

BEFORE THE PUBLIC SERVICE COMMISSION OF THE
STATE OF MISSOURI

FILED²

AUG 1 8 2005

Missouri Public
Service Commission

Cathy J. Orler
Complainant

VS.

Folsom Ridge, LLC (Owning and Controlling the BIHOA)
Respondent

COMPLAINT

1. Complainant resides at: 3252 Big Island Drive
Roach, MO. 65787
2. Respondent: Folsom Ridge, LLC
Big Island Homeowners' Association
P.O. Box 54
Longmont, CO. 80502

Is acting as a public utility providing service to complainant's residence.

3. As the basis of this complaint, complainant states the following facts:

After nearly six years of ongoing controversy concerning my "non-membership" in the Big Island Homeowners Association, (BIHOA), (and the "creatively imposed fees" associated with this), between myself, (as well as other resident property owners), and Folsom Ridge, (F.R.), (the developer of Big Island), with no resolve; and now the "threat" of a law suit, I have been left with no choice, and therefore forced to file a "Formal Complaint" with the Public Service Commission.

The basis of my complaint, is that the BIHOA is not operating as a Homeowners' Association, (HOA), as per the Department of Natural Resources, (DNR), Regulation requirements in accordance with 10 CSR 20-6.010(3)(B)5(IV), (Attachment A), as cited in the attached letter from DNR, to F.R. to the attention of Reggie Golden, (Attachment B); by servicing and/or billing users and non-users who are not members of the BIHOA, and therefore should be regulated as a public utility by the PSC.

Furthermore, the BIHOA, which is controlled by F.R. by a vote that is governed and dictated by the number of property lots owned, as stated in Article V - Association Membership and Voting Rights; Section 2. Voting Class of the Amended and Restated Declaration of Covenants and Conditions, (Attachment C), was established in the year 2000 for the sole purpose of the operation and management of the water and sewer system, as described in Article II, Section 1-C of the Amended and Restated By-laws of the BIHOA, Inc. (Attachment D), and the Amended and Restated Declaration of Covenants and Conditions, (Reference Attachment C). This was nearly two years after the issuance of a construction permit and operating permit by DNR, and not in accordance with the DNR Regulation requirements of 10 CSR 20-6.010(3)(A). (Reference Attachment A). As a result, the following situations of non-members' fees issues exists: (Attachment E).

In 1998, existing property owners on B.I., with their own wells, and septic systems, and with other, long established HOAs already in place, were solicited by F.R. LLC, (the developer), to purchase water and sewer taps, as a means to fund and cash flow their installation of a central water and wastewater system, and the residents were then required to pay up front, \$4,800.00 for sewer, and \$2,000.00 for water taps. This money was held in escrow at Central Bank, in Camdenton, Missouri until completion of the system(s). Residents were told there would be no additional charges, until which time they connected to the new system, and they would have a guaranteed right to connect at the time of their choosing. (Attachment F).

There was no association, (i.e.HOA) in place, as a functional organization to oversee, maintain, and operate the water and sewer system, at the time monies were exchanged and taps were purchased. No mention and/or disclosure of any membership affiliation requirements at any time was made, and therefore, no signatures were required and/or obtained. The current BIHOA, (which is the organization that was created to manage the water and sewer system), did not become operative until approximately two years later. (Attachment G). The DNR governing water and wastewater, require that a permanent organization be in existence before commencing with the construction of the system. The BIHOA did not elect their first board members until December 29, 2000; again, nearly two years after the permit was issued. The BIHOA has been, and is currently charging mandatory monthly fee assessments, to non-members, as follows:

- Property owners who have paid for a water and/or sewer tap, and by virtue of this, have the right to connect to the system, but are not presently connected to the system
- Property owners who are not receiving any services
- Property owners who are not members of the BIHOA

Numerous attempts between resident property owners and F.R., (controlling the BIHOA), to resolve this situation, have been ongoing for nearly six years, (Attachment H), with no resolution. A "sense of urgency" has been created, in that actual members of the BIHOA, as a "continuing authority," will assume liability for the water and sewer system in September, 2005, and ownership of the system in September, 2006.

In addition, my concern, as well as the concerns of other resident property owners who are not members of the BIHOA, is that F.R., controlling the BIHOA, is currently trying to create, yet another, "new HOA" to overcome the "non-member" resistance, in which I am not a member. This "new HOA" would replace the current BIHOA as well as all other existing HOAs, (including the HOA of my subdivision, which governs my property, and in which I am already a member, and to which extent, I do not want to abandon or dissolve my membership and/or my HOA), that are currently in place, and have been in existence, since the early 1960's when the island was first being developed. (Attachment I).

Our concern is that this "new HOA" is incorporating the present BIHOA and it's specific function of the operation of the water and sewer system, thus forcing members to assume financial liability and responsibility for a water and sewer system which has proven to be "sub-standard" as per the Settlement Agreement between F.R., (the developer), DNR, and the Attorney General's office, (Attachment J),

and in violation of it's operating practices as set forth in this Formal Complaint. In addition, F.R., (the developer), most recently expanded the original and present water system, (with a maximum capacity to service eighty homes, (Attachment K), off the island to include approximately 160 acres of virgin development, with no disclosures to it's members, and or residents, and in violation of DNR Regulation requirements by not obtaining a new construction permit from DNR and submitting engineered stamped and approved drawings for this purpose. (Attachment L). Moreover, in documents of correspondence sent out to residents of Big Island on BIHOA letterhead, and signed by the developers, they have assured, residents that this concern has been addressed by committing to: "restricting the boundary of the area the system will serve to only include the Big Island Lake Sites, Big Island Lake Sites 1st Addition, Portage Park Unit 3, Portage Park Unit 1, and all other property on the island (peninsula) itself.....thus eliminating approximately 160 acres that is somewhat separate anyway." (Attachment M). It is also questioned, if this new and recent expansion of the current water system infrastructure to accommodate and service approximately 160 acres of F.R.'s future off island development, has been presented to Planning and Zoning for approval?

In summary, and as a solution, I suggest that the PSC request from BIHOA and/or F.R. who is controlling the HOA, a listing of it's customers and members.

1. My name appearing as a customer and/or member of the BIHOA would undeniably confirm that the BIHOA is not operating as a HOA, because I am neither a customer or a member, (I do not receive any service, nor have I signed any documents to bilaterally consent and agree to membership, and therefore be subject to the regulations of the BIHOA), yet I am being billed. (Attachment N).
2. My name being omitted from a listing of customers and members, also undeniably confirms that the BIHOA is not operating as a HOA, because I am being billed regularly by the BIHOA, and therefore my name should be appearing as A customer, yet I am not a member in the association.

Therefore, the BIHOA is acting as a public utility, providing service to non-members, and should be regulated by the PSC.

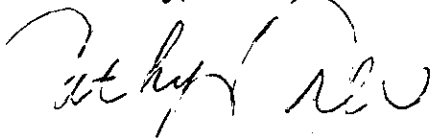
I realize that as per the PSC guidelines for filing a formal complaint, this "formal complaint" should include a listing of the BIHOA members. However, this request to F.R. has been made numerous times, by myself and other residents, and continues to be ignored; I feel for the obvious reasons stated above in #1 and #2. However, to confirm with the PSC, the integrity of my "formal complaint," as well as maintaining the integrity and validity of the information contained herein, I will make a final, written request to F.R., controlling the BIHOA, for a copy of it's customers and members listing. This written request will serve as support documentation and verification for the PSC, (if again, my request is ignored), that all efforts to obtain this listing, were met with opposition and failed. If however, by some chance, my written request should be honored, then the basis of my "formal complaint" as well as the guidelines for filing my complaint, will have been satisfied.

The relief requested of the PSC as a result of this "formal complaint," is a temporary injunction, halting the transfer of liability of the BIHOA water and sewer system to the actual members of the association, as the continuing authority, from F.R. on September 01, 2005, and the transfer of ownership of the same on September 01, 2006; until a determination and ruling can be made by the PSC, as to the BIHOA and it's legal operation as a HOA, (meeting all those requirements), or it's legal operation as a public utility, (meeting all those requirements). As a result of this determination and ruling, wherein the current water and sewer system of Big Island, would then be operating properly and legally as per the regulations of either a HOA or a Public Utility, the situation of member vs. non-member, and non customers receiving service and/or being billed, would be very clearly defined, and in effect, become a "non issue."

Although this "formal complaint" is being filed by me and bears only my signature, the situation cited herein, involves numerous residents and property owners on Big Island.

The assistance of the PSC in resolving this ongoing controversy, is very greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Cathy Orlor", written in a cursive style.

Cathy Orlor
3252 Big Island Drive
Roach, Missouri 65787

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**Attachment A DNR Regulations –Operating
And Construction Permits**

Chapter 6—Permits

10 CSR 20-6

Title 10—DEPARTMENT OF
NATURAL RESOURCESDivision 20—Clean Water Commission
Chapter 6—Permits10 CSR 20-6.010 Construction and Oper-
ating Permits

PURPOSE: This rule sets forth the require-
ments and process of application for con-
struction and operating permits, and the
terms and conditions for the permits. This
rule also clarifies the requirements of the per-
mit program, improves its administration and
brings the program in compliance with the
latest federal regulations, 44 FedReg 32.854
(1979).

PUBLISHER'S NOTE: The secretary of state
has determined that the publication of the
entire text of the material which is incorpo-
rated by reference as a portion of this rule
would be unduly cumbersome or expensive.
Therefore, the material which is so incorpo-
rated is on file with the agency who filed this
rule, and with the Office of the Secretary of
State. Any interested person may view this
material at either agency's headquarters or
the same will be made available at the Office
of the Secretary of State at a cost not to
exceed actual cost of copy reproduction. The
entire text of the rule is printed here. This
note refers only to the incorporated by refer-
ence material.

(1) Permits—General.

(A) All persons who build, erect, alter,
replace, operate, use or maintain existing
point sources, or intend these actions for a
proposed point source, water contaminant
sources or wastewater treatment facilities
shall apply to the department for the permits
required by the Missouri Clean Water Law
and these regulations. The department issues
these permits in order to enforce the Missouri
Clean Water Law and regulations and admin-
ister the National Pollutant Discharge Elim-
ination System (NPDES) Program.

(B) The following are exempt from permit
regulations:

1. Nonpoint source discharges;
2. Service connections to wastewater
sewer systems;
3. Internal plumbing and piping, or other
water diversion or retention structures within
a manufacturing or industrial plant or mine,
which are an integral part of the industrial or
manufacturing process or building or mining
operation. An operating permit or general
permit shall be required, if the piping,
plumbing or structures result in a discharge to
waters of the state;

4. Routine maintenance or repairs of any
existing sewer system, wastewater treatment
facility or other water contaminant or point
source;

5. Single family residences; and

6. The discharge of water from an envi-
ronmental emergency cleanup site under the
direction of, or the direct control of, the Mis-
souri Department of Natural Resources or the
Environmental Protection Agency (EPA),
provided the discharge shall not violate any
condition of 10 CSR 20-7.031 Water Quality
Standards;

7. Water used in constructing and main-
taining a drinking water well and distribution
system for public and private use, geologic
test holes, exploration drill holes, groundwa-
ter monitoring wells and heat pump wells; and

8. Small scale pilot projects or demon-
stration projects for beneficial use, that do
not exceed a period of one (1) year may be
exempted by written project approval from
the permitting authority. The department
may extend the permit exemption for up to
one (1) additional year. A permit application
shall be submitted at least ninety (90) days
prior to end of the demonstration period if the
facility intends to continue operation, unless
otherwise exempted under this rule or Chap-
ter 6.

(C) Nothing shall prevent the department
from taking action, including the requirement
for issuance of any permits under the Mis-
souri Clean Water Law and regulations, if
any of the activities exempted under subsec-
tion (1)(B) should cause pollution of waters
of the state or otherwise violate the Missouri
Clean Water Law or these regulations.

(2) Applications.

(A) An application for, or for renewal of,
a construction permit or operating permit shall
be made on forms (see 10 CSR 20-6.090)
provided by the department. The applica-
tions may be supplemented with copies of
information submitted for other federal or
state permits. The application shall include a
one inch equals two thousand feet (1" =
2000') scale (or larger) map showing the
location of all outfalls, as well as a flowchart
indicating each process which contributes to
an outfall. Each application must be accom-
panied by the appropriate permit fee. Alter-
nate scale maps are allowed upon the request
of the applicant and approval of the Depart-
ment of Natural Resources.

(B) All applications must be signed as fol-
lows:

1. For a corporation, by an individual
having responsibility for the overall operation
of the regulated facility or activity, such as
the plant manager, or by an individual having

overall responsibility for environmental mat-
ters at the facility;

2. For a partnership or sole proprietorship,
by a general partner or the proprietor
respectively; or

3. For a municipal, state, federal or
other public facility, by either a principal
executive officer or by an individual having
overall responsibility for environmental mat-
ters at the facility.

(C) All other reports required by the
department shall be signed by a person desig-
nated in subsection (2)(B) of this rule or a
duly authorized representative, if—

1. The representative so authorized is
responsible for the overall operation of the
facility from which the discharge occurs; and
2. The representative is in writing
by a person designated in subsection (2)(B) of
this rule and is submitted to the director.

(D) Any changes in the written authoriza-
tion which occur after the issuance of a per-
mit shall be reported to the department by
submitting a new written authorization which
meets the requirements of subsection (2)(C).

(3) Continuing Authorities.

(A) All applicants for construction permits
or operating permits shall show, as part of
their application, that a permanent organiza-
tion exists which will serve as the continuing
authority for the operation, maintenance and
modernization of the facility for which the
application is made. Construction and first-
time operating permits shall not be issued
unless the applicant provides such proof to
the department and the continuing authority
has submitted a statement indicating accep-
tance of the facility.

