

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF GOLFVIEW PARTNERS LLC ("SELLER"))
AND GOLFVIEW POA, INC. ("BUYER") FOR)
APPROVAL OF: (A) THE TRANSFER OF SELLER'S)
FRANCHISE, WORKS, SYSTEM, AND CERTIFICATE OF)
TERRITORIAL AUTHORITY TO BUYER PURSUANT TO)
AN AGREEMENT FOR PURCHASE AND SALE OF)
ASSETS; AND (B) APPROVAL OF INITIAL RATE BUYER)
WILL CHARGE UPON CLOSING THE ACQUISITION;)
AND (C) APPROVAL OF THE CONCISE CERTIFICATE)
OF TERRITORIAL AUTHORITY)

CAUSE NO. 44356

APPROVED:

MAR 19 2014

ORDER OF THE COMMISSION

Presiding Officers:

Carolene Mays, Commissioner

Gregory R. Ellis, Administrative Law Judge

On June 21, 2013, Golfview Partners, LLC ("Golfview Partners") and Golfview Property Owners Association, Inc. (the "POA") (collectively "Joint Petitioners") filed their verified Joint Petition seeking approval of the transfer of Golfview Partners' franchise, works, system, and Certificate of Territorial Authority ("CTA") to the POA pursuant to an Agreement for Purchase and Sale of Assets ("Agreement"), as amended, between the Joint Petitioners. On August 9, 2013, Joint Petitioners prefiled the direct testimony and exhibits of Gary Justak and Elisa Griffin in support of the transfer of assets. On September 20, 2013, the Indiana Office of the Utility Consumer Counselor ("OUCC") prefiled the testimony and exhibits of Harold L. Rees. On October 10, 2013, the Joint Petitioners and the OUCC responded to questions presented by the Presiding Officers in a docket entry dated October 4, 2013. Golfview Partners filed its late-filed exhibit on December 11, 2013.

Pursuant to notice given and published as required by law, proof of which was incorporated into the record by reference and placed in the official files of the Indiana Utility Regulatory Commission ("Commission"), an Evidentiary Hearing was held in this Cause at 9:30 a.m., on December 23, 2013, in Room 224, PNC Center, 101 West Washington Street, Indianapolis, Indiana. Joint Petitioners and the OUCC were present and participated in the hearing. No members of the general public appeared or sought to testify at the hearing. The testimony and exhibits of the Joint Petitioners and the OUCC were admitted into the record without objection.

Based upon the applicable law and the evidence presented, the Commission finds:

1. **Notice and Commission Jurisdiction.** Due, legal, and timely notice of these proceedings and the public hearings were given and published as required by law. Golfview Partners is a public utility as defined by Ind. Code § 8-1-2-1. The POA is an Indiana not-for-

profit corporation organized to conduct business as a homeowners association which will include operating a public utility as defined in Ind. Code § 8-1-2-1 if it acquires Golfview Partners' system. Pursuant to Ind. Code § 8-1-2-83, the Commission has authority over the sale, assignment, transfer, lease or encumbrance of a public utility's franchise, works, or system. Thus, the Commission has jurisdiction over Golfview Partners and the POA and the subject matter of this Cause

2. Joint Petitioners' Characteristics. Golfview Partners is an Indiana for profit domestic LLC incorporated on May 11, 2000 in the State of Indiana. Golfview Partners owns plant and equipment which are used and useful in the provision of sewage collection and disposal service in a rural area in Lake County, Indiana. Golfview Partners serves a customer base of approximately 40 residential customers in Phase A of Golfview Subdivision ("Subdivision"). Golfview Partners holds a CTA as a result of the approval of the Commission in its Order in Cause No. 41747, issued September 13, 2000. Golfview Partners notified the Commission on April 2, 2002, that it was withdrawing from Commission jurisdiction for rates and charges.

The POA is an Indiana not-for-profit corporation incorporated on August 30, 2000. The POA has all lawful power and authority to apply for a CTA and to provide sewer service. The POA currently operates as the property owners association for the area served by Golfview Partners. The POA has a five member Board of Directors ("BOD") and holds annual meetings as required by the Subdivision's by-laws.

