

THE STATE OF NEW HAMPSHIRE

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July 8, 2013

Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 S. Fruit St., Suite 10
Concord, New Hampshire 03301

Re: DW 13-101 Westgate Estates of Raymond Homeowners Association
Request for Exemption from Regulation as a Public Utility
Staff Recommendation for Approval

Dear Ms. Howland:

On April 2, 2013, Westgate Estates of Raymond Homeowners Association (Westgate) filed, pursuant to RSA 362:4, a Request for Exemption from Regulation as a Public Utility. Westgate is a homeowners association which currently operates a water system that serves 32 residential homes in the Town of Raymond. Of the 32 current customers taking service, 31 are association members and one is not a member. The subdivision in which Westgate operates has five remaining lots available for sale, and those lots will be served by the water system once they are developed. While the homeowners association operates the water system, it is still owned by the developer of Westgate Estates, Rockwood Construction, LLC (the developer). Once the five lots are sold, the system will be conveyed to Westgate.

Staff's review of the request has included two rounds of discovery; the responses to Staff's discovery requests are attached to this letter as attachments 1 and 2. In its request, Westgate states that since it was unaware until 2012 that a non-member was connected to the water system, the non-member has never been billed for water service. Current members of Westgate pay \$625 per year, which includes unmetered water service as well as other services provided by the association. For 2013 Westgate billed the non-member \$558 for water service, which is the amount that Westgate believes reflects the actual per-connection cost of providing service. See data responses Staff 1-2 and 1-3. The non-member has refused to pay, claiming that he has an agreement with the developer to receive water free of charge in perpetuity. The developer disputes this interpretation of an agreement to provide free water. Staff inquired as to the basis for the claim by the non-member, and Westgate provided a copy of the relevant page of the non-members purchase and sale agreement with the developer. See data responses Staff 2-1 and 2-2. The claim is based on language which states "subject to seller agreeing to tie in community water to said property at seller's expense."

Staff explored in discovery Westgate's intention as to the refusal of the non-member customer to pay for water service. Westgate advised Staff that it was relying on the advice of counsel that it could not terminate water service, either for members or non-members, but could only seek appropriate judicial relief for non-payment. Westgate provided a copy of that opinion from its counsel, and that letter is attached to the response to Staff 2-4.

Staff believes that, since Westgate as a homeowners association provides service to a non-member, it does not qualify for exemption from regulation under RSA 362:4, VII. It is therefore a public utility subject to the regulation of this Commission. It may seek a permissive exemption pursuant to RSA 362:4, I whereby Westgate serves less than 75 outside non-member customers. As a regulated public utility, however, Westgate is bound to the applicable provisions of Title 34. As such, it cannot provide free service under the prohibition found in RSA 378:14. Staff disagrees with the advice of Westgate's counsel and believes that, as a public utility, Westgate can avail itself of the processes found in the Commission's administrative rules, particularly Puc 1203.11 regarding disconnection of service.

Staff has had further discussions with Westgate regarding these issues. On May 10, 2013, Staff and Westgate requested a 60 day delay for further action in this docket, as Westgate wished to discuss its options for the water system with its full membership at its annual meeting in late June. The Commission approved that request by secretarial letter, directing Staff to update the Commission no later than July 8, 2013. Subsequent to its annual membership meeting Westgate advised Staff informally that the membership had determined to sell the water system to Hampstead Area Water Company (HAWC). On July 3 Staff received an email from Westgate, indicating that since it was expected to take "some time" for HAWC to move ahead with an acquisition, Westgate wished to go forward with their exemption request. That email is attached as attachment 3. Westgate also advised that the non-member customer has now agreed to pay the same water rate as member customers, and will be making monthly payments for the remainder of 2013 in order to pay the full annual amount of \$558.

Staff now believes that approval of Westgate's request for exemption from regulation pursuant to RSA 362:4, I is appropriate, and Staff provides its support for that exemption. The non-member customer will be charged the same rate as member customers and will be provided the same quality and quantity of water as that provided to members.

Thank you for your assistance in this matter. Please advise if there are any questions.

Sincerely,



Mark A. Naylor

DW 13-101 Westgate Estates of Raymond Homeowners Association
Staff Recommendation
Page 3 of 3

Director, Gas & Water Division

Attachments

Cc: Docket-Related Service List

Westgate Estates of Raymond Homeowners Association
PO Box 30
Candia, NH 03034

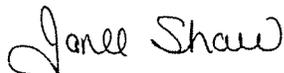
Marcia A. Brown, Esq.
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: DW 13-101 Westgate Estates of Raymond Homeowners Association
Request for Exemption from Regulation as a Public Utility

Dear Ms. Brown:

Enclosed please find one original and six copies of Westgate Estates response to Staff Discovery Requests Set 1.

Sincerely,



Janee Shaw
Westgate Estates President

WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION

Docket No. DW 13-101

Westgate Responses to Staff Set 1

Date Request Received: April 12, 2013

Date of Response: April 16, 2013

Request No. Staff 1-1

Witness: Jane Shaw

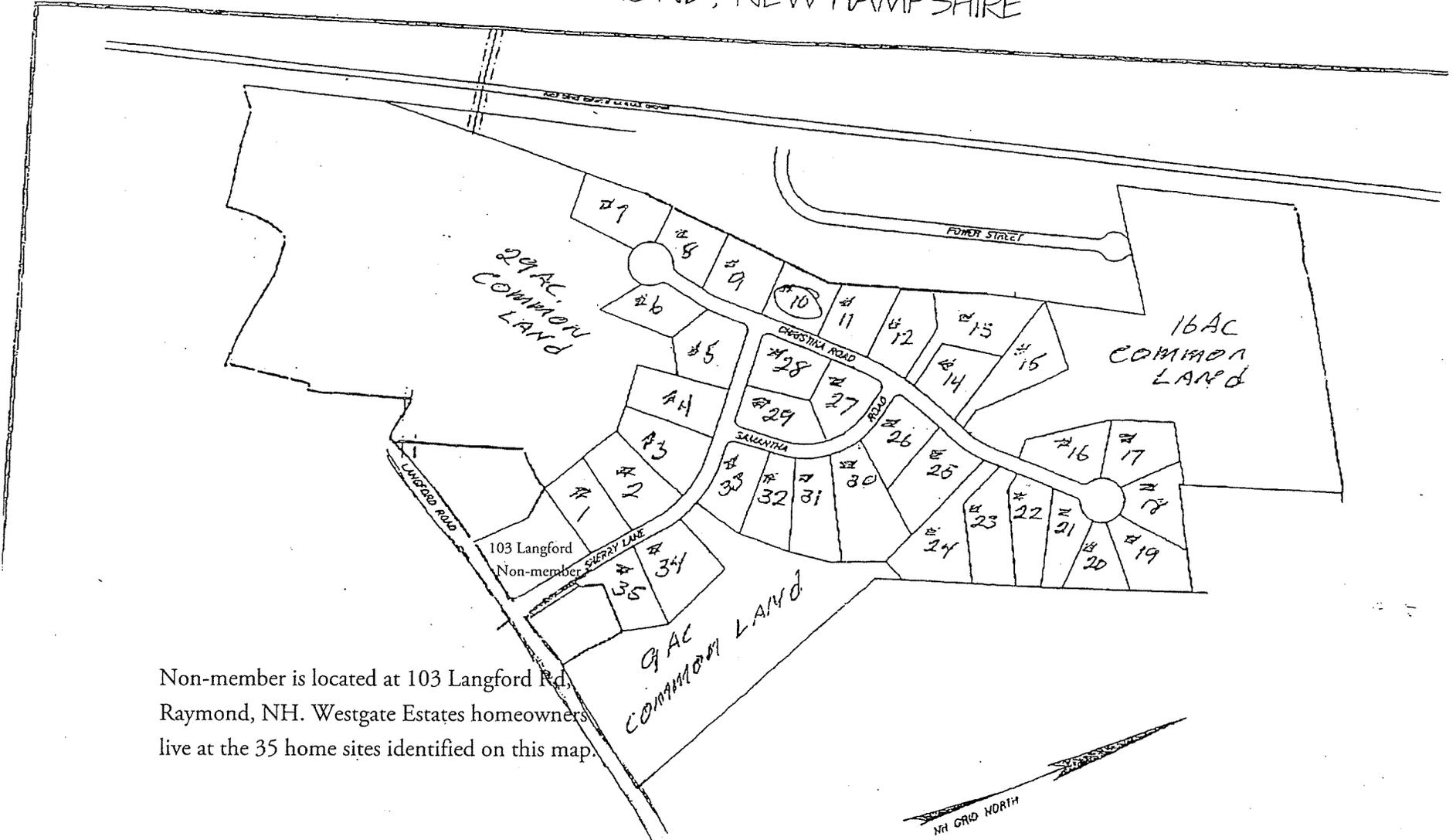
Staff 1-1

REQUEST: Please provide a map of the franchise area, which identifies all properties served (or to be served) as well as the location of the one non-member water customer.

