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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

February 6, 2018
Jefferson City, Missouri
Volume 2

Derald Morgan, Richard and Cindy)
Graver, William and Gloria Phipps)
and David Lott,)
)
Complainants,)
)
vs.) Case No.
) WC-2017-0037
)
Carl Richard Mills, Carriage Oak)
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.)

JUDGE JOHN CLARK, Presiding
REGULATORY LAW JUDGE

DANIEL Y. HALL, Chairman
MAIDA J. COLEMAN,
RYAN SILVEY,
COMMISSIONERS

REPORTED BY: Monnie S. Mealy, CCR, CSR, RPR
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A P P E A R A N C E S

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1 P R O C E E D I N G S

2 JUDGE CLARK: Okay. We'll go on the
3 record now. Good morning. Today is Tuesday,
4 February 6th, 2018, and the time is 9 a.m.

5 The Commission has set aside this time for
6 an evidentiary hearing in Derald Morgan, Rick and
7 Cindy Graver, William and Gloria Phipps and David
8 Lott, Complainants, versus Carl Richard Mills,
9 Carriage Oaks Estates, Distinctive Designs and
10 Caring -- Caring Americans Trust Foundations,
11 Incorporated, also known As Caring Americans
12 Foundations, Incorporated, Carriage Oaks Not For
13 Profit Water and Sewer Corporation, Respondents,
14 File No. WC-2017-0037.

15 My name is John Clark, and I am the
16 Regulatory Law Judge presiding over this hearing.
17 I'd like at this time for Counsel for the parties
18 to enter their appearance. I'm going to ask that
19 you be sure that your mics are on and that you
20 speak into this -- into them. For the
21 Complainants?

22 MR. FINKENBINDER: Karl Finkenbinder for
23 the Complainants.

24 JUDGE CLARK: Thank you, Mr. Finkenbinder.
25 for the Respondents?

1 MR. WADE: Bryan Wade and Whitney Smith
2 for the Respondents.

3 JUDGE CLARK: Mr. Wade, Ms. Smith, thank
4 you. The office of the Public Counsel?

5 MR. SMITH: Ryan Smith on behalf of the
6 Office of Public Counsel. My information has been
7 provided to the court reporter.

8 JUDGE CLARK: Thank you, Mr. Smith. And
9 Jacob Weston of the Commission Staff requested by
10 motion to be excused from today's hearing. That
11 motion will be granted.

12 Likewise, from the Office of the Public
13 Counsel, Ryan Smith requested this morning to be
14 excused from today's proceeding, and that will also
15 be granted.

16 MR. SMITH: Thank you, Judge.

17 JUDGE CLARK: I'll advise you at this time
18 if you have a cell phone to turn that cell phone
19 off or at least put it on silent. Are there any
20 preliminary matters that need to be taken up at
21 this time?

22 MR. FINKENBINDER: No, your Honor.

23 MR. WADE: No, Judge.

24 JUDGE CLARK: In that case, I'm going to
25 go -- because this is a case that involves a

1 subdivision and a number of individuals in the
2 subdivision, I'm going to go over one of the
3 pitfalls in today's case, and that is the
4 Commission's confidentiality rule.

5 It is against the Commission's rule to
6 release customer-specific information. And since
7 this is being live broadcast out, I'm going to ask
8 that you be very aware of that.

9 If any witnesses get up and are testifying
10 today before the Commission, what I don't want to
11 hear come out of their mouth is John Smith at 102
12 Made Up Lane. That's very customer-specific
13 information.

14 Now, as to parties that are here and are
15 going to be he testifying, I'm going to find that
16 that is waived in regard to those parties, at least
17 in terms of name when referring to each other.
18 That only makes sense.

19 But if you're going to get up and talk
20 about somebody else in the subdivision, it would be
21 easier to comply with the Commission's rule if you
22 merely said, My neighbor three houses up or my
23 neighbor behind me. So please try and be aware of
24 that.

25 If anybody accidentally says a name, we're

1 going to stop and we're going to strike it from the
2 record.

3 Now, to go over the general procedures for
4 today's case, each party is going to have an
5 opportunity to make a brief opening statement
6 starting with Complainants.

7 And then the Complainants will have an
8 opportunity to put on their case by putting on
9 their witness followed by the Respondents.

10 So my understanding is who we have for
11 witnesses are Derald Morgan followed by Carl Mills.
12 Is that correct?

13 MR. FINKENBINDER: Yes, your Honor.

14 MR. WADE: Yes.

15 JUDGE CLARK: Now, it's the practice
16 before the Commission in regard to direct testimony
17 that you put your witness on, that you lay such
18 foundation as would be necessary to enter their
19 direct pre-filed testimony, to have that admitted
20 as evidence and then tender the witness for
21 cross-examination.

22 Exhibits, I don't know what exhibits we
23 have today. It would be my preference in regard to
24 exhibits that if we need to take a moment now to
25 have them pre-marked that we go ahead and do that

1 rather than having the Complainants and Respondents
2 exhibits where you have Complainant's 1 and
3 respondent's one, I'd like all the exhibits just
4 numbered sequentially so Complainants are doing 1,
5 2 and 3 then Respondents might take 4, 5 and 6.

6 And that way, if we're referring to
7 Exhibit 7, we're all talking about the same Exhibit
8 7. So if you need to take a moment and mark your
9 exhibits, we can do that now.

10 MR. WADE: Judge, I have marked -- I've
11 got three books, and I've marked them with letters.
12 I don't know if I'm going to use them all, but I
13 have books for everybody. So it might be -- I have
14 a book for you, a book for opposing counsel and a
15 book for the witness.

16 JUDGE CLARK: I understand.

17 MR. WADE: If you --

18 JUDGE CLARK: If you want to go ahead and
19 remark those.

20 MR. WADE: You want to mark them -- number
21 them?

22 JUDGE CLARK: Number them. Yes.

23 MR. WADE: Okay. Carl, do you want to use
24 1 through --

25 MR. FINKENBINDER: I can count them real

1 quick.

2 MR. WADE: Okay. No. You cannot count
3 them.

4 MR. FINKENBINDER: I'm taking 1 through
5 10. 1 through 10.

6 MR. WADE: Okay. I will be 11.

7 JUDGE CLARK: And if we need to add more
8 numbers later, I'm not opposed to doing those out
9 of order. What you might want do is wait and offer
10 it at the appropriate time.

11 MR. WADE: I'll offer it. But this is an
12 extra copy for you.

13 JUDGE CLARK: Thank you. If exhibits --
14 if any exhibits have customer-specific information,
15 let me know.

16 If we're going to have any testimony
17 regarding any customer-specific information, let me
18 know, and we'll go in-camera to do that. Are we
19 ready?

20 MR. FINKENBINDER: Yes, your Honor.

21 MR. WADE: Yes, your Honor.

22 MR. CLARK: Okay. If the Complainant
23 would like to step up to the podium and make a
24 brief opening statement.

25 OPENING STATEMENT

1 BY MR. FINKENBINDER:

2 MR. FINKENBINDER: Good morning, your
3 Honor, Commissioners. My name is Carl
4 Finkenbinder. I represent the Complainants, Derald
5 Morgan, Rick and Cindy Graver, William and Gloria
6 Phillips and David Lott. Mr. Morgan and William
7 and Gloria Phipps are present with me today.

8 Your Honor, my clients are normal
9 homeowners in the subdivision, and they are not
10 litigious people. They don't sue people for fun,
11 and they're not here for spite or anything that
12 they're enjoying out of this.

13 But this is a interesting circumstance in
14 which you have a subdivision where there's only
15 seven homes in a subdivision with up to 33 lots,
16 but only seven of those lots have homes on them.

17 And this is not your typical neighborly
18 fight because what has occurred in this subdivision
19 is that the developer, or the Respondent,
20 Mr. Mills, is at odds with the majority of the lot
21 owners over several issues.

22 And if the Court will look at the entities
23 involved, it will see that Richard Mills is the
24 sole owner of Carriage Oaks, LLC, who is the
25 original developer, that it is the sole owner of

1 Distinctive Designs, which is also a company
2 related to development. And Mr. Mills also
3 controls the Carriage Oaks Estates by ten votes for
4 every lot that he owns.

5 He owns -- he controls Carriage Oaks Not
6 For Profit, which is a new litigant in this case.
7 And he also controls solely Caring Americans Trust
8 Foundation, Inc.

9 What brings us here today is, despite
10 multiple attempts to try to work with Mr. Mills, my
11 clients have been unable to. And so for that
12 reason, we've brought several issues before the
13 Commission and -- that we're going to ask the
14 Commission and your Honor to rule on.

15 The first is -- is whether the Respondents
16 were subject to the jurisdiction of the PSC prior
17 to the transfer of the water and sewer system to
18 the Carriage Oaks Not For Profit Water and Sewer.

19 We contend that yes, it is pursuant to
20 386.250 and according to case law as well which
21 identifies my clients as the public.

22 They are not members of this new Carriage
23 Oaks Not For Profit. The Commission and your Honor
24 will hear testimony from the Respondents that tries
25 to indicate that my clients are, in fact, members

1 of this.

2 However, they've never agreed to be part
3 of this Carriage Oaks Not For Profit, which is a
4 statutory requirement for it to exist and for my
5 clients to be a part of it.

6 Furthermore, you're going to hear that
7 this Carriage Oaks does not profit and its
8 predecessors have charged money, a profit. The
9 Respondent, you'll hear testimony that they have
10 tried to disguise it as something else, but that is
11 exactly what it is, particularly as the word profit
12 is broadly defined in case law and as the PSC has
13 defined it.

14 The second issue in -- well, I should say
15 that once the Commission rules that the Respondent
16 was subject to jurisdiction prior to the transfer
17 of the water and sewer systems, then the transfer
18 itself is void and the Commission has the ability
19 to void that transfer to the Carriage Oaks Not For
20 Profit.

21 The -- we are contending that because --
22 as a secondary issue, we are contending that
23 although in normal circumstance, I'll admit and the
24 Complainants will admit that a normally and
25 properly formed Carriage Oaks -- or sorry -- sewer

1 and water not for profit would not be subject to
2 PSC jurisdiction. We acknowledge that.

3 However, as it has been already briefed,
4 what is different about this case is that the
5 Carriage Oaks Not For Profit in this case was not
6 properly formed, which does give it jurisdiction --
7 sorry -- jurisdiction of the PSC.

8 And it's not properly formed on two bases.
9 First, the bylaws don't comply with 393.921 and
10 393.839(7). And the reason is because the bylaws
11 that the Respondent has created gives him one vote
12 for every lot that he owns.

13 You'll hear testimony that he owns
14 anywhere between 27 -- or 23 and -- 23 to 24 lots.
15 He owns these lots. So, therefore, he has -- as a
16 member for a lot owner in the Carriage Oaks Not For
17 Profit, he's got 23 to 24 votes, which will
18 out-number my clients for some time.

19 The statutes that I cited specifically
20 state and explicitly state that each member and
21 only each member is entitled to a vote. You don't
22 get more than one vote, so it's one member, one
23 vote under those statutes.

24 The second issue is -- is that the --
25 going back to the -- the Carriage Oaks Not For

1 Profit, 393.921 and 393.839 also require that my
2 clients agree to become members, which makes sense.
3 Obviously, in the State of Missouri, you can't
4 force people to be a part of a non-profit that
5 they're not willing to be a part of.

6 You will see no evidence, nothing in
7 writing, no verbal testimony that my clients have
8 agreed to be a part of this.

9 Also, the bylaws give prospective utility
10 customers rights as members in violation of
11 393.839.1 and 393.921. Prospective members under
12 those -- prospect -- sorry. Prospective utility
13 customers under those statutes cannot be members
14 entitled to votes.

15 You'll hear testimony here today while
16 there's only seven current houses connected to the
17 water and sewer, the Respondent has already
18 testified in pre-filed testimony that up to 33 lots
19 are already -- they are ready for immediate
20 hook-up. And as such, they are voted -- those lots
21 count as far as the member who is voting those, and
22 that's the Respondent.

23 So for those reasons, the transfer that
24 was made to the Carriage Oaks Not For Profit by
25 Caring Americans Trust Foundation, which was

1 subject to PSC jurisdiction prior to the transfer,
2 that is subject to -- the transfer itself was
3 subject to PSC jurisdiction, and then the
4 subsequent unlawfully formed Carriage Oaks Not For
5 Profit is also subject to PSC jurisdiction.

6 The final thing I'll say in closing -- or
7 in opening is that the Respondent relies very
8 heavily on the fact that they have obtained DNR
9 approval for the way the wastewater system and
10 their -- their water system.

11 We do not dispute that. They do have DNR
12 approval. But DNR has not approved -- first of
13 all, the DNR, as the Commission is well aware, it's
14 a separate jurisdiction. It has nothing to do with
15 what we're discussion here today. It's a red
16 herring before the Commission.

17 Secondly, we state that the -- the --
18 sorry. DNR, the Department of Natural Resources,
19 never actually made any finding that the bylaws
20 complied with the statutes that we've cited that
21 violate.

22 They have cited over statutes that they
23 comply with, mainly the Articles of Incorporation
24 and the original founding document complying with
25 two -- two different statutes, which I am not --

1 which are not at issue today before the Commission.
2 That's all, your Honor.

3 JUDGE CLARK: Thank you, Mr. Finkenbinder.
4 Any questions from the Commission?

5 CHAIRMAN HALL: Yes. Good morning. So if
6 -- if you're correct and the initial sale or
7 transfer back in 2016 was in violation of statute
8 and -- and there was a requirement to come to the
9 Commission for approval, you're arguing that,
10 therefore, that -- that that sale or transfer is --
11 is void under Missouri law, correct?

12 MR. FINKENBINDER: That is correct, your
13 Honor.

14 CHAIRMAN HALL: So then would it be your
15 position that -- that the Commission should
16 require the -- the owner of the system to submit
17 tariffs setting rates in terms of service going
18 forward?

19 MR. FINKENBINDER: Yes, your Honor. My --

20 CHAIRMAN HALL: Are you requesting that in
21 this case? Or are you -- would that -- would that
22 be a subsequent case or --

23 MR. FINKENBINDER: Yes. That would be a
24 subsequent case. I'm not -- that -- we -- we are
25 not requesting that specific relief in this case.

1 CHAIRMAN HALL: So you are merely -- mere
2 is not the right word. You are solely requesting
3 an order from the Commission voiding that original
4 sale and asserting jurisdiction?

5 MR. FINKENBINDER: That is the sole --
6 yes. That is the sole request here today.

7 CHAIRMAN HALL: Okay. Thank you.

8 JUDGE CLARK: Thank you, Mr. Finkenbinder.
9 Respondents?

10 MR. WADE: Thank you.

11 OPENING STATEMENT

12 BY MR. WADE:

13 MR. WADE: Bryan Wade on behalf of the
14 Respondents. I'm glad that the Commissioner asked
15 that question because I wasn't clear what the
16 relief being sought by the Complainants was because
17 when the original complaint was filed, the request
18 was that the assets, the water and sewer assets of
19 this small subdivision in nearby Branson should be
20 transferred to the Homeowners Association and that
21 was the prayer for relief, which I don't think the
22 Public Service Commission has any authority to make
23 that order.

24 But in any event, if -- if the issue is
25 that we're looking at whether or not this transfer

1 should have occurred from Caring Americans to the
2 non-profit, you're going to hear evidence of the
3 following: That transfer occurred after this
4 proceeding began and during discussions between
5 Staff Counsel and the parties respectively about
6 how to address this issue short of this particular
7 day.

8 And as a result of those discussions, the
9 idea was presented, not by either one of the
10 parties here, but by others, to transfer the assets
11 to a non-profit water and sewer company to possibly
12 avoid the -- the requirement of tariffs. That was
13 the reason for the transfer. There was no ulterior
14 motive.

15 And there will be evidence that that was
16 properly conveyed to the -- the not for profit
17 water and sewer company under the statutes and
18 bylaws and Articles of Incorporation were
19 prepared. Those were submitted to the Department
20 of Natural Resources for their review.

21 And 393.900 says, Prior to obtaining a
22 permit to provide service, a non-profit water
23 company shall provide a copy of the Articles of
24 Incorporation and company bylaws to the Department
25 of Natural Resources to ensure compliance with all

1 statutory requirements.

2 The Department shall review the documents
3 and provide the non-profit water company
4 authorization to provide service if all statutory
5 requirements are met.

6 If all statutory requirements have not
7 been met, the Department shall inform the
8 non-profit water company of all deficiencies and
9 assist such company in curing the deficiencies.

10 The evidence will be that the Department
11 of Natural Resources received those Articles and
12 bylaws and approved those Articles and bylaws and
13 issued a permit.

14 Now, because that transfer occurred during
15 the pendency of this dispute, I agree the Public
16 Service Commission, if it imposed jurisdiction the
17 original complaint, could potentially void that
18 transaction if it believed that it should -- if it
19 had jurisdiction over the original proceeding and,
20 I assume, thought it was in the best interest of
21 the parties to not allow that transfer.

22 But, there is -- will be evidence that DNR
23 has approved that non-profit as the recipient of
24 those water and sewer assets.

25 There is also going to be testimony that

1 -- or I believe the complainant is now alleging
2 that they are not members of the non-profit water
3 and sewer company.

4 As you know, a non-profit sewer company
5 operates as a cooperative and that each particular
6 person who receives water and sewer services are
7 members of that particular entity. And the bylaws
8 will be presented to you, and they will be admitted
9 into evidence.

10 And, of course, it shows that each person
11 receiving water and sewer service is a member of
12 that not for profit -- non-profit. Excuse me.

13 Now, I guess Mr. Finkenbinder's position
14 will be that they choose not to participate in that
15 cooperative. However, the declarations. Which
16 will also be admitted in evidence say that each
17 person who owns a lot in the subdivision must
18 connect to the water and sewer services available
19 to them.

20 Those water and sewer services at least
21 technically today are owned by the non-profit water
22 and sewer company. So whether they object or not
23 or agree or not, they are officially members of
24 that non-profit because they receive water and
25 sewer services.

1 Now, I've jumped ahead to kind of a side
2 issue because that was created during the pendency
3 of this claim.

4 The original issue -- defense that we've
5 raised is the Public Service Commission has no
6 jurisdiction over the original developer/owner or
7 the Caring Americans entity that became the owner
8 of the water and sewer services system for two
9 reasons.

10 One, it is a -- it does not provide
11 services for profit. And, two, in addition to
12 that, on the sewer side, it has fewer than the
13 requisite required connections under the statute.

14 As Mr. Finkenbinder alluded to, there are
15 only seven homes in the subdivision. And those are
16 the actual connections for both water and sewer
17 services.

18 And you're going to hear evidence today
19 that the charges for those water and sewer services
20 started at 600-some dollars a year. They moved to
21 800 or so dollars a year. Then a thousand and
22 sixty -- I may have my number wrong about that.
23 And, ultimately, by 2014, \$1,250 a year.

24 So the way the assessments operated,
25 you'll hear Mr. Mills testify, that the water and

1 sewer services were -- the costs were assessed to
2 the homeowners through their assessment as
3 Homeowners Association members. So the most they
4 ever paid from 2014 to present is \$1250 a year,
5 which equates to about a hundred bucks a month for
6 water and sewer services, and that includes repairs
7 and maintenance to the roadways, maintaining the
8 common areas, the gates that open and close at the
9 facilities and various and sundry other costs
10 associated with maintaining the subdivision.

11 So I believe the undisputed evidence is
12 going to be that the most they pay is about a
13 hundred bucks a month minus whatever costs were
14 incurred as a result of maintaining the roads.

15 You're also going to hear evidence that
16 it's geographically land-locked, the subdivision.
17 And so there's no opportunity to provide service to
18 those outside of the subdivision.

19 So I think you will find the evidence will
20 be that it's not -- it's not providing for profit
21 or for gain. It never has. And it has no
22 intention of doing so. And it's landlocked, and
23 the declarations would forbid it anyway.

24 So in the event that you make that
25 finding, and we're asking you to do so, then that

1 will be the end of the discussion about whether or
2 not these should continue.

3 Now, if the PSC is concerned that it has
4 jurisdiction in this case, then where does that
5 leave you? I think the evidence will be that,
6 okay, then potentially you have the opportunity to
7 go back to the original owners, Caring Americans
8 and set a tariff.

9 Since they were only paying a hundred
10 dollars a month less whatever they were being paid,
11 it's unlikely -- and based on your experience, you
12 will -- you know that the owners in that
13 subdivision will receive a much higher -- arguably,
14 much higher rate than they're currently being
15 assessed.

16 And so we think, in the end, you will find
17 that you don't have jurisdiction over this small
18 subdivision and that it will be in the best
19 interest of all parties to allow it to continue to
20 proceed as-is. Thank you.

21 JUDGE CLARK: Any questions from the
22 Commission?

23 CHAIRMAN HALL: Yeah. I'm sorry. What is
24 the statutory cite for the -- for the minimum
25 number of hook-ups required for Commission

1 jurisdiction?

2 MR. WADE: For the sewer? Whitney, do you
3 have that? I don't have it. I didn't bring it up
4 here. I apologize. We briefed it, and we'll give
5 it to you. There is no similar particular hook-up
6 for the water, unfortunately.

