

STATE OF FLORIDA

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OFFICE OF THE GENERAL COUNSEL
HAROLD A. MCLEAN
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

February 6, 2003

Mr. Fritz Holzberg
Gistro, Inc.
P.O. Box 100 131
Naples, Florida 34108

Re: Docket No. 020640-SU, Application for certificate to provide wastewater service in Lee County by Gistro, Inc.

Dear Mr. Holzberg:

Thank you for your letters dated November 15, 2002, December 9, 2002, and December 27, 2002, in response to staff's July 30, 2002, notification of deficiencies. While you have fulfilled some of the filing requirements for a certificate of authorization, a number of deficiencies still exist, as identified below. Therefore, your application is not complete as filed and amended.

First, the most critical issue regarding your application is the issue of ownership of the wastewater facilities, including the collection lines and all related wastewater collection equipment. Staff cannot recommend approval of an application for certificate of authorization when the applicant's ownership of, or right to manage, operate, or control the utility facilities is in doubt. By letter dated November 1, 2002, to your legal counsel, I indicated that a Sheriff's Deed had been filed in the docket which purports to show that legal title to the wastewater facilities of the Forest Mere and Spring Lake Subdivisions belongs to Mr. Rolf Pfaff. Unless Gistro, Inc., can prove that it owns, or has a legal right to manage, operate, or control the collection lines and facilities, staff will have no choice but to recommend to the Commission that the application be denied. Examples of satisfactory proof include, but are not limited to, a recorded instrument which shows that legal title to the utility facilities belongs to Gistro, Inc., despite the existence of the Sheriff's Deed, or, if Mr. Pfaff is indeed the rightful owner, an agreement made between yourself and Mr. Pfaff giving you the right to manage, operate, or control the utility facilities.

Staff notes that by letters dated November 15, 2002, and January 15, 2003, you provided provisions of the Declaration of Covenants, Restrictions, Easement, Charges and Liens for Forest Mere Townhouse Community (Covenants), a Quit Claim Deed, and Tax Records. For the following reasons, none of these documents prove that you own the wastewater collection facilities.

DOCUMENT NUMBER DATE

01289 FEB-6 03

FPSC-COMMISSION CLERK

- o The Covenants reserve community easements for utility purposes but do not prove that Gistro, Inc. owns, or has a right to manage, operate, or control the utility facilities located in the easement.
- o The Quit Claim Deed indicates that to the extent that Forest Mere J.V. has ownership rights, it grants those rights to Gistro, Inc. It does not prove that Forest Mere J.V. has ownership rights, and, given the existence of the Sheriff's Deed, Gistro, Inc.'s asserted ownership rights have been called into question. Moreover, there is no recognized corporation known as Forest Mere J.V.
- o The Tax Records indicate that Forest Mere Joint Venture pays the taxes on the land under the lift station but does not prove that Forest Mere Joint Venture or Gistro, Inc., owns, or has a right to manage, operate, or control the utility facilities.

If Gistro, Inc., is able to prove ownership of, or right to manage, operate, or control the collection lines and all related wastewater collection equipment, the remainder of the items listed below must also be completed before staff can move forward with a recommendation concerning the application. That said, the remaining deficiencies are as follow:

1. Noticing. Rule 25-30.030, Florida Administrative Code, requires that applications for an original certificate be noticed at the time the application is filed, or shortly thereafter. The notice must be provided to all customers of the utility and to the list of local utilities and governments provided by staff. An updated list of local utilities and governments is enclosed. The notice must also be published once in a newspaper of general circulation in the vicinity of the utility. Before giving the notice, it is important that it be appropriately styled and contain the territory description referenced in Item 2, below. A sample notice along with a copy of the noticing rule are enclosed.
2. Territory Description. Rule 25-30.034(1)(h), Florida Administrative Code, requires the applicant to provide a description of the territory to be served, using township, range and section references as specified by Rule 25-30.030(2). No territory description has been provided. Enclosed please find "Instructions For Preparation of Territory Description and Map." Please use the instructions to prepare and file a description of the territory to be served. Your County Property Appraiser's Office may be able to assist you in writing the necessary territory description.
3. Territory Map. Rule 25-30.034(1)(j), Florida Administrative Code, requires the utility to provide one copy of the official county tax assessment map or other map showing township, range and section, with a scale such as 1"=200' or 1"=400 feet, with the proposed territory plotted thereon by use of metes and bounds or quarter sections, and with a defined reference point of beginning. Although a map was provided, the map has no scale identified and the

