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07 MAY 14 AM 7:41

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THOMAS G. FREEMAN, ESQUIRE
OF COUNSEL

May 11, 2007

Florida Public Service Commission
Ann Cole, Commission Clerk
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED FPSC
07 MAY 14 AM 9:41
COMMISSION
CLERK

Re: Baypointe Builders, LLC v. Utilities, Inc. of Florida and Wedgefield
Utilities, Inc.

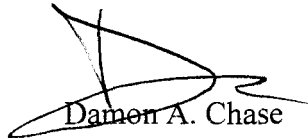
070312-415

Dear Ms. Cole:

Enclosed please find the original and sixteen copies of a Verified Petition for Writ of Mandamus Ordering the Provision of Water/Sewer Service in the above-styled case. Pursuant to my paralegal's telephone conversation of this date with Matilda Sanders in your office, we are required to file the original and fifteen copies with your office. Please date stamp the additional copy and return it to our office in the enclosed self-addressed, stamped envelope.

Ms. Sanders indicated that your office handles the service of this Petition on the defendants. If you need anything further from us, please contact my office.

Sincerely,


Damon A. Chase

DAC/jf
Encl.

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

03980 MAY 14 07

FPSC-COMMISSION CLERK

ORIGINAL

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

BAYPOINTE BUILDERS, LLC

PETITIONER,

vs.

CASE NO.: 070312-WS

UTILITIES, INC. OF FLORIDA and
WEDGEFIELD UTILITIES, INC.,

Respondents.

**VERIFIED PETITION FOR WRIT OF MANDAMUS ORDERING
THE PROVISION OF WATER/SEWER SERVICE**

Petitioner, BAYPOINTE BUILDERS, LLC, petitions the Public Service Commission (“Commission”) pursuant to Chapter 120, *Fla. Stat.* (2007) and the rules of the Commission and requests a Writ of Mandamus ordering UTILITIES, INC. OF FLORIDA and WEDGEFIELD UTILITIES, INC., to provide water/sewer service to Petitioner in Orange County, Florida and says:

1. The Commission has exclusive jurisdiction over utility matters relating to the provision of services by a utility company regulated by the Commission. See *Teleco Communications Company v. Susan F. Clark, et al*, 695 So. 2d 304 (Fla. 1997).
2. Wedgefield Utilities, Inc. (“Wedgefield”) is a utility provider and is regulated by the Commission.
3. Wedgefield provides water and sewer services to residents and property owners located in Orange County, Florida.
4. Utilities, Inc. of Florida (“UIF”) is a utility provider and is regulated by the Commission.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

5. Wedgefield/UIF maintains water and sewer line, and other equipment necessary for the provision of water and sewer services, in Orange County, Florida.

6. Wedgefield/UIF voluntarily provides water and sewer services to residents and property owners located in Orange County, Florida.

7. Petitioner has substantially completed a development of eighteen (18) townhouses (the "Development") along Maxim Parkway in the "City" area of Wedgefield, Orange County, Florida, all in Wedgefield/UIF's "franchise" area where Wedgefield/UIF voluntarily provides water and sewer services to residents and property owners located therein.

8. Wedgefield/UIF provides water and sewer services pursuant to rate scheduling and regulation by the Commission.

9. Wedgefield/UIF has a legal duty to provide water/sewer services to any entities or individuals within its service jurisdiction who apply for services and comply with its reasonable regulations. See *Florida Power & Light Company v. State*, 107 Fla. 317, 144 So. 2d 657 (Fla. 1932) (A corporation which is engaged in the provision of utilities must provide services to entities within its service jurisdiction); *City of Gainesville v. Gainesville Gas and Electric Power Company*, 65 Fla. 404, 62 So. 2d 919 (Fla. 1913)(A corporation, whether public or private, "which voluntarily undertakes to provide a service public in nature, assumes an obligation by law to render, for reasonable compensation and without discrimination and to all the public in the area sought to be served, a service reasonably adequate to meet the just requirements of those sought to be served").

10. Mandamus is an appropriate remedy where a corporation voluntarily assumes the legal duty to provide services and thereafter refuses to provide the services to requesting and

entitled parties. See *Florida Power & Light Company v. State*, 107 Fla. 317, 144 So. 2d 657 (Fla. 1932)

11. Petitioner is a legal entity authorized to do business in the State of Florida.
12. Petitioner owns real property located in Orange County, Florida.
13. The Development is in a franchise service area of Wedgefield/UIF.
14. The property involved has been platted but sewer and water services were not shown on the plat.
15. Petitioner offered to install any needed sewer or water service lines/equipment needed for service from Wedgefield/UIF.
16. Wedgefield/UIF required a development agreement from Petitioner to provide the installation.
17. Wedgefield/UIF confirmed that it had service capacity sufficient to provide service to Petitioner's development.
18. Petitioner in June 2006 issued to Wedgefield/UIF a check in the approximate amount of Sixty Thousand Dollars (\$60,000.00) in reliance upon, and deposit for, services to be provided by Wedgefield/UIF based upon its assurances of available service.
19. Application was made to the Orange County, Florida permitting department in support of Petitioner's development purposes.
20. Orange County issued the requested permits.
21. In October 2006, Petitioner provided Wedgefield/UIF with sepias of the water/sewer line locations for the benefit of Wedgefield/UIF.
22. Wedgefield/UIF informed Petitioner that a development agreement was forthcoming.

23. Petitioner retained engineers and provided to Wedgefield/UIF drawings of the then current and proposed installation of fire hydrants, and waterlines.

24. Wedgefield/Utilities returned the deposit check and indicated that it lacked service capacity for the development.

25. Petitioner is developing the real property for the construction of townhomes/condominiums for sale to the public. The proposed development is known as “Baypointe Homes”.

26. The real property is located within the service jurisdiction of Wedgefield/UIF

27. Petitioner requested Wedgefield/UIF to provide water and sewer services for the property.

28. Petitioner has complied with all reasonable regulations and conditions imposed by Wedgefield/UIF.

29. Upon information and belief, Wedgefield/UIF has sufficient service capacity to render to Petitioner the requested services for its proposed development.

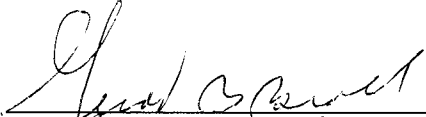
30. Wedgefield/UIF has refused, and continues to refuse, to provide to Petitioner the requested utility services.

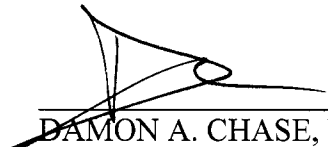
WHEREFORE, BAYPOINTE BUILDERS, LLC requests that the Commission established a docketed case, schedule a hearing on this Petition, and enter an order mandating

Wedgefield/UIF to provide the requested services to Petitioner.

I HEREBY CERTIFY that the above is true and correct.

BAYPOINTE BUILDERS, LLC


By: GERARD B. BENNETT
In his/her capacity as VP


DAMON A. CHASE, ESQUIRE
Florida Bar No.:642061
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Lake Mary, FL 32746
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ACKNOWLEDGEMENT

Before me, the undersigned authority, on this _____ day of April, 2007
personally appeared _____, (____) who is
personally known to me OR (____) who produced : _____
as identification and who swore that the above is true and correct.

NOTARY PUBLIC
Typed Name: _____
My Commission Expires: _____