

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Dean Leon Fortney,

Complainant,

vs.

Case No. \_\_\_\_\_

Folsom Ridge, LLC (Owning and Controlling  
the Big Island and Controlling the Big Island  
Homeowners' Association, (BIHOA))

Respondent.

**FILED**<sup>3</sup>

SEP 27 2005

Missouri Public  
Service Commission

**COMPLAINT**

**1. Complainant resides at: (your address)**

P.O. Box 1017

Louisburg, KS. 66053

Phone: 913-731-3369

**2. Respondent: Folsom Ridge, LLC**

Big Island Homeowners Association

P.O. Box 54

Longmont, CO. 80502

(Company's name and address)

**is acting as a public utility providing service to complainant's residence:**

1554 Big Island Drive

Roach, MO. 65787

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

I am not a member of the Big Island Home Owners Association (BIHOA). I purchased a sewer tap for \$4800 from Folsom Ridge, LLC in January 1999 for my house at 1554 Big Island Drive, Roach, MO. I was told I did not have to pay any fees until which time I chose to hookup to the system and receive services. (See attachment from David Lees)

I have never signed any document agreeing to become a member in the BIHOA.

I sold my house July 21<sup>st</sup>, 2005. Attached is a letter that was faxed to my realtor, Helen Riggins of Remax Realty and Westside Escrow, Inc. at the time of closing on July 21, 2005. This faxed letter is from attorney Charlie McElyea representing Folsom Ridge, LLC and the BIHOA. This letter was dated July 11, 2005, but was never and has never been sent to and/or received by myself, Dean Leon Fortney, whom it is referencing. The fax suddenly appeared and became an issue such to stop the real estate closing of my house at Westside Escrow, Inc. In addition, my realtor, Helen Riggins, was not aware of this letter nor any issue, until the closing. I do not have a law degree, but in my opinion, I certainly don't think it can be legal in the state of Missouri to interfere with, and/or hinder and/or impede a sale of \$220,000.00!

My daughter was told a couple of months previous to the real estate closing by Folsom Ridge, LLC that I owed about \$500 in back fees (it then creatively increased to \$990 by the time of closing) to the BIHOA for not being connected to the system, not receiving any services from the system and/or not being a member of the BIHOA. She was also told that Folsom Ridge, LLC was not going to fix the water/sewer taps on my lot next to the house being sold, that had now been mandated to be "fixed" through a Settlement Agreement between Folsom Ridge, LLC, the DNR, and the Attorney General's Office, because the original installation was done improperly, with water and sewer lines next to each other in one trench unless the back fees were paid. Again, this is a mandated re-installation of the water lines as per the Settlement Agreement between the DNR, the Attorney General's Office and Folsom Ridge, LLC. Then, they (Folsom Ridge, LLC) said during the same conversation with my daughter that they would waive the back fees if I started paying these same maintenance fees going forward and that they would fix the improperly installed taps. My daughter told Folsom Ridge, LLC that she would pass this information on to me, as she did. I repeat, I am not a member of the BIHOA nor are the taps hooked up to the system to receive any type of service! I am not required to pay anything to the BIHOA. Even at the closing date, the lines had not been properly re-installed per the mandated Settlement Agreement between DNR, the Attorney General's Office and Folsom Ridge, LLC. This issue was brought up to the DNR, since the taps were not properly installed and were mandated to be re-installed properly.

I'd like to add that in the last 2 months, since the real estate closing, the mandated proper re-installation of the water tap has been done according to Folsom Ridge, LLC. However, because this "corrected re-installation", according to Folsom Ridge, is in a trench that has been filled-in and covered with dirt and asphalt, I have no way of confirming whether or not the re-installation was actually done correctly and to the state regulations of the DNR.

