

BEFORE THE PUBLIC SERVICE COMMISSION OF THE
STATE OF MISSOURI

Benjamin D. Pugh
Complainant

Vs.

Folsom Ridge, LLC (Controlling the BI HOA)
Respondent

COMPLAINT

1. Complainant resides at: 1780 Big Island Drive
Roach, Missouri 65787
2. Respondent: Folsom Ridge LLC
Big Island Homeowners' Association
P.O Box 54
Longmont, Colorado 80502

Is acting as a public utility providing service to a NON member

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

RECEIVED
AUG 25 2005

UTILITY OPERATIONS
DIVISION
FILED²
AUG 25 2005

Missouri Public
Service Commission

FORMAL COMPLAINT

Basis of Complaint: Folsom Ridge / Big Island HOA providing water/sewer service to non-members therefore operating as a public utility, that should be regulated by the PSC.

My Name is Benjamin D. Pugh. I'm a long time property owner on Big Island, (Lake of the Ozark) having purchased property in 1962. I became a permanent resident in 1986. In early January 1999 I was solicited by Folsom Ridge, (a land developer from Longmont Colorado) to connect to the soon to be built community wastewater / water system. I paid \$4800 for a sewer tap. and for the right to connect to the new wastewater system at a time of my choosing. This money was to be used by the developers for the purpose of helping finance the building of the system.

At the time of my paying the money to be secured in a escrow account at Central Bank, Camdenton, Mo. there was never any mention of my having to join a HOA nor was there a HOA in existence. I was not asked to sign any agreement which would obligate me in any way to become a member of any organization. My only obligation was to deposit the \$4800 into the escrow acct by January 15, 1999. My money was deposited before the deadline date, January 15, 1999. This gave me the right to connect to the system any time of my choosing without any other conditions. I was informed by letter from David Lees (Folsom Ridge partner and manager of the Big Island project) that there would be no charges until the time I connected to the system.

I chose to connect to the wastewater system in November 1999 . With the complete knowledge by Folsom Ridge of my connection to the system there was no mention even at that time of me being required to join a HOA. I was the sixth property owner to connect to the system.

I had no knowledge that I would have the liabilities of ownership until months later, April, 2000, when all property owners received a set of HOA covenants and bylaws for the BI HOA which was being established for the sole purpose of managing the sewer and water systems. These were to be signed by me and notarized. The covenants and bylaws were unsatisfactory and I refused like many homeowners to sign these documents.

The documents were unsatisfactory to me, because:

1. It involved 160 acres of land off the island to be serviced by BIHOA
2. It was a general HOA's and not expressly for the purpose of owning and managing a sewer and water system
3. It divided the property owners into classes.
4. The declarants (Folsom Ridge) had complete control of the HOA, and the votes, as they do to this day.

After several months of negotiations (April through October 2000) , the declarant, (Folsom Ridge) removed from covenants, (see attachment) the following: "All of said systems to be free of defects, contamination, and in keeping with all federal, state and local laws and regulations governing the installation, maintenance and operation of said systems". Also removed from covenants, "In the event defects, contamination or violations are found to exist, Declarant covenants to correct and repair the same at its sole cost"

The Big Island HOA was not a operating, established HOA until December 29, 2000. On that date the HOA elected 5 board members and approved the covenants and by-laws.

This was 13 months after I connected to the system. On April 9, 2001, I received a billing for my sewer service for all periods prior to December 2000. 14 months of prior service. See attachment . There was no HOA in existence as required by the DNR regulations until approximately two years after the property owners were required to have their money deposited in escrow. The attachment is positive proof that the HOA was not established as there was no means for collection of funds owed them. A violation of the regulations.

