

LAW OFFICES

ROSE, SUNDSTROM & BENTLEY

A PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

2548 BLAIRSTONE PINES DRIVE

TALLAHASSEE, FLORIDA 32301

(904) 877-6555

ORIGINAL FILE COPY

ROBERT A. ANTISTA
CHRIS H. BENTLEY, P.A.
F. MARSHALL DETERDING
MARTIN S. FRIEDMAN, P.A.
JOHN R. JENKINS
ROBERT M. C. ROSE, P.A.
WILLIAM E. SUNDSTROM, P.A.
DIANE D. TREMOR, P.A.
JOHN L. WHARTON

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

TELECOPIER (904) 656-4029

March 2, 1994

Mr. Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

RE: Revocation by PSC of Certificate Nos. 451-W and 382-S
Docket No. 930944-WS
Our File No. 29056.03

Dear Mr. Tribble:

Enclosed please find the original and fifteen copies of the Notice of Filing Prefiled Direct Testimony and the Prefiled Direct Testimony of Richard D. Sims to be filed on behalf of Shady Oaks Mobile-Modular Estates, Inc. in the above-captioned case.

Should you have any questions or concerns regarding the above, please do not hesitate to contact me at your earliest convenience.

Sincerely,

ROSE, SUNDSTROM & BENTLEY

Robert A. Antista, Esq.
For The Firm

RECEIVED & FILED
was
FPSC-BUREAU OF RECORDS

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DOCUMENT NUMBER-DATE

02082 MAR-2 3

FPSC-RECORDS/REPORTING

**ORIGINAL
FILE COPY**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Revocation by Florida Public)
Service Commission of Certificates)
Nos. 451-W and 382-S issued to SHADY)
OAKS MOBILE-MODULAR ESTATES, INC. in)
Pasco County.)

DOCKET NO. 930944-WS

NOTICE OF FILING PREFILED DIRECT TESTIMONY

Shady Oaks Mobile-Modular Estates, Inc., by and through its undersigned attorneys, hereby files the original and fifteen copies of the Prefiled Direct Testimony Of Richard D. Sims and certifies that a true and accurate copy of the Prefiled Direct Testimony Of Richard D. Sims has been furnished by hand-delivery to Lila Jaber, Esq., Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, FL 32399-0850 on this 2nd day of March, 1994.



John L. Wharton, Esq.
Robert A. Antista, Esq.
ROSE, SUNDSTROM & BENTLEY
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(904) 877-6555

DOCUMENT NUMBER-DATE

ROSE, SUNDSTROM & BENTLEY
2548 BLAIRSTONE PINES DRIVE, TALLAHASSEE, FLORIDA 32301

02082 MAR-2 94

FPSC-RECORDS/REPORTING

**ORIGINAL
FILE COPY**

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
REVOCATION OF CERTIFICATE NOS. 451-W AND 382-S
ISSUED TO SHADY OAKS MOBILE-MODULAR ESTATES, INC.

DOCKET #930944-WS

ON BEHALF OF SHADY OAKS MOBILE-MODULAR ESTATES, INC.

PREFILED DIRECT TESTIMONY OF RICHARD D. SIMS

Q. Please state your name and employment address.

A. My name is Richard D. Sims. My employment address is 1315 Eckles Drive, Tampa, Florida 33612.

Q. What is your position with Shady Oaks Mobile-Modular Estates, Inc.?

A. I am President of that corporation.

Q. Has the Utility timely complied with Commission Order Nos. 24084 and 25296 with respect to meter installation requirements?

A. The Utility made a diligent effort to comply with the Commission's deadlines, but was unable to meet the deadlines because of financial constraints occasioned by a lack of cash flow. The Commission has been unrealistic in its view of our liquidity, cash flow problems and the absence of any reserve funds whatsoever. The delay in completing the installation of the meters until June, 1992 is strictly attributable to lack of the liquidity and cash flow problems. A \$25,000 loan (secured by Certificate of

DOCUMENT NUMBER-DATE

02082 MAR-28

FPSC-RECORDS/REPORTING

1 Deposit inherited by my wife from her aunt) enabled the
2 Utility to complete the installation about seventy days
3 beyond the deadline. In light of the realities of our
4 financial condition, the fact that the last meter was in-
5 stalled on June 17, 1992, should be viewed as understand-
6 able in view of the circumstances.

7 Q. Has the Utility complied with Commission Order Nos. 24084
8 and 25296 with respect to improving its quality of ser-
9 vice?

10 A. The Utility is continuing to make every effort to improve
11 the overall quality of the service provided to its custom-
12 ers. As part of this effort, the Utility has entered into
13 a proposal and contract for the construction of the sewer
14 interconnect to the Pasco County Utility System. A copy
15 of this contract and the Department of Transportation's
16 Permit relating to the interconnection is attached as
17 Exhibit "A." It is anticipated that the interconnect with
18 the wastewater system of Pasco County will be completed by
19 June of 1994, pursuant to the requirements of the Depart-
20 ment of Environmental Protection's Order of February 18,
21 1994, which is attached hereto as Exhibit "B". Within
22 thirty days of the completion of the connection of the
23 Utility to Pasco County's wastewater system, the Utility
24 will decommission its sewer plant and disposal system and
25 as part of this decommissioning will drain its percolation

1 pond and dismantle and remove the sewer plant. This
2 decommissioning will take place in accordance with Depart-
3 ment of Environmental Protection rules and regulations.
4 The Utility is currently applying to CoBank to secure the
5 necessary funds to accomplish the interconnection, of
6 course this depends upon the rate that is to be estab-
7 lished by the PSC and the time delay that they may take.
8 We are currently waiting on our financials to submit to
9 CoBank.