3. Relief Requested. Joint Petitioners request the Commission approve: (a) the transfer of Golfview Partners' franchise, works, system and CTA to the POA pursuant to Ind. Code §§ 8-1-2-83 and 89 and the terms of the agreement for purchase and sale of assets between Golfview Partners and the POA, as amended, and attached as Attachment A to the Joint Petition; (b) approval of initial rate the POA will charge upon closing the acquisition; and (c) approval of the concise CTA.

4. Joint Petitioners' Evidence.

A. Golfview Partners. Gary Justak, Managing Member of Golfview Partners, LLC, testified on behalf of Golfview Partners. Mr. Justak testified about the history of Golfview Partners since it was granted a CTA in Cause No. 41747 and outlined the basis for and the conditions of the transfer of Golfview Partners to the POA.

Mr. Justak testified that Golfview Partners is an Indiana for profit domestic LLC incorporated on May 11, 2000 and is in good standing in the State of Indiana. Golfview Partners was organized to develop and build homes in the Subdivision located in rural Lake County Indiana.

Mr. Justak also provided testimony regarding the POA. He explained that the POA is an Indiana not-for-profit corporation incorporated on August 30, 2000 for the purposes identified in its Articles of Incorporation. Mr. Justak and his wife were the initial incorporators of the POA. He stated the POA was transferred to the member homeowners of the POA on September 29,

2009. He explained the POA has been self-sustaining and under the control and direction of its resident members for several years now. Elisa F. Griffin is the current President of the POA. Mr. Justak testified the POA is in good standing as an Indiana corporation and has all lawful power and authority to apply for and be granted a CTA and to provide sewer service. Mr. Justak provided testimony that the POA has initiated collecting additional funds to ensure it has sufficient means to operate the utility. He stated that when he turned the POA over to the homeowners it was in sound financial condition and he believes that it continues to be in the same condition and that it has closely monitored its financial situation. He opined the POA has the financial ability to operate and maintain the sewer service provided by Golfview Partners. Mr. Justak further explained the residents of the Subdivision continue to need sewer service and the utility needs to continue to operate for the benefit of the residents in Phase A of the Subdivision, as reflected on the Plat included as Attachment B.1 to the Joint Petition. He concluded that the public convenience and necessity require the continued rendering of the existing sewer service in Phase A of the Subdivision and the POA is prepared to render that service.

Mr. Justak stated that Golfview Partners received a CTA authorizing it to provide sewage disposal service to Phase A of the Subdivision. Sewer service has continued since September 13, 2000 with no major interruptions or issues. He noted that it was always contemplated that the utility would be transferred to the POA.

He explained the sewer service has been provided through a recirculating sand media filter system under a permit acquired from the Indiana State Department of Health ("ISDH"). He stated he has serviced and maintained the sanitary sewer system since its installation and the system has functioned very well. He indicated the only types of repairs that have been required are normal wear and tear replacement of mechanical items and routine maintenance has been performed on a quarterly basis. There have been no repairs requiring the assistance of an outside contractor other than septic pumping services. He indicated that over the past thirteen years Golfview Partners has made improvements to the original system. The improvements include: installation of a self cleaning filter bank at the drip irrigation field, construction of a building to house the pumps and controls, construction of a road to allow access to the drip field tanks, and most recently a program was initiated to change the control panels from the electronic type to a simple float system.

Mr. Justak testified that he has routinely inspected the sand media filter system since it was installed. He stated the system has also undergone several inspections by the ISDH. He noted Golfview Partners was required as part of its permit to have laboratory reports of the effluent submitted to ISDH on a quarterly basis. Mr. Justak testified Golfview has complied with all of the terms of its ISDH permit. The reports indicated the system's effluent was within the guidelines of the permit. In 2004, the Indiana Capacity Center for the management of onsite decentralized systems conducted a detailed site inspection of the Golfview Partners system and the inspection showed no concerns. In addition, the POA had a visual inspection of the system performed and no major problems were detected.

Mr. Justak explained there are currently 40 members of the POA who are the 40 customers served by Golfview Partners. He stated that there are 14 lots that remain to be sold in

Phase A of the Subdivision. He stated the POA has taken a proactive and thorough approach to accepting the transfer of the utility. It has been represented by legal counsel, inspected the system, and understands the operation and maintenance needs of the utility. He noted that the POA only needs the portion of the CTA located in Phase A of the Subdivision as there is no construction underway or planned for the other phases of Subdivision. He explained that Golfview Partners has decided to wait until municipal service becomes available in the future, if it ever does, before proceeding with any further development of the 14 lots. Mr. Justak is requesting that the remainder of the CTA beyond Phase A be relinquished.

