

LAW OFFICES
ROSE, SUNDBSTROM & BENTLEY, LLP
2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301

(850) 877-6555

ORIGINAL
RECEIVED-PPSC

98 AUG -4 PM 4: 22

RECORDS AND
REPORTING
MAILING ADDRESS
POST OFFICE BOX 1507
TALLAHASSEE, FLORIDA 32302-1567

TELECOPIER (850) 656-4029

CHRIS H. BENTLEY, P.A.
F. MARSHALL DETERDING
MARTIN S. FRIEDMAN, P.A.
JOHN R. JENKINS, P.A.
STEVEN T. MINDLIN, P.A.
DAREN L. SHIPPY
WILLIAM E. SUNDBSTROM, P.A.
DIANE D. TREMOR, P.A.
JOHN L. WHARTON

ROBERT M. C. ROSE
OF COUNSEL

August 4, 1998

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

980992-WIS

Re: D.R. Horton Custom Homes, Inc.
Complaint Against Southlake Utilities, Inc.
Our File No. 33083.01

Dear Ms. Bayo:

Attached are the original and fifteen copies of the Complaint which is being filed on behalf of D.R. Horton Custom Homes, Inc. in the above-referenced case. A copy of this Complaint has been served on the Utility's counsel.

Should you have any questions in this regard, please let me know.

Sincerely,

ROSE, SUNDBSTROM & BENTLEY, LLP

Marty Deterding / LD

F. Marshall Deterding
For The Firm

Dictated by Mr. Deterding
but signed in his absence
to avoid delay in mailing.

RECEIVED & FILED

[Signature]
FPSC-BUREAU OF RECORDS

FMD/tmg

cc: Mr. Ralph Spano
Mr. David Auld

aloha\17\4bayo.fmd

DOCUMENT NUMBER-DATE

08233 AUG -4 88

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of D.R. Horton)
Custom Homes, Inc. Against South-)
lake Utilities, Inc.)
_____)

Docket No. _____

COMPLAINT

COMES NOW D.R. Horton Custom Homes, Inc. ("hereinafter "Developer" or "Horton") by and through its undersigned attorneys pursuant to the provisions of Section 25-22.036, and 25-30.560, Florida Administrative Code, and files this Complaint against Southlake Utilities, Inc. (hereinafter "Utility" or "Southlake") and in support states as follows:

Conformance With the Requirements of
Rule 25-22.036(7)(a) 1 & 2, Florida Administrative Code

1. The name of the Commission is the Florida Public Service Commission and there is no Commission docket number as of the date of filing this Complaint.

2. The name and address of the complainant is D.R. Horton Custom Homes, Inc., 6250 Hazeltine National Drive, Suite 102, Orlando, Florida 32822.

3. The name and address of the Utility Company is Southlake Utilities, Inc., 333 U.S. Highway 27, Clermont, Florida 34711.

4. D.R. Horton Custom Homes, Inc. owns properties within the certificated service territory of Southlake Utilities, Inc. and as such, is substantially affected by the charges imposed as a precondition of receiving water and wastewater service from the Utility.

DOCUMENT NUMBER-DATE

08233 AUG-4 88

FPOC-RECORDS/REPORTING

Statement of Facts and Actions Which Constitute Violation

5. The Florida Public Service Commission authorized the collection of certain AFPI charges for both the Utility's water and wastewater systems in Lake County pursuant to Order No. PSC-96-1082-FOF-WS, issued on August 22, 1996. The effective date of those charges was set at January 1, 1995.

6. D.R. Horton Custom Homes, Inc. entered into an agreement to receive service to 316 Equivalent Residential Connections (ERCs) from Southlake Utilities, Inc. by execution of a developer agreement dated September 17, 1996.

7. As part of that Agreement the Utility paid over \$169,594 in AFPI charges accrued through the date of the Agreement and all applicable water and wastewater plant capacity charges for the 316 ERCs.