I have since been requested to ratify these HOA documents and like many other homeowners have refused to do so. It was a well known fact to many homeowners that the installation of the wastewater & water system was installed illegally as per the DNR construction permit issued January 5, 1999. The potable waterlines were installed in the same trench with the wastewater lines which greatly increase the liability of any homeowner who chose to become a member of the HOA. This illegal installation was verified on January 12, 2004 with exploratory diggings on Big Island by the DNR. This was one of many reason for many homeowners refusing to accept the responsibilities of becoming a member of a HOA, whose only product was a illegally installed system.

Other violations I could mention are:

1. Charging homeowners fees while they are NOT members of the HOA.
2. No disclosure to new property owners before purchase of property, if they chose to use the facilities they would have to join the HOA .
3. No disclosure to new property owners that they were considered members of the BIHOA upon purchase of a property if the preceeding owner was a BIHOA member.
4. The covenants give the developers complete control of the HOA as well as the voting rights of members.

There are still violations occurring as late as May 2005 as Folsom Ridge continued to violate DNR regulations by installing water lines to the phase one installation off the island without permits by the DNR. To the best of my knowledge as of this date the DNR has not approved the re installed lines as required by the settlement agreement between Folsom Ridge, DNR and Attorney General Office , dated April 23, 2004.

I am connected to the waste water system and am not a member of the Big Island HOA as required by the DNR regulations . I am paying my monthly charges for services to the system but I have never signed anything related to becoming a member. I am considered a member by the HOA as per a letter received by me from Charles McElyea (Attorney for the developers and the Big Island HOA) notifying me that I'm considered a member. I contend that there was no HOA in effect at the time I connected to the system. There was nothing to join at that time which is in violation of the DNR regulations.

Referencing a letter dated November 16, 2001 (see attachment), Ms. Kristine Ricketts, DNR, referred to a DNR regulation 10CSR 20.6.010(3)(B)5(IV). With all due respect to Ms. Ricketts, her interpretation is different than mine. Her interpretation is taken from Article IV which is an extraction from the entire regulation and does not include the preceeding section C. which references the document establishing the association, (i.e.-Covenants) and further in article IV, be bound by the rules of the association, which again are found in the covenants and bylaws of the BIHOA which I have not ratified by my signature, therefore I am not a member. It states that "all members must be connected to the facility". The regulation makes no mention of a homeowner who is NOT a member, and therefore hardly refers to my situation, which is why the BIHOA is operating as a public utility by offering service to property owners

who are not member and therefore should be regulated by the PSC.

This regulation does not take in account :

There was no active HOA at the time I connected. This was not due to any fault of mine, but was the sole responsibility of Folsom Ridige to require my HOA membership before accepting my money for a connection . Then the decision would have been mine. Either join and use the facility or not join and not be allowed to use the facility. Initially the HOA was not in place to accept my signature to join. A violation of the DNR regulations and a good example why this HOA is not being run properly as a legal HOA, but as a unlicensed public utility.

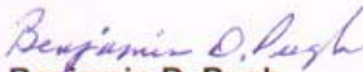
Two area attorneys , Mr. John Walker and Mr. Lew Bridges , have assured me that to become a member of a HOA the homeowner must sign a bi-lateral agreement, which I have NOT done. ([See Attachments](#)) I consider myself NOT a member as per the legal opinions of these attorneys. Ironically, one of these attorneys John Walker at the time of his writing was a member of the same law firm and associate of Charles McElyea who is presently representing the developers and the BIHOA. Incidentally, if this BI HOA were truly operating as a HOA then there would be a conflict of interest , with the same attorney representing both the BIHOA and the developers.

In year 2000, we as "Concerned Homeowner of Big Island" spent approximately \$5000 for the legal advice and representation of Mr. John Walker to negotiate covenants and ByLaws with Folsom Ridge which would be satisfactory for both parties. These negotiations between our group, referred to as "Concerned Homeowners" and Mr. Reggie Golden, Folsom Ridge, were only moderately successful as there was many issues we were unable to resolve and the talks were mutually agreed to be discontinued.

