

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DW 22-082**

**RESIDENTS OF COLONIAL DRIVE, MOULTONBOROUGH**

**Complaint by Residents of Colonial Drive, Moultonborough Against Agape**

**Community Church Sewer System**

**Order *Nisi* Granting Motion to Suspend Receivership**

**O R D E R N O. 26,901**

**November 8, 2023**

In this order, the Commission grants a motion to suspend the receivership petition filed by the residents of Colonial Drive in Moultonborough, New Hampshire. Based on the uncontested facts presented, the Commission finds the remaining questions raised in the petition for receivership moot and closes this docket.

The petition and subsequent docket filings, other than information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2022/22-082.html>.

**I. PROCEDURAL HISTORY & BACKGROUND**

On December 2, 2022, the Residents of Colonial Drive in Moultonborough (Residents) filed a complaint and petition to place a sewer system allegedly owned by Agape Community Church in receivership. The complaint requested that a receiver be appointed pursuant to RSA 374:47-a to oversee the ongoing emergency response for a failed sewer system that serves the Residents. A preliminary hearing was held on January 12, 2023 to consider several issues raised by the complaint, including whether a public utility existed and, if so, whether a receivership should be

established. No determination was made concerning whether or not a public utility existed.

On June 8, 2023, the Commission granted the Residents' motion to stay the proceeding. The motion to stay would provide time for the Residents to purchase the sewer system assets from the Agape Community Church. At the time of filing the motion to stay, the Residents noted that if they purchased the sewer system assets, then under RSA 362:4, VII, as a system serving its owners, the Colonial Drive system would be exempt from Commission regulation, and this outcome would render the present receivership request moot.

On October 9, 2023, the Residents filed a partially assented to amended petition to permanently suspend the receivership proceeding (Amended Petition). The Amended Petition further requests that the Commission approve the transfer of the sewer system assets and franchise to the Colonial Drive Sewer Association and exempt the association from regulation.

The Amended Petition details the steps the Residents have taken to form an association that would assume ownership of the sewer system. According to the Amended Petition, the Residents have obtained and provided a title opinion confirming the current ownership of the sewer system in Agape Community Church's predecessor.<sup>1</sup> The Residents have formed the Colonial Drive Sewer Association to assume ownership of the sewer system. The Residents have entered into a transfer of assets with the Agape Community Church. The Residents have each recorded individual Declarations and Acceptances of the Colonial Drive Sewer Association in the

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<sup>1</sup> On September 6, 2023, the Residents filed the opinion of Mark Dunn, Esq. who researched the ownership of the sewer lines in question. Attorney Dunn concluded that ownership of the Sewer lines and sewer pump station on Lot 13 vested in the Center Harbor Christian Church (which appears to be Agape Community Church's predecessor). See August 16, 2023, opinion of Attorney Mark Dunn.

Carroll County Registry of Deeds. *See* Docket Entry No. 37 filed on November 1, 2023. The Amended Petition states that the Residents have resolved the outstanding bills with Lamprey Suburban Septic, Inc.<sup>2</sup> The Residents, Agape Community Church and the Town of Moultonborough have reached a settlement in this matter. The settlement includes resolving the future ownership of the sewer assets. No party filed an objection to the Amended Petition.

## **II. COMMISSION ANALYSIS**

### **A. Request to Suspend Receivership Proceeding**

Order No. 26,841 (June 8, 2023) encouraged the parties to resolve ownership issues concerning the sewer system. The Amended Petition provides a resolution of the issues. The original petition was filed on December 2, 2022. At the time of filing the residents requested receivership pursuant to RSA 374:47-a and asserted that the Agape Community Church was not providing safe and adequate sewer services. On April 11, 2023, Agape Community Church filed a position statement. Agape Community Church denied knowledge that it owned the sewer system serving Colonial Drive residents. Agape Community Church indicated that it would turn over the land and system to “whomever” would manage it correctly. *See* April 11, 2023 position statement.

