

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

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

Complainants,)

v.)

File No. WC-2017-0037

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

Respondents.)

**SUGGESTIONS IN OPPOSITION TO
RESPONDENTS' MOTION FOR LEAVE TO FILE
RESPONSE OUT OF TIME AND FOR ADDITIONAL
THIRTY DAY EXTENSION**

On December 19, 2016, Respondents moved for the Public Service Commission (“PSC”) to grant them leave to file out of time, a response to the staff of the Missouri Public Service Commission (“Staff”) report and request for mediation. Respondents additionally asked for a *second* thirty-day extension to respond. Complainants object to this request and in support of their objection, they state as follows:

1. The Commission previously has already granted Respondent one extension of time to respond on November 9, 2016, giving the Respondent until December 16, 2016, to respond.
2. Despite such an extension, Respondent failed to respond by December 16, 2016, and instead asked for an additional month to respond on December 19, 2016.

3. Instead of responding timely, the Respondent sent out a notice to the members of the Carriage Oaks Estate Property Owners' Association (the "Association"), including the Complainants, on December 1, 2016, stating that the Respondent was going to assess them for improvements made to water/well system (the "Notice"). A true and accurate copy of the Notice is attached hereto as **Exhibit A**.
4. The Notice demonstrates the Respondent's ignorance of the issues at hand and is further evidence that the Respondent has no intention of complying with any mandate of the PSC or recommendations of the Staff because:
 - a. The Notice represents that the Association owns the water/well system despite the Respondent's representations to the PSC that his non-profit Caring Americans Trust Foundation, Inc. owns the water/well system.
 - b. The Notice obligates the Association to pay for an upgrade of the water/well system (performed in 2014) despite the fact that the Association has never owned the water/well system;
 - c. Counsel for Respondent has previously admitted, in a letter dated March 30, 2016, that the Association is not responsible for the capital improvements to the water/well system but is only responsible for the maintenance of said system. A true and accurate copy of Counsel's letter is attached hereto as **Exhibit B** (See item No. 11 of Exhibit B).
5. In addition to the Notice, on the week of December 12, 2016, the water/well system failed and the Respondent had notice of such failure.
6. Despite such notice, Respondent refused to notify the Complainants and a homeowner's water pump burned out as a result.

7. This is the third occasion of a water pump burning out in the Association due to Respondent's failure to properly maintain the water/well system.
8. The actions of Respondent prove that it has no intention of complying with its duties, the recommendations of the Staff or order of the PSC. As such, the Complainants request that the PSC deny the Respondent's second request for continuance and proceed with an evidentiary hearing.

WHEREFORE, for the above reasons, Complainants request the PSC deny any additional extension for the Respondent and proceed with setting this matter for evidentiary hearing or further discovery of Staff, if necessary, and for such other and further relief as the Commission deems appropriate.

Respectfully submitted,

SCHENEWERK & FINKENBINDER,
ATTORNEYS AT LAW, LLC

/s/ Karl Finkenbinder

By:

Karl Finkenbinder, Mo. Bar No. 59425
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COUNSEL FOR COMPLAINANTS

CERTIFICATE OF SERVICE

The below signed counsel hereby certifies that a true and accurate copy of the foregoing was sent to all counsel of record via email on this ____ day of December, 2016.

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

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

/s/ Karl Finkenbinder

Karl Finkenbinder, Counsel for
Complainants

Carriage Oaks Estates Property Owners Assessments 2016

TO: Carriage Oaks Estates Property Owners

Dated Dec. 1, 2016

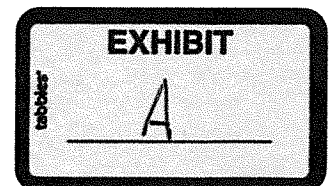
FROM: Carriage Oaks Estates HOA

REF: Property Assessments for 2016

This Assessment is for calendar year of 2016, and will be the same as last years fee of \$1250.00 Due by January 1, 2017 after which late fee is 9% per annum on unpaid balance. As we have never yet collected assessment fees in advance, however this system gives us an estimate to work with for the coming year, perhaps better known as a budget.