Relief requested by PSC:

Determination / Ruling that BIHOA is operating as a public utility by providing service to non- members and therefore should be regulated by PSC.

Thank you for your interest and assistance with this Formal Complaint.


Benjamin D. Pugh
1780 Big Island Drive
Roach, Missouri 65787

assessments are determined. All additional sums due to, or to be refunded by, the Association shall be paid, or refunded, within thirty (30) days after the determination. The Association shall not be required to pay interest on such deposits. At the time of each conveyance of a Lot or Property, such deposit shall not be returned to the selling Owner, but the selling Owner shall be entitled to a credit from his purchaser to the extent of the selling Owner's current balance of such deposit.

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 under the following terms:

A. With regard to the original Water System and/or Sewer System, any such special assessment for construction, reconstruction, repair or replacement under this section shall have the assent of two-thirds ($\frac{2}{3}$ rd) of the Owners and (i) who are connected to the Water System and/or Sewer System, as applicable, or (ii) who have membership rights by virtue of their ownership of a Lot, or (iii) who are entitled to use such original Water System and Sewer System by virtue of having paid a tap fee but who have not yet connected to the original Water System and Sewer System, who are voting in person or by proxy at a meeting duly called for this purpose. The initial Sewer System is designed to serve 80 homes (included in this number are homes, which are entitled to connect to the original Sewer System by virtue of having paid a tap fee but have not yet established a connection).

B. With regard to any expansion of the Water System and/or Sewer System to serve Lots beyond the original 80 Lots intended to be served by the original Water System and Sewer System shall be paid by Declarant or its successors:

successors. For a period of five years, with regard to the water system and sewer system presently in existence and installed by Declarant and such additional systems or additions thereto (expansion) that may be installed in the future by Declarant, Declarant warrants all of said systems to be free of defects, contamination, and in keeping with all federal, state and local laws and regulations governing the installation, maintenance and operation of said systems. This warranty includes but is not limited to the workmanship of (i) the water and sewer lines installed by Declarant and (ii) the sand beds serving the sewer system. In the event defects, contamination or violations are found to exist, Declarant covenants to correct and repair the same at its sole cost. Such warranty does not cover defects and damages occasioned due to acts of God and damages caused by circumstance beyond Declarant's control.

C. In order to alleviate the impact of the cost of unforeseen expenses and/or capital improvements, the Association by the assent of two-thirds of the Lot Owners may establish a reserve account, and monthly assessments to fund such reserve account.

Section 5. Notice and Quorum for any Action Authorized Under Section 4.A. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.A shall be sent to all member not less than thirty (30) days nor more than ninety (90) days in advance of the meeting. At each such meeting called, the presence of member or of proxies entitled to ~~at least sixty percent (60%)~~ cast a simple majority of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be ~~one-half (1/2) of the required quorum at the preceding meeting requirement.~~

Invoice

Big Island Homeowners Association

P. O. Box 54

Longmont, CO 80502-

USA

Phone: (303) 702-0708 Fax: (303) 702-058

Invoice Date 04/09/2001

Member ID 18

Payment Terms Net 30 Days

Member: Ben & Karen Pugh

HCR 67, Box 726

Roach, MO 65787-

USA

<i>Member Dues</i>	<i>\$150.00</i>
<i>Amount Paid</i>	
<i>Total Due</i>	<i>\$150.00</i>

*Big Island HOA Sewer Fees for 10/01/99 through 12/31/00 @
\$10.00 per month.*

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

April 9, 2001

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

Dear Benjamin & Karen,

Enclosed you will find your billing for your sewer and water service for all periods prior to December 2000. These were billed at the original rate of \$10 per month on sewer and \$5 per month on water. You were billed from the time you hooked up to the system. Please read the invoice carefully and make sure no mistakes were made concerning when you hooked up and if you are hooked up only to sewer or only to water. These invoices are due upon receipt.

