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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION -RECORDS/REPORTING

In Re: Petitions of Mad Hatter )  
Utility and Lake Heron Partnership ) DOCKET NO. 960656 -WS  
for Amicus Curiae Brief to be Filed )  
With the Circuit Court of the Sixth ) FILED: MAY 24, 1996  
Judicial Circuit for Pasco County )  
\_\_\_\_\_ )

**LAKE HERON PARTNERSHIP'S PETITION FOR AMICUS CURIAE BRIEF**

Lake Heron Partnership, pursuant to Commission Rule 25-22.036, Florida Administrative Code, hereby petitions the Commission to issue an amicus curiae brief setting forth the Commission's advice and action on certain issues posed in the case styled Lake Heron Partnership v. Mad Hatter Utility, Inc. and Pasco County, Case No. 95-2958CA/Y, now pending in the Circuit Court in and for Pasco County. (A copy of the Complaint is included herewith as Attachment A.) This Petition proceeds with a summary of what Lake Heron Partnership ("Lake Heron") believes is the advice that is appropriate and necessary to assist the Court in resolving the disputes before it and presents more detailed discussion of the procedural background of the case and of the issues raised. In support of its request, Lake Heron states as follows.

**SUMMARY**

In summary, Lake Heron respectfully requests that the Commission authorize its Staff to file with the Court an amicus curiae brief advising the Court as follows:

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-RECORDS/REPORTING

1. The FPSC is without jurisdiction to order Pasco County to refund monies to Lake Heron or to any residents of Lake Heron's developments in Pasco County.
2. The FPSC has no jurisdiction to interpret the bulk wastewater treatment service agreement between Mad Hatter and Pasco County. This jurisdiction lies in the courts.
3. Lake Heron and residents of Lake Heron's developments are paying twice for certain capital costs associated with the County's wastewater system, once through impact fees and once through the capital recovery surcharge incorporated into Mad Hatter's wastewater treatment rates.
4. Mad Hatter is not presently under any obligation to refund, or otherwise give credit to, Lake Heron or any of the residents of Lake Heron's developments any amounts that may be refunded, rebated, or credited to Lake Heron by Pasco County.
5. If the Court should determine that Mad Hatter must revise its tariff in order to correct the injustices complained of by Lake Heron, Mad Hatter could seek the Commission's authority to make such modifications via any of the means provided in chapter 367, Florida Statutes, and the rules promulgated pursuant thereto.

#### **PROCEDURAL HISTORY**

Lake Heron Partnership is a Florida general partnership engaged in real estate development, with its principal place of business in Pasco County, Florida. Lake Heron's address is:

Lake Heron Partnership  
Post Office Box 97  
Lutz, Florida 33549.

Copies of all pleadings, notices, orders and other documents in this proceeding should be delivered to:

Robert Scheffel Wright  
Landers & Parsons, P.A.  
310 West College Avenue (ZIP 32301)  
Post Office Box 271  
Tallahassee, Florida 32302.

Lake Heron is the developer of the Lake Heron development in Pasco County, which development is located within the service area of Mad Hatter Utility, Inc. ("Mad Hatter" or "MHU"). Lake Heron is a customer of Mad Hatter and pays wastewater (sewer) impact fees to Pasco County. Pasco County is a political subdivision of the State of Florida. Mad Hatter is a Florida corporation with its principal place of business in Pasco County, Florida. Mad Hatter is a utility within the meaning of section 367.021(12), Florida Statutes, engaged in the business of providing water and wastewater service. Mad Hatter is a Class "B" utility subject to the Commission's jurisdiction over water and wastewater utilities pursuant to chapter 367, Florida Statutes.

On May 25, 1995, Lake Heron filed its complaint, which initiated the pending lawsuit, against Pasco County and Mad Hatter, alleging (1) that Lake Heron has paid Mad Hatter substantial monies, through Mad Hatter's rates, that are directly attributable to the capital costs of Pasco County's wastewater treatment system, and also (2) that between January 1993 and February 1995, Lake Heron has paid Pasco County more than \$91,000 in sewer impact fees directly attributable to the same wastewater treatment system capital costs. Lake Heron's suit also alleges that Lake Heron should only pay impact fees, or the capital costs that impact fees are designed to recover, one time, i.e., either to Mad Hatter through the capital recovery surcharge component of its rates or to Pasco County through its sewer impact fees. Lake

Heron's suit seeks damages, declaratory relief, and injunctive relief from the Court.

