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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

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At a hearing of the Public Service  
Commission, held at Dexter, Missouri,  
on the 19th day of October, . . . 1978.

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In the matter of the approval of )  
Stoddard County Sewer Company, Inc., )  
for permission, approval, and a )  
certificate of convenience and )  
necessity authorizing it to construct, )  
install, own, operate, control, manage, ) CASE NO. SA-79-11.  
and maintain a sewer system for the )  
public, located in an unincorporated )  
area in Stoddard County, Missouri. )  
\_\_\_\_\_ )

BEFORE:

STANLEY A. LORING, Presiding,  
HEARING EXAMINER.

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REPORTED BY:

Barbara Skalla

*Missouri Public Service Commission*

APPEARANCES:

WILLIAM F. RINGER, Attorney at Law,  
21 Vine,  
Dexter, Missouri 63841,

FOR: APPLICANT, STODDARD COUNTY  
SEWER COMPANY.

L. RUSSELL MITTEN, II, Assistant Counsel,  
P. O. Box 360,  
Jefferson City, Missouri 65102.

FOR: STAFF OF THE MISSOURI  
PUBLIC SERVICE COMMISSION.

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1 BE IT REMEMBERED, at a hearing of the Public  
2 Service Commission, held at the time and place mentioned in  
3 the title page hereof, the following proceedings were had:

4 (Written Entries of Appearance Filed.)

5 (AT THIS TIME APPLICANT'S EXHIBITS NOS. 1,  
6 2, 3, AND 4, INCLUSIVE, WERE MARKED BY THE REPORTER FOR THE  
7 PURPOSE OF IDENTIFICATION.)

8 EXAMINER LORING: Let's go on the record in  
9 Case No. SA-79-11, in the matter of the approval of Stoddard  
10 County Sewer Company, for permission, approval, and a certi-  
11 ficate of convenience and necessity authorizing it to  
12 construct, install, own, operate, control, manage, and  
13 maintain a sewer system for the public, located in an unin-  
14 corporated area in Stoddard County, Missouri.

15 Would the attorneys make their entries, please

16 MR. RINGER: William F. Ringer, representing  
17 Stoddard County Sewer Company, Inc., the Applicant.

18 MR. MITTEN: L. R. Mitten, II, P. O. Box  
19 360, Jefferson City, Missouri, 65102, appearing on behalf  
20 of the Commission Staff.

21 EXAMINER LORING: Does the Company have any  
22 preliminary statement before calling a witness?

23 MR. RINGER: Yes, Mr. Examiner, if I may.

24 EXAMINER LORING: Sure.

25 MR. RINGER: I'd like to state for the record,



1 as you well know, Mr. Examiner, the corporation has filed  
2 an application for a certificate of convenience and neces-  
3 sity for a certain described area as attached to its petition  
4 The testimony of the Company will consist of three witnesses;  
5 the President of the Corporation, Mr. Carl Bien; our Engineer  
6 Mr. Gary Gaines; and our CPA, Mr. Louis Jones. Mr. Jones  
7 is out of town today, and he won't be able to testify on  
8 the financial aspect until a later date. Mr. Bien and Mr.  
9 Gaines are here.

10 Mr. Bien will testify to certain aspects of  
11 the Corporation, the ownership of the property, and he will  
12 testify that he has sold these lots and has never received  
13 any monies for the installation of a sewer system. And he'll  
14 further testify that his tax returns will never show any  
15 allocation of an expense for the installation of a sewer  
16 system. He will further testify that a corporation known  
17 as Bien and Gibbs Lumber Company, Inc., has never shown any  
18 allocation or receiving any funds for the installation of  
19 a sewer plant in this particular area.

20 Mr. Gary Gaines will present the engineering  
21 aspects of the sewer system which include the feasibility  
22 of the installation including the construction costs. And,  
23 also, he will have various maps showing the design of the  
24 system. And he will also testify as to a proposed rate  
25 structure.





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APPLICANT'S EVIDENCE:

C A R L      B I E N,                      called as a witness in  
behalf of the APPLICANT, being duly sworn,  
testified as follows:

DIRECT EXAMINATION BY MR. RINGER:

Q      Would you state your name, please, sir.

A      Carl Bien.

Q      And where do you reside?

A      Ecology Acres, Dexter, Missouri.

Q      Are you the President of a Corporation with  
the name of Stoddard County Sewer Company, Inc.?

A      Yes, sir.

Q      Mr. Bien, I want to hand you what has been  
marked as Exhibit No. 1. I have the original certificate  
here. And would you just explain what this is?

A      This is the certificate of incorporation  
for the Stoddard County Sewer Company Corporation for the  
purpose of--

Q      That is your certificate you received from  
the State of Missouri, right?

A      Right.

Q      And also as part of Exhibit 1, what is attached  
to that exhibit?

A      Articles of Incorporation.

Q      And has it been stamped Filed and Approved

*Missouri Public Service Commission*

1 by the Secretary of State?

2 A Yes, on July 19 of '78.

3 Q Who's President of that Corporation?

4 A I am.

5 Q And who are the principal stockholders?

6 A Carl Bien and Van Gibbs at this point.

7 MR. RINGER: Your Honor, I have the originals  
8 of the certificate and the articles. Would the copies that  
9 we've marked as Exhibit 1 be accepted into evidence?

10 EXAMINER LORING: Any objection to Exhibit 1?

11 MR. MITTEN: The Staff has no objection to  
12 Exhibit 1.

13 EXAMINER LORING: Accepted.

14 (AT THIS TIME APPLICANT'S EXHIBIT NO. 1 WAS  
15 RECEIVED IN EVIDENCE AND MADE A PART OF THIS RECORD.)

16 BY MR. RINGER:

17 Q Mr. Bien, are you familiar with an area that's  
18 called Ecology Acres and Western Heights Subdivision?

19 A Yes, sir.

20 Q How did you first become acquainted with  
21 that area?

22 A The Ecology Acres Subdivision we bought as  
23 an existing subdivision in 1974, I believe, is correct.

24 Q When you say, "we bought it," who bought that?

25 A Van Gibbs and myself as individuals.



*Missouri Public Service Commission*

1 Q You bought it as individuals?

2 A Yes, sir.

3 Q Did you and Mr. Gibbs ever convey that property?

4 A Yes, sir. We had sold some lots there. And

5 then the balance of the lots we conveyed to our Company,

6 Bien and Gibbs Lumber Company.

7 Q And is that a corporation?

8 A Yes.

9 Q Are you also familiar now with Western Heights  
10 Subdivision?

11 A Yes, sir.

12 Q Did you ever own Western Heights Subdivision?

13 A Yes, sir.

14 Q As an individual?

15 A As a company.

16 Q And what company bought Western Heights Subdivision?

17 A Bien and Gibbs Lumber Company.

18 Q And is Bien and Gibbs Lumber Company a cor-  
19 poration also?

20 A Yes.

21 Q And who are the principal stockholders of  
22 Bien and Gibbs Lumber Company?

23 A Carl Bien and Van Gibbs.

24 Q I'm going to hand you what's been marked  
25 Exhibit 2, and would you explain what Exhibit 2 purports  
to show?

1           A       These are the legal descriptions for Western  
2 Heights Subdivision and Ecology Acres Subdivision.

3           MR. RINGER: Mr. Examiner, I'd ask that Exhibit  
4 2 be admitted in evidence. It's not the original deed, but  
5 I'd ask that it be stipulated that this is the legal descrip-  
6 tion of Western Heights Subdivision and Ecology Acres Sub-  
7 division.

8           EXAMINER LORING: Any objection?

9           MR. MITTEN: No objection.

10          EXAMINER LORING: Exhibit 2 is received.

11          (AT THIS TIME APPLICANT'S EXHIBIT NO. 2 WAS  
12 RECEIVED IN EVIDENCE AND MADE A PART OF THIS RECORD.)

13 BY MR. RINGER:

14          Q       Now, Mr. Bien, did you and Mr. Gibbs, through  
15 your lumber company, begin a subdivision development of  
16 Ecology Acres and Western Heights Subdivision?

