

3. On August 28, 2006, Staff filed a formal complaint alleging that Respondent was operating a water utility without a certificate of convenience and necessity in violation of Section 393.170 RSMo (2000).

4. On August 29, 2006, a consent order was entered in Warren County circuit court. Under the terms of that order, Respondent agreed to reconnect customers who had been disconnected within 10 days of the date of the order. The consent order also requires Respondent to apply for a certificate of convenience and necessity on behalf of the property owners association within 14 days of the date of the order.

5. Complainant's Complaint requested reimbursement for the cost of installation of a well on his property. Staff also found that \$5,000 was paid by Consec Finance to Respondent prior to Complainant's purchase of the property.

6. The Commission does not have the authority to award monetary damages because "to determine whether one person is entitled to recover money from another by way of damages cannot be anything but a judicial question." *State ex rel. Missouri Pacific Railroad v. Public Service Commission*, 259 S.W. 445, 447 (Mo. 1924). Such questions are constitutionally reserved to the courts. *Id.* The Commission therefore cannot grant the relief requested by Complainant, either in the form of reimbursement for the cost of installing the well or in the form of ordering a refund of the water connection fee.

WHEREFORE, the Staff respectfully submits this response to the Commission's Order for the Commission's information and consideration in this case.

Respectfully submitted,

/s/ Jennifer Heintz

Jennifer Heintz
Assistant General Counsel
Missouri Bar No. 57128

Attorney for the Staff of the
Missouri Public Service Commission

P.O. Box 360
Jefferson City, MO 65102
(573) 751-8701 (Telephone)
(573) 751-9285 (Fax)
jennifer.heintz@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel and parties of record this 8th day of September 2006.

/s/ Jennifer Heintz

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

AFFIDAVIT OF DALE W. JOHANSEN

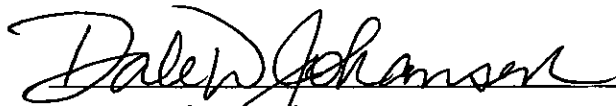
STATE OF MISSOURI)

) ss

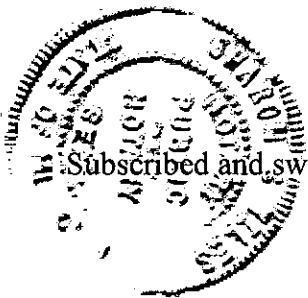
Case No. WC-2007-0015

COUNTY OF COLE)

Dale W. Johansen, of lawful age, on his oath states: (1) that he is the Manager of the Missouri Public Service Commission's Water & Sewer Department; (2) that he participated in the preparation of the foregoing Staff Report of Investigation and the Staff report included in the attached appendix; (3) that he has knowledge of the matters set forth in the foregoing Staff Report of Investigation and the Staff report included in the attached appendix; and (4) that the matters set forth in the foregoing Staff Report of Investigation and the Staff report included in the attached appendix are true and correct to the best of his knowledge, information and belief.



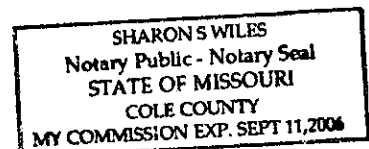
Dale W. Johansen – Manager
Water & Sewer Department
Utility Operations Division



Subscribed and sworn to before me this 8th day of September 2006.



Notary Public



My Commission Expires:

September 11, 2006

APPENDIX A

STAFF REPORT & ATTACHMENTS

CASE No. WC-2007-0015

Staff Report of Investigation

Case No. WC-2007-0015

Mark S. Liesenfeld v. Joe Hybl

Prepared By:

**Jerry Scheible, P.E.
Utility Regulatory Engineer
Water & Sewer Department**

Approved By:

**Dale W. Johansen – Manager
Water & Sewer Department**

September 7, 2006

INTRODUCTION

Oakview Estates is a subdivision located approximately six miles southwest of Warrenton in Franklin County. Joe Hybl is the developer of the subdivision and has been operating a small water supply system, serving three of the five homes in the subdivision, and a small office building which he owns for his own use. There are 68 total lots platted in the subdivision, the vast majority of which Mr. Hybl maintains ownership.

Mark Liesenfeld submitted a formal complaint (Complaint) against Joe Hybl to the Public Service Commission office on June 28, 2006 (unless noted otherwise, all dates herein refer to calendar year 2006), and the Complaint was officially filed on July 6. The Complaint alleges that the water service to his residence in Oakview Estates was terminated without notification on May 4. Mr. Liesenfeld requests restitution in the form of reimbursement by Mr. Hybl for the unspecified cost of establishing his own private water supply in the form of a well on his lot.