RESPONSE: See attached map.

MAP OF THE FRANCHISE AREA
 Westgate Estates of Raymond, NH
 RAYMOND, NEW HAMPSHIRE

Staff 1-1



Non-member is located at 103 Langford Rd,
 Raymond, NH. Westgate Estates homeowners
 live at the 35 home sites identified on this map.

[Handwritten signature]

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WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION

Docket No. DW 13-101

Westgate Responses to Staff Set 1

Date Request Received: April 12, 2013

Date of Response: April 16, 2013

Request No. Staff 1-2

Witness: Janee Shaw

Staff 1-2

REQUEST: Please provide a copy of the Association's most recent budget which identifies all water service-related costs.

RESPONSE:

Westgate Estates Association 2013 Budget

Water System

Pennichuck	\$4,402
NH Electric Coop	\$5,464
DF Richard	\$1,318
NHDES Permit	\$313
Generator Maintenance	\$400
Pump Maintenance	\$2,687
Reserve	\$120

Other

Bank Service Charges	\$24
Insurance Premium	\$2,038
PO Box Fees	\$46
Postage/Stamps	\$58
Neighborhood clean up	\$232
Misc(Radar survey, gate, mowing)	\$600
Legal Fees	\$1,040

Subtotal \$18,741

NUMBER OF HOUSEHOLDS 30

EXPENSES PER LOT \$625

2013 budget assumes at least 30 households will pay \$625 for water and other expenses. When the budget was prepared, there were 6 undeveloped lots. In 2012, 29 Association members paid in full, 1 Association member was not current in their payments, and the non-member did not pay.

WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION

Docket No. DW 13-101

Westgate Responses to Staff Set 1

Date Request Received: April 12, 2013

Date of Response: April 16, 2013

Request No. Staff 1-3

Witness: Janee Shaw

Staff 1-3

REQUEST: Referencing the budget identified in Staff 1-2, please provide a calculation of the \$558 annual charge to the non-member customer.

RESPONSE: Calculation of 2013 charge to non-member

ASSOCIATION EXPENSES

Water System

Pennichuck	\$	4,402
NH Electric Coop	\$	5,464
DF Richard	\$	1,318
NHDES Permit	\$	313
Generator Maintenance	\$	400
Pump Maintenance	\$	2,687
Insurance Premium	\$	2,038
Maintenance Reserve Fund	\$	120
Subtotal	\$	16,741
NUMBER OF HOUSEHOLDS		30
EXPENSES PER LOT	\$	558

See Staff 1-2 for assumptions regarding number of households expected to make payments in 2013

WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION

Docket No. DW 13-101

Westgate Responses to Staff Set 1

Date Request Received: April 12, 2013

Date of Response: April 16, 2013

Request No. Staff 1-4

Witness: Janee Shaw

Staff 1-4

REQUEST: With respect to the non-member customer: a) Please indicate if the non-member customer is aware of this petition for exemption from PUC regulation; b) Please indicate if the non-member customer is supportive of this petition; c) Please indicate why the non-member customer has not yet paid for water service.

RESPONSE:

- A) The non-member customer is aware of this petition for exemption from PUC regulation.
- B) The non-member has not expressed support for or against the petition.
- C) The non-member purchased his home from the builder of Westgate Estates in 2004. At that time, the builder connected non-member's home to the Westgate water system. The Association had not been formed at that time. The Association Board became aware that the non-member was connected to the water system in 2012 and notified the non-member that the Association members expected the non-member to pay for use of the water. The non-member believes that he has an agreement with the builder to receive water free of charge in perpetuity and therefore has refused to make payment. The builder does not concur that such an agreement was made with the non-member. The Association Board met with the homeowner in March 2013 and requested payment for 2013 but not for prior years. At that time the non-member stated he would not pay for the water.

WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION

Docket No. DW 13-101

Westgate Responses to Staff Set 1

Date Request Received: April 12, 2013

Request No. Staff 1-5

Date of Response: April 16, 2013

**Witness: Bernard Rousseau,
Pennichuck Water Company**

Staff 1-5

REQUEST: Please provide evidence that the water system complies with all requirements of the New Hampshire Department of Environmental Services (NHDES) regarding suitability and availability of water, pursuant to RSA 374:22 III.

RESPONSE: Bernard Rousseau, Vice President of Pennichuck Water Company, has confirmed that Westgate Estates water system complies with all requirements of the New Hampshire Department of Environmental Services (NHDES) regarding suitability and availability of water, pursuant to RSA 374:22 III. Attached is Westgate's contract with Pennichuck regarding its services as a certified operator. If further information is needed, Mr. Rousseau is happy to provide this information. He may be reached at Pennichuck Water Service Company, 25 Manchester Street, Merrimack, NH 03054 Phone # (603) 913-2502

BR

SERVICE AGREEMENT

WESTGATE ESTATES, RAYMOND, N.H.

(Name of System, Town, State)

Agreement made this 1ST day of DEC., 2003, by and between PENNICHUCK WATER SERVICE COMPANY, a New Hampshire corporation (the "Service Company") having a business address of 4 Water Street, Nashua, New Hampshire and ROCKWOOD CONST., (the "System Owner") having an address of DUNSFIELD, New Hampshire.

WHEREAS, the System Owner is the owner of a certain community water system or non-transient, non-community water supply and distribution system consisting of well(s), pumping equipment, pipelines, storage tanks and other related equipment, located in RAYMOND, New Hampshire, which provides water service to approximately 36 service connections and/or to 140 people; and

WHEREAS, the System Owner desires that the Service Company manage and operate the System's water supply in compliance with the requirements of the New Hampshire Department of Environmental Services (NHDES) rules Env-WS, Chapter 300.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties hereto agree as follows:

1. Term. The term of this Agreement shall be for a period of twelve (12) months commencing on the date first written above. Following the initial term, the Agreement shall be automatically renewed unless one of the parties notifies the other party in writing a least ninety (90) days prior to the date it intends to terminate the Agreement. Notice shall be provided in the manner set forth in Paragraph 11 herein.

2. Service Charge. During the term of this Agreement, the System Owner shall pay to the Service Company a monthly charge pursuant to the attached Service Charges, Schedule 1, payable within thirty (30) days of the System Owner's receipt of the Service Company's monthly statement.

3. Duties of the Service Company.

a. Management and Operation. The Service Company shall be the designated Certified Operator of the System and shall monitor the quality of the water supply in the System in accordance with the attached Water Quality Testing Schedule, Schedule 2. Sampling requirements may be subject to change by NHDES. The Service Company will modify the sampling program as necessary and adjust the Service Charge accordingly. Management and operation shall include sample gathering, analysis, record keeping and reporting. The Service Company shall also provide physical inspection of the wellhead and of visible operating equipment such as pumps, motors, electrical equipment, piping, valves, metering equipment and treatment equipment.

b. Reports. The Service Company shall provide the System Owner with a report, on a quarterly basis, which sets forth certain operating data. The report shall include results of water quality testing, a record of total monthly pumpage, if available, and an identification of any changes observed in general operating characteristics of the System.

c. Advisory Service. The Service Company will recommend measures for remediation of water quality problems and recommend any minor or major repairs determined advisable by the Service Company. Implementation of remedial measures or repairs will be the responsibility of the System Owner.

d. Emergency Service, Repair Work. The normal monthly charge includes work performed pursuant to sections a., b. and c. above. Visits to the System are normally scheduled during regular business hours (8 AM to 4 PM, Monday through Friday). Emergency service calls or other non-routine work may be performed at the Owner's request subject to the rates and charges as specified in Schedule 3.

4. Representations and Warranties. The System Owner represents and warrants (a) that it has the requisite power and authority to enter into this Agreement and to take all action contemplated by this Agreement (b) that it has complied and will continue to comply with all federal, state and local laws, regulations and ordinances applicable to its operation and/or ownership of the System.

5. Limitation of Liability. The Service Company's duties hereunder are limited solely to the monitoring and reporting duties as set forth in Paragraph 3 herein. The Company assumes no responsibility for the condition, operation, maintenance, repair or service of the System, or for the quality or quantity of water produced and distributed by the System. Any and all such duties and responsibilities are solely those of the System Owner.

6. Indemnification. The System Owner shall defend, indemnify and save the Service Company harmless from any and all liability, loss, damage, expenses, causes of action, suits, claims or judgments arising from loss of life, injury to person or property arising out of the quality or quantity of water or otherwise, which may be imposed upon, incurred by or asserted against the System Owner, or its officers, employees, directors or agents resulting from (i) the use or operation of the System, except for any such liability arising as a direct result of the Service Company's willful misconduct or gross negligence, (ii)

the System Owner's failure to perform its obligations hereunder and its obligations to operate the System in accordance with applicable federal, state, and local laws, regulations and ordinances, or (iii) the interruption or cessation of water service due to any cause whatsoever. The System Owner shall, at its own cost and expense, defend any and all suits which may be brought against the Service Company, either alone or in conjunction with others, upon any such liability or claims and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against the Service Company. The Service Company shall have the right to participate in the defense of any suit brought against it, either alone or in conjunction with others, and the System Owner shall at its expense provide the Service Company with copies of any and all pleadings and other documents related to any such suit or proceeding.

