The existing well pump can deliver 55 gallons per minute.

Hours of pump operation = 11,880 gallons / 55 gpm = 216 minutes

Based on the estimated demand the well pump will operate for 216 minutes or 3.6 hours per day.

Ground Level Storage Tank:

The ground level storage tank provided has a capacity of 30,000 gallons. This tank exceeds the Department of Natural Resources minimum recommendation 11,880 gallons.

Bladder Tanks:

The number of bladder tanks required to provide adequate system operating pressure is based on the estimated peak system demand.

$$\begin{aligned}\text{Peak Flow} &= 12 (\text{number of connections})^{0.515} \\ &= 12 (33)^{0.515} \\ &= 72.64 \text{ gallons per minute}\end{aligned}$$

Required number of bladder tanks.

$$\begin{aligned}72.64 \text{ gpm} \times 2 \text{ min} &= 145.29 \text{ gallons} \\ 145.29 \text{ gallons} / 31.86 \text{ gallons/tank} &= 4.5 \text{ tanks required} - 5 \text{ provided}\end{aligned}$$

The number of bladder tanks required to provide adequate system operating pressure have been provided.

High Service Pumps:

The system has been upgraded to include a 7.5 horse power duplex pump package to create system pressure and deliver water to the users. The operation of the duplex high service pump system is controlled by a 40-60 pressure switch in an alternating fashion. When the system is in use and the operating pressure drops below 40 pounds per square inch a pump is activated, once the system pressure of 60 psi reached the pump is deactivated. Pumps of this type can deliver water to the distribution system at rates of up to 100 gallons per minute.

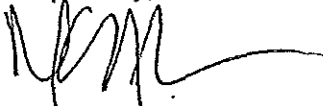
High service pumps capable of meeting system demand have been provided.

Based on the Missouri Department of Natural Resources Design Guide recommendations the water distribution system as constructed meets their minimum standard.

Although the existing system was capable of serving up to twelve homes, the system upgrade will improve system performance and extend its economic life.

If you have any questions please to call.

Respectfully,



Michael E. Stalzer, P.E.