10 The decision to close the recreational facility in
11 the fall of 1991 gave rise to numerous complaints to the
12 Commission concerning inadequate service. The re-opening
13 of the recreational facilities in November, 1992 along
14 with discussions of its sale to the homeowners associa-
15 tion, served to increase harmony between the Utility and
16 the owners. Continued efforts are being made to replace
17 faulty cut-off valves and to timely advise customers when
18 utility services are to be interrupted for normal and
19 routine repair and maintenance. It also is our intention
20 to replace, over a period of time, all the interconnecting
21 flow valves within our loop line system to insure quality
22 service to each section of the Park. These efforts re-
23 sulted in improved customer relations and a drastic reduc-
24 tion in customer complaints.

25 We consider quality of service to be a very impor-

1 tant issue and I have been pursuing, and continue to
2 pursue; a long-range plan to correct some of the problems
3 and perceived problems that the Utility has experienced.

4 Q. Has the Utility complied with Commission Order Nos. 24084
5 and 25296 with respect to the name change and restructure
6 requirements?

7 A. The Utility was perhaps remiss in not moving promptly to
8 redress the name change issue. In June of 1992, the
9 Utility filed bankruptcy and was thereafter under the
10 jurisdiction of the bankruptcy court. The Utility is most
11 anxious to resolve this issue as soon as possible, espe-
12 cially now that the bankruptcy case has been dismissed.
13 The Utility is now operating exclusively under its uncert-
14 ificated name of Shady Oaks Mobile-Modular Estates, Inc.,
15 as required by previous Commission Orders and not under
16 the name of Shady Oaks Mobile Home Est., as set forth on
17 its certificates, copies of which are attached hereto as
18 Exhibit "C." The land upon which the utilities are locat-
19 ed is currently titled in the name of "Richard D. Sims and
20 Caroline Sue Sims" but will be transferred to the Utility
21 upon the consummation of the financing arrangements cur-
22 rently being undertaken with CoBank. It is anticipated
23 that the title to the land will be transferred into the
24 name of the Utility within four months subject to long-
25 term financing. Again, the fact that we have been faced

1 with issues on several fronts has forced us to prioritize
2 our limited resources so that the most serious problems
3 are addressed as quickly as possible. However, we are
4 moving forward with the name change and restructuring
5 requirements and intend to fully cooperate with the Com-
6 mission in that regard.

7 Q. Has the Utility complied with Commission Order Nos. 24084
8 and 25296 with respect to the preventive maintenance
9 requirements?

10 A. The Utility's rate payers were paying \$25.00 per month
11 from March through August, 1991 and then \$42.98 there-
12 after, an increase of \$17.98 per month, of which \$12.69
13 per month was required to be escrowed. In essence, what
14 occurred was that the \$25.00 represented the fee to the
15 recreational center, roads and streets, etc., and only the
16 \$42.98 was for utilities. These charges were simply
17 insufficient to fund the ongoing preventative maintenance
18 requirements. In addition, during the summer months when
19 customers were on vacation they were paying nothing,
20 because at that time no vacation rate was established,
21 thus the Utility revenue drastically declined. It is
22 continuing to decline due to the additional lack of water
23 consumption. There is also a Quarterly Group I Unregulat-
24 ed Sample Analysis, which will cost \$1,600.00 a year and
25 is now required, plus other required DEP sampling. These

1 have all contributed to the Utility's difficulty in meet-
2 ing the preventative maintenance requirements set forth in
3 previous Commission Orders. I don't believe the Commis-
4 sion staff would disagree with me that our rates have been
5 insufficient to generate the revenues expected or neces-
6 sary in order to adequately address the concerns the
7 Commission has had.

8 Q. Has the Utility complied with Commission Order Nos. 24084
9 and 25296 with respect to escrow requirements?

10 A. The present escrow balance is \$9,529.55, as of 1-31-94.
11 This escrow balance is far less than the required balance
12 simply because cash resources were less than anticipated.
13 The Utility has incurred a short-fall in income over ordi-
14 nary and necessary expenses through the present date. The
15 Utility's present income level precludes meeting the
16 Commission's escrow requirements. The Utility's present
17 rate base is simply inadequate. The Utility's installa-
18 tion of meters has actually reduced anticipated actual
19 income. The current rate structure approved by the Com-
20 mission simply does not allow the Utility to refund the
21 unfunded portion of the escrow account and severely limits
22 the Utility's ability to meet its ongoing expense obliga-
23 tions. The Utility continues to operate and perform to
24 the best of its ability based on the current rate struc-
25 ture.

1 Q. Do you have any further testimony to provide at this time?

2 A. No.

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PROPOSAL and CONTRACT

Date January 31, 19 94

TO Shady Oaks Mobile-Modular Estate, Inc. & Richard and Carolyn Sims

1315 Eckles Drive
Tampa, Fl 33612

Dear Sir:

I propose to furnish all materials and perform all labor necessary to complete the following: 6" PVC & Ductile Iron Pipe per print of Towson & Rogers dated 1/25/94
Per attached detail sheet, Exhibit "A"

For the interconnect Shady Oaks Sewer System to Pasco County Utility System.

** Pricing good until March 15, 1994

SEE PER ADDENDUM TO CONTRACT.

All of the above work to be completed in a substantial and workmanlike manner according to standard practices for the sum of Ninety Three Thousand* Dollars (\$ 93,498.50)
Payments to be made to be arranged and satisfactory to this contractor.

as the work progresses
to the value of _____ per cent (100 %) of all work completed.
The entire amount of contract to be paid within see above days after completion.

Any alteration or deviation from the above specifications involving extra cost of material or labor will only be executed upon written orders for same, and will become an extra charge over the sum mentioned in this contract. All agreements must be made in writing.

