

REBUTTAL TESTIMONY

OF

Cindy Fortney

CASE NO.WA 2006 0480

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. Cindy Fortney. I reside at 3298 Big Island Dr., Roach, Missouri 65787.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am self-employed. I am an independent information security consultant. I am a Certified Information Systems Security Professional (CISSP) and a Certified Information Security Manager (CISM). I have been in the Information Security business for 21yrs including 15yrs with EDS and Perot Systems in Dallas, TX.

Q. WHY ARE YOU PROVIDING TESTIMONY?

A. My father and I are both home and landowners on Big Island. I am also the beneficiary to my father's properties and assets. I've been involved first hand with the issues of all the properties in my testimony. We have had multiple issues with Folsom Ridge LLC and filed formal complaints (WC-2006-0138 and WC-2006-0139) in September of 2005.

Q. WHEN DID YOU MOVE TO BIG ISLAND?

A. I moved to 1554 Big Island Drive, (Big Island), Roach, MO as a permanent resident in June of 2004. I was a temporary resident for 5 years previous to June 2004 to 1554 Big Island Drive, my father's house. Since I have moved here, I have been involved with issues going on, on Big Island and also keep my father abreast as he resides mostly in Paola, KS. In June of 2005, my father sold his house at 1554 Big Island Drive. We together and equally bought the residence I now reside, 3298 Big Island Drive in July of 2005. I helped find the real estate agent to sell my father's house and was

1 involved from beginning to end of the transaction. I was also the key person in purchasing the 3298
2 Big Island Drive, as this is my primary residence. My Dad's primary residence is in Paola, KS.

3 **Q. WAS YOUR FATHER A MEMBER OF THE BIHOA AT 1554 BIG ISLAND**
4 **DRIVE?**

5 A. No, at the time he bought the house (1998) there was no active HOA to join.

6 **Q. ARE YOU A MEMBER OF THE BIHOA AT 3298 BIG ISLAND DRIVE?**

7 A. No, I have never received any paperwork regarding the BIHOA nor have I ever signed anything with
8 regard to BIHOA.

9 **Q. DOES YOUR FATHER OWN ANY OTHER PROPERTY ON BIG ISLAND THAT**
10 **YOU ARE BENEFICIARY TO; THEREFORE YOU HAVE CONCERN OR INTEREST?**

11 A. Yes, lot 8 of Portage Park, Unit 3.

12 **Q. IS YOUR FATHER A MEMBER OF THE BIHOA AT PORTAGE PARK, UNIT 3?**

13 A. No, at the time he bought the lot (1999) there was no active HOA to join.

14 **Q. DID YOUR FATHER PURCHASE WATER AND/OR SEWER TAPS AT THE TIME**
15 **THEY WERE SOLICITED?**

16 A. Yes. He bought a sewer tap for \$4800 for the 1554 Big Island Drive property in 1998. Lot 8 of
17 Portage Park, Unit 3 included water and sewer taps.

18 **Q. DID YOUR FATHER EVER RECEIVE A LETTER FROM MR. LEES THAT**
19 **STATED '...THEY WILL NOT BE CHARGED A MONTHLY FEE UNTIL THEY**
20 **HOOK UP?'**

1 A. Yes. (CF Schedule 1)

2 Q. WHEN WERE THE RESTRICTIVE COVENANTS OF THE BIG ISLAND HOA
3 RECORDED AND IMPLEMENTED?

4 A. December 29, 2000.

5 Q. WERE THERE INTERFERENCES WITH THE SELLING OF 1554 BIG ISLAND
6 DRIVE?

7 A. Yes, Folsom Ridge and the BIHOA tried to stop the \$221k real estate closing for 1554 Big Island
8 Drive in June 2005. At closing, we were blind sided by a letter that had just been faxed that day to
9 Westside Escrow, Inc., from Charles McElyea representing the BIHOA. (CF Schedule 2) We were
10 told we could not continue the closing process until the issue was resolved which took an extra 2hours
11 or more and frustration on our part, our realtor's part and on the buyer's part. Our real estate agent,
12 Helen Riggins was also blind sided and asked for Mr. Charles McElyea to teleconference into the
13 closing. He reiterated the purpose of the letter that was faxed. The buyers were to join and start
14 paying a fee to the BIHOA or they would not be able to ever hook up to the system. If the new
15 buyers did not sign the letter, Mr. Fortney would be sued for back fees of \$990. Just a couple of
16 months before the closing I was told the back fees were around \$500 in a meeting with Folsom Ridge
17 and BIHOA at the Central Bank of Lake of the Ozarks. How could they almost double in a couple of
18 months?

