

1 decision is attached to the Complaint as Exhibit “B” but denies that this decision authorized
2 the replat discussed in Complaint paragraph 4 and the first sentence of Complaint paragraph
3 5.

4 5.

5 As to paragraph 6, Golfside admits that the Water Service Agreement between Roats
6 and 523, LLC discussed payment of residential development charges, but Golfside denies that
7 any obligation is imposed by that document on “the owner of the property” or any other entity
8 besides Roats and 523, LLC. Moreover, the Water Service Agreement specifically states that
9 such development charges are governed by “schedule No. 5 and rule 6a.” Accordingly,
10 Golfside denies that Rule 9a applies in any manner. Golfside admits the third and fourth
11 sentences of paragraph 6 but again denies that any rules or rates discussed in the June 27,
12 2005 letter have any application to this case.

13 6.

14 As to paragraph 8, Golfside admits that schedule No. 5 lists the identified development
15 charges and Complainant has accurately described the size of the 94 lots at issue.

16 7.

17 As to paragraph 9, Golfside admits that Complainant has accurately quoted a portion
18 of Rule 9a but denies that such rule has any application to this case.

19 8.

20 Golfside lacks sufficient knowledge or information to form an opinion as to the truth
21 or falsity of paragraphs 10 and 12 and, therefore, denies the same.

22 9.

23 Golfside denies the first sentence of paragraph 11 and admits the remainder.

24 10.

25 As to paragraph 13, Golfside admits it has not paid any of the amount demanded by
26 Complainant, but Golfside denies that such demand is supported by the applicable tariffs or

1 that Golfside has failed to pay any “development charges specified in the tariffs.”

2 11.

3 Should Golfside prevail in this dispute, it is entitled to an award of its reasonable
4 attorney fees pursuant to ORS 756.185.

5
6 **FIRST AFFIRMATIVE DEFENSE**
(Lack of Jurisdiction)

7 12.

8 Golfside is not regulated by the Public Utilities Commission and, therefore, the PUC
9 lacks jurisdiction over Defendant and/or the subject matter of this action.

10
11 **SECOND AFFIRMATIVE DEFENSE**
(ORS 92.845)

12 13.

13 The subdivision of the subject property from one tax lot to many tax lots was done
14 pursuant to HB 3686, which has since been codified at ORS 92.830 through 92.845. The law,
15 at ORS 92.845(1)(b), prohibits the precise charges that Complainant seeks to recover through
16 this action.

17 14.

18 Alternatively, if ORS 92.845 does not prohibit the entirety of Complainant’s demand,
19 it prohibits any and all charges associated with lots connected to Roats water prior to March
20 17, 2005, being the date Golfside received approval to convert the subject property into a
21 planned unit development.

22
23 **THIRD AFFIRMATIVE DEFENSE**
(Failure of condition precedent)

24 15.

25 Rule 6a, rather than Rule 9a, governs this complaint because Rule 9a did not become
26 effective until July 1, 2005, *after* the subject property was replatted into numerous tax lots and

1 *after* Complainant asserted its first, informal demand for payment.

2 16.

3 Rule 6a only permits assessment of additional development charges if “[s]ubsequent to
4 setting the master meter and payment of its fee ... lots within the master metered development
5 become separately identified tax lots.”

6 17.

7 No master meter was ever set in the subject property, so Rule 6a’s additional charges
8 cannot apply.

9
10 **FOURTH AFFIRMATIVE DEFENSE**
(Statute of Limitations)

11 18.

12 Depending upon whether Complainant’s suit is premised on contract or some other
13 theory of liability, this suit is governed either by the six year statute of limitations set forth in
14 ORS 12.080 or by the two year statute of limitations set forth in ORS 12.100.

15 19.

16 If based on contract, Complainant’s claim accrued on January 31, 2000, when
17 Complainant and 523, LLC signed the Water Service Agreement.

18 20.

19 If not based on contract, Complainant’s claim accrued on December 18, 2003, when
20 Golfside first recorded a plat which divided the single tax lot into numerous tax lots.

21 21.

22 Complainant filed its Complaint on or about February 9, 2006.

23 22.

24 Accordingly, this Complaint is barred by the statute of limitations contained in either
25 ORS 12.080 or 12.100.

26 ///

**FIFTH AFFIRMATIVE DEFENSE
(Laches)**

23.

In the alternative to the statute of limitations defense, this Complaint is barred by the doctrine of laches because Complainant did not assert, formally or informally, any right to additional development charges until more than 15 months after the December 18, 2003 replat which was the trigger for Complainant's alleged right to collect additional charges. Golfside was prejudiced by such delay and inaction because Golfside made development decisions, including the decision to seek approval for a planned unit development, based in part on the lack of any claim to additional charges.

**SIXTH AFFIRMATIVE DEFENSE
(ORS 757.020)**

24.