* Four ninety eight and 50 cents

Respectfully submitted,

By _____

Mr. Larry G. DeLucenay
(813) 949-4480

ACCEPTANCE

You are hereby authorized to furnish all materials and labor required to complete the work mentioned in the above proposal, for which I/We agree to pay the amount mentioned in said proposal, and according to the terms thereof.

ACCEPTED:

Richard D. Sims

Richard D. Sims
Richard D. Sims, President
Shady Oaks Mobile Modular Estates, Inc.

Date 2-8, 19 94

EXHIBIT
A

EXHIBIT "A"

A. LINE MATERIALS

600'	6" DI CL50	\$13.92	=	\$8352.00
650'	6" PVC DR18 C-900	\$ 9.87	=	\$6415.50
35'	6" JOINT RESTRAINER	\$89.00	=	3115.00
20'	6" MEGA LUG	\$49.00	=	980.00
1	6" X 8" DI REDUCER	197.00	=	197.00
4	6" DI 22 1/2 ELLS	97.00	=	388.00

SUBTOTAL: \$19,447.50

B. JACK & BORE 16" DOT SPECIFICATIONS 13937.00

BORE PITS, ROCK, DEWATERING

16	S.S BORE COUPLINGS	159.00EA	=	2544.00
9	RESTRAINING GLANDS @ BORE	90.00EA	=	810.00

SUBTOTAL: \$17,291.00

C. METER MAG 7842.00

4	6" DI FLG 90 @	100.00	=	360.00
1	6" DI FLG TEE	123.00	=	123.00
1	6" DI FLG BLIND	39.00	=	39.00
1	6" DI FLG CK VALVE	423.00	=	423.00
1	6" DI FLG AIR RELIEF	407.00	=	407.00
6	6" DI FLG SPOOLS	268.00	=	1608.00
1	6" CONC SLAB	360.00	=	360.00
24	6" BOLT KITS	22.00	=	528.00

SUBTOTAL \$11,690.00

D. ELECTRIC SERVICE WITH LACOOCHEE'S ELECTRIC ESTIMATE 1000.00

ROADWAY RESTERATION- SEED & MULCH	1920.00
NO ENVIRONMENTAL SCREENING	
PRESSURE TEST	350.00
TREES TO BE STACKED ON SITE ONLY	500.00
CLEARING DITCH BERM	4500.00

SUBTOTAL \$ 8,270.00

A-	LINE MATERIALS	19447.50
B-	JACK & BORE	17291.00
C-	MAG METER	11690.00
D-	MISC W/ CLEARING DITCH BERM	8270.00
	SUBTOTAL:	\$56,698.50

REHAB EXISTING LIFT STATION FOR PUMPING TO PASCO COUNTY- AGAINST COUNTY PRESSURE 31300.00

TOTAL MATERIAL & LABOR INSTALLED SUBTOTAL: 87998.50

PROJECT MANAGED & SUPERVISED SUBTOTAL: 5500.00

TOTAL: \$93,498.50

Legal & Survey 2,000.00
BWT

ADDENDUM

- # 1. Contract will provide Comprehensive General Liability Policy, Property Damage, and Medical Payments.
- # 2. Contract will completely explain Environmental Screening.
- # 3. Contract will State that this is with the approval of permanent financing, updated engineering prints, and all regulatory letters of approval will be attached
- # 4. Estimates, cost of surveying and legals should not exceed \$2,000.00.

X

This addendum is agreeable by both parties, Shady Oaks Mobile Modular Estates, Inc., and Larry G. DeLucenay, a registered contractor, State of Florida, # _____.

X Contract to Secura Utilities for
LD Permits As required by Law
RDD

LD



36339 S. R. 52
Dade City, FL 33525-8324
(904) 521-1444

February 02, 1994

Diana Becker
C/O Towson - Rogers Engineering, Inc.
5515 7th St.
Zephyrhills, Fl 33540

RE: Time Extension for Utility Permit CIVIL CNCS
Permit No. U-14-93-0049-P
Section: 14050
S. R. 39

Dear Ms. Becker:

This letter is to advise you that your request for a time extension for the subject permit has been approved.

An addendum to the subject permit shall be added to allow thirty (30) days to begin construction from the date of this letter. After commencement of construction, sixty (60) days will be allowed for completion.

This letter will authorize you to proceed with your proposed plans as submitted with the extension request, with all work to be completed in accordance with the amended permit.

Sincerely,

Larry G. Boone
Assistant Maintenance Engineer

LGB/MM/cm

cc: Doug Bramlett, Pasco County Utilities
File

Time.ext

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY PERMIT
(in compliance with Chapter 327, Florida Statutes)

PERM. FILE 1097

FORM 107-03
 UTILITIES
 05/90

DATE November 24, 1993 PERMIT NO. U-14-93-0049-P
 SUBJECT: Section 14050 State Road 39 County PASCO
 PERMITTEE Pasco County Utilities
 ADDRESS 7536 State St., New Port Richey, FL. 34654 Telephone Number (813) 847-8145

Requesting permission from the State of Florida Department of Transportation, hereinafter called the Department, to construct, operate and maintain approximately 140 linear feet of 6" copper main along MAINTENANCE OFFICE
proposed SPRINKLER NOTIFIED 24 HOURS IN

