

BEFORE THE PUBLIC

SERVICE COMMISSION

OF THE STATE OF MISSOURI

FILED²

OCT 11 2005

Cathy J. Orlor,

Complainant,

Case No. WC-2006-0082

Missouri Public
Service Commission

V.

Flosom Ridge, LLC. (Owning and Controlling the
Big Island Homeowners' Association)

Respondent,

RESPONSE TO MOTION TO DISMISS COMPLAINT
AND MOTION TO AMEND COMPLAINT*RESPONSE TO MOTION TO DISMISS*

I, Cathy Orlor, the complainant in case no. WC-2006-0082, request that the Commission not dismiss my case, on grounds that my complaint did state a claim upon which relief may be granted by the PSC, subject to the regulation of the PSC under the jurisdiction thereof, against Folsom Ridge, LLC, (Owning and Controlling the Big Island Homeowners' Association). If this claim was not made clear in my Formal Complaint, supported by the attachments provided as exhibits therein, I would like the opportunity in this motion to the Commission, to further clarify, support, and prove my suit.

SUGGESTIONS IN SUPPORT

The formal complaint form provided by the PSC, does not utilize page numbers and there are no instructions and/or guidelines accompanying that document, explaining that page numbering and/or paragraph numbering should be followed and/or are a requirement when submitting a Formal Complaint. However, if the Commission deems that the basis of my complaint was not made clear, I would like to make absolutely clear that I am alleging Folsom Ridge and the BIHOA are indeed one in the same. This is a fact that I will be able to demonstrate at a hearing.

As the basis of my complaint, I stated that the BIHOA is not operating as a HOA, by providing service and/or billing users and non-users who are not members of the BIHOA, and therefore, should be regulated as a public utility by the Public Service Commission under their jurisdiction. (Ref: "Attachment N" of my Formal Complaint – Examples of non-member fees billings; Letters to F.R., DNR, and the PSC trying to clarify/resolve non-member and fee issue). Also as a part of my Formal Complaint, I suggested as a means to facilitating an immediate resolve to the issue, that the PSC request from the BIHOA and/or Folsom Ridge who is controlling the HOA, (incidentally, the address for both F.R. and the BIHOA is the same), a listing of its customers and members. Subsequently, after the filing of my Formal Complaint, this request was formally made to F.R.'s attorney on 09-28-05, and filed. This "Complainant Request for Data" is approaching the 20 days allotted to respond and satisfy the request being made. In the interest of supplying the Commission with additional exhibits to further support my claim, until receipt of the information requested above has been supplied by F.R. and/or the BIHOA, I have attached copies of my personal, cancelled checks, cashed by the BIHOA, clearly indicating my non-member status in this association.

Folsom Ridge does own and control the BIHOA, as per my Formal Complaint:

1. "Attachment C" – Amended and Restated Declaration of Covenants and Conditions; Page 1, 3rd Paragraph: WHEREAS, Declarant desires to declare and establish certain covenants and conditions regarding water service and sewer service and related equipment, now owned by Declarant, to serve such property, In ARTICLE I – Definitions; Section 7, of this same document, Declarant means and refers to Folsom Ridge, LLC.
2. ARTICLE V – Association Membership and Voting Rights; Section 2, Voting Class: The association shall have one class of voting membership which shall be all Owners and shall be entitled to one vote for each lot owned. ARTICLE I – Definitions; Section 13, Owner or Owners shall mean and refer to the Record of owner. Folsom Ridge, LLC, owns the majority of the lots described therein and therefore controlling the voting process not only by the number of lots currently owned by F.R., but their ability to sub-divide and re-plot those existing lots into smaller and more numerous lots as has already been done by F.R. in the year 2004.

3. **ARTICLE V – Association Membership and Voting Rights; Section 4, Board of Directors:** The Board of Directors shall consist of five (5) directors who shall be members of the Association or an officer, director, manager, partner of an owner or it's partner, or an employee, manager or designee of Declarant. For a period ending September 1, 2006, Folsom Ridge, LLC, or it's successors shall be entitled to appoint three (3) Directors of the Board of Directors; thereby controlling the board by a majority representation.

Furthermore, in my Formal Complaint:

1. "Attachment D' – Amended and Restated By-Laws of the BIHOA; **ARTICLE III – Membership, Section 1; Membership shall be all Owners and shall be entitled to one vote for each lot owned.**

2. **ARTICLE VI – President, Section I; (last sentence), Notwithstanding anything to the contrary contained herein, for a period ending September 1, 2006, Folsom Ridge, LLC, or its successors, shall be entitled to appoint three (3) directors of the Board of Directors.**

As previously stated and substantiated in this motion, and as can be further confirmed and validated with a formal presentation to the Commission, by NOT ALLOWING the DISMISSAL of this case, it is Folsom Ridge, LLC, Owning and Controlling the Big Island Homeowners' Association. The BIHOA, is operating as an unlicensed public utility and therefore should be regulated by the PSC. Under the regulation and jurisdiction of the PSC, a "transfer" of the water/sewer system is not possible, unless "certificated" by the PSC. The objective of my request for a "temporary injunction," in my Formal Complaint, was to halt the transfer of liability and ownership of the water/sewer system to the members of the BIHOA. Not having a law degree, or an understanding of the scope of the jurisdiction of the PSC at the time of my filing, I did not realize that a "temporary injunction," was not a part of the judicial power of the Commission. However, in addition to requesting a "temporary injunction," I requested that the Commission determine that Folsom Ridge, LLC, /BIHOA is operating as a public utility, and as such should be subject to the Commission's jurisdiction. In the

event that this request for relief was not made clear, I would like to request of the Commission, leave to amend my complaint to make that clear.