7. Costs and Attorneys' Fees. The System Owner agrees to pay reasonable costs and attorneys' fees incurred by the Service Company in connection with the collection of monies due by the System Owner as a result of the System Owner's breach of this Agreement.

8. Default. In the event either party shall default in its obligations hereunder, the other party may declare a breach of contract and may enforce its rights in any proceeding at law or in equity, including, without limitation, reimbursement of all of its out-of-pocket expenses incurred in connection herewith.

9. Execution, Governing Laws, etc. This Agreement may be executed in any number of counterpart originals, each of which shall be an original for all purposes and all of which shall constitute one and the same instrument. This Agreement is to be governed by and construed under the laws of the State of New Hampshire and this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and may be canceled, modified or amended only by a written instrument executed by the parties hereto.

10. Entire Agreement. The terms of this Agreement constitute the entire agreement between the parties and no statements, oral or written, made by anyone have been relied upon by any party or shall bind any party unless expressly incorporated herein.

11. Notices. All notices required or permitted hereunder shall be deemed to have been given if delivered in hand or if mailed in any U. S. Post Office by certified or registered mail, postage prepaid, addressed to the Service Company or System Owner, respectively at the addresses first written above or such other addresses as the parties may designate in writing from time to time.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

PENNICHUCK WATER SERVICE COMPANY
By Its Vice President

Brend J. Lamm 11-21-03

SYSTEM OWNER

Robert Marquis

BILLING AND CONTACT:

MR. ROBERT MARQUIS

ROCKWOOD CONSTRUCTION CO., INC.

P.O. BOX 98

DEERFIELD, NH. 03037

(603) 498-2568 (PHONE)

(603) 463-9842 (FAX)

SERVICE CHARGES
(Name of System)

Section 2 of this Service Agreement refers to "Service Charges" which are as follows:

<u>Contract Period</u>	<u>Annual Service Charge</u>	<u>Monthly Service Charge</u>
12 mos.	\$ 2,760.00	\$ 230.00 PER MONTH

BASE OF \$ 130.00
PLUS LOW FLOW COST.
\$ 1,200 ÷ 12 = \$ 100.00 PER MO.

A one-time service initiation fee of \$150 is required with all new service contracts. This fee includes the initial costs for preparing and filing the necessary paperwork with NHDES and for securing the system records and information.

OK/RJR

Note: The Service Charges may be modified by agreement between the Owner and the Service Company to accommodate changes required by State regulation.

WATER QUALITY MONITORING SCHEDULE

WESTGATE ESTATES, RAYMOND, NH.
(Name of System, Town, State)

Section 3a of the SERVICE AGREEMENT which refers to "water quality tests" will consist of the following tests. This testing schedule is based upon the State's requirements as of the date of this Agreement. The schedule and related fees may be subject to change.

<u>Contract period</u>	<u>Sample type</u>	<u>Frequency</u>
	Bacteria	Monthly or Quarterly
	Inorganic Chemicals (IOC)	(1) Annually
	Nitrates	(1) Annually
	Nitrites	(1) Annually
	Radiologicals (RAD)	(1) Annually
	Synthetic Organic Compounds (SOC)	(1) Annually
	Volatile Organic Compounds (VOC)	(1) Annually

PENNICHUCK WATER SERVICE CORPORATION
PROCEDURE AND PRICE SCHEDULE FOR NON-ROUTINE OPERATIONS
AND EMERGENCY RESPONSE SERVICES

Pennichuck Water Service Corporation, or its authorized sub-contractor, will provide non-routine(emergency) response upon the written authorization of the Owner. The Owner will be furnished with a toll-free emergency response number to reach an "on-call" Pennichuck operator. The operator will take the call, inquire about the nature of the emergency and dispatch an "on-duty" employee, if necessary. The Owner will be charged a minimum three-hour callout for each such emergency response by an "on-duty" employee in accordance with the labor and equipment rates listed below. The Owner, or his authorized designee, will meet the on-duty employee at the site to ascertain the nature of the emergency.

Once the on-duty employee and the Owner determine the nature of the emergency, emergency personnel from approved sub-contractors will be called in to the site, subject to the Owner's written authorization.

Subject to availability, certain emergency response work may be performed by Pennichuck personnel. For all work performed by Pennichuck crews in the non-routine category, the Owner will be charged in accordance with the labor and equipment rates listed below. Copies of all work orders, time sheets, materials records, etc. will be submitted to the Owner. **Labor and Equipment Rates (2003):**

<u>Item</u>	<u>Rate per hour</u>		
	<u>Regular hours</u>	<u>OT 1</u>	<u>OT 2</u>
Foreman	\$47.65	71.50	95.30
Operator	44.50	66.70	89.00
Laborer	37.00	55.60	74.10
Backhoe	42.25		
Dumptruck	37.00		
Compressor	32.00		
Service truck	15.90		

Regular hours are normal working hours, Monday - Friday, non-holiday periods, 7:30 AM - 3:30 PM.

OT 1 is the rate for time and one half paid for Saturday, Sunday and holiday periods, 7:30 AM - 11:30 PM. OT 1 is also applicable to hours worked Monday - Friday, 3:30 PM - 11:30 PM.

OT 2 is the rate applicable for hours worked any day from 11:30 PM to 7:30 AM the following day.

Materials and supplies used will be included in the charges for work performed. A 35% charge for overhead and profit will be added to each invoice.

Work performed by subcontractors will be charged to the Owner in accordance with terms approved by the Owner. All subcontractor work administered by Pennichuck will be subject to the 35% charge enumerated above.

All prices to be escalated annually based on Bureau of Labor Statistics CPI, Northeast urban area.

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PENNICHUCK WATER SERVICE COMPANY

OPTIONAL SERVICES

Pennichuck Water Service Company, or its authorized sub-contractor, will provide the optional services listed below upon the written authorization of the owner. The owner will be charged for each optional item selected from the list exclusive of the monthly "Service Agreement" fee.

Consumer Confidence Report (CCR): All Community Water Systems must prepare and deliver to all customers by July 1st of every year a CCR that describes their water sources, levels of regulated and certain unregulated contaminants detected in their treated water, health effects information, compliance violations and other risk information. This requirement does not apply to Non-Transient/Non Community Water Systems.

(Required by State Statute)

YES NO

Lead and Copper Rule: All Community Water Systems and Non Transient/Non Community Water Systems must comply with the Lead and Copper Rule as outlined by the Federal Environmental Protection Agency and State Regulations. Based on the population of the system, a certain number of first-draw samples must be taken from individual taps within the home or business after the water has been allowed to stand for 6 to 8 hours. The owner of the system will be responsible for collecting these samples.

(Required by State Statute)

YES NO

Phase II/V Waivers: In order to avoid yearly sampling of Volatile Organic Contaminants (VOC) and Synthetic Organic Contaminants (SOC) it is possible to obtain a waiver from the State of NHDES. If the waiver is granted, these contaminants need only be tested once every three to six years.

(Optional)

YES NO

Distribution System Flushing: On an annual basis, the distribution system piping of the Community Water System will be flushed to remove settled solids from the pipes interior. The flushing will take place at blow-offs, hydrants or flushing ports if available in the distribution system. Distribution system flushing does not include the flushing of pipes located inside structures. The annual flushing activity will take place during the Spring or Autumn season of the year.

(State Suggested)

YES NO

WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION

Docket No. DW 13-101

Westgate Responses to Staff Set 1

Date Request Received: April 12, 2013

Date of Response: April 16, 2013

Request No. Staff 1-6

Witness: Janee Shaw/Bob Marquis

Staff 1-6

REQUEST: With respect to the water system: a) Please indicate if the Association has assumed ownership and control of the water system at this time; b) If the Association has not yet taken over ownership and control of the water system, please indicate when this will take place; c) Please indicate who or what entity is currently the qualified system operator for the water system; d) If the Association has not yet taken over ownership and control of the water system, please indicate what the Association's plans are for retaining a qualified system operator.

RESPONSE:

- A) The builder has ownership and control of the water system at this time. The Association collects the dues, pays all bills with builder's approval, and works directly with Pennichuck Water which operates the system. The Association also hires contractors, when needed, to repair or maintain the system.
- B) When the builder has developed and sold the remaining lots, ownership of the water system will pass to the Association.
- C) Pennichuck Water is the current system operator.
- D) The Association members have not discussed whether they will continue to use Pennichuck Water as the system operator. However, it is expected that a qualified system operator will be hired to operate the system.

WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION

Docket No. DW 13-101

Westgate Responses to Staff Set 1

Date Request Received: April 12, 2013

Date of Response: April 16, 2013

Request No. Staff 1-7

Witness: Janee Shaw/Bob Marquis

Staff 1-7

REQUEST: With respect to individual water service lines from the distribution main in the roadway to the home: a) Please indicate if there are shut-off valves at or near the property line for each home served; b) If there are shut-off valves, please indicate if there is clarity among all water customers as to the ownership of the service line from the shut-off valve to the home; c) Please indicate generally the Association's understanding as to responsibility for repair or maintenance of service lines beginning at the distribution main in the roadway and up to the entrance point of the home.

RESPONSE:

- a) Shut off valves are located near the property line for each member home served. It is unknown if a shut off valve is located near the non-members property.
- b) The Association members are aware of the shut-off valves but no discussion has occurred regarding the ownership of the service line from the shut-off valve to the home. It is the Association Board's understanding that the customer owns the service line from the shut-off value to the home.
- c) It is the Association Board's understanding that repairs or maintenance of service lines beginning at the distribution main in the roadway up to the entrance point of the home is the responsibility of the Association.

WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION

Docket No. DW 13-101

Westgate Responses to Staff Set 1

Date Request Received: April 12, 2013

Date of Response: April 16, 2013

Request No. Staff 1-8

Witness: Jance Shaw

Staff 1-8

REQUEST: Please indicate if water service is provided on a metered or unmetered basis.

RESPONSE: Water service is provided on an unmetered basis.

WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION

Docket No. DW 13-101

Westgate Responses to Staff Set 1

Date Request Received: April 12, 2013

Date of Response: April 16, 2013

Request No. Staff 1-9

Witness: Janee Shaw

Staff 1-9

REQUEST: With respect to non-payment of water bills: a) Please indicate what options exist for the Association in the event of non-payment by a member customer; b) Please indicate what options exist for the Association in the event of non-payment by the non-member customer.

RESPONSE:

- a) Although the by-laws include a procedure for disconnection of water service for failure to make payment, our attorney has advised us that NH law does not allow for the Association to disconnect service for non-payment because the Association is not a condominium association. Therefore, at this time we have no recourse for non-payment by a member or non-member customer.
- b) See response to (a).

WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION

Docket No. DW 13-101

Westgate Responses to Staff Set 1

Date Request Received: April 12, 2013

Date of Response: April 16, 2013

Request No. Staff 1-10

Witness: Jane Shaw

Staff 1-10

REQUEST: With respect to a tariff or similar document containing rules and regulations regarding such things as terms and conditions of service, payment of bills, water use restrictions, etc.: a) please indicate if the Association has such a document; and b) If so, please provide a copy.

RESPONSE: The regulations regarding the terms of condition of water usage are provided in the Association by-laws and covenants. A copy of each is attached.

WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION BYLAWS

Revised January 5, 2011

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ARTICLE 1

NAME

This organization shall be known as WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION ("ASSOCIATION" for short), a non-profit organization organized and existing under the laws of the State of New Hampshire. The principle address shall be P.O. Box 30, Candia, NH 03034.

ARTICLE 2

OBJECTIVES

The objectives of this Association shall be:

Section 1: To implement through joint efforts of all owners of single-family dwellings located within Westgate Estate Subdivision, Rockingham County, New Hampshire, an exemplary community which will combine change with tradition and beauty with functional advancement, while preserving the natural serenity of the countryside in which it is situated.

Section 2: To achieve a high quality of life for those residing in Westgate Estate Subdivision through joint effort.

Section 3: To foster and maintain, through joint effort, the beautification of individual property; the safety and security of the homeowners, children, and property; effective traffic safety measures to protect pedestrians, vehicle users of public roadways and personal property adjacent to such roadways; maintain, preserve, and improve common facilities, most notably the common water system.

ARTICLE 3

MEMBERSHIP

Section 1: Every person or entity holding any title interest in a lot in Westgate Estates Subdivision shall be a member of the Association (hereinafter referred to as "Member".) The owner named in the deed to the lot shall be the individual (or entity) with the authority to exercise the voting rights for that lot. The lot owner(s) may designate a representative to exercise her/his/its right to vote on any Association business by written notice to the Association.

Section 2: All members of the Association are subject to annual and special dues as approved by the Association members.

Section 3: All members of the Association shall abide by the Restrictive Covenants as recorded October 31, 2003, Registry of Deeds, Rockingham County, New Hampshire, and shall abide by any subsequent amendments to these Restrictive Covenants. The Restrictive Covenants are incorporated by reference to these By-laws. In the event of conflict between these By-laws and the Restrictive Covenants, the more restrictive provision shall govern.

Section 4: Only those members with no outstanding fees and dues as defined in Article 8 and no outstanding fines as defined in Articles 9 and 10 are eligible to vote. Only a single vote per individual dwelling is allowed.

ARTICLE 4

ELECTION OF OFFICERS OF THE ASSOCIATION

Section 1: The officers shall be a President, a Vice President, a Secretary, and a Treasurer. These officers shall constitute the Board of Directors.

Section 2: The officers shall be elected at the February meeting of the Association by a majority of the voting members present.

Section 3: A request for nominations for officers shall be sent to the members by January 15 and shall state that nominations will be accepted through January 25. By February 1, a slate of nominees shall be sent to the members for voting at the February meeting.

Section 4: The term of office shall be one year commencing March 1st.

Section 5: Vacancies of any office shall be filled by appointment by the remaining Board members, and the appointee will hold office for the remainder of the unexpired term.

Section 6: Only one member of a household may serve as an officer for any given term.

ARTICLE 5

DUTIES OF OFFICERS OF THE ASSOCIATION

Section 1: The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out and may sign all notes, checks, leases, mortgages, deeds, and all other written instruments.

Section 2: The Vice President shall perform all the duties of the President in his absence.

Section 3: The Secretary shall record the votes and keep the minutes of all proceedings in a book to be kept for the purpose. He shall keep the records of the Association. He shall record in a book kept for that purpose the names of all Members of the Association together with their addresses as registered by such Members.

Section 4: The Treasurer shall receive and deposit in appropriate corporate bank accounts all monies of the Association and shall disburse such funds to pay regular bills for the Association, or to pay for improvements as approved by the members. The Treasurer may sign all checks and notes which may also be signed by the President or the Vice President. The Treasurer shall keep proper books of account of all financial transactions of the corporation. He shall prepare an income and expense statement to be presented to the membership at all business meetings.

Section 5: Except in the case of an emergency repair, the Board of Directors shall incur no expenses, other than regular bills and accrued liabilities, without an affirmative vote of the Association.

ARTICLE 6

MEETINGS

Section 1: Regular meeting: The regular meetings of the Association shall be for the purpose of receiving reports from the officers; for establishing programs and budgets in furtherance of the objectives of the Association; and for any other business that may arise. The regular business meetings of the Association will be held on the third Thursday in February, June, and October of each year, unless that day should be a holiday; in such case, the meeting shall be held the following Thursday. Notice shall be given to the members at least one week in advance of the meetings. A simple majority of voting members present shall be considered sufficient to transact business at the regular meeting.

Section 2: Special meeting: Special meetings of the Association shall be called by the Board upon written request of one-fourth or more of the voting members of the Association. No less than two weeks notice of a special meeting shall be given, and only that business specified in the call may be transacted. Twenty per cent of the voting members shall constitute a quorum at any special meeting of the Association thus called. The Board shall have the power to call special meetings of the Association whenever it deems necessary.

Section 3: A member may submit a vote by proxy at either a regular or special meeting.

Section 4: Board of Directors: The President shall call a special meeting of the Board of Directors whenever the need arises. All business to be considered at a special Board meeting shall be stated in the call. Regular meeting of the Board of Directors shall be held as needed. Whenever possible, at least seven days notice of time and place of all Board meetings shall be given. The majority of the Board of Directors shall constitute a quorum at any meeting of the Board of Directors.

ARTICLE 7

FEEES AND DUES

Section 1: All dues are for the purpose of maintaining the continued availability and use of the common facilities in the Westgate Estates

Subdivision, including the water system, common land, landscaping, etc. Currently the water system accounts for well over 90% of the dues paid by members.

Section 2: The fiscal year of the Association shall be January 1 to December 31. The annual budget shall cover the fiscal year and shall be prepared on the basis of dues payable for the coming fiscal year.

Section 3: The annual Association dues shall be \$600.00 per single-family dwelling, payable to the Association, \$300 due by January 31st and the remainder to be paid in full by May 1st. In addition to levying annual dues, the Association may levy special dues as the occasion merits with the approval of voting members present. Annual dues shall be decided upon at an October business meeting of the Association by a majority of voting members present.

Section 4: All fines/fees of any kind, other than annual Association dues, are due within 30 days of assessment. If not paid within 30 days, they will be subject to a 12% APR interest charge.

