

In the Matter of:

ANCHOR'S POINT CONDOMINIUM OWNER'S ASSOCIATION

v.

TRR MANAGEMENT, LLC., et al.

WC-2020-0048, VOL. I

April 09, 2021



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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Procedural Conference

April 9, 2021

Jefferson City, Missouri via WebEx

Volume 1

Anchor's Point Condominium Owners)
Association, Inc.,)
Complainants,) File No. WC-2020-0048
v.)
TRR Management, LLC; Frank J, Steed,)
Jr. d/b/a Steed Communities; JM Land)
Holdings, LLC; TRR Time Share, LLC;)
Carroll James Christiansen; Kimberling)
Inn, Inc.; and Kimberling Properties,)
Inc.,)
Respondents.)

JOHN T. CLARK, Presiding
SENIOR REGULATORY LAW JUDGE.

REPORTED BY:
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FOR: Staff Of Missouri Public Service Commission

P R O C E E D I N G S

JUDGE CLARK: Today's date is April 9, 2021, and the current time is 12:56 p.m. The Commission has set aside this time for a prehearing conference in the case captioned as Anchor's Point Condominium Owners' Association, Inc., complainants versus TRR Management, LLC; Frank J. Steed, JR., doing business as Steed Communities; JM Land Holdings, LLC; TRR Timeshare, LLC; Carroll James Christiansen; Kimberling Inn, Inc.; and Kimberling Properties, Inc., Respondents. This is File Number WC-2020-0048.

My name is John Clark and I'm the regulatory law judge in this matter. And I'm going to begin by asking the attorneys to enter their appearances for the record, starting with the complainants.

MR. BRIDGES: Michael Bridges on behalf of Anchor's Point COA.

JUDGE CLARK: Thank you, Mr. Bridges.

On behalf of the Respondents?

MR. FAX: Austin Fax from Lowther Johnson on behalf of the Respondents.

JUDGE CLARK: Thank you, Mr. Fax. And on behalf of Staff counsel?

MS. ASLIN: Casi Aslin and Mark Johnson for Staff counsel.

JUDGE CLARK: Have I missed anyone? No, I have

1 not.

2 Are there any preliminary matters or pending
3 motions that I need to take up before I get into what I want to
4 get into?

5 MR. BRIDGES: Not that I'm aware of.

6 MR. FAX: None for respondents.

7 JUDGE CLARK: Okay. Thank you. All right. A
8 complaint has been filed, an Answer, I believe, has been made,
9 and a Staff report has been filed, and we've gone through
10 several rounds, I believe of status reports. And then this last
11 time status reports were due, I received what I would consider
12 to be competing status reports where I received a status report
13 from the complainants basically saying we'd like to continue the
14 stay of the case while we continue to pursue an outside source
15 of water. And I received in return also a status report from
16 the respondents saying that negotiations had broken down and
17 that they wanted to go ahead and have this thing set for an
18 evidentiary hearing and proceed down the procedural schedule.

19 I don't believe Mr. Johnson or Ms. Aslin,
20 correct me if I'm wrong, Staff did not file a status report; is
21 that correct?

22 MS. ASLIN: Correct.

23 JUDGE CLARK: Good. Thank you. Now, briefly,
24 this is not a situation that I see a lot where there are
25 competing status reports, and that's kind of why I called a

1 procedural conference today because I want to be sure moving
2 forward that everybody understands the potential consequences.
3 So if one of Staff's attorneys could pipe in and kind of briefly
4 explain what the relationship of the Commission to Staff is and
5 how we communicate with each other -- and did we lose somebody
6 there? No, we picked up my admin.

7 MR. JOHNSON: Casi, do you want to take this or
8 do you want me to jump in?

9 MS. ASLIN: Yes. I could do that. So
10 commission staff works for the Commission but we do not
11 communicate with the Commission or judges outside of official
12 procedural channels, such as filings in EFIS or hearings.

13 JUDGE CLARK: Okay. So would it be fair to say
14 that the Commission and Staff communicate as the Commission
15 would communicate pretty much with any other party in any case?