7 CHAIRMAN HALL: Well, while we're -- while
8 we're waiting on that, I want to understand an
9 argument a little better. If -- if the -- if the
10 original owner, Carriage Oaks, LLC, was subject to
11 -- to Commission jurisdiction, are you arguing that
12 a -- and so the first transfer should be void
13 because it --

14 MR. WADE: I'm not advocating that it
15 should be void.

16 CHAIRMAN HALL: I know. I'm saying if it
17 -- if it -- if it was void and I'm trying to
18 understand if you think that a subsequent
19 transaction could remedy that deficiency.

20 MR. WADE: Yes. I think if the PSC found
21 there was jurisdiction over the original developer
22 that it should allow the transfer to the non-profit
23 to alleviate the PSC -- any PSC concerns with
24 regard to jurisdiction.

25 CHAIRMAN HALL: But I guess I'm confused

1 because if -- if the Commission had jurisdiction
2 over Carriage Oaks, LLC, and Carriage Oaks, LLC,
3 did not receive Commission approval for the
4 transfer to Caring Americans Trust Foundation, that
5 transaction, as a matter of Missouri law, is void.

6 So then I don't understand how the
7 transfer from Caring Americans to a third party
8 could remedy that situation.

9 MR. WADE: I -- I should have also told
10 you that you will receive evidence that Caring
11 Americans, as we understand it, was set up as an
12 estate planning device for Mr. Mills.

13 Mr. Mills is 77 years old and is a
14 developer and sole member of Carriage Oaks, LLC.
15 And --

16 CHAIRMAN HALL: Why is it relevant that it
17 was set up as an estate planning tool?

18 MR. WADE: Because I believe that Caring
19 Americans, you will find, is simply a successor
20 designee of the developer/owner, which is Carriage
21 Oaks, LLC.

22 In other words, they're the same. It's --
23 they are different legal entities, but they're
24 operating in the same capacity with respect to the
25 subdivision.

1 CHAIRMAN HALL: Okay. Thank you.

2 MR. WADE: Oh, and the cite for that
3 connection was 368.020(49).

4 CHAIRMAN HALL: 368?

5 MR. WADE: Section 368.020(49). Does that
6 sound right?

7 MS. SMITH: Yes.

8 JUDGE CLARK: Okay. I've got a couple
9 questions for you I'd like to ask briefly. You had
10 indicated, at least in your opening, that Caring
11 Americans Trust Foundation was the original owner.
12 Is that the case?

13 MR. WADE: No. Carriage Oaks. If I said
14 that, I misspoke. Carriage Oaks, LLC, is the
15 original owner/developer. And Caring Americans --
16 there was conveyance to Caring Americans in 2015.

17 MR. MILLS: It was my trust originally was
18 the owner, and I transferred the ownership of
19 Carriage Oaks, LLC, to report possibly of
20 partnership maybe, if I wanted.

21 MR. WADE: You can explain that.

22 JUDGE CLARK: And that kind of leads in to
23 my second question. Carriage Oaks is an entity
24 that still exists?

25 MR. WADE: Yes.

1 JUDGE CLARK: And Caring Americans Trust
2 Foundation is an entity that still exists?

3 MR. WADE: Yes.

4 JUDGE CLARK: So Caring Americans Trust
5 Foundation is not a conversion from one entity into
6 another?

7 MR. WADE: No, it did not -- it did not
8 transfer or become the same entity, no. Carriage
9 Oaks, LLC, is a hundred percent owned by Mr. Hills,
10 and Caring Americans is also owned by Mr. Mills.

11 JUDGE CLARK: And you indicated --

12 MR. WADE: Well, it's not --

13 JUDGE CLARK: This was originally filed as
14 two cases, and they were consolidated. One was a
15 sewer case. One was a water case. And they were
16 consolidated at the request of a motion.

17 So, potentially, you could end up with
18 different treatment for each of these in regard to
19 the 25 lots; is that correct?

20 MR. WADE: I hope not. But, potentially,
21 that is true.

22 JUDGE CLARK: Okay. Thank you. Okay.
23 Complainants, you can call your first witness.

24 MR. FINKENBINDER: At this tie, we would
25 call Derald Morgan. Does he sit here?

1 JUDGE CLARK: Mr. Morgan, would you raise
2 your right hand to be sworn?

3 DERALD MORGAN,
4 being first duly sworn to testify the truth, the whole
5 truth, and nothing but the truth, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FINKENBINDER:

8 JUDGE CLARK: You can continue, Mr.
9 Finkenbinder.

10 MR. FINKENBINDER: Thank you, your Honor.

11 **Q (By Mr. Finkenbinder) Would you state**
12 **your name for the record?**

13 A Yes. My name is John Derald Morgan.

14 **Q Okay. And, Mr. Morgan, in preparing for**
15 **this case, do you recall preparing some written**
16 **testimony that was later submitted to the**
17 **Commission?**

18 A Yes, sir, I do.

19 **Q Okay.**

20 JUDGE CLARK: Can you check to see that
21 your microphone is on and that you're speaking into
22 the microphone? Yeah. If you want to just come up
23 to the podium to ask your questions?

24 A Oh, you mean his or --

25 JUDGE CLARK: I think you're good,

1 Mr. Morgan.

2 A Oh, I'm sorry.

3 Q (By Mr. Finkenbinder) I've previously
4 marked and handed you an exhibit labeled Exhibit
5 10. Can you review that exhibit for a moment? Do
6 you recognize that exhibit?

7 A Yes, I do.

8 Q Okay. And can you tell the Commission
9 what it is?

10 A This is direct testimony that I gave
11 December 20th, 2017. And let's see. I believe
12 there was some attachments to it. Do you want me
13 to enumerate the attachments?

14 Q No. I'm going to ask, is that a true and
15 accurate copy of what you read and signed?

16 A Yes, it is.

17 Q Okay.

18 MR. FINKENBINDER: At this time, we'd
19 offer Exhibit 10 into evidence that was the
20 pre-filed testimony, direct testimony, of Derald
21 Morgan.

22 JUDGE CLARK: Respondent, any objection?

23 MR. WADE: Is that -- I assume it's -- no
24 objection.

25 JUDGE CLARK: Exhibit 10, the direct

1 testimony of Derald Morgan, will be admitted into
2 the hearing record.

3 (Exhibit 10 was offered and admitted into
4 evidence.)

5 MR. FINKENBINDER: At this time, given the
6 Commission's typical procedures, although not
7 normal for me, I'll tender the witness for
8 cross-examination, unless the Commission has any
9 questions.

10 JUDGE CLARK: Thank you, Mr. Finkenbinder.

11 MR. FINKENBINDER: Your Honor, I apologize
12 for my unfamiliarity with the rules. Do you --
13 would the Commission prefer me to go ahead and
14 submit surrebuttal testimony now or later on even
15 though that was pre-filed?

16 JUDGE CLARK: You can do that later.

17 MR. WADE: May I approach the witness?

18 JUDGE CLARK: Actually, Mr. Finkenbinder,
19 if you'd like to, go ahead and offer your
20 surrebuttal testimony.

21 MR. FINKENBINDER: Okay.

22 MR. WADE: I have no objection to it.

23 JUDGE CLARK: Given that Respondent has no
24 objection -- is that correct?

25 MR. WADE: Right.

1 JUDGE CLARK: A what exhibit number is
2 that, Mr. Finkenbinder?

3 MR. FINKENBINDER: I apologize for going
4 out of order. I didn't know I was going to mark
5 this. So this is going to be Exhibit 27.

6 JUDGE CLARK: Exhibit 27, the surrebuttal,
7 is admitted in the hearing record.

8 (Exhibit 27 was offered and admitted into
9 evidence.)

10 MR. FINKENBINDER: I'd offer Exhibit 27 if
11 there's no objection.

12 JUDGE CLARK: Okay. That's been admitted.

13 MR. FINKENBINDER: Okay.

14 JUDGE CLARK: Mr. Wade, you can cross if
15 you'd like.

16 MR. WADE: May I approach the witness and
17 hand him a copy of my exhibits?

18 JUDGE CLARK: Yes.

19 MR. WADE: Thank you.

20 CROSS-EXAMINATION

21 BY MR. WADE:

22 **Q Mr. Morgan, I may refer to some exhibits**
23 **in the book. Mr. Morgan, you -- you are a**
24 **homeowner in the Carriage Oaks subdivision?**

25 A Yes, I am.

1 **Q And what lot or lots do you own?**

2 A 3-A, 4-A.

3 **Q Okay. And how long --**

4 A It's a single lot. I don't own two lots.

5 **Q How long have you lived there?**

6 A I've lived there since -- I bought the
7 lots in 2008.

8 **Q And did -- as a result of your purchase,**
9 **sir, did you receive a copy of the Carriage Oaks**
10 **Estates Declaration of Restrictive Covenants and**
11 **Easements?**

12 A As a part of the purchase?

13 **Q Yes.**

14 A I don't recall if I got them as a part of
15 the purchase. But I know -- I've received them at
16 some point. Yes.

17 **Q You're aware that your lot ownership is**
18 **subject to those declarations?**

19 A Yes, I am.

20 **Q Okay. If you will look at Exhibit 14 --**
21 **are you there, sir?**

22 A Yes.

23 MR. WADE: Did you give Carl --

24 MS. SMITH: He has a copy.

25 **Q (By Mr. Wade) Do those appear to be the**

1 **declarations related to Carriage Oaks subdivision,**
2 **sir?**

3 A It is.

4 MR. WADE: I'd offer Exhibit 14.

5 JUDGE CLARK: Any objection?

6 MR. FINKENBINDER: No objection.

7 JUDGE CLARK: Any objection?

8 MR. FINKENBINDER: No objection.

9 JUDGE CLARK: Exhibit 14 will be admitted
10 onto the hearing record.

11 (Exhibit 14 was offered and admitted into
12 evidence.)

13 JUDGE CLARK: And how would you describe
14 that?

15 MR. WADE: 14. I'm sorry.

16 JUDGE CLARK: How would you describe
17 Exhibit 14?

18 MR. WADE: The Declaration of Restrictive
19 Covenants and Easements for Carriage Oaks Estates.

20 JUDGE CLARK: Thank you.

21 **Q (By Mr. Wade) And, Mr. Morgan, if you'd**
22 **flip to -- I don't think the pages are numbered.**
23 **Well, I apologize. Page 1061, top right corner.**

24 A Okay.

25 **Q Are you there? Do you see the first**

1 sentence at the top of the page, All residential
2 units must connect to the water and sewer
3 distribution system?

4 A Yes.

5 Q Do you see it?

6 A That's --

7 Q Did I read that correctly?

8 A Yes, you did.

9 Q Have you connected to the well and sewer
10 distribution system in the subdivision?

11 A Yes. Yes, I have.

12 Q Great. You do you know of anyone outside
13 of the subdivision that's connected to the well and
14 distribution system?

15 A Not to my knowledge.

16 Q Now, I'd like you to flip to Exhibit 15.
17 Are you there?

18 A Yes.

19 Q Okay. That's a copy of the Carriage Oaks
20 Not For Profit Water and Sewer Corporation Bylaws.
21 Do you see that?

22 A Yes.

23 Q Okay. And under Section 1, it says,
24 Members. Do you see that?

25 A Yes.

1 **Q** And it says, Members shall be comprised to
2 include each person or entity owning property that
3 is or will receive water and sewer services and is
4 located within the geographic area to be served by
5 the corporation's water and sewer systems. Did I
6 read that correctly?

7 A Yes.

8 MR. WADE: Okay. I would offer Exhibit
9 15, which is the Carriage Oaks Not For Profit Water
10 and Sewer Corporation.

11 MR. FINKENBINDER: No objection.

12 JUDGE CLARK: Exhibit 16 is admitted on
13 the hearing record.

14 (Exhibit 16 was offered and admitted into
15 evidence.)

16 **Q** (By Mr. Wade) Now, Mr. Morgan, if you'd
17 look at Exhibit 11. Are you there?

18 A Yes.

19 **Q** The first page of that document is an
20 assessment for 2012 for Carriage Oaks Estates
21 property owners. Do you see that?

22 A Yes.

23 **Q** And it's dated December 31st, 2012?

24 A Yes.

25 **Q** Okay. And there are some redacted

1 portions, but do you see the amount claiming due
2 now for 2012?

3 A Right.

4 Q What's the number?

5 A 1250.

6 Q Okay. Now look at the next page.

7 A Yes.

8 Q Is that an assessment, same assessment for
9 January 5th, 2014, for fiscal year ending 2013?

10 A Yes.

11 Q And what is the assessment amount?

12 A 1250.

13 Q Flip to the third page. That is an
14 assessment for 2014 fiscal year. And what is the
15 assessment for that year?

16 A 1250.

17 Q And then, finally, flip over to the next
18 page, 2015, and there's an assessment there. How
19 much is that assessment for 2015?

20 A 1250.

21 Q And then the final two pages show
22 assessments for 2016. Do you see those?

23 A Yes.

24 Q And the assessment for that year is what?

25 A 1250.

1 MR. WADE: Okay. I would offer -- I would
2 offer Exhibit 11.

3 A I wonder why 2017 is missing.

4 MR. FINKENBINDER: No objection.

5 **Q (By Mr. Wade) So for the years 2012 to**
6 **2016, Mr. Morgan, as an owner, homeowner --**

7 A Yes.

8 **Q -- in carriage Oaks, you paid \$1250 --**

9 JUDGE CLARK: Mr. Wade, will you hold on
10 just a minute.

11 MR. WADE: Yes. Sorry.

12 JUDGE CLARK: Exhibit 11 will be admitted
13 onto the hearing record.

14 (Exhibit 11 was offered and admitted into
15 evidence.)

16 JUDGE CLARK: In regard to Exhibit 11, is
17 that an assessment for water or sewer services or
18 for both?

19 MR. WADE: Both. And -- and an
20 additional. I apologize for moving too quickly.

21 **Q (By Mr. Wade) With regard to those**
22 **assessments, Mr. Morgan, did you understand those**
23 **to include both water and sewer services?**

24 A Water, sewer, yes.

25 **Q It also included any maintenance or**

1 **repairs to the common area?**

2 A Yes, which are minimum.

3 **Q And it also included, say, mowing of the**
4 **common areas and -- and maintenance of the access**
5 **points to the subdivision?**

6 A Which is not often done, yes.

7 **Q Okay. So if I'm doing my math correctly,**
8 **the amounts paid were approximately a hundred-some**
9 **dollars per month?**

10 A Yes.

11 **Q Okay. And fair to say that is lower than**
12 **a typical cost would be in living in some other**
13 **area for water and sewer service?**

14 A No. I don't agree with that.

15 **Q You don't agree with that?**

16 A No. I get water, sewer and trash in
17 Oklahoma City for \$86 a month.

18 **Q Is there anyone in Missouri that you know**
19 **of that's -- that some homeowner is able to pay a**
20 **hundred dollars for water and sewer service?**

21 A I'm just telling you what mine is in
22 Oklahoma City.

23 MR. Wade: Okay. I don't have any further
24 questions.

25 JUDGE CLARK: Any questions from the

1 Commission? Any redirect?

2 MR. FINKENBINDER: Yes, your Honor.

3 REDIRECT EXAMINATION

4 BY MR. FINKENBINDER:

5 Q Mr. Morgan, the -- Mr. Wade previously
6 pointed to -- had you look at the declaration.

7 A Yes, sir.

8 Q You don't dispute that you are required to
9 connect to the water and sewer system in the
10 subdivision, correct?

11 A That's correct. I wish I didn't have to.

12 Q Exactly. That's the problem.

13 A Quite frankly.

14 Q You don't have a choice, do you?

15 A I don't. I wish I didn't have to.

16 Q So if he charges whatever fee he wants,
17 you don't have a choice, do you?

18 A No, I don't.

19 Q Do you have any input about what that fee
20 is?

21 A No, I sure don't.

22 Q So if you want something else, do you have
23 a choice?

24 A I don't.

25 Q No. What about those -- that declaration,

1 **does it say anywhere in there that you are forced**
2 **to join a non-profit should he ever one day form**
3 **one?**

4 A No.

5 **Q Does it say that you have to join that**
6 **non-profit under whatever rules he dictates?**

7 A No, it does not.

8 **Q And isn't it true that when the non-profit**
9 **was beginning to be formed early in 2017 that you**
10 **tried making some input with those bylaws?**

11 A Yes, we did.

12 **Q Those were rejected, were they not?**

13 A I don't know that anybody paid any
14 attention.

15 **Q Okay.**

16 A In fact, I think you presented them, and
17 we never heard anything back. In fact, we were at
18 a meeting, a homeowners meeting, and we were told
19 that, Here are the changes that were made to the
20 not for profit, and they were given back to us and
21 they were exactly the same as they were before we
22 had submitted some changes.

23 **Q The problem with that, again, over-riding**
24 **concern was -- was just like it was in the**
25 **declaration that because of the vote or because of**

1 the fact in those bylaws that give Mr. Mills 23
2 votes to your one, the main concern of you and your
3 fellow Complainants is -- is that he, effectively,
4 will always control that and do whatever he wants;
5 is that correct?

6 A Absolutely.

7 Q Okay. And, in fact, he's done that in the
8 past; is that correct?

9 A Everything. Whatever he wants, he gets.

10 Q Okay. He also handed you an exhibit that
11 was the Carriage Oaks not for profit bylaws. Do
12 you recall reviewing that?

13 A Yes, I did.

14 Q And it identified the members. Did you
15 ever sign that document?

16 A I did not.

17 Q Is your signature anywhere on that
18 exhibit?

19 A It is not.

20 Q Did you ever verbally agree that you'd be
21 part of that?

22 A No.

23 Q He's talked about the fees, to some
24 extent. What was the fee in 2017?

25 A Oh, 2000 --

1 **Q The homeowners fee?**

2 A 2017 was \$1750 a month.

3 **Q Is that -- so while it was 1250 for period**
4 **of time, it went up to 1750?**

5 A Yes. We did not approve that amount --
6 that increase amount at the Homeowners Association
7 meeting. In fact, it wasn't even discussed.

8 **Q Okay. And so we're clear -- I don't want**
9 **to mislead the Commission. The total fee you paid**
10 **was \$1750, that might have been a special**
11 **assessment with the 1250?**

12 A It's not clear. It's not clear.

13 **Q And you tried figuring out, but you**
14 **weren't able to figure out what the difference was**
15 **between --**

16 A That's -- that's correct. In fact, Mr.
17 Wade sent us a response to that saying there had
18 been no increase in the assessment. It was still
19 1250. And I sent the difference at 800-some
20 dollars under protest.

21 **Q Okay. But the total fee that you were**
22 **required to pay in 2017 was \$1,750, correct?**

23 A Oh, no. It was \$2100.

24 **Q \$2100?**

25 A \$1750, yeah.

1 Q Okay. Thank you for the correction.

2 A Right.

3 Q And to this day, you don't know exactly
4 what all that went towards?

5 A I have no idea.

6 Q Okay.

7 MR. FINKENBINDER: Nothing further.

8 JUDGE CLARK: Thank you, Mr. Finkenbinder.

9 We usually stop after redirect.

10 MR. WADE: There's no re-cross?

11 JUDGE CLARK: You can make a request.

12 MR. WADE: May I re-cross the witness
13 based on new information that he has presented in
14 redirect?

15 JUDGE CLARK: That will be granted.

16 MR. WADE: Thank you.

17 RE-CROSS EXAMINATION

18 BY MR. WADE:

19 Q Mr. Morgan, if I understand your
20 testimony, you said that the 2017 that you paid is
21 \$2100?

22 A That's correct.

23 Q And it was 1250, plus an additional
24 special assessment for the road?

25 A I don't know.

1 **Q Okay. Was there an associational meeting**
2 **in which the road improvements or repairs were**
3 **discussed?**

4 A No. Not specifically.

5 **Q So you just --**

6 A In fact, we were shocked. Everybody was
7 shocked. I got an e-mail from Cindy Graver saying,
8 What is this \$2100? And I said, I have no idea.

9 Because I was in Oklahoma. My wife has
10 Alzheimer's. I'm over there quite a bit taking
11 care of her. I'm not there a lot, so I didn't get
12 my mail. I didn't know that we were being charged
13 \$2100 instead of 1250.

14 You wrote a letter saying there was no
15 increase in assessment when I questioned it. And
16 yet it was \$2100 in the letter.

17 **Q I'm sorry.**

18 A So I still don't know the difference.

19 **Q Let me ask another question. Did you go**
20 **to the associational meeting?**

21 A I was there, yes.

22 **Q And -- okay. And I was not there.**

23 A I know you weren't.

24 **Q You were at the meeting?**

25 A Yes, I was.

1 Q And we did communicate, I think, by e-mail
2 in which I explained that --

3 A I sent an e-mail, and you -- you responded
4 and said there was no increase in the fee.

5 Q Well, I'll have to look at the e-mail.
6 But do you agree there was an issue with the roads
7 or improving or asphaltting the road in the
8 subdivision?