utility did not plot the territory description on the map. Please resubmit the territory map showing all angles and distances on the map using the territory description in Item 2, above.

4. System Map. Rule 25-30.034(1)(i), Florida Administrative Code, requires the applicant to provide one copy of a detailed system map showing the lines, treatment facilities and the territory to be served. The system map submitted is not detailed. For example, the sizes of the lines are not indicated, nor are lift stations identified on the map. Please prepare and file a detailed system map.
5. Financial Ability. Rule 25-30.033(e), Florida Administrative Code, requires a statement of the applicant's financial ability to provide service. Since you list yourself as the sole owner of Gistro, Inc., please provide a copy of your most recent personal financial statement. The statement should be accompanied by a pledge to continue to use the assets on behalf of the utility.
6. Wastewater Tariff. Rule 25-30.033(k), Florida Administrative Code, requires an original and two copies of the utility's proposed tariff which contains all rates, classifications, charges, rules, and regulations, consistent with Chapter 25-9, Florida Administrative Code. A model tariff was provided with the application package for your use in complying with this requirement. For the application to be considered filed, you must complete and file a proposed wastewater tariff.

Finally, staff notes that it appears that you have provided all the information which you are able to provide for the establishment of rate base. However, as noted in staff's July 30, 2002 initial notification of deficiencies, you will only be allowed to recover prudent, annual operating costs and be allowed an opportunity to earn a fair rate of return on your investment. In order to prove that your investment was not recovered when the lots were sold, you must be able to provide documentation, such as actual invoices, cancelled checks, and tax returns, to verify the amounts that you have invested in the system and tax returns during the years the lots were sold. These will be the developer's tax returns (Gulf Construction, Inc.), and not the utility tax returns mentioned in your original application.

Because you have been making an attempt to complete the application, staff will allow another 30 days for the above items to be satisfied. Therefore, please file an original and two copies of the information and documents requested above, and one copy of the maps, on or before March 6, 2003, directly with:

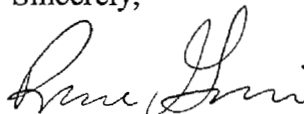
The Director, Division of the Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. Fritz Holzberg
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Please reference Docket No. 020640-SU on all correspondence to this Commission.

Should you have any questions about the information and documentation requested, please contact Ms. Patricia Brady at (850) 413-6686, pbrady@psc.state.fl.us or myself at (850) 413-6224, rgervasi@psc.state.fl.us.

Sincerely,



Rosanne Gervasi
Senior Attorney

RG/dm
Enclosures

cc: Division of the Commission Clerk and Administrative Services (2 copies)
Division of Economic Regulation (Brady, Redemann)
Robert B. Burandt, Esquire
William E. Sundstrom, Esquire
Martin S. Friedman, Esquire

LIST OF WATER AND WASTEWATER UTILITIES IN LEE COUNTY

(VALID FOR 60 DAYS)
01/31/2003-03/31/2003

UTILITY NAME

MANAGER

LEE COUNTY

AQUASOURCE UTILITY, INC. (SU821)
% AQUASOURCE, INC.
411 SEVENTH AVENUE, MD. 14-3
PITTSBURGH, PA 15219-1919

WILLIAM V. PFROMMER
(412) 393-3623

BAYSHORE UTILITIES, INC. (WU013)
2259 CLUBHOUSE ROAD
NORTH FT. MYERS, FL 33917-2523

WAYNE CARSON WAMPLER
(239) 482-4024

BE UTILITY SYSTEMS, L.L.C. D/B/A BUCCANEER WATER SERVICE (WU730)
% MANUFACTURED HOME COMMUNITIES, INC.
2 NORTH RIVERSIDE PLAZA, SUITE 800
CHICAGO, IL 60606-2682