19 With regard to the faxed letter to Westside Escrow, this document states that if the purchasers choose
20 not to sign the ratification of membership in the Big Island Homeowners Association document, then
21 the current sewer and water taps will be cancelled and they will have no further rights to tap into the

1 sewer or water system in the future. I checked with Elena Seon at the DNR the next day and she said
2 this is absolutely not true. In the letter, they also requested a \$21 fee per month from the new owners.

3 The house that was bought only had one sewer tap. Well, due to the incorrect installation, there is a
4 water tap, too, but this was at the fault of Folsom Ridge at the time of the installation by putting both
5 water and sewer pipes into the same trench. The new owners elected to NOT participate in the
6 BIHOA and were NOT connected or receiving service. In addition to the document that was faxed,
7 there was another document titled 'Homes Association Certification'. (CF Schedule 3) The
8 information herein is confusing, at best, because there has never been any mention of 'well fees,' and
9 my father's signature appearing as trustee, indicating his election to not pay any fees, seems to be
10 contradicted by the statement appearing prior to his signature, stating: "We herby certify that all
11 assessments, if any, are paid to this date, with none being past due." It also states that fees should be
12 paid to 'Folsom Ridge, LLC'. In fact, there is no mention of Big Island Home Owners Association or
13 BIHOA on this 'Homes Association Certification' document. The only entity mentioned is Folsom
14 Ridge, LLC. So, it appears that Folsom Ridge is owns and controls the homeowners association.

15 Since that time, the new homeowners have hooked up to water and sewer, receiving service and are
16 members of the BIHOA. They did not pay back fees, my father has not been sued and the new
17 owners did purchase a water tap for \$3000.00.

18 **Q. WERE YOU EVER COERCED OR INTIMIDATED BY FOLSOM RIDDGE, LLC**
19 **AND/OR BIHOA?**

20 **A.** Yes. I was intimidated by Folsom Ridge and BIHOA members in a meeting at the Central Bank of
21 Lake of the Ozarks that I attended in May of 2005. They tried to coerce me into paying or having my

1 Dad pay back fees for taps at that time and Mr. Stan Zeldon who was a BIHOA Board Member said
2 he would talk to them (Folsom Ridge/BIHOA) into waiving the back fees if I became a member and
3 started paying fees at that time. They singled Cathy Orlor and I out of the group and told us that we
4 were the only one's not paying. I refused to do anything. I did not believe in the pressure I was being
5 dealt nor did I believe in the BIHOA due to previous meetings I attended. By this I mean, the voting
6 process did not seem to be legal as they allowed non-members to vote (this can be verified in the
7 testimony that Phil Hiley gave at the public hearing at the fire station in May 2006. He stated he was
8 not a member, but was allowed to vote), voting was by property owner per lot and Folsom Ridge
9 owned most of the lots, so their vote would always win, they expressed the reason for forming an
10 HOA vs. another type of entity was that with an HOA they would not have to be regulated and they
11 would not have to go through 'red tape', etc. when implementing the system and maintaining it. I
12 didn't agree with this philosophy as I have always felt there should be some regulation by a 3rd party.
13 I believe in audits and periodic checks for compliance in any business. Plus, there had already been
14 violations with the system.

15 **Q. WERE THERE INTERFERENCES WITH THE PURCHASING OF 3298 BIG**
16 **ISLAND DRIVE?**

17 A. Yes, Folsom Ridge and the BIHOA had a line item on the closing for \$14 in 'Association Dues' to
18 Big Island HOA. (CF Schedule 4) I was not shown nor given any paperwork about this HOA. I was
19 told that if I didn't pay the \$14, the closing of this \$300k house would be stopped until it was
20 resolved. Since I found it ridiculous to stop a \$300k closing, I said I would pay the fees and take
21 action later. There was no paperwork shown to me nor given to me about the HOA, but they got their
22 \$14. I don't even know how the Title Company, Chalfant and Thompkins, could allow this. Again,

1 this closing was postponed a good hour or more and they threatened to stop the closing. To this date I
2 have not received any paperwork from BIHOA, however, my father does receive a combined bill for
3 his lot in Portage Park Unit 3 and this house for dues. Neither one of us has signed any letter of
4 ratification nor membership forms to be a member, yet my father is billed usually quarterly. How can
5 he be billed if we are not members and not receiving service? How can they interfere with real estate
6 transactions?

