

Lee R. and Sheila Brown
4963 No. August Street
Erda, Utah 84074

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the matter of the Investigation of the
Water Association for Certification as a
Public Utility or Exemption as a Mutual
Water Company

Petition for Hearing and Final Order

By Lee R. and Sheila Brown

Docket No. 04-2437-01

Procedural History⁹

1. On July 27th, 2004, the Division of Public Utilities (DPU) filed a Petition, pursuant to Utah Code Annotated sub section 54-4a-1, for an Order to Show Cause why Bridge Hollow Water Association (BHWA) should not be fined \$2,000 per day that the Company has operated as private water utility delivering culinary water to customers without the Commission authority required by statute, and why its named officers, John Tebbs and Duane Fluckinger, should not face the criminal sanctions provided by statute.
2. August 3, 2004, the Utah Public Service Commission (Commission) issued a Notice of Hearing and Order to Show Cause to BHWA and it's officers to appear before the Administrative Law Judge of the Commission on August 17, 2004, to

- respond and to show cause, if any, why BHWA has operated as a public utility without a certificate of public convenience and necessity, and further to show cause why BHWA should not be fined for operating without a certificate, and other remedies imposed on the Company and its named officers.
3. On August 18, 2004, the Commission issued a Notice of Rescheduled Show Cause Hearing in response to requests from BHWA and the DPU and rescheduled the hearing for September 2, 2004
 4. On September 2, 2004, the Commission issued an Amended Notice of Hearing as a result of an agreement between the DPU and BHWA and rescheduled the hearing for October 5, 2004.
 5. On September 15, 2004, Lee R. Brown and Sheila Brown submitted a Motion to Intervene in Docket No. 04-2437-01 as interested parties and shareholders of Bridge Hollow Water Association. The Commission on September 17, 2004, acknowledged the petition by issuing a Notice Concerning Motion To Intervene that received no opposition by the parties to the proceeding.
 6. On October 1, 2004, the Commission issued an Order Granting Intervention that granted the Browns right to intervene.
 7. On October 1, 2004, the Commission issued an Amended Notice of Hearing postponing the hearing until November 9, 2004 at the DPU's request to allow for exchange of information.
 8. On November 4, 2004, the Commission issued an Order Postponing Hearing until further notice at request of DPU and BHWA to allow time to work with BHWA in perfecting their application for exemption from regulation.

9. On September 21, 2004, the browns issued their first set of Data Requests to BHWA Officers and Directors.
10. On May 11, 2005, the Brown's filed a motion to Compel Answers to Data Requests to compel current and former officers and directors of BHWA to answer the data requests submitted to them September 21, 2004.
11. On June 3, 2005, the Commission issued a Procedural Notice and Notice of Technical and Scheduling Conference establishing a conference on June 28, 2005, in response to the May 25, 2006, Memorandum by the DPU recommending a hearing to require John Tebbs to show cause why he is not obligated to comply with the DPU request for relevant information regarding the operation, control and properly authorizing voting shares of BHWA.
12. On June 7, 2005, the Commission issued Amended Notice of Technical and Scheduling Conference rescheduling the conference for July 13, 2005.
13. July 13, 2005, the DPU makes a second request of John Tebbs (first request made October 25, 2004) to provide accounting records of BHWA and a list of current shareholders, and amount of voting shares owned by each.
14. July 14, 2005, the Commission issued Order Granting Motion to Compel answers by current BHWA officers and Tebbs family to data requests issued by Browns and DPU within 15 days.
15. July 27, 2005, Duane Fluckiger, President, BHWA answers Brown's first set of data requests.

16. August 11, 2005, the DPU petitions the Commission for Order to Show Cause requesting the Commission take agency action against the Tebbs members for failure to respond to the Order to Compel Answers issued July 14, 2006.
17. August 19, 2005, Tebbs family files answers to Browns first set of data requests.
18. October 3, 2005, Browns file second set of Discovery requests of Duane Fluckiger, President of BHWA and (Tebbs Family-successors to Surrey Ridge).
19. November 9, 2006, DPU sends notice to Tebbs family members requesting date for answering Brown's second data requests.
20. November 3, 2005, Duane Fluckiger, President of BHWA makes first data request of Tebbs family requesting studies and evaluations done on the BHWA well and distribution system.
21. November 9, 2005 Clement Tebbs files objection to Fluckiger's request for studies and evaluations claiming they are the property of BACT Limited Partnership. He also claims BACT Limited is the primary owner of BHWA.
22. December 2, 2005, Duane Fluckiger responds to Brown's second data request.
23. December 5, 2006, BACT Limited Partnership (formerly Tebbs Family Partnership) responds to Browns second data request. ~~H~~

— **Factual Background**

NOTE: Foot Note Reference documents are attached to assist reader.

