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Remarks Given At PSC Public Hearing
June 2, 2006, Camdenton, MO

(My name is Ben F. Weir and my family has maintained a weekend residence since 1962 at 2162 Big Island Drive, Roach, MO. My permanent address is 3515 S.W. Meyer Blvd., Blue Springs, MO, and my occupation for the past 35 years has been in newspaper publishing. I currently am the publisher of The Examiner newspaper in Harry Truman's hometown of Independence, MO.)

What difference does it make?

I appreciate this opportunity today to offer my opinions, observations and thoughts about Big Island...it's past, present and future.

To better understand why we are here today, we first need to remember and recall the events over the past seven (7) years which have motivated so many different individuals and groups of homeowners to develop such a wide variety of viewpoints on what they want the future of Big Island to be.

And yes, there are many...some would even say the REAL majority of homeowners...who will tell you rather quickly to not bother them or involve them in any of these discussions. One fellow resident even chastised me by asking, "At this point, and at this time, **what difference does it make?**"

Yes, indeed. **What difference does it make?** Unlike a financial advisor, who will remind you that a stock's past performance is not a guarantee of future results, a historical look at Big Island since 1998 provides us with a lengthy trail of evidence that suggests when it comes to discussing the pros and cons of the sewer and water system on Big Island that past performance is indeed a good indicator of future results.

And it's because of this past seven (7) year well documented pattern of corporate misbehavior that I believe Big Island homeowners must have the protection of a regulated public utility that is operated and managed by a certificated company, independent of any association with Folsom Ridge, LLC, or any of its agents or representatives.

FILED

JUN 27 2006

Missouri Public
Service Commission

Exhibit No. 5
Date 6-2-06 Case No. WC-2006-0082
Reporter Sarah Pekerski

Remarks Given At PSC Public Hearing
June 2, 2006, Camdenton, MO

Such a regulated public utility is absolutely necessary to ensure that safe and adequate water and sewer services will be provided to ALL residents of Big Island in the future.

Probably the one common denominator contributing to all the problems that have happened in the past seven (7) years on Big Island...which we are discussing today and hope to eliminate in the future with a regulated public utility...center around the disregard and disrespect of two (2) basic principles of conduct:

1. OBEY THE LAW.

2. TELL THE TRUTH.

You can switch 'em around however you want...mix and match 'em... call 'em what you will, but one goes with the other, AND trouble begins and only gets worse when you leave one and especially both of them out of your corporate code of ethics and personal day-to-day living.

Sadly, in my opinion, these two principles must have been left far behind in Colorado's "Rocky Mountain High" when Folsom Ridge, LLC, came to Big Island in 1998 with promises of a state of the art sewer and water system that we could all be proud of. The problem was...the system "concept" WAS indeed state of the art...but the installation of the service lines...and subsequent cover up of how it WAS done incorrectly and illegally eventually resulted in multiple violations of the codes and regulations of the Missouri Department of Natural Resources (DNR).

More than a dozen DNR violations and unsatisfactory features occurred over a seven (7) year period from November 19, 1998 when construction was started without a permit and 4,600 feet of sewer and water lines were installed in the same trench up until as recently as last June 28, 2005 when Folsom Ridge violated the terms of the state-mandated Settlement Agreement by extending the Phase I Water Main "off the Island" without a permit. These are all listed in **(Exhibit A)** which is attached as part of this report.

Yes indeed. **What difference does it make?** Does it make any difference when you have a corporation that does not believe it has either a moral or ethical responsibility or EVEN that it's just plain good ol' common business sense to obey the laws of the state of Missouri?

No wonder the first group of a "few disgruntled homeowners" on Big Island, referred to as the Concerned Homeowners Committee, were worried enough that 29 of them spent \$5,000 in legal fees from April to October 2000 in an unsuccessful attempt to negotiate with Folsom Ridge to put certain safeguards in the Amended and Restated Declaration of Covenants and Conditions reducing their liability exposure to the incorrect installation of sewer and water lines. Specifically, they requested Folsom Ridge to insert these two clauses into Section 4-B. of the revised Covenants...

(1) "Declarant (Folsom) warrants all of said systems to be free of defects, contaminations, and in keeping with all federal, state and local laws and regulations governing the installation, maintenance and operation of said systems."

(2) "In the event defects, contamination or violations are found to exist, Declarant (Folsom) covenants to correct and repair the same at its sole cost."

Of course, it's no surprise to us now that Folsom Ridge refused to insert those clauses in their final revised Covenants with the homeowners.

