

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
Duncan, Gavril, Workman, Bates, et al.) DOCKET NO. 13-2477-02
against Eagle's Landing Water Company,) REPORT AND ORDER
LLC)

ISSUED: April 24, 2014

SYNOPSIS

The Commission revises its March 6, 2014, report and order, in part, and finds the Butterfields are not the original property owners and, therefore, are not required to pay the additional \$1,000 meter set fee.

BACKGROUND

1. On March 6, 2014, we issued an order in this docket which, in part, determined that the tariff permits recovery of the remaining \$1,000 from Trevor and Jessica Butterfield (the "Butterfields") as original owners of certain property served by Eagle's Landing Water Company.¹

2. On March 18, 2014, the Butterfields filed a request for review or rehearing, asserting that they are not the original owners and, therefore, they should not be held responsible for the remaining \$1,000 for the meter set fee.² In support of their claim, the Butterfields assert that Knight West Construction Company ("Knight West") was the original owner, and they

¹ See Report and Order at 23, ¶ 4, issued March 6, 2014 ("The \$4,000 meter set fee does apply to original owners. The Butterfields, being original owners, are required to pay the remaining balance of \$1,000.").

² See Request for Review or Rehearing for Trevor and Jessica Butterfield, filed March 18, 2014.

attached an addendum from the real estate purchase contract with Knight West, showing Mr. Butterfield as buyer and Knight West as seller of Lot 68 in Eagle's Landing.³

3. On April 9, 2014, the Commission issued a notice of hearing in this docket.⁴ The notice states, in part, that "[p]arties should come prepared to provide testimony and exhibits (including a copy of the chain of title for the Butterfields' home) on whether the Butterfields are the original owners."⁵ The notice was sent to all parties in the docket.

4. On April 15, 2014, a hearing was held.⁶ The Butterfields appeared *pro se*. No one appeared on behalf of Eagle's Landing Water Company, LLC ("Company" or "Eagle's Landing").

5. The day after the hearing, counsel for the Company filed a notice of withdrawal.⁷

DISCUSSION, FINDINGS AND CONCLUSIONS

The Butterfields testified at the April 15, 2014, hearing that their home was built as a spec home.⁸ Mr. Butterfield also testified that he purchased it from Knight West after he went looking for builders to build a home in the Eagle's Landing Development⁹ and had entered into a construction agreement with Knight West to build the home.¹⁰ The Butterfields also

³ See id., Addendum No. One (1).

⁴ See Notice of Hearing, issued April 9, 2014.

⁵ See id. at 1-2.

⁶ See id.

⁷ See Notice of Withdrawal of Counsel, filed April 16, 2014.

⁸ See Transcript of Hearing on April 15, 2014, at 10, lines 14-17. We note that a "spec" home is one that is built on speculation, not on need or otherwise based on a contract to build. Mr. Butterfield testified that he entered into a contract with Knight West to build the home, and that the home did not exist before he chose the lot and entered into the contract to have the home built.

⁹ See id. at 9, lines 24-25.

¹⁰ See id. at 12, lines 3-21 (Mr. Butterfield testifying that he spoke with Knight West before the building of the home was started, stating that "[W]e were trying to negotiate a price on the lot and the home. And [Knight West] figured it would be best if [it] was just to buy the lot themselves and build the home for me. And then, afterwards, I would come in and purchase the home from [Knight West]."). See also id. at 10, lines 10-13 (Mr. Butterfield testifying that

testified that Knight West provided the funding to build the home so the Butterfields did not have to provide a construction loan, and then Mr. Butterfield obtained a loan to purchase the home from Knight West at closing.¹¹ The Butterfields submitted copies of two warranty deeds, showing transfers of ownership to Knight West on November 29, 2011,¹² and a subsequent transfer three days later, on December 2, 2011, from Knight West to Mr. Butterfield.¹³ The Butterfields also submitted a copy of a ledger, showing Knight West had paid \$3,000 of the \$4,000 meter set fee and that Dave Olsen, Eagle's Landing's owner, acknowledged the meter set fee had been paid.¹⁴ The Butterfields testified that Knight West paid these fees so it could obtain a construction permit to build the home.¹⁵ Eagle's Landing did not contest the Butterfields' evidence on rehearing.

Based on the evidence presented, the Commission finds that Knight West built the home as a spec home, paid the meter set fee, although not the entire fee, and owned the home before the Butterfields, albeit for only a few days. Under these circumstances, we find that the Butterfields were not the original owners and, therefore, are not responsible for the meter set fee.

"...I didn't go and get a construction loan or anything like that to help fund the building of the home. ...[Knight West] just figured it would save me some money if [Knight West] was to do it . . . out of their own pocket rather than have me go and get a construction loan to have the home built and everything. So, we just went about it that way." See also id. at 12, lines 22-24 (Mr. Butterfield testifying he entered into a construction agreement to build the home).

¹¹ See id. See also id. at 14, lines 12-16 (Mr. Butterfield testifying that "After . . . the home was completed and it was ready to move in, I then went and got a loan to purchase the home from Knight West.").

¹² See Warranty Deed, Entry No. 85835, Recorded by the Utah County Recorder on November 30, 2011, attached as Exhibit 1 to Transcript of Hearing on April 15, 2014.

¹³ See Warranty Deed, Entry No. 86755, Recorded by the Utah County Recorder on December 2, 2011, attached as Exhibit 1 to Transcript of Hearing on April 15, 2014.

¹⁴ See Knight West Construction, Vendor QuickReport, attached as Exhibit 2 to Transcript of Hearing on April 15, 2014.

¹⁵ Transcript of Hearing on April 15, 2014, at 18, lines 5-9. Mr. Butterfield further testified that he had nothing further, other than his assertion, that Knight West was obligated to pay the meter set fee. See id.

ORDER

Based on the testimony and evidence presented in this docket, the Commission finds that the Butterfields are not the original property owners and, therefore, are not responsible for the unpaid portion of the meter set fee. We revise our order issued on March 6, 2014, accordingly. This order represents a final agency action with respect to the motion for reconsideration and rehearing filed by the Butterfields in this docket.

DATED at Salt Lake City, Utah, this 24th day of April, 2014.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#253695

Notice of Opportunity for Appeal

Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on the 24th day of April, 2014, a true and correct copy of the foregoing was served upon the following as indicated below:

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