It is necessary to review the history of the events that led to the development of Bridge Hollow Water Association (BHWA) in order to determine if it is a mutual water association exempt from Commission regulation. My research into the matter reveals that BHWA was created on November 14th, 1994 with the creation of the Articles of

Incorporation and By-Laws of Bridge Hollow Water Association. BHWA was created in accordance with a Development Agreement between Bridge Hollow Development (BHD) and Surrey Ridge Ranch at Bridge Hollow (SRR) dated July 12, 1994.

Both parties were land developers with projects in Summit County.

Bridge Hollow Development

Bridge Hollow Development (BHD) was formed by Daniel and Shauna Newton in April 1992 and began development of Bridge Hollow Subdivision.¹ They marketed the subdivision and sold lots with CC&Rs that specifically obligated BHD to develop and construct a water system to connect to lots. Connection to the water system was included in the sale price of the lot.²

On July 12, 1994, BHD entered into the DEVELOPMENT AGREEMENT with SRR for the purpose of forming Bridge Hollow Water Association.³ The Agreement obligated both BHD and SRR to complete the BHWA water system to provide water service to lot owners of Bridge hollow Subdivision and the future Surrey Ridge at Bridge Hollow subdivision. The agreement proposed 37 shares of stock be issued to both parties for a total of 74; and that one acre foot of water be acquired for each share of water to meet obligations made to shareholders of the water association. Reference Section 8, which states in part:” BHD and SRR agree and understand that adequate water rights must be obtained to service BHWA. Adequate for purposes of this agreement shall be defined as 1 acre ft. of water per residential connection.” The initial BHWA Board of Directors meeting shows that 83

¹ Reference 3/15/95 letter from BHD to lot owners titled Proposal for Completion of Infrastructure Improvements.

² Reference CC&Rs and earnest money sales agreement for Bridge Hollow Subdivision.

³ Reference Development Agreement dated July 12, 1994.

shares of stock were issued and 83 shares of Weber Basin Water was budgeted. In addition the minutes reflect the ownership of Wanship Mutual Water Association shares (Reference footnote 16 attachment). Later demands by Tebbs in their letter June 16, 1997, to sell the Wanship Water shares to raise cash may have reduced water rights below the active shares issued and resulted in the violation of the covenants to shareholders. (Reference footnote 10 attachment).

BHD was apparently out of money in 1994 as indicated by a lot owners letter written a year later, March 6, 1995, that expressed their concerns about BHD's ability to complete the development.⁴

BHD however, had attempted to sell the concept of association with SRR and the creation of a water company a year earlier to lot owners in a meeting September 30, 1994 as an attempt to avoid problems with Wanship Mutual Water Company and an opportunity to reduce costs by cooperating with SRR.⁵

On June 8, 1995, BHD reached agreement with lot owners to allow the lot owners to form Bridge Hollow Home Owners Association (BHHOA) as per the CC&Rs to insure that the funds from the sale of lots and funds owed by SRR (\$150,000) were used to complete the required infrastructure.⁶

October 19, 1995, the Bridge Hollow Home Owners Association was created with Articles of Incorporation and later By-Laws.⁷ BHHOA and BHD worked together to complete the infrastructure and require SRR to complete it's obligations under the July 12, 1994,

⁴ Reference March 6, 1995 letter to Daniel Newton from lot owners.

⁵Reference 9/30/94 minutes of meeting with Bridge Hollow lot owners PP.5-8.

⁶.Reference 6/8/95 Agreement between BHD and lot owners.

⁷ Reference BHHA Articles of Inc. and Bylaws.

Development Agreement as evidenced by BHHOA news letters to members in September 1996 and January 1997.⁸

Key 1997 Events:

Surrey Ridge Ownership changes:

According to Clement Tebbs in his letter to Patricia Schmid dated December 5, 2005, (Tebbs- Family response to Browns 2nd set of data requests) he claims that on January 2, 1997, Real Corp Real Estate, Inc. acquired 28 shares of BHWA and the Barbara Ann Tebbs Trust Acquired 12 shares. "This Stock was acquired simultaneously with the acquisition of the property that was formerly owned by SRR." Here in after SRR is controlled by Real Corp Real Estate, Inc., Barbara Ann Tebbs Trust, Tebbs Family Partnership, or BACT LIMITED PARTNERSHIP. For simplicity I will refer to them as (Tebbs).

