

STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

Docket No. DW 22-082

AGAPE COMMUNITY CHURCH SEWER SYSTEM

OBJECTION TO MOTION TO CONTINUE HEARING

NOW COMES, the residents of Colonial Drive (Residents), pursuant to Puc 203.07(e), and object to Agape Community Church's (Church) motion for a sixty (60) day continuance of Thursday's hearing. In support of this objection, the Residents state as follows:

1. Requests to postpone hearings are governed by Puc 203.13. Puc 203.13(a) states that a "party requesting postponement of a hearing shall file a request...in writing...at least 7 days prior to the date of hearing." The Church emailed a copy of the motion to the Resident's counsel on Sunday, January 8, 2023, which is 4 days, not 7 days, before the scheduled hearing. On this basis alone, the Commission should deny the motion.

2. The second prong of Puc 203.13 is that the Commission will only grant a motion to postpone a hearing if it finds that to do so would "promote the orderly and efficient conduct of the proceeding." To this point, the only argument the Church makes in support of its request for an additional 60 days is that newly requested legal counsel is still conducting a conflicts check and can't make Thursday's hearing. See Motion at para. 6. The Church admits, in paragraph 4, that it has legal counsel, Phillip Marbury, Esq., and that there is an emergency situation regarding the sewer system.

3. The Residents aver that waiting an additional 60 days to determine RSA 362's applicability to this emergency, given that the sewer pumps failed in August and that the Church

has known of this hearing since December 9, 2022, patently does not promote the orderly and efficient conduct of the proceeding.

4. The Residents can think of no situation where allowing an emergency to continue for an additional 60 days is consistent with the public interest. The legislature mandated in RSA 374:1 that utilities provide “safe and adequate” service. The Commission is authorized under RSA 374:41 to act not only when a utility has failed to provide such service but also when the utility is “about to fail” to provide the service required by law. The quickness by which the legislature seeks failures to be addressed is seen in RSA 374:42 which requires that answers to complaints be due “not exceeding 20 days”. Further, under Puc 204.02, utilities are to respond to complaints “no later than 10 days from the date the complaint is received by the utility.” Here, the Church received the Resident’s petition on December 2, 2022. Earlier, on November 22, 2022, the Church received the Resident’s request that the NH Department of Environmental Services (NHDES) enforce against the Church. The Church’s attempt to further delay its response to the emergency is contrary to the public policy of promptness contained in these statutes and rules.

Sua Sponte Waiver Issue

5. Puc 201.05 allows the Commission to waive application of a rule if the Commission finds that: (1) waiver of the rule serves the public interest; and (2) the waiver will not disrupt the orderly and efficient resolution of matters before the Commission. In determining the public interest, the Commission considers whether: (1) compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or (2) the purpose of the rule would be satisfied by an alternative method proposed.

6. Although the Church made no argument for waiver, in the event the Commission *sua sponte* considers this argument, the Residents argue a waiver would be contrary to the public interest. The sewer system has failed. The Residents are being threatened with eviction by the Town of Moultonborough from their homes if the sewage overflows the holding tank. Further, the Church has failed to act to address the complete failure of the sewer system and Lamprey Suburban Septic Service (Lamprey) has stepped in and has been pumping the holding tanks nearly daily, since August 10, 2022, at great expense to Lamprey. See Exh 1, pages 37-43, which contains a list of dates Lamprey has pumped the holding tanks as well as the costs Lamprey has incurred. In addition to Lamprey's expense, the Residents themselves have prepaid Lamprey for installation of the new pumps. Thus, both Lamprey and the Residents are suffering actual financial harm as a direct result of the Church delaying its response. There is urgency for this Commission to make a determination on whether the circumstances of the Residents being served by a non-municipal sewer system that the Residents do not own triggers Commission jurisdiction under RSA 362:2 and RSA 362:4. Delaying this determination will very likely either cause Lamprey more uncompensated expense or Lamprey will stop pumping and the Residents will be evicted from their homes because of the resulting environmental emergency.

7. With respect to onerousness and an alternative method, the undersigned counsel informed Attorney Marbury that the Residents would not object to a request for virtual attendance, even given the lateness of such a request, if it would assist the Church's preferred counsel in attending the hearing.