From MP/Station 3.040 to MP/Station 3.066

1. Proposed work is within corporate limits of a municipality. Yes () No (X) 14050
 Name of Municipality _____
2. Applicant declares that prior to filing this application he has ascertained the location of all existing utilities, both aerial and underground and the accurate locations are shown on the plans.
 A letter of notification was mailed on 11-12-93 to the following utilities/municipalities:
General Telephone, Florida Power, Florida Satellite Network
3. The office of the local Maintenance or Resident Engineer shall be notified twenty-four (24) hours prior to starting work and again immediately upon completion of work. The Engineer is R.F. Grimsley, located at Tampa, Telephone Number (813) 746-6038.
4. All work, materials, and equipment shall be subject to inspection by the local Maintenance or Resident Engineer and shall meet Department standards.
5. All Department property shall be restored to its original condition as far as practical, in keeping with Department specifications, and in a manner satisfactory to the Department.
6. All installations shall conform to the Department's Utility Accommodations Guide in effect the date permit is approved.
7. Plans of this installation shall conform to the Department's Utility Accommodations Guide and shall be made a part of this permit.
8. This permittee shall commence actual construction in good faith within 30 days from the day of said permit approval and shall be completed within 60 days. If the beginning date is more than 60 days from date of permit approval, then permittee must review the permit with the D.O.T. Maintenance Engineer to make sure no changes have occurred in the highway that would affect the permitted construction.
9. The construction and maintenance of such utility shall not interfere with the property and rights of a prior permittee.
10. It is expressly stipulated that this permit is a license for permissive use only and that the placing of facilities upon public property pursuant to this permit shall not operate to create or vest any property right in said holder.
11. Whenever necessary for the construction, repair, improvement, maintenance, safe and efficient operation, alteration or relocation of all, or any portion of said highway as determined by the District Director of Operations, any or all of facilities and appurtenances authorized hereunder, shall be immediately removed from said highway or reset or relocated thereon as required by the District Director of Operations and at the expense of the permittee unless reimbursement is authorized by separate agreement.
12. It is agreed that in the event the relocation of said utility facilities are scheduled to be done simultaneously with the Department's construction work, the permittee will coordinate with the Department before proceeding, shall cooperate with the Department's contractor to arrange the sequence of work so as not to unnecessarily delay the work of the Department's contractor, defend any legal claims of the Department's contractor due to delays caused by the permittee's failure to comply with the approved schedule, and shall comply with all provisions of the law and Rule 14-46, Florida Administrative Code. The Permittee shall not be responsible for delays beyond its normal control.
13. Special conditions: _____
14. Special instructions: _____
15. It is understood and agreed that the rights and privileges herein set out are granted only to the extent of the State's right, title and interest in the land to be entered upon and used by the permittee, and the permittee will, at all times, assume all risk of and indemnify, defend, and save harmless the State of Florida and the Department from and against any and all loss, damage, cost or expense arising in any manner on account of the exercise or attempted exercises by said permittee of the aforesaid rights and privileges.
16. During construction, all safety regulations of the Department shall be observed and the holder must take measures, including placing and display of safety devices, that may be necessary in order to safely conduct the public through the project area in accordance with the Federal manual on Uniform Traffic Control Devices (MUTCD), as amended, and the Department's latest Roadway and Traffic Design standards.
17. In case of non-compliance with the Department's requirements in effect as of the approved date of this permit, this permit is void and the facility will have to be brought into compliance or removed from the R/W at no cost to the Department.

Submitted by: [Signature] Place Corporate Seal _____
 Signature and Title _____
 Attested _____

"Waiver of Corporate Seal on File with the State of Florida Department of Transportation, Tallahassee, Florida.
 Yes (X) No ()
 Roadway construction is proposed or underway. No () Yes (X) W.P.I. No. 7116.032 7115.944
 Recommended for approval [Signature] Title F.I. Date 12-22-07

A portion of the below listed requirements are in addition to those outlined in the Department Utility Accomodation Guide adopted July 1979. These requirements are subject to change without notice, and in no way do they relieve the permittee of his liability for any damage which may occur as a result of the Utility installation and maintenance of same.

Mr. Larry C. Boone, PHONE 904-521-1444 with the Department of Transportation shall be notified at least 24 hours in advance of commencing work.

During the construction and/or maintenance of the utility, as approved by this permit, all safety regulations of the Florida State Department of Transportation and other authorities shall be complied with including the display of warning devices, signs and flagmen when applicable.

No part of the pavement is to be obstructed during the construction or maintenance of this utility.

All above ground appurtenances shall be located at the Right-Of-Way line.

Temporary storage on the Department's right-of-way of materials (poles, cables, pipes, etc.) to be used in the construction of the utility will not be permitted prior to issuance of permit and will be limited to a 30 day period providing materials do not create a sight distance restriction and that the offset distance as specified in Section VIII, IX, and I of the Utility Accomodation Guide are met.

Temporary storage (not to exceed 7 calendar days) of trench excavations will not be permitted within 12 feet of the pavement edge. Also, these excavations are to be stored in such manner that the sight distance on horizontal curves or intersection side roads are not restricted.

No excavation shall be permitted within four feet of the pavement edge.

If the permitted utility includes mechanical boring, an inspector for the Department of Transportation must be present.

Any poles shown to be constructed by this permit are not to exceed 24" in diameter.

All jacking and boring shall be done as a continuous operation as specified by Section IV, Paragraph B Page 7, of the Utility Accomodation Guide.

All trenches will be backfilled in accordance with the State of Florida Department of Transportation's specifications.