Mad Hatter and Pasco County both moved, individually, to dismiss Lake Heron's Complaint. By order dated September 27, 1995, the Court denied both motions to dismiss but, on its own motion, abated the pending action for six months "during which period the parties hereto should file with the Florida Public Service Commission whatever action or request deemed appropriate in order to solicit the advice or action of the Florida Public Service Commission regarding the issues raised herein by the pleadings as they relate to Defendant, MAD HATTER." A copy of this order is included herewith as Attachment B.

Last October, Mad Hatter's attorney sent the Commission Staff a letter by which he indicated the utility's positions on the issues as Mad Hatter perceives them. During the remainder of the abatement, the parties diligently attempted to settle their disputes, during which time no further action toward soliciting the Commission's advice or action was taken. Unfortunately, these settlement discussions, which continued until late February 1996, were unsuccessful. On March 12, 1996, upon a stipulated motion from all three parties, the Circuit Court entered its order granting a further abatement of the lawsuit in order to give the parties an opportunity to seek and obtain the Commission's advice and action as contemplated by the initial order abating the action. On March 21, 1996, Lake Heron also furnished a letter to the Commission Staff setting forth what it

believes to be the appropriate advice for the Commission to give the Court.

To the best knowledge of Lake Heron's undersigned counsel, Pasco County has not filed any process with the Commission either outlining its positions on the issues or requesting the Commission's advice and action thereon.

#### **FACTUAL BACKGROUND**

On February 11, 1992, Mad Hatter and Pasco County executed an agreement whereby the County would treat and dispose of wastewater collected by Mad Hatter, and Mad Hatter would pay a bulk wastewater treatment charge for this service. The basic bulk wastewater service rate charged by Pasco County is \$4.12 per thousand gallons of wastewater received for treatment; one dollar (\$1.00) of the \$4.12 per thousand gallons charge is for a "capital recovery surcharge," the purpose of which is to pay for the capital expansion costs of the County's wastewater system.<sup>1</sup> Pasco County also collects impact fees from some developers, including Lake Heron, to recover the capital expansion costs of its wastewater system; Pasco requires developers to pay these impact fees before it will issue construction permits.

Between January 1993 and August 1995, Lake Heron paid more than \$100,000 in wastewater system impact fees to Pasco County. Since August 1995, Lake Heron has paid an additional \$78,745 for

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<sup>1</sup> Lake Heron understands that Pasco County has reduced its bulk wastewater service charge, but that the \$1.00 capital recovery surcharge remains in effect as part of the new, lower rate.

impact fees into the registry of the Circuit Court for Pasco County pursuant to that Court's order. During this same period, Lake Heron has paid Mad Hatter for wastewater treatment service for its own accounts, and the residents of Lake Heron's developments have likewise paid Mad Hatter for wastewater treatment service. The rates paid by Lake Heron and the residents of its developments have included the \$1.00 per thousand gallons capital recovery surcharge that is embedded in Mad Hatter's rates. Pasco County may have made refunds of such capital recovery surcharge payments to Mad Hatter or otherwise credited the bills submitted by the County to Mad Hatter for bulk wastewater treatment service, but neither Pasco County nor Mad Hatter has made any refunds or given any bill credits either to Lake Heron or to the residents of Lake Heron's developments.

#### **DISCUSSION**

The matters before the Court pose several issues relating to the Commission's jurisdiction, factual issues regarding the recovery of the capital costs of Pasco County's wastewater treatment system, Mad Hatter's obligations under currently effective Commission rules and orders, and options for Commission action that might correct the inequities identified in Lake Heron's complaint. These are addressed below.