Ownership of Sewer System

8. In paragraph 7 of its motion, for the first time, the Residents are learning that the Church seeks to absolve itself of responsibility for the sewer system in the subdivision that it

built. The Church states that it “had nothing to do with the subdivision of land or the installation of the septic system that the residents of Colonial Drive use.” The publicly available facts obtained by the Residents, however, do not support the Church’s claim:

i. The Resident’s petition at paragraph 1 describes the multiple names under which the Church has operated: Center Harbor Christian Fellowship, Center Harbor Christian Church, and Agape Community Church. The name change filings from the NH Secretary of State are attached as Attachment A. Also included in Attachment A are screen captures, as of January 9, 2023, that depict the Church as in “Good Standing” from the time it was initially formed to present and, importantly, that it has not dissolved since it was formed. Although the Church changed its name over the years, it retained its original legal corporate entity. The Church may wish to argue that its change in officers means that it is a different entity, but merely changing officers does not dissolve and create a legal corporate entity. Here, the Church has been and still is registered with the NH Secretary of State and Charitable Trusts Unit of the Attorney General’s Office and has continuously held utility property it reserved from the subdivision.

ii. The Town of Moultonborough tax records show that the present owner of the Church is Agape Community Church and that it has continuously owned its church parcel since August 28, 1992 when it acquired it by deed recorded at Book 1497, Page 805. See Attachment B, 80 Bean Road tax card and GIS map. Book 1497, Page 805 is attached to the Resident’s petition (Exhibit 1, pages 13-16). The deed is to Center Harbor Christian Fellowship, which is Agape Community Church’s previous name.

iii. Attachment C, is a copy of the subdivision plan found at Exhibit 1, pages 23 and 24 attached to the Resident's petition. The subdivision plan is clearly labeled for "Center Harbor Christian Church". The sewer utility easements the Church retained are clearly identified in the subdivision plan.

iv. The Church's retention of the sewer utility easements is also depicted in the declarations attached to the petition (Exhibit 1 at 25 – 32). In 2004, the Church recorded a *Declaration of Covenants, Restrictions and Easements* (Book 2498, Page 533) but the document did not reference a subdivision plan. The Church corrected this by recording a First Amendment at Book 2584, Page 407 to specifically reference that the intended reference was to the Plan at Plan Book 213, Pages 27-28. This latter filing cured the initial defect. The *Declaration*, which is auto-renewing per Article 6.2, reserved the following property rights under Article III:

3.1 The developer reserves in all Lots, and all Lots shall be conveyed subject to easements for all or any of the following uses and purposes: ...

(b) Ditches, pipes and culverts for surface water drainage and sewer, water and gas mains and pipes; ...

(d) Any other method of conducting and performing any public or quasi-public utility or service function over or beneath the surface of the ground; ...

(f) Installing, replacing, repairing, and servicing any of the foregoing.

Although under Section 3.2, the Church reserved the right to assign the easements, the Carroll County Registry of Deeds shows no such assignments. Additionally, although under Article V, *Water*, the *Declaration* states owners are responsible for their own water supply, which is consistent with Env-DW 504.07 that water supply infrastructure within the lot is the responsibility of the property owner, there was no analogous statement for sewer or any statement that would change the usual

convention that property owners are responsible for only the service line tying into the sewer main.

v. On page 5 of Attachment A, Center Harbor Christian Church states that “Center Harbor Christian Church will be responsible for the proper operation and maintenance of the proposed sewerage pump station at the above referenced residential subdivision until it is taken over by the Bay District Sewer Commission or an interim owner.”

vi. According to Bay District, it never acquired the Colonial Drive sewer system from the Church. The Residents anticipate that the NHDES will confirm this fact at Thursday’s hearing.

vii. The October 23, 2006 engineering report for the Town of Moultonborough’s inspection of the Colonial Drive road also notes that the entity responsible for the subdivision was “Center Harbor Christian Church”. See Attachment D.

9. Given these publicly available facts, and the lack of any record of conveyances from the Church to another entity of its utility assets and easements within the subdivision, the Residents dispute the Church’s statement that it “had nothing to do with the subdivision of land or the installation of the septic system that the residents of Colonial Drive use.”

10. In conclusion, given the urgency of this emergency and the need to determine as soon as possible who is financially responsible for the repair, operation, and maintenance of the Colonial Drive sewer system, the Residents urge the Commission to deny the Church’s request to postpone the hearing. The Residents are facing eviction if the holding tanks overflow, even though they have fully prepaid Lamprey for the installation of the needed sewer pumps.

Lamprey is incurring great expense to avert the pending environmental emergency and has advised the Residents that the new sewer pumps will not be installed until Lamprey can receive certainty on who will pay the emergency pumping costs. The Church's financial records are publicly available from the NH Attorney General's Office-Charitable Trusts Unit and show cash flow and equity. Notwithstanding this cash flow and equity, the Church has demonstrated a lack of technical, financial, and managerial competence in operating the sewer system for the subdivision it developed even when its obligation was brought to its attention. The Residents respectfully request the Commission act on the Residents' petition post haste. An audit of the Church's books and records needs to occur, and utility rates need to be set. Operational management needs to be ordered. Financing, if needed, needs to be approved. A plan for sustainable delivery of safe and adequate service to the customers of Colonial Drive is urgently needed.

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WHEREFORE, the Residents respectfully request the Commission:

- A. Denay the motion to postpone Thursday's hearing; and
- B. Grant such other and further relief as may be just and reasonable.

Respectfully submitted,

Residents of Colonial Drive

By its Attorney,

Date: January 9, 2023

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Certificate of Service

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

Marcia A. Brown
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