Note: Tebbs further states: "To be clear, the Tebbs family was never an officer or a director of the Bridge hollow Water Association. In addition, the Barbara Ann Tebbs Trust and Real Corp Real Estate, Inc, were never officers or directors of that Association."⁹ This is in direct conflict with their answers to the Brown's first set of Data Requests in which Tebbs claim John Tebbs served as President of the BHWA from mid1999 through March1, 2003. Clement Tebbs served as Treasurer of the BHWA from 1999 through March1, 2003. Their declaration that they were never officers or directors of BHWA is also not in keeping with Minutes of Shareholders Meetings of Bridge Hollow Water Association that show John Tebbs, Clement Tebbs and Barbara A. Tebbs being elected directors and there after controlling the business of BHWA by exercising a majority vote.¹⁰

⁸ Reference 9/96 and 1/97 BHHOA news letters

⁹ Reference page 1 of 12/5/05 Answer by Tebbs to Browns second rest for data requests.

¹⁰ Reference Minutes of BHWA Shareholders/Board meetings dated 1/7/97; 1/22/98; 12/18/98; 4/28/99; 6/7/00; 6/20/01; 1/2/03 and Tebbs answers to Brown's first set of data requests.

Conflict Escalates:

June 6, 1997, Tebbs attempts to deny responsibility for SRR obligations, and attempts to renegotiate their obligations under the 7/12/94 settlement agreement with BHHOA whose members are about to take control of BHD interests in BHWA.

Subsequent letters show the conflicting issues between Tebbs, and the homeowners as it relates to BHWA and the eventual Agreement between the parties dated November 7, 1997.¹¹

(Note: Amid the ongoing dispute with Tebbs, the BHHOA reached a Settlement Agreement with BHD on July 15, 1997. In that agreement, BHD assigned its entire interest in the DEVELOPMENT AGREEMENT with SRR dated 7/12/94 to BHHOA.)¹²

Unresolved Issues Flare:

A series of correspondence reveals problems between BHHOA members and BHWA that is now controlled by developer Tebbs who has not developed the Surrey Ridge Ranch at Bridge Hollow as contemplated by the Development Agreement nearly 12 years ago.

These letters include:

March 5, 2001, BHHOA (home owners) notifies BHWA (now controlled by Tebbs votes) of water Problems & Suggestions for Improvement.

January 9, 2003, Dan Hunter, Attorney for D. Fluckiger and other BHHOA members notifies Lorin Barker, Attorney for BHHOA and BHWA they are considering lawsuit because of Tebbs illegal control of BHWA.

¹¹ Reference letters 6/6/97; 6/16/97; 6/24/97; 8/26/97; 9/5/97; 9/10/97; and 9/19/97 between L Barker Counsel for BHHOA and DR Smith Counsel for Tebbs and Agreement 11/7/97.

¹² Reference Settlement Agreement dated 7/15/97 section D.3.

February 11, 2003, letter to L. Barker from Clement Tebbs, states the Tebbs are willing to step down and relinquish control of the board to the BHHOA while maintaining one board seat.

February 15, 2003, letter from BHHOA to BHWA members outlining their efforts to take back control of the BHWA board.

February 20, 2003, letter titled Bridge Hollow Water Association Addendum Agreement outlining basis for Tebbs family to relinquish control of BHWA from John Tebbs to Loren Barker.

March 4, 2003, Notice to BHWA members from newly elected BHWA Board of Directors titled "Results of the special meeting of the voting members of the BHWA called March 1, 2003". Letter announces removal of current BHWA board members (Tebbs).

March 6, 2003 letter from D. C. White, attorney for Tebbs, demanding an apology for Allegations made by the new board and a demand for support of the SRR subdivision.

March 25, 2003, letter from C.Tebbs to D. Fluckiger acknowledging receipt of requests for payment of fees from 1996-2001.

February 19, 2004 letter from John Tebbs to BHWA President Duane Fluckiger, President, and Sam McClaughlin, Vice President, providing Tebbs interpretation of the July 12, 1994 Development Agreement between SRR and BHD and his interpretation of The 1997 Agreement between Real Corp (Tebbs) and Home Owners Association.

In summary, Tebbs claims:

1. They have no further responsibility to pay the \$150,000 alleged owed as

Consideration For Water Service Connection as per the Development Agreement.

2. They have no responsibility to produce a well or guarantee availability of water.

3. That BHWA shareholders are not guaranteed one acre- foot of water with their share of water in the BHWA.

September 19, 2005 Letter from D.Fluckiger to shareholders of BHWA requesting copies of stock certificates; as Tebbs did not turn over copies of stock certificates issued after the change in Board of Directors.