17          A       We didn't begin the Ecology Acres Subdivision.  
18 We bought it as an existing subdivision. We did begin the  
19 Western Heights or we did form the Western Heights Subdivision

20          Q       And you had it subdivided and platted and  
21 recorded, Western Heights?

22          A       Yes.

23          Q       And it's your testimony that Ecology Acres  
24 was previously subdivided and platted?

25          A       Yes.

1 Q And what year did the corporation, Bien and  
2 Gibbs Lumber Company, obtain title to the property involved?

3 A Ecology Acres, I believe, was in 1974. Western  
4 Heights, I'm not sure. I believe it was in 1976, Western  
5 Heights.

6 Q Then after the lumber corporation obtained  
7 title, did you all later begin selling lots to individuals?

8 A Yes, sir.

9 Q Were some of these lots improved?

10 A The roads and water was in some of these areas.  
11 Some of the other areas we did put the roads and water in.  
12 So some of the lots did have improvements, yes, sir.

13 Q Were some of them unimproved when they were  
14 sold?

15 A When they were sold, no. We did put the roads  
16 and water in for all of them.

17 Q Were some of the lots vacant lots? I mean,  
18 they did not have any housing?

19 A Yes, sir.

20 Q And some of them did have housing; is that  
21 correct?

22 A In Ecology Acres, at the time we bought Ecology  
23 Acres, there was, I believe, four existing homes in Ecology  
24 Acres. It was either four or five right in the area there  
25 which we did not buy those homes. They were built by the



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1 previous owner. Now, we did build some homes out there and  
2 sold them as completed homes.

3 Q What kind of sewer system or sewer facilities  
4 presently exist concerning Western Heights Subdivision and  
5 Ecology Acres Subdivision?

6 A They're mostly septic tanks. There is one  
7 or two jet-air systems or a few jet-air systems, but most  
8 of them are septic tanks.

9 Q By this application today, what are you seek-  
10 ing through Stoddard County Sewer Company?

11 A Permission to install and operate a sewer  
12 system for the area.

13 Q A central sewer system?

14 A Yes.

15 Q When did you first decide or when did you and  
16 Mr. Gibbs, through your corporation, first decide to install  
17 a central sewer system?

18 A We felt like at the time we purchased the  
19 property that eventually the area would have to have a sewer  
20 system, and we have tentatively worked on this. In fact,  
21 we hired an engineer, I believe, in 1974, 1975, to design  
22 the system and do some work on it.

23 Q When you first hired the engineering firm,  
24 what engineering firm did you hire?

25 A C. R. Trotter & Associates.

1           Q     When you hired them, was it your understanding  
2 that you were under any requirement pursuant to the law that  
3 you were required to put in a central sewer system?

4           A     At the time we bought the Ecology Acres Sub-  
5 division, the law was not in existence involving subdivisions  
6 and sewer systems as it does today. We bought the property  
7 prior to the law. We become aware of the law shortly after  
8 it become law.

9           Q     And was that after your discussions with the  
10 engineers?

11          A     I don't know for sure. It was along about the  
12 same time.

13          Q     When you are speaking of the law, are you  
14 talking about the guidelines set forth by the Department  
15 of Natural Resources?

16          A     Yes, sir.

17          Q     Well, after you were informed that you as the  
18 owner-developer would be required to install a central sewer  
19 system, what action did you take?

20          A     Well, it was very hard starting out for two  
21 or three years to even find out what the law actually consisted  
22 of. We were under the impression--and I might add that we  
23 were wrong maybe--that a subdivision could be 30 percent  
24 developed with houses prior to any installation of a sewer  
25 system and so forth or without anything being done on it. But the

1 overall of it, to answer your question, I guess just--if  
2 you will repeat--

3 Q After your discussion with the engineers and  
4 possibly attorneys, did you at that time decide that you had  
5 to put in a central sewer system?

6 A Well, after we determined the law, after we  
7 found out what the law was, we knew that the system would  
8 have to go in eventually, yes.

9 Q And is that when you hired the engineering  
10 firm to propose a design for a central sewer system?

11 A No, sir. We hired the engineering firm prior  
12 to knowing for sure that the system had to go in. They had  
13 worked quite some time prior to this.

14 Q Did you ever consult any of the landowners  
15 in Ecology Acres and Western Heights Subdivisions as to their  
16 thinking or feelings about a central sewer system?

17 A Yes, sir. We held two public meetings. We  
18 sent invitations to all the property owners. We had a good  
19 response, I felt like, from the people. I believe one time  
20 there were six people that didn't receive the invitation  
21 through the mail. They were returned to us. And the other  
22 time, I believe, it was four that was returned to us. But  
23 we had two public meetings trying to determine how the  
24 system should go in, the ownership of it, the rates, how  
25 it should work really.



1                   Q     How many lots are platted total for Western  
2 Heights and Ecology Acres Subdivisions?

3                   A     I believe there's a total of 278 in both  
4 subdivisions.

5                   Q     How many of those lots have been sold out of  
6 your ownership?

7                   A     We have approximately 65 lots left ourself.

8                   Q     Do you know how many lots at this time are  
9 inhabited as residential dwellings?

10                  A     I believe at this time there's 78 houses in  
11 both subdivisions.

12                  Q     In any of your sales to any of these owners,  
13 have you discussed with any of these owners the installation  
14 of any central sewer system?

15                  A     Yes, sir, I have. In selling some of the  
16 houses, people asked me. And I always told them that we  
17 were planning a sewer system, that one was needed out there or  
18 would be needed out there. And I told them that the approxi-  
19 mate cost would be somewhere around \$1,000 per hockup on it.  
20 That's the basis that we used in our selling the individual  
21 houses and so forth.

22                  Q     In any of your sales of any of your lots,  
23 have you charged indirectly in the sales price of any lot  
24 for the installation of a sewer system, the actual capital  
25 expenditures needed to install the system?

*Missouri Public Service Commission*

1           A     I haven't received one dime for the sewer  
2 system for that area in cash or any other--

3           Q     Has the corporation, Bien and Gibbs Lumber  
4 Company, ever shown any income or shown any expense alloca-  
5 tion for the installation of a sewer system?

6           A     We haven't shown any income. The Bien and  
7 Gibbs Lumber Company has paid for engineering and attorney  
8 fees up to this date that we've had bills on and so forth,  
9 and it has been paid. I don't know how it was charged.  
10 But the outside services, I believe, were--but as far as  
11 expense goes, we have had expense involved.

12          Q     But the corporation itself, or you as an  
13 individual in your income tax returns, there's never been  
14 any expense allocation for a sewer system?

15          A     No.

16          Q     Do you have a CPA firm do your personal income  
17 tax returns?

18          A     Yes, sir.

19          Q     Does the CPA firm do your Bien and Gibbs  
20 Lumber Company corporation's income tax returns?

21          A     Yes, sir.

22          Q     Who is your CPA?

23          A     Jones & Riley.

24          Q     How many years have they been your CPA, both  
25 individually and for the corporation?

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1           A.     We have had CPA's for--I don't know how many  
2 years. I believe Jones & Riley has been our CPA's now---  
3 I believe this is the fifth or sixth year.

4           Q.     Have Jones & Riley been providing you with  
5 their CPA services ever since you've been the owner of  
6 Western Heights Subdivision and Ecology Acres Subdivision?

7           A.     I believe that would be correct, yes.

8           Q.     Will Mr. Jones testify at a later date concern-  
9 ing your financial statements and also your income tax  
10 returns as an individual and for the corporation?

11          A.     Yes, sir.

12          Q.     And has he not also performed audits of this  
13 corporation?

14          A.     Yes.

15          Q.     And it's your testimony that in no way have  
16 you ever received any monies in the sales of your lots  
17 that would be allocated to the construction of a central  
18 sewer system?

19          A.     No, sir, I have not received money for a  
20 sewer system.

21          Q.     To your knowledge, Mr. Bien, are there any  
22 other public utilities operating a sewer service within  
23 this proposed service area?