So why today in 2006 should "a few (REMAINING) disgruntled homeowners" still be criticized by others for not wanting to join an HOA or sign a set of covenants or by-laws knowing the provider of the service didn't want to agree to comply with federal, state and local laws and regulations?

Remember Principle No. 1 was to **OBEY THE LAW**.

It all relates back to a documented pattern of corporate abuse and misbehavior mentioned earlier, which makes it even more imperative to me and others that **a regulated public utility is absolutely necessary to ensure that**

safe and adequate water and sewer services will be provided to ALL residents of Big Island in the future.

I might add that the DNR itself was slow to respond for five (5) long years despite an overwhelming amount of documented evidence provided them by a very dedicated and determined group of concerned homeowners. We cannot depend on the DNR to be the watchdog of the sewer and water system in the future.

Only until State Representative Dr. Wayne Cooper got involved on our behalf in 2003 were we able to finally convince representatives of the DNR to sit down with the Concerned Homeowners Committee of Big Island to discuss the digging of test holes on Big Island to verify our claims of sewer and water lines in the same trench without proper variances or authorization contrary to what both Folsom Ridge and the DNR were telling us. Dr. Cooper helped facilitate two meetings with the DNR, one in Jefferson City and the second one on July 31, 2003 on Big Island. **(EXHIBIT C).**

By that time, after five (5) long and frustrating years, we were referring (and not so affectionately by the way) to the DNR as the Don't Need Regulations agency since they were not enforcing them anyway.

However, State Representative Cooper, being a medical doctor, realized the serious public health and safety hazards of having sewer and water lines in the same trench with their potential to contaminate the public drinking water supply. He therefore helped facilitate the investigation by the DNR of our claims. I want to publicly thank him for his community service on behalf of Big Island residents.

Finally, after several delays, on January 12, 2004, the test holes were dug, and the results were as predicted resulting in a Settlement Agreement (SA) with the Attorney General's office requiring Folsom Ridge, LLC to pay a monetary fine and correct the violations observed during the digging of the test pits which proved that the water and sewer lines had been improperly installed per DNR regulations.

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That was almost 2 1/2 years ago. On May 15, 2006, the DNR approved a project to construct the waterline relocation/replacement of an existing waterline that was previously constructed incorrectly in the same trench as the sewer line.

(EXHIBIT B).

Principle No. 2 dealt with **TELL THE TRUTH**. This also seems to have been left behind in Colorado.

Yes indeed. **What difference does it make?** To me it DOES MAKE A DIFFERENCE when you have representatives of a corporation, Folsom Ridge who not only are reluctant to comply with **federal, state and local laws and regulations** but also who repeatedly don't tell the truth when questioned about obeying those same laws and regulations. Documented cases of this type of misbehavior include...

(1) November 10, 1998 – Dave Lees, project manager and Folsom Ridge LLC partner, states in a letter to the homeowners that "If a homeowner hooks up to the system, the fee is \$10.00 a month. If they elect to pay their \$4,800.00, and a waste water stub is installed at their property, they will not be charged a monthly fee until they hook up."

(2) June 23, 2000 – Dave Lees, project manager and Folsom Ridge LLC partner, states to the DNR that "in fact the water line was laid on a separate shelf and that the shelf was comprised of compacted material." **(EXHIBIT A-1).**

(3) July 20, 2000 – R.V. (Reggie) Golden, Manager, Rick Rusaw, Manager, and David Lees, Manager, all signed a letter sent to update residents on their progress with the concerned citizens committee representing approximately 20 non-members. One of the items mentioned in that letter was item number five (5) "Restricting the boundary of the HOA to only include the causeway and the island thus eliminating approximately 160 acres that is somewhat separate anyway."

(4) Nov. 17, 2000 – R.V. (Reggie) Golden, manager, in a signed letter to members of the HOA stated, "We have also dug several test holes and have verified proper installation of water and sewer lines." This same message was

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repeated again on Nov. 29, 2000 in another signed letter to non-members of the HOA trying to convince them to join the organization. **(PSC EXHIBIT #9).**

(5) Nov. 17, 2000 and Nov. 29, 2000 -- In the same two letters referred to in Number (4) above, Mr. Golden stated that he was "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." **(Note: The reason I bring this up is that we currently have information from the DNR that indicates their recent approval of a Construction Permit for Big Island Subdivision/Camden County, Missouri for a Phase I – Waterline Extension to include an additional 12 small lots "off the Island" to the west 160 acres with both sewer and water services. If that is indeed correct, does it not contradict the very promises made in three separate letters referenced above assuring homeowners that the boundary of the HOA would NOT include those same 160 acres?)**

(6) April 10, 2004 -- And finally, despite two partners of Folsom Ridge, LLC, agreeing to abide by the terms of the Settlement Agreement (SA) with the DNR and Attorney General, they must **NOT** have read Paragraph 15, which was the very **LAST**, and **MOST IMPORTANT** paragraph right before they signed the agreement. Or if they did read it, they either didn't understand it or chose to ignore it. I quote that specific paragraph:

15. In consideration for the release contained herein, Folsom agrees to comply with all applicable Missouri water pollution statutes and regulations in the future.

