



Public Service Commission

ORIGINAL

-M-E-M-O-R-A-N-D-U-M-

DATE: August 18, 1998
 TO: Division of Records and Reporting
 FROM: Division of Water and Wastewater (Walker) *BSWGW*
 RE: Docket No. 980238-WS - Joint Application for Approval of Transfer of Majority Organizational Control of Spruce Creek South Utilities, Inc. (Holder of Certificates Nos. 511-w and 467-s in Marion and Sumter Counties) from Harvey and Brenda Erp and Jay and Lori Thompson to Del Webb's Spruce Creek Communities, Inc.

On August 5, 1998, Mr. Deterding, the attorney for the sellers (Harvey and Brenda Erp and Jay and Lori Thompson), filed additional information to further explain any questions about payment of regulatory assessment taxes for 1998. The attached letter should be added to the docket file.

Attachment

cc: Division of Legal Services (Fleming)

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- ELAG _____
- LEG _____
- LIN _____
- OPC _____
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- SEC I
- WAS _____
- OTH _____

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AUG - 5 1998

Florida Public Service Commission
Division of Water and Wastewater

August 5, 1998

VIA HAND DELIVERY

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ROBERT M. C. ROSE
OF COUNSEL

Mrs. Billie Messer
Division of Water and Wastewater
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Spruce Creek South Utilities, Inc.; PSC Docket No. 980238-WS
Joint Application for Transfer of Majority Organizational
Control
Our File No. 28039.07

Dear Billie:

As a follow up to our conversation yesterday, I am writing to you to explain the responsibility for regulatory assessment fees under the Stock Purchase Agreement for Spruce Creek South Utilities, Inc. from the Erp's and the Thompson's to Del Webb Communities, Inc.

As I expressed to you previously, the Transfer of Majority Organizational Control has no effect on the Commission's authority over the Utility itself and, in fact, the Commission's right to collect regulatory assessment fees from the regulated entity is wholly unchanged. Once these fees are due and payable, the Utility Company is responsible for payment of those fees. However, among the parties to the Transfer of stock a proration of those fees is specifically dealt with in the Stock Purchase Agreement enclosed with the original Application for Transfer of Majority Organizational Control as Exhibit "A".

Under Section 11.10 entitled "Expenses", a sentence in the middle of this section states "All normal and customary adjustments/prorations shall be made at closing, including without limitation, rent and other income, Utilities and taxes". The closing date is defined under Section 2.4 as being on January 15, 1998. Therefore, not only are the parties agreeing that there will be appropriate prorations and credits issued such that the buyer

Mrs. Billie Messer
August 5, 1998
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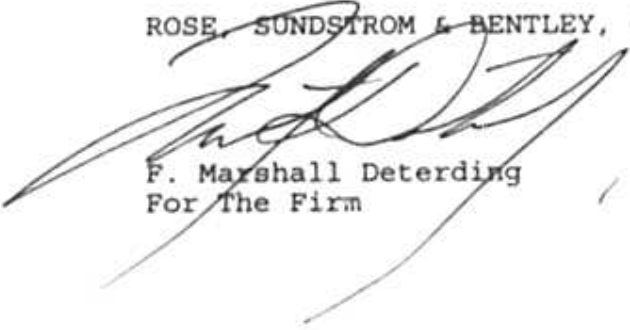
will be responsible for payment of all regulatory assessment fees at year end, but the only portion for which the seller will be charged in any case is an immaterial 15 days out of the year. Based upon last year's regulatory assessment fee total of approximately \$36,000, this would amount to approximately a \$1,500 charge against the monies owed to seller at closing under the Stock Purchase Agreement.

I trust that the above information clarifies the situation regarding payment of regulatory assessment fees, the Commission's right to those fees from the regulated entity at year end regardless of who owns the stock of that entity, and the proration between the parties and the immaterial portion assigned to the seller in any case.

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

Sincerely,

ROSE, SUNDBSTROM & BENTLEY, LLP



F. Marshall Deterding
For The Firm

FMD/tmg

Enclosure

cc: Bruce May, Esquire

spruce\messer.ltr

LAW OFFICES

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