16 MS. ASLIN: Correct.

17 JUDGE CLARK: And the reason I want to clarify
18 this is because I have counsel that haven't practiced a lot in
19 front of the Commission before and so I want to be sure that
20 they understand that just because the Staff's report says one
21 thing that does not necessarily mean that that is what the
22 Commission is going to do; although, it frequently may. And
23 Staff's counsel can answer this again. Are you aware of times
24 when the Commission has done something other than what Staff has
25 recommended?

1 MS. ASLIN: Yes.

2 JUDGE CLARK: And would you say that's with a
3 reasonable degree of frequency?

4 MS. ASLIN: I would say so, yes.

5 MR. JOHNSON: All right. And I would just add
6 that Staff serves in an advisory role to the Commission, but we
7 are also party to every proceeding before the Commission. So we
8 do maintain a large degree of separation between the Commission
9 itself and the advisory staff. So while we make official
10 filings and argue positions before the Commission, the
11 Commission does adopt -- or, excuse me, they issue decisions
12 taking, perhaps, our advice into account, but, ultimately, it's
13 based off of all of the evidence in any proceeding, and Staff is
14 treated substantially the same as any party -- the same as any
15 other party, excuse me.

16 JUDGE CLARK: Thank you for that clarification
17 Mr. Johnson. Excuse me. And that just gets to kind of what I
18 wanted to discuss with this procedural conference. I just want
19 to be sure moving forward that everyone understands what could
20 happen. The condo owners' association could end up without
21 the Commission -- or with the Commission deciding that the
22 Commission, in fact, doesn't have any jurisdiction over the
23 respondents. That's absolutely a possibility.

24 Likewise, the respondents could end up owning a
25 regulated utility and everything that comes with that.

1 So what I'm saying is, once the Commission holds
2 a hearing, to a large degree, the parties no longer control
3 their own destiny. I'm sure, as experienced attorneys, you're
4 well aware of that. That's the same as any court proceeding
5 anywhere.

6 That being said, I'm happy to order procedural
7 schedule with an evidentiary hearing at the end or I'm happy to
8 give the parties additional time if that's what they want. I'm
9 not going to -- I don't probe into settlement ever. What I will
10 say is, when you've got one party who's stating I think we're
11 going to -- we're contemplating digging a well, I have no idea
12 how long an endeavor like that is going to take.

13 MR. BRIDGES: And if I may jump in whenever the
14 opportunity arises, and I don't mean to interrupt, but if I
15 could speak to that. The COA board members have been working
16 with local contractors and with the Department of Natural
17 Resources in the hopes of having the well completed, and if DNR
18 acts promptly, having a license to operate their own independent
19 well by Memorial Day. That's what we're hoping for. And so
20 what I would propose, if it's feasible, table this matter until
21 after Memorial Day. If we have not either had a determination
22 from DNR -- or, I mean, if they've denied or approved the
23 application, we can report that.

24 My concern is that if we set this right now,
25 unless it's set fairly far in the future, both sides could spend

1 a lot of time and effort preparing for an evidentiary hearing
2 that may ultimately not be necessary.

3 I understand that the respondents' counsel or
4 the respondents themselves may want to try to push this along
5 and, you know, they're -- that's their right to do that, but
6 just as a practical matter, I would hope that we could delay
7 that until Memorial Day. It's not that far away. From reports
8 that I've received, they are hopeful to have word at that point
9 whether or not they're going to have approval. And if they do,
10 then I think this action will be dismissed.

11 If they, for whatever reason, can't get licensed
12 or certified through DNR, then we may have to come back and
13 revisit this proceeding because, as was indicated in our
14 response to staff's report, we do believe that PSC does have
15 jurisdiction here, but, there again, the Board has made the
16 determination that it's probably going to be in their owners
17 long-term interest if they just have an independent source of
18 water.