24          A.     No, sir.

25                 MR. RINGER: I believe that's all the questions



*Missouri Public Service Commission*

1 I have.

2 MR. MITTEN: Mr. Examiner, due to the fact  
3 that the CPA, for one, will not be available today, it's  
4 become apparent that this hearing will have to be continued  
5 to a later date in Jefferson City. Therefore, I would  
6 ask leave of the Commission to reserve the bulk of the  
7 Staff's cross-examination until that continued hearing  
8 is convened in Jefferson City.

9 EXAMINER LORING: Leave is granted.

10 MR. MITTEN: I do have just a couple questions  
11 that I would like to ask Mr. Bien at this time, however.

12 EXAMINER LORING: You may proceed.

13 CROSS-EXAMINATION BY MR. MITTEN:

14 Q Mr. Bien, you may have mentioned this; and  
15 I may have missed it. Who purchased the Ecology Acres  
16 Subdivision in 1974?

17 A Carl Bien and Van Gibbs as individuals.

18 Q Did you form some sort of partnership to  
19 purchase that subdivision?

20 A No. We just bought it as individuals. We  
21 were partners on this subdivision. We had no written agree-  
22 ment on it.

23 Q How did you take care of the revenues and  
24 expenses for income tax purposes on this subdivision as  
25 individuals?

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1           A     We kept the funds in a separate account and  
2     so forth.

3           Q     Did you file separate income tax returns for  
4     the subdivision?

5           A     No, sir, I don't believe we did. We filed  
6     it on our individual returns.

7           Q     On your individual returns?

8           A     I believe this is correct, yes.

9           Q     And are you and Mr. Gibbs the current owners  
10    of Ecology Acres or of what remains of Ecology Acres?

11          A     Of what remains, yes.

12          Q     Who purchased Western Heights Subdivision in  
13    1976?

14               MR. RINGER: Mr. Examiner, may I clarify that?  
15    I don't want any mistaken impression. May I ask a clarify-  
16    ing question?

17               EXAMINER LORING: Go ahead.

18               MR. RINGER: Mr. Bien, you're not the owner  
19    as an individual today, are you?

20               WITNESS BIEN: No. Bien and Gibbs Lumber  
21    Company is the owners of today.

22               BY MR. MITTEN:

23               Q     When was it transferred to Bien and Gibbs  
24    Lumber?

25               A     Let's see. Seventy-five or '76. This was

*Missouri Public Service Commission*

1 at the request of our CPA and, for what reason, really I  
2 don't know, other than just it was involved in other company  
3 activities as far as building houses and so forth.

4 Q Did you and Mr. Gibbs, as individuals, sell  
5 the subdivision to Bien and Gibbs Lumber?

6 A Yes, we sold it to them for what we had in  
7 it, I believe, is correct.

8 Q And since that time, have the development  
9 revenues and expenses been included in the Bien and Gibbs  
10 Lumber Company tax returns?

11 A Yes, sir.

12 Q Now, getting back to my question about Western  
13 Heights, who purchased Western Heights Subdivision in 1976?

14 A Bien and Gibbs Lumber Company.

15 Q And is Bien and Gibbs Lumber Company the cur-  
16 rent owner of that subdivision?

17 A Yes.

18 Q Have you filed the tax returns for the revenues  
19 and expenses realized from that subdivision on the returns  
20 of Bien and Gibbs Lumber Company?

21 A Yes.

22 Q Would those expenses and revenues be discern-  
23 ible from a review of the tax returns? And by that, I mean,  
24 do you have other subdivisions that are also being developed  
25 by Bien and Gibbs Lumber Company?



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1 A Yes, sir.

2 Q And are all of the revenues and expenses from  
3 all of your subdivisions recorded in a single account on  
4 the tax return?

5 A Each subdivision can be accounted for, yes.

6 Q Each can be accounted for?

7 A Yes, sir.

8 Q And would your CPA be the person to see about  
9 that?

10 A Yes, sir.

11 Q At the time you purchased Ecology Acres, you  
12 said that there were four existing houses; is that correct?

13 A Yes, sir.

14 Q Do you know how many of the lots in that sub-  
15 division had also been sold?

16 A No, I don't. I don't really believe that  
17 there were any lots, just vacant lots. I'm not aware of  
18 any.

19 Now, outlet 2, I believe--what was called  
20 outlet 2, I believe, was sold. And then there was a home  
21 place that was kept with--I think three lots was kept with  
22 it which at a later date we did purchase that area. On the  
23 original purchase, we didn't; but--

24 Q Other than the four homes and the outlet 2,  
25 ultimately you and Mr. Gibbs or Bien and Gibbs Lumber Company



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1 obtained title to the entire subdivision?

2 A Yes.

3 Q How about Western Heights Subdivision? Were  
4 there any existing homes in that subdivision when you  
5 purchased it?

6 A No, sir.

7 Q Had any lots been sold?

8 A No, sir.

9 Q So you took title to the entire subdivision  
10 and you subsequently sold whatever lots have been sold?

11 A That's right. We were the subdivider on  
12 Western Heights.

13 MR. MITTEN: I don't think I have any further  
14 questions at this time, Mr. Examiner.

15 EXAMINER LORING: Mr. Ringer?

16 MR. RINGER: Just one other area I want to  
17 develop.

18 REDIRECT EXAMINATION BY MR. RINGER:

19 Q As I stated before, Mr. Bien, your CPA will  
20 testify to the financing of the sewer company. But, basi-  
21 cally, the sewer company is going to be paying for what  
22 in this proposed system?

23 A In some way or another, it has to pay for the  
24 installation of the system.

25 Q Is it your testimony there's no contributed

1 plant?

2 A There's no contributed plant or funds at this  
3 time.

4 Q And you have never received any indirect  
5 funding for the installation of a sewer system?

6 A No, sir, I haven't.

7 MR. RINGER: That's all the questions I have.

8 EXAMINER LORING: If there's no further recross-  
9 examination, you're excused, Mr. Bien. Thank you.

10 (Witness excused.)

11 \_\_\_\_\_  
12 MR. RINGER: I'd like to call Gary Gaines.

13 (At this time Gary Gaines was duly sworn.)

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*Missouri Public Service Commission*

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GARY GAINES, called as a witness

in behalf of the APPLICANT, being duly sworn,  
testified as follows:

DIRECT EXAMINATION BY MR. RINGER:

Q Would you state your name, please, sir.

A Gary L. Gaines.

Q And where do you reside, Gary?

A At Five Leota Street in Dexter.

Q And what is your occupation?

A I'm a Professional Engineer.

Q I want to go through some of your qualifications.

Would you go through your various degrees you have received  
since--first of all, are you a high school graduate?

A Yes.

Q If you would, would you go through your  
various degrees that you have received upon graduation from  
high school?

A I have a Bachelor of Science Degree in Civil  
Engineering, a Master of Science Degree in Civil Engineering,  
and a Master of Science Degree in Environmental Engineer-  
ing, all from the University of Missouri at Rolla.

Q I'm not sure about this question myself, but  
are you a member of any engineering group or have you been  
certified by engineers or--

A I'm a Registered Professional Engineer in

1 the State of Missouri, and I'm a member of the Missouri  
2 Society of Professional Engineers and Vice President of  
3 the local chapter.

4 Q Where is your business office?

5 A At 100 Ridgetop Drive in Dexter.

6 Q Were you here in the courtroom and heard  
7 the testimony of Mr. Carl Bien?

8 A Yes.

9 Q Did Mr. Bien have you prepare a feasibility  
10 study and an engineer's design on a proposed central sewer  
11 system for Western Heights Subdivision and Ecology Acres  
12 Subdivision?

13 A Yes, he did.

14 Q Do you have your documents on said feasibility  
15 study and engineering design with you?

16 A Yes. They're back at my chair.

17 Q Would you bring them up to the chair with you.  
18 Before we get to the actual documents them-  
19 selves, Gary, have you ever been involved in doing any type  
20 of economic feasibility study or design for a sewer system  
21 before?