#### **A. Jurisdictional Issues**

Lake Heron believes that the Commission can properly advise the Court as to its jurisdiction over Pasco County and the bulk

wastewater service agreement that is the source of the disputes before the Court. Lake Heron respectfully submits that the following statements accurately summarize these jurisdictional matters.

1. The FPSC is without jurisdiction to order Pasco County to refund monies to Lake Heron or to any residents of Lake Heron's developments in Pasco County.
2. The FPSC has no jurisdiction to interpret the bulk wastewater treatment service agreement between Mad Hatter and Pasco County. This jurisdiction lies in the courts.

Certain disputes in the case before the Court revolve around whether Pasco County or Mad Hatter should be making refunds to Lake Heron and the residents of its developments, and what is required in this regard by the bulk wastewater service agreement between Mad Hatter and Pasco County. For example, as stated by Mad Hatter, "After Lake Heron raised this issue [relating to double payments for wastewater treatment system capital costs], the County refused any responsibility, and claimed that it is Mad Hatter's responsibility to refund the \$1.00 per thousand to the customers who pay it." Letter from Gerald T. Buhr, Esq., Mad Hatter's attorney to Rosanne Capeless, Esq. (October 10, 1995) at 2. Mad Hatter, on the other hand, takes the following position.

With regard to Mad Hatter's position on the matter, Mad Hatter believes that the \$1.00 should be refunded to the new home owners, but that the refund should be made by the County. Pasco County is the only party that knows which customers are entitled to a refund, and how much refund they are entitled to receive. Pasco could make such refunds without much effort once a year, or more often.

Letter from Gerald T. Buhr, Esq., to Rosanne Capeless, Esq. (October 10, 1995) at 2.

Lake Heron believes that it will assist the Court for the Commission to clarify its jurisdictional positions with respect to these matters by advising the Court (1) that the Commission has no jurisdiction to order Pasco County to make any refunds to Lake Heron or to the residents of its developments, and (2) that the Commission does not have the jurisdiction to interpret the bulk wastewater service agreement between Mad Hatter and the County.

The first point is obvious, in that Pasco County is clearly not a utility subject to the Commission's jurisdiction. Pursuant to section 367.011(2), Florida Statutes, the Commission has "exclusive jurisdiction over each utility with respect to its authority, service, and rates." Section 367.022(2) clearly excludes from the Commission's regulatory jurisdiction "[s]ystems owned, operated, managed, or controlled by governmental authorities" such as Pasco County.

The second point is almost equally obvious, in that the subject bulk service agreement is a wholesale services agreement between a utility and a supplier of services to the utility. As such, the prudence and reasonableness of the agreement are subject to the Commission's review for purposes of determining the utility's rates (e.g., the Commission could disallow rate recovery of unreasonably high payments to the County), but the Commission does not have the jurisdiction to interpret the agreement as between Pasco County and Mad Hatter. This is within the exclusive jurisdiction of the courts. See, e.g., In Re:



Petition of Tampa Electric Company for Declaratory Statement Regarding Conserv Cogeneration Agreement, 85 FPSC 3:229 (Order No. 14207, March 31, 1985) (The Commission agreed "that matters of contractual interpretation are properly left to the civil courts." 85 FPSC 3:232); Peck Plaza Condominium v. Division of Florida and Sales and Condominiums, Department of Business Regulation, 371 So.2d 152 (Fla. 1st DCA 1979) ("It is to the judiciary that the citizenry turns when their rights under a documents are unclear and they desire an interpretation thereof.") While section 367.121 gives the Commission "judicial powers . . . necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements," the Commission's jurisdiction does not extend to Pasco County or to the interpretation of contracts between regulated utilities and unregulated suppliers of goods and services that utilities use as inputs to their Commission-regulated services.

**B. Lake Heron's Overpayments for Wastewater System Costs**

Lake Heron believes that the Commission can properly advise the Court of the actual or apparent effects of the combination of impact fees paid by Lake Heron to Pasco County and retail rates paid by Lake Heron to Mad Hatter that include a specific component "attributable to impact fees." Lake Heron respectfully suggests that the following accurately states the substantive effects of the payment of both impact fees and retail rates that include a component specifically recognized by the Commission as

being "attributable to impact fees."

