

ATTACHMENT

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FILED<sup>2</sup>

APR 02 2007

Missouri Public  
Service Commission  
May 12, 2000

BRANCH OFFICE:  
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OSAGE BEACH, MO 65065  
(573) 348-2247

LEGAL ASSISTANTS: Sharon Piskorski  
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HUGH PHILLIPS (1911-1997)

Pugh Exhibit No. 56  
Case No(s) WC-2006-0082, et al  
Date 2-28-07 Rptr K5

Mr. David V. Lees  
Folsom Ridge LLC  
Big Island Development Co.  
HCR 60 Box 800  
Roach, MO 65787

Mr. Reginald V. Golden &  
Mr. Rick Rusaw  
Folsom Ridge LLC  
2020 Terry Street, Suite A  
Longmont, CO 805011

Gentlemen:

I am writing to you on behalf of my client, a committee of concerned twenty plus Big Island Lakesites property owners. Mrs. Jeanette F. Schrader, Mr. Duane F. Stoyer, Mr. Benjamin D. Pugh, and Mr. James B. Kwiatkowski represent this committee. Although many of the property owners have received Mr. David V. Lees' letters dated April 11 and 27, 2000, some have not.

The committee representatives understand that you have delivered to Central Bank of Lake of the Ozarks, as escrow agent, a letter from a licensed engineer stating the sewer system is complete, in place and operational. They also understand that you have provided the escrow agent with a letter from the State of Missouri stating that the sewer system meets all requirements of the State of Missouri. With your completion of these requirements, they understand that the escrow agent should pay to Folsom Ridge LLC the \$4,800.00 that each of property owners deposited into the escrow account. They are agreeable for the transfer of such funds from the escrow agent to Folsom Ridge LLC as provided by the escrow agreement. The property owners understand that they received the right to connect to the sewer system upon payment of their respective \$4,800.00 into the designated escrow account, Folsom Ridge LLC completing the sewer system as promised, and upon completion of the sewer system, the escrow agent delivering their escrowed funds to Folsom Ridge LLC as provided by the escrow agreement. All of these requirements appear to be met. However, the committee representatives note that much clean up associated with the installation of the Water and Sewer Systems needs to be completed even if these systems are now operational.

However the property owners did not understand that they were required to ratify the

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particular restrictive covenants (attached to your letter of April 11, 2000) as an additional condition in order to be able to connect to the completed sewer system. The committee representatives have diligently searched all papers received from Mr. David V. Lees on behalf of Folsom Ridge LLC and can not find any documentation, which supports this additional requirement contained in his letters of April 11 and 27, 2000. The property owners, having paid their money into escrow, have a right to connect to the sewer system whether or not they ratify any restrictive covenants. The property owners understand that subjecting their property to mutually agreed upon restrictive covenants may be an appropriate modification to the original agreement made between Folsom Ridge LLC and the individual property owners having a right to connect to the sewer system. However, each of these original agreements can not be modified unilaterally by Folsom Ridge LLC. Whether intended or not, the impression of unilateral modification by Folsom Ridge LLC was given to the individual members of the property owners committee by your recent letters.

The committee members have several concerns regarding the "Declaration of Covenants and Conditions" sent to them with the demand that they ratify such covenants or forfeit their ability to connect to the sewer system. If these concerns are addressed to their satisfaction they will ratify the agreed upon modified restrictive covenants as a modification to the individual original agreements between Folsom Ridge LLC and the individual property owners. If these concerns are not satisfactorily addressed, the individual property owners maintain their right to connect to the sewer system in keeping with the terms of the original agreement between Folsom Ridge LLC and the individual property owners without ratifying your "Declaration of Covenants and Conditions".

In a letter from Mr. Lees, on behalf of Folsom Ridge LLC, to the Big Island Homeowners (dated November 11, 1998) he makes reference to the Homeowners Association. In that letter he states, "The purpose of the (HOA) is to OWN and MAINTAIN the sewer and water facilities". The property owners do not oppose such an association if the powers of that association are limited to the sewer and water facilities in keeping with your earlier representations. Unfortunately, the "Bylaws of Big Island Homeowners Association, Inc." and the "Declaration of Covenants and Conditions" are much broader than the representation made in his November 11, 1998 letter. The powers granted under these two documents extend to the building and maintenance of roads, building restrictions, trash removal, security, etc. These extra purposes were not presented in your earlier representation of November 11, 1998 and were not agreed to by the property owners. The property owners were each offered to the right to connect to the "to be built" sewer system upon a payment into escrow of \$4,800.00 by each property owner. Each of the committee members accepted this offer, did pay the \$4,800.00 into escrow as directed and now that the sewer system is complete has the right to connect to the sewer system.