The obvious mistake here is that the agreement DID NOT also carry the words...***or lose its permit to operate a public water and sewer system in the state of Missouri.***

Remember Principle No. 2 was to **TELL THE TRUTH**. The developer's past, present and future lack of credibility was exposed in these above examples.

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We've discussed today two very basic principles of business conduct that seem to have been forgotten and ignored by the developer in the past seven (7) years of management and operations of the Big Island Sewer and Water Association. And that's:

1. OBEY THE LAW.

2. TELL THE TRUTH.

And that's why I believe Big Island homeowners must have the protection of a regulated public utility that is operated and managed by a certificated company, independent of any association with Folsom Ridge, LLC, or any of its agents or representatives.

Such a regulated public utility is absolutely necessary to ensure that safe and adequate water and sewer services will be provided to ALL residents of Big Island in the future.

In closing, no matter which side you agree or disagree with, I along with the other Complainants, make no apologies for bringing these issues of the water/sewer utility to the forefront, and placing them on the table for all residents of Big Island to be aware of.

This is what a group of us voted unanimously to do more than a year ago on May 7, 2005 when we met to hear a proposal from a qualified local attorney who warned us that if we didn't do something the PSC could get involved. A committee was appointed, a sense of urgency and mission to form a new organization independent of Folsom Ridge was given, and then nothing happened for more than 100 days EXCEPT continued violations of the DNR Settlement Agreement by Folsom Ridge.

Sorry, but that's NOT what we voted in favor of at that meeting.

If there are still residents a year later, who choose to remain complacent or question **what difference does it make?**, at least it isn't because we did not bring the real issues to their attention.

Exhibit A

Seven (7) Years of Documented Disregard of Missouri Laws

- (1) Starting construction/installation of the water and sewer system without a permit from the Missouri Department of Natural Resources (DNR). (November 19, 1998)
- (2) Issued a Notice of Violation #1315 by the DNR for failure to construct water lines and sewer lines in accordance with approved plans. (May 25, 1999)
- (3) Received a reprimand by the Camden County Road and Bridge Department for digging up a utility crossing to repair a leaking line, tearing up new asphalt, without a permit. (Sept. 26, 2000)
- (4) Received DNR Complaint JC 011193 for improper disposal (dumping) of roofing shingles on top of the hill near the wastewater treatment plant and public drinking water supply. (October 18, 2001)
- (5) Responding to issues raised by the Attorney General of Missouri, specifically that the wastewater system was not built as submitted to the Department of Natural Resources, answer was given that the DNR agrees that the system was not constructed as approved. (April 17, 2002)
- (6) **Settlement Agreement (SA)** requiring Folsom Ridge, LLC to pay a monetary fine and correct the violations observed during the digging of the test pits on January 12, 2004 which proved that the water and sewer lines have been improperly installed per DNR regulations. (April 26, 2004)
- (7) Unsatisfactory features found during a DNR construction investigation made of Big Island Subdivision waterline replacement and extension including: no bedding material being used on the service lines; not all of the water mains conform to the location shown on the approved revised plans; a few water line valves were not accessible because the valves were covered with mud and water inside of the valve box; and a few locations where the new service line valve boxes for both the water is less than ten feet (10') from the existing sewer line valve boxes. (March 18, 2005)
- (8) Issued a Notice of Violation #11210SW by the DNR for causing or permitting construction, installation or modification of community public water supply without written authorization by extending Phase I Water Main "off the Island" **which was in direct violation of Paragraph 15 of the Settlement Agreement signed in 2004.** (June 28, 2005)
- (9) Issued a series of violations of the Missouri Safe Drinking Water Regulations by the DNR. Included in these were: failure to collect routine samples from the distribution system; dispensing of water without obtaining a written permit to dispense water; and failure to develop a written total coliform bacteria sample siting plan. In addition, several construction deficiencies in the public water system were also noted. (June 28, 2005)

OBEY THE LAW.

