

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
Docket No. DW 22-082

RESIDENTS OF COLONIAL DRIVE SUPPLEMENTAL BRIEF

The residents of Colonial Drive (Residents), pursuant to the Commission’s Prehearing Order dated April 26, 2023, which requested parties to “review relevant documentation from municipal and state entities regarding approvals and/or permissions for the installation of a sewer system as part of the Colonial Drive subdivision” file the instant supplemental brief. In immediate response to that order, the Residents provided known approval records as part of its initial Brief as Attachment E. However, given the press of time, the Residents are only now able to provide the Commission with an analysis of those approval records.

1. Attachment E contains the Center Harbor Christian Church’s Wastewater Connection Permit and Wastewater Discharge Permit applications, filed in early 2005 with the N.H. Department of Environmental Services (NHDES), for the 14-lot subdivision. A summary table of the materials in attached as Attachment F.

2. The permit application materials show that T.R. Selling Engineering, P.C. filed the application materials on behalf of the Center Harbor Christian Church. Selling filed revised engineering plans to move sewer lines and private water supply wells so as to remove conflicts between the two, again, on behalf of the Center Harbor Christian Church. Throughout the application materials, Center Harbor Christian Church is repeatedly identified as the owner of the subdivision and the proposed sewer system to be constructed in that subdivision.

3. The materials in Attachment E were obtained by the Residents from NHDES. NHDES represented to the Residents that the materials represented all that exist in NHDES's files concerning the sewer system.

4. The application materials in Attachment E corroborate the land records publicly available at the Carroll County Registry of Deeds which show that the Center Harbor Christian Church owned the subdivision.

5. The records at the Carroll County Registry of Deeds would have been publicly available at the time Center Harbor Christian Church filed, on February 9, 2018, to change its name to Agape Community Church. If, as Agape contends, it purchased the debt and assets of Center Harbor Christian Church on or before February 9, 2018, a due diligence search of the land records would have revealed to Agape the recorded subdivision plans and associated sewer easements depicted on those plans. For that reason, the Residents do not agree with Agape's position that it didn't know that it owned sewer easements and sewer infrastructure. On the contrary, the records were publicly available.

6. RSA 362:4 makes clear, a customer of a water utility may only terminate water service if that customer can demonstrate the ability to comply with the requirements of RSA 485-A:29 and RSA 485-A:30-b. RSA 485-A:29 requires NHDES approval of subdivisions of land and NHDES approval of sewage disposal systems. RSA 485-A:30-b requires protective well radii for private water supply wells and prohibits sewer systems from being within that well radii. As shown on page 43 of Attachment E (wetland delineation plan), each lot's 75-foot protective well radius comprises a large area of the lot, such that there is not sufficient room left over, after deducting for building set backs, for individual septic systems. Page 43 corroborates

that Center Harbor Christian Church needed to install a public sewer system in order to subdivide the property into as many lots as it did.

7. The legislature amended RSA 362:2 in 1986 to extend the Commission's jurisdiction to sewer systems. The evidence presented shows that Center Harbor Christian Church constructed the sewer system in 2006, which was well after the 1986 amendment to RSA 362:2. In short, the church should have known that it was regulated by the Commission.

8. After 1986, a number of sewer systems filed for either franchise approval or exemption from regulation, including a corporation that was a nonprofit, similar to Center Harbor Christian Church. See, *Resort Waste Services Corporation*, Order No. 19,336 dated February 28, 1989 in Docket No. DR 88-164 (franchise application and rates set for 69 customers of nonprofit corporation). Other entities filed for either franchise approval or exemption: *Eastman Sewer Company, Inc.* Order No. 19,600, dated November 2, 1989 in Docket No. DS 88-117 (franchise approval for service to "several hundred" residences of the Eastman development); *Woodbound Inn*, Order No. 19,281 dated January 5, 1989 in Docket No. DS 88-98 (exemption); and *Lorden Commons Sewer Company, LLC*, Order No. 25,253 dated July 22, 2011 in Docket No. DW 11-139 (seeking franchise for proposed residential development with 50 initial homes). The point being, Commission regulation or exemption of sewer system was not a new concept by the time the church was constructing the Colonial Drive residential subdivision and sewer system, even for nonprofits.

9. Regardless of whether the church did know or should have known that its sewer system was subject to regulation by the Commission in addition to regulation by NHDES, ignorance of the law is not an excuse. See *Appeal of Mader*, 174 N.H. 520, 525 (2021) (appeal

of BTLA decision where Court upheld that taxpayer and taxpayer’s attorney were presumed to know the law and that “[i]gnorance of the law is no excuse” even in an administrative setting.)

10. In conclusion, the Residents of Colonial Drive respectfully aver that the evidence submitted to the Commission in this proceeding demonstrates a *prima facie* case of church ownership of the sewer system which triggers the Commission’s jurisdiction to review whether safe and adequate service is being provided and whether it is appropriate to place the Colonial Drive sewer system into receivership pending the church bringing the sewer system into compliance with Commission regulations.

11. The Residents thank the Commission for the opportunity to provide this supplemental brief.

Respectfully submitted,

Residents of Colonial Drive

By its Attorney,

Date: April 28, 2023

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Certificate of Service

I hereby certify that a copy of the foregoing supplemental brief has been emailed this day to the Docket Related Service List for this docket.

Date: April 28, 2023

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