

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DW 22-_____

AGAPE COMMUNITY CHURCH SEWER SYSTEM
CUSTOMER COMPLAINT FOR RECEIVERSHIP

The residents of Colonial Drive in Moultonborough (Residents) request the Commission open a receivership proceeding pursuant to RSA 374:47-a to oversee the emergency response to the failure of the sewer system owned by Agape Community Church and serving residents on Colonial Drive. In support of this request, the Residents of Colonial Drive state as follows:

Legal Name of Utility

1. On October 19, 1983, the Center Harbor Christian Fellowship registered itself with the NH Secretary of State's Office as a non-profit. On May 6, 1994, the church filed articles of amendment and changed its name to Center Harbor Christian Church. On February 9, 2018, the church informed the NH Secretary of State that it was changing its name to Agape Community Church (Church). The Church is registered with the Attorney General's Office-Charitable Trusts Unit under Agape Ministries Servants, Inc., No. 32958, with a physical address given of 80 Bean Road, Moultonborough.

Ownership of Sewer Assets

2. In 1992, the Center Harbor Christian Church purchased its 3.20 acre parcel from ERB Realty (Book 1497, Page 805). This lot is depicted on ERB Realty's plan recorded at Plan Book 131, Page 29 and is the lot occupied by the Church buildings. Deeds and plans of ownership are attached to this complaint as Attachment A. In January 2000, the Church

recorded its purchase of the 18.98-acre parcel denoted on ERB's Plan as Remaining Lot 1 (Book 1846, Page 338). In 2006, the Church filed its subdivision plan (Plan Book 213, Pages 27-28, "Subdivision Plan – Lands of Center Harbor Christian Church (Tax Map 40, Lots 38 & 38F) Bean Road, Moultonborough, Carroll County, NH" dated 22 November 2004"). The Plan shows Colonial Drive entering the Church's 3.20 acre lot from Bean Road and proceeding into the 18-acre back parcel. The Plan also shows the plans for a pump station, sewer facilities, and sewer easements within the development. The Church proceeded to construct the development, road, and sewer system assets, mostly within the road right of way.

3. Between late 2006, in 2009, 2010, 2011, 2012, and 2015, the Church sold lots in the development. Homes were constructed that connected to the sewer system.

Applicable Legal Authorities

4. Pursuant to RSA 362:2,

"[t]he term 'public utility' shall include every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court, except municipal corporations and county corporations operating within their corporate limits, owning, operating or managing any plant or equipment or any part of the same for the conveyance of telephone or telegraph messages or for the manufacture or furnishing of light, heat, *sewage disposal*, power or water for the public..." (emphasis added).

Pursuant to RSA 362:4,

"[e]very corporation, company, association, joint stock association, partnership, or person *shall be deemed to be a public utility by reason of the ownership* or operation of any water or sewage disposal system or part thereof. If the whole of such water or sewage disposal system shall supply a less number of consumers than 75, each family, tenement, store, or other establishment being considered a single consumer, the commission may exempt any such water or sewer company from any and all provisions of this title whenever the commission may find such exemption consistent with the public good." (Emphasis added).

Pursuant to RSA 374:1,

“Every public utility shall furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable.”

Pursuant to RSA 374:47-a,

For regulated public utilities having gross annual revenues less than \$2,000,000, and when the Commission finds that the public utility is “failing to provide adequate and reasonable service to its customers, and that such failure is a serious and imminent threat to the health and welfare of the customers of the utility, the Commission may appoint a receiver or direct its staff to take such temporary action as is necessary to assure continued service.”

To date, the registry of deeds still shows that the Church still owns the sewer system. The Church has never filed annual reports with the Commission but presumably its utility revenues are less than \$2,000,000 because it has never billed customers. There is no record of the Church having sought exemption from Commission regulation. There appears to be no management at the Church capable of responding to the present emergency. Further, there is no homeowners association to otherwise be exempt under RSA 362:4, VII. For these reasons, the facts demonstrate that the Church is a regulated public utility that has failed to meet its obligation to provide safe and adequate service to the residents of Colonial Drive and the extraordinary remedy of receivership is necessary to correct this emergency. The Residents hope that the receivership proceeding will offer a forum and authority for the proper maintenance of the sewer system going forward, payment by the Church of the significant emergency response costs caused by its neglect, and the establishment of rates for service going forward.

Other Relevant Facts

5. The Residents purchased the lots with the incorrect disclosure that they were receiving entirely municipal sewer service. The Residents have been paying sewer bills from Bay District Sewer since purchasing their properties and connecting to the sewer system. Bay District Sewer is part of the State-owned sewer system under the Winnepesaukee River Basin

Program managed by the NH Department of Environmental Services. So far, ten of the lots have been developed. The Town of Moultonborough owns four lots due to tax lien sales.

6. In 2011, Scott Farah, son of the former president of the Church pleaded guilty to a Ponzi scheme and is in federal prison for fraud. Records from the registry of deeds also show that the Church was in bankruptcy between 2010 to 2015. The Residents are concerned that without proper oversight from the Commission, the Church will not financially respond to the maintenance neglect, the emergency state of the sewer system, or satisfy its obligation to provide safe and adequate service under RSA 374:1.

7. Due to the complete failure of the sewer pump station and the resulting serious and imminent threat to the health and welfare of the residents on Colonial Drive, the NH Department of Environmental Services has arranged for Lamprey Suburban Septic Service to pump, nearly-daily, the system to keep it from overflowing. The cost to respond to this emergency presently totals about \$42,600.00 and is rising. These costs are attached as Attachment B.

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WHEREFORE, the Residents of Colonial Drive respectfully requests the Commission:

- A. Open a receivership proceeding pursuant to RSA 374:47-a;
- B. Enforce the provision of safe and adequate service under RSA 374:1; and
- C. Grant such other and further relief as may be just and reasonable.

Respectfully submitted,

RESIDENTS OF COLONIAL DRIVE,
MOULTONBOROUGH

By its Attorney,

Date: December 2, 2022

By: *Marcia A. Brown*
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Certificate of Service

I hereby certify that a copy of the foregoing complaint and supporting materials have been emailed this day to the Department of Energy (energy-litigation@energy.nh.gov), (rorie.e.patterson@energy.nh.gov), (amanda.o.noonan@energy.nh.gov) ; the Office of the Consumer Advocate (ocalitigation@oca.nh.gov); to Attorney Kurt DeVyllder (kurt@devyllderlaw.com), counsel for Lamprey Suburban Septic Service; Attorney Matthew Serge (mserge@dwmlaw.com), counsel for the Town of Moultonborough; and Attorney Kerry Barnsley (Kerry.d.barnsley@des.nh.gov), counsel for the Department of Environmental Services.

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