EXHIBIT A-2

STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Mei Cornblum, 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

MEMORANDUM

DATE: June 23, 2000
TO: File
FROM: Timothy S. Neal, Environmental Specialist
Jefferson City Regional Office *TS Neal*
SUBJECT: Big Island Subd. Meeting with Dave Lees, Developer

On June 13, 2000, Keith Forck and Tim Neal of the Department of Natural Resources' Jefferson City Regional Office met with Dave Lees, Developer of Big Island Subdivision, concerning complaints of improper installation of water and sewer lines serving existing homes on Big Island. Several homeowners on Big Island have expressed concerns that water and sewer mains and individual service connections have not and are not currently being constructed to MDNR standards and do not meet national plumbing codes. Photos provided by the homeowners appeared to show some violations of both MDNR's standards and the national plumbing codes for service connections.

* One of the claims by the homeowners was that a section of water and sewer mains were laid less than ten (10) linear feet apart in the same trench. The issue was not the separation distance since a variance had been granted, but that the water line was not laid on a separate, undisturbed shelf above the sewer line. Dave Lees stated that in fact the water line was laid on a separate shelf and that the shelf was comprised of compacted material.

Another claim by the homeowners, that was verified by a photograph, concerned a one (1) inch line connected to the water main that was connected to a two (2) inch line that crossed the road and then split into three (3) one (1) inch service connections. Dave Lees stated that he was not aware of this problem and that he believed that it was a mistake on the part of the contractor who did the installation. Dave Lees then stated that he would have the contractor dig up the area in question and have the problem corrected. The work was supposed to be done starting on Thursday June 15, 2000.

Discussion also took place concerning the separation distance of the service connections for the pre-existing homes on Big Island. It was determined that, in many cases, national plumbing codes could not be met for separation distance between water and sewer due to the existing limitations of the pre-existing homes. In those cases it was not possible to install water and sewer lines without violating the standards and that the homeowners would have to accept this or not receive a service connection. Dave Lees also stated that all new home construction on Big Island would have a ten (10) foot separation between water and sewer service lines.

TSN/cr

EXHIBIT B

Matt Blunt, Governor • Doyle Childers, Director

DEPARTMENT OF NATURAL RESOURCES

www.dnr.mo.gov

1101 Riverside, P.O. Box 176, Jefferson City, MO 65102
573/751-5331CI
Camden Co.
Big Island Subdivision
Review NO. 53810-06
PWS ID #MO3031265

May 15, 2006

Mr. Reggie Golden, Manager
Big Island Subdivision
P.O. Box 54
Longmont, Colorado 80501

Dear Mr. Golden:

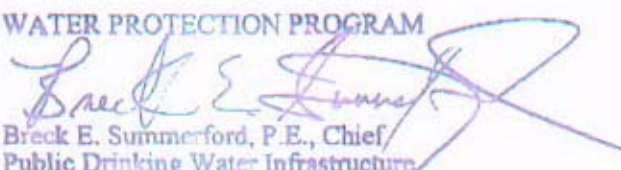
As a result of my meeting with your engineer, David Krehbiel, on May 11, 2006, I am hereby issuing the approval to construct the waterline relocation/replacement project under review no. 53810-06.

This project replaces an existing waterline that was previously constructed incorrectly in the same trench as the sewer line. This project provides for the construction of a new 4-inch waterline in a separate trench, and at least 10 feet from the sewer line. The new waterline will be approximately 715 feet in length, and will be constructed from the well and storage tanks, in a southeasterly direction, and tied into an existing 4-inch waterline at the bottom of the hill, along Lakeshore Drive.

If you have any questions, please feel free to call.

Sincerely,

WATER PROTECTION PROGRAM


Breck E. Summerford, P.E., Chief/
Public Drinking Water Infrastructure
Permits and Engineering Section

BES:be

c: Cathy Orler, Big Island Homeowners Association
Ben Pugh, Big Island Homeowners Association
Martin Hummel, PSC
Elena Seon, WPCB
John MacEachen, PDWB
Krehbiel Engineering Inc.
Southwest Regional Office



Meeting with Ms. Elena Seon
(Water Pollution Control/DNR Representatives)
July 31, 2003

By January 1999, 39 existing property owners of Big Island had invested \$4,800 each (\$187,200 total) to help fund the construction of a community sewer and water system by the developer, Folsom Ridge LLC. The payment ensured the homeowners the right to hook up to the system at their convenience at sometime in the future.

The homeowners assumed that these utilities would be installed according to the codes and regulations established by the Missouri Department of Natural Resources (DNR) and the National Plumbing Codes of the United States.

A dedicated group of "Concerned Homeowners of Big Island" refuse to this day, July 31, 2003, to accept the future responsibility and liability for these sewer and water lines that were not installed properly according to the codes and regulations required by DNR as stated in paragraph B.1-3 of the construction permit which was issued to Folsom Ridge LLC on Jan. 5, 1999.

