

State of Florida



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: August 28, 2002
TO: Division of the Commission Clerk and Administrative Services
FROM: Patricia Brady, Division of Economic Regulation *pb* *JN*
RE: Docket No. 020640-SU - Application for certificate to provide wastewater service in Lee County by Gistro, Inc.

Please add to the docket file the attached documents totaling 42 pages from J. Fritz Holzberg, applicant, to Rosanne Gervasi, Commission staff. The documents are part two of the utility's two part response to the allegation it was attempting to charge for service without Commission approved rates and charges.

Attachment

cc: Division of Economic Regulation (Redemann)
Office of the General Counsel (Gervasi)
Division of the Commission Clerk and Administrative Services (Security File)

DOCUMENT NUMBER - DATE

09083 AUG 28 02

FPSC-COMMISSION CLERK

SEWER CAPACITY PRESALE AGREEMENT

THIS AGREEMENT, made and entered into on the date set forth below, by and between Bonita Springs Water System, Inc., 11860 East Terry Street, Bonita Springs, Florida 33923 ("Service Company"), and

FOREST MERE JOINT VENTURE
26511 SOUTHERN PINES DRIVE
BONITA SPRINGS, FL 33923
Telephone No. 813-598-3994
("Customer")

WHEREAS, Service Company has undertaken to construct and operate a central sanitary sewer collection, transmission, treatment, and disposal system in the Bonita Springs area ("Sewer System") which has capacity available to serve Customer; and,

WHEREAS, Customer would like to receive service from the Sewer System for the following units located on its property described in Exhibit "A":

| | |
|--|-------------------------------|
| <u> </u> mobile home | <u> </u> condominium |
| <u> </u> recreational vehicle | <u>155</u> single-family |
| <u> </u> commercial | <u>120</u> multi-family |

WHEREAS, the parties wish to enter into this Agreement in order to secure the provision of service pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of ten dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The recitations herein are true and correct as stated.
2. The Customer hereby declares its intent to connect to the Sewer System within sixty (60) days of written notification from Service Company that capacity is available and the connection can be made. Service Company shall bear the cost of extending a sewer transmission main to a point abutting Customer's Property. Customer shall be responsible for, and bear the cost of, connection to the Sewer System's transmission main, which connection may be made by Service Company at its option.

RECEIVED
 2002
 BONITA PUBLIC SERVICE COMPANY
 PART OF THE GENERAL CORP.

3. Customer's obligation to connect to the Sewer System is conditioned upon Service Company providing service to the Property in the capacity set forth herein, without the payment of any connection charge, service availability charge or aid for new construction fee. Service Company has advised Customer that the failure to reserve capacity during the presale period may result in the subsequent payment of a substantial connection charge as a condition for the purchase of capacity and service.

4. Except as set forth in paragraph 8 herein, this Agreement evidences the binding obligation of both Customer and Service Company, their respective successors and assigns, for connection of existing units on the Property to the Sewer System. Customer warrants and represents that it has the authority to enter into this Agreement and to bind the Property as set forth herein.

5. Customer agrees that units on the Property shall, upon the Sewer System being made available for connection by Customer, be responsible for payment of monthly rates and charges on a take or pay basis. The rates and charges shall be those published in a tariff available from Service Company and shall be identical to rates charged to other customers in the same class of service as Customer. Monthly service charges shall include payment for treatment of all domestic wastewater introduced into the Sewer System from within the Property.

6. At Service Company's option, Customer shall convey to Service Company the on-site collection system serving the Property prior to the commencement of service from Sewer System. Such conveyance shall be by deed, bill of sale or other documents satisfactory to Service Company accompanied by appropriate easements or other property rights necessary to provide service to the Property.

7. Service Company shall provide sanitary sewer service to the Property in a manner consistent with federal, state and local regulatory requirements regarding the provision of such service. Customer shall introduce only domestic sanitary sewage from the Property into the Sewer System.

8. Service Company has advised Customer that it must achieve a minimum level of presold capacity in order to make financially feasible the provision of sanitary sewer service to Customer without payment of a connection charge. If Service Company is unable to presell that minimum capacity, and issue tax-exempt bonds of sufficient quality and amount to finance and construct the Sewer System, this Presale Agreement shall be null and void.

9. Service Company and Customer agree that this presale offer of capacity without connection charge payment, and the scope of this Agreement, apply only to existing customers within the Property receiving sewer service and those reasonably anticipated to be connected to the Sewer System within 12 months of the date that service is available, provided, however, that as to customers not connected to the Sewer System as of that date, that nevertheless monthly service fees are paid to the Sewer System on their behalf. Any customers for which monthly fees are paid for said 12 continuous months and which are not so connected to the Sewer System at the end of said 12-month period after service is so available, shall be entitled to a credit for such 12 months' payments against Service Company's connection charge in effect as of the date of actual connection.

10. It is anticipated that sewer service should be available to the property between 12 and 18 months from the time of execution hereof. For planning purposes, Customer hereby advises Service Company that it anticipates having 70 occupied units requiring sanitary sewer service as of January 1, 1992, and 205 additional occupied dwelling units requiring sanitary sewer service as of January 1, 1993.

11. This Agreement was delivered on _____, 1990 and shall constitute an offer which must be accepted within 30 days. This Agreement shall be effective upon execution.

IN WITNESS WHEREOF, the parties hereto enter into this Agreement as of the date written above.

BONITA SPRINGS WATER SYSTEM, INC.

T. Harvey Haines
T. HARVEY HAINES, President

1/15/91
Date

WITNESSES:

Mary Ann Kelly
J.M. O'Keefe

J. Paul Kelsley
Its Authorized Representative

Jan 2, 1991
Date

WITNESSES:

Mary Ann Kelly
Sandra J. Coffey

g:\atty\bsvs\presale
10/8/90/tm

FOREST MERE JOINT VENTURE

P.O.Box 366 762
Bonita Springs
FLO. 34136
(941)495 8089

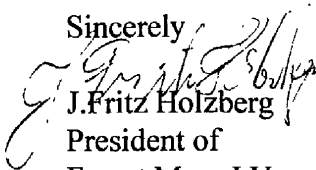
February 15, 001

State Of Florida Department
Of Environmental Protection

To whom it may concern.

Please be advised that the ownership of the sewer collection system in the Spring Lakes Development in Bonita Springs on Southern Pines Drive, has changed ownership. From Forest mere Joint Venture to GISTRO,INC., a Florida corporation. Sewer letters for building permits for the above mentioned development have to be requested from the sole owner of the sewer system GISTRO INC. Permission to connect to a building lot in this subdivision will only be given if a sewer letter has been issued by the sewer owner.

Sincerely



J. Fritz Holzberg
President of
Forest Mere J.V.

New owner.
GISTRO,INC.
P.O.Box 110131
Naples FL.34108
(941)495 8089

Registered agent
Tiffany Winkelsas
1601 Jackson Street, Suite 201.
Fort Myers, florida 33901.



BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number (941) 335-2236

Facsimile (941) 335-2606

Bob Janes
District One

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

Diana M. Parker
County Hearing
Examiner

April 24, 2001

G. Donald Thomson, P.A.
Attorney at Law
Bonita Bay Executive Center II
3461 Bonita Bay Boulevard, Suite 220
Bonita Springs, Florida 34134

**RE: BONITA SPRINGS UTILITIES, INC. (BSU) / MR. FRITZ HOLZBERG
(GINSTRO, INC.)**

Dear Don:

I am writing as the result of a recent meeting with Mr. Fritz Holzberg concerning the current BSU billing for wastewater treatment services provided to his development (Ginstro, Inc.) in Bonita Springs.

Apparently, Mr. Holzberg has connected his development to the BSU Utility System as a commercial customer for treatment services only. At this time, he has neither dedicated, nor has BSU accepted, his development's internal wastewater collection system, for BSU operations and maintenance.

As the result, Mr. Holzberg should be receiving a single bill from BSU for wastewater treatment only, which should be priced based upon the combined water usages for his development's residents.

At this time, however, BSU is billing Mr. Holzberg's sewer customers directly and individually for service, which given the present circumstances, is inappropriate without his consent. The County, as the franchisor for BSU, is respectfully requesting that BSU revisit this billing method with Mr. Holzberg and hopefully resolve same without further County input.

BSU-HOLZBERG-GINSTRO thomson.wpd

**RE: BONITA SPRINGS UTILITIES, INC. (BSU) / MR. FRITZ HOLZBERG
(GINSTRO, INC.)**

During our discussions, Mr. Holzberg was advised most strenuously by me, that:

1. BSU's connection fees (as part of its rates schedules) are non-negotiable, and
2. BSU has the right to require certain reasonable requirements in its specifications as a pre-condition to accepting an internal wastewater collection system, to include the installation of specified materials (including certain pumps, by name, for uniformity of servicing).

