

**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.), CARRIAGE)
OAKS NOT-FOR-PROFIT WATER AND)
SEWER CORPORATION.)
)
Respondents.)

**RESPONDENTS’ RESPONSE TO COMPLAINANTS SUGGESTIONS
IN OPPOSITION TO RESPONDENTS’ MOTION TO DISMISS**

Respondents, in an effort to clarify the accusations made in the Complainants’ Suggestions in Opposition to Respondents’ Motion to Dismiss, state as follows:

I. Formation and Structure of Carriage Oaks Not-for-Profit

Much of Complainants’ response is dedicated to pointing out the alleged inaccuracies in the formation and operation of Carriage Oaks Not-for-Profit Water and Sewer Corporation (“Carriage Oaks NFP”), with their overarching argument hinging on the fact that Carriage Oaks NFP was not in compliance with Sections 393.825 and 393.900 RSMo. Again, Respondents call attention to Section 393.825.3 and 393.900.3 RSMo, which requires the Missouri Department of Natural Resources (“DNR”) to review all not-for-profit water and sewer corporations’ bylaws to ensure all statutory requirements are met. As has been emphasized in previous responses, DNR has found that the bylaws of Carriage Oaks

NFP meet all statutory requirements. As such, the Complainants' allegations of improper formation lack merit and should be disregarded.

Although Respondents do not believe the structure of Carriage Oaks NFP requires justification or explanation, Respondents wish to elaborate on the structure of Carriage Oaks NFP for the sole purpose of correcting the inaccuracies depicted in Complainants' response. Carriage Oaks NFP is currently structured in such a manner as to allow each owner of property that is or will receive a water or sewer service connection within the geographic area to receive one membership interest and one vote for the election of Directors. Because Mr. Mills, as developer of Carriage Oaks Estates, owns the majority of the lots, he is entitled to the majority of the votes. As the remaining undeveloped lots are sold, new members will be added to Carriage Oaks NFP and Mr. Mills' voting power will diminish accordingly.

Prior to their last response, Complainants have never alleged that they did not wish to be members of Carriage Oaks NFP. Additionally, the Respondents note that the language in the Carriage Oaks Estates Declarations which prevents the installation of wells and septic systems is a reflection of the requirements imposed by Planning and Zoning and not an attempt by the developer to restrict the homeowners.

II. Accusations of Abusive Behaviors

Throughout Complainants' response, multiple references are made to the alleged abusive behavior of the Respondents in their operation of the water and sewer system, yet only one specific allegation is made. In fact, Complainants state that they only believe Respondents will operate the water and sewer system to the detriment of the Complaints. Such allegation is meritless and such claim cannot be justified by a mere inclination. Complainants make no allegations of high rates, poor water quality, or any other claim which would show the Respondents have operated the water and sewer systems in an abusive manner.

Additionally, Complainants allegation that Respondents threatened to turn off Dr. Morgan's water with no justification is strongly mischaracterized. Upon the purchase of his lot and the construction

of his home, Dr. Morgan and his contractor received certain specifications from the developer, among which was the requirement that all homes be equipped with a water meter. Despite these obligations, Dr. Morgan failed to comply. Previously this year, Carriage Oaks NFP notified the homeowners that instead of a flat rate billing system, they would be switching over the billing system based on usage. As such, each lot would be required to have a meter. All of the other homeowners, including the remainder of the Complainants, complied with this request. When Dr. Morgan stated that he would not add such meter, Carriage Oaks NFP sent him a letter stating that if he continued to refused to comply with such request, they would have no choice but to discontinue providing water services to him. The developer then hired a third-party, independent plumber to install the water meter at Dr. Morgan's house. Such installation would have only required the plumber to access waterlines located on the easements of Dr. Morgan's property and would not have intruded or interfered with Dr. Morgan's enjoyment of his property. Before the plumber even began his work, Dr. Morgan and his counsel sent the plumber a letter stating that if such installation occurred, Dr. Morgan would personally pursue a claim against the plumber in such an amount which would "put him out of business". Ultimately, the developer, with the oversight of one of the other Complainants, was able to install a meter on Dr. Morgan's easement. As such, the allegation that Respondents threatened to turn off Dr. Morgan's water for any retaliatory or abusive reason is a disingenuous mischaracterization that should be disregarded.

In sum, the Respondents believe that the Complainants are attempting to confuse and cloud the issues at hand with ancillary and repetitious arguments which in no way relate the question before the Public Service Commission. As such, the Respondents pray that the Public Service Commission will dismiss the Complainants' Complaint.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record on this 13th day of November, 2017.

/s/ Whitney Smith