

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

Derald Morgan, Rick and Cindy Graver,)
William and Gloria Phipps and David Lott,)
)
Complainants)
v.)
)
Carl Richard Mills, Carriage Oaks Estates,)
Distinctive Designs, Caring Americans Trust)
Foundation, Inc. (f/k/a Caring Americans)
Foundation, Inc.), Carriage Oaks Not-for-)
Profit Water and Sewer Corporation,)
)
Respondents.)

File No. WC-2017-0037

**ORDER DEEMING MOTION AN AMENDED COMPLAINT
AND NOTICE OF COMPLAINT**

Issue Date: October 10, 2017

Effective Date: October 10, 2017

On August 4, 2016, Derald Morgan, Rick and Cindy Graver, William and Gloria Phipps, and David Lott (collectively referred to as “Complainants”) filed a *Complaint* with the Missouri Public Service Commission requesting that the Commission return operations of a water and sewer system over to its home owner’s association. The Commission ordered Carl Richard Mills, Carriage Oaks Estates Homes Association, Distinctive Designs Ltd., and Caring Americans Trust Foundation, Inc., f/k/a Caring Americans Foundation, Inc. (collectively referred to as “Respondents”) to respond to the allegations and directed Staff to investigate the complaint and file a report.¹ The

¹ *Notice of Contested Case and Order Directing Filing*, File No. WC-2017-0037 (issued August 4, 2016).

Complainants filed an *Amended Complaint* ² on August 11, 2016, and the Commission ordered parties to address the contents of the *Amended Complaint*.³

After denying a motion to dismiss, a procedural schedule was established. On September 14, 2017, the Complainants filed a motion requesting that Carriage Oaks Not-For-Profit Water and Sewer Corporation (Carriage Oaks NFP) be added as a party to this case. The Complainants noted that Respondents have claimed that the sewer and water assets at issue were transferred to Carriage Oaks NFP. Therefore, Carriage Oaks NFP has an interest in this case.

The Commission will treat the motion to add a party as a second amended complaint. Therefore, the Commission will send notice of the complaint to Carriage Oaks, NFP, with an opportunity to answer as set out below. Because a procedural schedule has been set and Carriage Oaks NFP is a corporation formed by the same principals that are involved in the other Respondent organizations, the time for an answer will be shortened. Further, Carriage Oaks NFP will be subject to the procedural schedule already established.

THE COMMISSION ORDERS THAT:

1. Carriage Oaks Not-for-Profit Water and Sewer Corporation shall be a party to this case and shall be sent notice of the complaint.
2. The Data Center shall send a copy of this order, a copy of the *Amended Complaint*, filed August 11, 2016, and a copy of the Order Setting Procedural Schedule issued on August 30, 2017, by certified mail to:

² *Amended Complaint*, File No. WC-2017-0037 (filed August 11, 2016) (Amended Complaint).

³ *Order Regarding Responses to Amended Complaint*, File No. WC-2017-0037 (issued August 15, 2016).

Carl R. Mills, Registered Agent
Carriage Oaks Not-for-Profit Water and Sewer Corporation
209 Falling Leaf Court
Branson West, MO 65737

and by regular U.S. Mail to:

Bryan O. Wade
Whitney S. Smith
Husch Blackwell LLP
901. Louis St., Suite 1800
Springfield, MO 65806

4. Carriage Oaks Not-for-Profit Water and Sewer Corporation shall file an answer no later than October 24, 2017.

5. Carriage Oaks Not-for-Profit Water and Sewer Corporation shall be subject to the procedural schedule previously set in this matter unless excused or that procedural schedule is amended.

6. The caption of this case is amended to include Carriage Oaks Not-for-Profit Water and Sewer Corporation as a respondent.

7. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Nancy Dippell, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 10th day of October, 2017.

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

Derald Morgan, Rick and Cindy Graver,)
William and Gloria Phipps and David Lott,)
)
Complainants)
v.)
)
Carl Richard Mills, Carriage Oaks Estates,)
Distinctive Designs and Caring Americans Trust)
Foundation, Inc. (f/k/a Caring Americans)
Foundation, Inc.),)
)
Respondents.)

File No. WC-2017-0037

ORDER SETTING PROCEDURAL SCHEDULE

Issue Date: August 30, 2017

Effective Date: August 30, 2017

On August 15, 2017, the parties filed a proposed procedural schedule. The Commission has reviewed the proposed schedule and finds it reasonable. Therefore, the Commission will adopt the procedural schedule as set out below.