You will receive shortly, another bill for the 1st quarter of 2001. These bills will be at the new rates voted on at the December 29, 2000 meeting. They will be \$15 for sewer and \$10 for water. I have attached the meeting minutes for your review if you have any questions.

Please don't hesitate to contact us if anything is incorrect on your bill. We would be glad to discuss it. We can be reached at 303-702-0708.

Sincerely,



R. V. (Reggie) Golden
Big Island Homeowners Association
Director

Benjamin D. & Karen D. Pugh
HCR. 67, Box 726
Roach, Missouri 65787

File copy

April 14, 2001


R.V. Golden
Big Island Homeowners Association
Director

Enclosed is a check for \$140 for 14 months sewer services for the period from November 9, 1999 through December 31, 2000.. Our records show our hook up installation was completed on November 9, 1999.. The invoice stating our hook up from October 1, 1999 is incorrect..

If you have any questions about the hook up date, contact me at: 573 346 4336

Sincerely,

Benjamin D. Pugh
Benjamin D. Pugh

KAREN PUGH HCR 67 BOX 726 PH 573-346-4336 ROACH, MO 65787		5904 80-742/B15
DATE <u>4-14-01</u>		
PAY TO THE ORDER OF <u>Big Island Homeowners Assoc</u>		\$ <u>140.00</u>
<u>One Hundred Forty and ^{no}/₁₀₀</u>		<u>00</u> DOLLARS
 FIRST NATIONAL BANK <small>CARDENTON - CHICAGO - CINCINNATI - CLEVELAND - DAYTON - KANSAS CITY - LOUISVILLE - MINNEAPOLIS - ST. LOUIS - ST. PETERSBURG - TAMPA</small>	NOW ACCEPTED	<small>Security Features: Stateline on Back</small>
FOR <u>Sewer fees Nov '99 thru Dec 31, 2000</u>		<u>Benjamin D. Pugh</u>
⑆08⑆507425⑆ 5904⑆7262632⑆		
<small>© HARLAND 2000</small>		

PHILLIPS, McELYEA, CARPENTER & WELCH, 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
RONALD K. CARPENTER
DAVID T. WELCH
DEIRDRE O'DONNELL
MICHAEL A. CARTER

LEGAL ASSISTANTS: Sharon Piskorski
Dana Stoufer

HUGH PHILLIPS (1911-1997)

November 29, 2001

Mr. and Mrs. Ben Pugh
HCR 67, Box 726
Roach, MO 65787

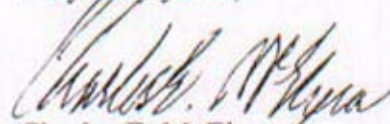
RE: Big Island Homeowners Association

Dear Mr. and Mrs. Pugh:

A question has arisen by some property owners as to whether or not they must sign an acknowledgment of membership in the Homeowners Association if they are hooked to the sewer system. Although this is preferred by the Homeowners Association, it is not a requirement. I am sending to you portions of the Code of State Regulations that addresses the issue as to membership in the Association. I have taken the liberty of highlighting certain portions of the regulations for your review. I direct your specific attention to 10 CSR 20-6.01(3)(b)5(iv) that states that everyone connected to the waste water treatment system shall be bound by the rules and regulations of the association and must be a member. Even though you have not signed the acknowledgment of membership, since you are connected to the Homeowners Association sewer system, you are considered a member of the Association. Of course, that does not mean you have to exercise your rights of membership. However, you are bound by the rules and regulations of the Association since you are connected to the system.

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

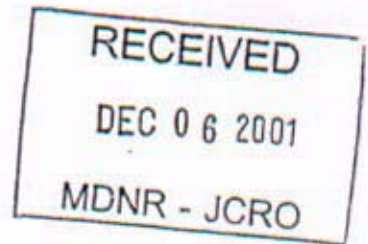
Very truly yours,


Charles E. McElyea

CEM:sp
enc.