The following documents establish a historical timeline of total negligence and disregard of DNR regulations by the developer, Folsom Ridge LLC, the project engineer, Jim Jackson, and the project manager, Dave Lees.

1. **Nov. 19, 1998**--Letter from DNR Breck Summerford replying to Jim Jackson, head engineer for the developer, Folsom Ridge LLC, stating that "sewer and water line construction must stop immediately until you receive a permit, and where it is not practical to maintain a 10 ft. separation, the DNR might allow deviations on a case-by-case basis."
2. **Nov. 22, 1998**--Jim Jackson, head engineer, sent a letter to Breck Summerford, DNR, with excuses for starting construction without a permit and admitting the installation of sewer and water lines in the same trench.
3. **Dec. 29, 1998**--Jim Jackson, head engineer, replies to B. Summerford's letter with a detailed drawing of the water line installed on an offset separated earthen shelf as requested by B. Summerford representing the DNR.
4. **Jan. 5, 1999**--DNR issues construction permit with required installation procedures including the separation of sewer & water lines.
5. **May 25, 1999**--A reprimand from DNR Steve Jones issued for improper installation of sewer and water lines in the same trench.
6. **Feb 23, 2000**--Operating permit and letter from Steve Jones stating that DNR was unable to inspect system but also stating that if at any time in the future that sewer and water lines are found, not installed in accordance with drinking water standards, that the DNR has the right to require alterations of the system to bring it into compliance with standards.
7. **June 23, 2000**--Memo to File from DNR Engineer Tim Neal stating that a variance had been given for the drinking water line to be installed on a undisturbed shelf. Dave Lees, project manager and partner for Folsom

EXHIBIT C

Ridge LLC, stated that in fact the water line was laid on a separate shelf and that the shelf was comprised of compacted material. Dave Lees also stated that all new home construction would have a 10 ft. separation of sewer and water lines.

8. Sept. 26, 2000--Gary Webster, Camden County Road Supervisor, sent a letter to Reggie Golden, managing partner of Folsom Ridge LLC, reprimanding the corporation for digging a trench across the county road without proper permission to do so as well as totally ignoring the county's directions on the proper use of sleeves to encase lines under the roads. This action came after Mr. Dave Lees, project manager, dug up the county's asphalt road at a utility crossing to repair a leak without a proper permission to do so.
9. Nov. 17, 2000--Reggie Golden, representing the developer, Folsom Ridge LLC, sent a letter to Big Island Homeowners in which he stated "We have dug several holes and have verified proper installation of water and sewer lines".

And finally, on April 17, 2002--The Missouri Attorney General Office's Deborah Neff, in response to the "Concerned Homeowners of Big Island" Attorney Lewis Bridges' complaint that "the system was not built as submitted to the DNR" replies, "The department (DNR) agrees that the system was not constructed as approved".

These facts speak for themselves. The total liability and responsibility for the Big Island Homeowners Assn. Sewer and Water System must become the sole financial responsibility of the developer, Folsom Ridge LLC, and NOT the individual homeowners who have been deceived.

The "Concerned Homeowners of Big Island" request the Department of Natural Resources (DNR) to require the developer, Folsom Ridge LLC, to comply with DNR regulations and codes.

The Big Island Community Wastewater/Water System must be corrected to be in compliance with the DNR regulations and codes.

#9

NOVEMBER 29, 2000
Golden Letter To Non-
Homeowners Members

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

November 29, 2000

"Non-Member"
Version

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

Dear Benjamin & Karen,

Recently we sent a letter to the Homeowners Association Members of Big Island. We will be having a meeting for all members of the Homeowners Association (HOA) on December 29, 2000. We would like to extend another invitation to you to join the HOA thereby making you eligible to attend the meeting. In the interest of all the residents who choose not to be a part of the HOA, we will hold an informational meeting on December 29, 2000 at 1:00 p.m. and would like for you to attend if you choose not to join the HOA.

Since the summer when the HOA was formed, a group of concerned island residents who did not choose to belong to the HOA presented their concerns. While we have worked diligently to accommodate these wishes, we have discovered that we will not have complete consensus on all the issues and feel it is time to bring this to closure. We have addressed all of the concerns raised in our summer meetings. Some of these items include:

- 1) One vote per lot (not allocated by square feet) - drafted in the new covenants.
- 2) No different classes of membership (all get the same vote) - drafted in the new covenants.
- 3) Folsom Ridge, LLC warranting the system until September 1, 2005
- 4) 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.