THE COMMISSION ORDERS THAT:

1. The following procedural schedule is established:

| | |
|--|-------------------|
| Last Day to Request Discovery..... | October 31, 2017 |
| Summary Determination Motion Filing Deadline..... | November 15, 2017 |
| Direct Testimony (By Complainants)..... | December 29, 2017 |
| Rebuttal Testimony (By Respondents)..... | January 12, 2018 |
| Surrebuttal Testimony (By Complainants)..... | January 22, 2018 |
| Parties file Prehearing Briefs, Issues List, Order of Witnesses, and any time limits..... | January 26, 2018 |
| Hearing..... | February 6, 2018 |
| Briefs (If requested by Commission)..... | March 2, 2018 |

2. The evidentiary hearing is scheduled for February 6, 2018, beginning at 9:00 a.m. The hearing will be held in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. The hearing will be held in a building that meets accessibility standards required by the Americans with Disabilities Act. Any person requiring additional accommodations to participate in the hearing shall call the Missouri Public Service Commission's Hotline at 800-392-4211 (voice) or Relay Missouri at 711 before the hearing.

3. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Nancy Dippell, Senior Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 30th day of August, 2017.

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

| | | |
|------------------------------------|---|----------|
| DERALD MORGAN, RICK AND CINDY |) | |
| GRAVER, WILLIAM AND GLORIA PHIPPS, |) | |
| and DAVID LOTT, |) | |
| |) | |
| Complainants, |) | |
| |) | |
| v. |) | File No. |
| |) | |
| CARL RICHARD MILLS, |) | |
| CARRIAGE OAKS ESTATES, |) | |
| DISTINCTIVE DESIGNS, and |) | |
| CARING AMERICANS TRUST |) | |
| FOUNDATION, INC. (f/k/a Caring |) | |
| Americans Foundation, Inc.) |) | |
| |) | |
| Respondents, |) | |

AMENDED COMPLAINT

1. Complainants reside at:

Derald Morgan, 108 Carriage Oaks Dr., Reeds Spring, MO 65737

Rick and Cindy Graver, 96 Falling Leaf Court, Reeds Spring, MO 65737

William and Gloria Phipps, 132 Falling Leaf Court, Reeds Spring, MO 65737

David Lott, 197 Falling Leaf Court, Reeds Spring, MO 65737

2. The utility service complained of was received at Complainants' addresses listed in Paragraph 1 above.

3. Respondents' address are as follows:

Carl Richard Mills, 209 Falling Leaf Court, Reeds Spring, MO 65737

Carriage Oaks Estates Homeowners Association, 209 Falling Leaf Court, Reeds Spring, MO 65737

Distinctive Designs, Ltd., 209 Falling Leaf Court, Reeds Spring, MO 65737

Caring Americans Trust Foundation, Inc., 209 Falling Leaf Court, Reeds Spring,
MO 65737

4. Respondents operate a public utility under the jurisdiction of the Missouri Public Service Commission.

5. The amount at issue is at least \$8,000.00.

6. Complainants now request the following relief:

a. Require respondents to transfer ownership of the wastewater treatment facility and water system, including necessary easements, to a proper entity where all owners are members of said entity, such as the existing homeowners' association.

b. Such further relief as deemed appropriate by the Public Service Commission under these circumstances.

7. The relief requested is appropriate because Respondents have violated several Missouri statutes and regulations, as follows:

a. Respondent Carl Richard Mills caused the ownership of the wastewater treatment facility and water facility to be transferred to Caring Americans Trust Foundation, Inc.

b. Respondent Caring Americans Trust Foundation, Inc., is a non-profit corporation organized for charitable and educational purposes, and was not formed as a water and sewer company.

c. Complainants are not members, shareholders, owners of Caring Americans Trust Foundation, Inc., and have no say whatsoever in the control or operation of this company.

d. Further, Respondent Caring Americans Trust Foundation, Inc., has not obtained a Certificate of Convenience and Necessity from the Public Service Commission, nor has it received a valid Operating Permit from the Missouri Department of Natural Resources.

e. Respondent Carl Richard Mills previously tried to establish rates for the water and sewer service; however, he did not obtain proper authorization from the Public Service Commission before doing so.

f. In 2015, in a Stone County Circuit Court lawsuit, the Court ordered that Respondent Carl Richard Mills owned the wastewater treatment system and water system, thus making these systems his responsibility.

g. In spite of this order, Respondent Carl Richard Mills charged the homeowners' association for all operational costs of the facilities and other undocumented services.

h. The property owners in Carriage Oaks Estates subdivision continue to be charged for the operation costs of the facilities, even though Respondent Caring Americans Trust Foundation, Inc., has not been authorized to charge for these services and has not obtained a valid Operating Permit.