He testified that Golfview Partners' current monthly rate is \$85 and the POA is requesting approval in this proceeding to maintain the \$85 monthly rate as the POA's initial rate. Mr. Justak opined that the current monthly rate is sufficient to permit the POA to continue sound operation of the system. He noted the POA could easily implement an assessment to adjust rates if necessary.

Mr. Justak explained that the transfer of the utility was discussed at length over an eight month period with the POA President, Ms. Griffin, and Golfview Partners reviewed documents relating to the terms and conditions of the transfer. The discussions and negotiations culminated in the final document, the Agreement. The Agreement between Golfview Partners and the POA was executed on June 10, 2013. Mr. Justak testified that the major components of the Agreement are:

1. The POA purchases the franchise, works, system, and CTA of Golfview Partners including the necessary easements associated with the reasonably necessary maintenance, replacement and operation of the system.
2. Golfview Partners is transferred at no cost to the POA.
3. Mr. Justak and his wife assign and convey certain rights and interests relating to the easement rights, sewer collection system franchise, sewer works and the CTA to the POA.
4. Mr. Justak and his wife provided a license agreement to the POA for driveway access to the system over and across a piece of land personally owned by them.
5. The system was inspected and accepted "as is" by the POA.
6. Golfview Partners assumes the costs associated with the sale, as well as the costs related to the Commission proceeding.
7. The initial rate for service by the POA will be \$85 per month, which is the current monthly rate charged by Golfview.
8. Establishes the orderly transfer of remaining fees collected in advance and the disposition of the sewer repair contingency fund with no liability to the POA for repayment of loans received by Golfview Partners.

Mr. Justak testified that the ISDH was notified of the impending sale and transfer of the system to the POA. The Lake County Health Department does not require any permits or inspections for operation of the system and has deferred all oversight to the ISDH. He indicated that no formal approvals are necessary from either entity.

He concluded that it would be in the best interest of the ratepayers to transfer ownership of Golfview Partners to the POA. The transfer will provide the POA members, the right to manage the system in the manner in which it deems most appropriate and in their best interest. Mr. Justak noted that it is anticipated that the POA will commence operation of the system on the first day of the month after the issuance of the Commission's order approving this transfer and sale to the POA.

B. The POA. Elisa Griffin, President of Golfview POA, Inc., testified on behalf of the POA. She provided testimony regarding the sale and transfer of the sewer utility from Golfview Partners to the POA.

Ms. Griffin testified that she resides in the Subdivision, has been a member of the POA since April 2008, and has served on the POA BOD since August 2011. She stated the POA is an Indiana corporation incorporated on August 30, 2000 for the purposes identified in its Articles of Incorporation. The POA currently has a five member BOD.

Ms. Griffin indicated that at the January 14, 2013 POA annual meeting, in preparation for transfer of the sewer utility, a flyer was distributed explaining the system, which was also sent to POA members via email after the meeting. She also explained that on October 16, 2012, a draft of the Agreement was initially received by representatives of the POA and it was suggested that, in order to reduce legal fees, Mr. Justak meet with the POA BOD directly to discuss and negotiate an acceptable agreement for all. The initial face to face meeting occurred on January 10, 2013. Thereafter, the current terms of a sale were reached through several months of negotiations. A final draft was presented to the POA BOD and unanimously approved with minor changes at a special BOD meeting on April 30, 2013. The Agreement was executed on behalf of the POA by Ms. Griffin as the POA President and Mr. Lawrence Labash as POA Secretary.

Ms. Griffin testified that Nathan Howell with Midwest Contract Operations ("MCO") and John Sturgill with McMahon Engineers/Architects have completed a visual inspection of the sanitary sewer system for the POA. The POA is accepting the sewer utility in an "as is condition" as described in the Agreement. She further testified that members of the POA are currently receiving utility service from Golfview Partners and the system has had no serious problems or failures.

