

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for )  
Certificate No. 247-S to extend )  
wastewater service area by ) Docket No. 981781-SU  
transfer of Buccaneer Estates in )  
Lee County, Florida to )  
NORTH FORT MYERS UTILITY, INC. )  
\_\_\_\_\_ )

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RECORDS AND REPORTING

NORTH FORT MYERS UTILITY, INC.'S  
FIRST REQUEST FOR OFFICIAL NOTICE

NORTH FORT MYERS UTILITY, INC., by and through its undersigned attorneys and pursuant to Section 120.569(2)(g), Florida Statutes, requests that the Hearing Officers take Official Notice of the following:

- 1. Lee County Ordinance No. 91-01. (Copy attached.)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished via U.S. Mail to Steve Reilly, Esquire, Office Of Public Counsel, 111 West Madison Street, Room 812, Tallahassee, FL 32399-1400, Jennifer Brubaker, Esquire, Florida Public Service Commission, Legal Division, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850, Ronald & Gwen Ludington, 509 Avanti Way, North Fort Myers, FL 33917, Donald Gill, 674 Brigantine Boulevard, North

Fort Myers, FL 33917, Mr. Joseph Devine, 688 Brigantine Boulevard,

AFA \_\_\_\_\_  
APP \_\_\_\_\_  
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FPSC-RECORDS/REPORTING

North Fort Myers, FL 33917, and Mr. Stanley Durbin, 718 Brigantine  
Boulevard, North Fort Myers, FL 33917.

Respectfully submitted on this  
18th day of May, 1999, by:

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

By   
MARTIN S. FRIEDMAN  
For the Firm

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LEE COUNTY ORDINANCE NO. 91-01

AN ORDINANCE OF LEE COUNTY, FLORIDA, TO PROVIDE FOR THE MANDATORY CONNECTION OF ON-SITE SEWAGE DISPOSAL SYSTEMS TO PUBLICLY OWNED OR INVESTOR-OWNED WASTEWATER COLLECTION SYSTEMS AFTER NOTICE THAT SUCH A SYSTEM IS AVAILABLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR AN ADMINISTRATIVE WAIVER OF THE MANDATORY CONNECTION; PROVIDING FOR PENALTIES FOR VIOLATION; PROVIDING FOR REPEAL OF ORDINANCE 76-17; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Section 1, Chapter 69-234, Laws of Florida, 1969, provides that in accordance with the provisions of Article VIII, § 1 of the Florida Constitution, counties shall have all powers of local self government including government, corporate, and proprietary powers to enable them to conduct county government, perform county functions, and render county services, and may exercise any such powers for county purposes for health, safety, or welfare of its citizens not inconsistent with general or special law; and,

WHEREAS, the Board of County Commissioners have previously adopted a Lee County Comprehensive Plan (the "Lee Plan") which incorporates the valid state and federal law objectives, which include, respectively, re-use of treated sewage effluent for groundwater recharge purposes and the elimination of as many source points of pollution as possible, as is mandated by federal public law 92-500, and this ordinance is in furtherance thereof; and

WHEREAS, the Board of County Commissioners of Lee County, Florida, recognizes that Lee County currently has, and will continue to have in the foreseeable future, far too many

package sewage treatment plants and septic tanks to allow and provide for the continued protection, planning, and management of Lee County's water resources; and,

WHEREAS, the county desires to encourage the re-use of wastewater and to prevent the increasing degradation of Lee County's water resources, both surface and ground waters resulting in a lower quality of life and potentially substantial increases in cost for water and sewerage services in the future, and to protect and provide for the continued health, safety, and welfare of the citizens of Lee County; and

WHEREAS, the Board of County Commissioners recognizes that in the general interest of the public and to promote the general health and welfare of said public it is necessary to encourage the use of publicly owned or investor-owned sewerage systems and to minimize the use of on-site sewage disposal systems.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: MANDATORY HOOKUPS TO CENTRAL SEWERAGE SYSTEMS

The Board of County Commissioners declares that it is the policy of Lee County to require that each on-site sewage disposal system in Lee County, developed under the provisions of applicable law (except approved on-site gray water systems developed under the provisions of law and administrative rules), shall connect to a public, non-profit, or investor-owned central wastewater collection system within 365 days after notification

by mail or by publication that such a system's collection lines have been installed immediately adjoining the property served by the on-site system. Upon such connection, the owner or beneficiary of such on-site system shall cease to use any other method for the disposal of sewage, sewage waste, or other polluting matter. All such connections shall be made in accordance with the applicable rules and regulations for such connections, which applicable rules and regulations may provide for, among other things, a charge for making any such connection in such reasonable amounts as shall be determined by the appropriate authority and pursuant to applicable law.