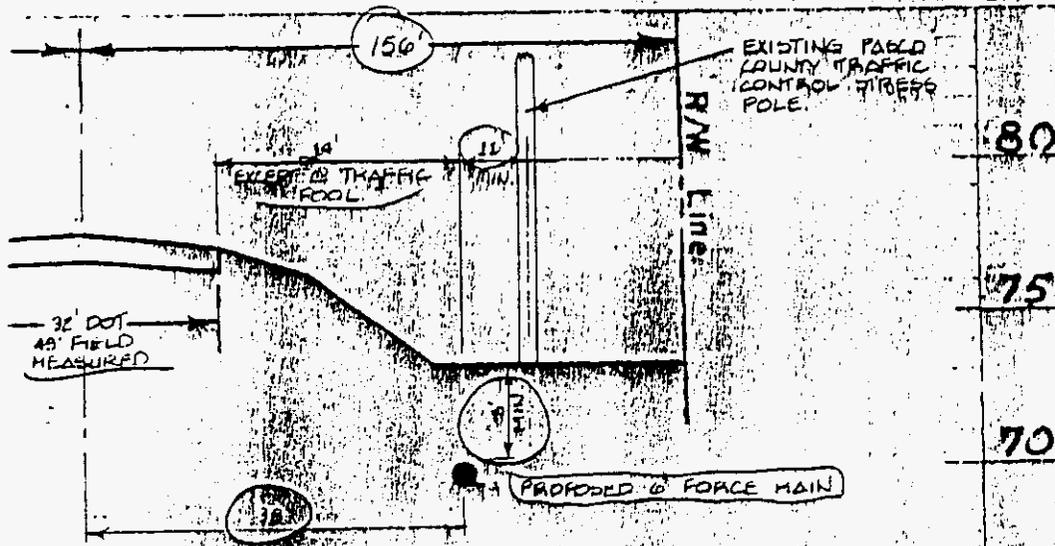
All portions of the right-of-way disturbed in the construction or maintenance of this utility will be mulched, seeded, and fertilized in accordance with the most recent specifications of the State of Florida Department of Transportation. Sodding may be required in specific areas.

If driveway connections are anticipated to be disturbed as a result of the installation of the Utility approved by this permit, it is highly recommended for the protection of the permittee that prior to construction, the permittee file with the Department, photos showing the

DEC 27 1993
PASCO COUNTY UTILITIES

PIPE HUB ASSEMBLY
GATE VALVE
TELEPHONE SERVICE BOX
POLE (POWER AND/OR TELEPHONE)
ANCHOR

103-100-30.7
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RURAL CROSS SECTION
 (not to scale)

PERMITTEE IS RESPONSIBLE TO MAINTAIN EROSION CONTROL BARRIERS IN THE D.O.T. RW THROUGHOUT THE CONSTRUCTION AND RESTORATION PERIODS.

DADE CITY MAINTENANCE OFFICE
 BE NOTIFIED 24 HOURS IN
 ADVANCE OF STARTING WORK
 (304) 521-1444

COUNTY ROADS AND DRIVEWAYS DEEMED TO BE IN GOOD CONDITION BY THE D.O.T. MAY NOT BE OPEN CUT UNLESS PRIOR APPROVAL FROM THE ACCESS USER IS SECURED BY THIS PERMITTEE.

OF APPROVED PERMIT AND DRAWINGS
 BE ON JOB SITE FOR WORK TO BEGIN

NOTE: ALL PORTIONS OF R/W DISTURBED IN THE CONSTRUCTION OF THIS UTILITY WILL BE MULCHED AND/OR SEEDING AS PER S.R.D. SPECS.

control activities associated with this permit in compliance with the more restrictive provisions of the FHWA Manual of Uniform Traffic Control Devices, the Standard Indexes of the current year TPO, and Traffic Design Standards.

NOTE: SEE ATTACHED SHEET FOR SPECIAL REQUIREMENTS.

NOTE: ALL ABOVE GROUND APPURTENANCES ARE TO BE LOCATED AT R/W LINE.

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 75
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J. E. ...
 12-15-14
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NO.	DATE	BY	DESCRIPTION
13		DRE	ADDED NOTES/REVISED DETAILS FOR PARCEL CO.
39		WAT	GENERAL REVISION

SCALE:
 HORIZ. 1" = 50'
 VERT. 1" = 5'
 SHEET 1 OF 3

02

103

93177

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT IN AND FOR
PASCO COUNTY, FLORIDA.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,
(formerly known as, Department
of Environmental Regulation,

Plaintiff,

CASE NO.: 87-3788CA DIV. Y

v.

FLORIDA BAR NO.: 356115

SHADY OAKS MOBILE MODULAR
ESTATES, INC.,

Defendant.

AGREED ORDER GRANTING DEP'S MOTION FOR CONTEMPT

This cause came before me on Plaintiff, State of Florida Department of Environmental Protection ("DEP") moved for contempt against Defendant Shady Oaks Mobile Modular Estates, Inc. ("Shady Oaks"), and pursuant to the stipulation of the parties, it is

ORDERED:

1. On July 8, 1991, this court ruled on a previous motion by the Plaintiff for contempt against the Defendant. In the hearing on that motion, the Defendant represented that it would completely remove its sewage treatment plant from operation and divert its flow to the Pasco County sewage collection system. The Defendant did not comply with this order.

2. The parties have stipulated that the Defendant had the ability to comply with the July 8, 1991 order but that it did not do so.

3. The Court finds that the Defendant's sewage treatment plant still must be removed from service.

EXHIBIT

B

4. The Court takes judicial notice of Public Service Commission Order No. PSC-93-0542-FOF-WS wherein the Public Service Commission ordered that a revocation proceeding be initiated to revoke the utility's certificate for failure to comply with, among other things, this Court's order. (Exhibit 1.)

5. The Court finds that Richard Sims is the president of the Defendant and the person responsible for complying with this Court's orders concerning the sewage treatment plant.