- * lines. We have also dug several holes and have verified proper installation of water and sewer lines. In addition, we have either made commitments to or provided the following:
- a) Cleanup of construction areas is nearly complete.
 - b) We will replant the construction areas to be completed in the spring when the horticulturist recommends planting.
 - c) We have cleared an area for boat trailer storage.
 - d) We have built a boat ramp for Island residents' use - one key will be provided to each homeowner.
 - * e) We will subsidize the water and sewer systems for costs over the monthly assessment until June 30, 2001.

PSC EXHIBIT #9

Exhibit A

From: Ben Weir <benweir@comcast.net>
Date: Wed, 21 Sep 2005 22:18:37 -0500
To: <tphiley@yahoo.com>
Subject: An Open Letter To Big Island Residents

Dear Residents,

This is an "open letter" to provide both factual documentation and "commentary" explaining recent DNR violations occurring on Big Island and why, in my opinion, this type of misbehavior must come to an end once and for all. Unfortunately, I was hoping that these violations would have been publicly disclosed to all property owners by now rather than through the "rumor mill" which usually results in worse results than just telling the truth in the first place.

About a week ago, you received a letter from Phil and Tonie Hiley which, among other things, pleaded "for respectful future actions by all that will return us to peace among the neighbors, and an effort by all to get involved and make the best of it in this new Big Island community."

I could not agree more with Phil and Tonie. However, the first step in that effort needs to begin with the developer, Folsom Ridge, LLC, and the full disclosure and explanation from them about why these violations were committed and how they plan to guarantee the property owners that this type of behavior NEVER happens again. In addition, a public apology from them is needed to indicate their willingness to be the leader of the SOLUTION in the healing process that Phil and Tonie seek rather than being the REASON there continues to be "the seemingly endless, intense conflict." It's been long overdue for the past seven (7) years.

I apologize for the length of the attached document, but it was necessary to present all the facts and related "opinions" in depth so you could be fully informed and decide your own course of action, if any. I have always believed that a truly free and democratic society depends on the ability of the populace to air their opposing views in a "respectful" manner as Phil and Tonie suggested.

This is my individual effort to encourage ALL parties to start solving OUR differences together for the betterment of the community at large rather than ignoring them in the false belief they will go away.

Respectfully submitted,

Ben F. Weir Jr.

Subject: Commentary/Public Disclosure of Violations

Date: Monday, September 19, 2005 9:03 PM

From: Ben Weir <benweir@comcast.net>

To: Big Island (9/05)

Date: September 19, 2005

To: Big Island Property Owners

Subject: Commentary/Public Disclosure of Latest DNR Violations

This message is written in response to an e-mail Phil Hiley sent Thursday, September 15, 2005 to Big Island residents and property owners referring to an e-mail Ben Pugh sent on 9/9/05 responding to an inaccurate statement made in Phil's 9/7/05 letter indicating that "the current community water/sewer system, with the water line corrections completed by Folsom Ridge (FR), has now been approved by the Department of Natural Resources and is operational."

The intent of this commentary is NOT to be confrontational BUT rather to provide factual information to Big Island property owners regarding the current status of the community water/sewer system including the public disclosure of five (5) more DNR violations reported in June 2005 affecting the community water supply serving Big Island Subdivision. With this information, YOU as an individual property owner can decide your own appropriate response. My opinions are just that. The facts stand on their own merits.

I have been a resident of Big Island since 1962. I do not have a sewer tap. I do not have a water tap. I am not a member of the BIHOA. However, I am a "Concerned Homeowner" who wants to protect my property values as well as those of my neighbors and am deeply concerned as to the current "state of affairs" on Big Island involving the management and operation of the community sewer and water system.

The information printed in BOLD type below is a matter of public record and copies are available at the Southwest Regional Office, Missouri Department of Natural Resources (DNR), Springfield, MO. These most recent violations (as well as many other DNR documents) have all been submitted to the Missouri Public Service Commission (PSC) for their review as part of a multitude of Formal Complaints recently filed by a group of individual Big Island property owners.

(Note: These five (5) most recent violations were committed while the developer,

Folsom Ridge, LLC, was operating under a state-mandated DNR Settlement Agreement (SA) issued in March 2004 "detailing the relocation of the drinking water distribution system".

Of special interest in light of these most recent violations is Paragraph 15 of that same agreement, which reads as follows:

15. In consideration for the release contained herein, Folsom agrees to comply with all applicable Missouri water pollution statues and regulations in the future.

Reggie Golden, Rick Rusaw, Robert C. Cook, Assistant Attorney General of Missouri, and Jim Hull, director, Water Protection Program, Missouri Department of Natural Resources, all signed the SA in April 2004.)