9 A Yes, there was.

10 Q Okay. That's -- that's all I'm asking.

11 A Yes, there was. There was no agreement
12 that we were going to pay that, though.

13 Q Okay. With respect to Exhibit 14,
14 Mr. Morgan, Exhibit 14, the declarations, you --
15 you were asked some questions on redirect about the
16 owner or developer having control by vote of the
17 subdivision and the water and sewer. Do you recall
18 that questioning?

19 A Keep going.

20 Q Do you recall the questions that were
21 asked of you about Mr. Mills or his entities
22 controlling --

23 A Yes.

24 Q -- the voting rights?

25 A Yes.

1 Q Do you recall that? Okay. So when you
2 bought in the subdivision, you agree with me that
3 the lots or lots --

4 A Yes.

5 Q -- were subject to the declaration, true?

6 A Yes.

7 Q And you also testified that you were
8 required to hook up to the water and sewer system?

9 A Yes.

10 Q And you also know that in this declaration
11 that the owner/developer has ten votes to every one
12 vote --

13 A Yes.

14 Q -- of an owner; is that true?

15 A Oh, yes. I knew that. And I --

16 Q You knew that when you bought it, right?

17 A Right.

18 Q And there are only seven homeowners in the
19 subdivision, true?

20 A That's true.

21 Q So the collective group would have seven
22 votes?

23 A Right.

24 Q And the owner/developer would have ten
25 votes per lot, right?

1 A Right.

2 Q And so he would always have effective
3 control under these declarations, wouldn't he?

4 A No.

5 Q And why not?

6 A Well, because most developers sell the
7 property and get out. In fact, I've been at
8 others, and I've never seen one that -- that tried
9 to control everything like this guy does.

10 Q Well, that's -- that's a fair point. Once
11 the lots are sold and/or developed --

12 A Right.

13 Q -- then the Association and those
14 respective owners of those lots --

15 A That's correct.

16 Q -- would have control of the Association.

17 A Sure.

18 Q And these declarations provide for that?

19 A Right.

20 Q But at this moment in time, the
21 developer/owner still has control under these
22 declarations?

23 A That's correct.

24 Q And so you're asking the PSC to subvert or
25 go around those declarations, in fact, and grant

1 you as a lot owner, and the other six, more control
2 over the operation of the water and sewer than they
3 would otherwise have under the declarations, true?

4 MR. FINKENBINDER: I'm going -- I don't
5 know if it's proper or not. I'm not familiar with
6 it, but I may lodge an objection. Even if it's
7 overruled, I should just make an objection for the
8 record that --

9 JUDGE CLARK: What's your objection?

10 MR. FINKENBINDER: The objection is that
11 it misstates what the declaration is as a legal
12 document. The -- the declaration -- he's trying to
13 make it sound like the declaration allows the
14 developer to subsequently create a different
15 document that they have to agree to.

16 My client is not trying to subvert this
17 document. We have not disputed the legitimacy of
18 this document in this hearing.

19 JUDGE CLARK: This document has been
20 admitted into evidence?

21 MR. FINKENBINDER: Right.

22 JUDGE CLARK: Is there a ruling on the
23 objection? I don't know what the objection was.
24 Did I talk too long or --

25 JUDGE CLARK: I guess the objection is

1 that you're misstating the -- would you clarify
2 your objection, please?

3 MR. FINKENBINDER: The objection was that
4 it misstates the -- it misleads the witness on the
5 question before it because it misstates what this
6 document is and does.

7 JUDGE CLARK: How does it misstate it?

8 MR. FINKENBINDER: The question was -- to
9 my client was, Is it your intent to subvert this
10 document when?

11 JUDGE CLARK: Right.

12 MR. FINKENBINDER: That -- that question
13 is argumentative. I guess that will be my question
14 (sic). The question is argumentative.

15 MR. WADE: I'll withdraw the question, and
16 I'll ask a different question.

17 **Q (By Mr. Wade) Would you like the PSC to**
18 **grant you more authority or control over the water**
19 **and sewer services than you are currently allowed**
20 **in the declarations?**

21 A I don't think that's the question at all.
22 I think -- I think we probably should all have an
23 equal say for how our properties is treated and how
24 each of us gets treated uniformly and not have one
25 person tell us all how we have to do our business.

1 That would be the real nice way to do things and
2 the way to treat people.

3 I'm not sure -- you know, I think if we
4 really got into the guts of this thing, I'm not
5 sure, quite frankly, that this document applies to
6 my lot because I could never find the fact that
7 this had actually been truly filed properly with
8 the County with my plat.

9 **Q Well, that would be inconsistent --**

10 A Because there was a re-plat. So I'm not
11 going to argue with you, but you brought that --
12 you brought me into it, and I'm going to bring it
13 back to you because there's a legal question as to
14 whether or not, in fact, this really applies to the
15 second plat in which I exist.

16 So -- now, I'm going to accept what you
17 have said in this point. And I'm not asking the
18 Commission to rule that I want more authority. But
19 if he's going to set up a water and sewer system
20 that's not for profit, I want him to follow the
21 law.

22 And the law is that everybody who gets
23 water and sewer system has an equal say in how it's
24 operated.

25 **Q And back to my line of questioning, under**

1 **the declarations which are subject -- the lots are**
2 **subject to, not all owners have an equal say in how**
3 **the water and sewer services are provided?**

4 A That's correct. But I'm not the guy that
5 decided to make all the changes in who owns it.

6 MR. WADE: I have no further questions.

7 JUDGE CLARK: Thank you. And since this
8 is the only witness we have from the Complainant,
9 Respondents, you may call your first witness. And,
10 Mr. Morgan, you're excused.

11 Okay. At this time, we're going to take a
12 short 15-minute recess.

13 MR. WADE: Okay. Sorry.

14 (Break in proceedings.)

15 JUDGE CLARK: Okay. We'll go back on the
16 record now. Mr. Wade, you were getting ready to
17 call your witness.

18 MR. WADE: Yes. Before I call Mr. Mills I
19 want to make one clarification. I think I
20 transposed the numbers on the statute that I cited
21 for the sewer connections. I think I said 368, and
22 it should be 386.

23 JUDGE CLARK: 386 for the -- and that's in
24 regard to the sewer connections?

25 MR. WADE: Yes. And in my defense, I may

1 also be a little dyslexic, so I apologize.

2 COMMISSIONER COLEMAN: Clarification,
3 386.020(49)?

4 MR. WADE: Yes, ma'am.

5 MS. COLEMAN: Okay. Thank you.

6 JUDGE CLARK: Thank you. Respondent, you
7 may call your first witness.

8 MR. WADE: Thank you. Respondents call
9 Richard Mills.

10 JUDGE CLARK: Mr. Mills, would you raise
11 your right hand in order to be sworn?

12 MR. MILLS: Yes.

13 CARL MILLS,
14 being first duly sworn to testify the truth, the whole
15 truth, and nothing but the truth, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. WADE:

18 **Q Will you tell us your full name, sir?**

19 A Carl Richard Mills.

20 **Q And where do you live, Mr. Mills?**

21 A At 209 Falling Leaf Court, Branson West,
22 Carriage Oaks Estates.

23 **Q That's a residence in Carriage Oaks
24 Estates subdivision?**

25 A Correct.

1 Q Okay. Thank you. Mr. Mills, could you --
2 there's a book in front of you with some exhibits
3 in it. Do you see it?

4 A I do.

5 Q Okay. There's a Tab N, which is also
6 Exhibit 24. Could you look at that, please?

7 A N? Okay.

8 Q Does that appear to be a copy of your
9 written testimony you have presented in this case?

10 A Yes, it does.

11 Q Is that an accurate recitation of your
12 testimony?

13 A This is the one I responded to. Yes.
14 I've signed it.

15 MR. WADE: I would offer at this time
16 Exhibit 24.

17 MR. FINKENBINDER: No objection.

18 JUDGE CLARK: Exhibit 24. And that's the
19 rebuttal testimony?

20 MR. WADE: Yes, your Honor.

21 JUDGE CLARK: Exhibit 24 will be admitted
22 on to the hearing record.

23 (Exhibit 24 was offered and admitted into
24 evidence.)

25 Q (By Mr. Wade) Mr. Mills, in that -- in

1 **addition to Exhibit 24, there's some other exhibits**
2 **in the book that I'd like to briefly ask you about.**

3 JUDGE CLARK: Mr. Wade, at this time, if
4 you'll tender the witness for cross-examination.

5 MR. WADE: Thank you. I don't want to
6 tender my coffee, Karl.

7 JUDGE CLARK: Mr. Finkenbinder.

8 RE CROSS EXAMINATION

9 BY MR. FINKENBINDER:

10 **Q Mr. Mills, I have a few questions. I want**
11 **to make sure we have a -- the Commission has a full**
12 **understanding of a little bit of the time frame and**
13 **I want to verify with you something that you stated**
14 **in your previous rebuttal testimony.**

15 **In your rebuttal testimony, you said that**
16 **originally the systems were owned by your trust.**
17 **That is technically not true, correct? It was**
18 **originally owned by Carriage Oaks, LLC, correct?**

19 A No. Carriage Oaks was founded by myself.
20 And my wife and I were the two owners, and it was
21 in my trust and her. She passed away. So that
22 basically left it in my trust.

23 And that was good until around 2007 or so.
24 That's when Carriage Oaks, LLC, came into being.
25 It was my trust that owned it before that.

1 Q Okay. In your Interrogatories that --
2 I'll just hand you something real quick because
3 that's -- I think it's important that we identify
4 that.

5 A Okay.

6 Q In your interrogatories, which I had sent
7 to you, and I'll give you a copy --

8 MR. FINKENBINDER: May I approach the
9 witness?

10 JUDGE CLARK: Yes.

11 Q (By Mr. Finkenbinder) I'll hand that to
12 you there. I asked -- I asked you in that question
13 who owned the systems. And you -- you told me in
14 that question that it was Carriage Oaks, LLC, that
15 owned it from 2000 until 2016. Is that correct
16 now?

17 A That's what it shows in here. Right.

18 Q Okay. So your trust did not own it.
19 Carriage Oaks, LLC, owned the systems from 2000 to
20 2016 according to your testimony?

21 A I guess the impression here was that my
22 trust owned Carriage Oaks, LLC.

23 Q Okay. Do you have a hard time keeping
24 your entities straight and who owns what?

25 A Well, there's only one owner of Carriage

1 Oaks, LLC, and that's my trust.

2 **Q Well, I understand. This is an important**
3 **issue, though. Do you know, sitting here today,**
4 **who owned your system, the water -- who owned the**
5 **water system and the sewer system from 2000 to**
6 **2016? Because you've given multiple answers. Do**
7 **you know?**

8 A Originally, as I said, it was my trust.
9 There was no Carriage Oaks, LLC, until -- I'm not
10 sure when it was founded. But it was some five,
11 six years after Carriage Oaks started because my --
12 it was my wife and I that was the owners of my
13 trust.

14 **Q Okay. So that answer is incorrect?**

15 A Well, in a sense. I am the owner, the
16 sole owner, of Carriage Oaks, LLC. My trust owned
17 Carriage Oaks, LLC. It's the same entity.

18 **Q Okay. So regardless of whether it was**
19 **owned by your trust or your -- or Carriage Oaks,**
20 **LLC, from 2000 to 2016, you, in some form or**
21 **fashion, were the sole owner of the water and sewer**
22 **system?**

23 A I was the sole owner through Carriage
24 Oaks, LLC, and my trust, they're one in the same.

25 **Q Okay. Then on April 2nd, 2016, Carriage**

1 Oaks -- at least that answer says either Carriage
2 Oaks or your trust, one or the other, transferred
3 the system, the water and sewer system, to Caring
4 Americans Trust Foundation, Inc. Is that correct?

5 A That's -- that's correct. 2016. Is that
6 -- around April 6th. I don't have a calendar where
7 they were actually recorded. But, yes, it was --

8 Q Your answer there says April 2nd, correct?

9 A This says April 6th in here. No. I'm
10 sorry. You're right. April 2nd. And April 6th
11 was something here. It says April 6th the
12 ownership transferred to Caring Americans.

13 Q Okay.

14 A And then it transferred again on January
15 27th of 2017 to Carriage Oaks Not For Profit
16 Corporation; is that correct?

17 A That's correct.

18 Q Okay. And that was done -- as your
19 Counsel stated, that was done during the pendency
20 of this action; is that right?

21 A The -- I think this has been already
22 started.

23 Q Okay. All right. The -- and just to make
24 the record clear, you have admitted and you don't
25 deny that you have never sought a Certificate of

1 Convenience or Necessity from the PSC in the life
2 of this water and sewer system?

3 A No, I have not.

4 Q Okay. Now, I want to talk about Caring
5 Americans for just a moment. On Caring Americans,
6 can you explain to the Commission what Caring
7 Americans is and what it does?

8 Or let me be more specific. Was Caring
9 Americans formed for the purpose of owning the
10 water and sewer system?

11 A No, it was not.

12 Q Okay.

13 A It was formed in 2012, in fact.

14 Q It's a charitable organization?

15 A It's a charitable organization. Correct.

16 Q And you control that organization?

17 A I don't. It's a public charity. I have
18 -- I'm the original founding member, and that's
19 about it. There are no owners of -- of Caring
20 Americans. It's just controlled by a Board of
21 Directors.

22 Q Okay. And of that organization, are my
23 clients -- you stated there are no members, so it's
24 fair to say that my clients have -- are not and
25 have never been members of Caring Americans; is

1 **that correct?**

2 A None of your clients that I know of even
3 knew about it.

4 **Q Okay.**

5 A I announced it at a meeting, homeowners
6 meeting at one point.

7 **Q So my question -- next question is while**
8 **Caring Americans owned the water and sewer system,**
9 **did my clients have any input or say in the water**
10 **and sewer -- did they have any input or say or**
11 **control or vote in Caring Americans during that**
12 **time?**

13 A I'm not sure how it applies. I think it
14 was alluded to.

15 **Q It's just a yes or no question. Did they**
16 **have control or vote in Caring Americans during**
17 **that time?**

18 A They would not have had control, no.

19 **Q Okay. On -- inside the Carriage Oaks Not**
20 **For Profit -- I'm sorry. I'm changing gears a**
21 **little bit. Inside Carriage Oaks Not For Profit,**
22 **do you know how many votes you currently have?**

23 A Well, I own all the -- unsold lots.
24 Whatever they are. We have eight lots in Phase 1
25 and 20 -- well, now 24 lots in Phase 2. Phase 3

1 has not been even broken ground yet. So one lot at
2 a time that it's going to be 22 when it's
3 developed.

4 **Q So you have at least 22 votes?**

5 A I would have at least 22. Yes.

6 **Q And up to 24, if I'm correct; is that**
7 **right?**

8 A I would say at least that. Yeah.

9 **Q Okay.**

10 A Twenty-four.

11 **Q And my clients in the current -- your**
12 **contention is that they're members of the Carriage**
13 **Oaks Not For Profit; is that correct?**

14 A Well, as you purchase a lot, you
15 automatically become a member of it according to
16 the Deed restrictions.

17 **Q Can you show me where in those deed**
18 **restrictions where it says that they automatically**
19 **become members of a future not-for-profit?**

20 A It's referred to when it says, You will
21 hook up to the sewer and water.

22 **Q I read that line. It doesn't say anything**
23 **about a not-for-profit.**

24 A Correct.

25 **Q It just says said that they had to hook up**

1 **to the system?**

2 A Yes. They had to connect with whatever
3 sewer and water utilities that were available from
4 the subdivision that they agreed when they
5 purchased the lot that they would hook up to sewer
6 and water.

7 Q Okay. So you would agree with me that as
8 of right now that if my clients were members of the
9 Carriage Oaks Not For Profit that they only have
10 one vote. Each one of my clients only has one
11 vote; is that correct?

12 A They only have one vote, I guess, either
13 way. Yes.

14 Q Okay.

15 A Regardless of ownership.

16 Q Regarding that, the 23 votes, you are
17 making each vote based on how many lots you own,
18 not based on the members; is that correct?

19 A I'm not quite sure.

20 Q Let me -- let me -- never mind. Ignore
21 that question. Regarding the connections, now, we
22 all acknowledge that there is only -- there are
23 seven homes built in the subdivision?

24 A That's correct.

25 Q Okay. The other lots, you've testified in

1 your previous testimony that those are available
2 for hook-up to water and sewer currently; is that
3 correct?

4 A They're required to be by the DNR. Yes.

5 Q Okay. So if we go out there today on-site
6 and we walk down the street, there is water and
7 sewer lines running up or through or next to those
8 lots currently right now?

9 A There are sewer mains that run through
10 Phase 1 and Phase 2. Yes.

11 Q Okay. All right. So if someone builds a
12 home on one of those lots that are undeveloped
13 right now, they would be able to immediately
14 connect to the water and sewer?

15 A As I said, that's a requirement from the
16 DNR that they have to be available.

17 Q Okay.

18 A Yes.

19 Q I wanted to ask a question regarding
20 assessments. It's your contention although that --
21 there was some previous testimony that the
22 assessment for 2017 was 2100; is that correct?

23 A Correct.

24 Q Okay. Do you have plans on what the 2018
25 assessment is going to be?

1 A There was an assessment created by one of
2 the Board members that came up. And we sent it to
3 every one of the members. And it stated from 2015
4 all the way to 2018, it -- it showed where we were
5 coming and where we thought we were going. And
6 that was part of the -- it was given out with the
7 assessment.

8 **Q You contend -- and I'm not sure I'm**
9 **getting the answer I'm looking for. But in your --**
10 **I asked this question to you in discovery earlier**
11 **and you stated that starting January 1st, 2018,**
12 **that Carriage Oaks Not For Profit will begin**
13 **invoicing customers individually on a monthly basis**
14 **with sewer being invoiced at a flat rate and water**
15 **being assessed on usage depending on meter**
16 **readings; is that correct?**

17 A Are we talking about the homeowners
18 meeting or --

19 **Q I asked you how Carriage Oaks Not For**
20 **Profit is going to begin invoicing people for their**
21 **-- for water and sewer?**

22 A Which question are we on here?

23 **Q Sure.**

24 A Question number what?

25 **Q Question 10. Okay. So after reviewing**

1 that answer, is it your testimony that in 2018, you
2 plan on assessing everybody differently than you
3 have in the past, that you plan on doing a flat
4 rate for sewer, and you're going to begin charging
5 people on a meter rate for water?

6 A Okay.

7 MR. WADE: I'd like to make a -- pose an
8 objection first.

9 JUDGE CLARK: What's your objection?

10 MR. WADE: My objection is those answers
11 were given prior to the challenge by the
12 Respondents of the validity of the not-for-profit.
13 So that was the plan.

14 So I don't know if he's trying to trick
15 him. But I would object to argumentative, and it
16 also leaves out some information related to the
17 timing of the answer and the challenge of the
18 not-for-profit's validity in this proceeding.

19 JUDGE CLARK: Okay. I understand that.
20 I'm going to overrule your objection. He can
21 answer.

22 **Q (By Mr. Finkenbinder) If you would -- so**
23 **it was your testimony, then, when you filled that**
24 **out that in 2018, your plan was to begin assessing**
25 **people a flat rate, which is non-identified for**

1 **sewer, and a metered rate for water, which also is**
2 **not identified; is that correct? That's your plan?**

3 A That was the hope, that we would be able
4 to do that starting January that we would go from
5 an assessment to reading meters and then being able
6 to bill. That was the hope that we'd be able to do
7 that.

8 **Q Okay. Now, has that changed again?**

9 A No. Actually, what -- we haven't started
10 yet. I've read the meters, but there's been no
11 billing for January actually even.

12 **Q Have you informed anybody of what your**
13 **current plan to bill for 2018 is?**

14 A The current -- the current plan is that in
15 lieu of Homeowners' meeting in 2017, the question
16 was asked -- I was told that the -- the people who
17 were complaining was that they wanted me to turn
18 the sewer system -- the sewer and water over to an
19 independent party.

20 And that's what I was trying to do was
21 turn it over to a separate individual party who
22 could read the meters and do the billing, and they
23 could take care of the management. They could take
24 care of the maintenance and just get it out of my
25 hands.

1 I was tired of working on it. And let
2 them take it over. And this is a not for profit
3 company that would do that. And that's what I was
4 under the impression they wanted. And when we
5 offered that, it was not accepted at the meeting
6 when I gave that proposal.

7 **Q Let me ask it a different way. Do you**
8 **have currently today a plan on how you are going to**
9 **assess the owners out there for water and sewer?**

10 A If -- if the plan goes as what I had hoped
11 it would have been, somebody else would take it
12 over and do that, and we ask exclude that from the
13 other costs of the subdivision.

14 They can take it over and do all the
15 billing and all the maintenance and everything
16 else. That was the plan for 2018. I would --
17 assessments for sewer and water would then just
18 stop and let them do the billing. That's what they
19 do.

20 **Q So it sounds like currently you don't have**
21 **a plan?**

22 A We have a plan.

23 **Q Can you inform me of what it is?**

24 A Chronologically, it's -- it's -- February
25 6th or whatever, I had talked to Ozark

1 Environmental Services to do this service. They've
2 agreed to do it. But they would like to have the
3 agreement with the homeowners to be able to do that
4 as well and make sure that's -- that's okay with
5 them because they will determine what the cost
6 would be. I wouldn't even be involved in that.