Please discuss this matter with Fred Partin and ultimately with Mr. Holzberg, at your convenience. I will make myself available to answer any questions at any point in this process, if you so desire. Thanks for your assistance.

Cordially,



David M. Owen
Assistant County Attorney

DMO:dm

xc: James G. Yaeger, County Attorney
Fred Partin, General Manager, Bonita Springs Utilities, Inc.
Mr. Fritz Holzberg (Ginstro, Inc.)

G. DONALD THOMSON, P.A.

ATTORNEYS AT LAW

BONITA BAY EXECUTIVE CENTER II

3461 BONITA BAY BOULEVARD

SUITE 220

BONITA SPRINGS, FLORIDA 34134

RICHARD S. ANNUNZIATA
BRYAN K. HORSLEY
G. DONALD THOMSONTELEPHONE (941) 498-6222
TELECOPIER (941) 498-6225

May 23, 2001

David M. Owen
Assistant County Attorney
Lee County
Post Office 398
Fort Myers, L 33902-0398

Re: Bonita Springs Utilities, Inc. (BSU)/Mr. Fritz Holzberg (Forest Mere Joint Venture)

Dear David:

Thank you for your letter of April 24, 2001, in the above matter. I apologize for my delay in responding. As I mentioned in our telephone conversation, it was my understanding that a Pre-Sale Agreement existed between Bonita Springs Utilities, Inc., and Forest Mere Joint Venture. The Agreement was entered into in January 1999, between BSU and Mr. Holzberg as a representative of Forest Mere Joint Venture. I am enclosing a copy for your reference. We have no record of Ginstro, Inc., and, in fact, the Florida Secretary of State corporate records does not reflect the existence of a corporation named Ginstro, Inc.

In any event, I believe the pre-sale agreement defines the terms and conditions of the agreement between the parties such that BSU is authorized to directly bill the Forest Mere customers. As I understand it, this has never been raised as an issue by Mr. Holzberg in the past.

I appreciate your bringing this to BSU's attention. If you have any questions, please do not hesitate to contact me.

Sincerely yours,


G. Donald Thomson

GDT/lmm

cc: Fred Partin, General Manager

G. DONALD THOMSON, P.A.

ATTORNEYS AT LAW
BONITA BAY EXECUTIVE CENTER II
3461 BONITA BAY BOULEVARD
SUITE 220
BONITA SPRINGS, FLORIDA 34134

RICHARD S. ANNUNZIATA
BRYAN K. HORSLEY
G. DONALD THOMSON

TELEPHONE (941) 498-6222
TELECOPIER (941) 498-6225

May 23, 2001

David M. Owen
Assistant County Attorney
Lee County
Post Office 398
Fort Myers, L 33902-0398

Re: Bonita Springs Utilities, Inc. (BSU)/Mr. Fritz Holzberg (Forest Mere Joint Venture)

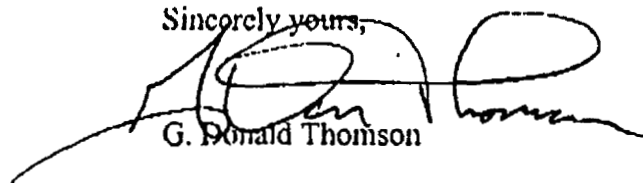
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In any event, I believe the pre-sale agreement defines the terms and conditions of the agreement between the parties such that BSU is authorized to directly bill the Forest Mere customers. As I understand it, this has never been raised as an issue by Mr. Holzberg in the past.

I appreciate your bringing this to BSU's attention. If you have any questions, please do not hesitate to contact me.

Sincerely yours,


G. Donald Thomson

GDT/lmm
cc: Fred Partin, General Manager
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[REDACTED]
1.15.91



FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

August 23, 2000

ROBERT T. MAHER, ESQ.
1601 JACKSON ST., SUITE 201
FT. MYERS, FL 33901

The Articles of Incorporation for GISTRO, INC. were filed on August 17, 2000 and assigned document number P0000079551. Please refer to this number whenever corresponding with this office regarding the above corporation. The certification you requested is enclosed.

PLEASE NOTE: COMPLIANCE WITH THE FOLLOWING PROCEDURES IS ESSENTIAL TO MAINTAINING YOUR CORPORATE STATUS. FAILURE TO DO SO MAY RESULT IN DISSOLUTION OF YOUR CORPORATION.

A CORPORATION ANNUAL REPORT/UNIFORM BUSINESS REPORT MUST BE FILED WITH THIS OFFICE BETWEEN JANUARY 1 AND MAY 1 OF EACH YEAR BEGINNING WITH THE CALENDAR YEAR FOLLOWING THE YEAR OF THE FILING DATE NOTED ABOVE AND EACH YEAR THEREAFTER. FAILURE TO FILE THE ANNUAL REPORT/UNIFORM BUSINESS REPORT ON TIME MAY RESULT IN ADMINISTRATIVE DISSOLUTION OF YOUR CORPORATION.

A FEDERAL EMPLOYER IDENTIFICATION (FEI) NUMBER MUST BE SHOWN ON THE ANNUAL REPORT/UNIFORM BUSINESS REPORT FORM PRIOR TO ITS FILING WITH THIS OFFICE. CONTACT THE INTERNAL REVENUE SERVICE TO RECEIVE THE FEI NUMBER IN TIME TO FILE THE ANNUAL REPORT/UNIFORM BUSINESS REPORT AT 1-800-829-3676 AND REQUEST FORM SS-4.

SHOULD YOUR CORPORATE MAILING ADDRESS CHANGE, YOU MUST NOTIFY THIS OFFICE IN WRITING, TO INSURE IMPORTANT MAILINGS SUCH AS THE ANNUAL REPORT/UNIFORM BUSINESS REPORT NOTICES REACH YOU.

Should you have any questions regarding corporations, please contact this office at the address given below.

Wanda Cunningham, Document Specialist
New Filing Section

Letter Number: 800A00045159

State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of GISTRO, INC., a Florida corporation, filed on August 17, 2000, as shown by the records of this office.

The document number of this corporation is P00000079551.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Twenty-third day of August, 2000



CR2EO22 (1-99)

Katherine Harris

Katherine Harris
Secretary of State

ARTICLES OF INCORPORATION
OF
GISTRO, INC.

FILED
00 AUG 17 4:12:27
SECRET
TALLAHASSEE, FL

ARTICLE I. CORPORATE NAME.

The name of this corporation is GISTRO, INC.

ARTICLE II. PRINCIPAL OFFICE.

The principal place of business and mailing address of this corporation are 1601 Jackson Street, Suite 201, Fort Myers, Florida 33901.

ARTICLE III. CAPITAL STOCK.

The number of shares of stock that this corporation is authorized to have outstanding at any one time is 1000, \$1.00 par value.

ARTICLE IV. INITIAL REGISTERED AGENT AND OFFICE.

The name and address of the initial registered agent are Tiffany Winkelsas, 1601 Jackson Street, Suite 201, Fort Myers, Florida 33901.

ARTICLE V. INCORPORATORS.

The name and street address of the incorporator of these articles of incorporation are Tiffany Winkelsas, 1601 Jackson Street, Suite 201, Fort Myers, Florida 33901.

ARTICLE VI. PURPOSE

The purpose of the corporation is to engage in sale, ownership, management and development of real estate and related activity, and any other lawful business activity.

ARTICLE VII. INDEMNIFICATION

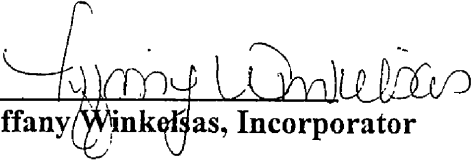
The corporation shall indemnify each officer and director to the fullest extent permitted by Chapter 607, Fla. Stat.

ARTICLE VIII. BY-LAWS

The power to enact, adopt, alter , repeal or amend by-laws shall be vested in the Board of Directors.

ARTICLE IX. DIRECTORS

There shall be one initial Director, who shall be the J. Fritz Holzberg, 1601 Jackson Street, Suite 201, Fort Myers, Florida 33901. The shareholders of the corporation shall have the right to increase or decrease the number of directors by vote of a simple majority of the shareholders at a duly authorized shareholder meeting. Directors shall be elected by the shareholders in the manner set forth in Chapter 607, Fla.Stat.



Tiffany Winkelsas, Incorporator

DESIGNATION OF REGISTERED AGENT

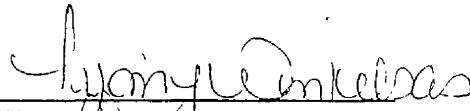
Pursuant to the provisions of F.S. 607.0501, the undersigned corporation, organized under the laws of the State of Florida, submits the following statement in designating the registered office/registered agent in the State of Florida.