All underlined information is from the original letter as written by Phil Hiley.

CLARIFICATION NO. 1—(As written by Phil Hiley.)

"Relative to start-up of the corrected water system, I was told by FR that the construction for the corrected system was complete, the proper bacteria and pressure checks were satisfactory, and the complete system was now operational and safe. My assumption was that DNR had approved the water line corrections. Bad assumption; there is no official approval yet."

**VIOLATION NO. 1--
June 28, 2005**

NOTICE OF VIOLATION #11210SW

**Mr. Reggie Golden
Folsom Ridge, L.L.C.
P.O. Box 54
Longmont, CO 80501**

Dear Mr. Golden:

On May 13, 2005, during a construction inspection, Mr. Clinton J. Finn, P.E., of the Missouri Department of Natural Resources Southwest Regional Office (the department), observed an area adjacent to Big Island Subdivision that was being cleared for development. It was observed that waterlines from the Big Island Subdivision Waterline Relocation of Phase I and New Phase III project (review number 53303-04) appear to have been extended to this area

under development.

In an effort to determine if this extension of waterlines was included in the approval of the above mentioned project, a construction inspection was conducted by Mr. Breck Summerford, P.E. and Mr. John MacEachen, both of the department's Public Drinking Water Branch, Ms. Elena Seon, of the department's Water Pollution Branch, and Mr. Clinton J. Finn, P.E., of this office.

During this construction inspection, it was determined that waterlines have been extended to this area adjacent to Big Island Subdivision and that this extension was not included in the approval for the Waterline Relocation of Phase I and New Phase III project. Therefore, this extension constitutes construction, installation, or modification of a community public water supply without written authorization, and is a violation of the federal and state Safe Drinking Water Law and Regulations as listed below:

Folsom Ridge, L.L.C. failed to obtain written authorization from the department prior to construction, alteration, or extension of the drinking water system at Big Island Subdivision in Roach, Camden County, Missouri.

(This letter was signed by Cynthia S. Davies, Chief, Water Section, DNR Southwest Regional Office, Springfield, MO)

(Note: This is the SAME TYPE OF VIOLATION (Construction without a permit) that the developer, Folsom Ridge, LLC, first committed in 1998 involving the installation of 4,600' of water and sewer lines in the SAME trench resulting ultimately in the Settlement Agreement of 2004 requiring the state-mandated re-installation of the Phase I Water Main System to separate it from the sewer main.)

CLARIFICATION NO. 2--(As written by Phil Hiley.)

"According to Mr. McDuffey, who has been in business for 30 years, the only sampling point that must pass the bacteria test before system start-up is at the end of the line where any contamination should be present. Subsequent testing every month is done at 5 different locations around the Island (one at a time), just as it has been done in the past for our system."

**VIOLATIONS NO. 2 through 5--
June 28, 2005**

Mr. Reggie Golden

**Folsom Ridge, L.L.C.
P.O. Box 54
Longmont, CO 80501**

Dear Mr. Golden:

Enclosed is the Report of Inspection for the community water supply serving Big Island Subdivision in Camden County, Missouri. This report is believed to be self-explanatory and I trust you will direct your attention to the recommendations contained therein.

Please feel free to contact Sheila Yoder of this office by calling 573-348-2442 or via mail at Southwest Regional Office, 2040 W. Woodland, Springfield, Missouri 65807-5912, if you have questions.

Sincerely,

SOUTHWEST REGIONAL OFFICE

(SIGNED)

**Cynthia S. Davies, Chief
Water Section**

**MISSOURI DEPARTMENT OF NATURAL RESOURCES
REPORT OF INSPECTION
COMMUNITY PUBLIC WATER SYSTEM
BIG ISLAND SUBDIVISION
CAMDEN COUNTY, MISSOURI
PUBLIC WATER SYSTEM ID MO3031265**

June 28, 2005

INTRODUCTION

A routine inspection was made of the community public water system serving Big Island Subdivision by Sheila Yoder of the Missouri Department of Natural Resources-Southwest Regional Office on June 2, 2005. The purpose of the inspection was to determine compliance with the Missouri Safe Drinking Water Law and Regulations. The following unsatisfactory features were noted with comments and recommendations for correction. These unsatisfactory

features are organized into categories as noted below.

UNSATISFACTORY FEATURES

Category I – Violations of Missouri Safe Drinking Water Regulations

These violations can result in enforcement action if repeated or not corrected. Some violations are more serious than others, and this is explained in the comments.