(B) Continuing authorities which can be
issued permits to collect and/or treat waste-
water under this regulation are listed in pref-
erential order in the following paragraphs. An
applicant may utilize a lower preference con-
tinuing authority by submitting, as part of the
application, a statement waiving preferential
status from each existing higher preference
authority, providing the waiver does not con-
flict with any area-wide management plan
approved under section 208 of the Federal
Clean Water Act or any other regional sewage
service and treatment plan approved for the
higher preference authority by the depart-
ment:

1. A municipality or public sewer dis-
trict which has been designated as the area-
wide management authority under Section
208(c)(1) of the Federal Clean Water Act;

2. A sanitary public sewer district
or sewer company regulated by the Public
Service Commission (PSC) which currently
provides sewage collection and/or treatment
services on a regional or watershed basis as

outlined in 10 CSR 20-6.010(3)(C) and approved by the Clean Water Commission. Permits shall not be issued to a continuing authority regulated by the PSC until the authority has obtained a certificate of convenience and necessity from the PSC;

3. A municipality, public sewer district or sewer company regulated by the PSC other than one which qualifies under paragraph (3)(B)1. or 2. of this rule or a public water supply district. Permits shall not be issued to a continuing authority regulated by the PSC until the authority has obtained a certificate of convenience and necessity from the PSC;

4. Any person with complete control of, and responsibility for, the water contaminant source, point source or wastewater treatment facility and all property served by it. The person may constitute a continuing authority only by showing that the authorities listed under paragraphs (3)(B)1.-3. of this rule are not available, do not have jurisdiction, are forbidden by statute or ordinance from providing service to the person or, if available, have submitted written waivers as provided for in subsection (3)(B) of this rule; and

5. An association of property owners served by the wastewater treatment facility, provided the applicant shows that—

~~the authorities listed in paragraphs (3)(B)1.-3. of this rule are not available or that any available authorities have submitted written waivers as provided for in subsection (3)(B);~~

B. The association owns the facility and has valid easements for all sewers;

C. The documents establishing the association imposes covenants on the land of each property owner which assures the proper operation, maintenance and modernization of the facility including at a minimum:

(I) The power to regulate the use of the facility;

(II) The power to levy assessments on its members and enforce these assessments by liens on the properties of each owner;

(III) The power to convey the facility to one (1) of the authorities listed in paragraphs (3)(B)1.-3.; and

(IV) The requirement that members connect with the facility and be bound by the rules of the association; and

D. The association is a corporation in good standing registered with the Office of the Missouri Secretary of State.

(C) The department will review the planning, design, construction and designation of watershed or regional sewage works. Where development is insufficient to warrant immediate construction of facilities for the entire watershed or region, interim facilities for a

portion of the area shall be authorized as long as the design is compatible with 10 CSR 20-8. Design Guides. The department shall condition permits for these interim discharges so they will be eliminated upon the availability of watershed or regional facilities. At such time as watershed or regional facilities become available, and to the extent their capacity is sufficient, any existing subregional treatment works and/or lift stations shall be taken out of service and the tributary waste flows diverted into the watershed or regional facilities. A Regional Sewage Service and Treatment Plan shall be developed by all affected political jurisdictions and submitted to the department. Staff will review the plan and submit recommendations to the Clean Water Commission. The Clean Water Commission may approve, require changes, deny the plan and/or hold public hearings related to approval of the plan.

(D) Industries, including electric cooperatives and mining operations, are by definition continuing authorities for collection and treatment of industrial type wastewater and incidental domestic wastewater associated with their operation when an authority listed in paragraph (3)(B)1. or 2. is infeasible.

(E) Private corporations which are not incorporated under the laws of the state of Missouri shall be represented by a registered agent in the state of Missouri before a construction permit or an operating permit will be issued by the department.

(4) Construction Permits.

(A) No person shall cause or permit the construction, installation or modification of any sewer system or of any water contaminant source, point source or wastewater treatment facility without first receiving a construction permit issued by the department except for the following:

~~1. Construction of a separate storm sewer; and~~

~~2. Facilities as provided in other 10 CSR 20-6 regulations.~~

(B) A separate application for each sewer system, water contaminant source, point source or wastewater treatment facility must be submitted to the department. Where there are multiple releases from a single operating location, however, one (1) application may cover all facilities and releases. For continuing authorities listed in paragraph (3)(B)1. or 2. only one (1) application may be required when the authority operates a sewage treatment plant and has one (1) or more other noncontinuous storm water-related discharges associated with the sewage treatment plant.

(C) An application for a construction permit must be submitted to the department at least one hundred eighty (180) days in

advance of the date on which construction begins. Requests for a shorter time for a review of a wastewater treatment facility may be made but must be accompanied by a detailed statement of the justification for the request. No such statement is required when the application is only for the construction of sewers.

(D) An application shall consist of the following items:

~~1. Unless not required by the department, an engineering report shall be submitted by an engineer and shall contain the information required by 10 CSR 20-8.020 and 10 CSR 20-8.110-10 CSR 20-8.220. If the report includes a wastewater treatment facility, it shall include consideration of the feasibility of constructing and operating a facility which will have no discharge to waters of the state (see section (12) of this rule). Unless the department specifies otherwise, this report will be reviewed and necessary changes made before the plans and specifications in paragraph (4)(D)2. will be reviewed;~~

~~2. Detailed plans and specifications shall be submitted by an engineer and shall contain the information required in 10 CSR 20-8.020 and 10 CSR 20-8.110-10 CSR 20-8.220 or other regulations as applicable;~~

~~3. The application form and permit fee;~~

~~4. A map which equals two thousand feet (1" = 2000') scale map (or larger) showing the location of all outfalls (alternate scale maps are allowed upon the request of the applicant and approval of the Department of Natural Resources);~~

~~5. Other information necessary to determine compliance with the Missouri Clean Water Law and these regulations as required by the department; and~~

~~6. If a construction permit is waived by the department, or not required, the information in paragraphs (4)(D)1.-5. may be required with application for the operating permit.~~

(E) If an application is incomplete or otherwise deficient, the applicant shall be notified of the deficiency and processing of the application may be discontinued until the applicant has corrected all deficiencies. The department will act after receipt of all documents and information necessary for a properly completed application, including appropriate filing fees and other supporting documents as necessary, by either issuing a notice of operating permit pending, issuing the construction permit or denying the permit. The director in writing, shall give the reasons for a denial to the applicant. Applicants who fail to satisfy all department comments after two (2) certified department com-

**Attachment B DNR Letter to F.R. Re: Non-
Members Connected to
Wastewater System**

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Bob Holden, Governor • Stephen M. Mahfood, Director

DIVISION OF ENVIRONMENTAL QUALITY

Jefferson City Regional Office

210 Hoover Road P.O. Box 176 Jefferson City, MO 65102-0176

(573)751-2729

FAX (573)751-0014

November 16, 2001

Folsom Ridge, LLC
ATTN: Mr. Reggie Golden
PO Box 328
Longmont, CO 80501

Dear Mr. Golden:

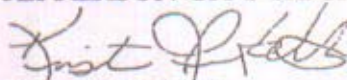
The Department of Natural Resources has become aware of several issues regarding the wastewater collection and treatment system at Big Island. Please address the following concerns:

1. According to the original homeowners association documentation, there were Class A and B members. We have become aware that there are people connected to the wastewater treatment facility who are not members of the homeowners association. In accordance with 10 CSR 20-6.010(3)(B)(IV), everyone connected to the wastewater treatment system shall be bound by the rules of the association, and thus be a member.
2. The as-built plans revised on October 9, 1999, by Lake Professional Engineering Services, Inc. do not appear to be accurate. For example, the pipe up to the wastewater treatment plant has been relocated. Please submit as-built plans, which show what was actually constructed.
3. According to Construction Permit 26-3390, the wastewater treatment plant expansion shall be complete and operational, prior to the construction of the eighty-first house within the Big Island Development. The eighty houses within the Big Island Development will be considered to be the original existing thirty-six houses along with the construction of forty-four new houses or connections. Update on the number of connections and sold lots is requested. 80

Your response concerning the above should be sent before December 7, 2001. If you have any questions, please contact me at (573) 751-2729.

Sincerely,

JEFFERSON CITY REGIONAL OFFICE



Kristine Ricketts
Regional Director

KR:kfr

c: Water Pollution Control Program
Lake Professional Engineering Services
Big Island Homeowners Association

→ "Connections"
KEY WORD

**Attachment C Amended and Restated
Declaration of Covenants
and Conditions**

**AMENDED AND RESTATED
DECLARATION
OF
COVENANTS AND CONDITIONS**

This Declaration, made by Folsom Ridge, LLC, a Colorado limited liability company certified to do business within the State of Missouri, hereinafter referred to as Declarant.

WHEREAS, Declarant is the owner of certain property in Camden County, State of Missouri which is located within the property more particularly described on Exhibit "A" attached hereto, hereinafter referred to as the "Property"; and

WHEREAS, Declarant desires to declare and establish certain covenants and conditions regarding water service and sewer service and related equipment, now owned by Declarant, to serve such Property; and

WHEREAS, Declarant wishes to allow certain additional property to utilize such water and sewer systems on the terms and conditions set forth herein; and

WHEREAS, Declarant recorded that certain Declaration of Covenants and Conditions affecting the real property described on Exhibit "A" attached hereto and additional real estate, which Declaration was recorded April 14, 2000 at Book 494, Page 577, and Declarant wishes to amend and replace such prior recorded Declaration in its entirety with this Amended and Restated Declaration of Covenants and Conditions.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of allowing owners of the Property, or portions thereof, to use the Water System and Sewer System on the terms and conditions set forth hereinbelow, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I.
DEFINITIONS**

Section 1. "Access Easements" shall mean and refer to those access easements upon the Property or Lots necessary to perform the duties and functions of the Association so as to permit it to operate the Water System and Sewer System. All such rights, privileges and easements shall be non-exclusive easements over and across the Lots for the purpose of permitting the operation of the Water System and Sewer System.

Section 2. "Articles" shall mean and refer to the articles of incorporation of the Association and any supplements or modifications thereto.

Section 3. "Association" shall mean and refer to Big Island Homeowners Association, Inc., a Missouri nonprofit corporation, its successors and assigns.

Section 4. "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

Section 5. "Bylaws" shall mean and refer to the Bylaws of the Association adopted August 19, 1998 and any supplements or modifications thereto.

Section 6. "Common Expenses" shall mean and include all expenses of administration, operation, maintenance, repair, replacement, utilities and taxes incurred by the Association pursuant to this Declaration related to the construction, improvement, maintenance and care of the Water System and Sewer System, all insurance premiums for the insurance carried by the Association, all expenses incurred in connection with enforcement of this Declaration, all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws or future vote of the Association's Board of Directors, all sums lawfully assessed against the Lots by the Board of Directors of the Association, all other expenses which the Association is entitled to incur pursuant to the provisions of this Declaration, the Articles, or the Bylaws, and in performance of the operation, care, maintenance, and other duties, rights and obligations under this Declaration.

Section 7. "Declarant" shall mean and refer to Folsom Ridge, LLC, a Colorado limited liability company certified to do business within the State of Missouri, its successors and assigns.

Section 8. "Declaration" shall mean and refer to this document and all Supplemental Declarations (if any), together with all exhibits attached thereto.

Section 9. "Lot" shall mean and refer to any plot of land and improvements thereon designated as a Lot on any subdivision filings or for purposes of the purchaser constructing residential improvements, and for which a connection to the Water and/or Sewer System is intended and shall include any portion of the Property conveyed by Declarant or other real property which is added, in the future, to the terms of this Declaration by ratification or other document whereby such other property is intended to be bound by the terms of this Declaration.

Section 10. "Managing Agent" shall mean and refer to the person employed by the Board to perform the management and operational functions of the Association.

Section 11. "Mortgage" shall mean and refer to any mortgage, deed of trust or other document pledging a Lot or Property (or the Water System and Sewer System in the case of the Association) as security for the payment of a debt or obligation.

Section 12. "Mortgagee" shall mean and refer to any person, corporation, partnership, trust, company, association or other legal entity which takes, owns, holds or receives a Mortgage.

Section 13. "Owner" or "Owners" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 14. "Property" shall mean and refer to that certain real property described on Exhibit "A" attached hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

"Covenants" & "By-laws" came into existence almost 2 yrs. after existing property owners purchased lots. This Assoc. and/or documents were not in existence @ the time existing property owners purchased lots - this was not a part of the original agreement!

Need to define: Member?

Section 15. "Water System and Sewer System" shall mean the now existing water lines, and related improvements and equipment and future additions and modifications thereto, and the now existing sewer plant, pods, sewer lines, and related improvements and equipment and future additions and modifications thereto. If the term "Water System" is used separately, such term shall apply only to those improvements and equipment and future additions and modifications thereto, which are used solely for providing water services. If the term "Sewer System" is used separately, such term shall apply only to those improvements and equipment and future additions and modifications thereto, which are used solely for providing sewer services.

ARTICLE II

PURPOSES AND RESTRICTIONS

Section 1. The purpose of this Declaration and the Association is to provide for the Water System and Sewer System to serve the Lots and the Property.

Section 2. Mechanic's Lien Rights and Indemnification. No labor performed or materials furnished and incorporated with the consent of or at the request of the Owner thereof or his agent, or his contractor or sub-contractor, shall be the basis for filing of a lien against any other Lot or Property or the Water System and Sewer System where the Owner of any other Lot, or the Association in the case of the Water System and Sewer System, has not expressly consented to or requested the same. Each Owner consenting to or requesting such labor or materials shall indemnify and hold harmless each of the Owners of other Lots or Property and the Association from and against all liability arising from the claim of any lien against any other Lot or the Water System and Sewer System for construction performed, or for labor, materials, services or products incorporated in an Owner's Lot at such Owner's express or implied consent or request. Notwithstanding the foregoing, any first Mortgagee of a Lot who shall become the Owner of such Lot pursuant to a lawful foreclosure sale or the taking of a deed in lieu of foreclosure shall not be under any obligation to indemnify and hold harmless any Owners of Lots or the Association against liability for claims arising prior to the date such first Mortgagee becomes an Owner, but such first Mortgagee shall be under such obligation for any such claims for work performed or materials furnished thereafter at the request of the Mortgagee.