1. The name of the corporation is GISTRO, INC.
2. The name of the registered agent is Tiffany Winkelsas.
3. The address of the registered agent/registered office is 1601 Jackson Street, Suite 201, Fort Myers, Florida 33901.

ACCEPTANCE BY REGISTERED AGENT

Having been named as registered agent and designated to accept service of process for the above corporation, I hereby accept the appointment as registered agent and agree to

act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

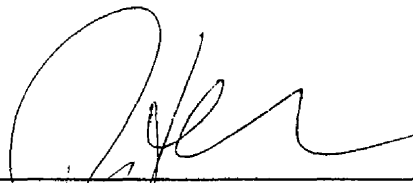

Tiffany Winkelsas

Date: July 27, 2000

STATE OF FLORIDA
COUNTY OF LEE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized by law in the state and county aforesaid to take acknowledgments, personally appeared Tiffany Winkelsas, personally known to me and known to be the person described in and who executed the above and foregoing instrument and she acknowledged before me that she executed same as her free and voluntary act and deed for the uses and purposes therein expressed.

WITNESS, my hand and official seal in the State and County aforesaid this 27th day of July, 2000.



NOTARY PUBLIC



Robert T Maher
My Commission CC689844
Expires October 19, 2001

COPY TO CLIENT

Roosa, Sutton, Burandt, Adamski & Roland, LLP
Attorneys and Counselors at Law

Richard V.S. Roosa
Larry D. Sutton
Robert B. Burandt
Robert C. Adamski
Ty G. Roland
Tulio G. Suárez

1714 Cape Coral Parkway
Cape Coral, Florida 33904

Telephone: 941-542-4733

Facsimile: 941-542-9203

July 13, 2001

G. Donald Thomson, Esquire
Bonita Bay Executive Center II
3461 Bonita Bay Boulevard, Suite 220
Bonita Springs, FL 34134

RE: **Gistro, Inc. v. Bonita Springs Utility, Inc. (BSU)**

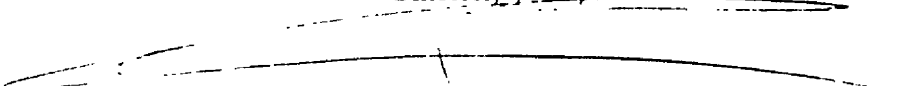
Dear Mr. Thomson:

Please be advised that our firm has been retained by GISTRO, INC. as an assignee of the undated "SEWER CAPACITY PRESALE AGREEMENT" between FOREST MERE JOINT VENTURE, INC. and BONITA SPRINGS WATER SYSTEM, INC. Please note that it is GISTRO, INC. and not GINSTRO, INC.

Since this was a presale agreement, please provide my office with any additional documentation executed by the parties subsequent to same. Also, please provide my office with any documentation that would indicate the period of time that this presale agreement was to cover, since I am unable to determine a termination date, I assume the agreement is terminable at will by either party. Based on that assumption, please be advised that my client plans to reactivate his own treatment plant thus terminating his arrangement with your client, Bonita Springs Water System, Inc. My client anticipates it will take him between 90 and 120 days to complete the necessary plant repairs, however, as those repairs near completion we will provide you with a date certain for terminating service.

Thank you for your expected cooperation in this matter. Should you have any questions or comments, please feel free to contact my office.

Sincerely yours,


Robert B. Burandt

RBB:lda

Roosa, Sutton, Burandt, Adamski & Roland, LLP
Attorneys and Counselors at Law

Richard V S Roosa
Larry D. Sutton
Robert B. Burandt
Robert C. Adamski
Ty G. Roland
Tulio G. Suárez

1714 Cape Coral Parkway
Cape Coral, Florida 33904

Telephone: 941-542-4733

Facsimile: 941-542-9203

August 16, 2001

David M. Owen
Assistant County Attorney
Post Office Box 398
Fort Myers, FL 33902-0398

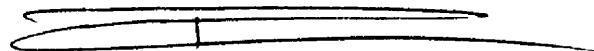
RE: Gistro, Inc. v. Bonita Springs Utility, Inc. (BSU)

Dear Mr. Owen:

Please be advised that our firm has been retained by Gistro, Inc., as assignee of Forest Mere Joint Venture, Inc. to demand that the County as franchisor instruct Bonita Springs Utility, Inc. to cease and desist from billing Gistro, Inc.'s customers directly for sewer service. Gistro, Inc. is entitled to be billed at the bulk rate and invoice its customers as opposed to the current system of BSU billing Gistro's customers individually.

Thank you for your expected cooperation in this matter.

Sincerely yours,



Robert B. Burandt

RBB:lda

Roosa, Sutton, Burandt, Adamski & Roland, LLP
Attorneys and Counselors at Law

Richard V.S. Roosa
Larry D. Sutton
Robert B. Burandt
Robert C. Adamski
Ty G. Roland
Tulio G. Suárez

1714 Cape Coral Parkway
Cape Coral, Florida 33904

Telephone: 941-542-4733

Facsimile: 941-542-9203

August 16, 2001

G. Donald Thomson, Esquire
Bonita Bay Executive Center II
3461 Bonita Bay Boulevard, Suite 220
Bonita Springs, FL 34134

RE: Gistro, Inc. v. Bonita Springs Utility, Inc. (BSU)

Dear Mr. Thomson:

I have not had a response to my July 13, 2001 correspondence therefore, I will assume that you are in agreement with my clients position.

At this time, my client is demanding that you cease and desist from billing his customers directly. Gistro, Inc. as assignee of Forest Mere Joint Venture is your customer and should be billed accordingly at the bulk rate, there after, Gistro, Inc. will turn around and bill its customers upon receipt of your invoice.

Your letter to the Assistant County Attorney, David M. Owen, dated May 23, 2001, you suggest that the agreement between the parties allows BSU to directly bill Forest Mere Joint Venture customers. Please articulate with specificity where you believe that right is contained in the Sewer Capacity Presale Agreement.

If this billing does not cease and desist immediately we will be instituting litigation, at which time we will seek additional damages for interference with the business relationship, attorneys fees and costs. Please advise your client and contact my office as soon as possible.

Sincerely yours,


Robert B. Burandt

RBB:lda

LAW OFFICES
ROSE, SUNDSTROM & BENTLEY, LLP

2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301

(850) 877-6555

CHRIS H. BENTLEY, P.A.
F. MARSHALL DETERDING
MARTIN S. FRIEDMAN, P.A.
JOHN R. JENKINS, P.A.
STEVEN T. MINDLIN, P.A.
JOSEPH P. PATTON
DAREN L. SHIPPY, LL.M. TAX
WILLIAM E. SUNDSTROM, P.A.
DIANE D. TREMOR, P.A.
JOHN L. WHARTON

MAILING ADDRESS
POST OFFICE BOX 1567
TALLAHASSEE, FLORIDA 32302-1567

TELECOPIER (850) 656-4029

ROBERT M. C. ROSE
OF COUNSEL

August 24, 2001

Via Telecopy and Mail

Robert B. Burandt, Esq.
Roosa, Sutton, Burandt, Adamski & Roland, LLP
1714 Cape Coral Parkway
Cape Coral, Florida 33904

Re: **Bonita Springs Utilities, Inc.;**
Forest Mere Pre Sale Agreement
Our File No. 20989.08

Dear Mr. Burandt:

This firm is counsel to Bonita Springs Utilities, Inc. ("BSU") and we have been forwarded your letters dated July 13 and 16, 2001 and instructed to provide a response. In order to continue dealing with your client beyond this initial response, please provide a copy of the assignment document evidencing the status of Gistro, Inc. as an assignee under the BSU Sewer Capacity Presale Agreement with Forest Mere Joint Venture, Inc.

It is the position of BSU that the Sewer Capacity Presale Agreement dated January 15, 1991 is no longer an executory contract, but is, rather, a fully-executed contract upon which the rights and obligations of parties have been satisfied. BSU undertook and completed construction of its central wastewater system, at an initial cost of over \$20 million, and made that service available to the units within Forest Mere without payment of a connection fee. The units within Forest Mere were connected to the central wastewater system without payment of a connection charge, and have continuously received service from BSU since that time. Accordingly, all units within Forest Mere are, by the terms of the Presale Agreement, the customers of BSU.