Regarding the 2015 budget, there were two new items that needed to be addressed, both were upgrades to the Development. Road repairs involved Seal Coating the existing roads of (5) or more years old, and repaving of a section of Falling Leaf Ct. that is fifteen years old. We almost had enough money for the seal coating only, however it ran over our assessments. The paving part was cancelled due to underfunding. We will need to budget for a loan in order complete the paving portion of Falling Leaf Ct., or, we could oil and gravel it for a lot less, however I doubt that anyone wants to expose their cars paint job trying to do that, or even chip N seal.

The other new expense was the upgrade of the well system to keep pace with the expanded irrigating systems put in by lot owners that have homes built on them. This is in keeping with the MDNR requirements for Subdivision's using only one hour of irrigation per house per day, has been grossly over used, even for estate lot designs. Also two homes with pools, and one with a greenhouse. And four lot owners not using roads or utilities, that contribute to the assessments the same as those with homes. This is why the 2014 HOA meeting verbally voted to do the upgrade for the well system, and have an extended loan to pay for it so as not to increase the assessments.



We will try again in 2017 to have a normal homeowners meeting, probably in February or March, to better plan for the things we need. There has been enough distractions, and little to nothing has been accomplished, let us all try and have a much more enjoyable and successful new year.

Please find your current assessment and history below.

Amount Due for Lot 3A/4A Name John & June Morgan Date of purchase 04-10-08

04-15-08

Last amount received Date 06-06-16 CK# 1805 Amount \$1250.00

Amount due now for 2016 Assessment year is \$1250.00

Make check payable to Carriage Oaks HOA, and mail to 209 Falling Leaf Ct. Branson West, MO. 65737

For any questions please call Dick Mills at 417-338-8870.

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Bryan O. Wade
Partner

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March 30, 2016

*Via email karl@sfalawfirm.com
and First Class Mail*

Karl Finkenbinder
Schenewerk & Finkenbinder
P.O. Box 123
Branson, MO 65616

Re: Carriage Oaks- Response to Demand Letter

Dear Karl:

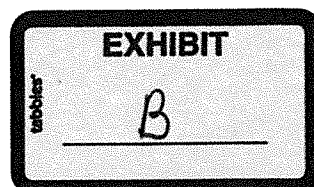
As we discussed in our call last week, this firm represents Mr. Mills ("Mills"), President of Carriage Oak Estate Homeowners Association (the "HOA"). I am writing in response to your March 10, 2016 demand letter.

Mills has made numerous attempts to resolve this matter with your clients (the "Lot Owners") without the involvement of legal counsel. Despite these attempts, the Lot Owners continue to pressure Mills to comply with a list of unreasonable demands. It is our hope that this letter will facilitate resolution without further legal action.

Based on our review, the Lot Owners' list of demands demonstrates a lack of understanding of the HOA's By-Laws, adopted on October 20, 1999 (the "Bylaws") and the Declaration of Restrictive Covenants and Easements, recorded on June 1, 2001 (the "Declaration"). By purchasing land in the subdivision, the Lot Owners agreed to be bound by the rules and procedures set forth in the Bylaws and the Declaration. Mills responds to each of the Lot Owners' demands in the following manner:

1. A new treasurer shall be elected from the HOA's members, other than Mills or a member of the current Board of Directors.

Neither the Bylaws nor the Declaration gives the Lot Owners the power to unilaterally elect a new treasurer. Article VIII, Section 2 of the Bylaws provide that the election of officers shall be made by a majority vote of the Board of Directors. As such, the Lot Owners have no right to directly participate in the election of officers, let alone unilaterally demand a new election.



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2. An election shall be held wherein a new set of Directors are elected from the HOA's members.

Neither the Bylaws nor the Declaration give the Lot Owners the power to demand an election of new Directors. Article V of the Bylaws provides that Directors serve a two (2) year term and are elected by a majority vote at the annual meeting. Directors can only be removed before the expiration of their term by a majority vote. Each Lot Owner holds voting interest in proportion to the number of lots they own and their class of interest. Thus, if the Lot Owners wish to elect a new set of Directors, they must first put it to a vote.

3. A new bank account shall be established and the newly elected treasurer shall be the only person authorized to utilize the account to pay the cost of the HOA.

This demand is a clear violation of the Bylaws. Article V, Section 8(a) of the Bylaws states that the President "shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes". As such, the treasurer is prohibited from having sole control over the bank account.

