

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

DERALD MORGAN, RICK AND CINDY)
GRAVER, WILLIAM AND GLORIA PHIPPS)
and DAVID LOTT,)
)
Complainants,)

v.)

File No. WC-2017-0037

)
CARL RICHARD MILLS,)
CARRIAGE OAKS ESTATES,)
DISTINCTIVE DESIGNS, and)
CARING AMERICANS TRUST)
FOUNDATION, INC. (f/k/a Caring)
Americans Foundation, Inc.))
)
Respondents.)

RESPONDENTS' RESPONSE TO STAFF RESPONSE TO AMENDED MOTION TO DISMISS

Respondents, in an effort to clarify some of the statements set forth in the *Staff Response to Respondents' Amended Motion to Dismiss*, state the following:

1. On September 6, 2016 Respondents filed Respondents' Motion to Dismiss Complainants' Amended Petition ("Motion to Dismiss"), which argued, among other things, that the Missouri Public Service Commission ("PSC") lacked jurisdiction over the water and sewer facilities of the Carriage Oaks Subdivision ("Carriage Oaks") because the water and sewer facilities were not operated for a profit.

2. On February 14, 2017, Respondents filed Respondents' Amended Motion to Dismiss ("Amended Motion to Dismiss"), arguing that the PSC continued to lack jurisdiction over the water and sewer facilities of Carriage Oaks due to the transfer of such facilities to a not-for-profit water and sewer corporation properly formed under Chapter 393.

3. While the Amended Motion to Dismiss hinged on the fact that the PSC now lacks jurisdiction due to the transfer to a Chapter 393 not-for-profit, Respondents continued to advocate that the PSC never had jurisdiction over the water and sewer systems of Carriage Oaks.

4. On February 22, 2017, the Staff of the PSC (“Staff”) filed its Response to Amended Petition, which argued that, among other things, the PSC has jurisdiction over Carriage Oaks in light of §393.933.3, which holds that the PSC shall not have jurisdiction over Chapter 393 organizations, except that the PSC shall have authority to approve the reorganization of any existing company regulated by the PSC.

ARGUMENT

Sections 386.020(24) and 386.020(59) defines regulated sewer and water corporations for which the PSC has jurisdiction over, as every corporation owning, operating, controlling or managing any plant or property engaged in distribution or selling or supplying *for gain* any water, or for the collection, carriage, treatment or disposal of sewage *for gain* (emphasis added). During the time period the water and sewer facilities of Carriage Oaks were initially owned by Carriage Oaks, LLC, a Missouri limited liability company (“LLC”)--and even after their subsequent transfer to the Caring Americans Trust Foundation, a Missouri not-for-profit organization (“Caring Americans”)-- such water and sewer services were never provided to the residents of Carriage Oaks *for a gain*.

While the water and sewer facilities were held by both the LLC and Caring Americans, Distinctive Designs, Ltd. (“Distinctive Designs”) was hired to perform maintenance and upkeep of the facilities at a rate which was much lower than any local competitor. The fees charged to the homeowners of Carriage Oaks were to cover the fees of maintenance and upkeep charged by Distinctive Designs. Neither LLC nor Caring Americans ever charged a fee for the provision of water of sewer services. Not only did neither LLC nor Caring Americans not operate for gain, they actually lost money by way of holding the water and sewer facilities. In particular, the water system of Carriage Oaks required a substantial upgrade to accommodate the unusually high volume of water used by the homeowners. Caring Americans fronted the approximately \$40,000 for the upgrade on the homeowners verbal agreement that

they would pay for the upgrades. *See Exhibit A.* After the upgrades were installed, the homeowners refused to pay, leaving Caring Americans stuck with absorbing such cost.

The Complainants' and Staff's assertion that the water and sewer systems operated for a gain is perhaps due to the lack of understand of the interplay between Distinctive Designs, LLC, and Caring Americans. Distinctive Designs Ltd. is a subset of Mills Property Group, which is owned by Mr. Carl Richard Mills ("Mills"), who is also an owner of LLC and a founder of Caring Americans. Mills' ownership interest in Distinctive Designs does not impute the concept of operating for gain to either the LLC or Caring Americans. As mentioned previously, such maintenance and upkeep services could have been easily been awarded to an outside company, such as White River Valley, but were awarded to Distinctive Designs because their proposal was significantly less than all outside companies. *See Exhibits B and C.*

Due to the fact that neither LLC nor Caring Americans ever received compensation for the provision of water and sewer services, Respondents maintain their position that the PSC has always lacked jurisdiction over the water and sewer facilities. As such, the Respondents' were never required to seek the approval of the PSC prior to the transfer of the water and sewer systems to a Chapter 393 not-for-profit organization.