Robert B. Burandt, Esq.
August 24, 2001
Page 2

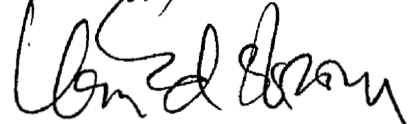
It is unclear what motive your client may have in raising this issue now, when the Presale Contract was fulfilled ten years ago, or what your intentions are with regard to utility service. Your client does not have the regulatory approvals needed in order to operate a wastewater utility in a lawful manner. Further, be advised that BSU considers the customers within Forest Mere to be its customers and will vigorously contest any effort by your client which is inconsistent with that position. This will include challenging any efforts by your client to secure permission from the Florida Public Service Commission, the Florida Department of Environmental Protection, or the Florida Department of Health or any other agencies having jurisdiction over the operation and maintenance of the former on site package plant within the development. Further, our client will hold yours strictly responsible for any effort to interfere with its relationship with its customers, and has instructed the undersigned to pursue vigorously any and all remedies appropriate thereto.

Frankly, we find it somewhere between laughable and ludicrous that you would take the position that you have, or that we are required to respond. You should know that it is a policy of the law, and the Comprehensive Plan of Lee County, to eliminate source points of pollution whenever and wherever possible, including the elimination of onsite package plants, and the development of regional reuse utility systems. To threaten litigation, obviously as a ploy to cut a better deal for your developer clients with BSU, is a tactic that will not work. We suggest you try another approach.

In short, we have no intention of honoring your previous requests and your threat of litigation against BSU, dated August 16th has not been well received. We will accept Service of Process.

Please govern your actions accordingly.

Sincerely,



William E. Sundstrom, P.A.
For the Firm

JRJ:wjl
cc: Mr. Fred Partin
Donald Thomson, Esq.
Jim Yaeger, Esq.
David Owen, Esq.

Bonita\08\Buandt082201.ltr

G I S T R O, inc., Corporation

*P o. box, 110 131
Naples FL. 34108
(941)495 8089 VOICE
(941)495 8089) FAX*

12,18,001.

*Mr. Bobby Stewart
Building Official*

*Lee County Southwest Florida
Department of Community Development
1500 Monroe Street, Suite A Fort Myers Fl. 33901*

Ref. 2 building permits.

Dear Mr .Stewart

Bonita Utilities is not the agent for sewer availability in the Forest Mere development in Bonita Springs, in fact Gistro Inc, Corporation is the owner that may legally authorize and provide sewer connection and sewer service in this development.

I hereby request that the two named permits being revoked until such time, as authorization by Gistro Inc. Corporation will be issued.

Sincerely

J. Fritz Holzberg

for Gistro Inc.

G I S T R O, inc., Corporation

P.o.box, 110 131
Naples FL 34108
(941)495 8089 VOICE
(941)495 8089) FAX.

January 2, 2002

David M.Owen
Chief Assistant County Attorney
Lee County Fla

Dear Mr. Owen,

Thank you for preparing for me so promptly the extra copys last Friday afternoon.

After reading your letter to Bobby Stuart I concluded that I have to give you much more information regarding the case Forest Mere- B.S.U. in order for you to have a better picture of the total situation, but I do not request farther intervention.

On Januar 2, 1991, exactly 11 years ago ,Forest - Mere Joint Venture and Bonita Springs Water System Inc. signed, based on a proposal by B.S.W.S. a sewer capacity presale agreement A copy of this document is included. Soon after, B.S.U. requested from Forest Mere the permission to lay their force main across our property, underground, which we granted.

A few month later we have been informed that their plant is already operating and we can tap in to their force main , what we did. Two weeks later we again did receive another information. As a result of an examination of our lift stations they have concluded that they can not take over our sewer system as our lift stations have not been build to their specification, but if we are interested to rebuild the lift stations at our expence, cost about \$ 130.000, they than will take the system. In this case we did not have a deal, they did not want to take and we did not want to pay as this lift station clause was not included in the presale agreement. In regard to this failed deal not one word has been written or spoken in the last ten years among the two parties.

During all this years B.S.U.has not issued one sewer letter for Forest Mere. The very first sewer letters have been issued on October 11, 001

In this case B.S.U has clearly broken the agreement!. Right after our tap in to their force main system. B.S.U. begun to ad to the water bills the sewer fees. A few years before, Forest Mere deeded the water system to B.S.U.without reimbursement, as they already had the names and addresses of the homeowners it was easy to ad the sewer fee to this bills.

We continued to maintain the system as before and paid until today all necessary expenses and repairs and B.S.U. collected all the income

In the past years I have met with Fred Partin a few times to discuss the reimbursement of our expenses, but he always had excuses and refused to pay, the rest you know

In fact in 1984 J.Fritz Holzberg received the building permits for this waste water system as well as D.E.P. and all other necessary documents to complete and maintain the system. The property never changed owner

CHAPTER 2

please very confidential

This chapter began over 3 years ago when MARI COPA number 2 WITH the colors yellow, orange, and black surfaced here.

A relatively new company with the name, EURO AMERICAN FINANCIAL SERVICES, residing in a over \$ 2 M. Bbuilding in Bonita Spring, performing in the same pattern as Mr Mobly. owners name James Amburn 95 % of the investors Euro Currency. Trade mark, also involved in a Mari Copa case where two U.S. Citizens have lost all their investment.

Collier Economic Crime Unit. A substantial file has been established and is proceeding

*Lee County Fort Myers
Office Of The Comptroller
Department Of Banking and Finance . Short before investigation.*

Mr Amburn is receiving most of the funds from Germany. If the Investors will ever see the money who knows?

Mr Amburn has bought lots in Forest Mere from a Miami Bank under the name of his partner Attorney Stephen CRAWFORD TRUST . The whole thing is covert with a small builder, Danny Mills. They have been very succesful with Fred Partin. But from Fritz they still will not get the Connection. Before 10,11,001 if someone requested a sewer letter he was send to us The story is much bigger. I dont think you want to hear more.

Sincerely

J.Fritz Holzberg

Roosa, Sutton, Burandt, Adamski & Roland, LLP
Attorneys and Counselors at Law

Richard V.S. Roosa
Larry D. Sutton
Robert B. Burandt
Robert C. Adamski
Ty G. Roland
Tulio G. Suárez

1714 Cape Coral Parkway
Cape Coral, Florida 33904

Telephone: 941-542-4733

Facsimile: 941-542-9203

January 11, 2002

William E. Sundstrom, Esquire
Post Office Box 1567
Tallahassee, Florida 32302-1567

RE: Gistro Inc., and Bonita Springs Utilities, Inc.,

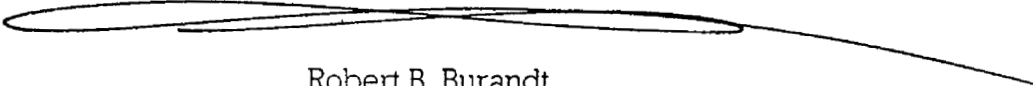
Dear Mr. Sundstrom:

Bonita Springs Utilities does not have authority to use Gistro, Inc., sewer lines and as previously stated the use of same is a trespass. Furthermore, Bonita Springs Utilities Inc., has no authority to accept any monies for tie ins to Gistro, Inc.'s sewer lines.

Please be advised that we are in the process of preparing litigation. Please advise whether or not you are authorized to accept service for same.

Please contact my office should you have any questions or comments regarding this matter.

Sincerely yours,



Robert B. Burandt

RBB:cab

3 Phases.

Roosa, Sutton, Burandt, Adamski & Roland, LLP
Attorneys and Counselors at Law

Richard V.S. Roosa
Larry D. Sutton
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1714 Cape Coral Parkway
Cape Coral, Florida 33904

Telephone: 941-542-4733

Facsimile: 941-542-9203

January 11, 2002

David M. Owen
Assistant County Attorney
Post Office Box 398
Fort Myers, FL 33902-0398

RE: Fritz Holzberg/Gistro, Inc. v. Bonita Springs Utility, Inc. (BSU)

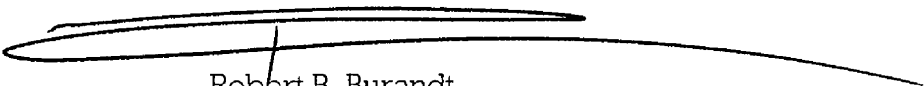
Dear Mr. Owen:

Please be advised that Gistro, Inc., is the owner of the sewer lines at Forest Mere Phase II and they have rescinded use by Bonita Springs Utility, Inc. Therefore, cooperating in any tie-ins might be considered compounding the trespass which is currently being committed by Bonita Spring Utility, Inc., and Mills Homes, whom I understand is the General Contractor who is committing the actual trespass.

Therefore, please be advised that contrary to your letter of December 21, 2001, to Bobby Stewart, without Mr. Holzberg's consent there is not a private utility company available for the sites in question.

Thank you for your expected cooperation in this matter.