7 **Q I'll just ask one -- I don't want to beat**
8 **a dead horse, so I'll ask one final question on**
9 **this issue.**

10 A Okay.

11 **Q Do you have a current number of what the**
12 **-- for the sewer, what the current sewer assessment**
13 **for 2018 is? Do you have a number?**

14 A If I had one for 2018, it would have to be
15 a guesstimate because you never know what's going
16 to happen in 2018.

17 **Q Okay.**

18 A So you don't -- it was in arrears, as you
19 know, in the past so we knew exactly what our costs
20 were. It was always one year behind and we were
21 paying assessments for the prior year.

22 **Q Is that the same for the water?**

23 A Water, sewer, gates, roads, you name it.

24 **Q Okay. All right. Has -- okay. You spent**
25 **some time testifying -- or answering some questions**

1 earlier about a total fee that is charged for water
2 and sewer, and I want to talk about a little about
3 that. Do you recall mentioning an amount of \$6,450
4 per year for water and sewer? Do you recall that
5 amount?

6 A Yes, I do.

7 Q Okay. Can you explain to the Commission
8 what that number is and what it reflects?

9 A What it -- what it -- what it is is broken
10 into two parts. One was for the management of the
11 sewer and water utilities and testing and so forth.
12 and the other part was maintenance, 4,000 I think
13 for -- for the management and, \$2,250 for
14 maintenance.

15 I was offered back in 2014 a -- an
16 opportunity from -- I think it was White River
17 Valley Environmental, and they asked if they could
18 quote for our services for the sewer and water.

19 And I said, I'd very much like to have
20 your quote. And they did. And they sent me a
21 letter. And what they put down for the management
22 fees, what they would do, which is basically what I
23 was doing, they give me a number for that.

24 And then they said -- they left out the
25 maintenance. And I asked, Okay, what do you charge

1 for maintenance? They said, We just charge \$75 an
2 hour, straight up, whatever that turns out to be,
3 and that would be the cost for that.

4 I said, Okay, fine. That's -- that's your
5 quote. Based on that -- based on that, we had had
6 -- losing money year after year after year trying
7 to take care of -- of these entities.

8 **Q I want to ask you about that for a second.**

9 A Okay.

10 **Q But before we get to that, I want to ask**
11 **this. Who charges that fee? Is it your testimony**
12 **that Carriage Oaks, LLC, or -- and then**
13 **subsequently Caring Americans charged the HOA that**
14 **6,450 per year?**

15 A Well, at the time this quote was done, it
16 was Carriage Oaks, LLC, myself as owner as well.
17 And when it was quoted for these services, I had
18 been doing it for 14 years for free. I mean,
19 everything was totally free for 14 years.

20 **Q But now it's not free?**

21 A From four -- 2014, things changed.

22 **Q Okay.**

23 A We had homeowners meetings and things
24 changed.

25 **Q Okay. But I just want to identify for the**

1 **Commission, that fee is the fee that Carriage Oaks,**
2 **LLC, and then subsequently Caring Americans charged**
3 **the Homeowners Association --**

4 A No.

5 **Q -- for maintenance and management of the**
6 **water and sewer; is that correct?**

7 A Caring Americans did not charge anything
8 at the time. They didn't -- they didn't own the
9 sewer and water in 2014. So that would still have
10 been Carriage Oaks, LLC, who invited White River
11 Valley Environmental to call for a quote.

12 And they did. And all services to that
13 point was free. And that was the homeowners
14 meeting that we decided to have an upgrade in
15 utilities because the water was going crazy. And
16 we discussed that.

17 And we decided we would upgrade utilities.
18 And it went from there where there was an agreement
19 that they would do this. And I paid for all the
20 upgrades. And Mr. Morgan was not at that meeting,
21 so he couldn't vote, didn't have any thing to say.
22 But the rest of them voted for it. Yes.

23 **Q One of your entities charges the 6450 to**
24 **the HOA every year; is that correct?**

25 A That would be Distinctive Designs, which

1 was the developer of the subdivision. That was a
2 company I used that did the bulldozing of the trees
3 and --

4 Q And the entity does not even own the water
5 and sewer is charging for maintenance and
6 management of the water and sewer system; is that
7 correct?

8 A It is a -- an entity that I do own. Yeah.
9 Sure.

10 Q Okay. Now, you have attached -- and I can
11 show it to you here in a minute. You have attached
12 -- or you've given me some documents that reflect
13 what those services cover.

14 And I want to make sure the Commission
15 understands what that 6450 covers. That does not
16 cover things like chemicals and actual hard costs
17 for the water and sewer system. That's in -- you
18 -- pay those in addition to the 6450; is that
19 correct?

20 A Those -- those are extra costs that Ozark
21 Environmental said, We're not quoting that. That's
22 extra costs. I said, Fine. We're used to paying
23 that.

24 Q Okay. So you based your 6450 figure off
25 White River or Ozark --

1 A I mirrored White River Valley
2 Environmental, which ultimately a few years later
3 became Ozark -- I think it's called Ozark
4 Environmental, which was a company with the exact
5 same intent.

6 **Q Okay. And they do offer a for-profit; is**
7 **that correct? Or do you know?**

8 A No. No, they do not.

9 **Q They don't make any money?**

10 A They're a -- what I understand,
11 not-for-profit organization, period.

12 **Q Okay. The -- the money that you charge**
13 **the two separate fees, the \$4,000 amount and the**
14 **\$2,000 amount, that's for your work on maintaining**
15 **the systems, is that correct, for the labor that**
16 **you perform?**

17 A It is. We -- that's correct. I guess
18 yes.

19 **Q Okay. And I want to make sure the**
20 **Commission understands this. Now, you contend that**
21 **you're running a loss in the Homeowners**
22 **Association, but you are charging a fee for your**
23 **labor and work from Distinctive Design; is that**
24 **correct?**

25 A When you say a profit, as I said, the

1 first 14 years, everything was free.

2 **Q I said you are charging a fee.**

3 A So you consider everything that I make now
4 a profit when I was making no profit for 14 years.
5 I was just offering the equivalent and -- to
6 operate it and to develop it and to take care of it
7 and maintain it was all for free.

8 And now we're saying, Okay, this is --
9 this is what somebody who is in this business and
10 is a not-for-profit could do, and this is -- this
11 is fine because I've never written myself a single
12 check ever for maintenance or anything else.

13 Only people that I hire to maintain the
14 filter beds or anything else, they get paid. I
15 don't. I never --

16 **Q You didn't write yourself a check, but the**
17 **HOA did. The HOA reimbursed your company for those**
18 **costs; is that correct?**

19 A The HOA -- all of the assessment money
20 goes into the HOA, Homeowners Association checking
21 account.

22 **Q Mr. Mills, did the HOA pay Distinctive**
23 **Designs for those fees?**

24 A If you're talking about the contractual
25 agreement for 2014 forward, yes.

1 **Q Okay. That's all I needed on the record.**

2 A And --

3 **Q That's all I needed on the record.**

4 A Okay.

5 MR. FINKENBINDER: Okay. How does the
6 Commission want exhibits? Do I give them each one?

7 JUDGE CLARK: After it's been admitted.

8 **Q (By Mr. Finkenbinder) Okay. This is a --**
9 **can you tell the Commission what this exhibit is?**

10 A Yes, I can. Again, this is -- this is the
11 quotation from Distinctive Designs to match up with
12 -- 2014 originally when they quoted it and master
13 prices for 2014 for the services.

14 In fact, we were -- we lowered the
15 management fees, and they -- they quoted \$75 an
16 hour for the maintenance, which is the second part,
17 the 2250. But \$75 an hour is like \$600 a day.
18 That's four days worth of work for 2250. And I
19 just put a cap on it.

20 **Q Understood.**

21 A That's all I was doing.

22 **Q I just -- I was just asking you to**
23 **identify what that document was. Is that a true**
24 **and accurate copy of the invoice for 2014 services**
25 **that went out?**

1 A Yes, it is.

2 MR. FINKENBINDER: Okay. Commission, I'd
3 like to offer Exhibit 6 into evidence at this time.

4 JUDGE CLARK: Any objection?

5 MR. WADE: No objection.

6 JUDGE CLARK: Exhibit 6 will be admitted
7 onto the hearing record.

8 (Exhibit 6 was offered and admitted into
9 evidence.)

10 JUDGE CLARK: And can you identify it for
11 me?

12 MR. FINKENBINDER: Yes. It is an invoice
13 for services from Distinctive Designs, LTD,
14 directed to Carriage Oaks Estates subdivision.

15 JUDGE CLARK: Thank you.

16 **Q (By Mr. Finkenbinder) And on that**
17 **exhibit, it describes all of the services there**
18 **that you're charging for; is that correct?**

19 A That's correct.

20 **Q Okay.**

21 A It states in here that chemicals are
22 separate.

23 **Q Thank you. So it's fair to say that the**
24 **-- well, I'll -- is it true -- you said that that**
25 **began in 2014; is that right?**

1 A Right.

2 **Q Is it true that you began assessing that**
3 **in order to recoup the cost that you expended for**
4 **upgrading the system?**

5 A No. It really didn't have much to do with
6 -- this would not have had anything to do with the
7 upgrade.

8 **Q Okay.**

9 A That was a separate entity in and of
10 itself. This was just maintenance and management
11 of what's existed there now.

12 **Q There was a -- you stated that you had**
13 **performed work on the system in the amount of**
14 **approximately \$40,000; is that correct?**

15 A That had nothing to do with the sewer
16 plant. That was strictly a well upgrade.

17 **Q Okay.**

18 A Okay.

19 **Q So it was an upgrade on the water system?**

20 A Had nothing to do with the sewer. It was
21 just the well.

22 **Q Okay. Do you know, had my clients ever**
23 **agreed verbally or in writing to be members of the**
24 **Carriage Oaks Not For Profit?**

25 A Carriage Oaks Not For Profit -- which

1 entity here are we -- this is the new -- the new
2 company you're talking about, Carriage Oaks Not For
3 Profit water and sewer?

4 **Q Correct. Yes, sir.**

5 A Right. No. We have -- we have some
6 members that are -- that are -- all the members are
7 property owners, if that's what you're asking.

8 **Q No.**

9 A All the Board of Directors are property
10 owners.

11 **Q Let me be more specific. Did any of my**
12 **clients ever agree verbally or in writing to be**
13 **members of that company?**

14 A No. Not really. No.

15 **Q Okay.**

16 A They weren't asked that I know of.

17 **Q Okay. Do you have any experience or**
18 **education -- prior to the construction of and**
19 **management of Carriage Oaks, do you have any**
20 **experience or -- or education in operating a water**
21 **or sewer system?**

22 A That's an interesting question. I had a
23 well driller drill the well, and I've had no
24 experience in drilling wells.

25 **Q Okay.**

1 A Water and wastewater, I owned a company in
2 Chicago that was into water and wastewater bigtime.
3 In fact, Black & Veatch was one of our major
4 customers that's in Kansas City.

5 And they were probably one of the world's
6 largest engineering companies for water and
7 wastewater. And we made some proprietary products
8 for them for wastewater. So I understood the
9 program pretty well.

10 **Q And that was an manufacturing entity?**

11 A For 25 years, we manufactured these
12 products in Chicago. We even had priority products
13 for Black & Veatch for rough water and rain water.

14 **Q Okay. That would be -- that would not be**
15 **experience in managing or operating a water or**
16 **sewer system, correct?**

17 A Well, it had to do with engineering and
18 what you need to make this thing work. That's what
19 it was all about.

20 **Q Okay.**

21 A We worked with their engineers to design
22 products and make it work.

23 **Q Okay. Did you ever seek approval from the**
24 **PSC prior to making the transfer -- from the**
25 **Commission -- I should be clear. Did you ever seek**

1 approval from the Commission prior to transferring
2 the water and sewer system from Caring -- sorry --
3 from Carriage -- from Caring Americans Trust
4 Foundation, Inc., to Carriage Oaks Not For Profit
5 Water and Sewer?

6 MR. WADE: I'd like to make an objection
7 that that invades the settlement discussions that
8 we had between the Staff Counsel and Respondents'
9 Counsel and Complainants' Counsel.

10 So he's seeking information about
11 settlement discussions we had with the parties in
12 this case.

13 JUDGE CLARK: I don't think he's seeking
14 information regarding a settlement. I think he's
15 asking whether or not the -- the Commission was
16 asked for permission to transfer the asset.

17 MR. WADE: Settlement discussions concern
18 the transfer of the assets of the not for profit.
19 It was formed during the pendency of this case.

20 JUDGE CLARK: And it was added as a party.

21 MR. WADE: After the settlement
22 discussions failed. So he's asking him a question
23 about those settlement discussions.

24 JUDGE CLARK: So no transfer occurred?

25 MR. WADE: The transfer did occur.

1 JUDGE CLARK: Then he's entitled to ask
2 about it. It will be overruled.

3 Q (By Mr. Finkenbinder) Did -- okay. I'll
4 just repeat it for clarity. Did you or any of your
5 entities seek PSC approval -- sorry. Did you or
6 any of your entities seek approval from the
7 Commission prior to making the transfer from Caring
8 Americans Trust Foundation, Inc., to Carriage Oaks
9 Not For Profit Water and Sewer?

10 A Okay. It was -- my recollection and
11 understanding was that because Caring Americans was
12 the owner and I transferred that prior in 2016,
13 that that was not agreeable with the Complainants
14 because it wasn't formed as a sewer and water
15 company. And so --

16 Q Sir, I don't mean to be -- I don't mean to
17 be rude, but you're not answering my question. All
18 I need you to do is -- it's a yes or no question.
19 Did you seek or obtain approval from the Commission
20 prior to that transfer? It's yes or no.

21 A I didn't even know PSC existed when I --
22 when I put it Caring Americans. I didn't even
23 realize what their job really was.

24 Q And I'm not talking about that transfer.
25 I'm talking about the subsequent transfer from

1 **Caring Americans to the not for profit.**

2 A That was done because -- because we
3 weren't set up for that. And so no, I did not seek
4 that.

5 **Q Okay.**

6 A I didn't know it was required.

7 **Q You would agree with me that the lots that**
8 **you own, the 22, 23 lots that don't have homes on**
9 **it, that that is a prospective utility customer.**

10 **You're not one -- you're not one right**
11 **now, but you're prospectively going to be one in**
12 **that subdivision; is that correct?**

13 A They -- they have to be. DNR is mandatory
14 that they have to be available for sewer and water,
15 or you can't even offer them for sale.

16 **Q So even though those lots don't use any**
17 **service, pay any fees or have any financial stake**
18 **currently in the not-for-profit, they all have**
19 **votes; is that correct?**

20 A They would have votes -- you're talking
21 about ones I own, right?

22 **Q Yes, sir.**

23 A They would have votes.

24 **Q Okay.**

25 A One vote each.

1 **Q** I'm going to hand you what's been
2 **previously marked as Exhibit 5. Can you tell me**
3 **what that document is?**

4 A It looks like a rendering here of the --
5 there's part of the Carriage Oaks --- it looks like
6 the original drawing here for Carriage Oaks Phase 1
7 and -- well, Phase 1 is already blanked out. This
8 is Phase 2 of Carriage Oaks, a drawing for Phase 2.

9 **Q** Okay. So it's shrank down, but at the
10 **top, it says, Re-plat of a part of Carriage Oaks**
11 **Estates, Phase 2 and Adjacent Land; is that**
12 **correct?**

13 A It is -- it is Phase 2. It's showing the
14 part that's it -- dimensions in Phase 2. Correct.

15 **Q** Okay. And I apologize. It is very
16 **difficult to read, but I have to submit the exhibit**
17 **as an 8 and a half by 11.**

18 But do you -- can you tell me, is that --
19 **from what you can tell, does that appear to be an**
20 **accurate copy of the re-plat for Phase 2?**

21 A That is what's platted and recorded.
22 Correct.

23 **Q** Okay. And just so --

24 MR. FINKENBINDER: Well, at this time, I'd
25 like to offer Exhibit 5.

1 JUDGE CLARK: Any objection?

2 MR. WADE: No objection.

3 JUDGE CLARK: Exhibit 5, the Phase 2 plat,
4 will be admitted onto the hearing record.

5 (Exhibit 5 was offered and admitted into
6 evidence.)

7 Q (By Mr. Finkenbinder) I just want to be
8 clear so that the Commission can understand. The
9 Phase 2 that -- the Phase 1, sorry, is depicted on
10 this, but is not platted, and that shows Lots 1
11 through 8, which were the bigger lots; is that
12 correct?

13 A Would have been what lots.

14 Q Lots 1 through 8, those are the bigger
15 lots there? That's Phase 1?

16 A Larger lots of the subdivision, and
17 they're in Phase 1. That was the first phase of
18 Carriage Oaks.

19 Q And you own a home that sits on one of
20 those lots; is that correct?

21 A I did own Lot 5.

22 Q And now Caring Americans does?

23 A Now I've turned it over to Caring
24 Americans, been donated to Caring Americans.

25 Q Okay.

1 A And for my trust purposes.

2 **Q Okay. The other lots in Phase 2, though,**
3 **you own -- that's where the -- the 22, the 23 lots**
4 **we're talking about that you owned; is that**
5 **correct?**

6 A I also owned Lot 7, which was owned by one
7 of the Complainants that bought it back from me.
8 He bought two. So I turned around and bought one
9 of those. So I have two lots now in Phase 1 --

10 **Q Okay.**

11 A -- that I still own. And bought one of
12 them back. And then all the lots that are in Phase
13 2 that are not sold. And Mr. Morgan bought two
14 lots, 3-A and 4-A, and turned those in one lot.
15 And he was one lot there, and the all the rest of
16 them are available for sale.

17 **Q But those -- that Phase 2 is the primary**
18 **part of the development that is not yet developed,**
19 **but it is ready for connection to water and sewer;**
20 **is that correct?**

21 A Ready for connection. Sure. As I said,
22 DNR said they will be ready for connection, or you
23 don't offer them for sale. Okay?

24 **Q Okay. Okay. Your Counsel talked, in**
25 **opening, approval from DNR. It's your contention**

1 that you've been approved by DNR or Department of
2 **Natural Resources, correct?**

3 A Uh-huh.

4 **Q Exhibit 8 there is what it's marked. Can**
5 **you identify for the Commission what that exhibit**
6 **is?**

7 A Well, I can barely read this. It's
8 distorted.

9 **Q It is. That's the only copy I have, so --**
10 **can -- can you identify it? Is it legible for you?**

11 A It's legible enough. It says Department
12 of Natural Resources, and it's a letter -- I think
13 this is the approval letter that's meets the 319 --
14 393 criteria.

15 And it was sent to Carriage Oaks Not For
16 Profit Water and Sewer. See, this is to the -- the
17 permit that we requested to change it from Caring
18 Americans to Carriage Oaks Not For Profit.

19 **Q Okay. Is this the letter that you contend**
20 **gave you approval for the systems from DNR,**
21 **Department of Natural Resources?**

22 A I think the letter just stated that it was
23 their approval for the 393. I had no idea what
24 they were asking for. But -- except for the 393
25 because the first one we received from them did not

1 state that it was good for 393. So this is the
2 bylaws. So that's when they had to go back and get
3 them right. Then we got this letter that says,
4 Okay, they are right now, we accept this.

5 **Q Okay. Can you identify anywhere in this**
6 **letter where it says that your -- or the new --**
7 **newly formed Carriage Oaks Not For Profit Water and**
8 **Sewer Corporation is compliant with 393 -- Section**
9 **393.921 or Section 393.839? Does it say that**
10 **anywhere in this letter?**

11 A I have -- I don't -- this is strictly a
12 DNR product. I know nothing about their 393s. I
13 only respond to what they ask me to do and that
14 they would or would not approve it if certain
15 things were done. And those are the things I did,
16 and they approved it. So that's all I can tell you
17 about it.

18 **Q Okay.**

19 A I don't know what each one of them
20 individually says.

21 **Q I understand. It's -- obviously, as you**
22 **probably heard me in opening, it was our contention**
23 **that the new non-profit violates the two sections I**
24 **just quoted.**

25 **You've stated in your pleadings that you**

1 have approved -- you've gotten approval from DNR
2 and that it is compliant with Section 393. And so
3 I'm asking, have you received anything from the
4 Department of Natural Resources -- this is my
5 ultimate question.

6 Have you received anything from the
7 Department of Natural Resource that's says that the
8 newly formed not for profit is compliant with
9 Section 393.921 or 393.839?

10 A The only thing that we have from the
11 Department of Natural Resources was they gave us a
12 new operating permit under that name, which
13 indicated to me they were -- they were compliant
14 with whatever they wanted.

15 Q Okay. Is that a true and accurate copy of
16 the letter that you received from the Department of
17 Natural Resources?

