

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

RESIDENTS OF COLONIAL DRIVE, MOULTONBOROUGH

Receivership of Community Church Sewer System

Docket No. DE 22-082

BRIEF OF POSITION OF THE LAMPREY SUBURBAN SEPTIC, INC.

Lamprey Suburban Septic, Inc. ("**Lamprey Septic**") hereby files its Brief of Position pursuant to the Public Utilities Commission ("**PUC**") instructions during the Pre-Trial Conference in this matter held on April 5, 2023 ("**the Conference**") , and respectfully states as follows:

1. On December 9, 2022, the Public Utilities Commission ("**PUC**") issued a Procedural Order re: Hearing on Preliminary Issues in which the Complaint "requested that the Commission open a receivership proceeding pursuant to RSA 374:47-a, enforce the provision of safe and adequate sewer utility service under RSA 374:1, and grant any other relief that may be just and reasonable". Lamprey Septic was the Septic Company referenced in the Complaint previously servicing the subject sewer system prior to ceasing all service due to non-payment.
2. On March 30, 2023, Lamprey Septic, through the undersigned, officially appeared and filed its Motion to Intervene in this docket pursuant to RSA 541-A: 32 and Puc §§ 203.02 and 203.17.
3. On April 5, 2023, Lamprey Septic, through the undersigned and Mr. Scott Lamprey, appeared and participated in the Conference; but, while the PUC heard Lamprey Septic's presentation and asked questions of Lamprey Septic during the Conference, the PUC did not clearly grant Lamprey Septic's Motion to Intervene at that time.

Lamprey Septic respectfully requests that the PUC officially grant its Motion to Intervene as soon as possible.

4. In short, Lamprey Septic respectfully asserts that the PUC has jurisdiction over this matter pursuant to the following:

- a. RSA 374:47 which authorizes the receivership as alleged by the Homeowners¹ since the issues involve an existing community sewer system (which meets the definition of a “public utility” under RSA 362:2 and there is no record of an exemption concerning the same);
- b. RSA 363:17-a which empowers the PUC to act broadly as arbiter between the interests of a utility and its customers;
- c. RSA 365:37 which recognizes that the PUC has power to conduct a broad array of investigations, including whether to extend a utility into new territory, to discontinue service and for authority to sell all or part of a utility; and
- d. RSA 371:1 et seq. broad power of eminent domain concerning utility property.

5. Under such authority, Lamprey Septic respectfully requests that the PUC cause other necessary parties, namely the Town of Moultonborough (“**the Town**”), the New Hampshire Department of Environmental Services (“**DES**”), the Bay District Sewer Commission (“**BDSC**”) and the Winnepesaukee River Basin Program (“**WRBP**”) (collectively “**the Additional Parties**”) to be joined in this proceeding to effect a full and fair resolution of all issues raised in this case, including but not limited to the payment of the substantial amounts due to Lamprey Septic for services rendered over

¹ Lamprey Septic refers to the Petitioners Residents of Colonial Drive as the “Homeowners” who consist of Robert and Theresa Landry, Keith and Karen Bell, Albert and Susan Solomon, Blaise and Cheryl Winter, George Correia and Valerie Marchand, Michael and Heidi Thurston as Trustees of the Thurston Family 2021 Trust, Thomas and Jerelyn Moreau, Steven and Nancy Hamilton, James Vocell and Paula Sheehan, and Jason Ray.

the course of several months to prevent the Sewer System from overflowing and causing an environmental catastrophe. As was referenced during the Conference, the Town owns several of the lots served by the Sewer System and approved the underlying subdivision creating these lots with the Sewer System (see Complaint Attachment A, Page 17 & 18 for a copy of the Subdivision Plan²). BDSC is the local Sewer Commission serving areas of the Towns of Center Harbor and Moultonborough, was involved in the approval of the above-referenced Subdivision Plan, and bills the Homeowners for their sewer service. WRBP is the regional sewer system into which effluent from BDSC flows.

6. As has been acknowledged in the Complaint, during the Hearing on Preliminary Issues before the PUC on January 12, 2023, and during the Homeowner's presentation at the Conference, Lamprey Septic was asked by Mr. James Talvy of DES and Homeowner Albert Solomon to start and then to continue to pump the duplex pump station ("the **Station**") for the sewer system in question to avoid septic spillage onto the Solomon property and adjacent wetlands due to Station failure. Lamprey Septic performed that necessary work starting on August 10, 2022 until January 16, 2023; and true and correct copies of a summary of Lamprey Septic's invoicing for such work totaling Fifty Three Thousand Eight Hundred Sixty-Two Dollars and Fifty Cents (\$53,862.50) are attached hereto as "**Exhibit A**".
7. Contrary to the representations made by the Homeowners counsel, Attorney Brown, Lamprey Septic has not been paid over \$17,000.00 for pumps. The true facts are these:

² Note 7 on the Plan refers to the Lots being serviced by a "municipal (off site) sewer".