Sincerely yours,


Robert B. Burandt

RBB:cab

Roosa, Sutton, Burandt, Adamski & Roland, LLP
Attorneys and Counselors at Law

Richard V.S. Roosa
Larry D. Sutton
Robert B. Burandt
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Ty G. Roland
Tulio G. Suárez

1714 Cape Coral Parkway
Cape Coral, Florida 33904

Telephone: 941-542-4755

Facsimile: 941-542-9205

February 7, 2002

Mr. David M. Owen
Chief Assistant County Attorney
P.O. Box 398
Fort Myers, FL 33902

RE: Fritz Holzberg/Gistro


Dear David:

This will acknowledge and thank you for your letter of January 31, 2002, to wit I offer the following response. It appears that everyone agrees that Mr. Holzberg still owns and maintains the internal sewer collection system of Forrest Mere and Spring Lakes. That having been said, it would be a misdemeanor (trespass) for someone to use the system without Mr. Holzberg's consent. For the County to consent to this trespass could be considered a compounding of a misdemeanor and therefore a violation of Florida law.

So when you say that in the interim, the County will continue to authorize parties to tie into his system without his consent, the County could be compound a criminal trespass. Contrary to your letter It is more than just following the administrative code (AC-12-4, paragraph 4), we have an active misdemeanor being committed at Forest Mere and Spring Lakes, and therefore the County must not encourage or acquiesce in that criminal activity, but must move forward to see that the problem is resolved and the trespass is abated.

Thank you for your attention to this matter. If you have any questions or changes please do not hesitate to call me.

Sincerely,



Robert B. Burandt

RBB:cab
cc: Client

P o box 366 782
Bonita Springs FL 34136
(941)495 8089 voice
(941)495 8089 fax
j: mail h1zbrg@cs.com

May 10, 2002

Commissioner
Ray Judah
Lee County Administration
P.O. box 398 Fort Myers
FL 33902

Dear Mr. Commissioner

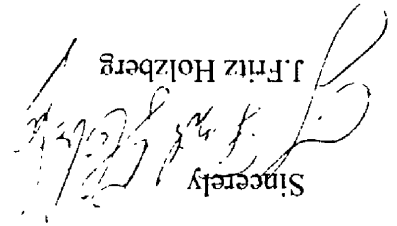
This is just a reminder of my letter I have mailed to you on February 21, 2001. About 4 weeks later your secretary mentioned to me that she could not find this letter when I faxed her a copy which was received.

In the last few weeks I have done some research and discovered some very interesting documents, which are very important in my effort to achieve justice against many much stronger powers than I am. Now I am certain that justice in my case will prevail.

The result of my findings shows me clearly that it would be a misdemeanor (trespass) for someone to connect, or to use our system without our consent. For the County to consent to this trespass would be considered a compounding of a misdemeanor and therefore a violation of Florida law. If the County will continue to authorize parties to tie into our system without our consent, the County would be compound a criminal trespass

The administrative code (AC-12-4, paragraph 4), is requesting very clearly a letter from the owner of the system and not from some one who does not own the system. B.S.U. sewer letter is misleading the County and the builder. The sewer letter is confirming the existence of the sewer, but does not guaranty the connection into the system.

This is an active misdemeanor being committed at Forest Mere - Spring lakes and therefore the County must not encourage or acquiesce in that criminal activity, but must stop issuing building permits for Forest Mere - Spring lakes without the consent of the owner of the collection system. Gistro INC. Corporation. I hope to hear from you soon.

Sincerely

J. Fritz Holzberg

J. Fritz Holzberg

(a) The offender used any amount of force beyond that effort necessary to obtain possession of the money or other property; or

(b) There was any resistance offered by the victim to the offender or that there was injury to the victim's person.

(2)(a) If, in the course of committing a robbery by sudden snatching, the offender carried a firearm or other deadly weapon, the robbery by sudden snatching is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If, in the course of committing a robbery by sudden snatching, the offender carried no firearm or other deadly weapon, the robbery by sudden snatching is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3)(a) An act shall be deemed "in the course of committing a robbery by sudden snatching" if the act occurs in an attempt to commit robbery by sudden snatching or in fleeing after the attempt or commission.

(b) An act shall be deemed "in the course of the taking" if the act occurs prior to, contemporaneous with, or subsequent to the taking of the property and if such act and the act of taking constitute a continuous series of acts or events.

History.—s. 1, ch. 99-175.

812.133 Carjacking.—

(1) "Carjacking" means the taking of a motor vehicle which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the motor vehicle, when in the course of the taking there is the use of force, violence, assault, or putting in fear.

(2)(a) If in the course of committing the carjacking the offender carried a firearm or other deadly weapon, then the carjacking is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment or as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If in the course of committing the carjacking the offender carried no firearm, deadly weapon, or other weapon, then the carjacking is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3)(a) An act shall be deemed "in the course of committing the carjacking" if it occurs in an attempt to commit carjacking or in flight after the attempt or commission.

(b) An act shall be deemed "in the course of the taking" if it occurs either prior to, contemporaneous with, or subsequent to the taking of the property and if it and the act of taking constitute a continuous series of acts or events.

History.—s. 1, ch. 93-212

812.135 Home-invasion robbery.—

(1) "Home-invasion robbery" means any robbery that occurs when the offender enters a dwelling with the intent to commit a robbery, and does commit a robbery of the occupants therein.

(2) A person who commits a home-invasion robbery is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 2, ch. 93-212

812.14 Trespass and larceny with relation to utility fixtures.—

(1) As used in this section, "utility" includes any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

(2) It is unlawful to:

(a) Willfully alter, tamper with, injure, or knowingly suffer to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service in such a manner as to cause loss or damage or to prevent any meter installed for registering electricity, gas, or water from registering the quantity which otherwise would pass through the same; or to alter the index or break the seal of any such meter; or in any way to hinder or interfere with the proper action or just registration of any such meter or device; or knowingly to use, waste, or suffer the waste, by any means, of electricity or gas or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility, after such meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered.

(b) Make or cause to be made any connection with any wire, main, service pipe or other pipes, appliance, or appurtenance in such manner as to use, without the consent of the utility, any service or any electricity, gas, or water, or to cause to be supplied any service or electricity, gas, or water from a utility to any person, firm, or corporation or any lamp, burner, orifice, faucet, or other outlet whatsoever, without such service being reported for payment or such electricity, gas, or water passing through a meter provided by the utility and used for measuring and registering the quantity of electricity, gas, or water passing through the same.

(c) Use or receive the direct benefit from the use of a utility knowing, or under such circumstances as would induce a reasonable person to believe, that such direct benefits have resulted from any tampering with, altering of, or injury to any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by such utility, for the purpose of avoiding payment.

(3) The presence on property in the actual possession of a person of any device or alteration which affects the diversion or use of the services of a utility so as to avoid the registration of such use by or on a meter installed by the utility or so as to otherwise avoid the reporting of use of such service for payment shall be prima facie evidence of the violation of this section by such person; however, this presumption shall not apply unless:

(a) The presence of such a device or alteration can be attributed only to a deliberate act in furtherance of an intent to avoid payment for utility services;

(b) The person charged has received the direct benefit of the reduction of the cost of such utility services; and

(c) The person has received at least one service; or (4) Any person shall be guilty of a felony punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person has received at least one service offered by a utility without payment for such service.

(6) Nothing in this section shall be construed to prevent a utility from using any meter, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service in such a manner as to cause loss or damage or to prevent any meter installed for registering electricity, gas, or water from registering the quantity which otherwise would pass through the same; or to alter the index or break the seal of any such meter; or in any way to hinder or interfere with the proper action or just registration of any such meter or device; or knowingly to use, waste, or suffer the waste, by any means, of electricity or gas or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility, after such meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered.

812.15 Utility services; per-

(1) As used in this section, "utility service" means any service offered by a utility without payment for such service.

(a) "Cable service" means any service offered by a utility without payment for such service.

(b) "Cable service" means any service offered by a utility without payment for such service.

(2)(a) No person shall be guilty of a felony punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person has received at least one service offered by a utility without payment for such service.

(b) Any person who commits a felony punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person has received at least one service offered by a utility without payment for such service.

(3)(a) An act shall be deemed "in the course of committing the felony" if it occurs in an attempt to commit the felony or in flight after the attempt or commission.

(b) Any act shall be deemed "in the course of the taking" if it occurs either prior to, contemporaneous with, or subsequent to the taking of the property and if it and the act of taking constitute a continuous series of acts or events.

(4)(a) An act shall be deemed "in the course of the taking" if it occurs either prior to, contemporaneous with, or subsequent to the taking of the property and if it and the act of taking constitute a continuous series of acts or events.

(b) Any person who commits a felony punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person has received at least one service offered by a utility without payment for such service.

ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS

CATEGORY:

Codes and Building Services

CODE NUMBER:

AC-12-4 ✓

TITLE:

Single Family and Duplex Permitting Procedures

ADOPTED:

1/27/82

AMENDED:

8/31/94

ORIGINATING DEPARTMENT:

Codes and Building Services/Attorney

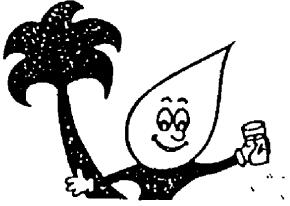
PURPOSE/SCOPE:

This Administrative Code sets out the minimum submission requirements necessary to successfully complete the permitting process for single family and duplex dwellings. It also sets out some of the basic requirements concerning the job site.

POLICY/PROCEDURE:

1. Three (3) copies of plot plan showing roof overhang as well as the basic structure outline, showing setbacks from the lot lines to the building(s) also showing placement of driveways, septic tank, drainfield, will be required with building permit application.
2. For construction in flood zones or seaward of the coastal construction line, a certified survey indicating the flood zone(s), coastal construction line and elevation of existing land will be necessary. If the construction is seaward of the coastal construction line and a state permit is required, a copy of the Department of Environmental Protection permit will be needed prior to issuance of the permit.
3. One (1) copy of an applicable variance or other special approvals must be provided.
4. Application for septic tank may be applied for at the time of building application. A well affidavit must be signed and notarized. A well permit and well inspection will be necessary before a certificate of occupancy will be issued. ~~If construction is located on private water and/or sewer, a letter must be submitted from the private utility company verifying availability for site submitted.~~
5. Plans must be signed and sealed by a Florida Registered Architect or Engineer or in compliance with SSTD 10-93 and a 10-93 checklist submitted for each set. Plans must be submitted on standardized sheets drawn to scale. The plans must bear the following specific information:
 - (a) Elevation for front, rear, right and left sides
 - (b) Foundation plan
 - (c) Floor plan
 - (d) Lateral breakdown (typical wall section from roofing through to foundation and NGVD Elevation)
 - (e) Duplex must have a tenant separation wall of UL Design or equal
 - (f) Location of electric and plumbing

- (g) Conventional roof framing layout
If trusses, include engineered truss layout from truss manufacturer
 - (h) Windows and garage doors installation
 - (i) Energy calculations and cover sheet
6. Any dwelling located in a Coastal Zone must have plans designed in accordance with the Lee County Coastal Construction Code and be certified by an architect or engineer registered in the State of Florida.
 7. Building permit application completed in its entirety. Contractor must show either State Certification or Lee County Certificate of Competency.
 8. An owner/builder must sign an affidavit of self-use to be submitted at the time of requesting a building permit. He must be able to do all the work himself or use a Lee County licensed contractor.
 9. Additional permits will be required for LP gas, well, septic tank, lawn sprinkler system, pool, pool enclosure, fence, solar heating and interior fire sprinkler systems, if applicable.
 10. After issuance of building permit and before footing inspection is requested, the job site must have sanitary facilities for workmen and a trash container.
 11. Permits must be posted in plain view at the job site and protected from the weather.
 12. All changes to the approved drawings must be submitted and approved prior to commencement of work.
 13. Reinspection fees will be charged for all recalls and turndowns.
 14. Buildings may not be occupied until the final inspection has been completed and a certificate of occupancy issued, at which time the power company will be notified to connect permanent power.



Bonita Springs Utilities, Inc.

October 11, 2001

Lee County Division of Concurrency
P. O. Box 398
Fort Myers, FL 33902

Re: Wastewater Service

Please be advised that Mills Homes wastewater service for:

Strap Number: 25-47-25-B3-00904.00220

Lot: 22

Building:

Block:4

Phase:

Unit Number:

Subdivision: Spring Lakes

Service Address: 11700 Red Hibiscus Dr.

Sewer force mains have been installed and are in operation adjacent to the project.

The company has sufficient capacity at its 4.5 m.g.d. plant to provide service to this site.

Application fees have been paid for 1 single residential unit and wastewater service will be provided.

Sincerely,

Fred Partin
General Manager
FP/dlm

PERMITS ISSUED BY THE LEE COUNTY BUILDING DEPARTMENT

Re: Wastewater Permit

The letter dated Oct. 11, 2001 by B.S.U. Directed to Lee County Division Of Concurrency Regarding wastewater service for Unit Number 2, 2650 Robin Way, is misleading. It does not properly declare that B.S.U. will provide connection to the construction site, it only explains that capacity is available and a sewer force main has been build.

The sewer collection system in the Forest Mere development is the property of Gistro Inc. a Florida Corporation., which is the only Authority that can issue a commitment letter that a connection will be given.

The building Department is issuing a building permit to a builder, based on a letter from B.S.U. which state that sewer capacity is available, it does not say that B.S.U. can also provide connection. Their letter is misleading the Building Department. In this case the Building Department is also misleading the builder by issuing a building permit on a misleading letter from B.S.U., Could this not make the Building Department liable, if the builder can not connect the house to the sewer collection system?.

On Feb. 15, 2001, in a hand delivered letter, Lee County Community Development was informed about the Gistro Inc. ownership in the Forest Mere development

The Plan Review probably missed this information and issued one or more permits on the misleading B.S.U. sewer letter. Sewer connection in Forest Mere, without a Gistro connection agreement will not be available

If the Lee county Statute does provide that a permit has to be issued on request, if sewer capacity is available to the construction site, it does not say that the connection is really guaranteed. In this case the issuance of a building permit is misleading the builder.

It can not be the meaning of the Lee County Building Statute that a building permit, based on a sewer letter from B.S.U., still does not mean a sewer connection will be available, once the house is completed.. The requested sewer letter should mean that not only the capacity, but also the connection is available. The letter issued by B.S.U. does not say this, and for the connection in Forest Mere, B.S.U. really does not have the Authority as they do not own this system.

The Building department should also request from a builder also a guarantee letter from the Gistro Inc Corp. a commitment letter before issuing a building permit

It is not in the interest of Gistro Inc. to block the completing of this development. But it is our opinion that Gistro Inc has the same right as B.U.S. and right is measured on one scale

J. Fritz Holzberg

P o box 366 782
Bonita Springs FL 34136
(941)495 8089 voice
(941)495 8089 fax
E mail hlzbrg@cs.com

May 11, 2002

G.Fred Shirley
Paralegal
Office Of The State Attorney
JOSEPH D ALESSANDRO
STATE ATTORNEY

Ref. your letter April 23,2002

Dear Mr. Shirley,

Thank you for your effort for trying to help me. You are absolutely right that I will need some involvement of an attorney in this matter also.

In the last few weeks I have done some research and found some material, which without doubt proofs that Danny Mills , from Mills venture committed a misdemeanor (trespass) which is a violation of Florida law and therefore criminal.

I do believe that with this strong help of the law, it will not be difficult to bring Danny Mills of Mills Venture to justice.

It might be of interest for you to know who is standing behind Mills Venture. Your colleagues in the Department of Banking and Finance, might let you in on. They are just around the corner from where you are.

I am confident that with the help of my finding it will be much easier to solve this problem

Sincerely


J. Fritz Holzberg

(a) The offender used any amount of force beyond that effort necessary to obtain possession of the money or other property; or

(b) There was any resistance offered by the victim to the offender or that there was injury to the victim's person.

(2)(a) If, in the course of committing a robbery by sudden snatching, the offender carried a firearm or other deadly weapon, the robbery by sudden snatching is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If, in the course of committing a robbery by sudden snatching, the offender carried no firearm or other deadly weapon, the robbery by sudden snatching is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3)(a) An act shall be deemed "in the course of committing a robbery by sudden snatching" if the act occurs in an attempt to commit robbery by sudden snatching or in fleeing after the attempt or commission.

(b) An act shall be deemed "in the course of the taking" if the act occurs prior to, contemporaneous with, or subsequent to the taking of the property and if such act and the act of taking constitute a continuous series of acts or events.

History.—s. 1, ch. 99-175.

812.133 Carjacking.—

(1) "Carjacking" means the taking of a motor vehicle which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the motor vehicle, when in the course of the taking there is the use of force, violence, assault, or putting in fear.

(2)(a) If in the course of committing the carjacking the offender carried a firearm or other deadly weapon, then the carjacking is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment or as provided in s. 775.082, s. 775.083, or s. 775.084.

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History.—s. 1, ch. 93-212.

812.135 Home-invasion robbery.—

(1) "Home-invasion robbery" means any robbery that occurs when the offender enters a dwelling with the intent to commit a robbery, and does commit a robbery of the occupants therein.

(2) A person who commits a home-invasion robbery is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 2, ch. 93-212.

812.14 Trespass and larceny with relation to utility fixtures.—

(1) As used in this section, "utility" includes any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

(2) It is unlawful to:

(a) Willfully alter, tamper with, injure, or knowingly suffer to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service in such a manner as to cause loss or damage or to prevent any meter installed for registering electricity, gas, or water from registering the quantity which otherwise would pass through the same; or to alter the index or break the seal of any such meter; or in any way to hinder or interfere with the proper action or just registration of any such meter or device; or knowingly to use, waste, or suffer the waste, by any means, of electricity or gas or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility, after such meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered.