18 A It looks like what they sent me. Yes.

19 MR. FINKENBINDER: Your Honor, at this
20 time, I'd offer Exhibit 8 into evidence.

21 JUDGE CLARK: And what is that?

22 MR. FINKENBINDER: It is a letter from the
23 Missouri Department of Natural Resources dated
24 August 17th, 2017, addressed to Mr. Carl Mills,
25 Director -- before I admit it, it does have an

1 address on there of the --

2 JUDGE CLARK: Let's -- let's not go into
3 the address.

4 MR. FINKENBINDER: May I still admit the
5 exhibit or no?

6 JUDGE CLARK: Any objection?

7 MR. WADE: No objection.

8 JUDGE CLARK: Okay. That --

9 MR. WADE: No objection. Sorry.

10 JUDGE CLARK: And it has personal
11 information of a customer?

12 MR. FINKENBINDER: Of only the
13 Respondent's home. Mr. Mills' home address is
14 identified on the exhibit.

15 JUDGE CLARK: Okay. Do you have any
16 objection to the address being in the record?

17 MR. WADE: I believe he's already
18 testified on the record as to his address.

19 JUDGE CLARK: I believe that's correct.
20 I'm just weighing out in my mind how it should be
21 confidential and whether or not that should be
22 stricken.

23 And I think in regard to this, since he is
24 the Respondent here and because he is, in many
25 instances, acting as the point person for the

1 company, I'm going to rule that that is waived by
2 the Commission, at least in regard to this piece of
3 evidence. And that will be admitted onto the
4 record.

5 (Exhibit 8 was offered and admitted into
6 evidence.)

7 JUDGE CLARK: You can continue.

8 MR. FINKENBINDER: Thank you, your Honor.

9 **Q (By Mr. Finkenbinder) Do you recall there**
10 **being a conflict with my client, Mr. Derald Morgan,**
11 **regarding a water meter for a loop?**

12 A Yes, I do.

13 **Q Okay. And is it true that at that time**
14 **the Homeowners Association was asserting that -- or**
15 **tell me -- well, before I make any accusations,**
16 **tell me what the nature of that conflict was.**

17 A Well, the nature of the conflict was that
18 we were considering going into reading meters
19 rather than just do it all by assessment, in which
20 case, he would have to have a meter.

21 But prior to that, when everyone purchased
22 their lots, I had to approve the drawings for their
23 house and -- and the things they would require.
24 One of those was a meter to connect to their new
25 home.

1 And they were going to put a meter in.
2 Everyone did except Mr. Morgan. He bypassed the
3 meter and put the loop in, put the vault in, but he
4 left the meter out.

5 And I said, Well, we can't read your meter
6 if you don't have one. We need to have you put a
7 meter in.

8 **Q Okay. And there was obviously some**
9 **dispute regarding the facts, but I won't get into**
10 **that. But my question is -- is this: Do you --**
11 **I'll hand you an exhibit previously marked Exhibit**
12 **9. Do you recognize this document here, Mr. Mills?**

13 A Well, I signed this February 2nd, 2017.

14 **Q Okay. And this is a letter to my client**
15 **regarding the conflict that we just identified; is**
16 **that correct?**

17 A It appears to be the problem. We couldn't
18 proceed without this. Or at least for his lot.

19 **Q Okay. And this letter is coming from**
20 **Carriage Oaks Estates; is that correct?**

21 A Correct.

22 **Q Can you tell me why Carriage Oaks Estates**
23 **is making demands on a lot owner regarding a water**
24 **meter that it does not own or manage or operate any**
25 **of the systems?**

1 A Because he's -- he's connected with it.
2 And although Carriage Oaks Estates is the
3 continuing -- was the continuing authority for all
4 this time, they were very much involved in who was
5 connected and who was not.

6 And we couldn't even get on his easement
7 without this. And Carriage Oaks is going to have
8 easement priority rights even to haul the water and
9 sewer.

10 And it was part of the Carriage Oaks
11 Estates Homeowners continuation. It would have
12 been because they were definitely in line to be the
13 owner of this thing.

14 **Q You would agree with me, though, that at**
15 **the time this was written in February of 2017 that**
16 **the Homeowners' Association did not own, manage or**
17 **operate either the water or the sewer system; is**
18 **that correct?**

19 A It would -- it would not have been owned
20 by them, no.

21 **Q Or operated?**

22 A No. It's not -- they're not operating.

23 **Q Okay.**

24 A The Homeowners' Association was not
25 capable of that.

1 **Q Okay.**

2 A Only outside people who had experience
3 could do that.

4 **Q Okay. Is this a true and accurate copy of**
5 **the letter that you sent my client?**

6 A Yes.

7 **Q Okay.**

8 MR. FINKENBINDER: Ask the -- at this
9 time, I'll make an offer of Exhibit 9 into
10 evidence.

11 JUDGE CLARK: Does Exhibit 9 have any
12 customer information?

13 MR. FINKENBINDER: It has Mr. Derald
14 Morgan's address. I believe he's -- I believe
15 he'll waive that. Is that correct, Mr. Morgan?

16 MR. MORGAN: Fine with me.

17 MR. FINKENBINDER: I think he -- my client
18 is willing to waive his personal address.

19 JUDGE CLARK: Okay. I'll accept that
20 waiver. And that will be -- that will be admitted
21 onto the record adds non-confidential. Let me ask
22 first -- first of all, do you have any objection?

23 MR. WADE: No objection.

24 JUDGE CLARK: Okay. I apologize. Exhibit
25 9 will be admitted onto the hearing record.

1 (Exhibit 9 was offered and admitted into
2 evidence.)

3 **Q (By Mr. Finkenbinder) Do you recall my**
4 **clients asking to make changes to the bylaws of the**
5 **not-for-profit?**

6 A I'm sorry. Say it again.

7 **Q Sure. Do you recall in 2017 -- it's true**
8 **that you drafted the -- or you had -- or someone on**
9 **your behalf drafted the bylaws for the newly formed**
10 **not-for-profit -- Carriage Oaks Not For Profit; is**
11 **that true?**

12 A Attorneys drafted the bylaws for it.
13 Right.

14 **Q Do you recall or were you aware that my**
15 **clients requested that changes be made to those**
16 **bylaws?**

17 A I don't recall him asking for any
18 particular thing. Just the fact that we didn't --
19 we needed bylaws and we needed a company.

20 **Q Were you aware at all that my client had**
21 **requested changes to those bylaws?**

22 A I -- no, I don't. I don't recall him
23 asking anything about the bylaws.

24 MR. FINKENBINDER: Okay. Nothing further.

25 JUDGE CLARK: Any questions from the

1 Commission?

2 CHAIRMAN HALL: Yeah.

3 CROSS-EXAMINATION

4 BY CHAIRMAN HALL.

5 Q Good morning.

6 A Yes.

7 Q I'm trying to understand the extent to
8 which the water system was operated for profit or
9 as -- as the Complaint alleged or as a not for
10 profit as my understanding of these that you
11 allege.

12 Between 2000 and 2014, were -- were the
13 homeowners with -- was the Homeowners' Association
14 assessed an annual fee?

15 A A portion of the -- yes. They were --
16 annual fees for everything including sewer and
17 water and roads, common areas.

18 Q And is there a document in the record that
19 -- or is there testimony in the record that sets
20 forth what those annual assessments are? And I'm
21 going to look to lawyers actually to answer that
22 question.

23 MR. FINKENBINDER: The only thing that I
24 believe is in the record from 2000 to 2014 is the
25 assessment that was assessed to each owner for --

1 from the HOA. I have not seen anything on or about
2 any paperwork that evidenced a fee charged to the
3 HOA for management or operation of the water and
4 sewer. Is that -- am I answering your question?

5 CHAIRMAN HALL: Okay. So --

6 MR. WADE: Exhibit 11 is a copy of the
7 assessments, but they only date back to 2012
8 through -- 2012 through 2016 and show an assessment
9 per lot owner of the 1,250, which the testimony --

10 CHAIRMAN HALL: \$1,250.

11 MR. WADE: Correct. And the testimony
12 from Mr. Morgan was that that included all water
13 and sewer.

14 CHAIRMAN HALL: And that was 2012?

15 MR. WADE: Through 2016.

16 CHAIRMAN HALL: Okay.

17 MR. WADE: There's nothing in the report
18 prior to 2012 at this point.

19 MR. FINKENBINDER: Your Honor, may I make
20 a distinction? And correct me if you disagree.
21 But that letter references assessments made from
22 the HOA to the individual homeowners.

23 But there is what I have presented as a
24 different exhibit was a fee charged to the HOA from
25 Distinctive Designs for management and operation of

1 the water -- water and sewer system.

2 So I guess what I'm saying is that
3 exhibit, although in evidence, does not reflect
4 what monies were being charged specifically for
5 water and sewer and where they were going.

6 MR. WADE: With -- with all due respect,
7 that doesn't make any sense. The testimony has
8 been they were charged 1250 per year, and that's
9 all that was received according to the Complainant.

10 So whether there were additional costs
11 associated with the operation of the facility would
12 go to our point that it is definitely costing more
13 to operate the facility and is actually --

14 CHAIRMAN HALL: That's an assessment by
15 the HOA.

16 MR. WADE: Yes.

17 CHAIRMAN HALL: Okay. What is the
18 evidence in the record that connects the assessment
19 to the HOA to what was received by the owner of the
20 water and sewer system?

21 MR. WADE: Well, you can ask Mr. Mills
22 that question. But I asked Mr. Morgan, and he said
23 he was only charged 1250 per --

24 CHAIRMAN HALL: But -- but I'm trying --
25 one of the key legal questions for us to determine

1 here is whether the system was being operated for a
2 profit.

3 MR. WADE: Yes.

4 CHAIRMAN HALL: So we need -- we need to
5 understand who owned, operated and managed the
6 system and whether or not they were doing so for a
7 profit.

8 And -- and so -- so it -- so what evidence
9 is there in the record that connects the -- the HOA
10 assessments with whatever was received by the
11 entity that was owning, maintaining and operating
12 the system?

13 MR. FINKENBINDER: I think -- I believe
14 the testimony is that it -- would the Commissioner
15 like me to clear that up with the witness? I think
16 I could ask a couple follow-up questions and make
17 that point down pat or I could explain what --

18 CHAIRMAN HALL: Sure.

19 RE CROSS EXAMINATION

20 BY MR. FINKENBINDER:

21 Q Mr. Mills, so in 2014, we discussed that
22 \$5,450 figure earlier that Carriage Oaks at one
23 time and then Caring Americans, and now we don't
24 know because -- we don't know what the new not for
25 profit is going to charge. But that \$6,450 was

1 being charged to the HOA for management and
2 maintenance of the water and sewer system; is that
3 correct?

4 A Correct.

5 Q And that started in 2014, correct?

6 A Right.

7 Q So that fee went towards the HOA. The HOA
8 paid that fee and received reimbursement for that
9 fee from the homeowners through the assessment; is
10 that correct?

11 A Through the assessments.

12 Q And that started in 2014, and it's been
13 going to the present; is that correct?

14 A It's contractual annually for those
15 services.

16 Q Okay. And the transfer from Carriage
17 Oaks, LLC, to Caring Americans, that occurred --
18 that transfer occurred in 2016, correct?

19 A 2016. Right.

20 Q Okay.

21 MR. FINKENBINDER: So we're not really
22 looking at -- so the Commission is clear, I guess
23 that's the only questions I have of the witness.
24 So the Commission's clear, I don't think the time
25 frame pre-2014 has been addressed by any of the

1 litigants. I think all of the actions is that
2 we're complaining of arose in 2014 and subsequent
3 starting with the transfer in 2016. I don't know
4 if I cleared things up or made them worse.

RE CROSS EXAMINATION

5
6 BY CHAIRMAN HALL:

7 **Q Okay. So -- so between 2000 and 2014,**
8 **when -- when Carriage Oaks, LLC, owned the system,**
9 **how was Carriage Oaks compensated for its**
10 **maintenance and operation of the system?**

11 A They weren't. There was nothing. In fact
12 -- and as far as the sewer and water were
13 concerned --

14 **Q Speak into the microphone.**

15 JUDGE CLARK: Would you --

16 A Oh, I'm sorry. There was -- there was no
17 cost, no bill sent at all. It was all -- what I
18 did for sewer and water up to that point had been
19 all out of my pocket until 2014.

20 **Q (By Chairman Hall) so between 2000 and**
21 **2014, the -- there was no homeowners assessment to**
22 **cover water and sewer?**

23 A There was -- whatever -- whatever the
24 actual costs were on the assessments. If we had a
25 breakdown, if something went wrong in the plants,

1 we had to call people into to fix it, whatever it
2 was, those are what the assessments were for, and
3 we paid those.

4 Q So your -- your -- your -- your testimony
5 is that between 2000 and 2014, you would determine
6 at the end of the year what the costs had been to
7 operates and maintain the system --

8 A The costs.

9 Q -- and that amount was -- was returned to
10 Carriage Oaks, LLC, in the form of -- of a
11 homeowners assessment?

12 A It was rendered to not Carriage Oaks, but
13 Distinctive Designs was the one that had the
14 contract with Carriage Oaks, LLC.

15 Q Okay. So the homeowners would pay an
16 assessment. And that assessment would go to
17 Distinctive Design from the HO -- homeowners would
18 pay an assessment. They would pay it to the HOA?

19 A Right.

20 Q From the HOA, it would go to --

21 A Whenever the bills were paid. Whoever --
22 whoever came onto property for water and sewer or
23 anything else, that was paid the -- the checks that
24 were paid to those entities was from the
25 assessment.

1 **Q** Well, let me -- let me go this way then.
2 **Are you the individual who made -- who -- who took**
3 **out a calculator and added up all the costs to**
4 **maintain the system for the year and determined the**
5 **amount that needed to be paid by homeowners?**

6 **A** All of the -- all of the accounting came
7 from the checks that were written to whatever party
8 participated in correcting problems, whether it was
9 a well company or --

10 **Q** But were you the one who totaled those up
11 **and made those calculations?**

12 **A** I was the one that received the bills and
13 paid the bills.

14 **Q** But you are the one that determined what
15 **all those costs were going to be?**

16 **A** I --

17 **Q** Or what those costs were for the year?

18 **A** I guess it's fair to say. I -- I knew
19 what it needed. I called the people. They did the
20 work. And I paid them, and it was all from the
21 assessments.

22 **Q** You added them up yourself?

23 **A** I added them up, and I paid them.

24 **Q** Okay. And you didn't take into account
25 **any kind of return on your investment in that**

1 **calculation?**

2 A It had nothing to do with me.

3 **Q It was exclusively all of -- all of the**
4 **out-of-pocket expenditures to maintain the system?**

5 A That's what -- we paid only what --

6 **Q Okay. So then -- so then you would figure**
7 **out the total amount of costs and divide that by**
8 **the number of homeowners?**

9 A Correct. For assessment.

10 **Q For the assessment?**

11 A Part of the assessment.

12 **Q Okay. So then the homeowners would write**
13 **that check to the HOA; is that correct?**

14 A Write it to the HOA put it back in the
15 checkbook.

16 **Q Okay. So then the HOA would take that --**
17 **that corpus, that -- that -- that fund, and they**
18 **would pay for -- for ongoing obligations?**

19 A You're right. It was paid -- it was paid
20 all in arrears. And then that determined what our
21 assessment would be for the next year.

22 So they paid that amount, and we used it
23 almost as a budget. But it was really in arrears
24 for the year past, the costs for that year. And
25 that was for whatever services were brought to us

1 were paid. Not mine. I sent on bills personally
2 from myself. I was never paid anything --

3 **Q Okay. So now --**

4 A -- until 2014.

5 **Q So now you are the owner of Distinctive**
6 **Designs; is that correct?**

7 A I am - I'm the sole owner of Distinctive
8 Designs. Yes.

9 **Q Okay. So Distinctive Designs would --**
10 **would invoice for services rendered to the -- to**
11 **the system, to the water and sewer system?**

12 A Distinctive Designs is a 20-year-old
13 company that I formed for the purpose of
14 construction. It designed and built the -- not
15 designed. Partially.

16 But it designed and actually constructed
17 all of the entities of Carriage Oaks, including not
18 the well, but lot of the sewer. All the mains were
19 put in by Distinctive Designs.

20 And it had been a company I had for 20
21 years. I used it to develop all of Carriage Oaks
22 and other things, shopping centers and other
23 things.

24 **Q So what was it doing in connection with**
25 **the operation and management of the system?**

1 A It didn't manage anything. It just simply
2 did whatever required for -- in maintenance and the
3 -- did the design -- or the management.

4 **Q So it was -- so it was maintaining the**
5 **system?**

6 A It was maintaining and -- and managing and
7 maintenance for Carriage Oaks Water and Sewer --

8 **Q And --**

9 A -- annually.

10 **Q And as the sole owner of --**

11 A Distinctive Designs.

12 **Q -- Distinctive Designs, the -- the -- the**
13 **money that was received from the Homeowners'**
14 **Association went into your pocket? That was --**
15 **that was --**

16 A Well, if it was paid to Distinctive
17 Designs, it would be the equivalent of -- any --
18 any entity would come in doing the exact same
19 thing.

20 **Q Did Distinctive Designs profit from --**
21 **from the system?**

22 A We have never profited a dime. In fact,
23 it's been a total loss, even after --

24 **Q Well, but Distinctive Designs was**
25 **receiving money for operating and maintaining the**

1 **system?**

2 A They had a contract. They had a contract.

3 **Q Okay. Were those -- okay. I interrupted**
4 **you. You said what?**

5 A They had an annual contract for -- for the
6 year --

7 **Q Okay.**

8 A -- for those services with Distinctive
9 Designs.

10 **Q Okay. And that -- that contract was**
11 **between Distinctive Designs and --**

12 A And the Homeowners' Association.

13 **Q So Distinctive Design was -- was profiting**
14 **from managing the system?**

15 A If I can't profit from it, they couldn't
16 profit from it because they just simply did the
17 same thing that I was doing before, whatever the
18 name of it was called.

19 **Q Were they getting checks solely as**
20 **reimbursement for expenditures, or were they --**
21 **were they getting paid to maintain and manage the**
22 **system?**

23 A They were being paid as the management
24 services and for management.

25 **Q So for management services. That would --**

1 **that would involve what? What were the management**
2 **services?**

3 A Taking care of anything that broke down,
4 had to be fixed or anything that -- tests that were
5 done. Anything required to operate that system.

6 **Q And so were they only getting reimbursed**
7 **for out-of-pocket expenditures, or were they**
8 **getting money beyond out-of-pocket expenditures?**

9 A Well, the services were -- if you call
10 testing and so forth in-pocket and out-of-pocket,
11 it costs to have these things tested. We did all
12 the testing, took them to Springfield, brought them
13 back and --

14 **Q Okay. So let's just take one example,**
15 **then. Okay. So they had to test the water for**
16 **lead on such and such date, and they -- they did**
17 **the test and took it to Springfield?**

18 A Uh-huh.

19 **Q What did they get paid for that?**

20 A Well, the contract annually was -- was the
21 contract to do all these services for the year.

22 **Q So it was an annual flat contract?**

23 A Flat rate contract for the year. Just
24 like we got a contract --

25 **Q And what was that contract amount for?**

1 A The management portion of it was --

2 Q **Between 2000 and 2014.**

3 A This is 2000 -- or starting 2014 services.

4 Q **Okay. I'm -- I'm really actually more**
5 **curious about the time period previous, 2000 to**
6 **2014?**

7 A Well, 2000 to 2014, I just -- I just did
8 invoice for anything. I was doing --

9 Q **So Distinctive Designs did not come into**
10 **play here until 2014?**

11 A Until 2014.

12 Q **Okay. Well, that clarifies -- all right.**
13 **So between 2000 and 2014, you would pull out a**
14 **calculator. You would figure out your total**
15 **expenses related to operating and maintaining the**
16 **system. And you would be reimbursed for those**
17 **costs through the HOA assessment?**

18 A What I was reimbursed for was what other
19 people really did. And then my own -- my own
20 services that I did was whether it was heavy
21 equipment or not, dozers, lawn mowers, bushhogs, I
22 took care of the plant and oversaw all the
23 management of it and the maintenance of it. And --

24 Q **But you only received payment for**
25 **out-of-pocket expenditures?**

1 A For me personally, I -- I --

2 Q I mean, I'm trying to understand the
3 extent to which there was any profit. And -- and
4 there is a whole bunch of interconnected entities.
5 And so the questioning has to be very precise as do
6 the answers.

7 So I'm trying to understand -- so there's
8 Carriage Oaks, LLC. There is the -- what I --
9 there's Distinctive Designs. There's Caring Oaks
10 Homeowners Association. There is Caring Oaks Not
11 For Profit. And I'm trying to understand the
12 extent to which any of -- other than the Homeowners
13 Association whether any of these entities ever
14 received money related to maintaining the system
15 above and beyond actual expenditures, out-of-pocket
16 expenditures. Because to the extent that there
17 was, there's ultimately a profit.

18 A Not that I can tell.

19 Q Okay. So between 2000 and 2014, the
20 extent to which you or Carriage Oaks, LLC, ever
21 received a dime in connection with operating and
22 maintaining the system, it was only out of -- as a
23 end of the year reimbursement for those years
24 expenditures related to operating and maintaining
25 the system?

1 A That would have been more of a real cost.
2 Yes.

3 Q Okay. So then fast forward to 2014 when
4 -- when there is a contract with Distinctive
5 Designs. So -- and I am in no way saying that
6 this is illegal because it's clearly not.