8. The Complainants have taken the following steps to present this matter to the Respondents to no avail:

a. The above described issues have been discussed during at least one meeting of the homeowners' association.


b. A demand letter was sent to Respondents' counsel on May 31, 2016, setting for these issues and requesting a resolution without having to file a complaint. A copy of the May 31, 2016, Demand Letter is attached hereto as **Exhibit A**.

c. Respondents now refuse to communicate with Complainants regarding this issue.

Respectfully submitted,


SCHENEWERK & FINKENBINDER,
ATTORNEYS AT LAW, LLC

By:


Karl Finkenbinder, Mo. Bar No. 59425
Cody A. Fenton, Mo. Bar No. 65526
P.O. Box 123
500 W. Main St., Suite 305
Branson, Missouri 65616
[417] 334.7922; [417] 334.7923 FAX
Email: karl@sfalawfirm.com
COUNSEL FOR COMPLAINANTS

CERTIFICATE OF SERVICE

The below signed counsel hereby certifies that a true and accurate copy of the foregoing was sent to Bryan Wade, counsel for respondents, via email (Bryan.Wade@huschblackwell.com) on this 11 day of August, 2016.


Cody A. Penton, Counsel for
Complainants

August 3, 2016

Date

/s/ J. Derald Morgan

Signature of Complainant

417-338-0296

Complainant's Phone Number

J. Derald Morgan

Complainant's Printed Full Name

Alternate Contact Number

jderaldmorgan@hotmail.com

Complainant's E-mail Address

8-3-16
Date

417-872-1219
Complainant's Phone Number

Alternate Contact Number

8-3-16
Date

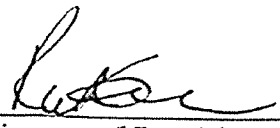
417-839-7309
Complainant's Phone Number

Alternate Contact Number

Date

Complainant's Phone Number

Alternate Contact Number



Signature of Complainant

RICK GRAVER
Complainant's Printed Full Name

Complainant's E-mail Address


Signature of Complainant

CINDY GRAVER
Complainant's Printed Full Name

@hotmail.com
Complainant's E-mail Address

Signature of Complainant

Complainant's Printed Full Name

Complainant's E-mail Address

Email: karl@sfalawfirm.com
COUNSEL FOR COMPLAINANTS

7-24-16
Date

William A. Phipps
Signature of Complainant

573-578-8787
Complainant's Phone Number

William A. Phipps
Complainant's Printed Full Name

Alternate Contact Number

bebosphipps@embargo.mai.com
Complainant's E-mail Address

7-24-16
Date

Gloria Phipps
Signature of Complainant

573-578-8787
Complainant's Phone Number

Gloria Phipps
Complainant's Printed Full Name

Alternate Contact Number

bebosphipps@embargo.mail.com
Complainant's E-mail Address

Date

Signature of Complainant

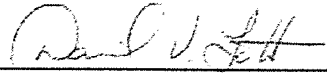
Complainant's Phone Number

Complainant's Printed Full Name

Alternate Contact Number

Complainant's E-mail Address

August 2, 2016
Date


Signature of Complainant

417-527-1432
Complainant's Phone Number

David V. Lott
Complainant's Printed Full Name

Alternate Contact Number

david@missouriholding.com
Complainant's E-mail Address

Date

Signature of Complainant

Complainant's Phone Number

Complainant's Printed Full Name

Alternate Contact Number

Complainant's E-mail Address

Date

Signature of Complainant

Complainant's Phone Number

Complainant's Printed Full Name

Alternate Contact Number

Complainant's E-mail Address



Russ Schenewerk' (Also licensed in AR)¹
Karl Finkenbinder (Also licensed in OK)²
Joshua Baker
Cody A. Fenton
Jacqueline Bryant
Nicolas Grimwood*

Direct email: karl@sfalawfirm.com

May 31, 2016

Bryan Wade
Husch Blackwell
901 St. Louis Street, Suite 1800
Springfield, MO 65806

Re: *Transfer of Carriage Oaks Water and Sewer Systems to Caring American Foundation, Inc.*

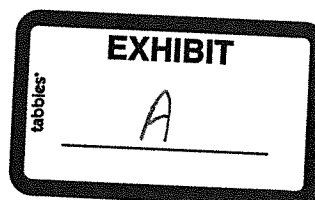
Dear Bryan:

As you know, at the HOA meeting, your client notified the Membership that ownership of the water and sewer systems were transferred from the developer, Mr. Mills, to Caring Americans Foundation, Inc. ("CAF"), a non-profit corporation formed exclusively for charitable and educational purposes. However, as I am sure you are aware, CAF would not be authorized to provide water and sewer services to Association members without first obtaining an operating permit from the Missouri Department of Natural Resources ("DNR"), and a certificate of convenience and necessity from the Public Service Commission ("PSC").