The PUC has jurisdiction to regulate the quality and safety of public utilities including sewer systems. *See* RSA 362:2 and RSA 362:4. If the Commission had determined that the sewer system was a public utility, and the Commission had determined that due to its failure the residents of Colonial Drive were posed with

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<sup>2</sup> Lamprey Suburban Septic, Inc. (Lamprey) was granted intervenor status in this matter on April 26, 2023. Lamprey asserted that it was owed over \$50,000.00 for work performed on the colonial drive sewer system. The Commission has previously held that it does not have jurisdiction over the issue of Lamprey’s request for compensation on work performed. *See* Order No. 26,841 (June 8, 2023)

serious and imminent threat to their health and welfare, a receiver could have been appointed. *See* RSA 374:47-a.

In this case, the parties have resolved any imminent and serious threat of the failing sewer system. The Amended Petition indicates that the failed pumps in the pump station have been replaced and arrangements have been made for periodic maintenance and inspection of the sewer system. *See* Amended Petition page 5. Given the steps taken to remediate the emergency, the Residents motion to suspend the receivership petition is granted.

**B. Request to Approve Transfer of Sewer System Assets and Exempt the Colonial Drive Sewer Association from Regulation.**

The parties have indicated that total resolution of this matter necessitates approval of the transfer of sewer system assets to the Colonial Drive Sewer Association and a finding that the homeowners association is exempt from regulation.

Concerning exemption of regulation, the Residents have formed a homeowners association to manage the upkeep and maintenance of the sewer system. The Residents' formation of the Sewer Association included recording declarations for said for each property in the registry of deeds. The Sewer Association ownership of the sewer system does exempt the sewer system from regulation. *See* RSA 362:4, VII. Order No. 26,841 encouraged the parties to pursue such a cooperative resolution to the outstanding issues and the Commission therefore confirms that Colonial Drive Sewer Association is exempt from Commission regulation.

To the extent that the parties have asked for the Commission to approve the transfer of the sewer system assets from Agape Community Church to the Colonial Drive Sewer Association, we lack jurisdiction to approve such transfer. Nonetheless, the Commission observes that the transfer is consistent with the type of cooperative

resolution of outstanding issues in this case that was envisioned by Order No. 26,841. Furthermore, we decline to issue a ruling concerning the initial ownership of the sewer system and whether it was a public utility as defined by RSA 362:2, as that ownership was not fully litigated and is effectively now moot based on the asset transfer to the Colonial Drive Sewer Association signed by the parties on September 8, 2023, and effective within 30 days of this order. *See* Amended Petition Exhibit B at 24.

**Based upon the foregoing, it is hereby**

**ORDERED NISI**, that subject to the effective date below, the Residents of Colonial Drive's Petition to Suspend Receivership Petition is **GRANTED**; and it is

**FURTHER ORDERED**, that Agape Community Church and the Residents of Colonial Drive may execute the Deed to Transfer and Easement Agreement for the Colonial Drive Sewer System on or after **December 8, 2023**; and it is

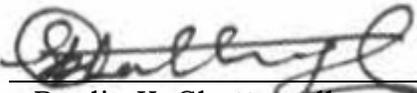
**FURTHER ORDERED**, upon transfer of ownership to the Colonial Drive Sewer Association the sewer system shall be exempt from regulations; and it is

**FURTHER ORDERED**, that all persons interested in responding to this order be notified that they may submit their comments or file a written request for a hearing, stating the reason and basis for a hearing, no later than **November 20, 2023** for the Commission's consideration; and it is

**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than **November 27, 2023**; and it is

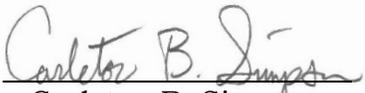
**FURTHER ORDERED**, that this order shall be effective **December 8, 2023**.

By order of the Public Utilities Commission of New Hampshire this eighth day of  
November, 2023.



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Pradip K. Chattopadhyay  
Commissioner



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Carleton B. Simpson  
Commissioner

# Service List - Docket Related

Docket#: 22-082

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