

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE ELECTRONIC APPLICATION OF BLUEGRASS)
WATER UTILITY OPERATING COMPANY, LLC) Case No.
FOR AN ADJUSTMENT OF RATES AND APPROVAL) 2020-00290
OF CONSTRUCTION)

**Reply in Support of Motion for Leave to Intervene of
Arcadia Pines Sewer Association, Inc., Carriage Park Neighborhood Association, Inc.
Marshall Ridge Sewer Association, Inc. and Randview Septic Corporation**

Comes now Arcadia Pines Sewer Association, Inc. (“Arcadia”), Carriage Park Neighborhood Association, Inc. (“Carriage Park”), Marshall Ridge Sewer Association, Inc. (“Marshall Ridge”) and Randview Septic Corporation (“Randview”) (collectively, “Movants”), by counsel, pursuant to 807 KAR 5:001, Section 4(11), and other applicable law, and do hereby tender their reply in further support of their motion for leave to intervene in this docket, respectfully stating as follows:

Bluegrass Water Utility Operating Company, LLC (“Bluegrass”), tendered its response in opposition to the Movants’ motions on January 13, 2021. Its latest response omits Bluegrass’s oft-repeated argument that neighborhood associations somehow fail the associational standing test under Kentucky law.¹

¹ In its prior opposition to: (1) the November 23, 2020 motion for leave to intervene filed by The Homestead Home Owners Association, Inc.; (2) the December 18, 2020 motion for leave to intervene filed by the Deer Run Estates Homeowners Association; and (3) the December 23, 2020 motion for leave to intervene filed by the Longview Homeowners Association, Inc., Bluegrass devoted considerable attention to the associational standing test articulated in *Bailey v. Preserve Rural Roads of Madison County, Inc.*, 394 S.W.3d 350 (Ky. 2010). Tellingly, Bluegrass’s latest response omits any mention of this legal authority – an acknowledgement that homeowners associations clearly have standing under Kentucky law to represent the interests of their members.

Instead, Bluegrass focuses its argument upon whether the Movants' interest is unique and whether it will assist the Commission in developing the record.² On this point, Bluegrass claims:

These same associations did not keep the information or records required by the Commission of jurisdictional utilities, and were unable to provide information requested by Bluegrass during the due diligence phase of closing on the systems. It is thus very unlikely for the Movants to have anything to contribute since the Movants are not themselves utility customers, have no experience in rate-making or Commission matters and cannot contribute useful information about the systems beyond what Bluegrass already presented in the underlying acquisition matter.³

The Movants were quite shocked to find this unsubstantiated allegation in Bluegrass's response. None of them are aware of any information requested by Bluegrass prior to the closing of the respective asset acquisitions that was not provided.⁴ Based upon the magnitude of the proposed rate increase and this unfounded assertion in Bluegrass's response, it is apparent that the applicant's strategy in this case is to propose an intensive – and unnecessary – capital spending plan in order to inflate its rate base and drive a massive rate increase. In the face of such an unprecedented rate increase, it is entirely possible that homeowners may find it more economically advantageous to install septic tank waste systems, thereby imposing a mountain of unnecessary costs on a shrinking customer base. Bluegrass's efforts to prevent criticism of what likely amounts to the proposed wasteful duplication of investment will be significantly curtailed if the former owners of the assets in question are able to constructively participate on behalf of their homeowners. Naturally, Bluegrass does not want this to happen. In truth, the Movants are in the *best* position to help the Commission become fully informed and developing the record as to the need for Bluegrass's proposed investments and requested Certificate of Public Convenience and Necessity.

The balance of Bluegrass's opposition to the Movants' motion to intervene is identical to the arguments raised in prior responses – the Attorney General will adequately represent the interests of all

² See Bluegrass's Response, pp. 4-5. Bluegrass has never alleged that the successful intervention of any homeowners association would somehow complicate or disrupt the proceeding. See 807 KAR 5:001, Section 4(11)(a)-(b).

³ See Bluegrass Response, p. 5.

⁴ See Attached Affidavits of Thomas Waldrop, Jr., Tina Martin and Sharon Sanderson.