September 21, 2005, C.F. Tebbs letter to shareholders denying Fluckigers allegations and making his own allegations.

October 29, 2005, Minutes of the Annual Shareholders meeting show Tebbs family representative, John Fleming, appears at meeting contending to have 42 votes. Lee Brown challenges the Tebbs votes. Brown goes on to explain Tebbs have been voting illegally because they have not paid the Consideration for connection fee required in the Development Agreement of July 12th, 1994 while others have paid as part of purchase of lot. He also stated the December 18th, 1998 Board of Directors meeting (dominated by Tebbs) that lowered Tebbs water charges from \$120 to \$40 per month for undeveloped property was in violation of Article IV of the July 12th, 1994 Development Agreement that requires stock to be issued to persons upon payment of connection fees, no vote to be allowed on shares that are delinquent on assessments and Article 7.3 of the By-Laws of the Association that requires uniform assessment. Article 7.3 had not been amended by a vote of a majority of the shares represented at a meeting of shareholders called for such purpose or at any annual meeting of shareholders as required by Article 2 of the BYLAWS.

The Board decided to delay the re-issuance of the shares of stock in accordance with the proposed vote due to threats by Tebbs representative ¹³

(Note: October 29, 2005 minutes are contained as exhibit 3 in D. Fluckiger's answers to Browns 2nd set of data requests and are not included in this document)

Summation

On July 27, 2004, the Division of Public Utilities filed it's petition with the Commission for an Order to Show Cause why Bridge Hollow Water Association should not be fined \$2,000 per day for each day that the Company has operated as a private water utility delivering culinary water to customers without the Commission authority required by

¹³ Reference attachment titled "Unresolved Issues Flare" that is a collection of the aforementioned letters.

statute, and why its named officers, John Tebbs and Duane Fluckiger, should not face the criminal sanctions provided by statute in PSC Docket No. 04-2437-01.

This proceeding has uncovered serious ongoing and existing problems with BHWA that the Commission must now address.

1. BHWA has been dominated and controlled by developers that have operated the water association in their own interests rather than the interests of shareholders as required in the Articles of Incorporation dated November 14, 1994.
2. The developers have issued more stock shares (estimated to be 83) than water rights owned (74 acre feet). Both Article V of the Articles of Incorporation and Article 4.2 of the Bylaws require that stock be issued on the basis of one acre foot of water right per one share of stock

The developers (SRR) issued themselves shares of stock in 1994 with knowledge that the \$150,000 Consideration for Water Service Connection and funds required to develop the water system was still owed. Tebbs denies they owe the remaining \$150,000 but has failed to bring forth evidence of payment that they claim they have in their records as per the February 19,2003 letter to BHWA officers. The \$150,000 is still owed today as evidenced by the record and affidavits of former BHWA and BHHOA officers.¹⁴

These are continuing violations of the Articles of Incorporation. Specifically Article V “SHARES” states in part: “The Corporation shall be owned by its shareholders. The corporation is not a public utility, and is not prepared, able, or legally empowered to serve persons other than its shareholders. The number of

¹⁴ Reference Affidavits of Lane Wardrop dated April12th, 2006 and Affidavit of Rod Burtenshaw dated April13th, 2006.

shares shall not be fixed, but the aggregate number of shares of stock which the corporation shall have authority to issue shall be limited to one share for each acre foot of water rights owned by the corporation.” Furthermore it states: “The stock in the corporation shall be issued to the persons entitled to receive stock upon payment of all connection fees, assessments, and other charges as established by the Bylaws and regulations of the corporation.” Later the Article states: “The owner of each share of stock is entitled to one vote for each share of stock he or she owns on all matters presented to shareholders for approval. No vote will be accepted on shares that are delinquent on any assessment.” Articles 3.7 – 3.10 of the Bylaws require that voting be conducted on the basis of validity of shareholder rights. Legitimate and valid voting is not possible until BHWA corrects the chaos and confusion related to shareholder stock ownership. This can best be accomplished by having the current BHWA Board of Directors adopt and implement the new Articles of Incorporation and Bylaws adopted at the most recent shareholders meeting. The Board also voted to reissue shareholder stock certificates in this manner. These corrective actions are currently on hold due to threats by Tebbs, the developer. **Correcting the stock records of this association is the single most important matter for the Commission to address.**

3. The recorded history of the developer and the BHWA members clearly shows that the developers successfully increased the burden on shareholders while avoiding their responsibilities to complete the construction of the water system for over 3 years. Desperate lot owners were required to renegotiate terms of the

Development Agreement and enter into an Agreement November 11, 1997, that required shareholders to pay unnecessary costs originally intended for the developers.