Section 3. Unlawful Activity Prohibited. No unlawful use shall be made of the Water System and Sewer System, or any property or improvements in which the Association owns an interest, nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having authority over the Property shall be observed.

ARTICLE III

ADMINISTRATION AND MANAGEMENT OF THE WATER SYSTEM AND SEWER SYSTEM

Section 1. Association as Administrator. The administration of the Water System and Sewer System shall be governed by this Declaration, the Articles, the Bylaws, and Rules and Regulations. An Owner of a Lot shall become a member of the Association upon conveyance to him of his interest in a Lot and shall remain a member for the period of his ownership.

→ this conveyance has not taken place -
"No disclosures" @ real estate closings.

The Association shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Water System and Sewer System and to perform all of the duties required of it. Notwithstanding the above, unless the Owners of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be empowered or entitled to:

(A) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Water System and Sewer System or other property owned, directly or indirectly, by the Association (except that the granting of easements for public utilities or other public purposes consistent with the intended use of such property by the Association or Owners shall not be deemed a transfer within the meaning of this clause), or to terminate the Water System and Sewer System;

(B) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(C) use hazard insurance proceeds for loss to any Association property for other than repair, replacement or reconstruction of such Water System and Sewer System.

The Association shall grant to each first Mortgagee of a Lot the right to examine the books and records of the Association at any reasonable time at the expense of the Mortgagee.

Section 2. Reservation for Access - Maintenance, Repair and Emergencies.

The Association shall have the irrevocable right to have access to each Lot from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any portion of the Water System and Sewer System, or undertaking such repairs and maintenance the Association is obligated, or elects, to perform or at any time for making emergency repairs therein necessary to prevent damage to the Water System and Sewer System or to another Lot caused by, or threatened to be caused by, the Water System and Sewer System. Damage to any part of a Lot or Property resulting from the maintenance, repair, emergency repair or replacement of any portion of the Water System and Sewer System, or as a result of emergency repairs to another Lot, at the instance of the Association shall be a Common Expense of all of the Owners unless caused by the negligence or acts of a specific Owner or its contractors, invitees, or permittees. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of a governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the actions or negligence of any Owner, then such Owner shall be solely responsible for the costs and expense of repairing such damage.

Section 3. Maintenance and Service Responsibility.

(A) Owner. Each Owner shall maintain and keep in repair the connections to the Water System and Sewer System lying within the interior of his Lot, including pipe connections to the Water System and Sewer System. No owner shall do an act, or fail to do an act, that will impair the Water System and Sewer System or impair any easement or hereditament which may affect the Water System and Sewer System. All connections, maintenance and repairs to an owner's pipe connections and to the Water System and Sewer System shall be performed in accordance with applicable laws and regulations and also in accordance with standards acceptable to the Association. No

at present, the "majority" of lots is owned by developer, "Folsom Ridge."

connection shall be made unless inspected and approved by the Association through its designated representatives. In the event an Owner fails to keep their water and sewer connection to the Water System and Sewer System, and/or their water and sewer systems located on their Lot or Property maintained in accordance with such standards, the Association shall have the right to perform such maintenance on behalf of the Owner of such Lot and on his account, and the cost thereof shall be an additional assessment secured by the lien for Common Expenses against such Lot and due and payable by its Owner upon presentation by the Association of written statements therefor, provided however, that the assessment lien for such additional sum shall always be subordinate to the lien of the first Mortgagee.

(B) Association:

(1) The Association shall have the duty of maintaining and repairing all of the Water System and Sewer System to the property boundary of a Lot once a Lot is connected to the Water System and Sewer System and the cost of said maintenance and repair shall be a Common Expense of all of the Owners unless caused by the actions or negligence of a particular Owner, and for which such Owner shall be liable. This maintenance obligation includes making reasonable safety inspections and immediate follow-up maintenance to correct unsafe conditions upon the Water System and Sewer System. The Association shall not need the prior approval of its members to cause such maintenance or repairs to be accomplished, notwithstanding the cost thereof; provided, however, there shall be no additions, alterations or improvements of or to the Water System and Sewer System requiring cumulative expenditures for such items in excess of Fifteen Thousand and No/100 (\$15,000.00) in any one calendar year without the prior approval of the Owners representing a majority of the Lots. Such limitation shall not be applicable to the replacement, repair, maintenance or obsolescence of all or any portion of the Water System and Sewer System, or the undertaking of repairs the Association is obligated to perform.

(2) The Association shall provide to the Owners the following services which shall be paid from the Common Expense assessment, to wit:

- (a) maintenance, repair and restoration of the Water System and Sewer System;
- (b) administration and management of the Water System and Sewer System;
- (c) insurance coverages as deemed prudent by the Board;
- (d) enforcement of the covenants and conditions set forth in the Declaration, and enforcement of all obligations owed to the Association by the Owners; and
- (e) performing all other acts required by this Declaration, the Articles and the Bylaws.

Notwithstanding the above, the Association reserves the right to hire one or more persons or entities, including a Managing Agent, contractors, and employees to perform such services, provided, however, that any such contracts shall not be for a term in excess of one (1) year and shall provide that the same may be terminated on not more than ninety (90) days written notice, with or without cause, at any time by either party and without payment of any termination fee.

(3) All complaints by the Owners, and other authorized users, concerning the use and administration of the Water System and Sewer System, shall be submitted in writing to the Board and the Managing Agent. A written response to such complaint shall be made within thirty (30) days of receipt of such complaint. This section shall not limit the Association's obligation to take immediate maintenance action to correct unsafe conditions.

(C) Water and Sanitary Sewer Lines and Fees. Except to the extent that any such lines are maintained and repaired by a governmental agency responsible therefor, the Owner of a Lot shall be responsible for undertaking and paying the cost of maintenance and repair of water and sanitary sewer lying within his Lot, and the Association shall be responsible for undertaking and paying the cost of maintenance and repair of water and sanitary sewer lines lying outside the boundary of a Lot unless the maintenance or repair is necessitated by the actions or negligence of a particular Owner and for which such Owner shall be liable. The Association, and the Owner of each Lot, respectively, shall promptly pay all water and sanitary sewer charges imposed thereon.

(D) Responsibility for Expenses Solely Attributable to Water System or Sewer System. Notwithstanding anything to the contrary set forth, to the extent that an expense is incurred, or to be incurred, by the Association solely to maintain or benefit only the Water System or only the Sewer System, (and to the extent such expense can be reasonably established as benefiting only the Water System or the Sewer System), such expense shall only be allocated among and chargeable to those Owners connected to the system for which the expense was incurred or to be incurred, (e.g. if a cost is incurred solely for repairing a water line, such cost shall be allocated only among those Owners connected to the Water System).

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot owned within the Property and each Owner of a Lot ratifying this Declaration, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association for each Lot connected to the Water System and Sewer System: (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 such assessment is made. Each such assessment, together with interest, shall become the personal obligation of the Owner of such Lot at the time when the assessment fell due, and his successors in title. If a Lot is owned by more than one person or entity, the Owners shall be jointly and severally liable for all assessments or charges against such Lot.

Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used exclusively to promote the purposes of the Association as set forth in this Declaration and for the construction, improvement and maintenance of the Water System and Sewer System.

Section 3. Working Capital Deposit.

The Owners of each Lot or Property connected to the Water System and Sewer System, shall maintain on deposit with the

existing property owners
did not sign/ratify this Declaration

people are
not psychic -
how disclosed if not
in deed and/or these
covenants
not
presented?

Folsom Ridge's lots

Cathy Oler's issue of water/sewer in same
trench - mandated by DNR in settlement agreement
to be corrected - but, still Folsom Ridge responsibility?

Association a sum set from time to time by the Board, and as approved by the affirmative vote of two-thirds (2/3) of the Owners, as operating capital for the Association. Each Owner acknowledges that this deposit is for the purpose of providing operating funds for the Association, and not as reserves for improvement, unless specifically designated as part of the capital improvement reserves by the Board. The amount of such deposit shall be adjusted annually as of the time the annual assessments are determined. All additional sums due to, or to be refunded by, the Association shall be paid, or refunded, within thirty (30) days after the determination. The Association shall not be required to pay interest on such deposits. At the time of each conveyance of a Lot or Property, such deposit shall not be returned to the selling Owner, but the selling Owner shall be entitled to a credit from his purchaser to the extent of the selling Owner's current balance of such deposit.

Folsom Ridge currently owns "more" property - therefore controlling the "Vote."

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 under the following terms:

A. With regard to the original Water System and/or Sewer System, any such special assessment for construction, reconstruction, repair or replacement under this section shall have the assent of two-thirds (2/3) of the Owners and (1) who are connected to the Water System and/or Sewer System, as applicable, or (2) who have membership rights by virtue of their ownership of a Lot, or (3) who are entitled to use such original Water System and Sewer System by virtue of having paid a tap fee but who have not yet connected to the original Water System and Sewer System), who are voting in person or by proxy at a meeting duly called for this purpose. The initial Sewer System is designed to serve 80 homes (included in this number are homes which are entitled to connect to the original Sewer System by virtue of having paid a tap fee but have not yet established a connection).

only if tap purchaser and/or lot owner ratifies by signature this document? - because these docs. came 2 yrs. after the fact.

B. With regard to any expansion of the Water System and/or Sewer System to serve Lots beyond the original 80 Lots intended to be served by the original Water System and Sewer System shall be paid by Declarant or its successors. For a period of five (5) years from September 1, 2000, with regard to the Water System and Sewer System presently in existence and installed by Folsom, and such additional systems or additions thereto (expansion) that may be installed in the future by Folsom, Folsom warrants the Water System and Sewer System were installed in accordance with customary installation procedures and to the best of Folsom's knowledge were installed in accordance with applicable laws and regulations. In the event a defect is discovered within the warranty period, for (a) the water and sewer lines installed by Folsom and/or (b) the sand beds installed by Folsom serving the sewer system, Folsom commits to repair defects at its sole cost. Such warranty does not cover defects and damages occasioned due to acts of God and damages caused by circumstances beyond Folsom's control. If any of the materials used in the Water System or Sewer System are found to be defective or if the installation is found to be defective, Folsom shall be entitled to any claim and recovery against the manufacturer concerning the materials used in the Sewer System and Water System, and against the original installer for any defective installation.

Sept. 2005 - assoc. membs. receive liability for system

C. In order to alleviate the impact of the cost of unforeseen expenses and/or capital improvements, the Association by the assent of two-thirds (2/3) of the Owners may establish a reserve account, and monthly assessments to fund such reserve account.

Section 5. Notice and Quorum for any Action Authorized Under Section 4.A. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.A. shall be sent to all members not less than thirty (30) days nor more than

Folsom Ridge has been counting "non-members" in attendance to get their quorum - can't do?

ninety (90) days in advance of the meeting. At each such meeting called, the presence of members or of proxies entitled to cast a simple majority of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, but never less than twenty-five percent (25%) of all votes eligible to be cast. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots on a prorata basis based on the number of connections to the Water System and Sewer System and shall be collected on a monthly basis. The liability for assessments shall become effective upon connection to the Water System and/or Sewer System, as applicable.

The Association may establish a lesser common expense assessment and assessment for reserving for those Owners of Lots which have obtained a commitment for a tap to the Water System and/or Sewer System, but which Lot has not yet connected to such system(s).

Notwithstanding anything to the contrary set forth, to the extent that an expense is incurred, or to be incurred, by the Association solely to maintain or benefit only the Water System or only the Sewer System, (and to the extent such expense can be reasonably established as benefiting only the Water System or the Sewer System), such expense shall only be allocated among and chargeable to those Owners connected to the system for which the expense was incurred or to be incurred, (e.g. if a cost is incurred solely for repairing a water line, such cost shall be allocated only among those Owners connected to the Water System).

Section 7. Date of Commencement of Annual Assessments: Due Dates. Except as set forth in Section 6 for non-connected Lots, the annual assessments provided for herein shall commence as to all Lots connected to the Water System and Sewer System (and those Lots ratifying this Declaration) on the first day of the month following such Lot's connection to the Water System and Sewer System. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot connected to the Water System and Sewer System at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The assessment due dates shall be established by the Board of Directors. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within then (10) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Water System and Sewer System or abandonment of his Lot, unless agreed to in a writing signed by the Association.

To evidence such lien for unpaid assessments, the Association shall prepare a written notice setting forth the amount, the name of the Owner of the Lot and a

refer to "David Lees" Hr. Ridge
that was used by Folsom Ridge
@ time existing property owners
purchased taps "No Fees"

... only if a member to the
assoc. by signing/ratifying
this document

description of the Lot. Such notice shall be signed on behalf of the Association by an officer of the Association and shall be recorded in the records of Camden County, Missouri. Such lien shall attach from the due date of the assessment, and may be enforced by foreclosure by the Association of the defaulting Owner's Lot in like manner as mortgages on real property. The lien provided herein shall be in favor of the Association and for the benefit of all of the Owners who are members of the Association, and, in furtherance thereof, the Association shall have the absolute right and power to sell such Lot. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs, expenses and attorney's fees for filing the notice or claim of lien, and all reasonable attorney's fees in connection with such foreclosure. The Owner shall also be required to pay to the Association the assessment for the Lot during the period of foreclosure and the Association shall be entitled to a receiver to collect the same. Pursuant to a foreclosure, the Association on behalf of the Owners shall have the power to bid for the Lot at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall send to the first Mortgagee of such Lot a copy of the Notice of Lien provided for herein. Any person holding a lien on a Lot may, but shall not be required to, pay any unpaid Common Expense payable with respect thereto, and upon such payment such person shall have a lien on such Lot for amounts so paid of the same rank as such encumbrance's lien.