22 A Yes, several.

23 Q How many times do you think?

24 A A dozen. Our firm works for cities in this  
25 area, and we have been the engineers on several both water and



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1 waste water systems throughout Southeast Missouri over the  
2 past 15 or 20 years. And I personally have been in respon-  
3 sible charge for the past 5 to 6 years.

4 Q Gary, is there any significant difference in  
5 doing a feasibility study that you have performed for Mr.  
6 Bien than there was doing for various cities in Southeast  
7 Missouri?

8 A Not really.

9 Q Do you have what has been marked as Exhibit 3,  
10 the economic feasibility study, and Exhibit 4, the design  
11 or engineer's report on the proposed sanitary sewer facilities?

12 A Yes.

13 EXAMINER LORING: Let's go off the record a  
14 minute.

15 (Off-the-record discussion.)

16  
17 EXAMINER LORING: Back on the record.

18 MR. RINGER: Just for the record, Applicant's  
19 Exhibit 3 is the engineer's report on the proposed sanitary  
20 sewer facilities, and Exhibit 4 is the economic feasibility  
21 study.

22 BY MR. RINGER:

23 Q Do you have the originals of those studies  
24 with you?

25 A Yes, I do.

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1 Q Referring to Exhibit 3, Gary, which is the  
2 engineer's report on the proposed sanitary sewer facilities,  
3 now, did you prepare that personally?

4 A I was in responsible charge when it was prepared.  
5 I prepared most of the narrative, but not all of the drawings.

6 Q Who would have prepared the drawings?

7 A Employees of our company.

8 Q Under your supervision?

9 A Yes.

10 Q Gary, would you just in general terms state  
11 what Applicant's Exhibit 3 purports to show?

12 A The engineer's report?

13 Q Yes, sir.

14 A The engineer's report is a standard report  
15 prepared by an engineer on any project that's to be under-  
16 taken. It describes the existing conditions that exist,  
17 and it investigates what problems exist in the area. It  
18 proposes solutions to these problems. It gives a preliminary  
19 design of any facilities that are proposed and preliminary  
20 cost estimates of those facilities.

21 The engineer's report is required by the  
22 regulatory agencies before they will approve construction  
23 of sewer facilities in the area.

24 Q Has any regulatory agency approved this report?

25 A Yes, they have. The Missouri Department of

1 Natural Resources has approved the report.

2 Q And by saying, "approved the report," what  
3 does that mean?

4 A That means that they agree with the findings  
5 of the report and we can proceed with whatever steps it  
6 takes to construct the facilities.

7 Q Without getting into too much depth, does this  
8 report cover Western Heights Subdivision and Ecology Acres  
9 Subdivision?

10 A There's two parts to the report. There's  
11 an engineer's report that addresses only Ecology Acres, and  
12 then there's an attachment to it. I can't remember if I  
13 call it a supplement or an addendum. It's a supplement to  
14 the engineer's report that addresses Ecology Acres and Western  
15 Heights. So the engineer's report as a whole does address  
16 all of the area.

17 Q What kind of facility presently exists in  
18 Western Heights and Ecology Acres?

19 A Individual home treatment units.

20 Q Is that discussed in your report?

21 A Yes.

22 Q What kind of facility have you proposed?

23 A A centralized collection and treatment system.

24 Q Is there any particular reason why you proposed  
25 that type of facility?

1           A     Because it's required by state regulations  
2 and because it would be the best for the overall environment  
3 of the area.

4           Q     Without getting too technical, why would it  
5 be the best system?

6           A     Because with individual home treatment units,  
7 there's a discharge on each lot of effluent. With centralized  
8 facilities, you collect all the waste water, take it to one  
9 location, and then treat it. You can more efficiently treat  
10 waste water when you do it in volumes, and you also isolate  
11 the point of effluent to one location. And you don't have  
12 the problems with effluent running across people's yards  
13 into their streets and so forth.

14          Q     Again, I don't want to get too technical,  
15 but does this report include the design of the actual system?

16          A     It includes the preliminary design, not the  
17 detailed plans and specifications.

18          Q     Does anyone have to approve the detailed plans  
19 and specs?

20          A     Yes, they do. The Department of Natural  
21 Resources has to review and approve them before any construc-  
22 tion can start.

23          Q     Have you submitted the detailed plans and  
24 specifications to the Department of Natural Resources?

25          A     Yes.



1 Q Have they responded to this?

2 A They have advised us recently that they are  
3 approvable, subject to the hearing on the point of discharge.  
4 Technically the plans and specifications are complete.

5 Q Now, if you would, refer to your Applicant's  
6 Exhibit No. 4, which is entitled, "Economic Feasibility  
7 Study." Did you prepare this exhibit?

8 A Yes, I did.

9 Q Basically, what does Applicant's Exhibit 4  
10 purport to show?

11 A This exhibit shows the financial aspect of  
12 the proposed improvements. It's an extension of the engineer's  
13 report and the work that was done up until that time. And  
14 it shows the estimated cost of the facilities and the rates  
15 that would have to be charged to recover that cost. It  
16 addresses only the financial aspects.

17 Q If you would, will you turn to Page 2 of  
18 Applicant's Exhibit 4. It has a heading, "System Layout and  
19 Cost Estimates." Would you explain what this Part II, "System  
20 Layout and Cost Estimates," purports to show?

21 A This shows the estimated cost of the facilities.

22 Q I notice that you have an item, a description,  
23 a quantity, a unit price, and a subtotal. If you will, will  
24 you explain where you derived the sources of each of these;  
25 item, description, quantity, unit price, and subtotal, in

1 general terms?

2 A The item number is simply a chronological  
3 order of the units listed here. The description actually  
4 describes what part of the facility that the price applies  
5 to. The quantity tells how many of each items will be used.

6 Q If I can interrupt you right there, on this  
7 description and quantity, where are you getting this descrip-  
8 tion and quantity, where are you getting these figures from?

9 A This comes from the detailed construction plans.

10 Q Is that what you prepared?

11 A Yes.

12 Q Go ahead.

13 A The unit price is an estimated cost of each  
14 quantity that will be constructed.

15 Q Where are you deriving this unit price?

16 A It's an estimate. And, by definition, it  
17 means you're not sure of it. But we have been engineers on  
18 several projects, and each time we have a project at a letting,  
19 we keep a bid tabulation sheet of all the prices that were  
20 bid. Whenever we prepare an estimate, we go back to all the  
21 current bid tabulation sheets and estimate the cost of future  
22 construction taking into account inflation. So I guess the  
23 best answer is it's based on past experience with construc-  
24 tion costs in this area.

25 Q In your opinion, would you say that these

1 unit prices reflect a present fair market value of these  
2 items?

3 A Yes.

4 Q So I guess what would be the total cost then,  
5 in your opinion, for the installation of this central sewer  
6 system?

7 A I feel if the system was let for competitive  
8 bids today, it would cost in the neighborhood of \$168,000.

9 Q Now, if you would, would you turn to Page 6,  
10 Part IV. Would you just explain what Part IV purports to  
11 show in general terms?

12 A Part IV lists the total lots in the subdivisions.  
13 It gives some information on the population density that  
14 could be expected and gives some information on the number  
15 of ultimate users of the system that might be expected. It  
16 also, at the last part, gives some information on the flows  
17 and the loadings that might be expected on the system.

18 Q Is this part pertinent in figuring the rate  
19 structure or calculating the rate structure?

20 A Yes.

21 Q Now, if you would, would you turn to Part V  
22 and explain what Part V purports to show?

23 A Part V is an estimate of the operating expenses  
24 that might be expected from the system.

25 Q Is that on a per-year basis?

1 A Yes.

2 Q If you would--I think you later on in an  
3 addendum break down where you come up with these costs per  
4 year. But I want you to explain each item; one, two, three,  
5 and four, and the breakdown of how you calculated these  
6 operating costs.

7 A Item 1 is labor. We estimated that approximately  
8 1,500 hours a year will have to be extended to take care  
9 of this system at a cost of \$4 an hour, which gives a labor  
10 cost of \$6,000 per year.