**4. The complainant has taken the following steps to present this complaint to the respondent:**

With regard to the attached letter document that was FAXed to Westside Escrow on July 21, 2005, this document states that if the purchasers choose not to sign the ratification of membership in the Big Island Homeowners Association document, then the current sewer and water taps will be cancelled and they will have no further rights to tap into the sewer and water system in the future. (my daughter checked with Elena Seon at the DNR and this is absolutely not true). Not only was this stated in writing, as per the attached document, but Mr. Charlie McElyea, (attorney representing Folsom Ridge, LLC and BIHOA), was on the telephone at the time of the closing, and was verbally confirming this fact, and in addition to this, he stated they would sue Leon Fortney for back fees of \$990 if the purchasers did not sign to join the BIHOA and agree to pay assessments on an ongoing basis. The amount of these back fees approximately doubled in the span of 2 months - from \$500 to \$990? I don't understand the math of Folsom Ridge, LLC either. They also requested a \$21 fee a month from the new owners. The house that was bought only had one sewer tap, which should equate to \$7. At this point, my daughter asked to speak with Mr. McElyea on the telephone to clarify these issues, and he refused to speak with her! The new owners elected to NOT participate in the BIHOA and they are NOT connected and are not receiving any service. The new owners did NOT sign-on to the BIHOA NOR did they sign to say that they would pay any fees to Folsom Ridge, LLC. I specifically told Phil and Mary, the new owners, that they could sign-off as such, because I did not have a problem with Folsom Ridge, LLC trying to sue me due to the fact that Folsom Ridge, LLC does not have any grounds to sue on. In addition to the document that was FAXed to the closing agent at the time of the closing, another document titled: "Homes Association Certification,". The information contained herein, is confusing, at best, because there has never been any mention of "well fees," and my signature appearing as trustee, indicating my election not to pay any fees, seems to be contradicted by the statement appearing prior to my signature, stating: "We hereby certify that all assessments, if any, are paid to this date, with none being past due;". I, Leon Fortney, to date, have never agreed to pay any fees - neither back fees nor fees going forward. In addition, I have never signed any document agreeing to become a member in the BIHOA.

**WHEREFORE, complainant now requests the following relief: (What do you want the PSC to do?)**

Folsom Ridge, LLC owning and controlling the BIHOA, is operating out of control. Two real estate closing transactions have now been impeded, hindered and interfered with by Folsom Ridge, LLC owning and controlling the BIHOA and their attorney, Charlie McElyea representing both Folsom Ridge, LLC and the BIHOA to the extent that the closing agent suggested that the real estate closing transaction be stopped until a resolve to these "fee issues" could be made. HOW CAN THIS POSSIBLY BE LEGAL? Furthermore, in addition to the sale and purchase of properties being jeopardized, all parties involved (both sellers and purchasers) were threatened if the demands of Folsom Ridge, LLC owning and controlling the BIHOA were not met according to Charlie McElyea, attorney for both Folsom Ridge, LLC and the BIHOA! The seller was threatened with a law suit and the purchaser was threatened with never ever being able to connect to the system and receive service even though a tap was purchased and installed on the property with a reserved connection to the system to receive service in the future.

The threats of law suits and the interference with real estate closings by Folsom Ridge, LLC, owning and controlling the BIHOA, has now created several legal issues to which I request the PSC to determine the authority and legal limits by which Folsom Ridge, LLC and the BIHOA are able to operate. Please regulate this association, as it is operating as an unlicensed public

utility, by providing service and billing people who are nonmembers and non users of the service. In addition, because of the severity of the questionable legal issues as addressed in this formal complaint and because of the numerous state regulations that have been violated (some of them repeat violations) by this developer, Folsom Ridge, LLC. I am also requesting that all operating permits allowing Folsom Ridge, LLC operate in the state of Missouri, be revoked permanently.