- 1. The public water system failed to collect routine samples from the distribution system as required by the Safe Drinking Water Regulations 10 CSR 60-4.020(1).**
- 2. The public water system dispensed water without obtaining a written permit to dispense water in violation of Safe Drinking Water Regulation 10 CSR 60-3.010.**
- 3. The public water system failed to develop a written total coliform bacteria sample siting plan as required by Safe Drinking Water Regulation 10 CSR 60-4.020(1)(A).**
- 4. The public water system failed to obtain written authorization from the department prior to construction, alteration, or extension of the water system in violation of Safe Drinking Water Regulation 10 CSR 60-3.010(1).**

Public water systems must collect total coliform samples according to a written sample siting plan at sites which are representative of water throughout the distribution system. Distribution sampling point should be chosen where both upstream and downstream repeat samples can be taken. The well can only be used for a repeat sample location, not for monthly routine samples.

The regulations require each system to have a written plan that outlines bacteriological sampling points. This plan should include the following:

- a) A map or sketch or written description indicating geographic location (street address) of each routine sampling point and repeat sampling point.**
- b) Five routine sampling points for small systems (under 4,901 population) and a separate sampling point for each sample collected on any day for large systems.**
- c) Choose routine sampling points that have upstream and downstream repeat sampling points within five services connections. List these upstream**

and downstream repeat sampling points.

d) Choose routine sampling points that are geographically scattered around the distribution system. Do not use the well or plant for routine sampling points.

(Note: If the statement that "just as it has been done in the past for our system". Is indeed accurate, then why would the DNR issue the above violation of **the Safe Drinking Water Regulations 10 CSR 60-4.020(1)** dealing with collection of water samples from five (5) routine service connections? The regulation also specifically says to NOT USE THE WELL FOR MONTHLY ROUTINE SAMPLES. Has this been the case on Big Island for the past five years? I hope that information will also be disclosed to the property owners.)

FINAL RESPONSE—(As written by Phil/Tonie Hiley)

"In our view, this Island needs to mend and we think it can and should begin now. We believe that the overwhelming majority of people on Big Island want to see an end to the seemingly endless, intense conflict with Folsom Ridge. This is not meant as a criticism to anyone on how things have gone in the past; we too were involved in some of the battles and believed it was the only way to proceed. But we also know that the conflicts have caused hard feelings among the neighbors when there was disagreement on how issues were solved. Isn't it time to heal?"

(My reply to their question of "Isn't it time to heal?": Absolutely yes! I join with the majority of other property owners in wanting "to see an end to the seemingly endless, intense conflict with Folsom Ridge." However, in my opinion, that WILL NOT HAPPEN on Big Island as long as the developer continues to commit violations (some of them serious repeat violations) potentially jeopardizing our property values as well as our family's health and safety. The first step in the healing process begins with Folsom Ridge taking responsibility for their actions and disclosing those actions to the homeowners who will ultimately end up with all the legal and financial liabilities and responsibilities associated with the operation of the community sewer and water system. I would ask the representatives of Folsom Ridge to publicly apologize to the Big Island property owners for not disclosing these latest violations committed while they were operating under a state-mandated Settlement Agreement. I would also like them to explain to the property owners why the extension of the community Phase I Water Main "off the Island" was not brought before the BIHOA membership on May 7 (or before or after) for open discussion and voter approval.)

Phil was accurate in his statement that "It is my understanding that the Public Service Commission is reviewing the current water-sewer association set-up and by-laws." I as well as several other property owners have filed an individual formal

complaint with the PSC asking them to investigate the control and management of the BIHOA by Folsom Ridge, LLC. In my opinion, the "straw that broke MY camel's back", after documenting seven (7) long years of corporate misbehavior, were these latest violations. Since 1998, the DNR has issued a multitude of violations to Folsom Ridge, LLC. When will it finally end? If and when it does end, then the healing can begin. It's as simple as obeying the regulations and laws of the state of Missouri and being honest with the property owners. Until that happens, there will always be conflict and distrust with Folsom Ridge. In my opinion, it's really up to THEM to accept responsibility and start the healing process!

This information has been provided in as factual and straightforward manner as possible to help YOU, the individual property owner on Big Island, decide what course of action YOU should take in the future to protect not only YOUR own family's health and safety but also YOUR own property values. You need to get involved. Only YOU can decide what is best for YOU and YOUR family AND the future of Big Island. My advice: Ask lots of questions and then question the answers. Knowledge of ALL the FACTS and differing points of view is a powerful motivator for RESPONSIBLE action. We need that now!

Respectfully submitted,

Ben F. Weir Jr.
Big Island Resident and
Concerned Homeowner