19 JUDGE CLARK: Okay. Kind of skipped -- and I
20 have no problem with you doing that, you skipped ahead to my
21 next question, which was what were the parties going to do. So
22 the complainants have told me what they would like to do.
23 Mr. Fax, would you like to let me know the respondents'
24 position?

25 MR. FAX: Yes, the respondents would, obviously,

1 like to see this case moved forward. We are in agreement with
2 what Staff has put in the staff report. We do not believe there
3 is jurisdiction and my clients are of the position they're ready
4 to get an answer to the question of do we proceed before the
5 Public Service Commission or can we go back down and litigate
6 this in circuit court.

7 I understand Mr. Bridges's position that they
8 believe it may be Memorial Day before they get an answer. To
9 us, it's just too tenuous right now to say, well, let's just
10 keep pushing it off and keep pushing it off. My folks would
11 like to have some sort of schedule in place that says -- and,
12 obviously, they would be entitled to do some discovery on the
13 issue of jurisdiction, but they'd like some schedule in place to
14 say here's how long we have to do discovery and here's when our
15 final hearing date is going to be on the issue of jurisdiction.

16 So that's the respondents's position. They're
17 looking to move this case forward.

18 JUDGE CLARK: Okay. Thank you. All right.
19 Well, clearly there's still disagreement, one party wants to
20 stay the continue and one party wants to establish a procedural
21 schedule with an evidentiary hearing. If there is a
22 disagreement, my tendency is to want to go ahead and order a
23 procedural schedule, which is what I am going to do.

24 So I would like the parties to jointly put
25 together and have Staff submit on their behalf a procedural

1 schedule, including pre-filed testimony, briefs, and I will
2 leave it to the parties whether or not they want reply briefs or
3 not.

4 Now, in regards to setting this procedural
5 schedule, I'm kind of booked up it looks like for hearings and
6 such that are set through May and possibly the early part of
7 June. It looks like there are some things that are uncertain
8 and in the air. So keeping that in mind when you propose dates
9 for an evidentiary hearing would be helpful. If you want to
10 copy the Commission's schedule, I'm certainly happy to email you
11 one. Or, you could just go by what is on the adjudication
12 calendar on the website.

13 Give me just a second. Obviously, the parties
14 are still free to negotiate during this time period, and if you
15 do happen to reach a resolution or the parties jointly decide
16 that they want to re-establish a stay in this case, as long as
17 there is agreement on it, I'm generally willing to do it, given
18 that there is no hard time lines on completing this case.

19 Staff, how long do you think it would take --
20 how long would you like to submit a joint proposed procedural
21 schedule?

22 MS. ASLIN: Is two weeks okay?

23 JUDGE CLARK: Two weeks is fine with me. Would
24 that be the 23rd?

25 MS. ASLIN: I believe so.

1 JUDGE CLARK: Okay. Do I need to issue an Order
2 or will you just do that?

3 MS. ASLIN: We can just file it.

4 JUDGE CLARK: Okay. Then I won't issue a
5 written Order for that, but I'll be expecting Staff to file a
6 procedural schedule by the 23rd, and I'll note that in my
7 calendar.

8 Now, that's all I have that I wanted to discuss.
9 I wanted to say -- you know, basically let the parties know
10 what's going to happen and let them know that we don't always --
11 that the Commission does not always go along with Staff's
12 recommendation. I think there's an assumption that Staff's role
13 sometimes is a little different than it actually is.

14 So in that case, I've heard parties. So I'd
15 like to know at this time, are there any other matters or issues
16 that need to be addressed by the Commission at this time?

17 MR. BRIDGES: Not from the complainants.

18 JUDGE CLARK: Respondents?

19 MR. FAX: None from the respondent either.

20 JUDGE CLARK: Anything from staff counsel?

21 MS. ASLIN: Nothing from Staff.

22 JUDGE CLARK: Okay. Hearing none, I'll adjourn
23 this prehearing conference. We'll go off the record.

24 (OFF THE RECORD.)
25

CERTIFICATE OF REPORTER

I, Lisa M. Banks, CCR within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Lisa M. Banks, CCR No. 1081

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