

BEFORE THE PUBLIC SERVICE COMMISSION OF THE
STATE OF MISSOURI

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SEP 09 2005

Ben F. Weir
Complainant

Vs.

UTILITY OPERATIONS
DIVISION

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

FILED²

SEP 09 2005

Missouri Public
Service Commission

COMPLAINT

1. Complainant resides at 2162 Big Island Drive
Roach, MO 65787

2. Respondent: Folsom Ridge, LLC
Big Island Homeowners Association (BIHOA)
P.O. Box 54
Longmont, CO 80502

Is "acting" as a public utility by providing and "controlling" service to property owners and homeowners on Big Island, Camden County, Roach, MO 65787.

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

After nearly seven (7) years of witnessing AND documenting the most unbelievable case of corporate abuse, misrepresentation, lack of responsibility and disregard for the public's health and safety as well as threats to my own personal well being and potential negative effects on my property values, as well as the lack of enforcement action by the Department of Natural Resources (DNR) to enforce their own regulations, I have been left with no choice, and therefore am filing this "Formal Complaint" with the Public Service Commission of the State of Missouri in hopes they will be able to bring a sense of law and order to Big Island and help protect the residents' public drinking water supply from being further compromised affecting their health and safety.

I grew up as a young boy on Big Island back in the early 1960's when my parents bought land and built one of the first true "cabins" there. I loved coming to the lake on weekends so I could ski, fish, tromp through the woods and later enjoyed helping my son "grow up" as a youngster on Big Island as well. My wife and I finally tore down the old cabin in 1990 and built a modern home with a new septic system and water well. We currently own about 160' of lakefront property in what is commonly called "Weir Cove". What a great place it was to come to on the

weekends until Folsom Ridge LLC showed up in 1998 with all their "verbal promises" of how great things were going to be...yes, "too good to be true" especially since nothing was in writing, nothing was formally outlined or documented. Unfortunately, many of my friends and neighbors (but not me since I didn't buy the sales pitch), wrote checks for \$4,800 to get a sewer tap for a proposed "state of the art" community system that would be one of the greatest things to ever happen on Big Island. There were all kinds of other verbal promises as well. There were no documents to sign (other than their checks sent to the Central Bank), and there was no formal HOA with written covenants or bylaws to read and realize what liabilities or restrictions they were committing themselves to. It was strictly a "voluntary" deal based on verbal promises. In my opinion, little did they know that they were buying into seven (7) years of controversy, illegal activities, financial liabilities and an organization (BIHOA) which they have no real control of and does whatever the developer, Folsom Ridge, LLC, decides it needs to do usually at the expense of the individual homeowners while benefiting the developer.

Thankfully, I did not get "sucked in" on that original "too good to be true" sales pitch back in 1998 and didn't pay a tap fee for either sewer or water. Therefore, I can truthfully say that I have not joined the BIHOA and cannot even be "considered" a member as many of my neighbors have told me they are "considered" even though they NEVER signed the covenants and bylaws. They could just as easily be "considered" members of the Communist Party. Thus, I have been able to witness and document (in an unbiased manner) the ongoing controversies involving Folsom Ridge, LLC, the concerned homeowners as well as the unresponsiveness and reluctance of the DNR to protect the citizens of Missouri by not enforcing their own regulations even when presented with documented evidence by the property owners who have the most to lose in all of this. Actually, several homeowners have done a better job of knowing and exposing the developer's abuse and disregard of DNR regulations than the agency itself has done. In my opinion, it's been a shameful display of their responsibilities to the citizens of Missouri in NOT protecting our public drinking water resources by failure to enforce their own regulations. Maybe DNR really should stand for "Don't Need Regulations."

I have included as separate "exhibits" numerous documented instances of misbehavior, potential fraud (deception) by the developer and his associates, as well as numerous letters I have written to the developer's representatives including a board member (2/4/04) and a partner (2/14/04) imploring them to finally help resolve the issues on Big Island and take some corporate responsibility for their misbehavior. I also wrote three lengthy letters (10/22/03; 11/18/03; 12/22/03) to a representative of the DNR pleading for that agency to finally do the right thing and investigate the concerned homeowners' claims about the improper and illegal installation of the sewer and water mains in the same

trench creating a potentially dangerous health hazard which compromised the safety of the public drinking water supply of the residents of Big Island. It's incredible but sad to report that it took almost five (5) years to convince the DNR, despite documented photos and other evidence, that the developer actually had lied to them and had indeed illegally put the sewer and water in the same trench exactly the way the concerned homeowners had witnessed, documented and reported to them. So much for the DNR protecting the best interests of your own state's citizens while protecting those of an out of state developer.