Section 9. Subordination of the Lien to First Mortgages. The lien securing the payment of the assessments provided for herein shall be subordinate to the lien of any first Mortgage. However, to the extent allowed by law, the lien of such assessments shall be superior to any homestead exemption as now or hereafter may be provided by Federal or Missouri law, and the acceptance of a deed or contract for deed to land subject to this Declaration shall constitute a waiver of the homestead exemption as against the said assessment lien. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a first Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of the Property and/or a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Property and/or Lot, except by mutual written agreement of the Association and the Owner.

Section 2. Voting Class. The Association shall have one class of voting membership which shall be all Owners and shall be entitled to one vote for each Lot owned or connected to either the Water System or the Sewer System. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to each Lot.

Section 3. Bylaws. The Association shall establish its own bylaws for the conduct of its affairs which shall include reasonable notice to each member prior to any meeting. Decisions of the Association shall be by majority of votes cast at any meeting, except as otherwise provided hereinabove.

Section 4. Board of Directors. The Board of Directors shall consist of five (5) Directors, who shall be members of the Association or an officer, director, manager or

Folsom Ridge owns
more property/lots - also has
3 members on the board with only other
2 members representing other
property owners

this must be a "unilaterally" agreed to:
just because developer "wishes" it to be
eg. doesn't make it so? (this is unilateral)

partner of an Owner or its partner, or an employee, manager or designee of Declarant. For a period ending September 1, 2006, Folsom Ridge, LLC, or its successors, shall be entitled to appoint three (3) Directors of the Board of Directors.

Section 5. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Lots covered by the Declaration and any Lots later bound by this Declaration by ratification or consent and the use of the Water System and Sewer System which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Prior to any decision to suspend voting rights, or to impose monetary penalties, the Board shall grant notice and hearing pursuant to procedures adopted by the Board from time to time.

ARTICLE VI

RESERVED RIGHTS OF DECLARANT

Section 1. Rights. Declarant shall have the right to sell or create additional Lots being portions of the Property, and the Owner of such additional Lots shall have the right to obtain a tap and be served by the Water System and Sewer System subject to the terms of this Declaration.

Section 2. Declarant shall be entitled to recover from the Owner of any Lot connecting to the Water System and/or Sewer System in the future, any tap fee paid by such owner until such time as Declarant has received tap fees equal to the cumulative sum of \$300,000.00 plus 8 percent per annum interest from May 1, 2000.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner or Declarant, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner or Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by all of the Owners of not less than two-thirds (2/3) of the Lots. Each amendment must be recorded.

Notwithstanding the foregoing, any amendment to this Declaration which changes or restricts Declarant's rights set out herein shall require the written consent of Declarant.

Section 3. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for periodic statements and

shall be sent by either registered or certified mail, postage prepaid and addressed in the name of the Owner to such registered mailing address. All notices, demands or other notices intended to be served upon the Association shall be sent by certified mail, postage prepaid, to Big Island Homeowners Association, Inc., P.O. Box 536, Roach, MO 65787 until such address change duly recorded in the records of Camden County, Missouri.

Section 4. Acceptance of provisions of all Documents. The conveyance or encumbrance of a Lot shall be deemed to include the acceptance of all of the provisions of this Declaration, the Articles and the Bylaws, and Rules and Regulations of the Association, and shall be binding upon each grantee without the necessity or inclusion of such express provision in the instrument of conveyance or encumbrance.

Section 5. General.

(A) If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstance shall be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or work in any other circumstances shall not be affected hereby.

(B) Whenever used herein, unless the context shall otherwise provide, the plural, the singular, and the use of any gender shall include all appropriate genders and quantity.

(C) In the event there shall be any conflict between the provisions of this Declaration and any provision of the Articles, any Bylaw, or any rule or regulation of the Association, the provisions of this Declaration shall be controlling.

(D) All conditions and covenants set forth herein shall run with the real property subject to this Declaration and any future real property becoming bound by this Declaration by ratification or consent.

This Amended and Restated Declaration of Covenants and Conditions shall amend and replace in its entirety, that certain Declaration of Covenants and Conditions, which Declaration was recorded April 14, 2000 at Book 494, Page 577, and such prior Declaration shall be of no further force or effect.

In witness whereof the Managers of Declarant have hereunto set their hands this _____ day of _____, 2000.

Folsom Ridge, LLC,
a Colorado limited liability company, certified to do business in Missouri

By _____
Reginald V. Golden, Manager

By _____
Rick Rusaw, Manager

By _____
David Lees, Manager

Some property owners signed the previously written documents, but refused to sign these "amended" docs.

STATE OF)
COUNTY OF) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2000 by Reginald V. Golden, as Manager of Folsom Ridge, LLC, a Colorado limited liability company.

My commission expires:

Witness my hand and official seal.

Notary Public

STATE OF)
COUNTY OF) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2000 by Rick Rusaw, as Manager of Folsom Ridge, LLC, a Colorado limited liability company.

My commission expires:

Witness my hand and official seal.

Notary Public

STATE OF MISSOURI)
COUNTY OF CAMDEN) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2000 by David Lees, as Manager of Folsom Ridge, LLC, a Colorado limited liability company.

My commission expires:

Witness my hand and official seal.

Notary Public

**Attachment D Amended and Restated
By-Laws of BIHOA**

AMENDED AND RESTATED
BY-LAWS OF BIG ISLAND HOMEOWNERS ASSOCIATION, INC.
A MISSOURI NONPROFIT CORPORATION

ARTICLE I
BIG ISLAND HOMEOWNERS ASSOCIATION, INC.

Section 1. The name of the Association shall be Big Island Homeowners Association, Inc., a Missouri nonprofit corporation.

ARTICLE II

PURPOSES

Section 1. The prime purposes of this Association are as follows:

- a. To provide for the installation, maintenance, upkeep, operation and improvement of utilities, if any, within that property described in that Amended and Restated Declaration of Covenants and Conditions (hereinafter referred to as "The Covenants") recorded in Book _____, at page _____, Deed Records of Camden County, Missouri, which real property described in such Covenants being hereinafter referred to as "Subdivisions"; All terms used in these By-Laws shall have the same meaning as set forth in The Covenants unless specifically excepted.
- b. To borrow money for such purposes and to execute notes, bonds and indentures or any other form or evidence of indebtedness and to secure the payment of the same by mortgage, deed of trust or any other form of encumbrance, pledge or any other form of hypothecation.
- c. To manage and control as trustee for its members any real property owned by the Association, the 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.
- d. To levy and collect the assessments, which are provided for in The Covenants covering the Subdivisions, mentioned above.
- e. To do any and all of the things hereinabove enumerated for its own account, or for the account of others as the agent for others, or in association with others by or through others;

...Can't impose membership if:
a. lot owner does not sign/ratify
b. a few "existing" property owners did connect to system - but because these documents came 2 yrs. after the fact - can membership be imposed?

f. The corporation is formed exclusively for purposes for which a corporation may be formed under the Missouri Nonprofit Corporation Act and not for pecuniary profit or financial gain. No part of the assets, income or profit of the corporation shall be distributable to, or inure to the benefit of, its members, directors or officers except to the extent permitted under the Missouri Nonprofit Corporation Act. The Corporation shall not operate any listing service for its members or take steps which will serve to facilitate the transaction of specific business by its members or promote the private interest of any member, or engage in any activities which would constitute a regular business of a kind ordinarily carried on for profit.

g. 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 finds and to 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.

h. In the event of the dissolution of the corporation, members shall be entitled to any distribution or division of its remaining property or the net proceeds from the sale of corporate assets

i. In furtherance of its corporate purposes, the corporation shall have all general powers enumerated in Section 355.131, as amended, of the Missouri Nonprofit Corporation Act.

ARTICLE III

MEMBERSHIP

Section 1. Members of this Association shall be one class as follows. Membership shall be all Owners and shall be entitled to one vote for each Lot owned and/or connected to either the Water System or the Sewer System. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to each Lot.

Section 2. Upon the sale or transfer in any manner of ownership in any Lot(s), the new purchaser will automatically be a member in the Association. Membership shall be transferrable only by transfer of ownership of the Lot(s).

This Disclosure is not taking place

ARTICLE IV

BOARD OF DIRECTORS

Section 1. The president shall be the chief executive officer of the corporation and subject to control of the Board of Directors. He shall have general charge of the business of the corporation and shall preside at all meetings of the Board of Directors when present. He shall see that all resolutions and orders of the Board of Directors are carried into effect and shall execute all contracts and agreements authorized by the Board of Directors.

Section 2. The president shall submit a report of the operation of the corporation for the fiscal year to the directors at their first annual meeting and to the members at their annual meeting.

ARTICLE VII

VICE-PRESIDENT

Section 1. In the absence or disability of the president, the vice-president shall have all the powers and shall be subject to all the duties of the president so long as such absence or disability of the president continues. A vice-president also shall have such duties as may be conferred upon him from time to time by the Board of Directors.

ARTICLE VIII

SECRETARY

Section 1. The secretary shall keep the minutes of all meetings of the Board of Directors and of all meetings of the membership. He shall attend to the giving and serving of all notices of the corporation.

ARTICLE IX

TREASURER

Section 1. The treasurer shall have the right to issue checks on the account of the corporation and the treasurer shall keep books of account as to monies paid to the corporation and shall give statement of account of the corporation at the annual meeting of the membership of the corporation.

Section 2. The treasurer shall have authority to invest corporate funds upon the affirmative vote of a majority of the Board of Directors.

ARTICLE X

MEETINGS OF THE MEMBERSHIP

b. To determine who shall be authorized to sign for and on behalf of the corporation checks, receipts, endorsements, contracts and other documents.

c. From time to time to provide for the management of the affairs of the corporation in such manner as they deem fit and in accordance with the wishes of the members of the corporation as determined at the annual or in a special meeting of the membership; to provide for the carrying out of the purposes of the corporation for the maintenance, upkeep, operation and improvements of said Water Systems and Sewer Systems and for the purposes of the corporation as set forth in the Articles of Incorporation and above.

d. To carry out such authority as is further granted to them by the members of the corporation specifically authorized at a duly convened membership meeting. Subject to the restrictions as set forth in The Covenants.

e. The Board of Directors is authorized to assess and collect during each year from the membership of the corporation sums of money sufficient for the operation and carrying out of the purposes of the corporation. Said assessment shall be as set forth in The Covenants.

f. In the event it becomes necessary to engage an attorney or collection agency for the enforcement of any violation of restrictive covenants and the collection of delinquent assessments, the Association shall be entitled to collect the costs of collection, including a reasonable attorneys fee and such other expenses that may be incurred in the prosecution or defense of any action or claim.

ARTICLE V

OFFICERS

Section 1. The officers of the Board of Directors shall consist of the president, vice president, secretary and treasurer. The same individual may hold the office of President and Treasurer; and the same individual may hold the office of Vice-President and Secretary.

Section 2. The Board of Directors from shall elect the office of President among its own members for a term of one year or until a successor to such office is elected. The annual election of officers of the Board of Directors shall be conducted at the annual meeting of the Board of Directors.

Section 3. Any officer elected by the Board of Directors may be removed at any time by the affirmative vote of the majority of the entire Board of Directors.

ARTICLE VI

PRESIDENT

Section 1. The business of the corporation shall be managed and be controlled by a Board of Directors consisting of five (5) members. The terms of office for the Board of Directors shall be three years. Provided however, the first Board of Directors shall serve until the 2001 annual membership meeting. Thereafter, the Board of Directors of five (5) members will be elected by the corporation members with two (2) directors being elected to a term of one year; two (2) directors being elected to a term of two years; and one (1) director being elected to a term of three years. Thereafter, at each annual meeting of the corporation, members of the Board of Directors shall be elected for a term of three years to replace the outgoing members of the Board of Directors upon expiration of the term of office of said outgoing members. Members of the Board of Directors may serve for an unlimited number of terms. Notwithstanding anything to the contrary contained herein, for a period ending September 1, 2006, Folsom Ridge, L.L.C., or its Successors, shall be entitled to appoint three (3) directors of the Board of Directors - to the other 2 - making Folsom the controlling entity

Section 2. In the event that a replacement election for any outgoing member of the Board of Directors has not been held at the designated expiration date of the directors term, the director shall remain a member of the Board of Directors until a replacement can be elected at a duly convened meeting of the members of the corporation.

Section 3. In case of a vacancy on the Board of Directors which occurs for any reason other than the ordinary expiration of a term of office, remaining directors by a majority vote shall elect a successor to hold office until the next annual meeting of the members of the corporation.

Section 4. The regular meeting of the Board of Directors shall be held following each annual meeting of the members and special meetings of the Board of Directors shall be held whenever called by the president or member of the Board of Directors. The secretary or the president shall give notice of any special meeting by mailing a notice at the time and place of such meeting at least fifteen days prior to such meeting date. If all the directors waive notice of a special meeting, no notice of such meeting shall be required. Meetings of the Board of Directors may be held by teleconference at the discretion of a majority of the Board of Directors.

Section 5. The majority of the directors shall constitute a quorum for the transaction of business, but if at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until there is a quorum.

Section 6. At the meeting of the Board of Directors, the president shall preside or in his absence the vice-president and in the absence of both, the directors shall elect a presiding officer for such meeting.

