

**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.)
)
Carl Richard Mills, Carriage Oaks Estates Homes)
Association, Distinctive Designs and Caring)
Americans Trust Foundation, Inc. (f/k/a Caring)
Americans Foundation, Inc.),)
)
Respondents.)

File No. WC-2017-0037

MOTION FOR MEDIATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and for its *Motion for Mediation* in these matters hereby state:

1. On August 4, 2016 the Complainants filed its *Complaint* with the Missouri Public Service Commission (Commission) requesting that the Commission return operations of a water and sewer system over to its home owner’s association. On the same day, the Commission ordered Carl Richard Mills, Carriage Oaks Estates Homes Association (Association), Distinctive Designs Ltd., and Caring Americans Trust Foundation, Inc., f/k/a Caring Americans Foundation, Inc. (Trust Foundation) (“Respondents” refers to the Association and the Trust Foundation) to file a response to the allegations not later September 6, 2016 and directed Staff to investigate the complaint and file a report not later than September 20, 2016.

2. On August 11, 2016 the Complainants filed its *Amended Complaint*. On August 15, 2016, the Commission ordered parties to address only the contents of the *Amended Complaint within its original time frame*.

3. On September 6, 2016 the Respondents filed their response and motion to dismiss.

4. On September 14, 2016 the Commission ordered Staff to file its report, including a response to the motion to dismiss, not later than September 24, 2016.

5. On September 16, 2016 the Complainants filed its *Suggestions in Opposition to Respondents' Motion to Dismiss*.

6. On September 16, 2016 Staff requested and the Commission granted an extension to file its recommendation be set not later than October 28, 2016.

7. On October 28, 2016 Staff filed its *Report* wherein it determined that it had jurisdiction over the Respondents' water and sewer system and proposed mediation pursuant to 4 CSR 240-2.125(2) as a means to resolve the formal complaint by 1) The Caring Americans Trust, Inc., or Carriage Oaks Home Owners Association, LLC, file for a Certificate of Convenience and Necessity as a Commission regulated water and sewer utility; or 2) turn over control of the water and sewer systems to an appropriately organized nonprofit water and sewer entity; or 3) turn over the water and sewer systems and operation to an existing unrelated utility capable of providing such utility service.

8. On October 31, 2016 the Commission directed the parties to respond to Staff's report and recommendation for mediation no later than November 10, 2016.

9. On November 2, 2016 the Respondents sought and were granted an extension to submit a response to Staff Report and Motion for Mediation no later than December 16, 2016.

10. On November 9, 2016, the Complainants filed a timely response to Staff's report and requested that mediation be set promptly so that the "Respondents not be allowed to further delay these proceedings." *Response to Staff of the Missouri Public Service Commission's Motion for Mediation, WC-2017-0037, EFIS 19.*

11. On December 19, 2016 the Respondents filed its *Respondents' Motion for Leave to File Response Out of Time and for Additional Thirty Day Extension*, requesting relief for failure to timely file a response to Staff's *Report* and seeking an addition extension to January 17, 2017 to respond to Staff's *Report*.

12. On December 23, 2016 the Complainants filed in opposition to the Respondents' requests and seeking the Commission to proceed with an evidentiary hearing.

13. On January 10, 2017 the Complainants circulated copies of draft Articles of Incorporation and Bylaws intended to effectuate nonprofit status for the operation its water and sewer assets.

14. Staff believes, upon review of the documents circulated by the Respondents, if executed would fail to effectuate lawful nonprofit status for the operation of water and sewer assets beyond the jurisdiction of the Commission. The Staff identifies the following facial defects:

a) Sections 393.825.1 and 393.900.1, RSMo, require five or more persons are required to organize nonprofit water or sewer corporations. According to its *Articles of Incorporation*, only four individuals are listed as incorporators.

b) Sections 393.825.3(1) and 393.900.3(1), RSMo, require all documentation establishing nonprofit water or sewer corporations be reviewed and approved by the Department of Natural Resources before a nonprofit corporation can lawfully operate water or sewer assets. There is no indication that the Articles of Incorporation and Bylaws have been submitted for consideration or received such approval.

c) Sections 393.827(1) and 393.900(1), RSMo, provide for the conversion of existing corporate entities possessing water and sewer assets to nonprofit corporate status through the drafting and execution of the Articles of Conversion. No such document has been included in this filing. Should the proposed entity described by the Respondents' documents intend to be a new corporate entity in compliance with Chapter 393, then such a conversion would not be required.

d) Sections 393.839.1 and 393.921.1, RSMo, state that no person shall become a member of a nonprofit sewer or water company "unless such person shall agree to use services furnished by the company when such shall be available through its facilities." This language limits the membership to a nonprofit corporation to the recipients of a company's utility service. The Respondents' documents fail to recognize the Complainants as members even though they are residents receiving utility service from the Respondent. Further, Staff has not received any documentation identifying all individuals listed by the Respondents' as incorporators or as directors meet the standards of membership proscribed by statute, and further discovery would be required

to address this issue. In addition, the Respondents' draft bylaws would allow a member to hold multiple "membership interests" which would confer multiple votes to an individual, in contravention on the 'one member, one vote' standard proscribed by Sections 393.839.7 and 393.921.7, RSMo, in defining the rights of membership. While Sections 393.839.1 and 393.921.1, RSMo, provides that bylaws may impose additional qualifications and limitations in respect to membership, such bylaws cannot restrict the statutory rights of membership conferred by the Legislature. Finally, pursuant to Sections 393.839.1 and 393.921.1, RSMo, restricts membership to persons who agree the use services "when such [services] shall be available through its facilities." The Respondents' bylaws expand the qualifications of membership in contravention to the terms defined in the statutes to include prospective utility consumers. As the water and sewer utility services are already in operation and have been for two decades, utility services are presently available and therefore membership is limited to those persons receiving utility services.

e) Sections 393.843.1 and 393.927.1, RSMo, require at least five directors be members of the nonprofit corporation. While the Respondents have identified five persons, Staff is unaware as to whether all persons identified meet Chapter 393's membership requirements. Should those individuals fail to meet the membership requirement, they would not be ineligible to serve on the Board of Directors. Further, Staff notes that no Complainant

WHEREFORE, for the foregoing reasons, Staff believes it necessary for the Commission to direct the parties to participate mediation authorized in 4 CSR 240-2.125(2) as Staff believes resolving the jurisdiction issue may ultimately provide the Complainants with a form of relief.

Respectfully submitted,

/s/ Hampton Williams

Wm. Hampton Williams

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CERTIFICATE OF SERVICE

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

/s/ Hampton Williams