DONALD BARTON
(813) 995-3337

CHATEAU COMMUNITIES, INC. (SU315)
6160 SOUTH SYRACUSE WAY
GREENWOOD VILLAGE, CO 80112-4772

MIKE WHITAKE
(303) 874-7059

COOLIDGE-FT. MYERS REALTY LIMITED PARTNERSHIP D/B/A HERON' (SU828)
2250 AVENIDA DEL VERA
NORTH FT. MYERS, FL 33917-6700

DOUGLASS CORDELLO
(941) 543-6200 EXT 528

ENVIRONMENTAL PROTECTION SYSTEMS OF PINE ISLAND, INC. (SU287)
3039 YORK ROAD
ST. JAMES CITY, FL 33956-2303

KEVIN J. CHERRY
(239) 283-1144

FLORIDA WATER SERVICES CORPORATION (WS565)
P. O. BOX 609520
ORLANDO, FL 32960-9520

CARLYN KOWALSKY
(407) 598-4297

FOREST UTILITIES, INC. (SU293)
6000 FOREST BLVD.
FT. MYERS, FL 33908-4318

DAVID SWOR
(239) 481-0111

FOUNTAIN LAKES SEWER CORP. (SU572)
523 SOUTH EIGHTH STREET
MINNEAPOLIS, MN 55404-1078

MARY JO KELLY
(612) 332-7281

HUNTER'S RIDGE UTILITY CO. OF LEE COUNTY (SU674)
12500 HUNTERS RIDGE DRIVE
BONITA SPRINGS, FL 34135-3401

DON HUPRICH
(239) 992-4900

LIST OF WATER AND WASTEWATER UTILITIES IN LEE COUNTY

(VALID FOR 60 DAYS)
01/31/2003-03/31/2003

UTILITY NAME

MANAGER

LEE COUNTY (continued)

MOBILE MANOR, INC. (WU167) 150 LANTERN LANE NORTH FORT MYERS, FL 33917-6515	CAROL JULIUS (239) 543-1414
NORTH FORT MYERS UTILITY, INC. (SU317) P. O. BOX 2547 FT. MYERS, FL 33902-2547	JACK SCHENKMAN (941) 543-4000 OR -1808
NORTH FORT MYERS UTILITY, INC. (WU834) P. O. BOX 2547 FT. MYERS, FL 33902-2547	JACK SCHENKMAN (941) 542-4000 OR -1808
PINE ISLAND COVE HOMEOWNERS ASSOCIATION, INC. (SU724) 7290 LADYFISH DRIVE ST. JAMES CITY, FL 33956-2723	ROBERT EAMES (239) 283-3100
REALNOR HALLANDALE, INC. (SU826) % NORTHERN TRUST BANK OF FLORIDA 4001 TAMiami TRAIL NORTH NAPLES, FL 33940-3556	LLOYD LIGGETT (239) 262-8800
SANIBEL BAYOUS UTILITY CORPORATION (SU331) 13591 MCGREGOR BLVD., SUITE 21 FT. MYERS, FL 33919-6050	JOHN HUCKEBA (239) 549-2191
SPRING CREEK VILLAGE, LTD. (WS234) P. O. BOX 6966 FT. MYERS, FL 33911-6966	DENNIS M. WALTCHACK (941) 992-3800/936-8888
TAMIAMI VILLAGE WATER COMPANY, INC. (WU740) 9280-5 COLLEGE PARKWAY FT. MYERS, FL 33919-4848	JOHN J. USTICA (239) 482-0717
TOWN AND COUNTRY UTILITIES COMPANY (WU811) 2220 PALMER STREET PITTSBURGH, PA 15218-2603	RICHARD S. CUDA (941) 639-3958
USEPPA ISLAND UTILITY, INC. (WS249) P. O. BOX 640 BOKEELIA, FL 33922-0640	VINCENT FORMOSA (239) 283-1061