At this point, I should also add that Mr. Lees, on behalf of Folsom Ridge LLC, stated that Folsom Ridge LLC "intended to accommodate each homeowner with the location of a stub out, most convenient to their needs". Committee representatives say that although a licensed engineer and the State of Missouri have pronounced the sewer system completed, some

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homeowners, which paid the \$4,800.00 into escrow, do not have a waste water (sewer) stub installed at their property.

Although not mentioned in any of the other documents attached to the letters of April 11 and 27, 2000, Folsom Ridge LLC also promised each homeowner securing a right to connect to the sewer system that the monthly fee for sewer service would be \$10.00. Mr. Lees on behalf of Folsom Ridge LLC also assured them that such monthly fee would not be charged until the homeowner connects to the sewer system. Finally, Mr. Lees stated that Folsom Ridge LLC would operate the sewer system for the first five years of the sewer system's operation or until seventy-five (75%) per cent of your lots were sold, whichever first occurs. During this period, Folsom Ridge LLC would remain responsible at its cost for repairing or replacing any broken sewer line and any defects resulting from faulty installation of the sewer system. The \$10.00 monthly fee paid by the sewer system users would be applied toward the regular operating costs of the system. At the end of this five-year period, Folsom Ridge LLC would transfer the ownership and the responsibility of operating and maintaining the Water System and Sewer System to an association of system users. The foregoing is not addressed in your documents and will need to be addressed.

The following is a list of specific concerns that the committee members have with the proposed by-laws and covenants and conditions, as well as, proposals that would remedy these concerns. However, your representations as restated in the preceding paragraph will also need to be addressed in these modified documents.

First, the covenants and conditions (Section 1, Article IV) talk in terms of two different assessments: annual and special. However, Section 3, Article IV describes a third assessment, "working capital deposit". This appears to duplicate the annual assessment. Therefore they recommend that the Section 3, Article IV be struck from the covenants and conditions.

Second, Article IV is unclear as to who will pay the assessments. It is their understanding that the annual operating expenses will be apportioned among the actual users of the system. To clarify this we recommend modifying Section 1 of Article IV as follows (new language in Italics):

Section 1. *Parties Responsible for Assessments, Creation of Lien, Personal Obligation.*

*All actual users of the Water System and Sewer System, including Declarant and individual lot owners, shall apportion at uniform rate among the actual system users and agree to pay: (I) annual assessments or charges, and (II) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, shall become*

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*the personal obligation of the owner of such Lot or Property at the time when the assessment fell due, and his successors in title. If a Lot or Property is owned by more than one person or entity, the Owners of shall be held jointly and severally liable for all assessments or charges against such Lot.*

The third concern that they have with the covenants and conditions involves the expansion of the system. The committee members understand that by each paying the \$4,800.00 each is entitled to connect to the sewer system at any time, i.e. not required to connect immediately. The system is presently supposed to be able to service 80 homes without further modification. When further modification is necessary, this cost should be apportioned among the new users, not the ones already entitled to use the system. To achieve this end, we recommend the following changes. First, we recommend rewriting Section 4 of Article IV entitled "Special Assessment for Capital Improvements" as follows (new language in Italics):

Section 4. Special Assessment for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon:

a. *With regard to the original Water System and Sewer System, any such special assessment for construction, reconstruction, repair or replacement under this section shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, and who are system users or entitled to use such original Water System and Sewer System. The initial Sewer System is designed to serve to 80 homes (included in this number are homes which are entitled to connect to the system but that have not yet established a connection).*

b. *With regard to any expansion of the Water System and Sewer System, any costs to expand the original Water System and Sewer System, shall be assessed against the homeowners wishing to have the system expanded to accommodate their needs. Any such special assessment under this section shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, and who are system users or are seeking to become system users.*

Next we recommend that Section 6, Article IV be struck from the covenants and conditions as this section is covered by the recommended rewritten Section 1 and Section 4, Article IV.