Section 7. Powers of Board of Directors are as follows:

- a. To appoint and at their discretion remove or suspend employees, agents and servants of the corporation for purposes of carrying out the object and purposes of the corporation.

no annual meeting
held in 2004

no annual meeting
held in

Section 1. There shall be an annual meeting of the membership of the corporation for the purpose of electing directors and for the transaction of other business as may be brought before the meeting. The Board of Directors shall establish the time and place of the meeting.

Section 2. It shall be the duty of the secretary of the Board of Directors to cause a notice of each annual meeting to be given to each corporation member by mailing a notice to the home post office address of each member as shown by the records of the corporation at least thirty (30) days prior to any annual meeting which shall give the hour and place of the meeting.

Section 3. Special meetings of the corporation membership may be held from time to time whenever called by the president of the Board of Directors or by a majority of the Board of Directors. A special membership meeting shall be called at any time by the president or vice-president upon the written request or petition of one-third or more of the corporation members. Notice of any special meeting indicating briefly the object or objects thereof shall be given by the secretary to each and every member in the same manner as provided for the giving of notice of each annual meeting.

ARTICLE XI

CORPORATION MEMBERSHIP MEETINGS

Section 1. The president of the Board of directors and in his absence the vice-president or any director of the corporation may call a meeting of the corporation membership to order. A chairman and secretary of each meeting shall be elected to conduct the business then before the members.

ARTICLE XII

WATER AND SEWER SYSTEMS

Section 1. So long as the Developer owns property within the property described in the Amended and Restated Declaration of Covenants and Conditions recorded in Book _____, Page _____, the Developer shall have the right at no connection or tap fee to connect any property that Developer might develop to the water and sewer systems. ?

Section 2. The Board of Directors shall have the discretion to allow individual property owners who do not own property in the "Subdivisions" who might desire to connect to the sewer system' and/or water system to connect to the systems at their expense and for a connection or tap fee established by the Board so long as the water system and sewer system are capable of adequately handling the additional connection(s).

Section 3. All property in the "Subdivisions" subdivided after the date of these By-Laws shall be required to connect to the State approved water and sewer systems constructed by the Developer no later than the earliest of (i) occupying the house improvements constructed on the lot, or (ii) the time of obtaining a certificate of occupancy for the house improvements constructed on any lot.

ARTICLE XIII

FISCAL YEAR

Section 1. The fiscal year in the business of this corporation shall be on a calendar year basis unless changed by a majority of the Board of Directors.

ARTICLE XIV

COMPENSATION

Section 1. No director or officer shall receive compensation for any services rendered, provided that each shall be reimbursed for his actual expenses; provided such reimbursement is approved by a majority of the Board of Directors.

Folsom Ridge LLC, adopted the above-stated amended and restated By-Laws, on this _____ day of _____, 2000.

FOLSOM RIDGE LLC

A Colorado limited liability company, certified to do
business in Missouri

REGINALD V. GOLDEN, Manager

RICK RUSAW, Manager

DAVID V. LEES, Manager

**Attachment E Non-Member Fee Issues
Letters to DNR w/Examples**

March 17, 2005

**Elena Seon
Environmental Specialist
Department of Natural Resources
Water Protection Program
P.O. Box 176
Jefferson City, MO. 65102-0176**

Good Morning, Elena:

I would like to take this opportunity, to personally thank you, for your prompt attention to my water/sewer problem, and also thank everyone at DNR who had an active role in the resolve to my water/sewer problem and the water/sewer problem in general on Big Island; it was very much appreciated.

As per our recent telephone conversation last week, this letter is to provide you with written documentation, concerning the proper re-installation of my water line by the developer of Big Island, as mandated by the settlement agreement, between the developer, Folsom Ridge, DNR, and the Attorney General's Office. I would also like to request a copy of the report from Clinton Finn, once it is generated.

I first contacted you on 02-17-05, after previous communications, and efforts with Folsom Ridge, (see attached letters dated 01-24-05 and 02-24-05), in an attempt to receive a correctly installed water tap had failed. Folsom Ridge's position remained, that I must pay "fees" to have my water/sewer problem corrected. I disagreed!

In 1998, existing property owners on Big Island, were solicited by Folsom Ridge LLC, (the developer), to purchase water and sewer taps, as a means to fund and cash flow their installation of a central water and wastewater system, and the residents were then required to pay up front, \$4,800.00 for sewer, and \$2,000.00 for water taps. This money was held in escrow at Central Bank, in Camdenton, Missouri until completion of the system(s). Residents were told there would be no additional charges, until which time they connected to the new system,

and they would have a guaranteed right to connect at the time of their choosing. (See attached letter from David Lees – Folsom Ridge partner and project manager.)

There was no association, (i.e. HOA), in place, as a functional organization to oversee, maintain and operate the water/wastewater system, at the time monies were exchanged and taps were purchased. No mention and/or disclosure of any membership affiliation requirements at any time was made, and therefore, no signatures were required and/or obtained. The current HOA, (which is the organization that was created to manage the water/wastewater system), did not become operative until approximately two years later. The Missouri Department of Natural Resources governing water and wastewater require that a permanent organization be in existence, before commencing with the construction of the system. (10 CSR 20-6-010). The HOA did not elect their first board members until December 29, 2000; again, two years after the permit was issued. The HOA has been and is currently charging mandatory monthly fee assessments, to non-members, as follows:

- Property owners who have paid for a water and/or sewer tap, and by virtue of this, have the right to connect to the system, but are not presently connected to the system.
- Property owners who are not receiving any services
- Property owners who are not members of the HOA

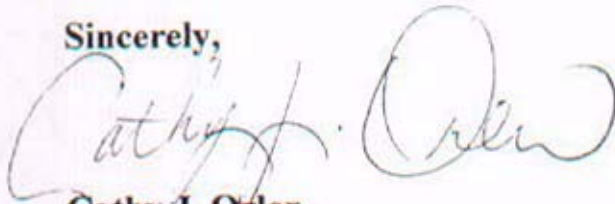
Again, referencing the enclosed letter from Folsom Ridge partner, David Lees, Quote: "...they will not be charged a monthly fee until they hook up." Property owners were not presented with an HOA contract, until April of 2000. At this time, there was extensive proof that the HOA's product was flawed and improperly installed. (ref. Mo. Clean Water Law, Section 644.076.1, RSMo, and 10 CSR 20-8.120(11)(C0 1 and Missouri Safe Drinking Water Law, Section 640.115.2, RSMo, and 10 CSR 3.010 (1). (The reference source for these laws, is the Settlement Agreement between the Department of Natural Resources, Attorney General of Missouri, and Folsom Ridge Development LLC.)

It is my contention, as well as other property owners, that we are not members of this organization; and are therefore, not subject to any mandatory charges, until such time as the owner connects to the system and by signature becomes a member of the HOA. New requirements cannot be made retroactive.

As of the date of this letter, my water tap and main service line have been re-installed. I have no way of determining and/or verifying the correct or incorrect re-installation, since nothing is visible. My response to Folsom Ridge, after the re-installation, has been,... that I might possibly consider, as a voluntary gesture of good will, a contribution to the HOA in the future – NOTHING MORE!

In closing, on behalf of myself, and the other residents of Big Island, I would like to thank DNR for mandating the correct installation of the water/wastewater system.

Sincerely,



Cathy J. Orler
3252 Big Island Drive
Roach, Mo. 65787
(573) 317-1490

cc: Clinton J. Finn
Unit Chief – Drinking Water
Engineering and Technical Assistance
2040 West Woodland
Springfield, Mo. 65807-5912

John MacEachen
Enforcement Unit Chief
Department of Natural Resources
P.O. Box 176
Jefferson City, Mo. 65102-0176

Cathy J. Orlor
3252 Big Island Drive
Roach, Mo. 65787
Phone (573) 317-1490 Fax (573) 317-1490

June 17, 2005

Mr. Bruce Martin
Regional Director of Southwest Regional Office
2040 West Woodland
Springfield, Mo. 65807-5912

Good Morning, Mr. Martin:

In an ongoing attempt to clarify and resolve numerous issues and matters of concern regarding the Big Island Home Owners' Association, (BIHOA), as set up by Folsom Ridge, and it's operation as permitted by the Department of Natural Resources, (DNR), of the water and waste water system servicing the residents of Big Island, I am directing this letter to your attention, and outlining several topics for your review and determination.

1. Has there been a definitive determination by DNR, that the BIHOA as set up by Folsom Ridge, LLC, meets all of the requirements of the Missouri state statute 10CSR20-6.010(3) regarding "continuing authorities" for the operation of the water and waste water treatment system?
2. Accordingly, the following situations and concerns exist within the current operation of the water and waste water system by the BIHOA:
 - a. Residents who are not members of the BIHOA, are connected to the system, and are receiving service
 - b. Residents who are not members of the BIHOA, and are not connected to the system, and are not receiving any service, are being billed
 - c. Existing residents, (with other, long established Home Owners' Associations already in place), were solicited in 1998 by Folsom

Ridge, (the developer), to purchase water and sewer taps as a means to fund and cash flow their installation of a central water and waste water system, and required to pay up front, \$4,800.00 for sewer, and \$2,000.00 for water taps, (with no mention, reference, and/or disclosure of any membership affiliation requirements at any time), and guaranteed a right to connect to the system at a time of their choosing, with a reserved connection to the original, Phase 1, 80 lot system, as outlined in Article IV, section 4, paragraph A, #3 and paragraph B of the "Amended and Restated Declaration of Covenants and Conditions", thereby creating a present "oversubscription" to the current system: (i.e. – if residents with a reserved connection chose to connect tomorrow to the 80 lot system, the maximum 80 lot capacity would be greatly exceeded).

- d. The current BIHOA, that was created to manage the operation of the water and waste water system, did not become operative until approximately 2 years later, when the first board members were elected on December 29, 2000; therefore, resulting in the nonmember issues as outlined previously in "a" and "b."
- e. The BIHOA is controlled by the developers, and not by it's members and/or customers of the utilities: (ref: Article III, "Administration and Management of the Water System and Sewer System," section 3. Maintenance and Service Responsibility, (B) Association, and Article IV, "Covenant for Maintenance Assessments," section 1. Creation of the Lien and Personal Obligation of Assessments; of the "Amended and Restated Declaration of Covenants and Conditions," and Article III, "Membership," section 1, and Article IV, "Board of Directors," section 1, of the "Amended and Restated By-Laws of the BIHOA).

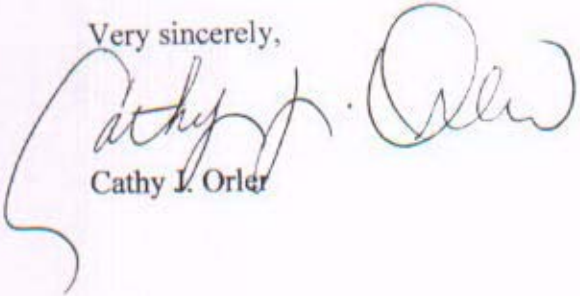
- 3. Additionally, in the "Settlement Agreement," between Folsom Ridge, (the developer), the Department of Natural Resources, (DNR), and the Attorney General's Office, the Big Island Home Owners' Association, (BIHOA), is presumably, called out as the "Continuing Authority;" however, the BIHOA was not party to the agreement.

For your convenience, I have enclosed copies of the Amended and Restated Declaration of Covenants and Conditions; Amended and Restated By-Laws of the Big Island Home

Owners' Association; and the Settlement Agreement between Folsom Ridge, the Department of Natural Resources, and the Attorney General's Office.

I look forward to hearing from you, and a prompt response would be very greatly appreciated, since it appears that numerous violations have been and continue to be a part of the system as well as the operation(s) of the system for which the homeowners of Big Island will ultimately inherit the responsibility and liability.

Very sincerely,



Cathy L. Orlor

Cc: ~~Robert Cook~~ – Assistant Attorney General –
Martin Hummel – Public Service Commission
Elena Seon – Department of Natural Resources

Big Island Homeowners Association
P. O. Box 54
Longmont, CO 80502

April 25, 2001

mailed 5/03/01
received 5/07/01
paid 5/10/01

Benjamin & Karen Pugh
HCR 67, Box 726
Roach, MO 65787

Dear Benjamin & Karen,

Enclosed is the sewer and water assessment for the first quarter of 2001. As you know, the assessments were voted on at the December 29, 2000 special meeting of the Homeowners Association. The assessments were set as follows:

Sewer

Non-members hooked up \$15.00

Non-members not hooked up \$5.00

Water

Non-members hooked up \$10.00

Non-members not hooked up \$5.00

These rates were agreed to be the rates until the next regular meeting in July when the assessment rates will be voted upon again. If you have any questions, please don't hesitate to call. This assessment is due upon receipt. The next assessment for the second quarter 2001 will be mailed in May.

Please keep in mind that the water tests are posted when we receive them at the well house on the west road. Please feel free to look at them. Your comments are welcome. Larry Toombs, Don Bracken, Reggie Golden, Rick Rusaw, and David Lees are your current board of directors.

Again, if you believe your bill is incorrect, please don't hesitate to call us at (303) 702-0708.

Thank you


Reggie Golden
Big Island Homeowners Association

Big Island Homeowners Association
P. O. Box 54
Longmont, CO 80502

April 25, 2001

Jim & Jeanette Schrader
HCR 67, Box 766
Roach, MO 65787

Dear Jim & Jeanette,

Enclosed is the sewer and water assessment for the first quarter of 2001. As you know, the assessments were voted on at the December 29, 2000 special meeting of the Homeowners Association. The assessments were set as follows:

<u>Sewer</u>	
Non-members hooked up	\$15.00
Non-members not hooked up	\$5.00
<u>Water</u>	
Non-members hooked up	\$10.00
Non-members not hooked up	\$5.00

These rates were agreed to be the rates until the next regular meeting in July when the assessment rates will be voted upon again. If you have any questions, please don't hesitate to call. This assessment is due upon receipt. The next assessment for the second quarter 2001 will be mailed in May.