LIST OF WATER AND WASTEWATER UTILITIES IN LEE COUNTY

(VALID FOR 60 DAYS)
01/31/2003-03/31/2003

UTILITY NAME

MANAGER

LEE COUNTY (continued)

UTILITIES, INC. OF EAGLE RIDGE (SU749)
200 WEATHERSFIELD AVENUE
ALTAMONTE SPRINGS, FL 32714-4099

DONALD RASMUSSEN
(407) 869-1919

LIST OF WATER AND WASTEWATER UTILITIES IN LEE COUNTY

(VALID FOR 60 DAYS)
01/31/2003-03/31/2003

UTILITY NAME

MANAGER

GOVERNMENTAL AGENCIES

CHAIRMAN, BOARD OF COUNTY COMMISSIONERS, LEE COUNTY
P. O. BOX 398
FT. MYERS, FL 33902-0398

CLERK OF CIRCUIT COURT, LEE COUNTY
P. O. BOX 2469
FORT MYERS, FL 33902-2469

DEP SOUTH DISTRICT
2295 VICTORIA AVE., SUITE 364
FORT MYERS, FL 33901

MAYOR, CITY OF CAPE CORAL
P. O. BOX 150027
CAPE CORAL, FL 33915-0027

MAYOR, CITY OF FT. MYERS
P. O. BOX 2217
FORT MYERS, FL 33902-2217

MAYOR, CITY OF SANIBEL
800 DUNLOP ROAD
SANIBEL, FL 33957-4096

S.W. FLORIDA REGIONAL PLANNING COUNCIL
P.O. BOX 3455
NORTH FT. MYERS, FL 33918-3455

SO. FLORIDA WATER MANAGEMENT DISTRICT
P.O. BOX 24680
WEST PALM BEACH, FL 33416-4680

LIST OF WATER AND WASTEWATER UTILITIES IN LEE COUNTY

(VALID FOR 60 DAYS)
01/31/2003-03/31/2003

UTILITY NAME

MANAGER

STATE OFFICIALS

STATE OF FLORIDA PUBLIC COUNSEL
C/O THE HOUSE OF REPRESENTATIVES
THE CAPITOL
TALLAHASSEE, FL 32399-1300

DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES
FLORIDA PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32399-0850

**SAMPLE PUBLICATION / LEGAL NOTICE FOR
APPLICATION FOR ORIGINAL CERTIFICATE
(FOR A PROPOSED OR EXISTING SYSTEM REQUESTING
INITIAL RATES AND CHARGES)**

(Section 367.045, Florida Statutes)

LEGAL NOTICE

Notice is hereby given on (Date) , pursuant to Section 367.045, Florida Statutes, of the application of (Name of Utility) to operate a water and/or wastewater utility to provide service to the following described territory in (County) , Florida.

(Insert a brief description of the area proposed to be served. Use the Survey of Public Lands method (township, range, section, and quarter section) if possible, or a metes and bounds description, and also the subdivision or project name. The description should **NOT** refer to land grants or plat books, but may use geographic boundaries (i.e., road right-of-ways, railroads, rivers, creeks, etc.). The object is to make the description as brief, but as accurate as possible.)

Any objection to the said application must be made in writing and filed with the Director, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within thirty (30) days from the date of this notice. At the same time, a copy of said objection should be mailed to the applicant whose address is set forth below. The objection must state the grounds for the objection with particularity.

(Utility name and address)

**CHAPTER 25-30.030, F.A.C.
NOTICE OF APPLICATION**

(1) When a utility applies for a certificate of authorization, an extension or deletion of its service area, or a sale, assignment or transfer of its certificate of authorization, facilities or any portion thereof or majority organizational control, it shall provide notice of its application in the manner and to the entities described in this section.