Section 5: If a member has not paid the annual Association dues or any outstanding fines/fees by January 31, the following procedure shall apply.

a) On February 15, a certified letter will be mailed to members that have not paid dues for the year. The letter will state the amount that must be paid to avoid disconnection and state that if payment is not received by March 15, the water will be shut off to the home.

b) If payment is not received or a payment plan has not been approved by the Board of Directors pursuant to Article 7, Section 5 (c) by March 15, a certified letter shall be sent notifying the member of the date when the water will be shut off. Such notice shall be mailed at least 7 days prior to shutting off the water and shall include the date of disconnection. Any reconnection charge shall be paid by the member prior to reconnection.

c) In the case of a hardship only, the member may make a written request to the Board of Trustees by March 15 for a monthly payment plan of not less than \$100 per month. All members that have not paid in full before March 15 will also be assessed a \$100 late fee. All payment plans must require that payment of the outstanding dues and late fee be paid in full by September 1. The payment plan will only be offered once during any fiscal year.

d) If the member establishes a payment plan and then is 30 days late with any payment, the water will be shut off to the home. A certified letter shall be sent notifying the member of the date when the water will be shut off. Such notice shall be mailed at least 7 days prior to shutting off the water and shall include the date of disconnection. Any reconnection charge shall be paid by the member prior to reconnection.

e) If water has been shutoff, the water will only be turned on if any outstanding dues, late fees and reconnection charges are paid in full.

f) Payment of any outstanding dues, late fees and reconnection charges must be paid by cash, certified check or money order. Personal checks will not be accepted.

Section 6: An exception to Article 7, Section 5 will be made if the total outstanding balance is less than \$100.

ARTICLE 8

WATER USE RESTRICTIONS

Section 1: Odd/Even Day Landscape Watering: Water users with odd numbered addresses may water their landscape only odd numbered days. Landscape watering by water users with even numbered addresses is restricted to even numbered days. First time violators of the odd/even program will receive a written warning of non-compliance. An exception will be made for those establishing new lawns or re-establishing lawns.

Section 2: The filling of empty swimming pools with water from the pump house is prohibited. Any member with a pool will be required to show evidence of the purchase of water from an outside source. If evidence cannot be shown, owners of in ground pools will be charged a fine of \$1,000 and above ground pools will be charge a fine of \$500.

Section 3: If a member uses water from the pump house to fill an empty swimming pool, water service will be disconnected and will only be reconnected upon payment of the fine and reconnect charge. A certified letter shall be sent notifying the member of the date when the water will be shut off. Such notice shall be mailed at least 7 days prior to shutting off the water and shall state the amount that must be paid to prevent disconnection. Water will not be reconnected until the fine and any reconnect charge is paid.

Section 4: No member shall use water from the pump house to fill a pool when the water level is 15 inches or more below the skimmer. In such case, if water from the pump house is used to fill the pool to a higher level, a fine of \$100 shall be assessed unless evidence is shown that water has been purchased from an outside source. Prior to imposing the fine, two association members must verify that the water level had fallen to 15 inches or more below the skimmer.

Section 5: Payment of the fine and any reconnection charges must be paid by cash, certified check or money order. Personal checks will not be accepted.

Section 6: The Board of Trustees may impose water restrictions on an emergency basis, until a meeting of the Association can be held.

ARTICLE 9

RUBBISH DISPOSAL

Section 1: No lot shall be used or maintained as a dumping ground for rubbish, trash, old automobiles, or similar materials offensive or degrading in appearance including but not limited to snowmobiles, lawnmowers, and ATVs.

Section 2: Any lot so neglected or abused by the owner(s) shall be given a warning and 10 days to clean it up. Failure to remove the offensive/degrading materials within the 10 days will result in a fine of \$10/day.

Section 3: Containers for rubbish removal may be placed at the end of the driveway up to 24 hours prior to pick up and must be removed within 48 hours of pick up. Three offenses to this rule shall result in a fine of \$10.

ARTICLE 10

AMENDMENTS

Section 1: These By-Laws may be amended, at a regular or special meeting of the Association, by a vote of a majority of a quorum of all the voting members present. Notice of change shall be made available to the members one week in advance of the meeting.

Section 2: Unless otherwise provided prior to its adoption or in the motion to adopt, an amendment shall become effective upon adjournment of the meeting at which it is adopted.

Section 3: Exemption Process

An association member may request a variance to specific rules and restrictions set forth in the association covenants and by-laws. A variance request is submitted and processed as follows:

- The association member submits their request to the executive board in writing. The request must, at a minimum, include the following information: The specific bylaw or covenant for which the variance is requested; the reason for the variance request.
- During the next scheduled executive board meeting, the member shall present their request for variance to the executive board. The executive board may request additional information, including but not limited to, proposed construction plans, alternate arrangements considered, and may solicit input information from other members potentially impacted by the proposed variance. The board may request, as necessary, a site walk of the member's lot to gain additional perspective on the proposed variance. Following review of all requested information, the executive board may either reject the request for variance, or recommend presentation of the request to the full association membership.
- Presentation of the request for variance to the association membership shall occur at the next regularly scheduled association meeting, or if deemed necessary by the executive board, at a special meeting. All association members shall receive notice of the request for variance no later than one week in advance of the meeting, and shall be permitted one vote per lot, either in person or by proxy, in support of or in objection to the proposed variance.
- A 2/3 majority vote shall be required to approve the exemption.
- If approved, a formal written notice of approval shall be provided the member from the executive board.

ARTICLE 11

BOOKS AND PAPERS

Section 1: The books, records, and papers of the Association shall at all times, during reasonable business hours, be subject to the inspection of any members.

RESTRICTIVE COVENANTS
WESTGATE ESTATES
RAYMOND, NEW HAMPSHIRE

NOW COMES Rockwood Construction, LLC (hereafter referred to as "Developer" and at all times including any entity or individual to whom Developer may assign its rights as Developer) owner of all of the lots in a subdivision located in Raymond, NH known as Westgate Estates, as shown on a plan entitled: A Proposed Layout Plan of Westgate Estates prepared for Robert Marquis situated in the Town of Raymond, NH, dated 4/09/02 prepared by Blaisdell Survey, LLC Roscoe T. Blaisdell, LLS 22 Scribner Road, Raymond, N.H. 03077 and recorded in the Rockingham County Registry of Deeds as Plan D-30692 and hereby submits all of the lots in the subdivision to the following restrictive covenants, which shall run with the land, in perpetuity.

1. APPLICABILITY.

a. Each an every owner of the lots made subject to these covenants, by accepting a deed to any lot, agrees for itself, himself or herself, its, his or her transferees, heirs, executors, administrators, successors or assigns, to become subject to and abide by the provisions of these Restrictive Covenants and to become a member of the Westgate Estates Homeowner's Association as provided below.

b. Every purchaser of an unimproved lot, as a condition of taking title to the lot, shall sign a "Compliance Agreement" prepared by Developer in the form attached to those Restrictive Covenants. Said Compliance Agreement will include any modifications which may be made by Developer subsequent to the recording of these Restrictive Covenants. This provision shall apply to all purchasers of unimproved lots whether the lot was sold to such purchaser by Developer or any transferee of said company.

2. USE OF LOTS.

a. The lots in the subdivision shall be used only for single family residential purposes. Commercial or business use of any nature or kind shall not be permitted unless such use conforms with the Town of Raymond zoning ordinance as a home occupation.

b. Further subdivision of the lots is expressly prohibited without the express written permission of Westgate Estates Homeowner's Association and the Raymond Planning Board.

3. CONSTRUCTION TIME.

a. Construction of a dwelling shall commence no later than twenty four (24) months after the conveyance of a lot by Developer to any purchaser, unless extended in writing for a particular lot. Developer reserves the right to waive this provision.

b. When the construction of the buildings on the premises is begun, work shall continue without significant interruption and shall be completed not more ten (10) months from commencement date and prior to issuance of an occupancy permit. Application extension of the ten (10) month period may be made to Developer, its successors or assigns. Such extension will not be unreasonably withheld, provided that the lot owner provides a specific time frame in which completion of construction is expected to occur. If the work is not completed within the ten (10) month period and prior to an occupancy permit being issued, the owner of the dwelling or structure shall be subject to penalty assessments as provided in these covenants until completion of the work

4. OUTBUILDINGS, ADDITIONAL STRUCTURE, ETC.

a. Garages. Each single family dwelling shall have a private garage attached to the dwelling unit **or under the dwelling unit** for not less than two cars. The garage must be built at the time of construction of the dwelling. Developer shall retain the right to determine placement of the garage when reviewing plans submitted.

b. Fuel Storage. No fuel tanks or similar storage receptacles may be exposed to view and may be installed only within a screened area as approved by Developer or the Westgate Estates Homeowner's Association or buried under ground.

c. Each residence shall have a paved driveway.