Please keep in mind that the water tests are posted when we receive them at the well house on the west road. Please feel free to look at them. Your comments are welcome. Larry Toombs, Don Bracken, Reggie Golden, Rick Rusaw, and David Lees are your current board of directors.

Again, if you believe your bill is incorrect, please don't hesitate to call us at (303) 702-0708.

Thank you,


Reggie Golden
Big Island Homeowners Association

**Attachment F Letter from David Lees (F.R.
Partner) Stating No Fees
Until Connected**

Big Island

1. We will have a monthly fee for the waste water system ,of \$10.00 per month..This fee will be deposited to the Homeowners interest bearing account..
- 2, It is anticipated with the number of users to this system, that we will have an excess of funds in the interest bearing escrow account.
3. The schedule to oversee this system will be on a as needed basis. We have been advised that to oversee this particular system, to clean filters, check equipment and take samples will require 2 to 3 visits a week. Whoever is chosen, is to be state licensed and accountable to the state of Missouri.
The cost to maintain and operate the system will depend entirely on the units and flow to the waste water system.
4. If a homeowner hooks up to the system , the fee is \$10.00 a month. If they elect to pay their \$4600.00, and a waste water stub is installed at their property, they will not be charged a monthly fee until they hook up.
5. We intend to accommodate each homeowner with the location of the stub out, most convenient to their needs.
- 6..The funding for the new asphalt road has been funded and is the sole responsibility of the Folsom Ridge LLC. The monies for this project are in escrow at Central bank , Camdenton, Mo.
7. There will be 5 board members which will consist of the 3 developers , one new property owner and one existing property owner.
8. It is your option to hook up to this system. You are under no obligation to do so. If you have any concerns about the developers financial capabilities as stated, feel free to call Jeff Welsh at Central Bank of Camdenton, Mo. Telephone # 573 346 2203 and satisfy yourself as to the LLC's financial capabilities..
9. This offer to hook up to this system is completely voluntary to any existing homeowners. It is mandatory by the DNR for any new homeowners .

We hope that this addresses some of your concerns. If not feel free to contact me at 573 346 6158 . FAX same number..

Sincerely, Dave Lees

**Attachment G F.R. Letters to Homeowners
Stating Dates BIHOA Was
Established; DNR
Construction and Operating
Permits to Confirm BIHOA
Not Yet Established; Lawyer
Letter Stating BIHOA Is
Operating as an Unlicensed
Public Utility**

BRIDGES, CISAR AND MIZELL, L.L.C.

ATTORNEYS AT LAW

2140 BAGNELL DAM BOULEVARD, SUITE 203

LAKE OZARK, MISSOURI 65049

WWW.LAKEOZARKLAW.COM

RECEIVED
FEB 22 2002**DRAFT**LEWIS Z. BRIDGES
TIMOTHY R. CISAR
DANIEL C. MIZELLTELEPHONE: (573) 365-2383
FACSIMILE: (573) 365-2068

February 21, 2002

Kristine Ricketts
Missouri Department of Natural
Resources
Jefferson City Regional Office
PO Box 176
Jefferson City MO 65102RE: *Big Island HOA, Inc.*
Permit at Big Island, Camden County, Missouri

Dear Ms. Ricketts:

I have been asked to write to you with regard to the above permit by a group of concerned citizens in Big Island Subdivision.

My clients insist, and I think the facts will show, the following:

1. The developers of the subdivision began construction of water and sewer systems prior to obtaining any permit.
2. The Department of Natural Resources allowed late filing.
3. The system was not built as submitted to the Department of Natural Resources.
4. The Department of Natural Resources has now allowed the developer and/or Association to submit "as built" drawings.
5. The "as built" drawings do not accurately depict the system.
6. The system has in the past, and continues to leak, causing sewage to encroach on residents' property.

February 21, 2002
Page 2 of 2

DRAFT

7. The Association is operating as an unlicensed public utility by providing sewage services to non-members. In addition, the original developer contracted with individuals and agreed to provide such services without authority to operate a public utility. None of my clients agreed to join the Association and are not bound by any of the terms of the Association's Articles of Incorporation or Revised Restrictions and Bylaws. They were not required to join the Association under the terms of their original agreement with the Developer.
8. Negotiations were conducted between my clients and the Developer concerning revisions to the Restrictions but no agreement was achieved. My clients are concerned with legal and financial liability associated with the system. In addition to the problems noted above, we are aware that several homes were connected to and used the system prior to an operating permit being issued on February 25, 2000. In addition, no functioning homeowners' association existed until July 2000 when the first Board of Directors was elected.
9. The system is overloaded now if we include all persons connected or who have a contractual right to connect.

It is my understand that the Department of Natural Resources has, as its purpose, the responsibility to enforce the laws and regulations of the state in these matters and to protect the public interest. I do not agree that the public interest is served when developers are given rubber stamp approval of systems constructed in violation of state regulations.

I would appreciate clarification of the Department of Natural Resource's position on the matters included in this letter.

Very truly yours,

Lewis Z. Bridges

LZB:clt

Big Island Homeowners Association
P. O. Box 536
Roach, MO 65787

Recy
4/11/00

April 11, 2000

Jeanette Schrader
HCR 67, Box 766
Roach, MO 65787

Re: Big Island Lake Sites

Dear Jeanette:

We are pleased with the progress that we are making on Big Island. The paving of the road and the installation of the water and sewer system have made a difference for the residents. Our water system has been operational since last May and the sewer system is ready to be tapped into. We have just received approval for both the water and sewer from the Department of Natural Resources of Missouri. While we would have preferred a faster response we have had to let the department proceed at their pace.

Now that approval is secured we can proceed with the development of the Big Island water and sewer homeowners association. The covenants for this association are enclosed for your review. We will hold a meeting on Thursday, June 1, 2000 to elect individuals to the board from the island. Furthermore, to proceed, you need to sign the attached Ratification to ensure that water and sewer rights remain with your property in accordance with the Big Island water and sewer association. Please review the legal description of your property to be sure it is in accordance with your records.

After we are in receipt of your signed document, Central Bank will release escrow funds and you will be eligible to tap into the system. If Central Bank does not receive your signed Ratification within 30 days then your escrow money will be refunded to you and you will not be eligible for using the system. Future fees for water and sewer hookup are to be determined by the board of the homeowners association and can be expected to be considerably higher.

Please send the enclosed signature page to Jeff Welsh, c/o Central Bank of Lake of the Ozarks, 140 E. Highway 54, Camdenton, MO 65020. Thank you for your prompt attention to this matter.

Folsom Ridge, LLC

Big Island Homeowners Association
P. O. Box 54
Longmont, CO 80502

January 29, 2001

Benjamin & Karen Pugh
HCR 67, Box 726
Roach, MO 65787

Dear Benjamin & Karen,

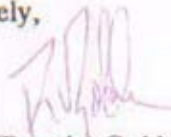
On December 29, 2000 the Big Island Homeowners Association approved the by-laws and covenants that were distributed earlier in December. The first board of directors was also elected. Mr. Larry Toombs and Mr. Don Bracken were elected to fill the available positions along with Mr. Reggie Golden, Mr. David Lees and Mr. Rick Rusaw.

We realize that many of the items you have received have been confusing, however, we have simply been trying to make sure everything we have done is legal. We have also been trying to communicate as much information as we have with you so that you can understand exactly what has been happening.

We are finally at the point to have you, individually ratify these documents and join the HOA. This will allow us to protect your investment in the sewer and water system by recording your membership at the county courthouse. Please join the Big Island Homeowners Association by signing the attached ratification form in front of a Notary and mail it back to the homeowners association in the enclosed envelope. The HOA has given us 90 days to complete this process. Please make sure you join within this time frame if you desire to become a member.

I have also attached a final copy of the covenants and the by-laws so feel free to throw away anything you have received in the past if you so choose. Also, please don't hesitate to call if you have any questions. The phone number is (303) 702-0708. We appreciate your patience and cooperation in this matter.

Sincerely,



R. V. (Reggie) Golden
Big Island Homeowners Association

**AMENDED AND RESTATED
DECLARATION
OF
COVENANTS AND CONDITIONS**

This Declaration, made by Folsom Ridge, LLC, a Colorado limited liability company certified to do business within the State of Missouri, hereinafter referred to as Declarant.

WHEREAS, Declarant is the owner of certain property in Camden County, State of Missouri which is located within the property more particularly described on Exhibit "A" attached hereto, hereinafter referred to as the "Property"; and

WHEREAS, Declarant desires to declare and establish certain covenants and conditions regarding water service and sewer service and related equipment, now owned by Declarant, to serve such Property; and

WHEREAS, Declarant wishes to allow certain additional property to utilize such water and sewer systems on the terms and conditions set forth herein; and

WHEREAS, Declarant recorded that certain Declaration of Covenants and Conditions affecting the real property described on Exhibit "A" attached hereto and additional real estate, which Declaration was recorded April 14, 2000 at Book 494, Page 577, and Declarant wishes to amend and replace such prior recorded Declaration in its entirety with this Amended and Restated Declaration of Covenants and Conditions.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of allowing owners of the Property, or portions thereof, to use the Water System and Sewer System on the terms and conditions set forth hereinbelow, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I.
DEFINITIONS**

Section 1. "Access Easements" shall mean and refer to those access easements upon the Property or Lots necessary to perform the duties and functions of the Association so as to permit it to operate the Water System and Sewer System. All such rights, privileges and easements shall be non-exclusive easements over and across the Lots for the purpose of permitting the operation of the Water System and Sewer System.

Section 2. "Articles" shall mean and refer to the articles of incorporation of the Association and any supplements or modifications thereto.

Section 3. "Association" shall mean and refer to Big Island Homeowners Association, Inc., a Missouri nonprofit corporation, its successors and assigns.

Big Island Homeowners Association

Minutes

12-29-00

Location: Conference Room Central Bank, Camdenton, MO

Time: 12-29-00, 10 a.m.

Present: see attached Proxy: see attached

Rick Rusaw called the meeting to order.

Rick gave an update on the progress of Big Island development. The water and sewer has been operational on the east side since March '00. The installation of the west side has been completed and waiting for final approval from Department of Natural Resources. DNR has approved the operation of the east side.

An update on the HOA issues was also given. We have negotiated with various residents who had formed a group of residents. The developers Folsom Ridge have made a number of changes to address the concerns. (see attached letter to highlight the changes)

Adoption of Amended By-Laws and Restated Declaration of Covenants and conditions. Was approved by unanimous consent and will be ratified by signature. Each ratification form will be returned to Central Bank and recorded on property deed.

John Pro moved and Wanda Shelton seconded the approval of Don Bracken, Larry Toombs as board members representing the lot owners. Motion passed unanimously. They will join Reg Golden, David Lees, & Rick Rusaw as appointed by Folsom Ridge.

Don Bracken moved and Gail Snyder seconded the recommended fees as follows:

For lots connected to the Water system: \$10.00 per month

For lots connected to the Sewer system: \$15.00 per month

For lots not connected to the Water system: \$5.00 per month

For lots not connected to the Sewer system: \$5.00 per month

Motion approved unanimously.

By consent the board will develop the operational budget and recommend working capital costs beyond the fees after June 30, with the understanding the developer has agreed to provide for any costs above the fees until June 30, 2001. The board will also decide the cost for joining the HOA during the next 90 days. The members present recommended doing all that was possible to have every homeowner join.

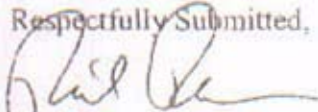
A time for questions from the floor was given. Most of the discussion centering around re-planting and future development plans for the Island.

Installation documents will be available through David Lees by the end of January for everyone who wants to complete their hook-up to water and/or sewer.

Ratification agreement will be sent in January and are to be returned to Central Bank for recording.

Meeting adjourned.

Respectfully Submitted,



Rick Rusaw

Board member

For information purposes, all homeowners who had not signed were invited to a meeting for information and discussion on 1-29-00 at 1:00 p.m. Tom Sowers and Phil Hiley were the only attendees besides Rick Rusaw.

1-5-99

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Act. Com. Gov. • Stephen M. Malloch, Director

DIVISION OF ENVIRONMENTAL QUALITY

Jefferson City Regional Office

210 Hoover Road P.O. Box 176 Jefferson City, MO 65102-0176

(573)751-2729

FAX (573)751-0014

January 5, 1999

Big Island Homeowners Association, Inc.
ATTN: Reggie Golden
P.O. Box 328
Longmont, CO 80501

Dear Applicant:

Your application for wastewater works to serve the Big Island has been approved by the Department of Natural Resources as evidenced by Construction Permit Number 26-3081 which is enclosed with this letter.

This permit will expire one year from the date of issuance unless justification for extension is presented thirty (30) days prior to expiration. The applicant must show that there have been no substantial changes in the project.

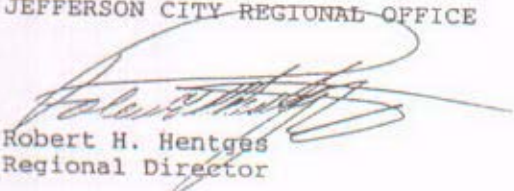
In addition to the requirements for a construction permit, land disturbance activities of five acres or more require a Missouri State Operating Permit to discharge stormwater (10 CSR 20-6.200). The permit requires best management stormwater practices. To obtain this permit, submit Forms E and G and a permit fee of \$150 to the Permits Unit Chief, Department of Natural Resources, Water Pollution Control Program, P.O. Box 176, Jefferson City, Missouri 65102.

Following completion of construction, the enclosed application shall be completed and returned to the Department of Natural Resources, Jefferson City Regional Office, P.O. Box 176, Jefferson City, Missouri 65102. The state operating permit must be obtained prior to discharging wastewater effluent from this facility.