(2) Before providing notice in accordance with this section, a utility shall obtain from the Commission a list of the names and addresses of the municipalities, the county or counties, the regional planning council, the Office of Public Counsel, the Commission's Director of the Division of the Commission Clerk and Administrative Services, the appropriate regional office of the Department of Environmental Protection, the appropriate water management district, and privately-owned water and wastewater utilities that hold a certificate granted by the Public Service Commission and that are located within the county in which the utility or the territory proposed to be served is located. In addition, if any portion of the proposed territory is within one mile of a county boundary, the utility shall obtain from the Commission a list of the names and addresses of the privately-owned utilities located in the bordering counties and holding a certificate granted by the Commission. The utility's request for the list shall include a complete legal description of the territory to be requested in the application that includes:

(a) a reference to township(s), range(s), land section(s) and county; and
(b) a complete and accurate description of the territory served or proposed to be served in one of the following formats. The description may reference interstates, state roads, and major bodies of water. The description shall not rely on references to government lots, local streets, recorded plats or lots, tracts, or other recorded instruments.

1. Sections: If the territory includes complete sections, the description shall only include the township, range, and section reference. If the territory includes partial sections, the description shall either identify the subsections included or excluded.

2. Metes and bounds: A point of beginning which is referenced from either a section corner or a subsection corner, such as a quarter corner. The perimeter shall be described by traversing the proposed territory and closing at the point of beginning. The description shall include all bearings and distances necessary to provide a continuous description.

(3) The notice shall be appropriately styled:

- (a) Notice of Application for an Initial Certificate of Authorization for Water, Wastewater, or Water and Wastewater Certificate;
(b) Notice of Application for an Extension of Service Area;
(c) Notice of Application for Deletion of Service Area;
(d) Notice of Application for a Transfer of Water, Wastewater, or Water and Wastewater Certificate(s); or
(e) Notice of Application for a Transfer of Majority Organizational Control.

(4) The notice shall include the following:
(a) the date the notice is given;
(b) the name and address of the applicant;
(c) a description, using township, range and section references, of the territory proposed to be either served, added, deleted, or transferred; and
(d) a statement that any objections to the application must be filed with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870, no later than 30 days after the last date that the notice was mailed or published, whichever is later.

(5) Within 7 days of filing its application, the utility shall provide a copy of the notice by regular mail to:

(a) the governing body of the county in which the utility system or the territory proposed to be served is located;

(b) the governing body of any municipality contained on the list obtained pursuant to (2) above;

(c) the regional planning council designated by the Clean Water Act, 33 U.S.C. 1288(2);

(d) all water or wastewater utilities contained on the list(s) obtained pursuant to (2) above;

(e) the office of Public Counsel;

(f) the Commission's Director of the Division of the Commission Clerk and Administrative Services;

(g) the appropriate regional office of the Department of Environmental Protection;
and

(h) the appropriate Water Management District.

(6) No sooner than 21 days before the application is filed and no later than 7 days after the application is filed, the utility shall also provide a copy of the Notice, by regular mail or personal service, to each customer, of the system to be certificated, transferred, acquired, or deleted.

(7) The Notice shall be published once in a newspaper of general circulation in the territory proposed to be served, added, deleted, or transferred. The publication shall be within 7 days of filing the application.

(8) A copy of the notice(s) and list of the entities receiving notice pursuant to this rule shall accompany the affidavit required by sections 367.045(1) (e) and (2) (f), Florida Statutes. The affidavit shall be filed no later than 15 days after filing the application.

(9) This rule does not apply to applications for grandfather certificates filed under section 367.171, Florida Statutes, or to applications for transfers to governmental authorities filed under Section 367.071, Florida Statutes, or to name changes.

Specific Authority: 367.121(1), F.S.

Law Implemented: 367.031, 367.045, 367.071, F.S.

History: New 4/5/81, formerly 25-10.061, Transferred from 25-10.0061 and Amended 11/9/86, Amended 1/27/91, Amended 11/30/93.

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**CHAPTER 25-30.031, F.A.C.
WRITTEN OBJECTION**

(1) A written objection to a Notice of Application is timely if it is filed within 30 days after the last day that the Notice is mailed or published by the applicant, whichever is later.