Date

9-24-05

Lean Fortney

Signature of Complainant

**PHILLIPS, McELYEA, CARPENTER & WELCH, P.C.**

ATTORNEYS AT LAW

85 COURT CIRCLE

Mailing Address: P.O. BOX 559

CAMDENTON, MISSOURI 65020

(573) 346-7233

FAX (573) 346-4411

CHARLES E. McELYEA  
RONALD K. CARPENTER  
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MICHAEL A. CARTER  
MICHAEL J. GILLEY

LEGAL ASSISTANTS: Sharon Pisto  
Dana Stouff

HUGH PHILLIPS (1911-1997)

July 11, 2005

Ms. Helen Riggins  
RE/MAX at the Lake  
Lake Plaza Center  
Laurie, MO 65038

Mr. Ron Duggan  
Westside Escrow, Inc.  
Stonecastle Center, Suite 203  
237 West Highway 54  
Camdenton, Missouri 65020

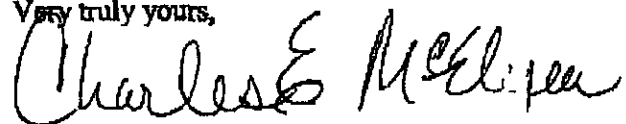
RE: Lots 8 and 9 Portage Park, Unit 3

Dear Helen and Ron:

I represent the Big Island Homeowners Association and it has come to our attention that Lots 8 and 9 of Portage Park, Unit 3 currently owned by Dean Fortney are being sold and Westside Escrow will be handling the transaction. I have been asked to advise you on behalf of the Homeowners Association that there is a current balance for water and sewer assessments in the amount of \$990.00. The Association is not asking for this amount from the current owner of the property. However, the new owners should be advised that if they desire to maintain the two sewer and one water tap that they will be required to pay assessments on a going forward basis. The assessments are \$7.00 for each tap or in this case \$21.00 per month. I am enclosing with this letter a ratification of membership in the Big Island Homeowners Association which we would appreciate you asking the new purchasers to sign at closing. If the purchasers choose not to sign the ratification document, then the current sewer and water taps will be cancelled and they will have no further rights to tap to the sewer system and water system in the future.

If you have any questions concerning this, do not hesitate to contact me.

Very truly yours,



Charles E. McElyea

TMB

CEM:sp

enc.

cc: Big Island Homeowners Association

## Homes Association Certification

Re: Fortney to Cadwell & Liberton

All of Lot 9 of Portage Park Subdivision, Unit 3, Camden County,  
Missouri

\_\_\_\_ To our knowledge, the Homes Association is inactive, or does not exist,  
and we have never received an assessment on the above referenced property.

✓  
\_\_\_\_ The Homes Association is active. Dues in the sum of \$ 0 were  
paid on \_\_\_\_\_ to fully pay the assessment due from \_\_\_\_\_ to  
\_\_\_\_\_.

Re: Water/Sewer Tap \$7.00 month/Billed  
Quarterly

Payment of the Homes Association Fee should be paid to:

Jolsom Ridge LLC  
\_\_\_\_\_  
\_\_\_\_\_

Elected  
not  
pay. 8/27

\_\_\_\_ Well maintenance fee(s) in the sum of \$ \_\_\_\_\_ were paid on  
\_\_\_\_\_ to fully pay the assessment due from \_\_\_\_\_ to  
\_\_\_\_\_.

Payment of the Well Fee(s) should be paid to:

Jolsom Ridge LLC  
\_\_\_\_\_  
\_\_\_\_\_

We hereby certify that all assessments, if any, are paid to this date, with none  
being past due.

Signed this 21 day of July, 2005.

Dean L. Fortney  
Dean L. Fortney, Trustee

**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

**BRANCH OFFICE:**

P.O. BOX 303  
OSAGE BEACH, MO 65065  
(573) 348-2247

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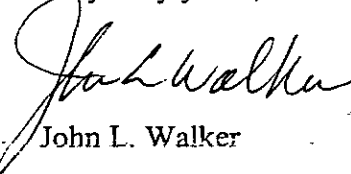
Mr. David Lees  
May 12, 2000  
Page 6 of 6

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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