6. The parties stipulate and this Court finds that Shady Oaks is in contempt of this Court's order of July 8, 1991. Shady Oaks may purge itself of contempt by complying with one of the following options:

a. Within 120 days from the entry of this order Shady Oaks will have completed the connection of its sewage treatment system with Pasco County's sewage collection system. During this time period, Shady Oaks shall acquire all permits, contracts and approvals needed to construct the connection to the Pasco County sewage collection system. Within 30 days of the completion of the connection of the Defendant's sewage system to the County's system, Shady Oaks shall decommission its sewer plant and shall modify the plant and disposal system so that they will not pose a threat to public health or safety. As a part of decommissioning, Shady Oaks shall drain the percolation ponds and destroy some or all of the berms of those ponds so that they no longer will retain water. All sludge from the sewer plant and any significant accumulation of sludge at the bottom of the pond shall be removed and disposed of in accordance with F.A.C. Rule 17-7. Shady Oaks

shall also dismantle and remove the sewer plant and/or create enough holes in the components of the plant so that they no longer retain water.

b. Within 120 days from the entry of this order Shady Oaks shall sell or otherwise convey the sewage treatment, collection and transmission system and the sewage treatment utility free and clear of all liens and encumbrances. The sale or conveyance shall not be to Richard Sims, his wife or any family member, or to any company or other entity owned or controlled, in whole or in part, directly or indirectly, by Richard Sims, his wife or any family member. The sale or conveyance must meet with the approval of the Public Service Commission. The new owner shall be responsible for complying with paragraph 6.a. above within the time periods specified therein. The time periods will commence from the date the sale or conveyance is complete.

7. If the Plaintiff demonstrates, upon affidavit, that Shady Oaks has failed to purge itself of contempt as provided herein, this Court shall order the Sheriff to arrest Richard Sims and incarcerate him in the county jail until such time as Shady Oaks complies.

8. In the event Shady Oaks fails to purge itself of contempt as provided herein, the Plaintiff may move for the appointment of a receiver to comply with the terms of this order.

The failure to purge shall constitute constructive notice of intent to abandon the system pursuant to section 367.165, Florida Statutes.

DONE AND ORDERED this ___ day of February, 1994.

SIGNED AND DATED

FEB 18 1994

LYNN TEPPER
Circuit Judge JUDGE LYNN TEPPER
CIRCUIT JUDGE

cc: David K. Thulman
Thomas Patrick McAlvanah

EXHIBIT

3 Lingo
2-8-94

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for staff-) DOCKET NO. 900025-WS
assisted rate case in Pasco) ORDER NO. PSC-93-0542-FOF-WS
County by Shady Oaks Mobile-) ISSUED: 04/09/93
Modular Estates, Inc.)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD
SUSAN P. CLARK
JULIA L. JOHNSON

Pursuant to notice, an administrative hearing was held on January 7, 1993, in Zephyrhills, Florida, before Commissioner Thomas M. Beard, sitting as Hearing Officer.

APPEARANCES:

MATTHEW J. FEIL, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff.

RICHARD BELLAK, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0862
On behalf of the Commissioners.

The Hearing Officer's Recommended Order was entered on February 11, 1993. No exceptions to the order were filed. After consideration of the evidence, we now enter our Order.

FINAL ORDER FINING UTILITY AND
ORDERING THAT REVOCATION PROCEEDINGS BE INITIATED

BY THE COMMISSION:

Background

Shady Oaks Mobile-Modular Estates, Inc., (Shady Oaks or utility) is a class "C" water and wastewater utility serving a 242 lot mobile-modular home park located in Pasco County, south of the City of Zephyrhills. On January 10, 1990, Shady Oaks applied for

ORDER NO. PSC-93-0542-FOF-WS
DOCKET NO. 90025-WS
PAGE 2

a staff-assisted rate case. By proposed agency action (PAA) Order No. 24084, issued February 8, 1991, the Commission approved a rate increase for Shady Oaks and ordered it to take various actions, including, that it install meters for all of its customers within six months, improve its quality of service, file information needed to process a name change, spend a fixed amount on preventative maintenance, and escrow a set portion of revenues. By Order No. 24409, issued April 22, 1991, the Commission dismissed a protest to the PAA Order on jurisdictional grounds and revived Order No. 24084, making it final and effective.

By Order No. 25296, issued November 4, 1991, the Commission found that the utility had failed to comply with the requirements of Order No. 24084. However, since numerous customers had not paid their utility bills as a result of a court dispute over the utility's rates, the Commission decided not to order the utility to show cause why it should not be fined for its noncompliance; instead, the Commission ordered the utility to obey its prior Order and bring the escrow account up to its proper balance. Upon reviewing the utility's situation a second time several months later, the Commission found that the utility had failed to abide by the above Orders. Therefore, by Order No. PSC-92-0367-FOF-WS, issued May 14, 1992, the Commission ordered the utility to show cause why it should not be fined for its continued noncompliance with Orders Nos. 24084 and 25296. Shady Oaks requested a hearing in response to the Order to Show Cause. Pursuant to that request, an administrative hearing was held on January 7, 1993, before Commissioner Beard sitting as Hearing Officer. Shady Oaks did not appear or participate in the hearing.

In accord with Order No. PSC-93-0083-PCO-WS, establishing post-hearing procedure, staff timely filed proposed findings of fact and conclusions of law. The utility did not file anything. The Hearing Officer filed his Recommended Order on February 11, 1993.

The full text of the Hearing Officer's Recommended Order is set forth below, beginning with "Findings of Fact."

II. FINDINGS OF FACT

The following abbreviations are used herein for purposes of citation: "TR" for Transcript, "EX." for Exhibit No., and "p." and "pp." for page(s).

DOCUMENT NUMBER-DATE

03905 APR-93

FPSC-RECORDS/REPORTING

I accept each and every proposed finding of fact submitted by the staff and, having considered the evidence presented at the hearing, I hereby make the following findings of fact.

ISSUE 1: Did the utility timely comply with Commission Orders Nos. 24084 and 25296 with respect to the meter installation requirements?

