



State of Florida  
 Division of Administrative Hearings  
 The DeSoto Building, 1230 Apalachee Parkway  
 Tallahassee, FL 32399-1550  
 (904) 488-9675 • SunCom: 278-9675

Sharyn L. Smith  
 Director

Ann Cole  
 Clerk

July 16, 1991

**ORIGINAL  
 FILE COPY**

Steve Tribble, Director  
 Records and Recording  
 Florida Public Service Commission  
 101 East Gaines Street  
 Tallahassee, Florida 32399

891280-WS

Re: DOAH Case No. 91-1159 - Betmar Utilities, Inc. vs. City of Zephyrhills and Florida Public Service Commission

Dear Mr. Tribble:

Enclosed is my Recommended Order in the above-referenced case. Also enclosed are the exhibits of record along with the transcript of this proceeding, filed with the Division on May 22, 1991.

Pursuant to Section 120.59(5), Florida Statutes, please furnish the Division of Administrative Hearings a copy of the Final Order within 15 days of rendition.

Sincerely,

VERONICA E. DONNELLY  
 Hearing Officer

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- LIN \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC   /
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

VED:bdg  
 Enclosures

cc: Scott L. Knox, Esquire  
 Thomas P. McAlvanah, Esquire  
 Robert J. Pierson, Esquire  
 Susan Clark, Esquire  
 David Swafford

DOCUMENT NUMBER-DATE

07270 JUL 18 1991

WPSC-RECORDS/REPORTING

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

BETMAR UTILITIES, INC., )

Petitioner, )

vs. )

CASE No. 91-1159

CITY OF ZEPHYRHILLS, )

Respondent, )

and )

FLORIDA PUBLIC SERVICE COMMISSION, )

Intervenor. )

**RECOMMENDED ORDER**

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Veronica E. Donnelly, held a formal hearing in the above-styled case on May 9, 1991, in Dade City, Florida.

**APPEARANCES**

For Petitioner: Scott L. Knox, Esquire  
28870 U.S. Highway 19 North  
Suite 230  
Clearwater, Florida 34621

For Respondent: Thomas P. McAlvanah, Esquire  
37818 Highway 54 West  
Zephyrhills, Florida 34248

For Intervenor: Robert J. Pierson, Esquire  
101 East Gaines Street  
Tallahassee, Florida 32399-0863

**STATEMENT OF THE ISSUES**

Whether Betmar Utilities, Inc.'s application for an expansion of territory under its water and wastewater certificates in Pasco County should be approved by the Public Service Commission.

DOCUMENT NUMBER-DATE

07270 JUL 18 1991

APSC-RECORDS/REPORTING

used in the Recommended Conclusions of Law as the April rule revisions were not available at hearing. It was further agreed that the statute in effect at the time the application was filed would be the controlling statutory law.

During the hearing, two witnesses were presented by Betmar and four exhibits were moved into evidence. The City submitted three exhibits, and applicable portions of the Pasco County Land Use Plan were admitted as Hearing Officer Exhibit #1. Leave to file the land use plan and the Tariff Sheet marked Petitioner's Exhibit #4 posthearing was granted by the Hearing Officer. These exhibits were filed May 20, 1991, and all exhibits were admitted without objection.

The transcript of the hearing was filed May 22, 1991. Proposed Recommended Orders were filed by all parties by June 3, 1991. Rulings on the proposed findings of fact are in the Appendix to the Recommended Order.

#### FINDINGS OF FACT

1. Betmar Utilities, Inc. is a private utility company who owns and holds Florida Public Service Commission Certificates Number 137W and No. 98S. These certificates grant Betmar the right to operate a water and wastewater system in a specified territory within an unincorporated area of Pasco County.