3. Lake Heron and residents of Lake Heron's developments are paying twice for certain capital costs associated with the County's wastewater system, once through impact fees and once through the capital recovery surcharge incorporated into Mad Hatter's wastewater treatment rates.

There is no dispute that Lake Heron has paid substantial wastewater impact fees to Pasco County, the purpose of which, like service availability charges paid to Commission-regulated utilities, is to pay for the capital costs of expanding the County's wastewater treatment system. There is likewise no dispute that "[t]he bulk service agreement between MHU and Pasco County reveals that of the \$4.12 per thousand gallons charge, \$1.00 is attributable to impact fees." Order No. PSC-93-0295-FOF-WS at 42. Inevitably and inescapably, then, Lake Heron pays the impact fees -- indeed, it must before it can obtain its construction permits -- and then, either Lake Heron or the residents of its developments also pay rates that include the surcharge of \$1.00 that is attributable to the same impact fees.

Lake Heron asks the Commission to advise the Court that, as noted in the Commission's order in MHU's rate case, "of the \$4.12 per thousand gallons charge, \$1.00 is attributable to impact fees," Order No. PSC-93-0295-FOF-WS at 42, and that this \$1.00 per thousand charge is embedded in Mad Hatter's retail rates. In light of the Commission's express recognition that \$1.00 of the bulk wastewater service charge is "attributable to impact fees," and taking as given Lake Heron's undisputed assertion that it has paid substantial impact fees to Pasco County, Lake Heron asks the

Commission to advise the Court that Lake Heron, or its residents, or both, are paying twice for the same thing, i.e., Pasco County's wastewater treatment system capital costs (or at least impact fees related thereto).

**C. Mad Hatter's Obligations Under Currently Effective Commission Rules and Orders**

Lake Heron believes and respectfully suggests that it would assist the Court for the Commission to advise the Court as to Mad Hatter's obligations under currently effective Commission rules and orders. Lake Heron believes that the following statement accurately reflects MHU's obligations.

4. Mad Hatter is not presently under any obligation to refund, or otherwise give credit to, Lake Heron or any of the residents of Lake Heron's developments any amounts that may be refunded, rebated, or credited to Lake Heron by Pasco County.

By Order No. PSC-93-0295-FOF-WS, the Commission granted Mad Hatter the authority to increase certain rates and charges. That order does not require Mad Hatter to refund any part of the rates paid to MHU based on, or to give credit to Lake Heron or any residents of Lake Heron's developments for, wastewater (sewer) impact fees paid to Pasco County, nor does any Commission rule require Mad Hatter to do so. Accordingly, Mad Hatter's tariffs developed pursuant to Order No. PSC-93-0295-FOF-WS do not provide for any refunds or credits based on wastewater impact fees paid.

**D. Potential Commission Action**

Lake Heron takes the position that this matter should be appropriately resolved by the Circuit Court in and for Pasco

County. Accordingly, Lake Heron does not ask the Commission for any advice or action on this issue other than a statement as to possible avenues for further action by Mad Hatter to adjust its rates, if the Circuit Court determines that such adjustment is the appropriate resolution of the issues before it. Lake Heron believes that the following statement accurately reflects the procedural options available to Mad Hatter if the Court should order it to seek to adjust its rates as part of the resolution of this dispute.

5. If the Court should determine that Mad Hatter must revise its tariff in order to correct the injustices complained of by Lake Heron, Mad Hatter could seek the Commission's authority to make such modifications via any of the means provided in chapter 367, Florida Statutes, and the rules promulgated pursuant thereto.

This statement simply indicates that, if the Court should determine that Mad Hatter must revise its tariff in order to correct the injustices complained of by Lake Heron, e.g., if the Court determines that such action were required under the MHU-Pasco County bulk service agreement, Mad Hatter could seek the Commission's authority to refund, or otherwise give appropriate credit for, monies or credits received from Pasco County in order to avoid the double collection of sewage treatment capital costs. Mad Hatter could seek such authority by any of the means provided in chapter 367, Florida Statutes, and the rules promulgated pursuant thereto, including: a general rate proceeding pursuant to section 367.081, a proceeding using the Commission's proposed agency action procedure pursuant to section 367.081(8), a limited proceeding pursuant to section 367.0822, or a petition to modify

its tariff pursuant to Commission Rules 25-22.036 and 25-9.004, Florida Administrative Code.