11 Q And, I believe, did you not explain that in  
12 your addendum?

13 A Yes. That's what I'm referring to now.

14 Q If you would, explain Item 2.

15 A Item 2 is "Testing." The Department of Natural  
16 Resources and the United States Environmental Protection  
17 Agency requires that any point source discharges be tested  
18 periodically to see that they comply with the effluent guide-  
19 lines. Therefore, whoever manages this system is obligated  
20 to run a periodic analysis on the effluent.

21 We estimate that the tests will have to be run  
22 once a month and that it will cost approximately \$1,000 a  
23 year to hire an independent lab to run these tests.

24 Q Item 3.

25 A Item 3 is an estimation of the power costs



1 that it will take to run the equipment and the facilities.

2 We have it broken down into three parts.

3 There will be a power cost at the treatment  
4 plant which will require the operation of a five-horsepower  
5 motor. We determined the number of kilowatt-hours per year  
6 that this will require. There will be a power cost at the  
7 pump station. Again, we determined the number of kilowatt-  
8 hours per year that it will require. There will be a power  
9 cost for the individual grinder pumps on people's homes.  
10 We estimated the number of kilowatt-hours that it will require

11 Then we contacted the local utility company  
12 and determined what the approximate power cost will be.  
13 We multiplied that times the total number of kilowatt-hours  
14 and came up with a yearly power cost of approximately \$3,000.

15 Q If you would turn to your addendum No. 1,  
16 under the power costs, and then Paragraph 1 under the power  
17 costs. In your opinion, is it necessary for this horsepowered  
18 motor to run continuously at the treatment plant?

19 A Yes, it must.

20 Q Why must it?

21 A The integrity of the treatment plant depends  
22 on the aeration that will be provided, so the motor must  
23 run continuously to drive the blowers to aerate the sewage.

24 Q If it were not run continuously, what would  
25 happen?

1           A     Stagnant conditions would result with foul  
2 smells and unsightly conditions because sludge would be  
3 developed and rise to the top.

4           Q     On Item 2 you say it would be necessary for  
5 a motor to run approximately one-third of the time to power  
6 the pumps at the pump station. Why are you saying that that  
7 must happen?

8           A     This is an approximation. The pump station  
9 will not run all the time. It's designed to handle two  
10 and a half times the average design flow. And when the  
11 system is initially put in operation, it won't have the  
12 total design flow on it. It will have something less than  
13 that. So we just estimated that it would run approximately  
14 one-third of the time to pump all the sewage that flows into  
15 it. It's an estimate.

16          Q     Now, on Part 3 you say that a one-horsepower  
17 motor will run approximately 10 percent of the time to power  
18 each of the 20 grinder pumps. Where are you getting the 10  
19 percent requirement?

20          A     We know the capacity of the grinder pumps that  
21 the manufacturers show, and we estimated the flow from the  
22 individual homes based on national figures of sewage contri-  
23 bution from individuals. And from that we estimated the  
24 length of time that the pumps would have to run to handle  
25 that flow.

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1           Q     Now, if you'd return then to your heading,  
2 "Operating Expenses," and Item 4, "Materials and Supplies."  
3 You've estimated \$2,000 per year. Would you explain how  
4 you derived the \$2,000 per year figure?

5           A     It was an estimate based on our experience  
6 with other small systems in the area. It's probably the  
7 hardest part to estimate on the operation and maintenance  
8 expenses because one major breakdown could cost a substantial  
9 amount of money in any one year; but, overall, it would be  
10 a lesser figure. So we felt like the \$2,000 would be a  
11 representative overall figure for materials and supplies.

12          Q     And that gives you a total operating expense  
13 of \$12,000 a year; is that correct?

14          A     That's right.

15          Q     Now, sir, if you'd turn to Page 8 of Applicant's  
16 Exhibit 4; and this is titled "Rate Structure." If you  
17 would, would you in general terms explain how you derived  
18 this rate structure?

19          A     Well, we derived two rate structures, alternative  
20 1 and alternative 2. The first rate structure is based on  
21 the premise that the individuals would pay a hook-on charge  
22 to recover the capital cost of the facilities and would pay  
23 a monthly user charge to recover the operation and maintenance  
24 expenses.

25                   Knowing the estimated cost of the facilities

1 and knowing the number of people that live in the subdivision  
2 now and estimating the number that will be added to the  
3 subdivision each year, just by math we were able to calculate  
4 what it would take from each individual for a hook-on charge  
5 to pay for the cost of the system.

6 Q And how many years did you spread this return  
7 of capital investment over?

8 A We spread it over ten years because, based on  
9 our estimates, it will take ten years for the subdivision  
10 to become fully occupied.

11 Q And then this came up with a hook-on fee of  
12 how much?

13 A Approximately \$1,100.

14 Q And, if you would, explain your calculation  
15 of the monthly user charge.

16 A About the same method was used. We had already  
17 estimated the yearly operation and maintenance expenses. We  
18 know how many people live in the subdivision now, and we  
19 estimated the number of new dwellers that would live there  
20 each year. Just by math, we figured up how much would have  
21 to be charged from each dwelling to pay this \$12,000 per  
22 year.

23 Q And what was the answer to this calculation?

24 A \$13.33 per month.

25 Q And the results of alternative 1?



1           A.     The results of alternative 1 are that if a  
2 hook-on fee is charged, it needs to be \$1,100 and a \$13.33  
3 monthly user charge from there on out to pay for operations  
4 and maintenance.

5           Q.     Now, would you explain alternative 2?

6           A.     Alternative 2 is under the basis that there  
7 will be no hook-on fee. Both the capital cost and the  
8 operation and maintenance costs will be recovered through  
9 a monthly user charge. Mathematically we figured out and  
10 then verified it later that in order to recover both the  
11 capital cost and the operation and maintenance costs a  
12 monthly user charge of \$24.91 would be necessary.

13                     After we figured this charge, we checked it  
14 each year for the number of customers expected in that year  
15 to see that it came out with the right figures, and it did  
16 check out.

17           Q.     And then I see you have a summary on Page 10.  
18 I think it's pretty well self-evident, but would you discuss  
19 your details that were considered in developing the rate  
20 structures?

21           A.     All right. There were five details that I  
22 put in this summary so that everyone would know what basis  
23 was used. No profit for the utility company was figured  
24 in the rates. Interest was figured at 10 percent compounded  
25 annually. Capital costs would be recovered in ten years with

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1 alternative 1 and 20 years with alternative 2. No future  
2 capital expenditures were considered, even though it points  
3 out in the report that some may be necessary. No increase  
4 in operating expenses was considered, even though we realize  
5 that there will be an increase with inflation.

6 MR. RINGER: I'd ask that Applicant's Exhibits  
7 Nos. 3 and 4 be received into evidence.

8 EXAMINER LORING: Any objection to 3 and 4?

9 MR. MITTEN: No objection.

10 EXAMINER LORING: They're received.

11 (AT THIS TIME APPLICANT'S EXHIBITS NOS. 3 AND  
12 4 WERE RECEIVED IN EVIDENCE AND MADE A PART OF THIS RECORD.)

13 MR. RINGER: I tender the witness for cross-  
14 examination.

15 MR. MITTEN: The Staff would ask leave to  
16 reserve its cross-examination of this witness until the con-  
17 tinuation of the hearing in Jefferson City.

18 EXAMINER LORING: That's granted. Thank you,  
19 Mr. Gaines.

20 (Witness excused.)

21  
22 MR. RINGER: Our CPA is unavailable today,  
23 and that would be our direct testimony as of today.

24 EXAMINER LORING: Let's go off the record a  
25 minute.

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1                   WHEREUPON, a recess was taken.

2  
3                   PURSUANT to the recess, the hearing of this  
4 case was resumed, and the following proceedings were had:

5                   EXAMINER LORING: Let's go back on the record.

6                   Do any of you folks care to testify about this  
7 matter? All it would entail would be coming up here and  
8 being sworn, sitting in the chair, and just telling what you  
9 have on your mind. This would go into the record and would  
10 be available to the Commission. It would be a pretty painless  
11 process.

12                   (AT this time Jon Ashley Baker was duly sworn.)