7 But what you have, in essence, is a
8 payment from -- from Distinctive Designs -- I mean,
9 I'm sorry -- a payment from the Carriage Oaks, I
10 guess -- well, tell me the contract -- Exhibit 6,
11 this is a contract between what two entities?

12 A The contract --

13 Q Well --

14 A Exhibit 6 is between Carriage Oaks
15 Homeowners Association and Distinctive Designs.

16 Q Okay. So it's an invoice. It's not a
17 contract.

18 A Right.

19 Q Okay. So if -- so this is Distinctive
20 Design invoicing the Homeowners Association?

21 A Correct.

22 Q And you are -- you are Distinctive Designs
23 as the -- as the sole owner?

24 A I own the company.

25 Q Okay.

1 A Right.

2 Q So -- so you -- so for 2000 -- for 2015,
3 you received a check for 6750?

4 MR. WADE: 6450.

5 Q (By Chairman Hall) 6450?

6 A 6450.

7 Q Okay. And did that 6,450 -- did that
8 reflect solely out-of-pocket expenditures, or was
9 there profit in connection with that receipt?

10 A There was no -- there was no profit made
11 with this or without it. This would have been an
12 understatement as to what the cost actually was and
13 the people that I used myself that -- prior to then
14 had been not even an invoice, but they still were
15 paid out of my pocket.

16 This only started to begin to take it
17 where it should have come out of years earlier and,
18 you know, begin to pay for those services.

19 Q Is there -- is there anything in the
20 record that would illuminate that statement? I.e.,
21 is there a list -- did you keep track of -- of --
22 of all of your expenditures related to operating
23 and maintaining the system?

24 A I did it from the checkbook by getting
25 invoices from people. They're all accounted for,

1 the invoices. If you're asking about Distinctive
2 Designs, it -- Distinctive Designs is much bigger
3 than this because it -- it manages and operates
4 shopping centers and other systems as well.

5 **Q So is -- what -- so is there anything in**
6 **the record that would show that Distinctive Design**
7 **was -- which you are the sole owner of was -- was**
8 **not profiting from this invoice?**

9 A We didn't profit from this invoice.

10 **Q Is there anything in the record that would**
11 **show that other than -- and I'm not saying you're a**
12 **liar, sir. Is there anything pointing to the**
13 **records --**

14 A Not in the record that I know of. I mean,
15 the checkbook -- the checks came out of the
16 checkbook. And they had an invoice for whatever it
17 was, who did it and what it was for and what their
18 services were.

19 **Q Was there -- was there any other entity**
20 **that was performing services related for**
21 **maintaining the system other than Distinctive**
22 **Designs from 2014 going forward?**

23 A I'd have to go to the checkbook and pull
24 out all the checks and who we made them to. Yes.
25 There were a lot of other things.

1 **Q So this -- this wasn't an all-inclusive**
2 **contract? Or arrangement? You had --**

3 A This was strictly for management and
4 maintenance only. It didn't include -- we don't
5 have electricians that would go and change a pump
6 out or anything like that.

7 There was a lot of other things that had
8 to be done that were paid out that this company
9 does not do.

10 CHAIRMAN HALL: All right. Okay.

11 MR. FINKENBINDER: Your Honor --

12 CHAIRMAN HALL: I have no further
13 questions. Thank you.

14 COMMISSIONER COLEMAN: No questions.

15 MR. FINKENBINDER: I'm done. I was just
16 going to clarify that he did previously testify
17 that that 6450 was -- did not include actual costs,
18 for example, chemicals for the system, electricity.
19 That was paid by the HOA. I just wanted to make
20 that --

21 A It's --

22 MR. WADE: Can I -- I have some follow-up
23 if I may.

24 CROSS-EXAMINATION

25 BY JUDGE CLARK:

1 Q Actually, I've got some questions first I
2 wanted to ask. And -- and I apologize if some of
3 this covers some ground that was covered by the
4 Chairman, but I'm actually needing some
5 clarification in regard to some of the various
6 entities.

7 Your attorney had said at one point that
8 Carriage Oaks, LLC, was the original owner of the
9 system and that they -- the transfer to Caring
10 Americans Trust Foundation was done for the purpose
11 of estate planning.

12 And then you had testified that Caring
13 Americans Trust Foundation was actually the owner
14 of Carriage Oaks, LLC. And then you later
15 testified that Caring Americans Trust Foundations
16 did not own the water and sewer assets until 2014.

17 So I want to go through the entities kind
18 of one by one and clarify what the membership of
19 those entities is, what other entities they own and
20 how they're related the other entities.

21 So let's start with Mills Properties
22 Group, Limited. What is Mills Properties Group,
23 Limited?

24 A That is the Distinctive Designs that we're
25 talking about. That's the construction company

1 that I used to develop Carriage Oaks with all the
2 roads and put in sewer lines and water lines and
3 everything that was built. Took down the trees.
4 Just literally developed Carriage Oaks.

5 **Q So Mills Property Groups, LTD, developed**
6 **the subdivision?**

7 A Correct. That is Distinctive Designs,
8 Division of Mills Property Group.

9 **Q Distinctive Designs, that's a fictitious**
10 **name?**

11 A I used that for probably 20 years for
12 Illinois and Missouri. But most of mine was in
13 Illinois. And I let it -- I let the name lapse of
14 Distinctive Designs for a few months, and somebody
15 grabbed it and took it.

16 I had been used to getting bills from --
17 for Distinctive Design, and I couldn't do it
18 anymore. So -- and everybody I dealt with,
19 vendors, were familiar with the name.

20 So I thought, Okay, we'll just give it a
21 fictitious name of Distinctive Designs, which was
22 always -- and what it used to be was the
23 corporation of Missouri. But it was taken because
24 it lapsed for three months, and somebody grabbed
25 it.

1 And I tried to get the name back, and they
2 wouldn't give it to me. So I said, Okay, we'll
3 just make it a fictitious name and just call it
4 Mills Property Group, Limited Division because it
5 was convenient for the customers that I had been
6 dealing with from Missouri when I came down here to
7 do, you know, work here.

8 I used these people. They were familiar
9 with that name, so that's why I kept the name
10 Distinctive Designs.

11 **Q Okay. And as -- as a fictitious name, it**
12 **was -- it was actually Mills Property Group,**
13 **Limited?**

14 A It was actually Mills Property --
15 technically and legally, it was Mills Property
16 Group, Limited, that used the name Distinctive
17 Designs so when I called people, they would know
18 who was calling. They would not know who Mills
19 Property Group, Limited, was.

20 **Q Okay. So they're the same thing?**

21 A Yeah.

22 **Q Okay. Who is the -- who is the owner of**
23 **Mills Properties Group, Limited?**

24 A Myself.

25 **Q Are there any other members --**

1 A Trust.

2 Q -- of Mills Property Group, Limited?

3 A It's solely owned as -- by my trust.

4 Q Now, when you say solely owned by your
5 trust, you're talking about the Caring Americans
6 Trust Foundation?

7 A No, no, no. No. Distinctive Design --
8 Mills Property Group is. No. I have no ownership
9 whatsoever in Caring Americans. I just formed it
10 as the original founder and formed a Board of
11 Directors.

12 And nobody but nobody was as to own
13 anything in Caring Americans. That was a 501-C-3,
14 and it's -- it's a public charity.

15 Q So when you say --

16 A Nobody owns it.

17 Q When you say that Mills Property Groups,
18 Limited, was owned by another -- was owned by a
19 trust, you're speaking of a different trust than
20 Caring Americans?

21 A Well, Carl R. Mills Trust is -- is who
22 owned Distinctive Designs.

23 Q And because Distinctive Designs is Mills
24 Property Group, they own Mills Property Group?

25 A Exactly. But not Caring Americans.

1 **Q And what's your interest in the Carl R.**
2 **Mills Trust?**

3 A What's my interest?

4 **Q Yes.**

5 A It is my -- my trust, latest updates. I'm
6 not sure what the last update was, what year it
7 was, but it's about to be updated again.

8 And this is part of what I did this for
9 was to update it because Caring -- Caring Americans
10 was formed in 2011 and 2012 solely for charitable
11 purposes.

12 And I'd already donated shopping centers
13 and commercial buildings and so forth into that
14 just to give them some money to get going.

15 But nobody was to make a dime off of
16 Caring Americans. It was there to -- from what I
17 understand, we're one of the few people, if
18 anybody, that applied for that. And they said,
19 Well, what do these people do?

20 And I said, Well, we're a publicly owned
21 charity. It's owned as a -- it's not actually
22 owned by anybody, but it is an entity that is in
23 business to help other charities.

24 And that's -- and they said, Well, we
25 never had a charity that helped other charities

1 before. What do you do? I said, Well, the smaller
2 charities that get people out of a ditch because of
3 drugs or alcohol, we wouldn't be able to do much
4 for that. But we can actually help people that do
5 that because they're not very financially astute
6 and they -- they don't do things right and they go
7 out of business.

8 But they're good at what they do. They
9 just are not very good financially. So we're in
10 business to help those people stay in business as
11 long as they can. And that's what Caring Americans
12 is for.

13 **Q Okay. And I've got some questions about**
14 **Caring Americans. But I'd like to back up a second**
15 **and talk about Carriage Oaks, LLC.**

16 A Okay.

17 **Q Who owns Carriage Oaks, LLC?**

18 A Carriage Oaks, LLC, was an LLC that I
19 formed after my wife passed away. And I didn't
20 know with, like Phase 3 if I was ever going to be
21 -- live long enough to develop it.

22 So I thought, well, I'll put it into an
23 LLC. That way, if I want to sell half of or
24 two-thirds or a portion of it, I can do that and
25 then give them partial ownership of it if they want

1 to buy it.

2 But I -- even though I set it up, I never
3 really found anybody that I wanted to partner with
4 or sell them part of the LLC, ownership of that
5 Caring -- Carriage Oaks.

6 **Q When was it set up?**

7 A I think somewhere around 2006 or seven,
8 somewhere around there. It was -- it wasn't hardly
9 anybody in it at that time.

10 But I was thinking, I'm getting older
11 here, and I don't know whether I'm going to make it
12 or not. I'd like to maybe at least have the
13 opportunity to sell some of this to somebody other
14 than myself, unless I want to give it to my kids.
15 That's another story. So I didn't want to do that.
16 It was not a good idea.

17 **Q So you never sold any interest in Carriage**
18 **Oaks, LLC?**

19 A I never did.

20 **Q And you're the sole owner?**

21 A Sole owner of Carriage Oaks, LLC.

22 **Q And there's -- there's -- there's no other**
23 **members?**

24 A No other members.

25 **Q Your attorney had indicated that it was**

1 **the original owner of the water and sewer assets;**
2 **is that correct?**

3 A Carriage Oaks, LLC, would -- would -- the
4 whole drawing for the property of Carriage Oaks,
5 that plot of property, I guess, would have been
6 transferred in to the LLC from my trust. But my
7 trust owned the LLC anyway.

8 But it was a lateral move to be able to
9 maybe sell some of it to somebody else. But that
10 never really happened. So for all intents and
11 purposes, I guess, it was the same as if I owned it
12 with a trust continued on, but it was simply under
13 a different name at that point.

14 It had the ability to be able to sell part
15 of the subdivision to somebody else if they wanted
16 it. Or if I wanted to sell it. That was the
17 reason it was put together in the first place.

18 And then it was always the owner, the
19 complete development and the sewer and water and
20 owned everything. And then LLC is the one who
21 transposed just the sewer and water deeds of the
22 property, plus the accruances on that property to
23 Caring Americans to operate the sewer and the
24 water.

25 And those were plats that were just for

1 those two entities. They did not own all of the
2 Carriage Oaks or the unsold lots or anything else.
3 That's going to go in my estate planning to give
4 them the rights to have everything, all the lots,
5 Caring Americans.

6 **Q Okay. So when we're talking in regard to**
7 **Mills Property Group, Limited, Carriage Oaks, LLC,**
8 **and Distinctive Designs, all those are umbrellaed**
9 **for ownership by your personal trust?**

10 A With the exception of Caring Americans.
11 The LLC Distinctive Designs would be, yes.

12 **Q Okay. So, again, I'm going to ask that**
13 **again. So Mills Properties Group, Limited,**
14 **Carriage Oaks, LLC, and Distinctive Designs,**
15 **Limited, are all owned by your trust?**

16 A Correct.

17 **Q And this is your personal trust?**

18 A Yes.

19 **Q Does anybody else control the trust but**
20 **you?**

21 A I -- my wife is no longer here, so that's
22 me.

23 **Q So --**

24 A The children are --.

25 **Q So your trust would have been the original**

1 **owner of the water and sewer assets?**

2 A Everything. Including the water and
3 sewer.

4 **Q Now, let's talk about Caring Americans**
5 **Trust Foundation. What is your interest in Caring**
6 **Americans Trust Foundation?**

7 A As I said, I was the founder -- founding
8 member of Caring Americans. I -- that's a story in
9 and of itself.

10 A A friend of mine took me to a charitable
11 thing in Branson that had people come in giving
12 testimonies and so forth about what had happened to
13 them and how this particular organization saved
14 their life, so to speak, five years earlier or
15 whatever.

16 A And after -- after that -- that thing at
17 the Hilton Hotel where all these people were
18 invited, really, they're donors, and they were
19 looking for money.

20 A So I made a sizable donation at that
21 meeting. And I asked the person that took me
22 there, Can you take me out to where this charity
23 operates? Where do they function from?

24 A And they had this large house and -- and
25 so forth. And I got to meet all of these people

1 that were being helped by these people. And I
2 thought, This is wonderful, and I'd like to get
3 involved somehow, but I don't know how.

4 So I thought, Well, I could form a
5 charitable organization with a Board of Directors.
6 And I have been on another Board of a -- of a
7 not-for-profit organization that was charitable
8 that did similar things that was -- and in Branson,
9 they -- they asked me to be a member of that Board.
10 It was Christian Associates of Table Rock Lake.

11 And they did some of these things, but not
12 nearly to the extent of the one I went to the
13 fundraiser for. They had fundraisers, too. But
14 they're -- they have a lot of things that they do.

15 They asked me to sit on their Board
16 because of the large donation I made to them. I
17 said, Okay, I'll be interested to do that. I'd be
18 interested to see how a Board -- how a charitable
19 Board works. I'd only been on a corporate Board
20 before.

21 **Q Mr. Mills, we're getting a little**
22 **off-track.**

23 A I'm sorry. Go ahead.

24 **Q So I'm going to ask again, so you said you**
25 **founded Caring Americans Trust Foundation?**

1 A I founded it as a founding member, went to
2 the Federal Government and applied for this Caring
3 Americans Trust Foundation.

4 **Q And are you currently on the Board?**

5 A Yes, I am. I'm on the Board.

6 **Q Are there other people on the Board of**
7 **that?**

8 A Yes, there is.

9 **Q Are any of them members of the**
10 **subdivision?**

11 A One. (Name was stricken) is on that
12 Board.

13 **Q I'm going to ask that that be stricken.**

14 A Excuse me?

15 **Q I'd ask that the name stricken.**

16 A Oh, I'm sorry. Okay.

17 **Q How many people are on the Board?**

18 A I think there's six. Six. These are
19 people that -- in different businesses that are
20 accountants, business -- business people that are
21 -- would be good a influence in running a charity
22 all of its needs and so forth. And they're also
23 people that could participate with whatever
24 business they're in and would be able to help us as
25 well.

1 **Q** **Okay. Now, that wasn't -- you indicated**
2 **that was set up as a charitable trust, correct?**

3 A Uh-huh.

4 **Q** **That was not set up to manage or own water**
5 **or sewer assets?**

6 A It was -- it was -- it was designed for
7 anything it could do in a charitable entity. But
8 being a 501-C-3, I think that one was designated
9 for religious, educational and one other thing.

10 But they also could expand out and do
11 other things. They were capable -- if I donated
12 sewer and water -- Carriage Oaks itself, everything
13 to Caring Americans, they could be the owner.

14 They would not be capable of managing it.
15 They would have to hire a management company to do
16 these things. They would just simply own it. It
17 was donated to them. And then they would have to
18 still hire somebody to do that work. They would
19 then hire somebody as needed.

20 **Q** **Okay. And it was in 2014 when the water**
21 **and sewer assets were transferred to the Caring**
22 **Americans Trust Foundation?**

23 A No. That was in 2016.

24 **Q** **In 2016?**

25 A Yeah.

1 **Q And who did they acquire the water and**
2 **sewer assets from?**

3 A They would have to have gotten it from the
4 LLC.

5 **Q From Carriage Oaks, LLC?**

6 A Right. As I say, again, that was just for
7 the two plats, one for the water and one for the
8 sewer. It was not all of Carriage Oaks.

9 **Q Would you describe to me the membership of**
10 **Carriage Oaks Not For Profit Water and Sewer**
11 **Corporation?**

12 A I'm sorry. Describe what?

13 **Q Would you describe to me the membership of**
14 **Carriage Oaks Not For Profit Water and Sewer**
15 **Corporation?**

16 A Well, we have -- the membership consists
17 of myself and some of the members that were on
18 Caring Americans. A couple of them actually sat on
19 that Board.

20 But one of them I sent to water and
21 wastewater school to get a certificate to actually
22 operate a sewer treatment plant. I thought it
23 would be good that they had that experience.

24 Because when I'm gone, I don't know what
25 the DNR saw in me, but they did not require me to

1 have a certificate from their course on water and
2 wastewater.

3 Being the developer and so forth, I was
4 exempt from that. But I carried it on for 16 years
5 or whatever, 17 years. And we -- we always passed
6 our tests and everything was done to their
7 satisfaction. So that's -- that was my knowledge.

8 The other -- the other owners -- or
9 members of the Board were picked for membership for
10 what they were good for. We had -- my accountant,
11 who is in Springfield, they're -- they're on the
12 Board.

13 Now, we're talking about this entity is
14 Caring Americans now or --

15 **Q Correct.**

16 A Caring Americans, the Board of Directors
17 of that?

18 **Q Oh, no. I'm sorry. I'm talking about**
19 **Carriage -- Carriage Oaks Not For Profit?**

20 A Oh, that's water and sewer.

21 **Q Okay.**

22 A Those are -- those are owners of the
23 property -- so every member of the Board of
24 Carriage Oaks Not For Profit owns property in the
25 subdivision?

1 A That's correct.

2 **Q And how many members are there of Carriage**
3 **Oaks Not For Profit Water and Sewer Corporation**
4 **total?**

5 A Six. Five.

6 **Q I'm not talking about the Board. I'm**
7 **talking about total membership. Anybody who would**
8 **have voting rights.**

9 MR. WADE: It's identified in Exhibit 15,
10 which has been admitted.

11 A There were six.

12 MR. WADE: The bylaws identify the
13 membership.

14 JUDGE CLARK: Okay. So -- thank you. So
15 that's exhibit what?

16 MR. WADE: 15. 15.

17 JUDGE CLARK: Thank you.

18 JUDGE CLARK: And does that also indicate
19 what Mr. Mills' voting interest is?

20 MR. WADE: It defines a membership
21 interest. So in -- indirectly, yes. But it
22 doesn't specifically fall on Mr. Mills. But it
23 defines who is a member and how they become a
24 member of the --

25 JUDGE CLARK: Okay. Thank you.

1 **Q (By Judge Clark) Now, Carriage Oaks**
2 **Homeowners Association, what is your interest in**
3 **Carriage Oaks Homeowners Association?**

4 A I started it at the request of DNR. They
5 said, We can't give you a certificate unless you
6 have a Homeowners Association and it is a
7 corporation. And so I formed it for that reason.

8 And that was before I even put a blade to
9 the ground that they said, You'll have to have this
10 before we can give you an operating permit. So I
11 formed Carriage Oaks Homeowners Association, used
12 them as an continuing authority, not the owner, but
13 who I thought would be the ultimate benefactor of
14 Carriage Oaks HOA. It was designed to go to them.

15 **Q Okay. But Carriage Oaks HOA does not own**
16 **or manage the sewer or water assets?**

17 A No, they do not.

18 **Q And how many members are there of Carriage**
19 **Oaks Homeowners Association?**

20 A Eleven.

21 **Q And do all of them have the same**
22 **proportional vote?**

23 A Yes. Everybody owns one lot, they have
24 one vote. And if they have two lots or three lots
25 or five lots, they still have one vote to each for

1 that lot.

2 **Q Are you a member?**

3 A Yes.

4 **Q And so --**

5 MR. WADE: I apologize. But the developer
6 does have more votes. That's under Exhibit?

7 A 14?

8 MR. WADE: That's the declaration that
9 identifies the votes per member for a lot owner.

10 JUDGE CLARK: And how many votes does the
11 owner have?

12 MR. WADE: Ten per lot.

13 JUDGE CLARK: Per lot.

14 **Q (By Judge Clark) And how many lots do you**
15 **own?**

16 A Oh, at least -- I guess 23. There's 30
17 and -- there's a total of 32. We have -- so these
18 are the unsold lots that haven't been sold to other
19 people.

20 And we had -- from the drawing here, we
21 had 25 lots, and then was made 24 lots, plus Phase
22 1 was eight more lots. So eight lots and 24.