7 **Q. WERE YOU EVER TOLD THAT THE PIPES IN THE SAME TRENCH ON YOUR**
8 **LOT WOULD NOT BE FIXED UNLESS BACK FEES WERE PAID ON LOT 8 OF**
9 **PORTAGE PARK UNIT 3?**

10 A. Yes, in the meeting in May of 2005 where I was intimidated, I was also told that Folsom Ridge, LLC
11 would not fix the water/sewer taps on the lot itself unless my Dad or I paid the back fees. We thought
12 'The Settlement' mandated this fix. I don't know for sure because no one wants to take
13 responsibility for something that was installed on someone's property improperly because it is out of
14 the jurisdiction of DNR and will be out of jurisdiction of the PSC. It is the responsibility of the
15 property owner.

16 FR did implement a fix. However, instead of installing a new 1" water line to the lot, they did a "Y"
17 off of the neighbor's water line. In essence, the two property owners that paid for a dedicated 1"
18 water line are now sharing one 1" water line. This was not the expected fix or what they paid for.
19 This neighboring property to our lot is also the property that still has water and sewer pipes in the
20 same trench. See Benjamin D. Pugh's Testimony. We hired them to install the taps with integrity
21 and safety in mind. Manholes are labeled 'Water' or 'Sewer' but if you take the lid off, there are 2

1 pipes, water and sewer inside, which is the one that should be used? Or the lid says 'Water' and the
2 pipe inside is a sewer pipe. See Benjamin D. Pugh's Testimony

3 **Q. ARE YOU AWARE OF AND AGREE WITH THE REBUTTAL TESTIMONY OF**
4 **CATHY ORLER?**

5 A. Yes. I have read it and totally agree.

6 **Q. ARE YOU AWARE OF AND AGREE WITH THE REBUTTAL TESTIMONY OF BEN**
7 **PUGH?**

8 A. Yes. I have read it and totally agree.

9 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

10 A. Yes.

11 **Summary:**

12 I believe that if the utility was regulated by the MPSC most if not all of the issues would not be
13 repeated in the future. Anything outside the jurisdiction of the MPSC still remains and may need
14 further attention. FR and the BIHOA have shown their lack of experience and business ethics with
15 operating a water and sewer utility by allowing the improper installation of the utility, the additional
16 violations, billing non-members who are not receiving service after they had in writing we would not
17 be billed until we started receiving service, intimidating and coercing non-members to join the HOA
18 and pay back fees, threatening law suits with regard to back fees when we are not hooked up nor
19 receiving service and trying to stop and ultimately delaying the sell and purchase of property with
20 regard to membership and membership fees/back fees. A 393 would certainly not address our issues,

1 however, being regulated should. We would rather be treated as a customer to a utility that is
2 regulated than be a member of a non-regulated utility company. We own other properties that receive
3 utility service from regulated utilities and feel it is like having additional insurance knowing that the
4 utilities conform to regulations and standards above and beyond DNR and state of MO. Statutes.

5 These actions and negative publicity do not increase our property value nor do they help our
6 community mind-set. They have only hurt our community that used to be close nit and neighborly
7 like; now divided. In order for our property values to increase, to re-create a neighborhood like we
8 had and that will attract others, we need a regulated public utility. We need assurance that these same
9 issues will not keep re-occurring. This also means that a 393 will not resolve our issues as a 393 is
10 not regulated and there would be no guarantee that minimum regulations, standard practices and
11 procedures would be followed or enforced. Let alone the intimidation and coercing to hook up to the
12 system and possible lawsuits.

13 What will it take for all water and sewer utilities to be regulated before the creation of the entity
14 owning and operating them? It seems to me that it is as important, if not more important as the
15 regulations on the lake for docks and vessels and power utilities. The lake's planning and zoning
16 committees are approving or have approved so much development in the recent years and years to
17 come, that there will be a backlash/domino affect at some point where there will be a 'costly catch up'
18 period. AmerenUE put regulations in with grandfathering several years ago. Now they will be able
19 to catch up and enforce new docks that were damaged due to the ice and snow that has destroyed or
20 damaged docks most of which didn't meet their regulations due to grandfathering. Why can't the
21 water and sewer utilities and the MPSC be proactive to prevent a major disaster before it happens and

1 || costly catch up later? A major disaster is bound to happen when non-certificated water and sewer
2 || utilities are allowed to operate in the manner they have on Big Island.