If you have any questions, please contact Keith Forck at the Jefferson City Regional Office at (573) 751-2729.

Sincerely,

JEFFERSON CITY REGIONAL OFFICE


Robert H. Hentges
Regional Director

RHH:kfl

Enclosures

c: Water Pollution Control Program
Lake Professional Engineering Services, Inc.

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

MISSOURI CLEAN WATER COMMISSION

WPC - Camden
Big Island
ID NO 2174

Construction Permit No. 26-3081
River Reach No: 10290110-03-00



CONSTRUCTION PERMIT

The Missouri Department of Natural Resources hereby issues a permit to: **Big Island Homeowners**
ATTN: Reggie Golden
P.O. Box 328
Longmont, CO 80501

for the construction of (describe facilities):

1000 and 1500 gallon septic tanks with .5 to 1 horsepower effluent pumps designed for 10 gallons per minute at 140 to 170 feet of total dynamic head, 2000 linear feet of two-inch PVC pressure pipe, 7200 linear feet of three-inch PVC pressure pipe, 3400 linear feet of four-inch PVC pressure pipe, air release valves, ten feet by forty feet by six feet deep recirculation tank with four one horsepower pumps - each designed for fifty gallons per minute

Permit Conditions: (NONE)

Construction of such proposed facilities shall be in accordance with the provisions of the Missouri Clean Water Law, Chapter 644, RSMo, and regulations promulgated thereunder, or this permit may be revoked by the Department of Natural Resources.

As the Department of Natural Resources does not examine structural features of design or the efficiency of mechanical equipment, the issuance of this permit does not include approval of these features.

A representative of the Department may inspect the work covered by this permit periodically during construction. Issuance of an operating permit by the Department will be contingent on the work substantially adhering to the approved plans and specifications.

This permit applies only to the construction of wastewater treatment facilities; it does not apply to other environmentally regulated areas.

January 5, 1999 *[Signature]*

Effective Date

John A. Young
Director, Division of Environmental Quality

January 5, 2000

Expiration Date
\$500.00 Rec'd. Check No. 1011

[Signature]
Director of Staff, Clean Water Commission or Designee

Big Island
January 5, 1999
Page 2

FACILITY DESCRIPTION (CONTINUED):

at fifty-one feet of total dynamic head, 120 feet by 46 feet recirculating sand filter bed, 1000 gallon chlorine contact chamber, and all the necessary appurtenances to make the facilities complete and usable. This facility is to serve eighty homes in Big Island with a design flow of 22,525 gallons per day.

Legal Description: NW1/4, NW1/4, SW1/4, Sec. 6, T38N, R17W, Camden County, Missouri.

LAKE PROFESSIONAL ENGINEERING SERVICES, INC.

CONSULTING ENGINEERS

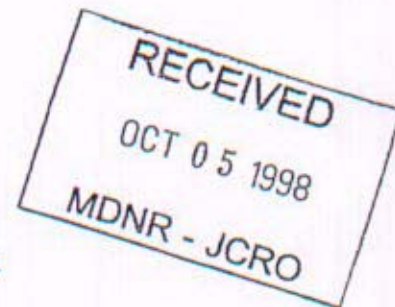
P.O. Box 27

Camdenton, Mo. 65020

JAMES O. JACKSON, P.E. 573-480-0508 - BOWDEN CAMPBELL, EIT 573-480-7100
573-873-3898

September 30, 1998

Mr. Steve Jones, P.E.
Jefferson City Regional Office
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102



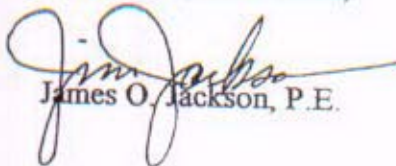
RE: Construction of Deep Well at Big Island Subdivision

Dear Mr. Jones:

Attached are two copies of the Application For a Construction Permit, the engineering report, detailed specifications (including a layout map), calculations and a map showing the location of the project. This project will furnish water for 80 lots. There is land available for future expansion and an application will be made when the well pump and/or water lines are expanded.

If you have any questions please feel free to contact me.

Respectfully Submitted,


James O. Jackson, P.E.

Enclosures

Date Rec'd 10-13-98 Plan # 31182-98
Public Drinking Water Program
Division of Environmental Quality

RECEIVED

OCT 13 1998

PUBLIC DRINKING WATER
PROGRAM

10-14-99
D

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Art Carnahan, Governor • Stephen M. Mahood, Director

DIVISION OF ENVIRONMENTAL QUALITY

Jefferson City Regional Office

210 Hoover Road P.O. Box 176 Jefferson City, MO 65102-0176

(573) 751-2729

FAX (573) 751-0014

February 23, 2000

Mr. David Lee, President
Owners Association
HCR 67, Box 800
Roach, MO 65787

Dear Mr. Lee:

Enclosed is a report of Final Inspection and Approval for the new community public drinking water well, storage tanks and distribution system serving the Big Island Subdivision. The system was placed into service in May of 1999.

To determine if the water meets safe drinking water standards the water system will be listed as an active community system, starting March 1, 2000, for the next twelve months so that the necessary sampling can be completed. There will be a \$200.00 sampling fee to cover all sampling required. If testing shows that the water meets all safe drinking water standards then the system will be reclassified as inactive. No further water monitoring will be required until such time in the future that the system serves enough people or homes to meet the definition of a public drinking water system. You will need to notify this office at that time so that the system can be reactivated.

If you have any questions, please contact me at (573) 751-2729.

Sincerely,

JEFFERSON CITY REGIONAL OFFICE



Stephen P. Jones, P.E.
Unit Chief, Public Drinking Water Unit

SPJ:th

Enclosure

c: Public Drinking Water Program, %Beverly Elya
Harms, Inc. c/o Randall Wilson, P.E. P.O. Box 52, Eldon, MO 65026

RECEIVED

FEB 24 2000

PUBLIC DRINKING WATER
PROGRAM

DEPARTMENT OF NATURAL RESOURCES
Report of Final Inspection and Approval
of Public Water Supply
Big Island Subdivision
Water Well, Storage Tanks and Distribution
MO-3031265
February 23, 2000

INTRODUCTION

A final inspection of the addition of a new well, storage tanks, and distribution serving the Big Island Subdivision was conducted in December, 1999. The plans and specifications for these features were reviewed and approved under Review Number 31182-98.

BRIEF DESCRIPTION

The approved project consists of a six inch diameter well, well house, four - 119 gallon pressure storage tanks, two - 4500 gallon storage tanks, and all the necessary appurtenances to make a complete and usable system.

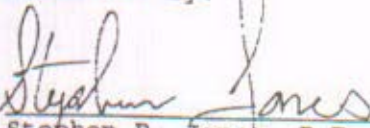
FINAL APPROVAL

The completed water supply facilities described above were examined as to features of construction which may affect the operation of the facilities, including size, capacities of various units, and features which may affect the efficiency and ease of operation. The completed facilities, so far as could be determined, are constructed essentially in accordance with the approved plans, and final approval of the completed project is hereby granted.

The Department of Natural Resources did not examine structural features or the efficiency of mechanical equipment. This final approval does not include approval of these features. Nor was the department able to observe the placement of distribution lines to verify the adequate separation of water and sewer liners in accordance with community drinking water construction standards. Therefore, if at any time in the future, it is found that the water system was not constructed in accordance with community drinking water construction standards, the department reserves the right to require any and all necessary alterations of the system to bring it back into compliance with appropriate standards.

In addition, the department further reserves the right to withdraw the approval of the water supply facilities any time they are found to be operating unsatisfactorily, and to require alterations, additional treatment, or changed methods of operation as deemed necessary to place the facilities in satisfactory condition.

Submitted by:



Stephen P. Jones, P.E.
Environmental Engineer

SPJ:th

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

McCarthan, Governor • Stephen M. Malinoff, Director

DIVISION OF ENVIRONMENTAL QUALITY

P.O. Box 176 Jefferson City, MO 65102-0176

February 25, 2000

Big Island Homeowners Association, Inc.
PO Box 328
Longmont, CO 80501



Dear Permittee:

Pursuant to the Federal Water Pollution Control Act, under the authority granted to the State of Missouri and in compliance with the Missouri Clean Water Law, we have issued and are enclosing your State Operating Permit to discharge from Big Island.

Please read your permit and attached Standard Conditions. They contain important information on monitoring requirements, effluent limitations, sampling frequencies and reporting requirements.

Monitoring reports required by the special conditions must be submitted on a periodic basis. Copies of the necessary report forms are enclosed and should be mailed to the regional office listed below. Please contact that office for additional forms.

This permit is both your Federal Discharge Permit and your new State Operating Permit and replaces all previous State Operating Permits for this facility. In all future correspondence regarding this facility, please refer to your State Operating Permit number and facility name as shown on page one of the permit.

If you have any questions concerning this permit, please do not hesitate to call this office or our Jefferson City Regional Office at 219 Hoover Dr, Jefferson City, MO 65102-0176 (573) 751-2729.

Sincerely,

WATER POLLUTION CONTROL

Philip A. Schroeder, Chief
Permit Section

PAS:ah

Enclosure

c: Jefferson City Regional Office
Big Island

MAR-08-2000 08:49

DNR WATER POLLUTION

5735265797 P.03/06

6

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

MISSOURI CLEAN WATER COMMISSION



MISSOURI STATE OPERATING PERMIT

In compliance with the Missouri Clean Water Law, (Chapter 644 R.S. Mo. as amended, hereinafter, the Law), and the Federal Water Pollution Control Act (Public Law 92-500, 92nd Congress) as amended.

Permit No.: MO-0123013

Owner: Big Island Homeowners Association, Inc.

Owner's Address: RCR 67, Box 680, Roach, MO 65787

Operating Authority: Same as above

Operating Authority's Address: Same as above

Facility Name: Big Island Subdivision

Facility Address: Lake Road AA-109, Roach, MO 65787

Legal Description: NW 1/4, NW 1/4, SW 1/4, Sec. 6, T38N, R17W, Camden County

Receiving Stream & Basin: Little Niangua Arm (L2)
Lake of the Ozarks Basin (10290110-03-00)

is authorized to discharge from the facility described herein, in accordance with the effluent limitations and monitoring requirements as set forth herein.

FACILITY DESCRIPTION

Outfall #001 - Subdivision - SIC #4952

Septic tank/recirculating sand filter/chlorination/sludge disposal is by contract hauler.

Design population equivalent is 296.

Design flow is 22,525 gallons per day.

Design sludge production is 2.1 dry tons/year.

This permit authorizes only wastewater discharges under the Missouri Clean Water Law and the National Pollutant Discharge Elimination System. It does not apply to other regulated areas. This permit may be appealed in accordance with Section 744.051 of the Law.

February 25, 2000

Issuance Date

February 24, 2005

Expiration Date

John A. Young
Director, Division of Environmental Quality

Director of State Clean Water Commission

DEPARTMENT OF NATURAL RESOURCES
Report of Final Inspection and Approval
of Public Water Supply
Big Island Subdivision
Water Well, Storage Tanks and Distribution
MO-3031265
February 23, 2000

INTRODUCTION

A final inspection of the addition of a new well, storage tanks, and distribution serving the Big Island Subdivision was conducted in December, 1999. The plans and specifications for these features were reviewed and approved under Review Number 31182-98.

BRIEF DESCRIPTION

The approved project consists of a six inch diameter well, well house, four - 119 gallon pressure storage tanks, two - 4500 gallon storage tanks, and all the necessary appurtenances to make a complete and usable system.

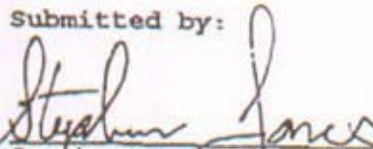
FINAL APPROVAL

The completed water supply facilities described above were examined as to features of construction which may affect the operation of the facilities, including size, capacities of various units, and features which may affect the efficiency and ease of operation. The completed facilities, so far as could be determined, are constructed essentially in accordance with the approved plans, and final approval of the completed project is hereby granted.

The Department of Natural Resources did not examine structural features or the efficiency of mechanical equipment. This final approval does not include approval of these features. Nor was the department able to observe the placement of distribution lines to verify the adequate separation of water and sewer liners in accordance with community drinking water construction standards. Therefore, if at any time in the future, it is found that the water system was not constructed in accordance with community drinking water construction standards, the department reserves the right to require any and all necessary alterations of the system to bring it back into compliance with appropriate standards.

In addition, the department further reserves the right to withdraw the approval of the water supply facilities any time they are found to be operating unsatisfactorily, and to require alterations, additional treatment, or changed methods of operation as deemed necessary to place the facilities in satisfactory condition.

Submitted by:


Stephen P. Jones, P.E.
Environmental Engineer

SPJ:th

MISSOURI DEPARTMENT OF NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL QUALITY
JEFFERSON CITY REGIONAL OFFICE
P.O. BOX 176
JEFFERSON CITY, MISSOURI 65102

CERTIFICATION OF WORK COMPLETED

As required by Missouri Department of Natural Resources Regulation 10 CSR 20-6.010.(5)(D), the following certification is submitted:

1. Project name: BIG ISLAND HOMEOWNERS ASSOC., INC.
2. Legal description of treatment facility location:
NW 1/4, NW 1/4, SW 1/4, S6, T38N, R17W, CAMDEN CO
3. Dates of construction inspections by engineer during construction:
VARIOUS
4. Date of final inspection by engineer: 9 OCT 99
5. Complete either "a" or "b", as appropriate:
 - a. The undersigned hereby affirms that based on periodic construction inspections the wastewater facilities authorized by Construction Permit Number 26 - _____, have been, to the best of my knowledge and belief, completed in accordance with plans and specifications submitted to the Missouri Department of Natural Resources.
 - b. The undersigned hereby affirms that based on periodic construction inspections the wastewater facilities authorized by Construction Permit Number 26 - 3081, have been, to the best of my knowledge and belief, completed in accordance with plans and specifications submitted to the Missouri Department of Natural Resources except for the change orders, deviations, and alterations listed below. The as-built facilities conform with the requirements contained in 10 CSR 20-7.105 and 10 CSR 20-8.110 thru 8.220. List and describe changes, deviations, and alterations:
MAIN WINTER AND SEWER LINES CONSTRUCTED
IN SAME DITCH - CHANGE DUE TO NARROW ROADS
AND SOLID ROCK IN CONSTRUCTION SITE.

