

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1248

ROATS WATER SYSTEM, INC., an active)
Oregon business corporation,)
Complainant,)
vs.)
GOLFSIDE INVESTMENTS, LLC, an active)
Oregon limited liability company,)
Defendant.)

COMPLAINANT ROATS WATER
SYSTEM, INC'S REPLY TO ANSWER
OF GOLFSIDE INVESTMENTS, LLC

ROATS WATER SYSTEM, INC. ("Roats") responds to the Answer and Affirmative
Defenses of GOLFSIDE INVESTMENTS, LLC, (hereinafter "Golfside"), as follows:

FIRST AFFIRMATIVE DEFENSE

(Good Faith and Fair Dealing)

1.

Defendant has an obligation of good faith and fair dealing with respect to the contracts
it enters into. Golfside is a successor in interest to 523, LLC. The entities are closely related.
Golfside's related predecessor entered into an agreement whereby it agreed to pay a certain
tariff charge to Roats in the event it developed the property as individual tax lots. Now,
Golfside is attempting to get around the agreed charges by claiming that since such charges
were not assessed up front, they cannot be assessed now. However, it is Roats' position that
these charges were provided up front when the written contract included a provision that if the
developer created a PUD with individually-owned tax lots, it would pay the applicable tariff.
Golfside's current position violates its duty of good faith and fair dealing.

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1 **SECOND AFFIRMATIVE DEFENSE**

2 (Waiver / Laches)

3 2.

4 Roats realleges the matters alleged in paragraph 1 above.

5 3.

6 Golfside claims that Roats’ tariff charges are unjust and unreasonable. However,
7 neither Golfside nor its predecessor made any objection through the PUC or otherwise as to the
8 justness or reasonableness of the charges it agreed to pay in its written agreement with Roats.
9 Defendant has long waived any opportunity to contest the fairness of the charges it agreed to
10 pay in the contract seven years ago.

11 **COUNTERCLAIM**

12 (Attorney Fees ORS 756.185)

13 4.

14 Golfside has pleaded a claim against Roats alleging Roat’s violation of ORS 757.020
15 for charging unfair and unreasonable amounts. Golfside claims an entitlement to
16 reimbursement of its attorney fees on that particular claim pursuant to ORS 756.185. If Roat’s
17 charges, whether applicable in this case or not, are determined to be reasonable, Roats is
18 entitled to reimbursement of its attorney fees as ORS 756.185 is reciprocal.

19 DATED THIS _____ day of October 2006.

20 BRYANT, LOVLIE & JARVIS,

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22 MARK G. REINECKE, OSB 91407
23 Of Attorneys for Roats Water Systems
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