1. By Order No. 24084, issued February 8, 1991, the utility was to install water meters on all its customers' connections within six months, by August, 1991. (EX 5, FJL-2, pp. 6, 31)

2. In Order No. 25296, issued November 4, 1991, the Commission noted that the utility had installed 31 of the 185 meters required, but allowed the utility an additional five months, by April, 1992, to complete the meter installations. (EX 5, FJL-3, p. 5)

3. As of May 14, 1992, when the Order to Show Cause, Order No. PSC-92-0367-POF-WS, was issued, the utility had installed a total of 47 of the 185 meters required. (EX 5, FJL-4, pp. 5, 6, 11)

4. The last meters were installed on June 17, 1992, which is 74 days past the extended deadline established in Order No. 25296. (TR 59)

5. The utility does not deny it failed to timely comply, but in a letter to the Commission, the utility claimed that the meter installations were delayed because of an additional monthly expense of \$1,155 for loan service expense and for past due engineering fees. (EX 6, p. 31)

6. The utility did not timely comply with the Commission's Orders with regard to meter installations. (TR 58, 59)

7. Some of the meters that were installed were installed in a haphazard fashion. (TR 64-66, 68-71)

quality of service

ISSUE 2: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to improving its quality of service?

1. By Order No. 24084, issued February 8, 1991, the Commission found that the utility's quality of service was unsatisfactory, so the Commission took the following action: (1) It imposed a \$2,000 fine on the utility for unsatisfactory service and required the utility to accumulate the fine in an escrow account; however, the Commission suspended the fine for nine months pending review of the utility's service for improvement; (2) It ordered the utility to comply with a Department of Environmental Regulation (DER) Consent Order requiring specific repairs and improvements necessary for the proper operation of the utility's wastewater treatment and disposal facilities within the time period prescribed by that Consent Order; and (3) It directed the utility to spend a minimum of 85% of the \$1,700 per system per month preventative maintenance expense allowance on repairs and maintenance, and it ordered that if the utility had not spent the minimum over a period of six months, the utility must submit an explanation and a detailed statement of future plans to maintain the system. (EX 5, FJL-2, pp. 3, 4, 15)

2. By Order No. 25296, issued November 4, 1991, the Commission (1) suspended the \$2,000 fine until February, 1992; (2) required the utility to escrow the fine as previously ordered; (3) found that the quality of service had deteriorated, noting numerous customer complaints against the utility and the derelict condition of the utility systems; (4) required the utility to interconnect its wastewater system with Pasco County as agreed to in a court-approved settlement between the utility and DER; and (5) found that the utility had failed to spend the minimum of the monthly preventative maintenance allowance, but announced it would review the situation again before further action. (EX 5, FJL-3, pp. 6-9)

3. By Order No. PSC-92-0367-POF-WS, issued May 14, 1992, the Commission lifted suspension of the fine and noted that the utility continued to disobey the Commission's directives. (EX 5, FJL-4, pp. 1-9)

4. The utility believes customer relations have improved, but does not deny it failed to interconnect with Pasco County or that it failed to expend funds on preventative maintenance, but it claims to have had cash flow problems. (EX 6, pp. 31-32)
5. The utility has failed to interconnect its wastewater system with Pasco County. (TR 59)
6. The utility's customer relations have not improved. (TR 13-53, 59; EX 1-5)
7. The utility has not spent sufficient funds on preventative maintenance or provided a schedule of its maintenance plans. (TR 78-80; EX. 6, pp. 11, 31)
8. The utility has violated the Commission's Orders regarding quality of service, and its quality of service remains unsatisfactory. (TR 59, all above citations)

ISSUE 3: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the name change and restructure requirements?

1. By Order No. 24084, the Commission required the utility to file a request for acknowledgement of a restructure and a name change within sixty days of the date of the Order. (TR. 76-78; EX 5, FJL-2, pp 2-3)
2. On March 17, 1991, staff received a letter from the utility requesting official recognition of the utility's new name, S&D Utility (S&D). On April 1, 1991, staff wrote the utility that the name change could not be recognized until the utility produced evidence that the utility land and assets had been properly transferred to S&D and that S&D had been properly registered as a fictitious name. (EX 5, FJL-3, p. 4)
3. In reliance on the utility owner's representation that he would be able to correct the title to the utility land and assets as part of a payment plan he entered into in a bankruptcy proceeding, the Commission allowed the utility, in Order No. 25296, an additional sixty days to complete the name change and restructure requirements.

If the utility failed to produce the required documentation, it was ordered to operate under its certificated name Shady Oaks Mobile-Modular Estates, Inc. (TR 76-78, EX. 5, FJL-3, p. 4)

4. Staff wrote the utility twice, by letters dated January 22, 1992, and July 21, 1992, to remind the utility of the filing requirements regarding the name change. (TR 77; EX 5, FJL-1 and FJL-5)
5. According to the utility, (1) The land upon which the utility assets are located is titled in the names of Richard D. Sims and Caroline Sue Sims, jointly, and the utility's assets are owned individually by Richard D. Sims d/b/a S&D Utility; (2) The utility is now a sole proprietorship for federal income tax purposes; and (3) The utility does not understand what it is supposed to file. (EX 6, pp. 5, 6, 30)

6. The utility is operating under the name S&D Utility. (TR 78, EX 5, FJL-6)

7. The utility has not filed the documents for a name change and restructure, nor has it complied with the Commission's order to revert to operating under its certificated name of Shady Oaks Mobile-Modular Estates, Inc.; therefore, the utility has not complied with Orders Nos. 24084 and 25296 with respect to the name change and restructure requirements. (TR 78; EX 6, pp. 5, 30, 31)

ISSUE 4: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the preventative maintenance requirements?

