

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION
RESIDENTS OF COLONIAL DRIVE, MOULTONBOROUGH

Receivership of Community Church Sewer System

Docket No. DW 22-082

RESPONSE TO "OBJECTION TO RESIDENTS OF COLONIAL DRIVE PARTIALLY
ASSENTED TO MOTION TO STAY PROCEEDING PENDING EXPLORATION OF ASSET
TRANSFER"

NOW COMES the State of New Hampshire, Dept. of Environmental Services ("NHDES") and requests that this Commission deny the relief requested in the pleading identified as "Objection to Residents of Colonial Drive Partially Assented To Motion to Stay Proceeding Pending Exploration of Asset Transfer" ("Objection").

1. As stated in its limited motion to intervene, for the second time in five weeks, the recent intervenor, Lamprey Suburban Septic, Inc. ("Lamprey") asks this Commission to force NHDES to be joined as a party.

2. Lamprey cites no authority allowing the Commission to require NHDES to become a party.

3. Lamprey also cites no coherent reason why NHDES would need to be a party to an action to determine whether a utility exists and whether such utility should be placed in receivership.

4. Lamprey's only reference to NHDES asserts that Lamprey believes that NHDES agreed to pay Lamprey for certain services.

5. Lamprey then asks the Commission to resolve this issue as part of the receivership process arguing that NHDES should be joined “so that the Board can determine as part of this Receivership who has the responsibility to pay Lamprey Septic for the services rendered.” Objection, pg. 3.

6. This has nothing to do with the issues before the Commission.

7. First, the Commission has no ability to adjudicate any claim by Lamprey against NHDES.

8. To make a claim against the State, Lamprey would either have to follow the process established for the N.H. Board of Claims or file suit in Superior Court as described in RSA 541-B. *See* RSA 541-B:9 (giving the N.H. Board of Claims or the N.H. Superior Court “original and exclusive” jurisdiction over such claims).

9. Given the disagreement over facts, NHDES would require a forum capable of adjudicating all applicable forms of relief including a request for attorney’s fees for frivolous claims should it become necessary. The Commission is not suited or empowered to grant any of the relief requested by Lamprey against it or for any claim NHDES may have against Lamprey.

10. Second, prior to, and to some extent during, the hearing held on January 12, 2023, Scott Lamprey, the president and sole director of Lamprey, made an assertion similar to those in the Objection.

11. Specifically, Mr. Lamprey asserted that Mr. James Talvy of NHDES told him that the State would pay Lamprey for certain work.

12. However, Mr. Lamprey disavowed this statement during the hearing, indicating that the State’s summary of what likely occurred – i.e., that NHDES merely asserted that the area needed to be pumped out – seemed accurate.

13. Specifically, NHDES summarized the likely exchange as: “‘This needs to keep being pumped. You can't just let this go into failure.’.... My understanding is that DES did not say ‘And we, the State, will pay you for that.’” T., pg. 82.¹

14. Rather than providing evidence that established a contractual relationship with the State – a contractual relationship that anyone in Mr. Lamprey’s position must know requires certain formalities – Mr. Lamprey responded by stating: “I think he [Talvy] was just encouraging me.” T., pg. 83.

15. Lamprey also admitted that he at no time believed that NHDES owned the system, believing instead that it was owned by the residents, the Town of Meredith, or the Bay District. T., pg. 72; 76.

16. Therefore, the assertions of Lamprey fail to state a claim and certainly fail to state a claim that can be resolved by the Commission.

17. NHDES points out, however, that if the Commission requests as a courtesy that NHDES attend any hearing, NHDES will make every effort to do so. NHDES requests, however, that the Commission provide notice to NHDES identifying any NHDES employee that should be present and what that person should be prepared to address.

Wherefore, NHDES respectfully requests that the Commission deny the relief requested against NHDES in the Objection.

¹“T., pg. __” refers to the transcript of the January 12, 2023.

Respectfully Submitted,

NH Department of Environmental Services

By and through its attorney

John M. Formella
Attorney General

6/2/23
Date

By: SE
K. Allen Brooks
NH Bar No. 16424
Senior Assistant Attorney General
Chief, Environmental Protection Bureau
33 Capitol Street
Concord, New Hampshire 03301-6397
(603) 271-3679
Kelvin.a.brooks@doj.nh.gov

CERTIFICATE OF SERVICE

I hereby certify that, on this day, I emailed a copy of the foregoing to the people listed on DW 22-082 Service List pursuant to N.H. Code Admin. Rule Puc 203.11.

6/2/23
Date

SE
K. Allen Brooks