Bluegrass's customers. However, there is a legitimate and serious question of whether the proposed rate design is fair, just and reasonable under the particular circumstances of this proceeding. That conflict is especially important now, as this is Bluegrass's initial rate case filing as a consolidated system and it is likely that the neighborhoods served by Bluegrass will be forced to live with this precedent for many years to come. The Attorney General will do an excellent job in helping to assure that Bluegrass's revenue requirement is as low as permitted under the facts and law, however, he cannot fully weigh in on the proposal to adopt the single, uniform rate without prejudicing some neighborhoods and favoring others. This conflict is tangible, not just theoretical. The Movants clearly have a special interest in this proceeding for all the specific reasons set forth in their original motion, which Bluegrass's response generally ignores.

While Bluegrass seeks to diminish the long-standing Commission precedent that firmly establishes a homeowners association's ability to intervene on behalf of its members in a rate proceeding,⁵ it fails to cite a single Commission precedent where such a request for intervention by a homeowners association was denied on the merits in a case such as this. Homeowners associations are widely recognized to have standing before the state and federal courts of the Commonwealth of Kentucky to represent the interests of their constituent residents.⁶ Indeed, the Commission has itself repeatedly allowed a homeowners association to file a complaint to challenge a utility serving its "homeowners" on their behalf.⁷

⁵ See, e.g., *In the Matter of the Application of Hayfield Utilities, Inc. for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities*, Order, Case No. 97-00457 (Ky. P.S.C Oct. 9, 1998); *In the Matter of the Application of Springcrest Sewer Company, Inc. for Transfer of the Equestrian Woods Septic System and for the Establishment of Initial Rates*, Order, Case No. 95-00289 (Ky. P.S.C Mar. 22, 1996); *In the Matter of the Application of Covered Bridge Utilities, Inc. for an Adjustment of Rates Pursuant to the Alternate Rate Filing Procedure for Small Utilities*, Order, Case No. 97-00455 (Ky. P.S.C. July 13, 1998). The foregoing cases are cited to demonstrate the sheer mountain of precedent supporting the Movants' position, but rather to unequivocally demonstrate that the Movants' position has decades of precedent behind it.

⁶ See, e.g., *Colliver v. Stonewall Equestrian Estates Ass'n, Inc.*, 139 S.W.3d 521, 524 (Ky. Ct. App. 2003); *River Fields, Inc. v. Peters*, No. CIV.A. 3:08-CV-264S, 2009 WL 2222901 (W.D. Ky. July 23, 2009)

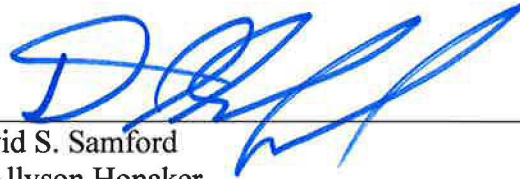
⁷ The previously raised argument that the Movants must represent Bluegrass's "customers" and not the "homeowners" whose residences who are attached to the respective wastewater treatment facilities is a fruitless exercise in sophistry. See *In the Matter of: Forest Hills Residents Association, Inc. and William Bates v. Jessamine South Elkhorn Water District*, Order, Case No. 2011-00138 (Ky. P.S.C. May 3, 2011); *In the Matter of: The Villas of Woodson Bend Condominium Association, Inc., et al. v. South fork Development, Inc. Timothy L. Gross and the Janice Gross Living Revocable Trust, Janice Gross Trustee*, Order, Case No. 2009-00037 (Ky. P.S.C. Feb. 11, 2009).

Bluegrass's speculative assertion that the Movants' corporate purpose is somehow non-germane to its members' interests in this case is a fiction. The Movants clearly have an interest in maintaining their respective neighborhoods, which clearly includes access to adequate and efficient wastewater service at fair, just and reasonable rates. When the neighborhoods were developed, such efforts were undertaken with the fundamental understanding that wastewater would be processed through a centralized facility, not individual septic tanks. Shrubberies and landscaping are nice. Wastewater facilities are essential. An enormous increase in rates is behind the decisions of some of Bluegrass's new customers to apparently plan on installing septic systems that give them a high degree of certainty while avoiding further risk of unpredictable and unnecessary rate increases. Protecting the neighborhood's consistent and unified interest in these communities existing infrastructure clearly falls within the general purpose of any homeowners association. The Movants' interest here is germane to their broader purpose as incorporated homeowners associations. It also bears emphasis that, while the interests of the homeowners within the subdivisions have standing under Kentucky law to challenge Bluegrass's rates, the participation of each individual member is not necessary. It is sufficient for the Movants to represent the collective interest of all affected homeowners. Indeed, that is the very purpose of associational standing.