The Commission issued its Notice of Complaint on July 10, specifying that a response was to be filed within thirty (30) days of that date. Mr. Hybl has not yet filed a response to the Complaint.

Susan Jaeger (Ms. Jaeger), also of Oakview Estates, filed a similar formal complaint (Case Number WC-2006-0550) on June 27 for water service to her residence also being terminated on May 4. The Commission Staff (Staff) filed its Staff Report of Investigation in that case on August 23. In that report, the Staff recommended that the Commission immediately order Mr. Hybl to reestablish Ms. Jaeger's water service and to apply for a certificate of convenience and necessity (Certificate) to operate as a water utility. A hearing in that matter has been scheduled by the Commission for September 20.

Due to the similarity of Mr. Liesenfeld's Complaint to that of Ms. Jaeger's, many of the facts presented in this report are a result of the Staff's investigation of Ms. Jaeger's complaint.

The Staff also filed a complaint regarding this situation on August 28, which was subsequently assigned Case Number WC-2007-0088. In its complaint, the Staff prays the Commission to find that Mr. Hybl is indeed operating a water corporation subject to the jurisdiction, regulation and control of the Commission, and requests the authority for the Commission's General Counsel to seek penalties for any violations of Commission regulations and applicable statutes.

WATER & SEWER DEPARTMENT STAFF'S INVESTIGATION AND FINDINGS

I left a phone message for Mr. Hybl to contact me on May 18, regarding what was at the time Ms. Jaeger's informal complaint. Mr. Hybl left me a voice mail message on May 25, directing me to contact his attorney, Don Baerveldt, in regard to the situation. I called and spoke to Mr. Baerveldt on the same day. He said that Bill Beeny, the original developer of the subdivision, installed the original water supply system. Mr. Hybl purchased the subdivision development from Mr. Beeny in 1985. He further stated that Mr. Hybl had recently completed upgrades to the well and main line to meet Missouri Department of Natural Resources regulations. The water system is now to be operated under the control of the "not-for-profit" company of Oakview Estates Homeowners Association, Inc., which I have verified the Articles of Incorporation of said association are indeed on file with the Missouri Secretary of State. When Mr. Hybl performed the upgrades on the water supply and replaced the existing water main which served the three residences on the water system, Mark Liesenfeld, Susan Jaeger and Lonnie Markham were not re-connected to the new main, leaving them without water service on May 4. There are currently no paying customers on the system and Mr. Hybl reports that the homes that had been disconnected from service had been "stealing" water service since they had not been submitting any payment for service. I questioned Mr. Baerveldt as to under what circumstances the customers would be reconnected. He stated that the customers would be connected to the new main if they would agree to pay a connection charge, which would include the installation of a meter, and on-going charges for water service. He could not identify what amount those charges would be. Mr. Baerveldt further reported that a sewer treatment facility has been constructed by Mr. Hybl for the subdivision as well, although no connections have been made to it to date. I informed him that the Staff would be investigating the sewer situation in the near future.

On May 26, I performed a site visit of the subdivision. There was, at the time, significant earthwork, road cuts, and water and sewer piping and manhole components throughout the subdivision on both sides of Highway F. I also visited with Sandra Liesenfeld, Mark Liesenfeld's wife, at their home that day. Mrs. Liesenfeld stated at that time that their water service was terminated on May 4 without notification, and Mr. Hybl had not contacted them since. She went on to say that due to their water service being terminated and through frustration in dealing with Mr. Hybl in the past, they planned to drill their own private well, which they have since done and allowed the Markham residence to connect to it.

Further, I confirmed that a newly constructed extended air wastewater treatment facility is indeed in place in the subdivision, though it appears that it is neither receiving nor treating wastewater.

I spoke to Joe Hybl on the phone on May 31. He claimed to have no obligation to provide water to the existing residences because they bought their property from Bill Beeny. Mr. Hybl has since performed upgrades to the water system that was put in place by Beeny for the original subdivision and feels the existing residences do not have a right to access the upgraded water system. I asked Mr. Hybl if he would be willing to hook up the existing residences if they agreed to pay a connection fee and usage fees and he stated that he would rather not because he is wanting to "clean up" the area so that he can develop the subdivision. (The existing residences are manufactured homes.) When I asked if the homes without water were part of the Oakview Estates Subdivision, he said they were not because those lots were not included in the property he purchased, and for which he established the Association.