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PUBLIC'S EVIDENCE:

J O N      A S H L E Y      B A K E R,                      called as a  
witness in behalf of the PUBLIC, being duly  
sworn, testified as follows:

EXAMINER LORING: Mr. Baker, you can just  
start and say what you--let's have your address, sir, for  
the Reporter, please.

WITNESS BAKER: Route 3, Box 180, Ecology  
Acres, Dexter, Missouri.

EXAMINER LORING: Do you have a statement?

WITNESS BAKER: I have some things I'd like  
to say, yes.

First, I would like to verify, one, that I  
have lived in Ecology Acres for about three and a half years,  
one of the not original homeowners; but there was only, I  
believe, six homes in the Ecology Acres addition when I moved  
out there.

There are a number of things that I would like  
to say. Number one is the number one proposal that has been  
brought forward as far as the \$1,100 hook-up plus the \$13.33  
a month service charge. That's an awful lot of money as far  
as I'm concerned. Actually, with the approximately 80 homes  
that are there now--I'm rounding this off--we're talking  
about a 52 percent return on investment just to hook every-  
body up and, plus, around \$13,000 a year for repairs, upkeep,



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1 and whatever.

2 Now, I'm not an accountant, but I know that  
3 figures can be made to say a lot of different things. But,  
4 in my opinion, this is a considerable amount of money to  
5 put in the system. And there is the possibility of twice  
6 that many homes which would net twice that much money, which  
7 would create--if there was 160 homes in there, it would almost  
8 pay back the initial investment just in hook-up fees. And  
9 that would leave a considerable monthly charge that would be  
10 net just for the upkeep, around \$26,000 or more, if they would  
11 just double the amount of homes.

12 With the number of homes that I've seen go  
13 in in the last three and a half years and with a sewer system  
14 put in, I would imagine that they would go in that much faster  
15 in the future. And I, myself, feel that this proposal is  
16 completely unacceptable.

17 The developer himself bought the addition,  
18 has made money from the sale of the land and the homes.  
19 And this proposal is what I feel asking us to pay for a  
20 sewer system that should have been put in a long time ago,  
21 put in from the very start. Anyone could have seen or who  
22 knows the land around here knows that septic systems just  
23 do not work; and especially in enclosed areas on small lots  
24 with the number of homes that we have, the drainage problem  
25 was going to be evident. And I think this is something that

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1 could be seen from the very beginning.

2 Now, the second proposal with the no hook-up  
3 fee and \$24.92 a month, I assume--the restrictive covenants  
4 that we have in our abstract for Ecology Acres state that  
5 there shall be no hook-up fee and a reasonable monthly charge  
6 as determined by the Public Service Commission.

7 Now, I assume that this second proposal is  
8 an attempt to meet this agreement since it's something that  
9 has been brought up in previous meetings that we have had  
10 with the owners in Ecology Acres and Western Heights. Now,  
11 I will make one admission, that reasonable is a relative  
12 term and it depends on who you talk with. Now, if someone  
13 makes a considerable amount of money, reasonable can be  
14 very high. For someone who's on a limited income, reasonable  
15 becomes a little bit lower. And I think that we will find  
16 if we check most of the people who live in the two additions,  
17 they are not high-income people. They're not people that can  
18 afford considerable amounts of money. And most of the homes,  
19 though they are nice, are not what you would consider real  
20 expensive homes.

21 Now, most of the money that I feel--and I'm  
22 speaking for myself and I assume a lot of other people--that  
23 most of the money they have is invested in their home, in  
24 the down payment that they make and some of the monthly pay-  
25 ments that they have to make to maintain these homes. And I

1 for myself can say that my household budget will not stand  
2 another \$24.92 a month. I just don't know where I'd squeeze  
3 it in if I had to pay it.

4 Now, there's a couple points to make on this.  
5 One, the income from the existing homes does not seem that  
6 large, 24,000. But you start doubling that, and it gets up  
7 to considerable amounts of money and quite a quick return on  
8 investment. Now, both of the other meetings that we've had  
9 with the members and owners in Ecology Acres, when we were  
10 talking about trying to put this in and ways to finance it  
11 and all this, we did a lot of talking about hooking up people  
12 outside the addition.

13 And I realize that this hearing is talking  
14 about the problem in Ecology Acres and Western Heights, but  
15 we've done a lot of talking in previous meetings about hook-  
16 ing up people in the Seven Sisters Road which adjoins Western  
17 Heights, on Three Mile Road, and along AF and even reaching  
18 as far as into Orchard Lake Estates and Glenwood Hills was  
19 even mentioned.

20 Now, I don't know the feasibility of this.  
21 I'm not an engineer, and I don't know the capabilities really  
22 of the system that's being put in. But I know these things  
23 have been brought up. And if this was to be done, this thing  
24 would be turned into quite a money-making project at these  
25 rates.

1                    Now, as for myself, again, I would like to  
2 say that Ecology Acres is one place we've been in a mess  
3 ever since the beginning with houses not being on lots,  
4 having to buy extra lots, houses setting in road right-of-  
5 ways, other houses setting straddle of lots, and whatever.  
6 It just seems to be one mess after another.

7                    We were told when we moved in--and I realize  
8 I'm not for sure whether this was on the appraisal of our  
9 home or not, but we were told when we moved in that the roads  
10 would be blacktopped and the sewer system would be put in and  
11 whatever. And it wasn't long until they come by and they  
12 wanted money to blacktop the roads. And now we're asking to  
13 finance a sewer system. And I think this, you know, just carries  
14 on the system. It really has created a problem for some of  
15 us and a financial bind for some of us.

16                    Now, it's been said also in the previous  
17 meetings that it was up to us if we wanted to hook on to the  
18 sewer system at all. I said, "Well, what's it matter on  
19 the rate? If you don't want to hook up, you won't hook up."  
20 Well, I think it's rather inevitable if the Clean Water Com-  
21 mission is forcing Ecology Acres to put in a sewer system,  
22 then they're not going to let somebody live out there without  
23 hooking up to it if it's available. So it's not something  
24 that we will have a choice with. I feel that we will have  
25 to hook up if it's put there. And that financial burden is



1 something that kind of leaves us possibly at the mercy of  
2 the Public Service Commission because it's what they decide  
3 at what rates we will be charged as to what it will cost us.

4 Now, I would also like to say that I heard a  
5 minute ago the request to continue the meeting in Jefferson  
6 City. And I, for one, would be against that because then  
7 we would be in the dark again because I would say very few  
8 of us could travel to Jefferson City to be involved in that  
9 meeting. And there is some other figures that are going to  
10 be verified possibly in that meeting that I think we should  
11 be aware of. And I would like to ask now that the meeting  
12 be held here as it is now.

13 EXAMINER LORING: Thank you. Do you have any  
14 questions?

15 MR. MITTEN: I have a couple.

16 CROSS-EXAMINATION BY MR. MITTEN:

17 Q Mr. Baker, you live in Ecology Acres; is that  
18 right?

19 A Yes, it is.

20 Q Who did you buy your home from?

21 A Gene Tucker. He owned the home at the time.

22 Q Do you know who he purchased it from?

23 A I believe he built it or had it built. I  
24 think he was the original owner of the addition who sold it  
25 to Carl.

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1           Q     When you bought the home from Mr. Tucker,  
2 were there any representations made to you with respect to  
3 sewers that would be installed?

4           A     To the best of my recollection of what I  
5 mentioned--and I do not know whether it's verified on the appraisal  
6 of my home or not. The loan records would have to be checked  
7 for this. But they went out and appraised the home, and they  
8 come back and we were asking for an 80-percent loan. And they  
9 come back, and the appraisal did not come up with this. And  
10 they said, "Well, let us check." And then they came back to  
11 us after they had talked to Tucker or to other people--I'm  
12 not for sure who--and said, "The appraisal is okay. We have  
13 raised it due to the fact that the roads will be blacktopped,  
14 the sewer system was going to be put in. And with these  
15 additions or improvements that's going to be made, the property  
16 will be worth that." And the appraisal was raised, and the  
17 loan went through.