Pursuant to 10 CSR 20-6.010, All persons who build, erect, alter, replace, operate, use, or maintain existing point sources, or intend these actions for a proposed point source, water contaminant sources, or wastewater treatment facilities shall apply to the department for the permits required by the Missouri Clean Water Law and these regulations. 10 CSR 20-6.010(1)(A). Further, All applicants for construction permits or operating permits shall show, as part of their application, that a permanent organization exists which will serve as the continuing authority for the operation, maintenance, and modernization of the facility for which the application is made. 10 CSR 20-6.010(3)(A).

CAF, however, is not a valid continuing authority for purposed of providing water and sewer service to Association members. 10 CSR 20-6.010(3)(B) provides a list of continuing authorities that may be issued an operating permit for water and sewer services; CAF, however, would not fall under any of the categories listed. While CAF could attempt to take the position that it would qualify as a continuing authority under 10 CSR 20-6.010(3)(B)(3), this argument would fail because CAF was not formed as a water or sewer company; it was formed as a non-profit corporation for chartable and educational purposes. Even if CAF were able to establish it is a continuing authority under 10 CSR 20-6.010(3)(B)(3), CAF would still need to acquire a certificate of convenience and necessity from the PSC prior to providing services, and would be subject to PSC regulation.

P.O. Box 123
500 W. Main St., Suite 305
Branson, MO 65616



Phone: (417) 334-7922
Fax: (417) 334-7923
Email: info@sfalawfirm.com
www.sfalawfirm.com

Letter to Bryan Wade
Re: Carriage Oaks HOA
May 31, 2016
Page 2

SCHENEWERK & FINKENBINDER
ATTORNEYS AT LAW, LLC

It should also be noted that CAF would not be exempt from PSC regulation simply because it is a non-profit corporation. While there were statutory provisions enacted in 1997 to authorize non-profit organizations to operate water and sewer system free of PSC authority, CAF would not fall into this category because it is not a non-profit water or sewer corporation organized under Chapter 393 RSMo. Further, CAF would not be eligible to convert to a non-profit water or sewer corporation because it was not originally organized for the purposes of providing water and sewer services. *See*, §393.827 (sewer) and §393.903 (water).

Because CAF is not a continuing authority for purposes of providing water and sewer services, and because CAF would not be exempt from PSC regulation, CAF is not authorized to provide or charge Association members for water and sewer services. Notably, though, the Association could be a continuing authority for purposes of obtaining an operating permit, provided that certain guidelines detailed in 10 CSR 20-6.010(3)(B)(5) were complied with.

Accordingly, demand is hereby made that, within 15 days, Mr. Mills: (a) create a non-profit water and sewer corporation with all Association members being members of the water and sewer corporation, and then strictly adhere to the statutory requirements detailed in §§ 393.825-.861 and 393.900-.954 – including the requirement that the entity refund to their membership all revenues in excess of their operating expenses; (b) then transfer all ownership rights to the water and sewer facilities to the newly formed non-profit corporation, along with any required easements so that the corporation may apply for an operating permit; and (c) ensure that the sewer and water corporation is in compliance with DNR and PSC requirements – including obtaining a certificate of convenience and necessity. My clients also demand that Mr. Mills have the systems inspected to ensure that they are in full compliance with all DNR requirements and code.

In the event that Mr. Mills fails to comply with this demand, my clients would be forced to report Mr. Mills' misconduct to DNR and the PSC. In addition, they may be forced to initiate legal proceedings against Mr. Mills and CAF, and petition the PSC to conduct a judicial review of CAF for unlawfully engaging in the provision of water and sewer services for gain without certification.

After reviewing the relevant provisions, I think you would agree that Mr. Mills would be subject to civil liability to the Association and the PSC for operating water and sewer services without the proper permits and certifications; as such, it would very much be in your client's best interest to comply with our demands.

Respectfully,


Karl Finkenbinder

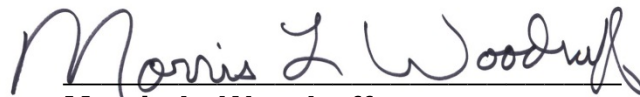
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 10th day of October 2017.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

October 10, 2017

File/Case No. WC-2017-0037

**Missouri Public Service
Commission**

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bryan.wade@huschblackwell.com

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karl@sfalawfirm.com

Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,


Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.