As built plans are enclosed to document any changes.

Firm Name: LAKE PROFESSIONAL ENGINEERING SERVICES INC
Address: P.O. Box 37, CAMDENTON, MO. 65020
Signature: [Signature] P.E. Number: E 14597

**Attachment H Letters Between F.R./BIHOA
and Attorneys Representing
Homeowners Try to Resolve
Non-Member Fee Issue**

PHILLIPS, McELYEA, WALKER & CARPENTER, P.C.

ATTORNEYS AT LAW

190 COURT CIRCLE

P.O. BOX 559

CAMDENTON, MISSOURI 65020

(573) 346-7231

FAX (573) 346-4411

CHARLES E. McELYEA
JOHN L. WALKER
RONALD K. CARPENTER
DAVID T. WELCH
DEIRDRE O'DONNELL

HUGH PHILLIPS (1911-1997)

BRANCH OFFICE:

P.O. BOX 303

OSAGE BEACH, MO 65065

(573) 348-2247

LEGAL ASSISTANTS: Sharon Piskorski
Gari Luttrell

May 1, 2000

Mr. & Mrs. Joseph J. Schrader
HCR 67 Box 766
Roach, MO 65787

Dear Jim & Jeanette:

After meeting with you in my office on April 21, 2000, and receiving for review the numerous documents that you left with me on that date to review. I have completed my review as I indicated during our telephone conversation with you on Saturday, April 29, 2000.

As I understand your situation, you are concerned that Folsom Ridge LLC, a Colorado limited liability company, as the owner and developer (developer) of a large parcel of land in the vicinity of your residence is now changing the conditions upon which you can connect to the waste water treatment (sewer) system constructed to service both lots being developed by Folsom Ridge LLC and lots owned by others (including yourself).

When the developer announced plans for the construction of a waster water treatment facility, the developer invited you and other third party landowners to secure the right to connected to such completed system if you paid \$4,800.00 into an escrow account at Central Bank of Lake of the Ozarks (escrow agent). The developer would proceed to construct the sewer facility. The bank would pay over to the developer all escrow funds at such time as the sewer system was completed, in place and operational. As a condition for payment, the developer must deliver to the bank a letter from a Missouri licensed engineer stating that the sewer system is complete, in place and operational together with a letter from Missouri stating that the sewer system meets all requirements of the state. Upon the occurrence of these events the developer would receive the escrow funds, you and the other parties paying the funds into escrow would be entitled to connect to the sewer system.

The developer in its letter of April 11, 2000 to Jeanette intimates that this is now the case. However, the developer in its letter states additional conditions that were not a part of the original agreement. The developer is requiring that you (Jeanette), as the lot owner, agree to (ratify) certain restrictive covenants that will pertain to your lot forever from date of recording unless later terminated or modified. By ratifying these restrictive covenants you are also consenting to the articles of incorporation and the bylaws of a homeowners association called

COPY

Mr. & Mrs. Joseph J. Schrader
May 1, 2000
Page 2 of 5

Big Island Homeowners Association. I shall attempt to address your concerns based upon my understanding of the situation.

First, based upon the information provided by you to me, I believe that the developer is entitled to receive the money from the bank, as escrow agent, upon the happening of the following: "Developer shall deliver to Agent a letter from an Engineer licensed in the State of Missouri, stating that the sewer system is complete, in place and operational together with a letter from the State of Missouri that the sewer system meets all requirements of the State of Missouri". When the foregoing condition occurs, the Developer is entitled to the escrowed funds. If the bank disburses the escrowed funds to the Developer without this occurring, the bank may be liable to you and the others that deposited funds into escrow. The escrow agreement indicates that by paying into escrow the amount determined by the Developer you have the right to connect to the sewer system upon its completion. No other requirement is stated in the escrow agreement.

There does not appear to be any writing that reflects your agreement with the developer with respect to connecting to the sewer system. You did not agree to consent to the proposed restrictive covenants, the articles of incorporation and bylaws of Big Island Homeowners Association. The proposed documents do not appear to be drafted in a manner that is mutually beneficial to the developer and the ultimate users of the sewer system (including yourself).

Let me first provide comment regarding the proposed restrictive covenants ("restrictions"). The restrictions apply to all land that the developer purchased in 1998 from the trustees of the Uskali trusts plus such other lands held by others ratifying these restrictions. Big Island Homeowners Association is to be the association to enforce these restrictions and to manage and operate the water and sewer system serving the land area subject to these restrictions.

The stated purpose of these restrictions is to provide for the "Water System and Sewer System to serve the Lots and the Property" subject to these restrictions. Each lot owner is responsible for repair and maintenance of the system within the boundaries of his or her lot. The association is responsible ^{for} such repairs and maintenance that occur outside of the various owners' property boundaries. The association will determine the amount of money needed to be raised to operate the system, and to determine the amount of the annual assessment for such common expenses. In addition to this annual assessment, the association will also determine the amount lot owners will be required to pay for the "working capital deposit" and any special assessments. The amount of the working capital deposit may be adjusted annually at the same time, as the annual assessment is determined. No interest will be paid on the working capital deposit, and no refund will be paid to the lot owner when the lot owner sells his or her lot. The proposed restrictions indicate that the annual assessment or common expenses and the working capital deposit are two separate assessments but appear to be for the same purpose. This will want this clarified.

COPY

Mr. & Mrs. Joseph J. Schrader
May 1, 2000
Page 3 of 5

Special assessments may be required to cover the cost of construction, reconstruction, repair or replacement. Two thirds of each class of membership in the association present and voting at such meeting must approve any such special assessment. A voting member of a class may vote either in person or by proxy.

The rate of the assessment for both annual and special assessments is unclear to me. This provision is located at Section 6 of Article IV of the proposed restrictions, which states as follows:

"Both annual and special assessments must be fixed at a uniform rate for all Lots and the Property on a prorata basis based upon the number of connections to the Water System and Sewer System and shall be collected on a monthly basis."

This can be read as meaning that if 100 represents all lots and 30 represents the number of connections to the water and sewer systems. The cost of operating the water and sewer systems for the 30 connections is prorated among the 100 lots. This is probably not the meaning you have in mind. Clarification needs to be obtained from the developer on this point.

Section 7 of Article IV indicates that annual assessments commence for all lots connected to the Water and Sewer Systems and those lots ratifying the restrictions on the first day of the month following such lot's connection to the system. This seems to indicate that only the users of the system will pay the annual assessment. This would be in keeping with your understanding. But, it seems to be in conflict with the preceding provision. Therefore, these two provisions need to be clarified.

The association is to have two classes of members. The Class A members are the developer and every lot owner purchasing his or her lot from the developer. The Class B members are the lot owners who did not purchase their lots from the developer but ratified the proposed restrictions.

The lot owners in Class A members are entitled to one vote weighted by the relative square footage of their lot owned in relation to all of the property the developer purchased from the Uskali trusts. Each lot owner in Class B has one vote per lot. Under this set up the developer controls everything as long as the developer owns a significant land area, which may well extend beyond January 1, 2005.

Next, I direct your attention to the bylaws for the association. You were not supplied a copy of the Articles of Incorporation for the association so I do not have this document to review. However, the purposes stated in the bylaws appear to include many additional purposes than are needed for an association with its charge limited to operating and managing community water and sewer systems. For example, the purposes dealing with road, security and trash are not needed for this association. There are two purpose clauses dealing with managing common property. This should be consolidated into one and limited to the common property owned by

COPY

Mr. & Mrs. Joseph J. Schrader
May 1, 2000
Page 4 of 5

the association, i.e. the water and sewer systems. I am not certain as to the meaning of purpose "j". I believe purpose "m" is incorrect. If the association is dissolved, the assets of the association should be returned to its member. An association to operate a water and wastewater treatment system is not a 501 © (3) organization under the tax law.

The bylaws restate the same classes of membership as set forth in the proposed restrictions. The bylaws provide that the five-member board of directors will first be elected to serve until the first annual meeting of the association. The board elected at the first annual meeting will provide for staggered terms. After that annual meeting one or two directors will be elected annually and each director will serve for a three-year term. Directors are not limited to any number of terms that can be served.

Bylaw Article IV, Section 8 e deals with the power of the board to levy assessments. This provision is not the same as the one appearing in the proposed restrictions. Whatever becomes the agreed procedure with regard to assessments should be stated the same way in each document.

Bylaw Article XII, Sections 1 provides that as the developer owns property purchased from the Uskali trusts, the developer has the right to connect any property that the developer may develop to the water and sewer systems without paying a connection fee. However, it is unclear if the developer begins paying the annual assessments for common expenses the month following connection as any other lot owner.

After reviewing the numerous documents that left with me on April 21, 2000, I do not believe that you (Jeanette) should sign the piece of paper ratifying the proposed restrictive covenants unless certain changes are made to that document as well as the bylaws (and possibly the articles of incorporation) of the association. Again, this was not a requirement when you were invited to deposit \$4,800.00 with the escrow agent.

I suggest that you permit me to write to the developer on your behalf acknowledging receipt of its letter date April 11, 2000 on April 17, 2000. Such a letter should express satisfaction of receiving word that the sewer system is complete and operational, but also request copies of both its licensed engineer's report stating the system is complete, in place and operational, and the letter received from the State of Missouri stating that the sewer system meets all the requirements of the State of Missouri.

The letter to the developer should also remind the developer that the original terms entitling you (Jeanette) to connect to the sewer system did not require you to ratify any proposed restrictions, it merely required you to deposit \$4,800.00 into the escrow account at Central Bank of Lake of the Ozarks, and to consent to the escrow agent paying over the funds to the developer upon receipt of the two above described letters. And, you continue to agree to these terms.

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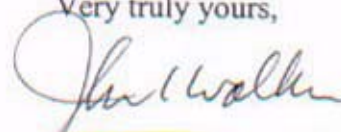
Mr. & Mrs. Joseph J. Schrader
May 1, 2000
Page 5 of 5

However, you will not ratify the proposed restrictions as presently stated, but are willing to discuss with the developer's designated representative as to how the proposed restrictions, association bylaws and articles may be changed to become agreeable to you.

If you so direct, I should also send a letter to the escrow agent, advising the agent that you do not object to the release of the funds that you placed in escrow to the developer upon the developer's full compliance with the provisions of the escrow agreement.

After you have had an opportunity to review the contents of this letter, please let me know how you want me to proceed in your behalf. I shall await your further questions and instructions.

Very truly yours,



John L. Walker

JLW:jw

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PHILLIPS, McELYEA, WALKER & CARPENTER, P.C.

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LEGAL ASSISTANTS: Sharon Piskorski
Gari Luttrell

HUGH PHILLIPS (1911-1997)

May 12, 2000

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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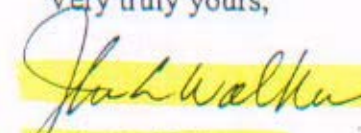
Mr. David Lees
May 12, 2000
Page 6 of 6

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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December 21, 2001

Charles McElyea
Phillips, McElyea, Walker
& Carpenter, P.C.
190 Court Circle
PO Box 559
Camdenton MO 65020

RE: *Big Island Property Owners' Association*

Dear Mr. McElyea:

I have been retained by a group of property owners in the Big Island subdivision including Ben Pugh. My clients have all paid in advance for sewage disposal services to their property. Some are connected as Mr. Pugh is, but others have been refused the right to connect.

At the time they made their agreements, neither the developer nor the Association included any requirements that they become members of the Property Owners' Association or subjected them to any of their rules and regulations. Thereafter, they were presented with proposed revisions of restricted covenants and included property and rejected same.

It is my opinion that your clients and the developer or Big Island are contractually obligated to provide sewage disposal services to my clients. The format under which they will be provided is primarily your client's concern. My clients are not willing at this time to become members of your Association but would not be opposed to your client being licensed by the Public Service Commission. Your assertion that the Code of State Regulations makes Mr. Pugh a member upon connection to system mis-states the result. The fact that your client has made these commitments to non-members and has connected some of them is merely proof that the Association is violating DNR rules and the provisions of its license.

December 21, 2001

Page 2 of 2

Please advise as to whether you also represent the developer or only the Property Owners' Association in this matter. I will be happy to discuss this matter at your convenience.

Very truly yours,



Lewis Z. Bridges

LZB:clt

BRIDGES, CISAR AND MIZELL, L.L.C.

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March 19, 2002

Charles McElyea
Phillips, McElyea, Walker
& Carpenter, P.C.
190 Court Circle
PO Box 559
Camdenton MO 65020

RE: *Big Island Property Owners' Association*
Charles and Donna Gannaway

Dear Charles:

Mr. and Mrs. Gannaway have indicated to me that they intend to hook up to the sewer system within the next couple of weeks based upon their prior contractual agreements. They do not intend to be a member of the HOA, although they are willing to pay reasonable charges for the service.

I believe this matter needs to be resolved as quickly as possible. I would propose that an additional class of membership be created which would encompass the owners in the original subdivision who wish to participate in utility services but not other aspects of the homeowners' association's services and activities. In this manner, I think we can all achieve our purposes.

Thank you for your prompt attention to this matter. Please feel free to call me should you have questions.

Very truly yours,


Lewis Z. Bridges

LZB:clt