(b) Make or cause to be made any connection with any wire, main, service pipe or other pipes, appliance, or appurtenance in such manner as to use, without the consent of the utility, any service or any electricity, gas, or water, or to cause to be supplied any service or electricity, gas, or water from a utility to any person, firm, or corporation or any lamp, burner, orifice, faucet, or other outlet whatsoever, without such service being reported for payment or such electricity, gas, or water passing through a meter provided by the utility and used for measuring and registering the quantity of electricity, gas, or water passing through the same.

(c) Use or receive the direct benefit from the use of a utility knowing, or under such circumstances as would induce a reasonable person to believe, that such direct benefits have resulted from any tampering with, altering of, or injury to any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by such utility, for the purpose of avoiding payment.

(3) The presence on property in the actual possession of a person of any device or alteration which affects the diversion or use of the services of a utility so as to avoid the registration of such use by or on a meter installed by the utility or so as to otherwise avoid the reporting of use of such service for payment shall be prima facie evidence of the violation of this section by such person; however, this presumption shall not apply unless:

(a) The presence of such a device or alteration can be attributed only to a deliberate act in furtherance of an intent to avoid payment for utility services;

(b) The person charged has received the direct benefit of the reduction of the cost of such utility services; and

(c) The person has received at least one utility service; or

(4) Any person shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person is involved in a violation of this section unless the person is a greater.

(6) Nothing in this section shall be construed to prevent the use of any recognized service.

History.—s. 1, ch. 88-173; s. 11

812.15 Utility services; per

(1) As used in this section, "utility" means any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which is engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

(a) "Cable" means any service or any electricity, gas, or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility, after such meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered.

(b) "Cable" means any service or any electricity, gas, or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility, after such meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered.

(2)(a) No person shall intercept or receive any service or any electricity, gas, or water from a utility to any person, firm, or corporation or any lamp, burner, orifice, faucet, or other outlet whatsoever, without such service being reported for payment or such electricity, gas, or water passing through a meter provided by the utility and used for measuring and registering the quantity of electricity, gas, or water passing through the same.

(b) Any person shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person is involved in a violation of this section unless the person is a greater.

(3)(a) An act shall be deemed "in the course of committing the carjacking" if it occurs in an attempt to commit carjacking or in flight after the attempt or commission.

(b) An act shall be deemed "in the course of the taking" if it occurs either prior to, contemporaneous with, or subsequent to the taking of the property and if it and the act of taking constitute a continuous series of acts or events.

(4)(a) Any person who commits a home-invasion robbery is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who commits a home-invasion robbery is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who commits a home-invasion robbery is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.



BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number, (239) 335-2223

Bob Jones
District One

Douglas R. St. Bern.
District Two

Ray Judson
District Three

Andrew W. Cox
District Four

John E. Adair
District Five

Donald D. Shuler
County Manager

James G. Haaber
County Attorney

Diana M. Parker
County Hearing
Examiner

June 11, 2002

J. Fritz Holzberg, President
Gistro, Inc. / Forest Mere Joint Venture
Post Office Box 366762
Bonita Springs, Florida 34136

**RE: FOREST MERE SUBDIVISION / WATER AND SEWER
SERVICE FROM BONITA SPRINGS UTILITIES, INC. ("BSU")**

Dear Mr. Holzberg:

Thank you for your letter and materials dated May 10, 2002, which were received in my office on May 14, 2002. I provided same to David Owen of the County Attorney's office, as he is familiar with your issues, and requested his input prior to my responding to your inquiry.

You must understand that as only one of five County Commissioners, I do not have any authority on my own to either address or attempt to resolve your disputed matters with Bonita Springs Utilities ("BSU").

Additionally, I am advised by the County Attorney's office that you have secured legal representation (Mr. Robert Burandt) and may be pursuing legal redress through him. As the result, counsel is advising me that the better course of action for both myself and the Board at this time is to leave the contractual matters to the real parties in interest (BSU and Forest Mere), and their attorneys. A declaratory judgment from a Judge of the Circuit Court as to the parties' rights and obligations may well settle all outstanding issues, to include your exception to the County's issuance of development approvals to home builders within the Forest Mere Subdivision based upon letters of availability from BSU pursuant to the 1991 contract between yourself and BSU.

Page 2
June 11, 2002

The only suggestion that I can offer at this time is that you continue to work with your attorney and BSU representatives, to include their counsel.

My best wishes to you for a successful resolution of the disputed contractual issues with BSU.

Sincerely,



Ray Judah
Commissioner, District #3

RJ/dm

xc: Board of County Commissioners
James G. Yaeger, County Attorney
David M. Owen, Chief Assistant County Attorney
Donald D. Stilwell, County Manager
James Lavender, Director, Public Works Administration
Fred Partin, General Manager, Bonita Springs Utilities, Inc.
G. Donald Thomson, Esq., P.A., Counsel to Bonita Springs Utilities, Inc.

REPRESENTING:

CHARLOTTE

COLLIER

GLADES

HENDRY

LEE



OFFICE OF THE STATE ATTORNEY

Twentieth Judicial Circuit of Florida

P.O. Box 399

Fort Myers, FL 33902-0399

Telephone (941) 335-2700

FAX (941) 335-2787

Website: sao.cjis20.org

Joseph P. D'Alessandro

State Attorney

July 2, 2002

J. Fritz Holzberg
26510 Southern Pine Drive
Bonita Springs, FL 34135

Re: Complaint Filed Against: Danny Mills
Complaint Number: 620225

Dear J. Fritz Holzberg:

This is to advise you that your complaint has been thoroughly reviewed and I feel your complaint is civil in nature and not criminal. Since this office can only handle criminal matters, I suggest you contact your private attorney for legal advice.

Thank you for giving me the opportunity to be of service to you. I regret that I am unable to assist you in this matter.

JOSEPH P. D'ALESSANDRO
STATE ATTORNEY

A handwritten signature in cursive script, appearing to read "G. Fred Shirley".

G. Fred Shirley
Paralegal

GFS:s

The existence of the agreement between Forest Mere Joint Venture and Bonita Springs Utilities makes any chance of criminal prosecution impossible. This issue is clearly civil.

Handwritten initials "GFS" in cursive script.