5. SIZE OF DWELLINGS.

Each single family dwelling unit shall have a gross living area of not less than 1,800 square feet not including attic, basement, garage, porches or breezeways. If the dwelling is less than 2,000 square feet total, the first floor minimum area shall be 950 square feet of finished space. A single story house shall also have a minimum of 1800 square feet not including attic, basement, garage, porches or breezeways.

6. DESIGN AND PLAN APPROVALS.

a. All buildings and structures shall be architecturally designed in keeping with traditional styles. Approval of the plans and specifications of all residences and other structures shall be by Developer, in its sole and absolute discretion, for as long as Designer is the owner of

any lot in the subdivision notwithstanding Developer's relinquishing any other authority under these Covenants to the Homeowner's Association. At such time as Developer conveys its last lot, the responsibility and/or authority for any architectural approvals in accordance with these restrictive covenants shall become the responsibility of the Westgate Estate Homeowner's Association. Developer reserves the right to turn over responsibility for architectural approvals to the Association at any time prior to its conveyance of the last lot it owns.

b. No construction of any kind shall be commenced on any lot nor shall any exterior addition or change or alteration be made to any structure nor shall utility lines be erected or installed until plans for the foregoing have been approved in writing by Developer. A copy of any approved plans shall be provided to Developer for its records.

c. Developer shall have no liability to any lot owner or any other individual except for bad faith exercise of its rights to make decisions regarding approval of plans as specified in these covenants. Upon relinquishment of responsibility for approvals to the Westgate Estates Homeowner's Association, Developer shall have no liability of any kind for any actions taken by the Association. By acceptance of a deed to a lot, the lot owner(s) agree to indemnify and hold Developer harmless with respect to any expenses incurred or moneys paid as a result of any claim, lawsuit or damages resulting from the approval process. The Homeowner's Association likewise agrees to indemnify and hold Developer harmless from any claims by individual owners for actions by Developer relating to the approval process.

7. PLANS REQUIRED

Prior to commencement of construction on each lot, the lot owner shall submit for approval, some or all of the following as Developer shall require:

- a. A site plan showing the location on the lot of the dwelling, the garage, the driveway, landscaping and any proposed tree cutting.
- b. Floor plan for the dwelling showing a minimum of 1,800 square feet of living space;
- c. Elevation plans showing all facades of all buildings on the lot;
- d. Exterior color scheme for the dwelling and appurtenant structures;
- e. There shall be a minimum of an 8 inch roof pitch except where shed owners dormers are used.
- f. All windows visible from the street shall have true divided lights or removable grids.
- g. Developer, in its sole and absolute discretion, reserves the right to approve alternate architectural features in keeping with the character and quality of the subdivision.



8. FENCES.

a. Fences may be placed no closer than three (3) feet from any lot line. No fence exceeding six (6) feet in height shall be permitted on any lot, except as part of an approved tennis court layout or swimming pool enclosure. However, under no circumstances shall silver or galvanized chain link fence be approved. No fence shall be constructed between the front plane of any house and the street unless approved by Developer. All fences shall be constructed with finished side facing away from the dwelling.

Notwithstanding the above, Developer, or the Westgate Estates Homeowner's Association upon transfer of Developer's rights to the Association, may place ornamental posts and fencing along the entrance of the subdivision and portions of the roadway in proximity to the entrance to enhance the aesthetics of the road.

b. A lot owner wishing to install any fence shall submit a drawing of such fencing and a sample of materials to be used to Developer prior to installation. No such fence shall be installed without obtaining Developer's approval.

9. SIGNS.

No commercial or advertising signs of any kind shall be erected, placed, permitted or maintained on any lot or improvement except for a single sign no larger than four square feet advertising a lot or house for sale unless Developer approves other types or sizes of signs in Developer's sole discretion.

10. NO VEHICLE STORAGE.

Any vehicles, pleasure or commercial boats, motor homes, campers, trailers, which are stored on the premises shall be kept out of sight of the roadway, or stored in some other manner which has received written approval by Developer or the Westgate Estates Homeowner's Association. Unregistered or uninspected automobiles or automobiles being repaired, refinished or restored for a period of more than seven (7) days shall be stored in a garage or other enclosed structure.

11. ANIMALS.

No farm animal or fowl shall be maintained on any lot. A reasonable number of household pets shall be allowed, but shall not be bred or maintained for purposes of resale.

No pets shall create unreasonable noise or create a nuisance or annoyance to neighbors.

12. BUILDING AND SITE MAINTENANCE.

a. During construction, materials shall be neatly stacked or placed within the immediate area of the incomplete structure. Stockpiling of materials, and parking of construction vehicles and equipment when not in use, shall be no closer than 20 feet from the



roadway, Construction workers' vehicles shall be parked off of the public road whenever possible. Construction debris shall be kept in a dumpster and Developer or the Westgate Estates Homeowner's Association shall have the right to impose additional reasonable controls on construction. The owner on whose lot construction is taking place, along with the builder, shall be responsible for compliance with the provisions of this paragraph.

b. Owners of vacant lots, lots with houses under construction, and lots with finished homes shall at all times keep and maintain their property in an orderly manner, not permit lawns to become overgrown, and prevent any accumulation of rubbish or debris on the premises. Front yards shall be free of unattended lawn chairs, swing sets, swimming pools and the like.

13. TREE REMOVAL

a. No healthy living trees with a diameter in excess of six (6) inches shall be cut at any time within fifteen (15) feet of any property line including the lot frontage on the roadway, without the express approval of Developer.

b. Within fourteen (14) days of cutting, any felled trees shall be cut up and the logs stacked neatly. Any stumps or slash shall be removed from the lot or buried no closer than twenty feet from any lot line.

c. Each owner shall:

(1) loam and seed all disturbed areas after construction,

14. ADDITIONAL RESTRICTIONS.

The following are prohibited:

a. Clotheslines

b. Above ground swimming pools between the road and rear plane of the house.

c. Antennas or satellite dishes with diameters larger than 24 inches.

d. Additions, sheds or outbuildings or appurtenances unless prior approval has been obtained.

e. Pesticides may be used only in limited quantities and only by professional application. In areas where it is reasonably apparent that runoff drains into wetlands or where wetlands are within 50 feet of the property line as shown on the subdivision plan a lot owner shall take reasonable precautions to avoid application of pesticides or fertilizer which would have an adverse impact on the wetlands.



f. There shall be no filling of wetlands on individual lots or in conservation easement areas.

15. CONSERVATION LAND

a. The conservation land shown on the subdivision plan as recorded in the Rockingham County Registry of Deeds at D-30692 shall be maintained by the Developer until the Developer has conveyed such conservation land to the Westgate Estates Homeowner's Association and after such time, the conservation land shall be owned and maintained by the Westgate Estates Homeowner's Association. At all times, conservation land shall be used only for passive (self-directed) recreation which shall not include any usage on or involving any off-road motorized vehicles including but not limited to snowmobiles, ATV's, motor bikes or motor cycles. Furthermore, the conservation land shall not be developed in any way, including but not limited to erecting any structures, **(with the exception of Section c (2) below)** without the express approval of the Planning Board of the Town of Raymond, New Hampshire ("the Town").

b. These Restrictive Covenants shall be read in conjunction with any limitations or restrictions as shown on said plan and any deeds containing conservation restrictions, to be recorded in the Rockingham County Registry of Deeds. In the event the provisions of any of these covenants and the restrictions are in conflict with any provisions in any such deed(s), the provision which is more restrictive shall govern.

c. The above conservation land shall be subject to the following restrictions:

(1) Conservation land shall be available only for passive recreational use by Homeowner's of lots in the subdivision.

(2) No structures of any kind shall be constructed or placed within the conservation easement areas **with the exception of structures related to and necessary for the development, maintenance and repair of the fire road and/or the water system as shown on the Plan D-30692 and with the exception of any structures, lines or piping necessary for the installation of utilities for the development.**

(3) There shall be no cutting of live trees on conservation land; However, Developer and the Homeowner's Association (at such time as authority for operation of the subdivision is turned over to the Association by Developer) reserves the right to cut, clear and clean out any dead or diseased trees of whatever size from the conservation area including, but not limited to, the fire road area and water system areas, but such right to cut, clear and clean out shall only be exercised after express written permission is obtained from the Planning Board of the Town or designee. Developer and said Association shall also have the right to mow or cut grass or hay; landscape and maintain proper drainage in the easement area, including but not limited to, the fire road and water system areas, but such rights shall only be exercised after express written permission obtained from the Planning Board of the Town of designee.

(4) No stumps shall be removed nor fill placed in the conservation area.

(5) Developer or the Homeowner's Association shall be responsible for developing of a walking trail/path through the conservation area; but such development shall only be conducted after express written approval of a specific plan is obtained from the Planning Board and/or the Conservation Commission of the Town. At such time as Developer turns over responsibility for all common land to the Association, the Association shall assume the obligation to maintain the trail free of overgrowth and undergrowth.