- a. As noted above, Lamprey Septic was first approached in early August by Mr. Talvy at DES to help address the emergency situation involving this failing system;
- b. At that time, Mr. Lamprey was told by Mr. Talvy “don’t let it overflow” (meaning the Station) and that DES would see that he was paid; however, such payment was never forthcoming;
- c. Mr. Lamprey also interfaced with Mr. Solomon that the Homeowners needed figure out a Homeowners Association or other method quickly as the pumping bill was mounting; and Mr. Lamprey continued to perform these necessary services;
- d. By mid-October, Mr. Lamprey had made efforts to find replacement pumps and communicated with the Homeowners that he needed to be paid for his services to date as well as for the new pumps.
- e. While Lamprey Septic ordered the pumps, Lamprey Septic never took possession of the pumps from its distributor.
- f. While some of the Homeowners made payments toward the pumps, the full amount for the pumps was never paid nor were funds paid for the full amount of the pumpage charges, despite Mr. Lamprey’s offer of payment terms for the same;
- g. True and correct copies of the eight (8) Homeowners’ checks from late October 2022 totaling \$9,200.00 that were cashed by Lamprey Septic are attached as **“Exhibit B”**;

- h. True and correct copies of the two (2) Homeowners' (Bell and Landry) credit card payments which were "charged back" or cancelled by the Homeowners are attached as "**Exhibit C**";
 - i. True and correct copies of the seven (7) Homeowners' checks from mid-December 2022 totaling \$4,077.50 which were not cashed by Lamprey Septic are attached as "**Exhibit D**". Those checks were not cashed because Lamprey Septic and the Homeowners did not agree on the terms of a payment plan for the ongoing pumpage expenses; and at this late date, Lamprey Septic does not view the checks contained in Exhibit D as still valid;
 - j. Accordingly, Lamprey Septic has received a total of \$9,200.00 on an amount due for the pumpage of \$53,862.50, leaving a balance due of \$44,662.50.
8. Accordingly, Lamprey Septic respectfully requests that the PUC address as part of this docket the determination of the just, fair and reasonable amount due to Lamprey Septic for the pumpage charges totaling \$53,862.50, recognizing the off-set of the \$9,200 paid by some of the Homeowners, leaving a balance due of \$44,662.50 ("**the Amount**").
9. The Homeowners received the benefit of Lamprey Septic's services and Lamprey Septic continued to provide such services in reliance upon the various assurances that it would be paid.
10. Lamprey Septic recognizes that the Homeowners claim that only Agape Church ("the Church") is liable for Amount; but Lamprey Septic had no dealings with the Church.
11. Lamprey Septic also recognizes that the Church apparently did not know of its titular ownership of septic system in question, which are contrary to the references to the sewer system being a "municipal (off-site) sewer" on the above-referenced Subdivision Plan.

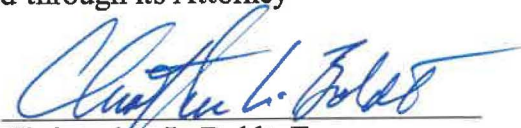
12. Lamprey Septic respectfully suggests that, as part of this Receivership, the Additional Parties be joined in this Docket since the Additional Parties, whether individually or collectively, may have access to financial resources to pay Lamprey Septic the Amount due for Lamprey "stepping to the plate" to prevent the environmental catastrophe and the closure of the Homeowners' homes had the work not been done.
13. Lamprey Septic does not have a recommendation of an appropriate Receiver at this time but reserves the right to provide such a recommendation at a later date if needed.

Respectfully submitted,

Lamprey Suburban Septic, Inc.

By and through its Attorney

April 26, 2023
Date

By: 
Christopher L. Boldt, Esq.

NH Bar No. 15301
Donahue, Tucker & Ciandella, PLLC
164 NH Rte. 25
Towle House, Unit 2
Meredith, NH 03253
(603) 279-4158
cboldt@dtclawyers.com

VERIFICATION

I, Scott Lamprey, President of Lamprey Suburban Septic, Inc., do solemnly swear and affirm that I have read the attached Brief of Position, and that all statements of fact and exhibits attached hereto are true and correct to the best of my knowledge and belief.

Scott Lamprey
Scott Lamprey, President

STATE OF NEW HAMPSHIRE
COUNTY OF CARROLL, ss

The foregoing instrument was acknowledged before me this 25 day of April, 2023, by Scott Lamprey, President of Lamprey Suburban Septic, Inc.



Brandin Taggett
Notary Public
My Commission Expires: 08/04/2026

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached Brief of Position of Lamprey Septic to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

April 26, 2023
Date

Christopher L. Boldt
Christopher L. Boldt, Esq.