

**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.)

**RESPONSE TO THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION'S
MOTION FOR MEDIATION**

COME NOW Complainants Derald Morgan, Rick Graver, Cindy Graver, William Phipps, Gloria Phipps, and David Lott ("Complainants"), by and through counsel, Schenewerk & Finkenbinder, Attorneys at Law, LLC, and in response to the Staff of the Missouri Public Service Commission's (the "Staff") Motion to Mediate, state the following:

1. The Staff filed a Motion for Mediation in this case on January 13, 2017.
2. Pursuant to 4 CSR 240.2125(2), the Commission may order mediation before any further proceedings in the case and may appoint a presiding officer or other neutral third party to mediate the dispute.
3. Complainants agree that it is possible that their complaint could be resolved through mediation.

4. On January 10, 2017, Respondents provided Complainants and the Staff with the corporate documents created for the purpose of achieving nonprofit status for the operation of the water and sewer utilities.

5. However, the corporate documents created by Respondents are deficient for several reasons:

(a) The Articles of Incorporation fail to identify five or more persons as organizers as required by Sections 393.825.1 and 393.900.1, RSMo.;

(b) The documents establishing a nonprofit water and sewer corporation have not been reviewed or approved by the Department of Natural Resources as required by Sections 393.825.3 and 393.900.3(1), RSMo.;

(c) No Articles of Conversion were included with the corporate documents. Section 393.827(1), RSMo. requires the board of directors to approve such Articles.

(d) Respondent's documents fail to recognize Complainants as members of the nonprofit even though Complainants are residents receiving utility services from the Respondent.

(e) Respondent's bylaws allow a member to hold multiple membership interests, which would allow such a member to have multiple votes. Accordingly, Respondent's bylaws violate Sections 393.839.7 and 393.921.7, RSMo. Furthermore, Respondent's bylaws expand the qualifications of membership to include future utility consumers, in violation of Sections 393.839.1 and 393.921.1, RSMo.

(f) Respondents have not demonstrated that the five directors are members of the nonprofit corporation. Sections 393.843.1 and 393.927.1, RSMo. require at least five directors be members of the nonprofit corporation.

6. Complainants believe that appointing a neutral third-party to mediate this case could potentially resolve the disputes between the parties.

7. Complainants request that the mediation be set promptly and that Respondents not be allowed to further delay these proceedings.

WHEREFORE, Complainants state that they will agree to mediation with a mediator and respectfully request that the mediation be scheduled as soon as practicable for all parties to this matter.

Respectfully submitted,

SCHENEWERK & FINKENBINDER,
ATTORNEYS AT LAW, LLC

By: /s/Karl Finkenbinder

Karl Finkenbinder, Mo. Bar No. 59425
Jacqueline Bryant, Mo. Bar No. 64755
P.O. Box 123
500 W. Main St., Suite 305
Branson, Missouri 65616
[417] 334.7922;
[417] 334.7923 FAX
Email: karl@sfalawfirm.com
COUNSEL FOR COMPLAINANTS

CERTIFICATE OF SERVICE

The below signed counsel hereby certifies that a true and accurate copy of the foregoing was sent to all counsel of record via email on this January 25, 2017.

Bryan Wade
Bryan.Wade@huschblackwell.com
Counsel for Respondents

Hampton Williams
Hampton.Williams@psc.mo.gov
Assistant Staff Counsel for PSC

/s/ Karl Finkenbinder
Karl Finkenbinder