Folsom Ridge, LLC
2020 Terry St., Suite A
Longmont, CO 80501

November 29, 2001



Kristine Ricketts
Department of Natural Resources
P. O. Box 176
Jefferson City, MO 65102-0176

Dear Ms. Ricketts,

I am in receipt of your letter dated November 16, 2001. Because I just received it today, I will not be able to respond specifically by December 7th. However, I will research the information you requested and have a formal response by December 20, 2001.

Items of note that I can respond to currently are:

- 6th
- 1) The homeowners association voted to change their bylaws on December 29, 2000. This change eliminated the two classes of membership. There is currently one homeowner who is connected (the very first to connect) that has refused to join the HOA. Even though the homeowner connected does not consider himself to be a member of the association, we are treating him as a member and he has been so advised. Our attorney is in the process of dealing with this issue. Everyone else who is connected is a member. We will follow up later with the current by-laws.
 - 2) I have a current handwritten as-built drawing of the system. Apparently you have an old copy that showed the pipe in the wrong crevice. I will get with Mr. Jackson and have him redraw the as-builts based on the handwritten drawing that I have.
 - 3) I can assure you that we have not exceeded the eighty-house limit triggering construction of the next wastewater treatment plant expansion. I will however provide a current count of taps and a current number of lots sold.

For future reference, the system and the ground have been turned over to the Big Island Homeowners Association. The address for Big Island Homeowners Association is P.O. Box 54, Longmont, CO 80502. Folsom Ridge LLC has also moved. Their address is 2020 Terry St., Suite A, Longmont, CO 80501. Also, David Lees is no longer involved as a manager in either organization. Please make the necessary corrections in your database.

If I can be of further assistance, please don't hesitate to call me at (303) 702-0708.

Sincerely,

Reggie Golden
Manager



Bob Holden, Governor • Stephen M. Mahfood, Director

DEPARTMENT OF NATURAL RESOURCES

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

November 16, 2001

Folsom Ridge, LLC
ATTN: Mr. Reggie Golden
PO Box 328
Longmont, CO 80501

Dear Mr. Golden:

The Department of Natural Resources has become aware of several issues regarding the wastewater collection and treatment system at Big Island. Please address the following concerns:

1. According to the original homeowners association documentation, there were Class A and B members. We have become aware that there are people connected to the wastewater treatment facility who are not members of the homeowners association. In accordance with 10 CSR 20-6.010(3)(B)5(IV), everyone connected to the wastewater treatment system shall be bound by the rules of the association, and thus be a member.
2. The as-built plans revised on October 9, 1999, by Lake Professional Engineering Services, Inc. do not appear to be accurate. For example, the pipe up to the wastewater treatment plant has been relocated. Please submit as-built plans, which show what was actually constructed.
3. According to Construction Permit 26-3390, the wastewater treatment plant expansion shall be complete and operational, prior to the construction of the eighty-first house within the Big Island Development. The eighty houses within the Big Island Development will be considered to be the original existing thirty-six houses along with the construction of forty-four new houses or connections. Update on the number of connections and sold lots is requested.

Your response concerning the above should be sent before December 7, 2001. If you have any questions, please contact me at (573) 751-2729.

Sincerely,

JEFFERSON CITY REGIONAL OFFICE

A handwritten signature in cursive script, appearing to read "Kristine Ricketts", is written over the typed name.