**CONCLUSION**

WHEREFORE, based on the foregoing, Lake Heron respectfully asks the Commission to direct its Staff to file an amicus curiae brief with the Circuit Court: (1) advising the Court of the Commission's jurisdiction with respect to the issues in Lake Heron v. Mad Hatter and Pasco County, (2) advising the Court that Lake Heron and the residents of the Lake Heron development are apparently paying twice for wastewater treatment system capital costs, (3) advising the Court that Mad Hatter is not under any obligation to refund monies associated with this double payment to Lake Heron or its residents, and (4) advising the Court of the procedural options available to Mad Hatter for addressing this situation, as described above.

Respectfully submitted this 24 th day of May, 1996.



Robert Scheffel Wright  
Florida Bar No. 966721  
LANDERS & PARSONS, P.A.  
310 West College Avenue (ZIP 32301)  
Post Office Box 271  
Tallahassee, Florida 32302  
(904) 681-0311

Counsel for Lake Heron Partnership

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by hand delivery (\*) or by United States Mail, postage prepaid, on the following individuals this 24<sup>th</sup> day of May, 1996:

Rosanne Capeless, Esquire\*  
Division of Legal Services  
Florida Public Service Commission  
Gunter Bldg., Room 370  
2540 Shumard Oak Bld.  
Tallahassee, Florida 32399-0862

Gerald T Buhr, Esquire  
Northfork Professional Center  
1519 Dale Mabry, Suite 100  
Lutz, FL 33549-1647

Walter Mathews, Esquire  
Assistant County Attorney  
Pasco County Government Center  
7530 Little Road  
New Port Richey, FL 34654

Gerald A. Figurski, Esquire  
Figurski & Harrill  
2435 U.S. Highway 19 N.  
Suite 350  
Holiday, FL 34691

  
ROBERT SCHEFFEL WRIGHT

ATTACHMENT A

COMPLAINT OF LAKE HERON PARTERSHIP

v.

MAD HATTER UTILITY, INC. and PASCO COUNTY

IN THE CIRCUIT COURT IN AND FOR PASCO COUNTY, FLORIDA  
CIRCUIT CIVIL NO.

LAKE HERON Partnership,  
a Florida general partnership,  
  
Plaintiff,

vs.

MAD HATTER UTILITY, INC.,  
a Florida corporation,

and

PASCO COUNTY, a political  
subdivision of the State of Florida,

Defendants.

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C O M P L A I N T

LAKE HERON Partnership, a Florida general partnership, by and through its undersigned attorneys, hereby sues MAD HATTER UTILITY, INC., a Florida corporation, and PASCO COUNTY, a political subdivision of the State of Florida, and states:

COUNT I - DECLARATORY RELIEF

1. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes, which seeks monetary damages in excess of \$15,000.00. This Court has jurisdiction.

2. LAKE HERON Partnership, is a Florida General partnership, (hereinafter "LAKE HERON"), with its principal office located in Pasco County, Florida.

3. MAD HATTER UTILITY, INC. is a Florida corporation, (hereinafter "MAD HATTER"), with its principal office located in Pasco County, Florida.

4. PASCO COUNTY is a political subdivision of the State of



Florida, (hereinafter "COUNTY").

5. LAKE HERON is developing a multi-family residential project in Pasco County, Florida, which project is located on the real property, (hereinafter "Property"), described in Exhibit A and made a part of this Complaint for all purposes.

6. The wastewater from LAKE HERON is collected by MAD HATTER and then transmitted to COUNTY for disposal.

7. On March 29, 1994, LAKE HERON and MAD HATTER executed an agreement regarding wastewater service. A copy of this agreement is attached to this Complaint as Exhibit B and made a part of this Complaint for all purposes. The rate LAKE HERON is charged for wastewater service is \$4.12 per thousand gallons.