6/6/02
7 39 01 AM

Activities for Case #: RES2001-08398

| Activity | Description | Date 1 | Date 2 | Date 3 | Assigned To | Done By | Disp | Hold Level | Updated By | Updated | Notes |
|----------|--------------------------------|----------|----------|----------|-------------|---------|------|------------------|------------|----------|--|
| RESA0010 | Application Received | | | 11/29/01 | | PAA | | No Hold | CSM | 12/20/01 | |
| RESA0012 | Zoning Review | 11/29/01 | 12/6/01 | 11/30/01 | | EMA | REJ | Hold w/ Override | EMA | 11/30/01 | DOESN'T MEET REAR SETBACK |
| RESA0015 | Plan Review | 11/29/01 | 12/6/01 | 12/13/01 | LMR | LMR | REJ | Hold w/ Override | LMR | 12/13/01 | 12/7/01 LMR, 12/13/01 Faxed rejection for master and if this is case by case need a letter for this lot. LMR |
| RESA0019 | Impact Fee Determination | 11/29/01 | | 12/17/01 | | AME | DONE | Hold w/ Override | AME | 12/17/01 | |
| RESA0020 | Additional Documents Required | 11/29/01 | | | | | | No Hold | CSM | 12/20/01 | NEED DEED/needs new utility letters from mr holzberg not bonita springs utilities |
| RESH0630 | INSP - NOTICE OF COMMENCEMENT | 11/29/01 | | 11/29/01 | | PAA | YES | Hold w/ Override | PAA | 11/29/01 | |
| RESA16 | Concurrency Review | 11/29/01 | 12/3/01 | 12/2/01 | RLM | RLM | APPR | No Hold | RLM | 12/2/01 | CNC2001-02888 EXPIRE 12/02/04 |
| RESG0975 | Sewer Sub Permit Req'd/ Issued | | 11/29/01 | 12/26/01 | | SJM | DONE | No Hold | SJM | 12/26/01 | REEVE'S OF SOUTHWEST FL |
| RESA0030 | Resubmit Zoning Review | 12/6/01 | 12/9/01 | 12/6/01 | | EMA | DONE | Hold w/ Override | EMA | 12/6/01 | FRONT 10'UE, EACH SIDE 6' UE |
| RESA0025 | Resubmit Plan Review | 12/14/01 | 12/17/01 | 12/14/01 | LMR | LMR | DONE | Hold w/ Override | LMR | 12/14/01 | 12/13/01 received letter on master LMR |
| RESG0910 | Elec. Sub Permit Req'd/Issued | | 12/14/01 | 1/28/02 | | BJE | DONE | No Hold | BJE | 5/22/02 | IDEAL ELECTRIC 5-22-02 RECEIVED LETTER FROM THE GENERAL CONTRACTOR TO CHANGE TO DENNIS SYTSMAS ELECTRIC. BJE |
| RESG0940 | Mech. Sub Permit Req'd/Issued | | 12/14/01 | 12/26/01 | | SJM | DONE | No Hold | SJM | 12/26/01 | ANEW AIR HEATING & COOLING. |
| RESG0950 | Plumb. Sub Permit Req'd/Issued | | 12/14/01 | 12/26/01 | | SJM | DONE | No Hold | SJM | 12/26/01 | REEVE'S OF SOUTHWEST FL |
| RESG0960 | Roof Sub Permit Req'd/ Issued | | 12/14/01 | 12/26/01 | | SJM | DONE | No Hold | SJM | 12/26/01 | Shingle Roof- SUNQUEST BLDG & DEV. |
| RESA0032 | Called for Pick-up | 12/17/01 | | 12/17/01 | | CSM | DONE | No Hold | CSM | 12/17/01 | |
| RESG0800 | Print Permit Info Board (F) | | | 12/21/01 | | KLS | DONE | No Hold | KLS | 12/21/01 | |
| RESG0900 | Permit Issued (F) | | | 12/21/01 | | KLS | DONE | Hold w/ Override | KLS | 12/21/01 | |
| RESH0845 | Insp Plum - 201 Rough | 12/26/01 | 12/27/01 | 12/27/01 | | JDM | FAIL | No Hold | LJP | 12/27/01 | Not to code 304 3 |
| RESH0855 | Insp Plum - 203 Sewer | 12/26/01 | 12/27/01 | 12/28/01 | | JDM | DONE | No Hold | AMB | 12/28/01 | |
| RESH0845 | Insp Plum - 201 Rough | 12/28/01 | 12/28/01 | 1/2/02 | | JDM | DONE | No Hold | AMB | 1/2/02 | |
| RESH0705 | Insp Struct - 102 Floor | 12/28/01 | 1/2/02 | 1/3/02 | | DEO | DONE | No Hold | AMB | 1/3/02 | W/NOC-COMP-POISON G BAR |
| RESH0710 | Insp Struct - 103 Tie Beam | 1/14/02 | 1/15/02 | 1/15/02 | | PAK | FAIL | No Hold | LJP | 1/15/02 | No beam schedule |
| RESH0752 | Insp Ele - Tug Letter | 1/18/02 | | 1/18/02 | | AMB | DONE | No Hold | AMB | 1/18/02 | Ideal Elect |
| RESH0710 | Insp Struct - 103 Tie Beam | 1/20/02 | 1/22/02 | 1/23/02 | | RRJ | DONE | No Hold | AMB | 1/23/02 | eng letter attached |
| RESH0820 | Insp Mec - 401 Rough HVAC | 1/27/02 | 1/28/02 | 1/27/02 | | IVR | CNCL | No Hold | | 1/27/02 | |

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for)
Certificate to provide)
wastewater service in Lee County,) Docket No. 020640
Florida by GISTRO, INC.)
_____)

OBJECTION TO APPLICATION AND
PETITION FOR FORMAL ADMINISTRATIVE HEARING

BONITA SPRINGS UTILITIES, INC., ("BSU"), by and through its undersigned attorneys and pursuant to Rule 28-106.201, Florida Administrative Code, files this objection to the application of Gistro, Inc. for a wastewater certificate in Lee County, Florida, and in support thereof states:

1. The agency affected is the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, Docket No. 020640.

2. The name, address and telephone number of the Petitioner is:

BONITA SPRINGS UTILITIES, INC.
11860 East Terry Street
Bonita Springs, Florida 32159
(941)992-0711

3. The name and address of the person authorized to receive notices and communications in respect to this application is:

Martin S. Friedman, Esquire
Rose, Sundstrom & Bentley, LLP
650 S. North Lake Boulevard, Suite 420
Altamonte Springs, Florida 32701
(407)830-6331
(407)830-8522 fax
mfriedman@rsbattorneys.com

4. Petitioner did not receive notice of the Application, but learned of it from its attorneys' routine check of new Commission dockets on or about July 3, 2002.

5. The disputed issues of material fact known at this time are as follows:

- a) Whether BSU has the ability to continue to provide wastewater service to the customers within the proposed certificated territory.
- b) Whether BSU has the ability to provide wastewater service to the undeveloped lots within the proposed certificated territory.
- c) Whether Gistro, Inc.'s application meets the requirements of law.
- d) Whether Gistro, Inc. has the financial and technical ability to operate a wastewater utility.

6. The following is a concise statement of facts:

In January, 1991, BSU and Forest Mere Joint Venture (with Mr. Holzberg signing as its authorized representative) entered into a Sewer Capacity Resale Agreement, a copy of which is attached. BSU subsequently began providing wastewater service to the development in question, but elected not to accept the collection system since it was not up to BSU's standards. BSU is presently billing the individual customers within this development and has the ability and right pursuant to *City of Mount Dora v. JJ's Mobile*

Homes, 579 So.2d 219 (Fla. 5th DCA 1991) to serve the undeveloped lots within the subdivision.

If Gistro, Inc. is seeking a certificate to bill the residents using the collection system for the cost of operation and maintenance of the collection system, then BSU does not object to the granting of a certificate to Gistro, Inc. However, if Gistro, Inc. is seeking a certificate to provide the wastewater service that BSU is providing and has the ability to continue to provide, then BSU does object.

7. Section 367.045, Florida Statutes, requires denial of Gistro's application if it is to replace BSU as the provider of wastewater service.

WHEREFORE, if Gistro, Inc. is seeking a wastewater certificate to provide wastewater service directly to the residents within the territory, and not just for the expense of operating and maintaining the collection system, then BSU requests this Commission deny that application.

Respectfully submitted on this
24th day of July, 2002, by:

ROSE, SUNDSTROM & BENTLEY, LLP
650 S. North Lake Boulevard
Altamonte Springs, Florida 32701
(407) 830-6331

By: 
MARTIN S. FRIEDMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail on this 24th day of July, 2002, to:

Roseanne Gervasi, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Mr. J. Fritz Holzberg
Gistro, Inc.
Post Office Box 110131
Naples, Florida 34108


MARTIN S. FRIEDMAN

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TELECOPIER (850) 656-4029

ROBERT M. C. ROSE
WAYNE L. SCHIEFELBEIN
OF COUNSEL

August 13, 2002

Via Facsimile and Mail

Robert B. Burandt, Esq.
Roosa, Sutton, Burandt, Adamski & Roland, LLP
1714 Cape Coral Parkway
Cape Coral, Florida 33904

Re: Gistro, Inc.\Bonita Springs Utilities, Inc.

Dear Bob:

This letter is further to our telephone conferences of even date, wherein Don Thomson and I have requested, and you have, on behalf of your client, granted to Bonita Springs Utilities, Inc. (BSU) permission to inspect the wastewater collection lines and lift station(s) located within the Forest Mere Subdivision. Pat Jennings, P.E., from Bonita Springs Utilities, will shortly be coordinating and overseeing that inspection.

This letter will further confirm our agreement that the information gathered in the course of the inspection will be considered as confidential between BSU and Gistro, Inc. and that BSU will indemnify and hold harmless your client from any damage to your client's property occasioned by BSU or its agents in the course of such inspection.

The purpose of the inspection is for BSU to form an opinion as to the condition of the subject lines and facilities, with a view that the parties might negotiate a universal settlement of all issues outstanding between BSU, Gistro, Inc. and all interested third parties relative to the ownership and use of such lines now and in the future, by BSU's purchase of whatever interest your client has in those lines. Alternatively, BSU will consider working with your client toward developing a mutually acceptable bulk service arrangement.

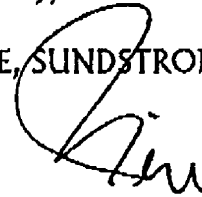
This letter will further reiterate our client's request that you contact Mr. Hai Vanvo and Mr. and Mrs. Terry Kyle and inform them that you will hold your requested discontinuance of wastewater service to their homes in abeyance while the parties attempt to work out a mutually acceptable solution to the problem.

Robert B. Burandt, Esq.
August 13, 2002
Page 2

Thank you for your cooperation and assistance in this regard. Should you have any questions or comments regarding this matter, please do not hesitate to contact me.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP



William E. Sundstrom, P.A.
For the Firm

WES:jmt

cc: Fred Partin
Pat Jennings
Don Thomson
David Owen