Kristine Ricketts
Regional Director

KR:kfr

c: Water Pollution Control Program
Lake Professional Engineering Services
Big Island Homeowners Association

until the authority has obtained a certificate of convenience and necessity from the PSC;

4. Any person with complete control of, and responsibility for, the water contaminant source, point source or wastewater treatment facility and all property served by it. The person may constitute a continuing authority only by showing that the authorities listed under paragraphs (3)(B)1.-3. of this rule are not available, do not have jurisdiction, are forbidden by statute or ordinance from providing service to the person or, if available, have submitted written waivers as provided for in subsection (3)(B) of this rule; and

5. An association of property owners served by the wastewater treatment facility, provided the applicant shows that—

A. The authorities listed in paragraphs (3)(B)1.-3. of this rule are not available or that any available authorities have submitted written waivers as provided for in subsection (3)(B);

B. The association owns the facility and has valid easements for all sewers;

C. The document establishing the association imposes covenants on the land of each property owner which assures the proper operation, maintenance and modernization of the facility including at a minimum:

(I) The power to regulate the use of the facility;

(II) The power to levy assessments on its members and enforce these assessments by liens on the properties of each owner;

(III) The power to convey the facility to one (1) of the authorities listed in paragraphs (3)(B)1.-3.; and

(IV) The requirement that members connect with the facility and be bound by the rules of the association; and

D. The association is a corporation in good standing registered with the Office of the Missouri Secretary of state.

(C) The department will review the planning, design, construction and designation of watershed or regional sewage works. Where development is insufficient to warrant immediate construction of facilities for the entire watershed or region, interim facilities for a portion of the area shall be authorized as long as the design is compatible with 10 CSR 20-8, Design Guides. The department shall condition permits for these interim discharges so they will be eliminated upon the availability of watershed or regional facilities. At such time as watershed or regional facilities become available, and to the extent their capacity is sufficient, any existing subregional treatment works and/or lift stations shall be taken out of service and the tributary waste flows diverted into the watershed or regional facilities. A Regional Sewage Service and Treatment Plan shall be developed by all affected political jurisdictions and submitted

to the department. Staff will review the plan and submit recommendations to the Clean Water Commission. The Clean Water Commission may approve, require changes, deny the plan and/or hold public hearings related to approval of the plan.

(D) Industries, including electric cooperatives and mining operations, are by definition continuing authorities for collection and treatment of industrial type wastewater and incidental domestic wastewater associated with their operation when an authority listed in paragraph (3)(B)1. or 2. is infeasible.

(E) Private corporations which are not incorporated under the laws of the state of Missouri shall be represented by a registered agent in the state of Missouri before a construction permit or an operating permit will be issued by the department.

(4) Construction Permits.

(A) No person shall cause or permit the construction, installation or modification of any sewer system or of any water contaminant source, point source or wastewater treatment facility without first receiving a construction permit issued by the department except for the following:

1. Construction of a separate storm sewer; and

2. Facilities as provided in other 10 CSR 20-6 regulations.

(B) A separate application for each sewer system, water contaminant source, point source or wastewater treatment facility must be submitted to the department. Where there are multiple releases from a single operating location, however, one (1) application may cover all facilities and releases. For continuing authorities listed in paragraph (3)(B)1. or 2. only one (1) application may be required when the authority operates a sewage treatment plant and has one (1) or more other noncontinuous storm water-related discharges associated with the sewage treatment plant.

(C) An application for a construction permit must be submitted to the department at least one hundred eighty (180) days in advance of the date on which construction begins. Requests for a shorter time for a review of a wastewater treatment facility may be made but must be accompanied by a detailed statement of the justification for the request. No such statement is required when the application is only for the construction of sewers.

(D) An application shall consist of the following items:

1. Unless not required by the department, an engineering report shall be submitted by an engineer and shall contain the information required by 10 CSR 20-8.020 and 10 CSR 20-8.110-10 CSR 20-8.220. If the report includes a wastewater treatment facility, it shall include consideration of the

feasibility of constructing and operating a facility which will have no discharge to waters of the state (see section (12) of this rule). Unless the department specifies otherwise, this report will be reviewed and necessary changes made before the plans and specifications in paragraph (4)(D)2. will be reviewed;

2. Detailed plans and specifications shall be submitted by an engineer and shall contain the information required in 10 CSR 20-8.020 and 10 CSR 20-8.110-10 CSR 20-8.220 or other regulations as applicable;

3. An application form and permit fee;

4. A one inch equals two thousand feet (1" = 2000') scale map (or large) showing the location of all outfalls (alternate scale maps are allowed upon the request of the applicant and approval of the Department of Natural Resources);

5. Other information necessary to determine compliance with the Missouri Clean Water Law and these regulations as required by the department; and

6. If a construction permit is waived by the department, or not required, the information in paragraphs (4)(D)1.-5. may be required with application for the operating permit.