I visited the Warren County Courthouse on June 1 in an attempt to obtain information regarding the Association and property ownership in the subdivision. I determined the residences that were recently disconnected from the water system are on the following lots: Jaeger #52, Liesenfeld #67, and Markham #68. The *Covenants, Conditions, Reservations and Restrictions* dated March 16, 2000, under the signature of Joe Hybl, President of Oakview Estates Homeowners Association, Inc., states "WHEREAS, Declarant is the owner in fee simple title to lots 5 - 31, 34 - 37, 39 - 42, 46 - 50, 53, and 55-56 shown and recorded . . . " – thus excluding the lots of the residences in question, among others. However, the original plat map of the subdivision as recorded on March 23, 1983, shows lots 1 - 68 as part of "Oak View Estates." It may be worthy of note additionally that the original *Articles of Restrictions* for the subdivision dated July 8th, 1983, as well as the original plat map of the subdivision on file at the county, lists the name of the subdivision as "Oak View Estates." The latest *Covenants, Conditions, Reservations and Restrictions* for the subdivision on file by Joe Hybl, lists the name of the subdivision losing the space between the first two words and changed to "Oakview Estates." I have not been able to determine if this was intentional on Mr. Hybl's part, or just a typographical error. The Markhams, the Liesenfelds and the Jaegers have all confirmed that they are not a part of, nor have any say in, any homeowners association. Furthermore, the *Conditions, Reservations and Restrictions* for the subdivision, Section 4.4. Voting Rights, states, "There shall be one (1) vote for each Lot at meetings of the members of the Association." Importantly, Mr. Hybl owns a substantial majority of the lots in the subdivision.

On June 2, I spoke to Lonnie Markham on the phone. He originally bought his property from Bill Beeny and was told water service was included in the price of the real estate. At a later date, Mr. Hybl approached him and told him he owed \$10/month for water service, both past due and going forward. Mr. Markham said he would not pay the past due but would pay going forward, but did not have an address to mail payment to, so never made any payments. After the recent outage, Mr. Hybl told Mr. Markham that he would reconnect him to the water system for a fee of \$5,000 and a \$50/month payment going forward. Mr. Markham refused.

On June 2, I received a fax from the Liesenfelds, which is attached hereto as Attachment 1. They claim that \$5,000 was paid to Mr. Hybl for establishing water service when they purchased their property, which they bought from Conseco Finance and not directly from Mr. Hybl. The fax reads as follows: "I Chris Gardner, of Conseco Finance Servicing Corp. hereby agree that Conseco will pay any invoices submitted by Joe Hybl or Jack Hybl on behalf of Oakview Estates Subdivision regarding water connection fee in the amount of \$5,000.00 on property located at 207 Hybl Dr., Wright City, MO. And to hold Troy Title Company harmless from any charges or liens which might arise regarding said property."

WATER & SEWER DEPARTMENT STAFF'S CONCLUSIONS

The Water & Sewer Department Staff has concluded that Mr. Hybl has control of , and is operating, the water system in the Oakview Estates subdivision in a manner such that it meets the definitions of "water corporation", "water system" and "public utility" found in Section 393.020, RSMo, thus making the system subject to the Commission's jurisdiction. This conclusion is based on the following reasons.

- * Charges have been made to, and paid on behalf of, the Liesenfelds for connection to the water system.
- * Mr. Hybl, through his attorney, has notified several of the existing residents of the subdivision that a monthly fee of \$56.01 would be billed for ongoing water usage (see Attachment 2 hereto).
- * The *Covenants, Conditions, Reservations and Restrictions* on file at Warren County for the Association do not meet the criteria of a legitimate association providing water service as established in PSC Case Number WD-93-307, *Rocky Ridge Ranch Property Owners Association* ("Rocky Ridge Ranch"), in that the voting rights are designated as one vote per lot, which gives the owner of the majority of the lots, that being Mr. Hybl, control over the majority of the votes. In turn, in the Staff's opinion this means that the system should not be exempted from regulation by the Commission.
- * Mr. Hybl's Answer filed in Case Number WC-2006-0550 requests that Ms. Jaeger be ordered to pay a reasonable amount each month for her use of water supplied, and that she be ordered to pay a reasonable amount for the cost of the hook-up of her residence onto the water supply system including the cost of a water meter. Additionally, Mr. Hybl's Answer in that case states that the installation of the new system and the supplying of water service were never intended to be a free service, and that he has never represented such to any lot owner.
- * The Association clearly is not organized under the provisions of Chapter 393, RSMo, that provide for the formation of nonprofit water companies, which are not subject to the Commission's jurisdiction.