She indicated that the POA will charge the current rate of \$85 per month, which will be evaluated once operation has begun and true costs are established. She noted that the POA will operate not-for-profit and the rate will represent a true cost of service. The decision to keep the current rate was made based on the current rate being set by Mr. Justak operating the utility as a for profit business. She explained that once the utility transfer takes place the POA will adjust the rate according to actual expenses without profit.

Ms. Griffin indicated that after the acquisition of the utility Golfview Partners will be owned and operated by the POA and it will use 1st American Management Company, Inc.'s services. The POA will also utilize the expertise of MCO and McMahon Engineers/Architects to assist in the set-up of the utility business. She stated the POA is aware that there are environmental requirements imposed by the ISDH and the Lake County Health Department regarding the operation of the utility and the POA will utilize available experts to continue to meet those requirements.

Ms. Griffin testified that as part of the Agreement the necessary easements from Lake County Parks and Recreation are in place and are being transferred to the POA. Additionally, the POA has been granted access to the system through property owned by Mr. & Mrs. Justak. She indicated all necessary easements are in place for the POA's operation of the utility.

She also explained that the transfer of the ownership of the utility was initiated by Mr. Justak. Ms. Griffin noted that on June 10, 2013, at a special meeting a majority vote to approve a special assessment which would cover start-up costs for the POA owned utility was approved. Ms. Griffin stated that there was not a vote to accept the formal transfer document presented to the full membership; rather, the POA BOD approved the transfer by a majority vote. The sewer system was fully explained to members at the January 14, 2013 annual meeting and there was a question and answer session for the POA members. Ms. Griffin explained that the POA anticipates accepting transfer and commencing operations upon the first day of the month following receipt of an order from the Commission approving this transfer.

Ms. Griffin explained that the transfer of Golfview Partners to the POA is in the best interest of the POA members because the POA is an organized body that is fully capable of managing the needs of the utility and directing the utility and its future operations. The POA members who own the properties served by the utility prefer to control the future operations of the sewer, in terms both of operation and from a cost perspective. The POA members have a vested interest in the on-going operation of the utility.

Ms. Griffin concluded by testifying that she was unaware of any problems or defects the POA would be inheriting with transfer of the utility. She testified the POA is seeking approval of the sale and transfer of the franchise works, system and CTA to the POA based on the terms and conditions described in the Agreement, approval of the initial rate the POA will impose, and approval of the reduced CTA, which will be the CTA as amended to reflect the POA as the new owner of the system.

C. Late Filed Exhibit. The Joint petitioners filed a late-filed exhibit consisting of an Amendment to the Agreement (the "Amendment"). The Amendment was entered into on December 11, 2013. It noted that an inspection of the drip field by the ISDH disclosed certain improvements needing to be made to the drip field location. Under the Amendment, Golfview Partners agreed to make any repairs and procedure modifications required by the ISDH to the utility drip field at Golfview Partners' sole expense and to have the repairs approved by ISDH.

The second matter addressed in the Amendment was the capacity of the system to permit vacant lots in the Subdivision to be added without expanding the field or making other improvements. Golfview Partners agreed not to sell or develop any of the vacant lots unless, and until, there is capacity available for such lots and ISDH gives its approval or Golfview Partners, at its sole expense, designs, plans, permits and constructs additional drip irrigation field to add the capacity to serve the vacant lots. The Amendment also sets out if Golfview Partners constructs additional drip irrigation to add to the capacity to serve the vacant lots and/or makes any repairs and/or improvements to the equipment for the vacant lots, Golfview Partners shall convey ownership of the construction, repairs, and improvements to the POA.

5. OUCC's Testimony. The OUCC presented the testimony of Harold L. Rees, Senior Utility Analyst in the Water/Wastewater Division. Mr. Rees' testimony discussed the proposed transfer of Golfview Partners' utility assets and CTA to the POA.

Mr. Rees testified that Golfview Partners began operations in 2001 with the construction of a recirculating sand media filter system designed to treat the sewage waste for a rural housing community being developed near Cedar Lake in Northwestern Indiana. The initial monthly customer rate was \$45.00. In an April 2, 2002 letter to the Commission, Golfview Partners provided notice that the utility had withdrawn from Commission jurisdiction for rates and charges. Golfview Partners currently serves 40 wastewater customers who pay a monthly charge of \$85.00 for sewage disposal service.