18           Q     And, therefore, you feel that the price you  
19 paid for your home included the cost of sewers and the black-  
20 topped road?

21           A     That was my impression when I purchased the  
22 home. I bought it with that agreement.

23           Q     When did you purchase your home in Ecology  
24 Acres?

25           A     In March of 1975.

1 MR. MITTEN: I don't think I have anything  
2 else, Mr. Examiner.

3 Thank you, Mr. Baker.

4 CROSS-EXAMINATION BY MR. RINGER:

5 Q Mr. Baker, how many lots do you own in Ecology  
6 Acres?

7 A Two.

8 Q What was the purchase price of both of those  
9 lots?

10 A I purchased one with the home, and it was  
11 included in the price of the home. And after I bought the  
12 home, I found out that my septic system was--

13 MR. RINGER: Mr. Examiner, I just asked what  
14 the purchase price was. I didn't ask for him to give a  
15 narrative. Would you please instruct him to answer the  
16 question?

17 EXAMINER LORING: We're not going to hold  
18 everyone to a very tight answer.

19 Did you give the answer of the purchase price?

20 WITNESS BAKER: No, I didn't. When I purchased  
21 the home, I bought one lot with the home. It was represented  
22 to me as I moved into the home--and I found out that my  
23 house and my septic system was on a separate lot and the  
24 property line was within three foot of the side of the house.

25 And with that, I went back to the real estate



1 company which I purchased the home through, and through about  
2 negotiations for a considerable amount of time, I finally  
3 paid half the price of the lot, and the real estate company  
4 paid the other half, which the total price of the lot was  
5 \$2,000, and I paid \$1,000 for my half.

6 BY MR. RINGER:

7 Q For both lots?

8 A For the one lot that I had to buy extra. The  
9 first lot was purchased with the home.

10 Q How much?

11 A I don't know. I paid for the home \$24,000.

12 Q And then you're saying you paid \$2,000 for  
13 the additional lot?

14 A I paid \$1,000. The real estate company paid  
15 another \$1,000 for the other lot.

16 Q Who owned the additional lot at the time you  
17 purchased it?

18 A Carl Bien.

19 Q Did you talk to Carl Bien during the purchase?

20 A Yes, I talked to him quite often.

21 Q Did you all discuss the installation of any  
22 central sewer system?

23 A Not on that lot, no, because I was purchasing  
24 it simply to get my house and buy what was mine, the sewer  
25 system and all this, to protect myself.



1           Q     So Carl Bien never told you that a central  
2 sewer system would be installed by him at his cost?

3           A     No, not that I recall.

4           Q     You also said that you didn't think the  
5 engineer's proposed rate structure of approximately \$24 was  
6 reasonable. Do you have any facts or figures to show why  
7 it's not reasonable?

8           A     No. I'm not an engineer. It's just from my  
9 own personal standpoint.

10           MR. RINGER: That's what I thought. Thank  
11 you.

12           EXAMINER LORING: Thank you very much.

13           (Witness excused.)

14  
15           EXAMINER LORING: We're not taking in any  
16 particular order. If you'd like to come up, sir, we'd  
17 appreciate it.

18           MR. MITTEN: Mr. Examiner, can we go off the  
19 record for just a minute?

20           EXAMINER LORING: Off the record.

21           (Off-the-record discussion.)

22  
23           EXAMINER LORING: Back on the record.

24           (At this time Don Gard was duly sworn.)  
25

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1 D O N G A R D,

called as a witness in behalf

2 of the PUBLIC, being duly sworn, testified

3 as follows:

4 EXAMINER LORING: Mr. Gard, you can just go  
5 ahead and make your statement if you wish.

6 WITNESS GARD: I built my home in May of '76.

7 EXAMINER LORING: Excuse me. Let's get your  
8 address.

9 WITNESS GARD: My address is Route 3, Box 187,  
10 Ecology Acres.

11 We are in what would be considered the eastern  
12 end of Ecology Acres, and actually the road was put in since  
13 Carl has bought it. And, of course, our abstracts read the  
14 same way, that no hook-up charge for sewer and so forth and  
15 so on, as everybody else's abstract reads.

16 Now, I bought my lot from two individuals  
17 who bought 50 lots from Carl just as an investment, so to  
18 speak. And they have a separate contract which I did not  
19 think to bring today which states that Carl would provide  
20 sewer at no charge to these 50 lots. And I questioned him  
21 about it as to whether or not maybe we might ought to bring  
22 that with us, and they felt like that that is irrelevant  
23 to this meeting. Let the PSC make their rulings. Then they  
24 will talk with Carl on this at that time. So really, we  
25 feel like that we're in the same position, of course, as

1 everybody in this room.

2 Now, there's several of us here that have  
3 some of these original 50 lots, or some of these 50, and  
4 we feel like that we're in the same boat. But, also,  
5 we feel like we're protected under a separate contract with  
6 Carl. And, of course, Carl is familiar with it; and he knows  
7 what he's got. But we wanted to make certain that the PSC  
8 understood that, that we have a separate contract besides  
9 the original abstract.

10 CROSS-EXAMINATION BY MR. RINGER:

11 Q Would you explain that contract again?

12 A Well, Bill, I have seen it. It is a contract  
13 between Carl and two individuals that he is selling 50 lots,  
14 X-number of dollars, pavement, the main pavement will be  
15 put in, sewer will be run to these lots at no charge. It's  
16 included in our purchase price. And, of course, we paid it.

17 Now, we've paid more for our lots than probably  
18 the majority of the people in this room. My original lot was  
19 \$3,500. I've bought two since, one at thirty-five and one  
20 at three. So I actually own three lots now altogether; and  
21 they are more, of course, than what some of the others have  
22 paid. But we felt like that we were paying for the roads  
23 and we were paying for the sewer. This was part of the  
24 purchase price. Now, this is where we're sitting.

25



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1 CROSS-EXAMINATION BY MR. MITTEN:

2 Q You have three lots in Ecology Acres?

3 A Yes.

4 Q Do you intend to build houses on all three  
5 of those?

6 A No.

7 Q How many houses do you intend to build on  
8 those three lots?

9 A I built one that I'm living on. I bought the  
10 other two just for the backyard. They're just a part of  
11 the original.

12 Q Then the 50 lots you were talking about, are  
13 they in Ecology Acres too?

14 A Yes.

15 Q Who did you buy your three lots from?

16 A From Jim Lincoln and Paul Douglas.

17 Q Are these people that owned the subdivision  
18 prior to--

19 A No. They just bought the 50 lots from Carl  
20 as an investment. They just bought them to resell them.

21 Q They bought them from Mr. Bien and then resold  
22 them to you?

23 A Right.

24 Q Were there any representations made to you  
25 when you purchased your lot as to whether or not you'd have



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1 to pay for sewers?

2 A Yes. At that time they said that we were  
3 paying in our purchase price for sewers and paving. And  
4 they said both would be in by, according to their contract,  
5 October of '76. And we got the pavement in '77, and we haven'  
6 got the sewer yet.

7 Q Did you have to pay anything extra for the  
8 pavement other than--

9 A I assume it was in the purchase price. What  
10 it would be, I don't know.

11 Q But you weren't assessed anything extra for  
12 that?

13 A No.

14 Q Did you have anything in writing other than  
15 the covenant that's in your abstract?

16 A I'm strictly relying on their contract with  
17 Carl.

18 Q They're oral representations to you?

19 A As far as myself and Douglas and Lincoln,  
20 it's all oral. All I have is what you're looking at right  
21 there.

22 Q Did you go over this abstract with Mr. Lincoln  
23 or Mr. Douglas?

24 A I've been over it, yes.

25 Q Did you go over it with them, though? That's

1 what I mean.

2 A Probably sometime I did. But I have been  
3 through it, yes, every sheet of it.

4 Q Quite frankly, I'm having a little difficulty  
5 understanding exactly what clause 11 in the covenant means  
6 where it says, "There will be no cost to the lotowner in  
7 connecting to the central sewage disposal system." What do  
8 you believe that that phrase means?