23 **Q So you own 24 lots?**

24 A No. This was the total number of lots in
25 Phase 1 and Phase 2, and 11 of those are sold.

1 So --

2 **Q How many lots do you own?**

3 A The remaining lots. If we had 24 -- I had
4 two lots I wanted Phase 1. And there would be --
5 in Phase 2, there's 22 lots that became one that
6 were sold. We had 25. So it would be 23 left. So
7 I have 20 -- 23 lots in Phase 2.

8 But those were -- I've got three -- three
9 of those or so. And -- so other members that --
10 they don't have houses on it, but they own the
11 property. So we take nine, ten, six, Phase 2, and
12 Lot 6 out of Phase 1, I -- 23 lots, maybe.

13 **Q Okay. So you own 23 lots?**

14 A Left, I guess. Unsold.

15 **Q And my understanding is there was a flat**
16 **assessment that was done per current ownership**
17 **interest?**

18 A We did a flat assessment based on the
19 prior year's costs. And that's where it came from.
20 We didn't have to -- to try to guess what our costs
21 were. We just paid for the year past, whatever was
22 done there.

23 And the checks were given out. That was
24 what we basically used for our assessment for the
25 coming year. Now, if something bad happened and we

1 had a big expenditure in that year, then we'd
2 project that into the next. Is that likely to
3 happen again or not happen again?

4 So we had to do a little bit of jockeying
5 for what should they be and based on what could
6 happen or if what did happen, could it happen
7 again?

8 And I would say, Well, okay, that's not
9 likely to happen. So I think everybody tries to
10 get a little bit of reserve if they can. But that
11 doesn't always work. Just do the best you can.

12 **Q Now, was each -- was each member of the**
13 **Homeowners Association assessed proportional to the**
14 **amount of property they owned?**

15 A Each homeowner for whoever owned the lot
16 was the same. Whether they had a house on it or
17 not, they were assessed the same thing.

18 **Q They -- they had to pay --**

19 A They paid for sewer and water even though
20 they didn't have a house.

21 **Q Okay. Were you assessed proportionally?**

22 A Yes.

23 **Q So you paid 23 times -- you paid for 23**
24 **lots on the water and sewer assessments?**

25 A These were the unsold lots, the ones that

1 were actually sold and pay taxes on from the County
2 that considered them a sold lot.

3 The lots that were unsold, the County
4 gives you a much better reserve, you know, like \$20
5 a lot. If it's in the bank, so to speak, then they
6 haven't been sold.

7 But once they're sold, they give what they
8 call an improved lot cost for taxes. And anybody
9 who has bought a lot, that immediately goes into
10 that -- that arena, and they get paid just like
11 everybody else.

12 So it's only the reserve lots that I had
13 that are -- that I own those lots. But they
14 haven't been sold to anybody else yet. They're
15 like in inventory, so to speak.

16 **Q Okay. Let me just ask the question a**
17 **little bit more pointedly. How many water and**
18 **sewer assessments -- or how much -- how many**
19 **properties would you pay water and sewer**
20 **assessments on to the HOA?**

21 A Only the lots that have been sold other
22 than what's in inventory. Anyone who actually
23 purchases a lot pays an assessment whether they
24 have a house or not.

25 **Q So the lots you owned didn't have to pay**

1 **an assessment if they weren't sold to somebody?**

2 A If they were never sold.

3 JUDGE CLARK: Okay. I think that's all I
4 have. Redirect?

5 MR. WADE: Thank you.

6 REDIRECT EXAMINATION

7 BY MR. WADE:

8 **Q Mr. Mills, I'll try to be brief. I know**
9 **you've been up there a while. How many sewer**
10 **connections are there in Carriage Oaks subdivision,**
11 **actual connections for sewer?**

12 A You mean potential --

13 **Q No. I said actual connected to a pipe**
14 **that's receiving sewer service.**

15 A Actually connected, there would be seven.

16 **Q Seven. And how many actual connections**
17 **are there that receive water?**

18 A Seven.

19 **Q Okay. I want to ask you some more**
20 **questions about those exhibits in the book.**

21 A Okay.

22 **Q So Exhibit 11, which is A, under Tab A --**

23 A A.

24 **Q Are you there?**

25 A 11?

1 Q 11.

2 A Okay.

3 Q And this has already been admitted. These
4 are assessments from 2012 to 2016. Do you see
5 that?

6 A Yes.

7 Q Okay. So the Association assessed each
8 one of the property owners that had -- actually had
9 a connection in the subdivision --

10 A Uh-huh.

11 Q -- \$1250 per annum in those years?

12 A Well, everybody who owns a lot -- these
13 people, the ones that have a connection pay it,
14 but, also, the people who don't have connection pay
15 it.

16 Q I get --

17 A Does that --

18 Q I get that part.

19 A Okay.

20 Q But the people that actually have a house
21 and receive water and sewer services were charged
22 or assessed \$1250?

23 A That's right.

24 Q And they weren't charged more than that?

25 A No.

1 Q At any time?

2 A No.

3 Q In fact, the assessments prior to 2012
4 were less, true?

5 A Yes.

6 Q And how much were they prior to 2012?

7 A I actually wrote some of those down. I
8 went all the way back to 2008. I can give you
9 that. The one before 2000 -- or 1250 would have
10 gone back to 1160 -- or \$1,060. And that was back
11 in 2012. And in 2012 -- 2012, 2011.

12 Q Okay. So prior to 2012, the assessment
13 was less than 1250?

14 A Correct.

15 Q As of 2012, the assessment was 1250, and
16 that's remained constant for 2016?

17 A Right.

18 Q What is the assessment in 2017?

19 A 2017, that's when we went up 2100.

20 Q Okay. And out of that 2100, some of that
21 portion related to roads; is that true?

22 A Oh, yeah. Yeah.

23 Q Explain that.

24 A Gates, roads, common areas, maintenance,
25 besides just sewer and water.

1 **Q Was there a special or unusual issue that**
2 **came up with regard to the road?**

3 A Well, yeah. As a matter of fact, there
4 was.

5 **Q What was that?**

6 A We were doing some -- some paving and,
7 also, some -- we had to resurface some of them and
8 then pave a section of them that were really bad.
9 We had to re-pave it. And the other part was for
10 just -- well, spraying it to renew it.

11 **Q So was the idea for 2017 to capture that**
12 **expense in the 2017 assessment?**

13 A That's correct.

14 **Q Okay. And the only people that use that**
15 **road, by the way, are the people that live there?**

16 A That's correct.

17 **Q Okay. Or their friends or guests or other**
18 **people that come to the subdivision?**

19 A Right.

20 **Q Okay. Now, look at Exhibit 12.**

21 A Exhibit 12. Is that in B?

22 **Q That's B.**

23 A Okay.

24 **Q Are those the meeting minutes of Carriage**
25 **Oaks Estates Homeowners Association from June 29th,**

1 **2014?**

2 A That is correct.

3 MR. WADE: Okay. I'd offer Exhibit 12.

4 JUDGE CLARK: Any objection?

5 MR. FINKENBINDER: No objection.

6 JUDGE CLARK: Exhibit 12, the meeting
7 minutes, is admitted onto the hearing record.

8 (Exhibit 12 was offered and admitted into
9 evidence.)

10 **Q (By Mr. Wade) Mr. Mills, is that -- does**
11 **that reflect you telling the members of the**
12 **association that you were considering transferring**
13 **to the water and sewer Caring Americans and your**
14 **reasons for doing so?**

15 A We were considering that at that meeting.
16 I think I announced it that Caring American -- is
17 that -- if this is the one or --

18 **Q That's the reason it's in there.**

19 A I think that was. Yeah. Right.

20 **Q Look at Page 2.**

21 A Page 2. Okay. Okay. Where it went into
22 unexpected overtime and I announced I had a
23 501-C-3, public charity?

24 **Q Yes.**

25 A Okay. And that was kind of a surprise.

1 **Q You announced that you were going to**
2 **transfer the LL -- Carriage Oaks, LLC, to the**
3 **Caring Americans, right?**

4 A I think, yeah, this was referring to the
5 fact that I was going to have -- all of the lots at
6 some point in time was going to go to Caring
7 Americans.

8 **Q Well, that would include the water and**
9 **sewer assets?**

10 A Right.

11 **Q So it's as a 501-C-3, according to your**
12 **testimony?**

13 A Right.

14 **Q Has it ever lost or had its 501-C-3 status**
15 **revoked since it was --**

16 A No, no, no.

17 **Q And that, by its nature, is a not for**
18 **profit, right?**

19 A Right.

20 **Q And nobody owns a not for profit interest?**

21 A Nobody owns anything in Caring Americans.
22 There's no ownership at all.

23 **Q So by law, it can't make a profit?**

24 A It's a public charity not for profit
25 Federally.

1 **Q** Okay. The -- look at page -- excuse me --
2 **Exhibit 13.**

3 A Was that in C? Okay.

4 **Q** Those are the bylaws of Carriage Oaks
5 **Homeowners Association, correct?**

6 A Yes.

7 MR. WADE: Offer Exhibit 13.

8 MR. FINKENBINDER: No objection.

9 JUDGE CLARK: And those are the bylaws of
10 Carriage Oaks Homeowners' Association?

11 MR. WADE: Yes.

12 JUDGE CLARK: Exhibit 13 will be admitted
13 onto the hearing record.

14 (Exhibit 13 was offered and admitted into
15 evidence.)

16 **Q** (By Mr. Wade) So you are an officer and
17 **Director of the association, sir?**

18 A Yes.

19 **Q** And as a -- as a result of your position
20 **as owner/developer, you have ten votes per lot**
21 **under the declaration?**

22 A That was done under the deed restrictions,
23 yes.

24 **Q** So if your testimony, then, if you had --
25 **if you had approximately 23 lots, you would have**

1 **230 votes?**

2 A That would be magnified by ten. Right.

3 **Q Well, I just magnified it for you.**

4 A Twenty-three lots.

5 **Q Times ten?**

6 A Times ten votes.

7 **Q That would be 230, right?**

8 A Uh-huh.

9 **Q Yes?**

10 A Yes.

11 **Q Okay. And the other members of the**
12 **association would have one vote per lot that they**
13 **own, correct?**

14 A For these. It says you have a Class A
15 membership and a Class B membership. Class a is
16 one vote. Class B is ten votes.

17 **Q So when you -- whether the association**
18 **owns the water and sewer or the owner/developer**
19 **entity, whatever that entity is that you own, you**
20 **with essentially control, by virtue of your voting**
21 **power, the operation of those assets?**

22 A Whether it's one vote or ten votes, I
23 still would, yes.

24 **Q So nonetheless, though, you're still**
25 **subject to that -- the owner of that asset is still**

1 **subject to those declarations?**

2 A Yes.

3 **Q And those declarations require water and**
4 **sewer be provided to the owners of the subdivision?**

5 A They do.

6 **Q Okay. And the way that structure is laid**
7 **out, were those declarations recorded before sales**
8 **of those lots occurred?**

9 A Yes, they were.

10 **Q So as an example, that declaration was**
11 **recorded before Mr. Morgan purchased his lot?**

12 A Oh, oh, absolutely.

13 **Q Look -- at Exhibit 14 has already been**
14 **admitted. Look at Exhibit 15.**

15 A Did you have 14?

16 **Q 14 has been admitted. It's the**
17 **declaration.**

18 A Okay. So 15 is --

19 **Q 15 has been -- I believe it's been**
20 **admitted, also.**

21 JUDGE CLARK: That's correct.

22 A Is that 15? Okay. Yeah. These are the
23 bylaws.

24 **Q (By Mr. Wade) Those are the bylaws. And**
25 **so the bylaws of the not-for-profit were created**

1 with -- after the lots -- this proceeding began,
2 true, after this PSC action was initiated?

3 A Yes, it was.

4 Q And was it an effort on your part to
5 alleviate concerns of the existing lot owners?

6 A That's exactly why it was done, to meet
7 their requests.

8 Q But you understand that that potential
9 transfer is subject to PSC jurisdiction?

10 A I didn't at the time. But they wanted to
11 -- to do this. So they said, It's not right, it
12 wasn't built for that. So I said, Okay, Caring
13 Americans. So --

14 Q Rather than saying that, you understood
15 that the Public Service Commission Staff Counsel
16 was involved in those discussions?

17 A Yes. Oh, yeah.

18 Q Let's leave it at that. Looking at
19 Exhibit 16, can you identify 16, please?

20 A 16 appears to be a portion of -- of the
21 entire geographical boundaries of Carriage Oaks.
22 But it's just a partial. It only shows three
23 boundaries. But it's the part that's built on, not
24 the part that's vacant land.

25 Q Is it a true and accurate copy of the

1 **geographical boundaries of the subdivision?**

2 A Yes, it is. I mean, what's -- what
3 portion of it is on there is.

4 MR. WADE: I'd offer Exhibit 16.

5 JUDGE CLARK: Any objection?

6 MR. FINKENBINDER: No objection.

7 JUDGE CLARK: Exhibit 16 is admitted onto
8 the hearing record.

9 (Exhibit 16 was offered admitted into
10 evidence.)

11 A This is --

12 **Q (By Mr. Wade) Looking at the second**
13 **page --**

14 A Okay.

15 **Q -- does that show the boundaries?**

16 A That's the full boundaries. Right.

17 **Q Okay. And outside those boundaries, are**
18 **there any -- strike that. Does the water and sewer**
19 **system within the subdivision serve any properties**
20 **outside of the geographic boundaries of Carriage**
21 **Oaks?**

22 A No. It's basically not even possible, I
23 don't think. No, it wouldn't.

24 **Q It does not?**

25 A It does not.

1 **Q And in your opinion, it could not?**

2 A It could not because -- well --

3 **Q All right. Looking at Exhibit 17 now, can**
4 **you identify Exhibit 17?**

5 A Yes, I can.

6 **Q What is it?**

7 A That was for a -- a water tank from
8 Montgomery Metal Craft. And does that include the
9 well, the upgrade on the well or just the tank? Or
10 is that part of 17 is what -- this well, too?

11 **Q Just identify Page 1. What is it? Is it**
12 **an invoice?**

13 A Page 1 is the invoice for just the tank,
14 the water tank.

15 **Q That's not really helping. What's the**
16 **invoice for? What does it identify it's for?**

17 A It identifies a water tank that was made
18 by Montgomery Metal Craft quotation that they --
19 this is because of the 2014 homeowners meeting that
20 we were going to have an up grade, and I got costs.

21 **Q Okay. So is that a bill related to work**
22 **that was done on the water and sewer system for**
23 **Carriage Oaks?**

24 A Yes. It would be an upgrade.

25 **Q Okay. And then the second page of that,**

1 **is that also related to water and sewer system?**

2 A That is another part of it that completed
3 that particular upgrade.

4 **Q And the first invoice is \$29,408.75?**

5 A Correct.

6 **Q And the second invoice is \$9,946.61?**

7 A 661. Yes that is correct.

8 MR. WADE: I'd offer Exhibit 17.

9 JUDGE CLARK: Any objection?

10 MR. FINKENBINDER: No objection.

11 JUDGE CLARK: Exhibit 17 is -- is admitted
12 onto the hearing record.

13 (Exhibit 17 was offered and admitted into
14 evidence.)

15 **Q (By Mr. Wade) Now, look at Exhibit 18,**
16 **please.**

17 A Okay.

18 **Q Now, I'll represent to you the first page**
19 **of Exhibit 18 has been admitted as Complainant's**
20 **Exhibit 6. Can you identify Exhibit 18, Mr. Mills?**

21 A Yes.

22 **Q What is it?**

23 A It's the same document that we did for the
24 Complaint's Exhibit 6.

25 **Q Is it --**

1 A Quotation.

2 Q Is it an invoice for --

3 A Oh, I'm sorry. An invoice, yes, to
4 Carriage Oaks Homeowners -- or Carriage Oaks
5 Estates for services.

6 Q It's an invoice from Distinctive Designs
7 to Carriage Oaks Homeowners Association --

8 A Yes. Yes, it is.

9 Q -- right? For 2000 -- year 2014, but it's
10 billed in 2015?

11 A That's correct.

12 Q All right. And the total is 6,250? 450.

13 Excuse me.

14 A \$6,450. Right.

15 Q Okay. So look at the second page.

16 A Okay.

17 Q Is that another invoice for 2015?

18 A Yes. Yes, it is. It's 2016 for the 2015
19 services.

20 Q Okay. And then the third page, is that an
21 invoice for 2016?

22 A That's 2016 for the services billed in
23 January 2017.

24 Q Okay. And are they all the same, 6250?

25 A Yes, they are.

1 MR. WADE: Offer Exhibit 18.

2 JUDGE CLARK: Any objection?

3 COMMISSIONER COLEMAN: No -- no objection.

4 JUDGE CLARK: Exhibit 18 is admitted onto
5 the hearing record.

6 (Exhibit 18 was offered and admitted into
7 evidence.)

8 **Q (By Mr. Wade) So let me ask you this**
9 **question. We're going to do some math, Mr. Mills.**
10 **If you look back at Exhibit 17 and you see those**
11 **two invoices of 29,000 and \$9,946 -- and those are**
12 **dated January 12th, 2015, and June 16th, 2015. Do**
13 **you see that?**

14 A That was Exhibit 17?

15 **Q Yes.**

16 A And it was January 2015 for the -- the
17 tank, and '16 for the well.

18 **Q Yes. Do you see it?**

19 A Yes.

20 **Q Okay. Do those amounts exceed the amount**
21 **that was charged to the Association in 2015, sir?**

22 A The Association has never been charged for
23 any of these. These two, It was paid for by Caring
24 Americans Trust.

25 **Q Okay. So the owner of the water and sewer**

1 **service system paid the \$40,000 or so?**

2 A For the upgrade.

3 **Q But the owners in the -- the lot owners in**
4 **the association at the subdivision were only**
5 **charged \$6,450?**

6 A Right.

7 **Q Okay. And that expense has not been**
8 **recouped?**

9 A No. No. That's yet to be dealt with. It
10 was what was agreed upon in the 2014 homeowners
11 meeting, and it would be. And that was changed.
12 It changed their mind.

13 **Q As we sit here today, it has not been**
14 **charged to the owners -- the lot owners, or it's**
15 **just been discussed?**

16 A No. It's been discussed at the homeowners
17 meeting and put in place. And then after it was
18 put in place and paid for, nothing came of it.
19 They didn't want to pay for the upgrade.

20 **Q You're saying the owners refused to pay**
21 **for it? Is that what you're saying?**

22 A That's basically what happened. I mean,
23 ones that were at the meeting said they would. One
24 said he wasn't at the meetings and didn't get
25 involved in that and wasn't going to have any part

1 of it.

2 But he didn't say that until after it was
3 already put in and paid for and then objected and
4 said it was under-designed to begin with.

5 **Q Okay. Exhibit 19. Are you there?**

6 A Okay.

7 **Q Is that a letter you received from DNR**
8 **approving the Carriage Oaks Not For Profit Water**
9 **and Sewer Company?**

10 A Yes, it is.

11 MR. WADE: I'd offer Exhibit 19.

12 JUDGE CLARK: Would you identify that for
13 me, please?

14 MR. WADE: The letter from the Department
15 of Natural Resources dated March 17th, 2016,
16 approving the operating permit for the Carriage
17 Oaks Not for Profit Water and Sewer Company.

18 JUDGE CLARK: Any objections?

19 MR. FINKENBINDER: No objections.

20 JUDGE CLARK: 19 will be admitted onto the
21 hearing record.

22 (Exhibit 19 was offered and admitted into
23 evidence.)

24 JUDGE CLARK: At this time, if there's no
25 real good spot to see to take a break for noon,

1 this seems to be --

2 MR. WADE: I think I may have 10 minutes.
3 Maybe.

4 JUDGE CLARK: Okay. If you think you can
5 wrap it up in about 19 minutes, go ahead.

6 MR. WADE: I think so.

7 **Q (By Mr. Wade) Looking at Exhibit 20,**
8 **Mr. Mills --**

9 A Okay.

10 **Q -- can you identify Exhibit 20, please?**

11 A Okay. Yes.

12 **Q What is it?**

13 A It's a operating permit for Caring
14 Americans Not for Profit Water and Sewer from the
15 Department of Natural Resources.

16 **Q So that's the actual operating permit?**

17 A Uh-huh.

18 **Q Okay. And what's the second page?**

19 A That also is an operating permit for
20 Caring Americans to -- from Department of Natural
21 Resources.

22 **Q Okay. So that was the permit prior in**
23 **time for the not for profit?**

24 A Right.

25 MR. WADE: Offer Exhibit 20.

1 A And I -- that was for Carriage Oaks Not
2 For Profit. And the first one -- and it was also
3 the continuing authority. The first one was Caring
4 Americans owner. But the continuing authority was
5 left as Carriage Oaks Homeowners Association.

6 That's the primary difference, I think, is
7 when Caring Americans had it, their intent was to
8 give it back to the homeowners after X number of
9 lots were sold and not just for lot owners.