Mr. Rees explained that Golfview Partners and the POA entered into an agreement for the transfer of the franchise, works, system, and CTA to the POA. He indicated the POA will purchase the franchise, works, system, and CTA of Golfview Partners including all necessary easements. Golfview will be transferred at no cost to the POA. Mr. Rees testified that, subject to inspection, the system will be accepted "as is" by the POA and Golfview Partners will pay the costs associated with the sale. The initial rate for service by the POA will be \$85.00 per month.

He also recommended the Commission authorize the requested transfer of utility assets and the CTA. Mr. Rees stated that the POA is a legal entity in Indiana and has lawful power and authority to apply for and be granted a CTA and to provide sewer service. He noted the POA will be providing service to its own members and only its own members. Consequently, all the customers of this utility will have a voice in the operations of the utility. Mr. Rees indicated ownership and management of the utility by the POA should be more sustainable than ownership by a closely held corporation and more desirable in the long-term.

Mr. Rees testified the POA notified all homeowners of the proposed transfer of the utility and the ISDH has also been notified of the impending sale and transfer of the system to the POA. He noted that the Lake County Health Department has deferred all oversight to the ISDH. He stated that the OUCC anticipates the POA will commence operation of the system on the first day of the month after the issuance of the Commission's order approving the transfer and sale to the POA.

In conclusion, Mr. Rees described the OUCC's recommendations. He indicated that the OUCC recommends the Commission approve the sale and transfer of the franchise, works, and

system to the POA based on the terms and conditions described in the Agreement. The POA should be required to report the closing of the final transaction to the Commission and the OUCC within 30 days of the event. He stated the OUCC also recommends that the Commission approve the transfer of the CTA from Golfview Partners to the POA for the area serving the current 40 customers in Phase A of the Subdivision. He also recommended that if the POA desires to opt-out of Commission jurisdiction for rates and charges it should comply with the applicable rules and statutes.

6. Commission Discussion and Findings.

A. The Transfer of Golfview Partners' Franchise, Works, and System to the POA. Pursuant to Ind. Code § 8-1-2-83, this Commission has authority to approve or disapprove the sale, assignment, transfer, lease or encumbrance of a public utility's franchise, works, or system. Golfview Partners and the POA seek Commission approval of the transfer of Golfview Partners' franchise, works, and system to the POA.

Mr. Justak provided testimony and exhibits indicating that the operation or management of the sewage treatment system will rest solely with the POA upon transfer of the franchise, works, or system. He testified that the POA has the financial ability to operate and maintain the sewer service provided by Golfview Partners.

Ms. Griffin provided testimony indicating that after the acquisition of the utility Golfview Partners will be owned and operated by the POA and it will use 1st American Management Company, Inc.'s services. The POA will also utilize the expertise of MCO and McMahon Engineers/Architects to assist in the set-up of the utility business.

In addition, the OUCC's witness Mr. Rees noted the POA is a legal entity in Indiana and has lawful power and authority to apply for and be granted a CTA and to provide sewer service. Mr. Rees also explained that since it is a small system, the POA will have the ability to hire the technical expertise it needs to operate the system. He also indicated that the POA will have continuing membership and leadership motivated to operate and manage the system.

Based on the evidence presented as discussed herein, we find the POA has the technical, managerial, operational and financial capabilities to own and successfully operate the sewer utility. We also find that a transfer of Golfview Partners' franchise, works, and system to the POA will be beneficial to the POA's members/customers. The transfer will enable the POA's members to control the costs and reliability of their sewer service, which will ultimately be reflected in their rates. Therefore, the transfer of Golfview Partners' franchise, works, and system to the POA is hereby approved. The POA shall file a notification of closing within thirty (30) days of closing of the final transfer of assets of the utility and shall serve all parties of record.

B. Approval of the Agreement. Joint Petitioners are also seeking approval of the terms of the agreement for purchase and sale of assets between Golfview Partners and the POA, as amended. The Joint Petitioners provided testimony indicating that discussions and negotiations between Golfview Partners and the POA culminated in the Agreement. Mr. Justak

outlined the terms of the agreement in his testimony. Ms. Griffin testified the POA BOD fully understands the Agreement. The OUCC's testimony recommends the Commission approve the sale and transfer of the franchise, works, and system to the POA based on the terms and conditions described in the Agreement.