(6) a. The Chairperson of the Raymond Conservation Commission or the Commission's designated members, together with the members of the Town Planning Board, shall have reasonable access to the conservation land to insure compliance with the above restrictions.

b. In the event of a violation of any restrictions or conditions on the conservation land, the Town shall have the authority to enforce the above restrictions, including the authority to assume the responsibility to maintain the conservation land and to assess the homeowners and/or property owners covered by these Restrictions for the cost of such maintenance.

16. HOMEOWNER'S ASSOCIATION.

a. Developer shall create the Westgate Estates Homeowner's Association ("Association") which shall be a not for profit corporation created no later than December, 2006, or prior to the sale of the last lot owned by Developer in the subdivision, or at such time as Developer deems appropriate, whichever occurs sooner.

b. The purpose for which the Association is created will be to assume responsibility for common land and conservation land in the subdivision and for all business affecting the Association including but not limited to; maintaining landscaping and lighting at entrances to the subdivision and along the roadway, the payment of taxes and insurance on the common land and if any, on the conservation land, preparation of an annual budget and collection of Association dues from all lot owners.

c. The initial annual fee to be paid by the lot owners will be \$150.00 to be deposited in the Association's at the time of the purchase of any lot. Said account will be under the control of Developer until such time as the subdivision responsibilities are turned over to the Homeowner's Association. The annual budget, unless changed by the Homeowner's Association or written notice by Developer to lot owners, shall run from January 1st to December 31st of each year. The initial deposit at closing shall be pro-rated from the date of closing to the following December 31st.

d. All purchasers of lots in the Westgate Estates Development shall be members of the Association. The owner named in the deed to a lot shall be the individual (or entity) with the authority to exercise the voting rights for that lot. The lot owner(s) may designate a representative to exercise his/her/its right to vote on any Association business by written notice to Developer or the Homeowner's Association.

e. Association business may be carried out at a formal meeting called for that purpose or by written notice to lot owners whose votes shall be submitted in writing as specified in the notice.

f. Prior to turning over authority for control of the common elements in the subdivision to the Homeowner's Association, Developer shall prepare a set of Bylaws to be utilized by the Association until such time as those Bylaws may be altered or amended by vote of the Association.

g. Developer shall have all authority and shall exercise all rights of the Homeowner's Association until such time as it no longer owns any lot in the subdivision or at such earlier time as Developer relinquishes any such rights and obligations to the Homeowner's Association. Among the rights which Developer may exercise are the right to assess and collect fees from lot owners as provided in these covenants.

17. ASSOCIATION FEES AND ASSESSMENTS.

a. Developer shall have the right until relinquished to the Homeowner's Association to establish an annual budget for management and maintenance of all common areas of the subdivision and the Homeowner's Association shall thereafter have such right. The fees or assessments shall be used for the improvement, maintenance and operation of right-of-way, drainage ways, lighting, signage, security operations and facilities, insect control, vegetation control, drainage systems, open space maintenance and other common property expenses, including but not limited to, the payment of taxes and insurance and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision and third party services such as legal and accounting.

b. The owner of each lot within the property hereby agrees by acceptance of the deed to a lot to all of the terms and conditions of these covenants and to pay the Association:

- (1) annual fee or charges; and
- (2) special assessments for the purposes set forth above.

c. All fees and assessments, together with interest and costs of collection shall be the personal obligation of the person who was the owner of the lot at the time when the fee or assessment became due. In the case of co-ownership of a lot, all such co-

owners of the lot shall be jointly and severally liable for the entire amount of the fees and assessments.

d. If the assessment is not paid within thirty (30) days after the due date, interest shall accrue at the rate of 1 ½% per month on the outstanding balance and the Association may bring an action against the owner(s) personally obligated to pay the same and place a lien against the lot and there shall be added in the amount due all costs and expenses incurred, including reasonable attorney's fees.

18. GENERAL PROVISIONS.

a. All of the foregoing covenants, conditions, reservations and restrictions shall continue and remain in full force and effect at all times against the owner of any lot in such premises, regardless of how title was acquired for a period of twenty-five (25) years from the date of recording hereof, after which time said covenants will be automatically extended for successive periods of ten (10) years.

b. Developer, as long as it owns an interest in any lot or remains obligated for any development work, reserves the right to itself, its agents, employees, contractors and subcontractors, to enter upon the land covered by these restrictions for the purpose of carrying out and completing the development of the subdivision as well as to abate, remove, or correct any violations of these restrictions, and such entry, abatement or removal shall not be deemed trespass, conversion or other actionable wrong. However the provisions of this paragraph shall not be deemed to obligate Developer to in fact take such action once it has turned over authority or responsibility for enforcement of these covenants to a successor subdivider/developer or to the Homeowner's Association.

c. (1) Save and except Section 15, above, which may not be amended without the express written approval of the Town's Planning Board, the foregoing covenants, conditions, reservations, and restrictions may be amended by an instrument signed by Developer, as long as Developer owns any lot in the subdivision. Upon sale of Developer's last lot or voluntary relinquishment of this right to amend and subject to the above limitation, amendment will then be by a majority of the then owners of the lots within said subdivision agreeing to change said covenants in whole or in part as provided in the By-laws of the Homeowner's Association. Furthermore, once the Association owns the conservation land referenced in Section 15, above, the Association shall not be dissolved without the express written approval of the Town's Planning Board. Any amendment shall be recorded in the Rockingham County Registry of Deeds.

(2) Developer may sell multiple lots a single purchaser on such terms as Developer shall in its sole and absolute discretion determine.

d. Developer or, upon relinquishment of its enforcement rights provided in these covenants to the Homeowner's Association shall have the right to assess a penalty in the amount of One Hundred (\$100.00) dollars per day for the violation or breach of



d. Developer or, upon relinquishment of its enforcement rights provided in these covenants to the Homeowner's Association shall have the right to assess a penalty in the amount of One Hundred (\$100.00) dollars per day for the violation or breach of any of these covenants, conditions, reservations or restrictions upon failure of a lot owner to cure such violation after reasonable notice to the violator.

e. Invalidation of any one of these covenants by court order shall in no way effect any of the other provisions which shall remain in full force and effect.

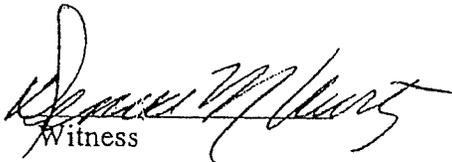
f. These covenants shall be read in conjunction with all other recorded documents affecting the subdivision including recorded plans, Conservation Restrictions and Conservation Easements. In the event of a conflict between these Restrictive Covenants and any other recorded documents affecting use of the lots or subdivision property, the more restrictive provision shall govern the use or activity o the lot or in the subdivision.

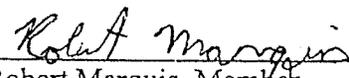
g. Failure to specifically refer to and include or incorporate these covenants in deeds to any lot shall not in any manner affect the validity and effectiveness of these restrictions upon any lot made subject to them.

h. Any notices provided for in these covenants shall be served by being delivered in hand to the dwelling on any lot, or to such other address or location as a lot owner may have specified in writing to Developer or to the Association. Such notice shall also be deemed delivered if properly addressed and sent by first class mail except in a case where the penalty assessment provisions of these covenants my be invoked for failure to comply, in which case such notice shall be sent by certified mail, return receipt requested, and shall be deemed received upon signing of the receipt or five (5) days after the first notice of attempt to deliver certified mail.

These covenants were executed by Rockwood Construction, LLC Corporation on this 31st day of October, 2003.

ROCKWOOD CONSTRUCTION, LLC


Witness

By: 
Robert Marquis, Member



WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION

Docket No. DW 13-101

Westgate Responses to Staff Set 1

Date Request Received: April 12, 2013

Date of Response: April 16, 2013

Request No. Staff 1-11

Witness: Janee Shaw

Staff 1-11

REQUEST: Please indicate if there are any outstanding administrative orders or letters of deficiency issued by the NHDES with respect to this water system. If so, please provide copies.

RESPONSE: There are no outstanding administrative orders or letters of deficiency issues by the NHDES.

Westgate Estates of Raymond Homeowners Association
PO Box 30
Candia, NH 03034

May 3, 2013

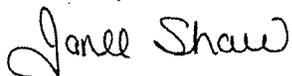
Marcia A. Brown, Esq.
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: DW 13-101 Westgate Estates of Raymond Homeowners Association
Request for Exemption from Regulation as a Public Utility

Dear Ms. Brown:

Enclosed please find one original and six copies of Westgate Estates response to Staff Discovery Requests Set 2.