As evidenced by Bluegrass's response itself, the Movants have a special interest in this proceeding that is not otherwise adequately represented and their participation in the case will assist in fully developing the record without unduly complicating the Commission's proceeding.

WHEREFORE, on the basis of the foregoing, the Movants respectfully request the Commission to grant them leave to intervene in this proceeding and award any and all relief to which they or their members may be entitled.

Respectfully submitted,



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Carriage Park Neighborhood Association, Inc.
Marshall Ridge Sewer Association, Inc. and
Randview Septic Corporation*

CERTIFICATE OF SERVICE

This will certify that the foregoing document was filed via the Commission's electronic filing system today. The undersigned hereby certifies that the electronic filing is a true and accurate copy of the documents being filed in paper medium; the electronic filing was transmitted to the Commission on January 19, 2021; there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; paper copies of this information will be hand-delivered to the Commission within thirty (30) days of the lifting of the present State of Emergency relating to the COVID-19 pandemic.



*Counsel for Arcadia Pines Sewer Association, Inc.,
Carriage Park Neighborhood Association, Inc.
Marshall Ridge Sewer Association, Inc. and
Randview Septic Corporation*

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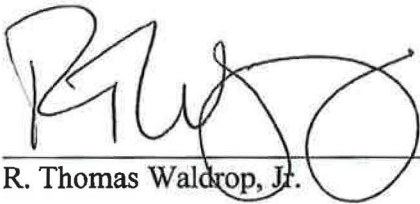
AFFIDAVIT OF R. THOMAS. WALDROP, JR.

Comes now the Affiant, R. Thomas Waldrop, Jr., and after first being duly sworn, does hereby state as follows:

1. My name is R. Thomas Waldrop, Jr. I am the Vice-President of Randview Septic Corporation ("Randview"). Randview is a non-stock, non-profit corporation with a principal business address of 935 Paris Road, Mayfield, Kentucky 42066. Randview represents the interests of the approximately fifty-five (55) homeowners and one church who utilize a non-discharging lagoon wastewater treatment facility serving the Randview neighborhood located in Graves County, Kentucky.
2. The assets of Randview were conveyed to Bluegrass Water Utility Operating Company, LLC on or about November 19, 2020. I was directly involved with the sale of Randview's assets.
3. I have personally reviewed the January 13, 2021 Response filed by Bluegrass in opposition to Randview's January 6, 2021 Motion for Leave to Intervene in the above-styled case.

4. I am unaware of any information requested of Randview by Bluegrass that was not provided prior to the closing of the asset sale. I therefore disagree with and dispute the factual assertions raised in Bluegrass's January 13, 2021 Response.
5. Further, the Affiant sayeth not.

The foregoing Affidavit, being duly sworn, is based upon my personal knowledge and is true and correct to the best of my information, knowledge and belief, formed after reasonable due diligence on this 18th day of January 2021.



R. Thomas Waldrop, Jr.

COMMONWEALTH OF KENTUCKY)
COUNTY OF GRAVES)

The foregoing Affidavit was subscribed and sworn to by R. Thomas Waldrop, Jr., in his capacity as Vice-President of Randview Septic Corporation, before me, the NOTARY PUBLIC, on this 18th day of January, 2021.