(E) If an application is incomplete or otherwise deficient, the applicant shall be notified of the deficiency and processing of the application may be discontinued until the applicant has corrected all deficiencies. The department will act after receipt of all documents and information necessary for a properly completed application, including appropriate filing fees and other supporting documents as necessary, by either issuing a notice of operating permit pending, issuing the construction permit or denying the permit. The director in writing, shall give the reasons for a denial to the applicant. Applicants who fail to satisfy all department comments after two (2) certified department comment letters in a time frame established by the department shall have the application returned as incomplete and the construction fees shall be forfeited. The applicant has the right to request that the time frames be extended when additional time is needed. The request must occur within the established time frame, it must be in writing and the department will grant reasonable time extensions.

(F) A notice of permit pending is a statement that the department intends to issue an operating permit. The department will issue the public notice of a pending new operating permit for a wastewater treatment facility before it issues the construction permit for the wastewater treatment facility. This allows the public an opportunity for comment prior to the construction of a wastewater treatment facility. A public notice will not be required prior to the issuance of a construction permit

BRIDGES, CISAR AND MIZELL, L.L.C.

ATTORNEYS AT LAW
2140 BAGNELL DAM BOULEVARD, SUITE 203
LAKE OZARK, MISSOURI 65049
WWW.LAKEOZARKLAW.COM

LEWIS Z. BRIDGES
TIMOTHY R. CISAR
DANIEL C. MIZELL

TELEPHONE: (573) 365-2383
FACSIMILE: (573) 365-2068

December 21, 2001

Charles McElyea
Phillips, McElyea, Walker
& Carpenter, P.C.
190 Court Circle
PO Box 559
Camdenton MO 65020

RE: *Big Island Property Owners' Association*

Dear Mr. McElyea:

I have been retained by a group of property owners in the Big Island subdivision including Ben Pugh. My clients have all paid in advance for sewage disposal services to their property. Some are connected as Mr. Pugh is, but others have been refused the right to connect.

At the time they made their agreements, neither the developer nor the Association included any requirements that they become members of the Property Owners' Association or subjected them to any of their rules and regulations. Thereafter, they were presented with proposed revisions of restricted covenants and included property and rejected same.

It is my opinion that your clients and the developer or Big Island are contractually obligated to provide sewage disposal services to my clients. The format under which they will be provided is primarily your client's concern. My clients are not willing at this time to become members of your Association but would not be opposed to your client being licensed by the Public Service Commission. Your assertion that the Code of State Regulations makes Mr. Pugh a member upon connection to system mis-states the result. The fact that your client has made these commitments to non-members and has connected some of them is merely proof that the Association is violating DNR rules and the provisions of its license.

December 21, 2001

Page 2 of 2

Please advise as to whether you also represent the developer or only the Property Owners' Association in this matter. I will be happy to discuss this matter at your convenience.

Very truly yours,



Lewis Z. Bridges

LZB:elt

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 Luitrell

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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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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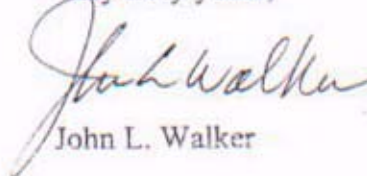
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Covenants and Conditions to which all parties can agree. If Folsom Ridge LLC does not agree with the contents of this letter, we would appreciate receiving Folsom Ridge LLC's statement of its understanding as to the agreement with the property owners 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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