Finally, as mentioned previously, the committee members are concerned with the broad powers established in the By-laws of the Big Island Homeowners Association. They believe that the extra purposes of the Association should be removed to properly reflect the purpose of the association. The true purpose of the Homeowners Association is to own and maintain the sewer

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and water facilities. Therefore, parts a, c, e, g, h, the last sentence of l should be deleted from Section 1, Article II of the Association bylaws.

We recommend rewriting that part f, Article II of the Association bylaws as follows (new language in Italics):

f. To manage and control as trustee for its member *the* common properties (*Water System and Sewer System*) which may now or hereafter be designated as such, and any and all improvements thereon, provided that such management and control of said places and improvements shall at all times be subject to those powers had and exercised by any township, city, county or state or any of them, in which said places and improvements are located.

Also associated with the purpose clauses of the proposed association by laws (and troublesome) are parts l and m, Section 1, Article II indicating the association is a tax exempt organization under the provisions of Section 501 © (3) of the Internal Revenue Code. Although neither the committee members nor myself are tax experts, we do not believe that such an association is a "501 © (3)" tax exempt organization. Therefore, We recommend rewriting that part l, and m, Article II of the Association bylaws as follows (new language in Italics):

l. The corporation shall have the power, either directly or indirectly, either alone or in conjunction or cooperation with others, to do any and all lawful acts and engage in any and all lawful activities which may be necessary, useful, suitable, desirable, or proper for the furtherance, accomplishment, fostering or attainment of any or all of the purposes for which the corporation is organized, and to aid or assist other organizations whose activities are such as to further, accomplish, foster or attain any of such purposes.

m. *In the event of the dissolution of the corporation, members shall be entitled to any distribution or division of its remaining property or its proceeds.*

These requests are not unrealistic and more accurately reflect the purposes for which the water and sewer system was originally envisioned. The committee members are willing to agree to modify their original individual agreements with Folsom Ridge LLC and thereby ratify mutually agreed upon covenants and conditions that resolve these concerns. If the concerns are not resolved, we wish to put you and Folsom Ridge LLC on notice that the property owners expect to be able to connect to the sewer system at any time in the future without the payment of any additional amount above the \$4,800.00 already paid. They acquired this right by accepting your original offer and by each paying the \$4,800.00 into escrow as directed.

If, after reading this letter, Folsom Ridge LLC agrees that the property owners have correctly stated the terms of their agreement with Folsom Ridge LLC with regard to connecting the to sewer system, please contact me so that we can arrange to meet to prepare a Declaration of

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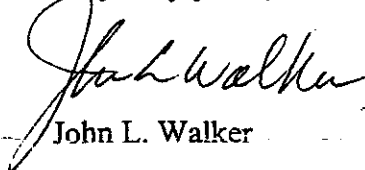
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Covenants and Conditions to which all parties can agree. If Folsom Ridge LLC does not agree with the contents of this letter, we would appreciate receiving Folsom Ridge LLC's statement of its understanding as to the agreement with the property owners regarding connecting to the sewer system, and the documentation supporting such understanding.

In keeping with the representations already made to the property owners, the escrow agent releases the money to Folsom Ridge LLC upon completion of the system as provided in the escrow agreement. With the escrow agent in receipt of the documents required by the escrow agreement, the escrow agent is in the position to disburse the escrow funds to Folsom Ridge LLC at this time. Although the Water System and Sewer System are complete, Folsom Ridge LLC represented to the property owners that it would operate and maintain the systems for the first five years of operation or until seventy-five (75%) of your lots were sold, whichever first occurs. Therefore, the systems do not need to be immediately transferred to an association, and an association does not immediately need to assume operational responsibility for the systems. Folsom Ridge LLC has an opportunity to meet with the property owners to formulate a mutually agreeable modification of your original agreement as to connection, use and operation of the systems. We urge you to consider using the meeting scheduled for May 30, 2000 to further discuss and resolve how the contemplated Declaration of Covenants and Conditions, as well as the Articles and By Laws of the water and sewer association, can be further improved and made acceptable to all.

I shall await your response.

Very truly yours,



John L. Walker

JLW:jw

CC: Mrs. Jeanette F. Schrader  
Mr. Duane F. Stoyer  
Mr. Benjamin D. Pugh  
Mr. James B. Kwiatkowski  
Central Bank of Lake of Ozarks  
Attn: Mr. Jeff Welsh

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