NOTARY PUBLIC

Commission: Kentucky

My Commission Expires: 09-09-2021

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AFFIDAVIT OF SHARON SANDERSON

Comes now the Affiant, Sharon Sanderson, and after first being duly sworn, does hereby state as follows:

1. My name is Sharon Sanderson. I am the President of the Carriage Park Neighborhood Association, Inc. ("Carriage Park"). Carriage Park is a non-stock, non-profit corporation with a principal business address of 3670 North Brian Avenue, Paducah, Kentucky 42001. Carriage Park represents the interests and enforces the collective obligations of the approximately thirty-eight (38) homeowners who reside in the Carriage Park neighborhood located in McCracken County, Kentucky and two additional landowners whose properties are immediately south of the subdivision. These residents are all served by a non-discharging lagoon wastewater treatment facility.
2. I am also the Secretary of the Marshall Ridge Sewer Association, Inc. ("Marshall Ridge"). Marshall Ridge is a non-stock, non-profit corporation with a principal business address of 3670 North Brian Avenue, Paducah, Kentucky 42001. Marshall Ridge represents the interests of the approximately forty (40) homeowners in the

Marshall Ridge neighborhood located in McCracken County, Kentucky. These residents are all served by a non-discharging lagoon wastewater treatment facility.

3. The assets of Carriage Park and Marshall Ridge were conveyed to Bluegrass Water Utility Operating Company, LLC on or about November 19, 2020. I was directly involved with the sale of Carriage Park's assets and Marshall Ridge's assets.
4. I have personally reviewed the January 13, 2021 Response filed by Bluegrass in opposition to Carriage Park's January 6, 2021 Motion for Leave to Intervene in the above-styled case.
5. I am unaware of any information requested of Carriage Park or Marshall Ridge by Bluegrass that was not provided prior to the closing of the asset sale. I therefore disagree with and dispute the factual assertions raised in Bluegrass's January 13, 2021 Response.
6. Further, the Affiant sayeth not.


The foregoing Affidavit, being duly sworn, is based upon my personal knowledge and is true and correct to the best of my information, knowledge and belief, formed after reasonable due diligence on this 17th day of January 2021.


Sharon Sanderson

COMMONWEALTH OF KENTUCKY)
COUNTY OF MCCRACKEN)

The foregoing Affidavit was subscribed and sworn to by Sharon Sanderson, in her capacity as President of Carriage Park Neighborhood Association, Inc. and as Secretary of the Marshall

Ridge Sewer Association, Inc., before me, the NOTARY PUBLIC, on this 17th day of January, 2021.


NOTARY PUBLIC

Commission: State at large

My Commission Expires: 1-23-23
ID 616161



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AFFIDAVIT OF TINA MARTIN

Comes now the Affiant, Tina Martin, and after first being duly sworn, does hereby state as follows:

1. My name is Tina Martin. I am a Director of Arcadia Pines Sewer Association, Inc. ("Arcadia"). Arcadia is a non-stock, non-profit corporation with its principal business address at 5339 Shelldrake Lane, Paducah, Kentucky 42001. Arcadia represents the interests of approximately twenty-five (25) homeowners within the Arcadia Pines neighborhood located in McCracken County, Kentucky, who are served by a non-discharging lagoon wastewater treatment facility.
2. The assets of Arcadia were conveyed to Bluegrass Water Utility Operating Company, LLC on or about November 19, 2020. I was directly involved with the sale of Arcadia's assets.
3. I have personally reviewed the January 13, 2021 Response filed by Bluegrass in opposition to Arcadia's January 6, 2021 Motion for Leave to Intervene in the above-styled case.

4. I am unaware of any information requested of Arcadia by Bluegrass that was not provided prior to the closing of the asset sale. I therefore disagree with and dispute the factual assertions raised in Bluegrass's January 13, 2021 Response.

5. Further, the Affiant sayeth not.

The foregoing Affidavit, being duly sworn, is based upon my personal knowledge and is true and correct to the best of my information, knowledge and belief, formed after reasonable due diligence on this 19th day of January 2021.

Tina Martin
Tina Martin

Florida
COMMONWEALTH OF KENTUCKY)
COUNTY OF MCCracken *Collier*)

The foregoing Affidavit was subscribed and sworn to by Tina Martin, in her capacity as a Director of Arcadia Pines Sewer Association, Inc., before me, the NOTARY PUBLIC, on this 19 day of January, 2021.

Eba Sunkhara
NOTARY PUBLIC

Commission: 66 # 333140

My Commission Expires: 05/12/2023