8. This per thousand gallon rate is established pursuant to the agreement between MAD HATTER and COUNTY identified hereinbelow.

9. On February 11, 1992, MAD HATTER and COUNTY executed an agreement for COUNTY's disposal of the wastewater collected by MAD HATTER. A copy of this agreement is attached to this Complaint as Exhibit C and made a part of this Complaint for all purposes.

10. One Dollar (\$1.00) of this \$4.12 per thousand gallon charge is for a "capital recovery surcharge". The purpose of this capital recovery surcharge is to pay for the capital expansion costs of the COUNTY's wastewater system. This charge is the equivalent of the COUNTY's Sewer Impact Fee.

11. In pursuing each phase of its development, LAKE HERON must construct sewer lines but first must secure from the Florida Department of Environmental Protection a permit. Such permit must

be executed by the utility providing the wastewater service. In this case, the utility is COUNTY.

12. Prior to executing any such permit application, COUNTY requires LAKE HERON to pay upfront sewer impact fees. Without such payment, COUNTY will not execute the permit application and the Florida Department of Environmental Protection will not issue the permit.

13. LAKE HERON is paying \$921.00 in sewer impact fees to COUNTY for each unit and is also paying MAD HATTER impact fees by being required by MAD HATTER to pay the \$1.00 per thousand gallons capital recovery surcharge.

14. LAKE HERON has advised both MAD HATTER and COUNTY of the unfairness of paying such impact fee twice.

15. COUNTY advises LAKE HERON that COUNTY is to collect such impact fees and MAD HATTER is not to collect the capital recovery surcharge. COUNTY states its agreement with MAD HATTER so provides.

16. MAD HATTER advises LAKE HERON that COUNTY is not legally interpreting the contract between COUNTY and MAD HATTER and, further, MAD HATTER is required by the Florida Service Commission to charge the rate set by such Commission which includes the capital recovery surcharge.

17. MAD HATTER has taken no action to seek an amendment to its rates before the Florida Public Service Commission.

18. LAKE HERON has paid MAD HATTER substantial monies for the capital recovery surcharge during the course of development.

19. LAKE HERON has paid COUNTY \$91,852.00 for sewer impact fees between January 13, 1993, and February 28, 1995.

20. A controversy has arisen and presently exists between LAKE HERON and Defendants concerning their rights and legal relationships. LAKE HERON contends LAKE HERON should only pay one impact fee to either COUNTY or MAD HATTER. COUNTY and MAD HATTER disagree.

21. Plaintiff is in doubt and is uncertain as to whether COUNTY or MAD HATTER should be collecting these impact fees.

22. A judicial declaration of the duties and rights of LAKE HERON and Defendants is necessary and appropriate.

23. As a proximate result of COUNTY and MAD HATTER's wrongful conduct, LAKE HERON has lost the use of its money in the amount of no less than \$10,000.00 which continues to accrue.

24. LAKE HERON has retained the firm of Figurski & Harrill to represent LAKE HERON in this action and has agreed to pay the firm a reasonable attorney's fee.

WHEREFORE, Plaintiff demands judgment against COUNTY and MAD HATTER as follows:

1. For a judgment declaring that LAKE HERON is only obligated to pay either MAD HATTER or COUNTY.

2. For general damages including but not limited to monies paid the two Defendants.

3. For special damages for loss of use of money in the amount of no less than \$10,000.00.

4. For costs of suit incurred in this proceeding.

5. For attorney's fees.

6. For such other and further relief as the court deems proper.

COUNT II - INJUNCTIVE RELIEF

LAKE HERON Partnership, a Florida general partnership, by and through its undersigned attorneys, hereby sues PASCO COUNTY, a political subdivision of the State of Florida, and states:

25. This is an action for injunctive relief which also seeks monetary damages in excess of \$15,000.00. This Court has jurisdiction:

26. Plaintiff realleges paragraphs 2 - 14, 18 and 19, and 23 and 24 as if fully set forth herein.

27. COUNTY is causing LAKE HERON to pay sewer impact fees twice.

28. No other sewer customer of COUNTY is required to pay impact fees twice.

29. Such action by COUNTY against LAKE HERON constitutes invidious discrimination against LAKE HERON, constitutes action which is arbitrary and capricious, and violates LAKE HERON's rights to equal protection under the law contrary to the Fifth and Fourteenth Amendments of the Constitution of the United States and Article I of the Florida Constitution.