Sincerely,



Jane Shaw
Westgate Estates President

WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION
Docket No. DW 13-101
Westgate Responses to Staff Set 2

Date Request Received: April 25, 2013
Request No. Staff 2-1

Date of Response: May 3, 2013
Witness: Janee Shaw

Staff 2-1

REQUEST: As a follow-up to the response to Staff 1-4, please indicate if the non-member customer has any written agreement with the builder that the non-member customer does not have to pay for water service.

RESPONSE: The non-member is relying on section 19 of his purchase and sales agreement which states, "Subject to Seller Agreeing to Tie in Community Water to Said Property at Seller's Expense."

WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION

Docket No. DW 13-101

Westgate Responses to Staff Set 2

Date Request Received: April 25, 2013
Request No. Staff 2-2

Date of Response: May 3, 2013
Witness: Janee Shaw

Staff 2-2

REQUEST: If a written agreement exists between the non-member customer and the builder, please provide a copy.

RESPONSE: A copy is attached.

15. LEAD-BASED PAINT TESTING (Pre 1978 Housing) (fill in if applicable and initial)

This agreement is contingent upon a risk assessment or inspection of the property for the presence of leadbased paint and/or lead-based paint hazards * at the BUYER'S expense until 9:00 P.M. on the tenth calendar day or mutually agreed upon date of NA, NA after ratification.

This contingency will terminate at the above predetermined deadline unless the BUYER (or BUYER'S agent) delivers to the SELLER (or SELLER'S agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The SELLER may, at the SELLER'S option within NA days after delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the SELLER will correct the condition, the SELLER shall furnish the BUYER with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement if the SELLER does not elect to make the repairs, or if the SELLER makes a counteroffer, the BUYER shall have NA days to respond to the counteroffer or remove this contingency and take the property in "asis" condition or this agreement shall become void. The BUYER may remove this contingency at any time without cause.

*intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information.

OR

BUYER waives the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards. BPC (BUYER'S initials)

16. ATTACHMENTS

The following attached disclosures become an integral part of this agreement
1. Sellers Representation of Property 2. Lead-Based Paint Disclosure (if applicable)

17. ACKNOWLEDGMENT

All representations, statements, and agreements heretofore made between the parties and merged in this agreement which alone fully and completely expresses their respective obligations, and this agreement is entered into by each party after opportunity for investigation, neither party relying on any statements or representations not embodied in this agreement, made by the other or on his behalf.

BUYER acknowledges that: information was supplied by the SELLER and has not been checked for accuracy by the Agent(s); public information was subject to BUYER'S verification at local town offices and/or law enforcement agency; each item was subject to direct inquiry by the BUYER, and the BUYER has been so advised; and the Agent(s) makes no representations regarding the property, the neighborhood, and the condition of the premises, structure(s) thereon or the mechanical components thereof.

18. ADDENDUM(S) TO AGREEMENT: (fill in)

Attached addendum(s) are incorporated and become an integral part of this agreement. (if none, state "none").
None

19. ADDITIONAL PROVISIONS (fill in) (if none, state "none")

Subject To Seller Providing Warranty Guarantee On Foundation.
Subject To Seller Agreeing To Tie In Community Water To Said Property At Seller's Expense.
Subject To Seller Giving \$6,500.00 Back At Closing Towards Buyers Closing Costs & Or Prepaids.
Subject To Seller Installing New Roof Prior To Closing.

NOTICE: THIS IS A LEGAL DOCUMENT THAT CREATES CERTAIN BINDING OBLIGATIONS. IF YOU DO NOT UNDERSTAND IT, CONTACT AN ATTORNEY BEFORE SIGNING. This agreement shall be binding upon the heirs, executors, administrators and assigns of both parties.

I HAVE READ AND UNDERSTAND THIS DOCUMENT.

Sheryl J. Beggs 7-21-03 BPC Q 7-21-03
Witness Date Buyer Date Soc. Sec. or Fed. I.D.

Witness Date Buyer Date Soc. Sec. or Fed. I.D.

Robert Mangini 7/21/03
Witness Date Seller Date Soc. Sec. or Fed. I.D.

Witness Date Seller Date Soc. Sec. or Fed. I.D.



BPC
BUYER'S Initials

RM
SELLER'S initials

BUYER'S Initials

SELLER'S initials

WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION

Docket No. DW 13-101

Westgate Responses to Staff Set 2

Date Request Received: April 25, 2013
Request No. Staff 2-3

Date of Response: May 3, 2013
Witness: Janee Shaw

Staff 2-3

REQUEST: As a follow-up to the response to Staff 1-9, is it the Association's position that there are no circumstances under which water service can be terminated to any customer who refuses or is unwilling to pay for that service?

RESPONSE: Yes, as long as the water system is owned by the Builder or the Association.

WESTGATE ESTATES OF RAYMOND HOMEOWNERS ASSOCIATION
Docket No. DW 13-101
Westgate Responses to Staff Set 2

Date Request Received: April 25, 2013
Request No. Staff 2-4

Date of Response: May 3, 2013
Witness: Jane Shaw

Staff 2-4

REQUEST: Please indicate if the Association is willing to share the legal citations that form the basis for the advice received, as detailed in the response to Staff 1-9, that the Association cannot terminate service for non-payment.

RESPONSE: The Association is relying on the advice of its legal counsel. Attached is a letter from the attorney concerning this issue.

Daniel C. Proctor

Attorney-at-Law

P.O. Box 3544
Concord, NH 03302-3544
Telephone (603) 228-8226
Facsimile (603) 228-6090
carol3544@myfairpoint.net
*Admitted in New Hampshire only

Cohn and Dussi, LLC

Of Counsel*
300 Trade Center, Suite 3700
Woburn, MA 01801
dproctor@cohnanddussi.com

All non-emails, please telephone
and write to Concord

May 3, 2013

Janee Shaw, President
Westgate Homeowners Association
8 Christina Drive
Raymond, NH 03077

RE: Unpaid Association Fees - Self-Help

Dear Janee:

Pursuant to your request, this letter is sent to you, in your capacity as President of the Westgate Homeowners Association. Specifically, this letter deals with the so-called "self-help" issue of the Association and its ability to contend with Association members who are delinquent in paying their assessments. In other words, "shutting someone off" for non-payment. Said assessments include, but are not limited to, water fees.

As a preliminary matter, I have reviewed the restrictive covenants of the Westgate Estates Association, which are recorded in the Rockingham County Registry of Deeds. I have also reviewed the Westgate Estates of Raymond Homeowners Association By-Laws (Rev. 1/5/2011). Lastly, I have reviewed New Hampshire Revised Statutes Annotated.

As we have discussed, the Westgate Estates "Homeowners Association" is not a "Condominium" Association, as that word is defined by RSA 356-B:3 IV. While Condominium Associations have specific statutory powers to undertake "self-help" measures, including the recording of liens and the additional charges under RSA 356-B:46 and RSA 356-B:46-a there is no statutory authority for non-condominium associations, such as Westgate. To sum up, I see no authority for the Westgate Homeowners Association, an Association not recognized by the New Hampshire Legislature as having any authority different than a business association (such as an LLC and/or corporation) as having any authority, other than to seek appropriate judicial relief for non-payment of monies owed.

Ms. Janee Shaw
May 3, 2013
Page Two

In addition to the lack of statutory authority to take "self-help" measures, including "shutting off" association members off for non-payment of their water assessments, your Association has a compounding problem. Third-parties, who are not association members, being hooked up to your water system. As you know, the builder who built Westgate Estates hooked non-estate members up to your water system. The covenants and restrictions covering your Association, also do not appear to apply to these third-parties. Hence, aside from the lack citable authority regarding the ability of your Association to shut-off non-paying association members, your problems are factually compounded by a non-member being part of your water system.

I hope this letter of opinion provides some clarity for you and anyone who may wish to see it. If anyone would like to speak with about the contents of this letter, please do not hesitate to contact me.

As always, thank you for giving me an opportunity of being of service.

Sincerely,



Daniel C. Proctor, Esq.

DCP/cav

Naylor, Mark

From: Janee Shaw <shawjanee@gmail.com>
Sent: Wednesday, July 03, 2013 1:26 PM
To: Naylor, Mark
Cc: Alisa Claytor
Subject: Re: DW 13-101 Westgate Estates of Raymond

Mr. Naylor,

I wanted to update you on our progress. Since it is going to take some time for Hampstead to have the information needed to complete the sale of the water system, we would like to go forward and obtain an exemption. When we last spoke, I understood you to say that if the non-member (the Claytors) agreed to pay for the water, you would recommend that the exemption be given. The Claytors have agreed to pay and we have set up a monthly payment plan in which they will have fully paid the 2013 amount by December 1. They will be paying \$111.60 per month beginning on August 1. We felt this was a fair as the Association has offered similar payment arrangements to other members in extenuating circumstances.

Based on this agreement, have we met the requirements to obtain the exemption? And if so, what do you need for us to file by July 8.

Thank you for your help. I am copying the Claytors on this email so that they are aware of our communication.

Janee Shaw
Westgate President.