In my opinion, the "straw that broke this camel's back", after witnessing seven (7) long years of all this foolishness and lawless behavior, and which finally convinced me that the PSC needed to be involved in investigating the "out of control" management of the BIHOA by Folsom Ridge, LLC, were the two most recent documented DNR violations dated June 28, 2005 (exhibits attached). One was actually a repeat offense of their first violation back in 1998 (construction without a permit) dealing with the "off the Island" extension of the Phase I Water Main being reinstalled by the developer while operating under a directive of the state-mandated Settlement Agreement imposed on Folsom Ridge, LLC in April 2004 (exhibits attached).

The second series of violations dated June 28, 2005 involved the community water supply system itself and the unsatisfactory features found during the DNR inspection including: the failure to collect routine samples from the distribution system; the dispensing of water without obtaining a written permit; the failure to develop a written total coliform bacteria sample siting plan as well as construction deficiencies. All of these could potentially compromise the safe distribution of the residents' public drinking water supply.

To the best of my knowledge, even though the DNR has been asked numerous times to enforce penalties on Folsom Ridge, LLC for these most recent violations, especially the "repeat violation" committed while operating under the 2004 Settlement Agreement, there still has been nothing done by the DNR to punish the developer for these offenses. Don't Need Regulations?

More importantly, the extension of the "off the Island" water main to other Folsom Ridge, LLC development property was apparently done without the prior knowledge not only of the DNR but also of the members of the BIHOA, and those members did not have the opportunity to vote on this extension of their own water supply system even though there was an official ("looks like a quorum") annual meeting held May 7 at which time that issue was never brought up in front of those in attendance for their approval. Why the cover up? Why no disclosure of what was going to happen to their drinking water supply? Was the developer afraid of a negative vote or some homeowners finding out in advance of a potential violation for a change instead of having to report it to the DNR after the

fact? Or did the developer consider it none of the homeowners business even though the homeowners will eventually assume the liabilities for that extension.

Also the developer has disclosed none of these most recent violations to the members of the BIHOA. In my opinion, this clearly indicates a degree of "control" by the developer of the BIHOA to keep all matters concerning the operation of the sewer and water community system (whether safe or otherwise) a secret. There can be no representation by the homeowners of their own organization under such a dictatorial arrangement. In my opinion, I believe the developer considers Big Island to be his own private kingdom where the laws of the state of Missouri and common decency including open meetings and disclosures are obviously not a high priority or respected.

In my opinion, I further believe the documented exhibits attached to this "Formal Complaint" speak for themselves and clearly show a pattern of seven (7) years of negligence and corporate misbehavior by Folsom Ridge, LLC which has severely compromised the safe operation of the community drinking water supply potentially affecting the health, safety and well being of the Big Island residents as well as their property values.

WHEREFORE, complainant now requests the following relief: That the PSC investigate the claims of this petition and others they've received from Big Island residents to determine if 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 Folsom Ridge, LLC, on September 1, 2005, and the transfer of ownership of the same on September 1, 2006, until a determination and ruling can be made by the PSC as to the BIHOA, and its legal operation as a HOA (meeting all those requirements) or its legal operation as a public utility (meeting all those requirements). More importantly, that the PSC also investigate the most recent violations of the Missouri Safe Drinking Water Regulations, and determine if additional punishment, including fines and restrictions on further development, should be assessed against an out-of-state developer who has a well documented seven (7) year history of disrespect for the laws of the State of Missouri as well as an arrogant attitude toward the residents of Big Island who are courageously trying to protect their family's health, safety and property values.

Respectfully submitted,

A handwritten signature in black ink that reads "Ben F. Weir" followed by the date "(9/8/05)" in parentheses. The signature is written in a cursive, flowing style.

Ben F. Weir
2162 Big Island Drive
Roach, MO 65787