WHEREFORE, based on the above, Respondents request that the Public Service Commission dismiss the Complaint for lack of jurisdiction and for such other future relief as the Public Service Commission deems just.

HUSCH BLACKWELL LLP

By: /s/ Whitney Smith

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Attorneys for Respondent

Certificate of Service

The below signed counsel hereby certifies that a true and accurate copy of the foregoing was sent to Karl Finkenbinder, counsel for the Complainants, via email (karl@sfalawfirm.com) on this 6th day of March, 2017.

/s/ Whitney Smith

Whitney Smith, Counsel for Respondents

Exhibit A

See Attached.


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 **MORGAN**

Exhibit A1



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.

Exhibit AZ

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.

Exhibit B

See Attached.

White River Valley Environmental Services, LLC.

536 Roark Branch Drive

Branson West, MO. 65737

417-294-0590

417-339-2007 Fax

rhelms@whiteriver.org email

August 22, 2014

Exhibit B

Carriage Oaks Estates Subdivision

Dick Mills

209 Falling Leaf Court

Branson West, MO. 65737

Dear Mr. Mills:

The proposed monthly amount for operating and maintaining your Wastewater Treatment Facility at Carriage Oaks Estates Subdivision is \$392.00 per month. This includes a once per week visit to the wastewater treatment facility. During this visit operations and maintenance tasks will be performed and recorded. Operator will collect required samples once per quarter and perform lab testing as required by MDNR. A monthly wastewater report will be prepared for you. The proposed amount does not include grounds maintenance work on or around the Wastewater Treatment Facility. Chemicals used at the facility can be provided at an additional cost. If other tasks are needed to be performed they will be billed at our hourly rate. *75⁰⁰ Hr.*

Current Chemical Pricing (subject to change in the event of price change from our supplier).

Chlorine Tablets	50 lb. pail	\$196.20
Dechlor Tablets	45 lb. pail	\$164.40
Prestofloc C-100	55 gallon drum	\$374.40

If you have any questions please do not hesitate to call me at 417-294-0591.

We look forward to doing business with you.

Sincerely,



Tim Thorson, Operations Supervisor

Exhibit C

See Attached.

Distinctive Designs Ltd.

Div. Mills Properties Group Ltd.

209 Falling Leaf Court
Branson West, MO 65737
(417) 338-8870
Fax (417) 338-0521

Jan. 30, 2015

Invoice for 2014 Services

Exhibit C

Carriage Oaks Estates Subdivision
209 Falling Leaf Court
Branson West, MO. 75737

Management for calendar year 2014 of, Carriage Oaks Estates Subdivision, Sewer Treatment Plant & Water Well, Facilities. Operating and Maintaining these facilities includes: A weekly check of operating equipment, for functioning ability of motors, monitors and signaling devices, inspection of grounds for fallen trees, overgrown vegetations, including filter bed, and checking chemical levels. Collecting water samples from the Water Well annually, until at least ten homes, or twenty five persons reside in the subdivision. Collect samples of sewer treatment plant quarterly, and prepare a test report as required for the MDNR. The monthly cost is \$350.00, and does not include grounds maintenance work on or around the Well or Wastewater Treatment Facility. Chemicals used at the facilities, and testing are separate including Chlorine Tablets, De-Chlorination Tablets, Prestofloc C-100 55 gallon drums. And are determined by the commercial suppliers, and subject to change, will be supplied at cost.

Cost for 2014 year above described services. \$4,200.00

Maintenance costs being separate from above, include: Sewer Treatment Plant facility, Brush-hogging, as needed for large growth, regular mowing for small grass areas, weed-eating for steep inclines and outside Filter Bed fenced area, removal of overgrown brush, cut up and/or remove fallen trees near filter bed. Remove vegetation from filter bed in Spring and Fall, or as required by MDNR. Accompany MDNR on any inspections requested. Clean Recirculation Pumps/Motors and Filter Baskets in Recirculation Tank annually for fecal material. Check each year, and Pump out Flocculation Tank as needed. Renew Operating Permit with MDNR when required, and keep permit current annually. Schedule all Carriage Oaks property owners to pump out Septic tanks, and clean Pump/motor and filter baskets every three (3) years in August starting 2014 year.

Cost for 2014 year above described services. \$2,250.00

All other outside service costs such as, vendors supplying repairs of/new equipment, electricians, repairmen, new requirements from the MDNR, engineers or skilled labor for repairs or all pearls, and pumping out services, are not included in the above invoice.