4. The new treasurer shall follow the budget that is adopted each year by the HOA's membership.

Mills has never opposed working with the Lot Owners to create a budget for 2016. Throughout his correspondence with you, Mills advocates collaboration with the Lot Owners to create a budget which would fully encompass the needs of the HOA.

5. That Mills make a deposit of the 2015 HOA assessments for the four lots that Mills owns and that Caring American Charitable trust make a new deposit for the 2015 HOA assessments that it owns into the new account established by the new treasurer.

Mills has already paid the 2015 assessments for the lots that he owns and for the lots owned by Caring American Charitable. Thus, Mills is under no obligation to again pay the 2015 HOA assessments.

6. That Mills deposit all HOA assessments incurred for the lots that it repurchased, and the Court ordered Mills to pay in its Final Judgment.

Mills has already fulfilled his financial obligation imposed by the final judgment. On October 25, 2015 a check in the amount of \$12,310 from Carriage Oaks, LLC was deposited into the HOA to satisfy the previous HOA assessments.

7. That Mills agree to turn over management of the water and sewer system to a management company selected by the HOA, and that Mills not interfere with the management of the water and sewer systems.

In the order issued in June 2015, the court found that Carriage Oaks, LLC was the owner of the water and sewer system serving the subdivision. Due to the fact that the water and sewer

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are not owned by the HOA, the Lot Owners have no right to demand transfer of the systems to a management company.

8. That Mills agrees to the proposed upgrades of the gates to be voted on at the meeting of the HOA.

Mills has repeatedly stated that this is a matter that should be voted on in accordance with the procedures set forth in the Bylaws. Mills, by virtue of his percentage of voting interest, is free to vote on the issue as he sees in the best interest of the HOA. The Lot Owners have no right to pressure him to vote in accordance with their wishes.

9. That Mills will provide a copy of all keys, to any and all facilities and gates utilized by the subdivision, to all Lot Owners

Certain areas of Carriage Oaks are not owned by the HOA (i.e. the water and sewer system). Therefore, the Lot Owners do not have a right to access all areas utilized by the subdivision.

10. That Mills agree to contract for the care of the common areas.

Section V(1)(b) of the Declaration states that the HOA will be responsible for the repair, maintenance and/or improvement of any common areas or gates. Thus, it is the responsibility of the HOA to pay this expense. Again, Mills is under no obligation to exercise his voting rights in accordance with the Lot Owner's demands.

11. That Mills agrees the Lot Owners are not going to pay for the installation of a tank and well that were required in the design that Missouri DNR approved in 1999.

In an attempt to transfer the water system to the HOA, Mills previously had asked the Lot Owners to contribute to the new water tank, valve, and pump. After the Lot Owners refused to contribute to these expenses, Mills took it upon himself to pay for the upgrades to the entire system. Because the Lot Owners do not own the water system, they are only responsible for the maintenance cost associated with their use.

12. That Mills will agree the Lot Owners are not going to pay legal fees for past or future actions associated with the HOA, for which Lot Owners did not agree to pursue.

Article IX, Section 3(g) of the Declaration gives the Board of Directors the right to employ counsel to prosecute or defend lawsuits against the HOA. Therefore, acting in his capacity as Director, Mills is under no obligation to get the approval of the Lot Owners to defend claims against the HOA.

13. That Mills will turn over copies of the past four years of check stubs and invoices, in order for the Lot Owners to prepare a new budget to present for approval by the Lot Owners.

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Mills has never objected to turning over the financials of the HOA to the Lot Owners in order to help form a new budget for the upcoming years. Mills strives to provide transparency in the HOA's finances and hopes the Lot Owners will provide their input in crafting the 2016 budget.

Again, it is Mills' wish that he and the Lot Owners will be able to resolve these matters without involvement of legal counsel. As Mills describes in his past correspondence with you, people should not use attorneys as weapons. Accordingly, any further legal action by the Lot Owners is a direct detriment to their interest—as they must pay your legal expenses and the HOA bears the burden of footing the expenses to defend such claims. Perhaps these expenses the HOA must bear in defending claims would be better spent on other needs. Thus, it is our suggestion that the two sides attempt to resolve these disputes at the HOA meeting to be held on April 9, 2016.

I look forward to hearing from you.

Sincerely,



Bryan O. Wade

BOW/ws
cc: Client