30. LAKE HERON has a clear, legal right to injunctive relief.

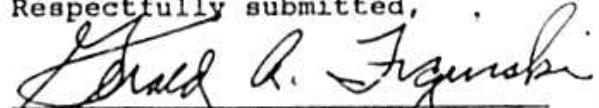
31. LAKE HERON will suffer irreparable harm by virtue of continuous violations by COUNTY of its constitutional rights.

32. LAKE HERON has no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment against COUNTY as follows:

1. For a judgment enjoining COUNTY from further violations of LAKE HERON's constitutional rights.
2. For general damages including but not limited to monies paid the two Defendants.
3. For special damages for loss of use of money in the amount of no less than \$10,000.00.
4. For costs of suit incurred in this proceeding.
5. For attorney's fees.
6. For such other and further relief as the court deems proper.

Respectfully submitted, .



Gerald A. Figurski, Esquire  
MARTIN, FIGURSKI & HARRILL  
Post Office Box 786  
New Port Richey, FL 34565-0786  
Telephone: (813) 842-8439  
Bar No. 189717  
SPN No. 30825  
Attorneys for Plaintiff

ATTACHMENT B

ORDER ON DEFENDANT, MAD HATTER'S MOTION TO DISMISS  
AND DEFENDANT, PASCO COUNTY'S AMENDED MOTION TO DISMISS

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

LAKE HERON, Partnership, a  
Florida general partnership,

Plaintiff,

v.

Case No. 95-2958CA/Y

MAD HATTER UTILITY, INC.,  
a Florida corporation,

and

PASCO COUNTY, a political  
subdivision of the State  
of Florida

Defendants.

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ORDER ON DEFENDANT, MAD HATTER'S MOTION TO  
DISMISS AND DEFENDANT, PASCO COUNTY'S AMENDED MOTION TO DISMISS

THIS CAUSE came on to be heard upon Defendant, MAD HATTER'S Motion to Dismiss and Defendant, PASCO COUNTY'S Amended Motion to Dismiss, and the Court having heard argument of counsel and being otherwise fully advised in the premises it is

ORDERED that Defendant, MAD HATTER'S Motion to Dismiss and Defendant, PASCO COUNTY'S Amended Motion to Dismiss are denied. However, the Court on its own motion hereby abates the action against Defendant, MAD HATTER, for a period of six (6) months from the date of the hearing to-wit: September 7, 1995, during which period the parties hereto should file with the Florida Public Service Commission whatever action or request deemed appropriate in order to solicit the advice or action of the Florida Public Service Commission regarding the issues raised herein by the pleadings as they relate to Defendant, MAD HATTER. In the event no action is taken by the Florida Public Service Commission within the six (6)

SEP 29 1995

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month period, or after final action by the Florida Public Service Commission this Court shall proceed to resolve this matter.

Upon oral motion by the Plaintiff, LAKE HERON PARTNERSHIP, it is hereby ordered that any lump sum impact fees which may be due Defendant, PASCO COUNTY, by virtue of building permits sought by Plaintiff, LAKE HERON, shall be tendered to the Court and such monies shall be paid into the Court Registry to be held by the Clerk of the Circuit Court until further order of this Court. The Clerk of the Circuit Court is hereby directed to accept and hold such monies in the Clerk's custody awaiting further order of this Court.

**DONE AND ORDERED** in Chambers at Dade City, Pasco County, Florida, this \_\_\_ day of September, 1995.

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MAYNARD F. SWANSON, JR.  
Circuit Judge

COPIES FURNISHED:

GERALD A. FIGURSKI, ESQUIRE  
GERRY L. CLARK, ESQUIRE  
GERALD T. BUHR, ESQUIRE

SIGNED AND DATED  
SEP 27 1995  
JUDGE MAYNARD F. SWANSON JR.