9 A I think it's up to the developer as the  
10 developer to supply it.

11 MR. RINGER: I want to make an objection to  
12 this question. I think he's invading the province of the  
13 Commission by that question. It's a final conclusion that  
14 the Commission itself must resolve, not a lay witness, the  
15 interpretation of a covenant. I think we're invading the  
16 province of the Commission and possibly our courts, too.

17 EXAMINER LORING: I think probably more so  
18 the courts. But I think neither the Commission nor the courts  
19 would be swayed by a lay witness' legal opinion. But he  
20 can testify as to what he believes that that meant to him.

21 So the objection is overruled. You can answer  
22 the question.

23 WITNESS GARD: The question was what, sir?

24 EXAMINER LORING: Let's repeat the question.  
25

1 BY MR. MITTEN:

2 Q The clause in the covenant reads, "There shall  
3 be no cost to the lotowner in connecting to the central  
4 sewage disposal system." And perhaps if I rephrase the  
5 question, the objection will be muted.

6 Did anyone explain to you the meaning of that  
7 phrase in the covenant?

8 A At the time I purchased my lot, there again,  
9 I was told that I was paying for sewer and pavement, it was  
10 included in my purchase price.

11 Q When they told you that, did they direct  
12 your attention specifically to that clause of the covenant?

13 A I do not recall. This has been three years  
14 ago or whatever, but I do not recall the wording on it.  
15 But, at that time, I knew it was in this abstract anyway.  
16 I had seen the abstract. I knew it was there at that time.  
17 And then, of course, I was told orally that I was paying  
18 more than what some of the others had paid because of that  
19 fact. I was paying it in, whereas some of the others maybe  
20 hadn't. I don't know.

21 Q And if anyone had explained to you the meaning  
22 of that, it would have been Mr. Lincoln or Mr. Douglas, the  
23 people that you purchased your lots from?

24 A Yes.

25 MR. MITTEN: I don't believe I have any further  
questions.



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EXAMINER LORING: Thank you, Mr. Gard.

(Witness excused.)

(At this time Alan Hartlein was duly sworn.)

A L A N H A R T L E I N, called as a witness

in behalf of the PUBLIC, being duly sworn,  
testified as follows:

EXAMINER LORING: Mr. Hartlein, what's your  
address?

WITNESS HARTLEIN: Route 3, Box 221, Ecology  
Acres.

EXAMINER LORING: You can proceed, sir.

WITNESS HARTLEIN: I can concur with Mr. Baker's  
statements in the fact that I personally feel that the cost  
would be prohibitive, both in maintaining a home and in resell-  
ing a home. As for my own case, I purchased my home directly  
from Mr. Gibbs and Mr. Bien. I was led to believe that the  
sewer would be installed at no cost to me, with the only  
cost being connecting from my house to the existing line.

Before I purchased the property, I examined  
the covenants of the abstract and interpreted that phrase  
which you just questioned about to mean just what it said,  
that there would be no cost to the owner of the lot in any way.

I personally believe that we do need a sewer



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1 system; and I do not object to paying a fee, but only for  
2 maintaining the system. I do not believe that we should pay  
3 the cost of installing such a system.

4 Originally when the subdivision was platted  
5 and recorded on the 9th of July, 1973, outlot 1 was designated  
6 to be a sewage lagoon. I purchased my home in March of 1976.  
7 Since that time, the subdivision has been replatted; and  
8 outlot No. 1 has been subdivided. And that was recorded  
9 on the 28th of April, 1976.

10 Now, my personal feelings is that at that  
11 point in time and since there has been, to my knowledge,  
12 no plat recorded showing an additional sewer system, that  
13 there was a time that he intended not to install such a system.  
14 And I think I have been--had facts misrepresented to me.

15 I would also ask the Commission to consider  
16 moving the hearing to Dexter. That's my statement.

17 EXAMINER LORING: Mr. Mitten?

18 CROSS-EXAMINATION BY MR. MITTEN:

19 Q Mr. Hartlein, you say you bought your home  
20 from Mr. Bien and Gibbs?

21 A Directly, yes, sir.

22 Q And what did they tell you with respect to  
23 the installation of sewers?

24 A The exact wording of things because it was in  
25 the discussion of the purchasing of the home, I couldn't swear

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1 the exact wording. But I do know that I specifically asked  
2 about the sewer because I knew that there were metal septic  
3 tanks installed on the property, and I didn't want that.  
4 I had intended to replace the septic system and install a  
5 concrete tank. And Mr. Bien told me that at a future date  
6 he had planned to put in a sewer system. And he said--I  
7 don't remember the exact wording--but something to the effect,  
8 "Now, that would be included in the cost of your house."

9 And after I had talked to him initially, I  
10 examined the covenant before I agreed to purchase the house.  
11 And, as you noted in Item No. 11 in the covenant, it says  
12 that there will be no cost to the owner of the lot, which  
13 I believe to substantiate what he had indicated to me at  
14 that time.

15 Q But Mr. Bien did tell you that the cost of  
16 the sewer was included in the price of your lot?

17 A To the best of my knowledge, yes, sir.

18 Q How many lots do you own in Ecology Acres?

19 A I own one.

20 Q And do you have a house on that?

21 A Yes, I do.

22 Q Do you have any knowledge as to whether or  
23 not--first of all, do you have a loan on your house?

24 A Yes, I do.

25 Q And I assume an appraisal was conducted for

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1 purposes of determining the value--

2 A I assume so, yes.

3 Q Do you know if the value of sewers was included  
4 in that appraisal?

5 A I do not know.

6 MR. MITTEN: I guess I don't have anything  
7 further. Thank you, Mr. Hartlein.

8 MR. RINGER: I just have a couple.

9 CROSS-EXAMINATION BY MR. RINGER:

10 Q Was there a house on your lot when you purchased  
11 it?

12 A Yes.

13 Q Do you remember your purchase price?

14 A I believe it was twenty-seven, five.

15 MR. RINGER: That's all.

16 EXAMINER LORING: Thank you, Mr. Hartlein.

17 (Witness excused.)

18 \_\_\_\_\_  
19 EXAMINER LORING: Who else would like to say  
20 a few words or make some comments for the record?

21 (No response.)

22 EXAMINER LORING: We'll take a short recess.

23 WHEREUPON, a recess was taken.

24  
25



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1                   PURSUANT to the recess, the hearing of this  
2 case was resumed, and the following proceedings were had:

3                   EXAMINER LORING: Let's go back on the record.

4                   (At this time Bill Brandt was duly sworn.)  
5

6                   B I L L       B R A N D T,                   called as a witness in  
7                   behalf of the public, being duly sworn,  
8                   testified as follows:

9                   EXAMINER LORING: You can proceed, sir.

10                  WITNESS BRANDT: I just wanted to state that  
11 I bought my house about a year and a half ago from Bien and  
12 Gibbs Lumber Company, and that in discussing the purchase  
13 price of the house and other things of this nature, I had  
14 heard something about at some point in time a centralized  
15 sewer system being put in in Ecology Acres. And in talking  
16 with Carl Bien, he indicated at the time that it was put in  
17 that it would cost approximately \$1,000 to hook on to it;  
18 and that was about the extent of our conversation. We had  
19 no discussion concerning monthly premium costs or what the  
20 user charge or anything of this nature would be. And that's  
21 about all I have.

22                  EXAMINER LORING: Do you have any questions  
23 for Mr. Brandt?

24                  CROSS-EXAMINATION BY MR. MITTEN:

25                  Q       Did Mr. Bien tell you it would be \$1,000



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1 over and above your purchase price?

2 A He said it would be approximately \$1,000 at  
3 the time that the system went in. And, again, he didn't  
4 have, I don't think, at that time any exact figures; but  
5 he indicated it would cost about \$1,000. And it had nothing  
6 to do with the purchase price at that time.

7 MR. MITTEN: Nothing further.

8 EXAMINER LORING: Thank you, Mr. Brandt.

9 (Witness excused.)

10  
11 EXAMINER LORING: Would anyone else like to  
12 make a statement on this?

13 (At this time Joe Watson was duly sworn.)  
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