(2) A written objection must state the grounds for the objection with particularity.

Specific Authority: 367.121(1), F.S.

Law Implemented: 367.045, F.S.

History: New 11/9/86. Amended 1/27/91.

2

FLORIDA PUBLIC SERVICE COMMISSION

INSTRUCTIONS FOR PREPARATION OF TERRITORY DESCRIPTION AND MAP

An accurate description of the territory served or proposed to be served is essential. The noticing requirement in Rule 25-30, Florida Administrative Code, and the territory description requirement for each of the certification applications require the territory to be described using township, range and land sections. Failure to use the required format will cause your application to be delayed and may result in your having to renotice. The following information is provided to assist you in preparing a correct legal description and plotting that territory on the service territory map.

TERRITORY DESCRIPTION

The territory description must contain the following:

- 1) A reference to a township(s), range(s), land section(s) and county.
- 2) A complete and accurate description of the territory served or proposed to be served. There are two acceptable formats which may be used.
 - a) Sections - If the territory includes complete sections, the description may only include the township, range, and section reference. If the territory includes partial sections, the description shall either identify the subsections included or excluded.
 - b) Metes and Bounds - A point of beginning which is referenced from either a section corner or a subsection corner, such as a quarter corner. The perimeter shall be described by traversing the proposed territory and closing at the point of beginning. Also, the description shall include all bearings and distances necessary to provide a continuous description.
- 3) References to interstates, state roads, and major bodies of water are acceptable.
- 4) References to government lots, local streets, recorded plats or lots, tracts, or other recorded instruments are not acceptable.

Acceptable territory description formats are shown in the attached Examples 1 and 2.

FORMAT TO BE FOLLOWED IN PREPARING TERRITORY DESCRIPTIONS.
EXAMPLE 1 IS PREFERRED OVER METES AND BOUNDS IN EXAMPLE 2.

EXAMPLE 1

Township 26 South, Range 29 East, Osceola
County, Florida

Section 18

The South 1/2 of the Southeast 1/4 and the
South 1/2 of the North 1/2 of the Southeast
1/4 of said Section 18

also

The East 1/2 of the Southeast 1/4 of the South
West 1/4 and the Southeast 1/4 of the
Northeast 1/4 of the Southwest 1/4 of said
Section 18

Section 19

The North 1/2 of the Northeast 1/4 and the
North 1/2 of the South 1/2 of the Northeast
1/4 of said Section 19

also

The East 1/2 of the Northeast 1/4 of the
Northwest 1/4 and the Northeast 1/4 of the
Southeast 1/4 of the Northwest 1/4 of said
Section 19

EXAMPLE 2

A portion of Section 18 and 19, Township 26
South, Range 29 East, Osceola County Florida;
being more particularly described as follows:
Commencing at the SE corner of Section 18,
this point also being the Point of Beginning;
thence run due south along the east line of
Section 19 a distance of 1980 feet to a point;
thence run due west a distance of 2706 feet to
a point; thence run due north a distance of
3960 feet to a point; thence run due east a
distance of 2706 feet to a point of east line
of Section 18; thence run due south along the
east line of Section 18 a distance of 1980
feet to the Point of Beginning.

Territory maps are required in the Florida Administrative Code rules related to applications for original certificates, amendments, grandfather certificates, and in transfers to a governmental agency where only a portion of the territory is transferred. The map is used by staff to verify the location of the existing or proposed territory. The territory maps should not be confused with the system depiction map which is used to locate existing or proposed service lines and facilities.