8. Upon a recent request by Developer to connect some of the ERCs reserved under the September 17, 1996 Agreement, the Utility proposed to accrue additional AFPI charges up through the date of the physical connection of each of those additional connections. With the request for setting of meters for each of those connections, the Utility has demanded payment of a "true-up" in the AFPI charges collected with the execution of the September 17, 1996 Agreement. In doing so the Utility President has referred to the original payments of AFPI as "deposits" for the total amount alleged to be due.

9. Developer has offered payment of all the applicable miscellaneous service charges, customer deposits and meter

installation fees and has demanded service for 44 of the units for which prepayments of AFPI and water and wastewater plant capacity charges were made under the September 17, 1996 Agreement. The Utility made the demand for the additional AFPI charges as a condition of allowing those connections.

10. During the pendency of this dispute, the Utility has now informally agreed to provide connections to Developer, and will access the additional AFPI demanded against the "deposit to fund AFPI" charged by Utility pursuant to the September 17, 1996 Agreement. While the Developer does not agree that this accrual is appropriate, we will not contest those additional charges being made to that "deposit account" during the pendency of this case in order to allow for continued connection of homes and ERCs reserved during the pendency of this Complaint.

11. The Utility's action in accruing AFPI charges after the date that plant capacity charges are paid, and service is committed, is contrary to the requirements of Rule 25-30.434, Commission Order No. PSC-96-1082-FOF-WS and is effectively an attempt to impose guaranteed revenue charges when none has been approved, in violation of the requirements of Section 367.091, Florida Statutes.

WHEREFORE, in light of these circumstances, Developer alleges that the actions of Southlake Utilities, Inc. in demanding additional AFPI charges accruing after the date of entering into the Developer Agreement and payment of all appropriate plant capacity charges is inappropriate and contrary

to the Utility's approved tariff. The Utility is in effect charging guaranteed revenues without Commission approval or tariff sheets authorizing the Utility to do so. The Developer requests that the Commission order the Utility to discontinue all attempts to assess unauthorized guaranteed revenues against D.R. Horton Custom Homes, Inc. under the label of AFPI charges, and to refund any previously assessed AFPI charges imposed by the Utility after the date that the approved plant capacity charges were paid, along with applicable interest.

Finally, Developer requests that the Commission require that the Utility continue to provide connections to Developer throughout the pendency of this process without requirement for payment of these additional unauthorized AFPI charges pursuant to the provisions of Rule 25-30.560(2), Florida Administrative Code and in light of the substantial "deposit to fund AFPI" held by the Utility pursuant to the September 17, 1996 Agreement for the then applicable AFPI charges to all 316 connections reserved.

Respectfully submitted this
4th day of August, 1998,
by:

ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blirstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

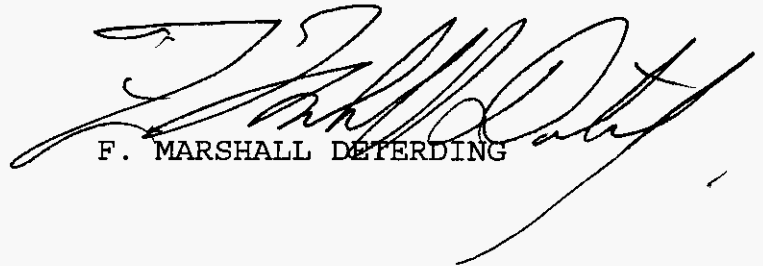

F. MARSHALL DETERDING

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the following parties this ~~4th~~ day of August, 1998.

James L. Ade
Martin, Ade, Birchfield & Mickler
One Independent Drive
Suite 3000
Post Office Box 59
Jacksonville, Florida 32201

Scott Schildberg, Esq.
Martin, Ade, Birchfield & Mickler, P.A.
One Independent Drive
Suite 3000
Post Office Box 59
Jacksonville, FL 32201



F. MARSHALL DETERDING

drhorton\complaint