2. Betmar seeks an extension of its certified territory into the areas immediately to the north and south in an unincorporated area of the county. There is, or will be in the near future, a need for water and wastewater services in the

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

|                                    |   |                  |
|------------------------------------|---|------------------|
| BETMAR UTILITIES, INC.,            | ) |                  |
|                                    | ) |                  |
| Petitioner,                        | ) |                  |
|                                    | ) |                  |
| vs.                                | ) | CASE No. 91-1159 |
|                                    | ) |                  |
| CITY OF ZEPHYRHILLS,               | ) |                  |
|                                    | ) |                  |
| Respondent,                        | ) |                  |
| and                                | ) |                  |
|                                    | ) |                  |
| FLORIDA PUBLIC SERVICE COMMISSION, | ) |                  |
|                                    | ) |                  |
| Intervenor.                        | ) |                  |

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| For Intervenor: | Robert J. Pierson, Esquire<br>101 East Gaines Street<br>Tallahassee, Florida 32399-0863         |

**STATEMENT OF THE ISSUES**

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2. Betmar seeks an extension of its certified territory into the areas immediately to the north and south in an unincorporated area of the county. There is, or will be in the near future, a need for water and wastewater services in the

proposed amended territory. An Application for Amendment of Territory was filed with the Commission to allow Betmar to service the area on November 13, 1989.

3. When Betmar noticed the City of its pending application, an objection was filed to the proposed expansion. The objection specifically relates to the property on the south side of Geiger Road, which extends 330 feet south of the roadway, and adjoins the City's boundaries.

4. Although the City does not currently provide services to this locale, it does own water and sewer lines on the northern side of Geiger Road in the Silver Oaks area. Other water and sewer lines in the City's system extend below the south side of Geiger Road at the far eastern portion of the area for which Betmar is seeking the extension of territory.

5. In an interlocal agreement between the City and the County dated February 9, 1988, these governmental entities established designated service areas for water and wastewater services in this particular area of the county. The purpose of the agreement was to promote the economic delivery of services to citizens in the area, and to provide for the necessary long-range planning inherent in the provision of these services. Prior to the agreement, the County was authorized to provide the services to the areas for which an extension is sought by Betmar.

6. The service area boundaries delineated in the agreement were to be periodically reviewed in conjunction with the review of each party's respective comprehensive plans.

7. Pursuant to this agreement, the City and County determined that the City's Service Area Boundry would include the area south of Geiger Road that abuts Betmar's current service area.

8. The City and the County each relied upon this interlocal agreement in the creation of their respective comprehensive plans. However, no additional action has been taken by the City to service the area.

9. The City is not actually operating within the disputed area for a number of reasons. First of all, the City has adopted an ordinance which requires annexation of contiguous property as a condition of receiving its water and sewer services. The disputed portion of the proposed amended territory is not within the city limits and has not been annexed. Secondly, the City is not prepared to build utility lines to service the disputed proposed amended territory until the new bypass road along Geiger Road is built, and the proper right-of-way is obtained. At that time, the City would like to extend the Silver Oaks line under Geiger Road to the south, and the line along the eastern side of the disputed portion of territory to the west. These anticipated expansions correlate with the City's Service Area Boundry in the interlocal agreement which remains unchanged between the City and the County. A proposed service date was not provided by the City at the formal hearing.

10. The City seeks to control land use and development of property along the Geiger Road corridor though its ability to provide or withhold utility services.

18. Betmar presented no evidence about plans for further financial investment which would enable the utility to provide service in the area for which the extension has been requested because Betmar believes further investment is unnecessary.

19. Betmar has an agreement with the County that states the County will provide bulk wastewater treatment to Betmar for the purpose of offering centralized wastewater services from the County's Southeast Subregional Wastewater Treatment Plant for a twenty-five year term.

20. The County has placed a possible qualification on the term of years in the agreement by inserting the following clause:

... its first responsibility is to the customers inside its own service limits and that it reserves the right to act in the best interest of those customers in all circumstances.

21. The agreement between the County and Betmar has not been approved by the Commission.

#### CONCLUSIONS OF LAW

The Division of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Sections 367.045(4) and 120.57(1), Florida Statutes.

When a utility applies for an amended certificate of authorization from the Commission, it is required to provide all information required by rule or order of the Commission. Section 367.045(2), Florida Statutes.