1. By Order No. 24084, the Commission allowed in rates a \$1,700 per system per month preventative maintenance expense allowance, directed the utility to spend a minimum of 85% of that allowance, and ordered that if the utility had not spent the minimum over a period of six months, the utility must submit an explanation and a detailed statement of future plans to maintain the system. (EX 5, FJL-2, pp. 3, 4, 15)
2. In Order No. 25296, the Commission found that the utility's failure to spend the maintenance allowance was

preventative maintenance

likely due to decreased revenues collected due to a Court dispute, and, therefore, ordered the utility to comply with the requirements of Order No. 24084 on a prospective basis. (TR 79; EX 5, FJL-3)

3. For the months of September, 1991, through February, 1992, the utility's actual expenditures represented less than 40% of what the utility was ordered to spend. (TR 70)

4. Required expenditures for maintenance up to February, 1992, were \$8,670. Actual expenditures for maintenance by February, 1992, were \$3,291. (EX. 5, FJL-7)

5. The utility does not deny it failed to expend funds on preventative maintenance, but claims to have had cash flow problems. (EX 6, pp. 31-32)

6. The utility has not submitted a written schedule to the Commission showing what monthly maintenance will be adopted, along with a statement of the reason such funds were not expended, and a detailed statement of its future plans to maintain the system, and has, therefore, violated the Commission's Orders. (TR 78-80; EX. 6, pp. 11, 31)

ISSUE 5: Has the utility complied with Commission Orders Nos. 24084 and 25296 with respect to the escrow requirements?

1. By Order No. 24084, the Commission required the utility to escrow that portion of the rate increase related to the pro forma plant allowed and the \$2,000 fine imposed, but suspended, until such time as the pro forma plant was constructed and the Commission reviewed the utility's quality of service. (TR. 80-81; EX 5, FJL-2, pp., 3, 29)

2. In Order No. 25296, the Commission recognized that the utility did not comply with Order No. 24084 regarding the escrow requirements in large part because many of the utility's customers did not pay their water and wastewater bills. However, the utility was admonished for unilaterally ceasing to escrow without Commission approval. The utility was ordered to immediately correct

the deficiency in the escrow account, and to continue placing the appropriate portion of revenues in the escrow account. (TR 80-81; EX 5, FJL-3, pp. 4, 5)

3. As of November 30, 1991, the utility had placed \$1,201 into escrow, or approximately \$3,417 less than the appropriate escrow amount of \$4,618. (TR 81)

4. As of September, 1992, the required escrow account balance was \$20,109, but the actual escrow account balance was \$9,251. (EX 5, FJL-8 (revised))

5. The utility does not deny it has not escrowed the required amounts, but claims it has been unable to meet the escrow obligation because of cash flow problems resulting from the Chapter 11 filing wherein the utility owner must escrow \$886.00 to cover back real estate taxes and must make payments (now delinquent) to the U.S. Trustee. According to the utility, Richard D. Sims d/b/a S&D Utility filed for Chapter 11 bankruptcy on June 22, 1992. (EX. 6, p. 31)

6. The utility has violated the Commission's Orders requiring that a set amount of funds be escrowed and that the escrow account be brought up to the appropriate balance. (TR 81; above citations)

ISSUE 6: What punitive action should the Commission take against the utility?

1. The utility has failed to comply with Orders Nos. 24084 and 25296 regarding timely installation of water meters, implementing specific directives to improve quality of service, filing appropriate name change and restructuring documents, meeting preventative maintenance requirements, and escrow requirements. (See above citations)

* 2. The utility should be fined in the amount of rate base. The Commission should initiate a proceeding to reduce the utility's rates by the amount of proforma plant and preventative maintenance expense that has not been spent by the utility. The utility's certificate should be revoked. (TR 84)

*Punitive
action*



FLORIDA PUBLIC SERVICE COMMISSION

CERTIFICATE NUMBER

451-W

Upon consideration of the record it is hereby ORDERED that authority be and is hereby granted to

Shady Oaks Mobile Home Est.

Whose principal address is

1702 H/W 39 South (P.O. Box H-237)

Zephyrhills, Florida 33599 (Pasco County)

to provide water service in accordance with the provisions of Chapter 367, Florida Statutes, the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission.

This Certificate shall remain in force and effect until suspended, cancelled or revoked by Orders of this Commission.

ORDER 15633 DATED 2-6-86 DOCKET 840360-WS

ORDER _____ DATED _____ DOCKET _____

ORDER _____ DATED _____ DOCKET _____

ORDER _____ DATED _____ DOCKET _____

BY ORDER OF THE
FLORIDA PUBLIC SERVICE COMMISSION



Steve Jibble
Commission Clerk

D. Buff
Executive Director

EXHIBIT

C



FLORIDA PUBLIC SERVICE COMMISSION

CERTIFICATE NUMBER

401-S

Upon consideration of the record it is hereby ORDERED that authority be and is hereby granted to

Shady Oaks Mobile Home Est.

Whose principal address is

1702 H/W 39 South (P.O. Box H-237)

Zephyrhills, Florida 33599 (Pasco County)

to provide sewer service in accordance with the provisions of Chapter 367, Florida Statutes, the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission.

This Certificate shall remain in force and effect until suspended, cancelled or revoked by Orders of this Commission.

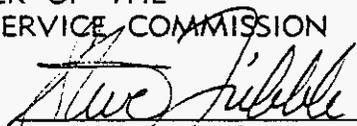
ORDER 15633 DATED 2-6-86 DOCKET 840360-WS

ORDER _____ DATED _____ DOCKET _____

ORDER _____ DATED _____ DOCKET _____

ORDER _____ DATED _____ DOCKET _____

BY ORDER OF THE
FLORIDA PUBLIC SERVICE COMMISSION



Commission Clerk



Executive Director