TERRITORY MAP

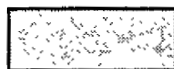
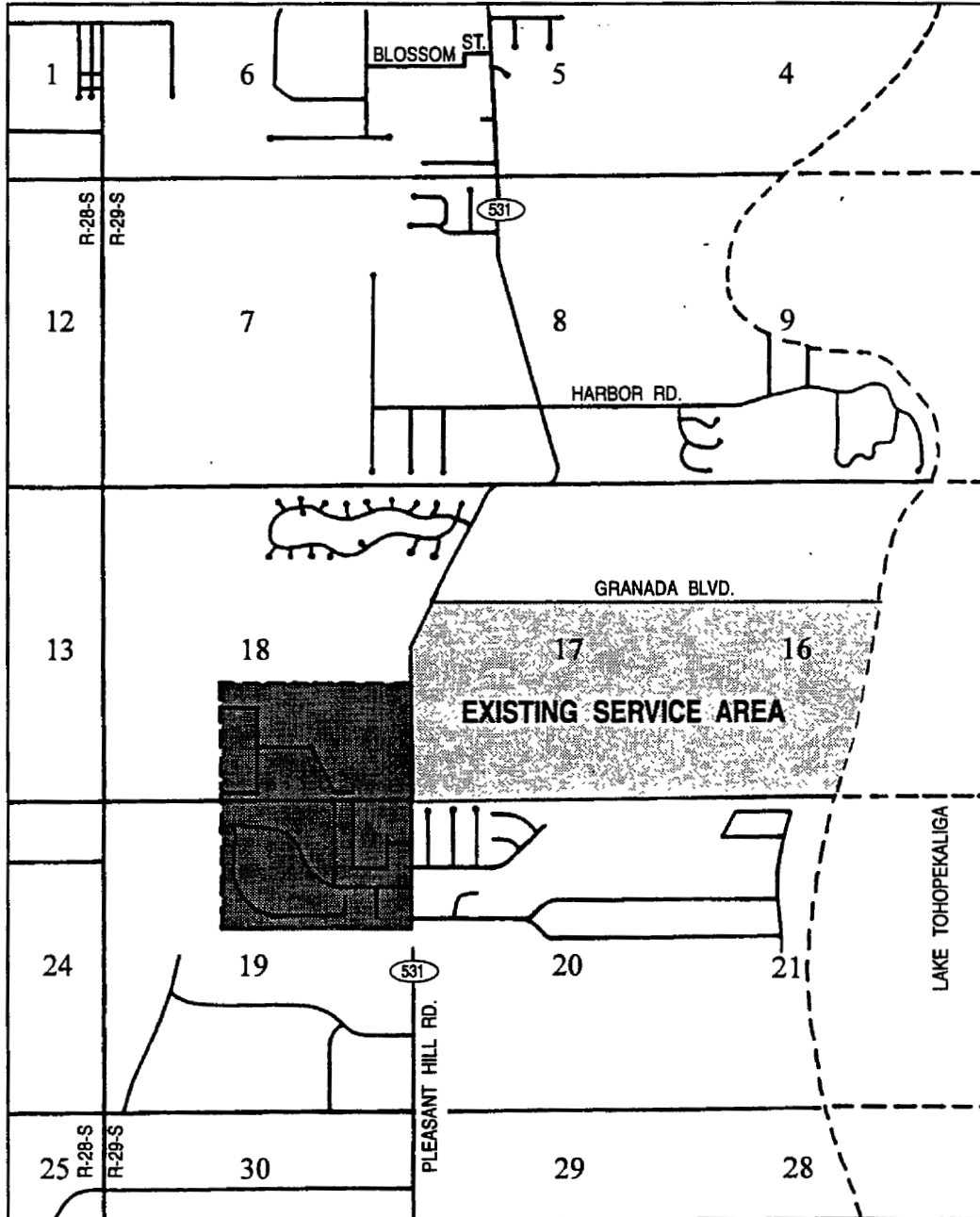
The territory map shall contain the following:

- 1) Territory shall be plotted on a Department of Transportation Map, County tax assessor map or any other map with a scale of 1" = 200 ft. or 1" = 400 ft.
- 2) Township, range, section, and county.
- 3) An accurate depiction of the existing or proposed territory. The map should clearly distinguish the existing versus the proposed territory.

An example of a acceptable territory map is attached as Example 3.

EXAMPLE 3

TOWNSHIP 26 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY, FLORIDA



EXISTING SERVICE AREA



PROPOSED SERVICE AREA