WATER & SEWER DEPARTMENT STAFF'S RECOMMENDATIONS

In light of the legal issues regarding the Commission's authority to grant the relief requested by Mr. Liesenfeld's Complaint, which are addressed in Paragraph 6 of the pleading through which this report is being filed, the Water & Sewer Department Staff has no recommendations to offer regarding those matters. Likewise, in light of the information regarding the Warren County Circuit Court case addressed in Paragraph 4 of that pleading, the Water & Sewer Department Staff has no recommendations to offer regarding the certification of the subject water system. However, with regard to the sewer system that exists in the subject subdivision, the Water & Sewer Department recommends that Mr. Hybl be required to apply for a Certificate of Convenience and Necessity to provide sewer service in the subdivision, in conjunction with the forthcoming water system certificate application.

ATTACHMENT 1.

I, CHRIS GARDNER, OF CONSECO FINANCE SERVICING CORP.
HEREBY AGREE THAT CONSECO WILL PAY ANY INVOICES
SUBMITTED BY JOE HYBL OR JACK HYBL ON BEHALF OF
OAKVIEW ESTATES SUBDIVISION REGARDING WATER
CONNECTION FEE IN THE AMOUNT OF \$5,000.00 ON PROPERTY
LOCATED AT 207 HYBL DR., WRIGHT CITY, MO. AND TO HOLD
TROY TITLE COMPANY HARMLESS FROM ANY CHARGES OR
LIENS WHICH MIGHT ARISE REGARDING SAID PROPERTY.

DATED AT TROY, MO. JULY 26, 2000.

CONSECO FINANCE SERVICING CORP.

BY

Chris Gardner, Icm
CHRIS GARDNER

Conseco Finance MO-90

BAERVELDT, BAGSBY, LEE & GREEN, L.L.C.

ATTORNEYS AT LAW
566 FIRST CAPITOL DRIVE
ST. CHARLES, MO 63301

DONALD A. BAERVELDT, JR.
LARRY A. BAGSBY*
TIM G. LEE*
JOSEPH L. GREEN

AARON M. STAEBELL*

PHONE (636) 947-8500
FAX (636) 947-7365

* ALSO LICENSED IN ILLINOIS

March 17, 2003

Mr. & Mrs. Mark Pelarido
225 Christy Drive
Warrenton, MO 63383

Re: Oakview Estates / Water Useage

Dear Mr. & Mrs. Pelarido:

I represent Oakview Estates, Inc., a subdivision in Warren County, in which you reside. I am conveying this letter to you, as well as other homeowners, in regard to the fresh water system installed and operated by Oakview Estates, Inc.

As I am sure you are aware, you have been receiving fresh water service but have not been paying for the service provided by Oakview Estates, Inc. The fresh water system was installed at great cost to my clients and is operated at an additional cost for the fresh water provided. The ownership of Oakview Estates, Inc. has requested that I contact each of the homeowners currently accessing the fresh water system to negotiate repayment over a period of five (5) years of the apportioned cost of the fresh water system and the cost of current usage on a monthly basis. My client has authorized me to waive any past usage fees up to and through April 1, 2003, if an agreement can be negotiated on or before that date.

The apportioned costs for each lot of the subdivision is approximately \$4,275.00. My client has proposed repayment of the apportioned costs as a "tap-on" fee of \$71.25 per month, payable over a period of 60 months secured by a second deed of trust on the respective homeowners' real estate. The current fresh water usage fee each month would be an additional \$56.01 per month. You will be billed by a private service in regard to both charges.

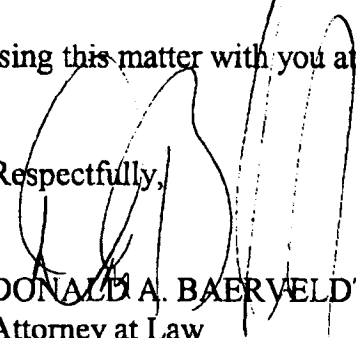
Finally, as part of the negotiated resolution of the water usage and water installation as set forth herein, each homeowner will be required to submit to the Declaration & Covenants of Oakview Estates Subdivision, a copy of which is enclosed with this letter.

Page Two

If we are not able to negotiate the above matters on or before **April 1, 2003**, my client will have no recourse but to remove your tap on to the fresh water system. You will thereafter be responsible for provision of fresh water for your property.

I will look forward to discussing this matter with you at your earliest convenience prior to April 1, 2003.

Respectfully,



DONALD A. BAERVELDT, JR.
Attorney at Law

DAB:pt - enclosure

cc: David Fierge