The law, at ORS 757.020, prohibits "every unjust or unreasonable charge" for utility service.

25.

Complainant's demand is unjust and unreasonable for at least the following reasons:

- a. The charge, if allowed, will represent a windfall for Roats because Roats would receive additional money without performing any additional work or providing any additional services. Thus, Golfside's payment of the alleged charges would result in the unjust enrichment of Roats.
- b. Golfside subdivided its property in reliance of the protections offered by HB 3686. At the time, the law did not prohibit Golfside from constructing site-built homes on the new lots. A 2004 amendment limited the protections of HB 3686 to subdivisions of manufactured homes only, but that amendment was not effective when the December 18, 2003 plat was recorded. The only reason Golfside converted its subdivision to a PUD is because the City of Bend threatened to retroactively apply the 2004 amendments that prohibit the construction of site-built homes.
- c. Allowing the charges would (1) adversely affect the City's continuing struggle to provide affordable housing and (2) violate the policy behind ORS 92.830 through 92.845 to avoid "an undue financial burden on the owner of a park" who chooses to subdivide.

1 d. The Water Service Agreement indicates that connection charges only apply
2 to “new service,” but no new service is at issue respecting Roats’ claim.
3 Similarly, the Agreement also provides that the “total amount of this
4 contract is due and payable with the written acceptance of Company for the
5 water facilities,” and no warning is given that additional amounts, above
6 and beyond the “total amount”, may be charged at a later date. To the
7 extent PUC approved tariffs or rules purport to authorize additional charges
8 despite this contract language, such tariffs and/or rules constitute an
9 unconstitutional interference with a private contract.

10 **SEVENTH AFFIRMATIVE DEFENSE**
11 **(Lack of Contractual Privity)**

12 26.

13 The Water Service Agreement, upon which Complainant bases its demand for
14 additional charges, has never been signed by Golfside. Nor does that Agreement provide that
15 it shall apply to “successors and assigns.”

16 27.

17 Accordingly, there is no contractual privity between the parties, and Complainant’s
18 demand must fail.

19 **EIGHTH AFFIRMATIVE DEFENSE**
20 **(Estoppel)**

21 28.

22 Through the Water Service Agreement, upon which Complainant bases its demand for
23 additional charges, Complainant represented both that (a) the “total amount” of the contract
24 would be due upon Complainant’s acceptance of the water facilities (which occurred in early
25 2000) and (b) connection charges would only be imposed for “new service.”

26 29.

Complainant made the above representations while knowing it might seek additional
charges if the subject property were ever subdivided into numerous tax lots, even though such
subdivision would not require “new service.”

30.

Golfside lacked any knowledge that Complainant might seek additional charges and,

1 in making development decisions including the December, 2003 replat and the 2005
2 application to convert to a planned unit development, relied on Complainant's representations
3 discussed in paragraph 28.

4 31.

5 Accordingly, Complainant is estopped from seeking any additional charges.

6
7 **NINTH AFFIRMATIVE DEFENSE**
8 **(Ripeness)**

9 32.

10 As stated on page 7 of Exhibit "B" to the Complaint, development charges are not due
11 until building permits have issued.

12 33.

13 To the extent Complainant seeks to impose development charges on lots for which no
14 building permits have issued, this action is not ripe for adjudication.

15 **TENTH AFFIRMATIVE DEFENSE**
16 **(Failure of Consideration)**

17 34.

18 Complainant is already obligated to provide water to the 94 lots at issue.

19 35.

20 Complainant has not and does not offer any additional services or other form of
21 consideration to support its demand for payment of additional charges.

22 36.

23 Thus, to the extent the parties' relationship and Complainant's demand are governed
24 by a contract, being the January, 2000 Water Service Agreement, Complainant's demand
25 cannot succeed because it is contractual in nature yet unsupported by consideration.

26 ///

///

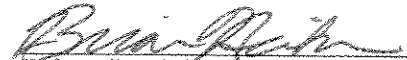
1 WHEREFORE, having answered Roats' Complaint, Golfside prays that such
2 Complaint be dismissed with prejudice and that Golfside be awarded (1) its reasonable
3 attorney fees, costs and disbursements incurred herein and (2) such further and additional
4 relief as may be deemed just and equitable.

5

6 **DATED** this 21 day of June, 2006.

7

PETERKIN & ASSOCIATES


Brian C. Hickman; OSB #03109
Of Attorneys for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that I served on the date set forth below the foregoing DEFENDANT'S ANSWER on the following counsel by the following indicated method(s):

Mark G. Reinecke
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[] by MAILING a full, true and correct copy in a sealed, postage paid envelope, addressed to the above and deposited with the U S Postal Service in Bend, OR 97701.

[] by causing full, true and correct copies to be hand delivered to the above persons.

[X] by FAXING a full, true and correct copy to the above.

DATED: June 21, 2006.

PETERKIN & ASSOCIATES



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