

Subj: **Fwd: Fw: Legal Update From Pam Holstead**
Date: 3/25/2007 10:17:20 A.M. Central Standard Time
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Subj: Fw: Legal Update From Pam Holstead Date: 3/25/2007 10:09:18 A.M. Central Standard Time From: corlerwine@yhfi.net To: SPROUT2@aol.com <i>Sent from the Internet (Details)</i>

----- Original Message -----

From: [Ben and Karen Pugh](#)
To: [Cathy Orlor](#)
Sent: Sunday, March 25, 2007 7:21 AM
Subject: Fw: Legal Update From Pam Holstead

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From: Phil and Tonie Hiley <tphiley@yahoo.com>
Date: Sat, 3 Mar 2007 17:32:42 -0800 (PST)
To: Phil and Tonie Hiley <tphiley@yahoo.com>
Subject: Legal Update From Pam Holstead

Sat. March 2, 2007

Dear Big Island Neighbor:

PSC CASE

The Big Island hearing before the Missouri Public Service Commission has ended. The hearing lasted for 3 days and would usually begin at 8:30 am and end somewhere between 7 pm and 9 pm. The proceedings were broadcast over the PSC website. There were two cases which were heard at the same time.

The first case was filed by Cathy Orlor, Ben Pugh, Cindy Fortney, Stan Temares, and four additional Big Island residents or former residents. It was designated as the "COMPLAINT" case. The primary issue in the complaint case was whether or not Folsom Ridge, or the Homeowners Association, should be subject to PSC jurisdiction and therefore PSC regulation.

Although eight people filed complaints, only those named above actually participated in the hearing.

The second case was filed by Folsom Ridge and the Homeowner's Association and was designated as the "Transfer" Case. The primary issue in the transfer case was whether or not transferring the utility assets to the 393 companies would be detrimental to public interest. A secondary issue was whether or not any conditions should be imposed on the transfer. The following individuals intervened in the Transfer Case for the reason they were opposed to the proposed transfer: Mr. & Mrs. Weast, Mr. & Mrs. Mahr, Mr. & Mrs. Thorpe, Bernadette Sears, Sherrie Fields, Arthur Nelson, Cathy Orlor, Cindy Fortney, Ben Pugh, and William Foley II. The following 393 companies intervened in the Transfer Case for the reason they were supportive of the Transfer: Big Island Water Company and Big Island Sewer Company.

Although numerous people filed opposition in the Transfer case, the only ones who attended the hearing were Cathy Orlor, Ben Pugh, and Cindy Fortney.

Everyone who filed a complaint, or intervened, yet failed to attend the hearing, is subject to dismissal from the case. However, a ruling has not yet been made by the judge.

Testimony favoring PSC jurisdiction and opposing the transfer of Big Island utilities to the 393 companies was provided by Cathy Orlor, Cindy Fortney, and Ben Pugh.

Testimony opposed to PSC jurisdiction and in favor of the 393 transfer was provided by representatives of Folsom Ridge: Rick Rusaw, Barb Brunk, William Hughes.

Additional testimony was provided by Michael McDuffey of Lake Ozark Water and Sewer (the management company), and by Mr. Dave Krehbiel of Krehbiel Engineering.

Testimony in favor of the 393 transfer was sponsored by the 393 companies and presented by Gail Snyder and Phil Hiley.

A representative of the MO. Dept. of Natural Resources presented testimony. PSC Staff Member, Jim Merciel, presented testimony which favored the transfer to the 393 companies. As an interesting note, Mr Merciel said statutes which provided for the creation of 393 companies only came about in 1999 and he was aware of only 5 or 6 Missouri utility companies organized as 393 companies. He was not aware of any of them having problems.

A transcript of the proceedings is now being prepared and upon completion will be posted to the PSC EFIS website. (Approx. 2 weeks from now). The parties will be receiving some late filed testimony from Utility Contractor Kenny Carroll, but the details of how that will happen have not yet been arranged.

The parties have been instructed to file legal briefs by mid April. Hopefully a written decision will be made available by May 1.

.....Service Lines: A great deal of testimony time at the PSC hearing was devoted to the issue of individual utility "service lines". In general, these are the lines that connect a HOME to a water or sewer MAIN. (It seems one of the Commissioners had a very personal interest in this issue) Neither the PSC, nor the DNR, currently have jurisdiction over residential service lines. Therefore, depending on who built your home and/ or installed

your service lines, the water and sewer line may be installed side by side in the same trench with little or no legal consequence. If ground movement or excavation should rupture both lines at once, the possibility exists for contaminating the entire water system on Big Island.

The Board of Directors for the 393 Companies have decided to edit the 393 bylaws to reserve the right to REFUSE new service to any home where the water & sewer service lines are not appropriately separated. This would probably mean a separation of at least 10 feet. If the new service is requested for a pre-existing home where it is impossible to locate the lines 10 feet apart and the lines must be buried in the same trench.....PSC personnel has recommended to us the sewer line be buried a minimum of 18 inches below the water line.

Circuit Court Case

On February 2, 2007 a law suit (Case #07CM-CCC00040) was filed in Camden County Circuit Court, by Attorney Lewis Bridges, against Folsom Ridge, the Homeowners Association, and the 393 Companies.

The suit was filed by the following Big Island property owners: Mr. & Mrs. Pugh, Cindy Fortney, Mr. & Mrs. Steinhour, Mr. & Mrs. Nelson, Cathy Orlor, Stan Temares, Mr. & Mrs. Kasten, Mr. & Mrs. Foley, Mr. & Mrs. Thorpe, Mr. & Mrs. Mahr, and Gary Brown.

The suit was brought in two counts. The First Count purports to be for "Breach of Contract" and seeks damages equal to the utility tap fees associated with each of their properties, plus additional sums for loss of property value. The Second Count purports to be for "Imposition of Constructive Trust" and asks the Court to find that the Big Island utility assets should be held in trust for the benefit of the above named plaintiffs to the extent of the "contributions made by them".

I have filed a "Motion to Dismiss" the Plaintiff's case with the Camden County Circuit Court. I believe attorneys for Folsom and the HOA have done likewise. The earliest possible date these motions can be heard is March 14, however it is not certain at this time whether or not a hearing will take place on that date.

As always, feel free to contact me if you have questions.

Pam Holstead
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----- End of Forwarded Message