(Note: There is a continuing dispute as to whether the Tebbs controlled BHWA board accepted a well that did not meet the requirements of 85 gpm and adequate water for a minimum of 74 residential connections.) D. Fluckiger sent his representative to contact Aqua Engineering to inquire into the tests conducted on the BHWA well. The informal report that is attached created deep concerns that the well cannot provide water to more than 24 lots. Indications are that the well can not support an additional 24 lots proposed by Tebbs unless the current residents were restricted to one half acre foot of water for indoor use only¹⁵. This report resulted in D. Fluckiger filing his first set of data requests of Tebbs; that Tebbs has refused to answer.

4. The facts reveal there are incomplete and incorrect records of shares of stock ownership. Stock certificates are improperly issued to persons outside the service area, to non-lot owners, and to former lot owners in violation of the Articles of Incorporation and Bylaws. (Reference answers to Browns data requests by both Tebbs and Fluckiger). Some current lot owners have not been issued their share of stock because of the confusion existing over what stock is current and available to be issued with the lot purchase.
5. The Articles of Incorporation and Bylaws require uniformity in assessments and rates among shareholders. However, on December 18, 1998, the Tebbs dominated board gave Tebbs a reduction in the original established uniform water assessment

that had existed for 4 years. They reduced their original assessment from \$120 per month per lot to \$40 per month per lot thus transferring the burden of financing the operation and maintenance to the shareholders. The original assessment had been established since December 1994 and considered to be the uniform assessment for shareholders that were either connected or unconnected to the water system.¹⁶

Tebbs created their own category titled undeveloped. Such action was not in the authority of the Tebbs controlled board. While Article X of the Articles of Incorporation allows the board to set rates, Article XI ASSESSMENTS states in part:” All shares shall be assessed to meet their proportionate share of annual fixed costs of the operation and maintenance of the water system. Shares actually receiving water service from the corporation may be assessed to pay both their proportionate share of the fixed costs, plus the variable costs of operation and maintenance related to water consumption. The Assessment for variable costs may take the form of a uniform assessment of periodic water charges based on water usage as determined by meters, or such combination as the Directors may determine from time to time.

Article 7.3 of the Bylaws states in part:” The amount of the assessment for fixed costs or costs independent of the amount of water actually used shall be uniform for all outstanding shares of stock of the association.

Article 7.4. Special Assessments states in part:” Any such special assessment must be approved by the shareholders at a meeting of the shareholders called for such purpose in the manner and with the appropriate notice, as specified in the Bylaws.

¹⁵ Reference October 27, 2005, Bridge Hollow Water Notes, by David Lyman

¹⁶ Reference December 1994 BHWA Board minutes and December 1998 BHWA Board minutes.

My research reveals that for BHWA to qualify for a letter of Exemption:

The Company must make application to the DPU.

The Company must be in good standing with Division of Corporations.

The Company must have an approved rating from the Division of Drinking water.

The water system must be run by it's members as a non-profit corporation that can supply water only to its members who must own a lot in Bridge Hollow or Surrey Ridge subdivisions.

The Company must have sufficient water rights for the needs of its shareholders and the ability to deliver same.

No member should be able to control the Company.

And finally a commonality of interest should exist.

We as shareholders of BHWA and intervening parties to this proceeding request the Commission conduct a Hearing and direct the BHWA to complete the required tasks for exemption. As Shareholders we feel it is in the best interests of the shareholders to become a competent well-qualified water association.

Dated this 20th day, of May 2006.

Lee R. Brown

Share

Holder of Bridge Hollow Water Association

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing intervention of Lee R. and Sheila Brown, in Docket No. 04-2437-01 was hand delivered or mailed postage prepaid on this 20th, day of May 2006, to the following:

Utah Public Service Commission
Stephen F. Goodwill, ALJ
Heber M. Wells State Office Bldg.
160 E. 300 So.
Salt Lake City, Utah 84111

Patricia E. Schmid
Assistant Attorney General
Counsel for the Division of
Public Utilities
500 Heber M. Wells State Office Bldg.
160 E. 300 So.
P.O. Box 140857
Salt Lake City, Utah 84111
Telephone (801) 366-0380

John Tebbs

(Copy left with DPU ,Scott Moio, in same manner Tebbs delivered Data Request Answers ,to Browns)

3642 So. Bountiful Blvd
Bountiful, Utah 84010

Duane Flukiger
1501 Oak Haven Lane
Wanship, Utah 84017