Rule 25-30.036(d), Florida Administrative Code, requires a utility proposing to extend its service area to provide:

[E]vidence that the utility owns the land upon which the utility treatment facilities that will serve the proposed territory are located or a copy of an agreement, such as a 99-year lease, which provides for the continued use of the land.

In this case, Betmar has an agreement with the County, who currently has jurisdiction to service the area in controversy. The agreement states the county will provide bulk wastewater treatment to Betmar in the area for a twenty-five year term, subject to the County's need to use its Southeast Subregional Wastewater Treatment Plant for customers within its own service area. When this agreement was placed into evidence instead of a deed or a long-term lease as required by rule, a legal issue arose as to whether Betmar's request for an amended certificate of authorization is materially deficient under the statutory and regulatory framework.

During a cursory review of the pending amendment application, it appears that there would be numerous public benefits if Betmar were to obtain the amended certificate and expand its territory to all of the requested area. The County has no objection, and the City is unable to act ultra vires in the area due to its ordinance which prevents the provision of City utilities in an unincorporated area. Further scrutiny reveals the amendment application is materially deficient in that the required ownership or long-term 99-year lease regarding

utility treatment facilities is nonexistent. Even the proposed twenty-five year permitted use agreement regarding the treatment facilities contains conditions subsequent that severely limit the County's obligations under the agreement. As a matter of law, the agreement lacks the certainty required by Rule 25-30.036, Florida Administrative Code.


The applicant has the burden to prove that his request for the amendment is in the public interest. Although the proposed amendment application contains numerous public benefits, it is contrary to the public interest to cause future Betmar customers to rely on a wastewater treatment agreement that lacks certainty. The conditions subsequent, which are out of Betmar's control, make the proposed agreement with the County unreliable, even for the proposed twenty-five year term.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is **RECOMMENDED**:

The Commission should deny Betmar's application for an amendment to its certified territory in Pasco County as the applicant has failed to provide that it will be allowed the continued use of the County's Southeast Subregional Wastewater Treatment Plant for the twenty-five year term set forth in the agreement presented at hearing.

DONE and ENTERED this 16<sup>th</sup> day of July, 1991, in Tallahassee, Leon County, Florida.

  
VERONICA E. DONNELLY  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904)488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 16<sup>th</sup> day of July 1991.

**NOTICE OF RIGHT TO SUBMIT EXCEPTIONS:** All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.

Copies furnished:

Scott L. Knox, Esquire  
28870 U.S. Highway 19 North  
Suite 230  
Clearwater, Florida 34621

Thomas P. McAlvanah, Esquire  
37818 Highway 54 West  
Zephyrhills, Florida 34248

Robert J. Pierson, Esquire  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399-0863

**APPENDIX TO RECOMMENDED ORDER**  
**IN CASE No. 91-1159**

Petitioner's proposed findings of fact are addressed as follows:

1. Accepted. See HO #2.
2. Accepted. See HO #1.
3. Accepted. See HO #3.
4. Accepted. See HO #11.
5. Accepted. See HO #4.
6. Accepted. See HO #9.
7. Accepted. See HO #11.
8. Accepted. See HO #13.
9. Accepted. See HO #14.
10. Accepted. See HO #9.
11. Accepted. See HO #9.
12. Accepted. See HO #11.
13. Accepted.
14. Rejected. Improper legal conclusion.
15. Accepted. See HO #5.
16. Accepted. See HO #8.
17. Accepted. See HO #14.
18. Accepted. See HO #14.
19. Accepted.
20. Accepted.
21. Accepted.
22. Accepted.
23. Accepted. See HO #15.
24. Accepted. See HO #15.
25. Accepted. See HO #16.
26. Rejected. Improper legal conclusion. See HO #17.
27. Accepted. See Preliminary Statement.

Respondent's proposed findings of fact are addressed as follows:

1. Accepted. See Preliminary Statement.
2. Accepted. See Preliminary Statement.
3. Accepted that an interlocal agreement between City and county existed. See HO #5. The rest of the paragraph is rejected as legal argument.