Having reviewed the Agreement and the Amendment thereto and based upon the evidence, we find the Agreement, as amended, and its terms and acquisitions contemplated therein are found to be reasonable and in the public interest. Joint Petitioners are authorized to take all necessary actions to effect the Agreement.

C. Certificate of Territorial Authority. Golfview Partners and the POA also seek the transfer of Golfview Partners' CTA to the POA pursuant to Ind. Code § 8-1-2-89. Golfview Partners was originally granted a CTA to render sewage disposal service in an area of Lake County, Indiana in Cause No. 41747. Joint Petitioners specifically request that only the portion of the CTA located in Phase A of the Subdivision be transferred to the POA and the remainder of the CTA be relinquished. The OUCC recommends that the Commission approve the transfer of the CTA from Golfview Partners to the POA for the limited use of the area serving the current 40 customers in Phase A of the Subdivision.

The Joint Petitioners, as well as the OUCC, provided testimony that the POA is an Indiana corporation and has the lawful power and authority to apply for and be granted a CTA and to provide sewer service. Golfview Partners evidence indicated the public convenience and necessity require the rendering of the utility service currently offered by Golfview Partners and the public convenience and necessity will continue to be served by the transfer of the CTA to the POA. We note that because the POA will be providing service to its own members and only its own members, its customers will have input into the ongoing operations of the utility.

Based upon the evidence presented, we find that the requirements for the issuance of a CTA have been satisfied. The POA has the lawful power and authority to be granted a CTA to provide sewage disposal in Phase A of the Subdivision. Further, the evidence supports a conclusion that public convenience and necessity require the rendering of the utility service currently offered by Golfview Partners and will continue to be served by the transfer of the CTA to the POA. We also find the evidence supports reducing the CTA to encompass only Phase A of the Subdivision. Accordingly, the CTA granted to Golfview Partners in Cause No. 41747 is hereby reduced to encompass only Phase A of the Subdivision and shall be transferred to the POA.

D. Rates for Customers of the POA. In their Joint Petition, Golfview Partners and the POA request authorization for the POA to charge the utility's customers the existing rate charged by Golfview Partners. Joint Petitioners presented evidence that the current monthly rate is \$85 and that rate is sufficient to permit the POA to continue sound operation of the system. The Joint Petitioners also indicated the POA could implement an assessment to adjust rates if necessary. Ms. Griffin explained that once the utility transfer takes place the POA will adjust the rate according to actual expenses without profit and the rate will represent a true cost of service.

The evidence of record supports the POA's request to maintain the current \$85 monthly rate for sewer service. Therefore, we find the POA is authorized, as its initial rate, to charge the utility's customers at the current rate for sewer service.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The transfer of Golfview Partners' franchise, works, and system to the POA is hereby approved. The POA shall file a notification of closing within thirty (30) days of closing of the final transfer of assets of the utility and shall serve all parties of record.

2. To the extent necessary to support the findings and approvals made in this Order, the Agreement, as amended, and its terms and acquisitions contemplated therein are found to be reasonable and in the public interest. Joint Petitioners are authorized to take all necessary actions to effect the Agreement.

3. The Certificate of Territorial Authority granted to Golfview Partners in Cause No. 41747 is hereby reduced to encompass only Phase A of the Subdivision and shall be transferred to the POA.

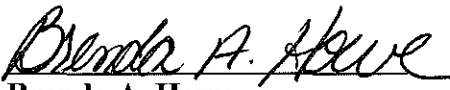
4. The current monthly rate of \$85.00 for sewer service now applicable to Golfview Partners' customers shall remain in effect as the POA's initial rate to be charged to its customers. The POA shall file with the Water/Sewer Division of the Commission a schedule of rates and charges in a manner consistent with this Order and the Commission's rules for filing such schedules.

5. This order shall be effective on and after the date of its approval.

ATTERHOLT, MAYS, STEPHAN, AND ZIEGNER CONCUR; WEBER NOT PARTICIPATING:

APPROVED: MAR 19 2014

I hereby certify that the above is a true and correct copy of the Order as approved.


Brenda A. Howe
Secretary to the Commission