Additionally, the Motion to Dismiss Complaint, on the grounds that Folsom Ridge, LLC, Owning and Controlling the BIHOA are not one in the same, is NOT CONSISTENT; Case No. WC-2006-0090 Benjamin D. Pugh, complainant, V. Folsom Ridge, LLC, Owning and Controlling the BIHOA, respondent. The respondent has filed a motion requesting mediation in this case and not a dismissal.

In summary, the residents of Big Island have been mediating with F.R. for nearly 5 years, with no resolve to the many legal and ethical issues of misoperations of the BIHOA. Nearly \$5,000.00 was spent by residents in legal fees resulting in these legal opinions: ("Attachment H" of my Formal Complaint).

- a. membership in the BIHOA, is a result of bi-laterally agreeing to the Amended and Restated Declarations and Covenants, and the Amended and Restated By-Laws of the BIHOA, by a signature Ratifying these documents. (Otherwise, you are NOT A MEMBER!)
- b. F.R./BIHOA should become licensed as a public utility by the PSC, if non-members continue to be billed and/or serviced. (As supported by "Attachment B" of my Formal Complaint; in a letter to Folsom Ridge, LLC, to the attention of Reggie Golden from the DNR, requesting him to address the following concerns;...we have become aware that there are people connected to the wastewater treatment facility who are not members of the homeowners association. This letter was dated November 16, 2001).

Still, non-members of the BIHOA continue to receive utility service and/or charged fees in regular monthly billings from the BIHOA; contrary to all legal opinions, DNR regulation requirements, and efforts by non-members to resist the forced membership.

Moreover, F.R. is currently operating under a "Settlement Agreement," ("Attachment J" – of my Formal Complaint), to reinstall the incorrect installation of the system, by separating the water and sewer lines. Item number 15 of the "Settlement Agreement," has also been violated by F.R. by repeating a previous violation in addition to committing yet another new violation which is substantiated by the DNR's documented Report of Inspection.

The residents of Big Island are appealing to the PSC to regulate the operations of a water/sewer system over which they have NO CONTROL.

The BIHOA, is a homeowners association in name only, and was established and created solely, to manage and operate the water/sewer system with no other functions.

Please help the residents of Big Island!

Respectfully submitted,



Cathy J. Orlor

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent this 7th day of October 2005, to the General Counsel's Office, and the Office of Public Counsel, and via U.S. mail, postage prepaid to Mark W. Comley, 601 Monroe Street, Suite 301, P.O. Box 537, Jefferson City, Mo. 65102



Cathy J. Litty
HC 67 Box 840
Roach, MO 65787-9710

July 01, 2001 DATE

80-907/815 V

18

pg. 6

PAY TO THE
ORDER OF

Big Island Homeowners Assn. \$ 15.00
Fifteen and ^{no}/₁₀₀ —————
DOLLARS

Central Bank of Lake of the Ozarks

P.O. Box 207 / Osage Beach, MO 65065



Sewer - Not Connected
FOR Non-Member Jan 1-Mar 31, 2001

Cathy J. Litty
"00000001500"



CATHY OR JEFF LITTY
DL# 00938170
HCR 87, BOX 840 BIG ISLAND
ROACH, MO 65787

80-907/815

DATE Nov. 13, 2001 3000

PAY TO THE
ORDER OF

Big Island HOA \$ 15.00
Fifteen and ^{no}/₁₀₀ —————
DOLLARS

CENTRAL BANK OF LAKE OF THE OZARKS
P.O. BOX 207
OSAGE BEACH, MO 65065

FOR Non-Memb/Not connected

Cathy J. Litty

IMAGE CHECKS: 1997

ELEVANCE

1-800-562-8768



CATHY OR JEFF LITTY
DL# 00938170
HCR 87, BOX 840 BIG ISLAND
ROACH, MO 65787

80-907/815

DATE Jan. 11, 2002 3046

PAY TO THE
ORDER OF

Big Island HOA \$ 15.00
Fifteen and ^{no}/₁₀₀ —————
DOLLARS

CENTRAL BANK OF LAKE OF THE OZARKS
P.O. BOX 207
OSAGE BEACH, MO 65065

FOR non-member/not hooked up

Cathy J. Litty

IMAGE CHECKS: 1997

ELEVANCE

1-800-562-8768



CATHY OR JEFF LITTY
DL# 00938170
3252 BIG ISLAND DR.
ROACH, MO 65787

80-907/815

DATE April 16, 2002 3111

PAY TO THE
ORDER OF

Big Island HOA \$ 15.00
Fifteen and ^{no}/₁₀₀ —————
DOLLARS

CENTRAL BANK OF LAKE OF THE OZARKS
P.O. BOX 207
OSAGE BEACH, MO 65065

Not Connected - No Service Received
Non-Memb. HOA

Cathy J. Litty