

Mt. Shadows Home Owners Assoc.
C/O Dennis Chaney
3201 NE 38th Ave.
Portland, OR 97212

July 20, 2015

Public Utilities Commission of Oregon
201 High St, SE, Suite 100
Salem, OR

Subject: UM 1745, Supplement to Petition, Mt. Shadows Home Owners Assoc.

Greetings:

The following is a supplement providing more detailed information on this petition.

Background

Mt. Shadows is a 70's-era subdivision located twenty-two miles south of the city of Hood River on the northeast slope of Mt. Hood at 3,000' elevation. It is a ten acre rectangle running east and west with nineteen approximate one-half acre lots lining both sides of a private cul de sac road.

It was designed as a PUD with the water and sewer in place along with underground power and telephone. All of the houses are secondary homes with almost all of the owners living in the Portland metro area.

The development's Conditions and Restrictions established the Neighborhood Committee which was given the authority to be an architectural control board and to maintain the water and sewer systems. Each lot owner was given one vote for the election of committee officers and future community functions. The three partners in the project were the first Neighborhood Committee officers, and at a designated point they selected successors from the new lot owners and resigned from the Committee.

Subsequently, the Conditions and Restrictions were incorporated into the Bylaws of Mt. Shadows Home Owners Assoc. Except for unplanned events in 1971, the HOA would today be the operator of the water and sewer systems.

By the fall of 1971, the subdivision was complete and the developers were in the marketing phase. The infrastructure was installed, including a well, and a model home had been built. The last piece was a large wood water reservoir which was under

construction when the well stopped producing water. Shortly, water started flowing again, but then it failed a second time.

Simultaneous with the water problem, the partners were experiencing personal and financial problems. They decided to sell off the development and dissolve their partnership. At this time, one lot had been sold and the new owners had starting construction of a house.

In order to sell off the remaining lots the water problem had to be resolved; however, the partners were not investing any more money into the project. Jerry Branton was the engineer hired to install the water and sewer infrastructure. Branton offered to take responsibility to acquire water for the development if he was allowed to form Mt. Shadows Utilities Company.

In January of 1972, Branton and the Neighborhood Committee, composed of the three partners, entered into an agreement in which Branton agreed to acquire the water, to maintain the water and sewer systems, and to sell the services to the home owners. The agreement included an annual assessment paid by the owners to the water company to help fund the operation and maintenance of the systems. Branton also acquired the model home and became one of the home owners.

In the agreement, called the Water Supply Contract, the Neighborhood Committee set over to Branton all rights to the infrastructure and the public utility easements in order to operate the company. In return, Branton was to operate the company per all state requirements and to maintain the systems at his own expense. Upon termination of the contract or breach by Branton of any of the terms the above rights revert back to the Neighborhood Committee in its present configuration, the HOA.

Current Status

The agreement has been in place for forty-three years. Each home owner makes quarterly payments for water and sewer, with the exception of two owners who installed septic systems and only pay for water. Separate from Mt. Shadows, the water company also sells water to some property owners to the south in a subdivision known as the Snowbird development.

The home owners had a good relationship with Branton and the water company for many years. However, shortly after the unexpected death of Branton in 2011, it was learned that there were problems. Hood River County Health Department did a water system survey that year and documented several deficiencies. The most serious deficiency is that the current well is within 100' of the waste water system.

The immediate concern of the HOA is the status of the wood water reservoir and the septic tank. All of the infrastructure, with the exception of the well, is original to the development. The wood reservoir has deteriorated as would be expected after forty-

three years. A major leak was sealed in 2013, but a minor leak has been ongoing for decades. The company stated that the septic tank passed an inspection in 2013.

Branton's widow, Charlotte Branton, has been operating the water company since his passing. One of the home owners has been offering his help to assist her when possible. Within a year of Branton's passing, Char Branton started indicating that she might sell the company. This caused the home owners to first consider acquiring the company and an investigating committee was formed. In 2013, the HOA officially agreed to acquire the company, and the committee has been working on this ever since.

In May of 2015, the HOA thought a deal had finally been struck to purchase the company. A signing date was set at the office of Branton's attorney, but two days prior she cancelled the deal. Since then she has vacillated between keeping the business or finding an outside party to buy it. Everyone is in agreement that the reservoir is a major problem that needs to be addressed. Most recently, Branton has stated that she will keep operating the company, and she is considering a liner for the reservoir similar to a pond liner.

Plan B

After two years of failed efforts to acquire the company the HOA concluded that a Plan B was needed. The big picture is the protection of an estimated \$5 million in real estate investments. The immediate concern is that the company will continue billing for services, but not re-invest in the infrastructure. Or, stop gap repairs will be done which will just push the problems down the road. Eventually, once there is a catastrophic failure the HOA fears that the company will dissolve and leave the mess to the owners. The home owners will then be without water for an unknown period until the failed infrastructure is replaced at the owner's expense.

Plan B is the HOA's petition to be excluded from the exclusive service territory in order to develop a water system for the home owners. Upon receiving the permission of the PUC the HOA will install a new well, including a reservoir, that is over 100' from the waste water system. It is the position of the HOA that the contract with the water company terminates once the HOA has a water source as the contract exists for the purpose of receiving water from the company.

It is the HOA's opinion that the requirements of ORS 758.320 (2) are fulfilled. It is not detrimental to the public interest to allow the HOA to supply water to its home owners. The HOA, which comprises three quarters of the current customers, will drill a compliant well with a new reservoir to ensure a future of safe potable water. In addition, the HOA will replace the septic tank to ensure the longevity of the wastewater system.

The lack of action by Mt. Shadows Utilities, LLC is detrimental to the public interest. The company has not resolved the reservoir problem after at least three years of acknowledging that it is a major problem. It has not indicated an interest in replacing the

aged septic tank. And, it has not shown interest in installing a compliant water source that is outside the 100' line.

There is the matter of the Snowbird customers. Out of the ten properties there are currently six customers left. Over the years, they have been installing wells and leaving the system. It is believed that this trend is due to years of complaints about water pressure and general concern about the future of the water company.

The water company can continue serving the remaining Snowbird customers. In the event the water company goes out of business the PUC could allow the HOA to provide water for a period of time until the Snowbird customers transition to their own water sources.

In conclusion, the HOA is requesting this action after a two year attempt in acquiring the company resulted in nothing but frustration and the expenditure of multi-thousands of dollars in attorney's fees. In the event that Branton changes her mind again and wishes to sell we are still interested buyers, but based on experience it would probably be another wasted effort.

The HOA is obligated to take action in the best interests of the home owners. Their best interests is to regain control of the water and sewer systems as it was originally laid out in 1969. As long as Branton refuses to sell to the owners the HOA sees no other option but to ask the PUC to make a ruling that will permit the HOA to set up its own system. The HOA does not see continuing down the current path as a viable option