10 **Q (By Mr. Wade) This exhibit, though, is**
11 **the operating permit -- operating permits for the**
12 **water and sewer systems that were issued for**
13 **Carriage Oaks?**

14 A For Caring Americans. Yes.

15 **Q Well, on the second --**

16 A The second page. Operating water and
17 sewer. Both -- both the get letters for water and
18 sewer.

19 MR. WADE: Offer Exhibit 20.

20 MR. FINKENBINDER: No objection.

21 JUDGE CLARK: Exhibit 20 is admitted onto
22 the hearing record.

23 (Exhibit 20 was offered and admitted into
24 evidence.)

25 **Q (By Mr. Wade) Looking at Exhibit 21.**

1 A Okay.

2 **Q Can you identify that, please?**

3 A Yes. It's an offer to run our water and
4 sewer.

5 **Q Okay. It's -- it's a letter from?**

6 A Well, it's from Ozark Environmental
7 Services by their -- from the President.

8 **Q To?**

9 A To myself at Carriage Oaks Estates
10 subdivision or Carriage Oaks Estate Homeowners
11 Association. It was a quote to run our sewer and
12 water.

13 **Q Okay. Did -- did you, in fact, ask Ozark
14 Environmental Services to come do an inspection of
15 the facility?**

16 A I did.

17 **Q And did they do so?**

18 A Yes.

19 **Q And what's your understanding of the -- of
20 the Ozarks Environmental Services operation?
21 Is it not for profit? Is it for profit?**

22 A It's a -- it's a not for profit
23 organization that runs utilities for -- for
24 subdivisions. Some they own, and some they just
25 manage.

1 And this is -- this one was for -- for
2 management. They weren't going to own it. They
3 were just going to manage it and operate it.

4 **Q Okay. So did you advise the association**
5 **members of your attempt to obtain a Third Party**
6 **Manager for the service?**

7 A I made that offer at the homeowners
8 meeting for this -- 2017 year. Yes.

9 **Q And did the Ozark Environmental Services**
10 **reach out to the homeowners about their agreement**
11 **to allow that management?**

12 A This -- this was how they reached out.
13 They weren't at the meeting. They made this offer
14 to be presented at the meeting.

15 **Q Okay.**

16 MR. WADE: Offer Exhibit 21.

17 MR. FINKENBINDER: No objection.

18 JUDGE CLARK: Exhibit 21 is admitted onto
19 the hearing record.

20 (Exhibit 21 was offered and admitted into
21 evidence.)

22 **Q (By Mr. Wade) On page 2 of that exhibit,**
23 **Mr. Mills --**

24 A Okay.

25 **Q -- does -- does that identify what Ozarks**

1 **Environmental Services proposes to charge for**
2 **operation of the facility in the subdivision?**

3 A Yes, it is.

4 **Q And how much is it?**

5 A Well, it was a series of charges here, if
6 you're talking about for the operator, the helper,
7 the repair and Operation Manager, leak detection,
8 backhoe operator and so on. Is that what you're
9 referring to?

10 **Q No. I'm referring to the second page**
11 **where it identifies the flat rate for sewer and**
12 **base rate for water.**

13 A I think I missed a page. Okay. The
14 second page. I've got you. The monthly flat rate
15 for the sewer, 94.25. Is that --

16 **Q Yes.**

17 A Okay. Yes. I've got that.

18 **Q That's a monthly charge?**

19 A That's a monthly charge for the sewer
20 only.

21 **Q And what about the water?**

22 A They're showing that they would charge
23 68.25, which includes 3,000 gallons of water. And
24 then anything after 3,000 is -- or no. 1,000
25 gallons -- 3,000. Then it went to \$5.36 per

1 thousand gallons.

2 And if they went over 20,000 gallons, it
3 was \$7.16 for over 20,000 gallons.

4 **Q Is it safe to assume without doing the**
5 **math that the charge -- Ozark Environmental**
6 **Services would have charged more than \$104 a month?**

7 A That's pretty obvious. Yes, it would be.

8 **Q And the \$1250 assessment that was**
9 **collected for water and sewer and additional**
10 **things, how much was that per month?**

11 A Well, the 1250 would have come close to --
12 I mean, I don't think it would pay this. Just --
13 is that what your question was?

14 **Q Yes.**

15 A Okay.

16 **Q So were the assessments less than this**
17 **proposal by Environmental Services?**

18 A Considerably. Yeah. That's why it wasn't
19 accepted, I guess.

20 **Q And so nobody in the association accepted**
21 **it?**

22 A Nobody even voted for it. And when they
23 saw it, they realized it was a lot more than what
24 they'd been charging.

25 **Q So is it your testimony that none of the**

1 **homeowners have agreed to this proposal?**

2 A Nobody -- nobody has agreed to it. Nobody
3 wanted it.

4 **Q Okay. And the next -- Mr. Mills, the few**
5 **exhibits have already been admitted, so I'm**
6 **skipping to the last exhibit, 26.**

7 A 26.

8 **Q 26.**

9 JUDGE CLARK: Excuse me, Mr. Wade. Did
10 you --

11 A Yes.

12 MR. WADE: The next few exhibits -- I'm
13 not including the Findings of Fact and Conclusions
14 of Law that you see. But the next few exhibits I
15 think were just the testimony that's already been
16 admitted.

17 JUDGE CLARK: Okay. I have 24 as
18 admitted. I don't have 23 and 22 as admitted.

19 MR. WADE: Those are different exhibit
20 numbers. That's Mr. Morgan's testimony that was
21 admitted by the Complainant. And I think it's a
22 different Exhibit number. Carl, what's the -- I
23 have copies of Mr. Morgan's testimony.

24 JUDGE CLARK: That would be Exhibit -- be
25 Exhibits 10 and 27. Yes.

1 MR. WADE: Yes.

2 MR. FINKENBINDER: Correct.

3 MR. WADE: So those are in evidence, but
4 they have different numbers, Judge.

5 JUDGE CLARK: Thank you.

6 Q (By Mr. Wade) Okay. Looking at Exhibit
7 26, Mr. Mills --

8 A Uh-huh.

9 Q -- can you identify that, please?

10 A It's where I hired a --

11 Q Okay. Just identify the exhibit, and then
12 we'll talk about it.

13 A Identify it. It's 26.

14 Q Yes.

15 A 26?

16 Q Yes. It's a 2015 letter from?

17 A Michael Stalzer, a civil engineer.

18 Q And he is -- forwarded this to you?

19 A He sent it to me for the Homeowners
20 Association, to my attention.

21 Q Does it concern some work that he did for
22 you or the Homeowners Association?

23 A Well, he did an evaluation.

24 Q Okay. Is that what this is, this exhibit?

25 A This is basically his evaluation of what

1 the DNR requirements would -- it's an evaluation of
2 their requirements.

3 MR. WADE: Offer Exhibit 26.

4 JUDGE CLARK: Any objection to Exhibit 26?

5 MR. FINKENBINDER: No.

6 JUDGE CLARK: Exhibit 26 is admitted onto
7 the hearing record.

8 (Exhibit 26 was offered and admitted into
9 evidence.)

10 **Q (By Mr. Wade) Now, you said Mr. Stalzer**
11 **was the engineer. Did he inspect the facility?**

12 A Yes.

13 **Q Okay. And what were his -- just in sum,**
14 **what were his findings?**

15 A Well, in sum, we were trying to determine
16 whether or not the system was under-designed from
17 the first place, and they didn't really need an
18 upgrade. And we -- we -- because these are estate
19 lots and extremely big and there was irrigation
20 that was being done, it was taking a lot more water
21 than was allowed by the Department of Natural
22 Resources.

23 They allowed one hour of irrigation a day.
24 And, obviously, they were using a whole lot more
25 than that. And -- because of the meters that we

1 were reading and so forth. And the system that the
2 DNR designed allowed for five accumulators. So
3 every 150 gallons of usable water between 60 PSI
4 and 40 PSI, the pump kicked on and did this.

5 So the upgrade alleviated that and cut the
6 cost down of operations and allowed them to use the
7 water that they were using without difficulty. And
8 he said it should have been good enough for 12
9 homes, and we only had seven. And they were
10 exceeding, obviously, what 12 would do.

11 **Q Mr. Stalzer gave the Association**
12 **assurances that it was in compliance?**

13 A It was definitely in compliance. I think
14 it was the last page of his letter that he stated
15 that.

16 **Q That's all for the exhibits. Let me ask**
17 **you one brief thing before some testimony you were**
18 **asked about earlier. You testified that Mr. Morgan**
19 **does not have a meter. Is that what you said?**

20 A He -- he didn't then. He does now.

21 **Q Okay. The meter requirement was for --**
22 **was an Association requirement; is that true?**

23 A I -- I required that from anyone who
24 offered me the plans to approve their house. I
25 told them at the time, which wasn't in any of the

1 documents. I said, You need to have a vault to
2 connect and a meter so that when we -- someday,
3 we're going to read these meters, and we're going
4 to need that, so put them in there. And everybody
5 did, except for Mr. Morgan.

6 **Q But to date -- to date, the Association**
7 **nor anybody else has charged a homeowner for usage**
8 **based on the meter readings; is that true?**

9 A No, they have not.

10 **Q It's always been an assessment of 1250 or**
11 **what we've discussed?**

12 A Right.

13 **Q Right?**

14 A Right.

15 **Q So the flat charge of, let's say, a**
16 **hundred dollars a month is across the board for**
17 **users of water and sewer?**

18 A That's correct.

19 **Q So if somebody is using more than somebody**
20 **else, they're getting the benefit of that?**

21 A That's right.

22 **Q Okay. But it -- but the system is in**
23 **place to read the meters?**

24 A It is now.

25 **Q And the not for profit, Environmental**

1 **Services -- Ozark Environmental Services, their**
2 **quotation was based on meter reading?**

3 A Right.

4 **Q And a flat sewer rate?**

5 A Correct.

6 **Q And nobody agreed to do that?**

7 A No.

8 **Q Why did you solicit the request from Ozark**
9 **Environmental Services?**

10 A As I recall, it was because that's what
11 the Complainants asked me to do, turn it over to a
12 private company and let them operate it and
13 maintain it and run it.

14 **Q But it's not a private company. It's a**
15 **not for profit, isn't it? It's a not for profit**
16 **sewer and water company, Ozark Environmental**
17 **Services?**

18 A That's what I understand. They're a not
19 for profit.

20 **Q So the complaint was they didn't want you**
21 **to operate it anymore?**

22 A That's the basic complaint. They --they
23 -- they didn't really give any specific reasons
24 other than they thought that I could do something
25 wrong. But I hadn't. And so they wanted somebody

1 else to run it. And I --

2 Q So -- so at the associational meetings, at
3 least the last two that I'm aware of, did you make
4 the expenses of the Association available to the
5 members?

6 A Yes.

7 Q Did you provide them copies --

8 A Yes.

9 Q -- of those expenses? Did you provide
10 copies to Mr. Finkenbinder when he requested it?

11 A Yes.

12 Q So you gave all the bills and the checks
13 that were written to the lot owners and their
14 attorney?

15 A Yes.

16 MR. WADE: No further questions.

17 JUDGE CLARK: Mr. Finkenbinder, I gave
18 Mr. Wade an opportunity to recross. Would you like
19 to recross?

20 MR. FINKENBINDER: Yes, I would, your
21 Honor. I'll keep it brief.

22 RE CROSS EXAMINATION

23 BY MR. FINKENBINDER:

24 Q I'll start at the end and go backwards.
25 So Mr. Wade just asked you if you provided records

1 **of the HOA.**

2 A Uh-huh.

3 **Q You did that because I demanded those**
4 **letters through a demand letter; is that correct?**

5 A Now, would you be more specific about what
6 you're asking?

7 **Q Yes.**

8 A Did you demand --

9 **Q Have you ever voluntarily given over -- at**
10 **my client's request, have you given them any**
11 **records of the HOA or anyone else at their request?**

12 A This was a standing offer at every
13 homeowner's meetings. Anybody who wished to look
14 at the checkbook of what we had spent and what it
15 was for and the receipts were welcome at any
16 reasonable time to come and knock on my door, and I
17 would show them the receipts and the checkbook. It
18 was a given from Day 1.

19 **Q And you are aware -- you would agree that**
20 **I had sent you demand letters demanding that you**
21 **turn over records to the HOA; isn't that correct?**

22 A Well, you've done that. Yes.

23 **Q And, in fact, isn't it true that you were**
24 **once you sued for that, that you refused and you**
25 **were sued to turn over the records because you had**

1 **priorly refused to turn over records to the HOA and**
2 **the Judge in Stone County forced you to turn over**
3 **the records to the HOA? Isn't that true?**

4 A No. Not that I know of. I was forced to,
5 and I refused to turn --

6 **Q Do you acknowledge that you were sued in**
7 **Stone County? Do you acknowledge that by Derald**
8 **Morgan?**

9 A Derald Morgan was trying to get two lots
10 into one, and that was what it was all about. And
11 then go from there.

12 **Q Do you remember, also, that he had sought**
13 **accounting records of the HOA in that lawsuit? Do**
14 **you remember that?**

15 A No, I don't.

16 **Q Okay.**

17 A No. I don't recall that being asked for.
18 I gave everything that was required.

19 **Q Okay. The upgrade to the lots that you**
20 **had made \$40,000 reflected by the invoices that**
21 **were previously submitted, that upgrade was not**
22 **required for the seven homes that existed; is that**
23 **correct?**

24 A It was not required?

25 **Q Correct. It wasn't necessary. The seven**

1 homes that exist out there today did not need that
2 \$40,000 upgrade to the water system; is that
3 correct?

4 A Not according to the DNR. That's why I
5 had this done by an engineer.

6 Q So the benefit of that \$40,000 upgrade was
7 to the additional 23 lots that you owned in Phase
8 2; is that not true?

9 A No. Because they didn't use any water.
10 It was only for the people that were using water
11 that it was for the benefit for, that agreed to do
12 it.

13 Q Those 23 lots when you build a home on
14 them are going to use that system with the water --
15 the new water tower; is that correct?

16 A They -- there's nothing tapped on that can
17 use that water. Nothing --

18 Q You're not answering my question. When a
19 house is built on the 23 lots that you own on one
20 of those 23 lots, is it going to use the upgraded
21 system that had constructed?

22 A When it's going to be used. When it's
23 built, it will. But not until it's built.

24 Q Correct. But the seven homes that exist
25 out there today did not need that \$40,000 upgrade,

1 **did it?**

2 A They were using -- according to the study,
3 they were using way more water than they should
4 have. It should have -- I think his -- his study
5 showed that it was good for 12 homes, should have
6 been good for 12 homes according to the DNR's
7 design.

8 **Q Okay. So beyond 12 homes, those**
9 **additional lots that you owned, the system that you**
10 **owned at the time, the system that was on there at**
11 **the time was not sufficient beyond 12 lots; is that**
12 **correct?**

13 A You would have to get beyond 12 lots to
14 the meet the one-hour of irrigation that the DNR
15 proposed put in.

16 **Q So the new upgrade -- you would agree with**
17 **me, then, that the new upgrade was really for the**
18 **benefit of the additional lots that you owned so**
19 **that you could sell them one day to new owners. Is**
20 **that not true?**

21 A The -- the real benefit was because they
22 were putting a heavy taxation on the water that was
23 already there, and it burned up our -- our well and
24 water -- or motor and the pump and --

25 **Q You testified Mr. Stalzer testified --**

1 **that Mr. Stalzer said the current system was**
2 **already appropriate.**

3 A If they used amount of water that was done
4 by the DNR's requirements, they should be fine.
5 They over-used it substantially. And that's what
6 caused the need for the upgrade.

7 **Q DNR would not -- you would agree with me**
8 **DNR would not -- would have required an additional**
9 **component to the system beyond 12 lots?**

10 A Beyond 12 lots, you would have to start to
11 consider that.

12 **Q Okay.**

13 A The DNR allowed it for 32 lots for Phase 1
14 and Phase 2.

15 **Q Okay.**

16 A Actually, as I was told verbally from the
17 DNR, that somewhere around -- this should be good
18 for at least 20 houses, not 12. And he said but
19 that will not reach all of Phase 2. But he said
20 some were halfway in between your total lots. You
21 should be -- you will be going into an upgrade or
22 need an upgrade.

23 **Q Okay.**

24 A That was what was told to me verbally by
25 the DNR.

1 Q And those 23 lots, just to reiterate,
2 those 23 lots which will use this upgraded system
3 when a home is built, they currently will not pay a
4 single dime in -- for water or sewer bill, correct?

5 A The 23 lots --

6 Q That you own.

7 A -- are not in existence.

8 Q No. The lots are in existence. There's
9 no home. The lots are in existence, correct?

10 A There is no tap on it. They use nothing.

11 Q Just answer my question.

12 A Okay.

13 Q They're going to use the \$40,000 upgraded
14 system when a home is built; is that correct?

15 A Someday. Someday.

16 Q Do they currently pay any money whatsoever
17 for water or sewer?

18 A There's nothing to pay other than --
19 they're in a reserve.

20 Q Okay.

21 A Inventory.

22 Q So they could not?

23 A No. They couldn't.

24 Q All right.

25 MR. FINKENBINDER: No further questions.

1 A Okay.

2 JUDGE CLARK: Thank you. Mr. Mills,
3 you're excused. Thank you. Okay. Since there are
4 no more witnesses, are there any final matters?

5 MR. FINKENBINDER: No. Unless the
6 Commissioner wants closings.

7 JUDGE CLARK: We don't generally do a
8 closing. I am going to ask for a couple briefs in
9 regard to a couple of issues.

10 MR. WADE: Judge, I have no -- just there
11 are a couple of exhibits I think in that book that
12 we provided to you that we did not offer. So we
13 can remove those at this conclusion.

14 I think there may be one or two that we'll
15 need to remove that I did not offer and were not
16 admitted.

17 JUDGE CLARK: Okay. Will you let me know
18 what exhibits those are?

19 MR. WADE: Yes. Exhibit 22 in the book
20 was not offered or admitted.

21 JUDGE CLARK: That's the only one I have.

22 MR. WADE: I think that's right. That's
23 it.

24 JUDGE CLARK: And in regard to the
25 Complainant's exhibits, I have offered and admitted

1 so far Exhibit 5, Exhibit 6, Exhibit 8, Exhibit 9
2 admitted under the Commission's confidentiality
3 standing, and Exhibit 10.

4 MR. FINKENBINDER: I also have Exhibit 27.

5 JUDGE CLARK: That's correct. I'm sorry.
6 And, also, Exhibit 27. Are you wanting to offer
7 any of those other exhibits?

8 MR. FINKENBINDER: Of the respondents in
9 this?

10 JUDGE CLARK: Of your exhibits.

11 MR. FINKENBINDER: Oh, no. No.

12 JUDGE CLARK: Generally, I'll allow that
13 if there's an agreement with the other side. But
14 if there's not -- in regard to briefs, the -- the
15 Commission's Chair expressed some interest in the
16 for profit, so I'm going to ask the parties to do a
17 brief in regard to whether or not entities -- any
18 of these entities that were described were selling
19 water and sewer services for profit.

20 And I'm also going to ask as an additional
21 issue that in regard for the Carriage Oaks Not For
22 Profit Water and Sewer Corporation, I'm going to
23 request a brief in regards to whether or not it
24 fits the 393 definitions of a not for profit such
25 that it would avoid Commission -- Commission

1 jurisdiction. Okay. Do you know when transcripts
2 will be available?

3 THE COURT REPORTER: They told me
4 Monday.

5 JUDGE CLARK: So we're looking at
6 transcripts available on Monday. How long do the
7 parties think they'll need in order to brief these
8 issues?

9 MR. FINKENBINDER: Fifteen days.

10 MR. WADE: From the date you receive the
11 transcript.

12 MR. FINKENBINDER: Fifteen days from the
13 day we receive the transcript.

14 MR. WADE: Do you want simultaneous
15 submissions or --

16 JUDGE CLARK: Yes.

17 MR. WADE: Can you do that?

18 MS. SMITH: Yeah.

19 MR. WADE: Whitney says yes.

20 JUDGE CLARK: I've got Monday is a
21 holiday, so I don't think anybody will be able to
22 access anything until Tuesday. So we've got 15
23 days from Tuesday. And that would put it, I
24 believe, on the 27th. And I'll send out an Order
25 to that effect.

1 JUDGE CLARK: Okay. Is there any need for
2 reply briefs?

3 MR. FINKENBINDER: Well, it depends on how
4 good of a brief you write.

5 THE COURT: Well, I'd like you to decide
6 now, if possible.

7 MR. FINKENBINDER: No. I don't think so.

8 MR. WADE: We'll waive. No.

9 JUDGE CLARK: Okay. So no reply briefs
10 are requested. Are there any other matters that
11 need to be addressed by the Commission before we
12 adjourn?

13 MR. FINKENBINDER: No.

14 MR. WADE: None for Respondent.

15 JUDGE CLARK: Okay. I'd like to thank you
16 all for your time today. And this evidentiary
17 hearing is adjourned, and we'll go off the record
18 now.

19 THE COURT REPORTER: Do either of you want
20 a copy of the transcript?

21 MR. WADE: I guess so since we have to
22 write a brief. Probably both of us.

23 MR. FINKENBINDER: You have my card. I'll
24 take an E-Trans.

25 THE COURT REPORTER: Okay. Thank you.

1 (The proceedings were concluded at 12:40 p.m. on
2 February 6, 2018.)
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