On-site sewage disposal systems other than standard septic tank systems shall be exempt from this section provided that such a system has maintained continuous compliance with all rules, orders, statutes, and/or regulations, relating to the operation and maintenance of the facility, of any regulatory agencies or governmental authorities having jurisdiction over that facility.

The Board of County Commissioners shall be the final administrative decision-making body with respect to all issues relating to the mandatory sewer connections pursuant to the terms and conditions of this Ordinance.

#### SECTION TWO: DEFINITIONS

(1) "Continuous Compliance" shall mean that the on-site sewage disposal system has not been out of compliance at any time during the preceding 12 months before the notification

by mail or by publication as referenced in Section One of this Ordinance; with any rule, order, statute, and/or regulation relating to the operation and maintenance of the facility of any regulatory agencies or governmental authorities having jurisdiction over that facility. If an equipment malfunction that causes a transitory or temporary violation is immediately repaired by the owners of any affected system, such malfunction shall not be deemed or construed to cause the system to be out of "continuous compliance" for purposes of Section One, herein.

(2) "On-site sewage disposal system" shall mean any sewage treatment or disposal facility not equipped for effluent re-use, whether serving individual buildings or units, or several buildings or units, which treats or disposes of human body or household type wastes. Such systems include, but are not limited to, standard septic tank systems, laundry wastewater systems, and individual "package" sewage treatment plants which are installed or proposed to be installed on land of the owner or on other land to which the owner or owners have the legal right to install a system and which primarily serves or proposes to serve the owner's property or development.

### SECTION THREE: ADMINISTRATIVE WAIVER

The requirement of mandatory connection as set forth above may be waived administratively by the County Administrator if he or she, or an authorized representative or agent, with the approval of the Department of Health and Rehabilitative Services, determines that such connection should not be

required. Any such waiver shall be limited to a specified time period, not to exceed 365 days, and shall be based on a written finding that one or more of the following conditions exists:

- (A) The central wastewater system does not have sufficient capacity to serve the additional demand; or
- (B) Connection to the central wastewater system imposes an undue financial hardship if such connection is made within the time period as specified in this ordinance.

#### SECTION FOUR: PENALTIES

A violation of the provisions of this Ordinance shall constitute a misdemeanor of the second degree, punishable as provided by Florida Statutes, for each day or time of occurrence. Additionally, a violation of the provisions of this Ordinance may be punishable by a civil fine of up to \$1,000.00 per day for each day or time of occurrence.

#### SECTION FIVE: REPEALER

Lee County Ordinance No. 76-17 is superseded by this ordinance and is therefore repealed and of no further force and effect.

SECTION SIX: SEVERABILITY

If any section, subsection, sentence, clause, or phrase or if any portion of this Ordinance is found for any reason to be invalid, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate and distinct, an independent provisions, and such holding shall not affect the validity of any remaining portions thereof.

SECTION SEVEN: EFFECTIVE DATE

The provisions of this Ordinance shall become effective immediately upon receipt from the Secretary of State that said Ordinance has been duly filed with the Secretary of State of the State of Florida.

THE FOREGOING ORDINANCE was offered by Commissioner Judah, who moved its adoption. The motion was seconded by Commissioner St. Cerny, and being put to a vote, the vote was as follows:

JOHN E. MANNING	<u>AYE</u>
DOUG ST. CERNY	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
VICKI LOPEZ-WOLFE	<u>AYE</u>
DONALD SLISHER	<u>ABSENT</u>



DONE AND ADOPTED this 2nd day of January, 1991.

ATTEST:

5015  
CHARLIE GREEN, CLERK

*Charlie Green*  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: *Ray Judicial*  
Vice-Chairman

APPROVED AS TO FORM:

By: *[Signature]*  
Office of County Attorney



**Charlie Green**

Clerk Of Circuit Court  
Lee County, Florida

STATE OF FLORIDA

COUNTY OF LEE

I, Charlie Green, Clerk of the Circuit Court, Lee County, and ex-Officio Clerk to the Board of County Commissioners, Lee County, Florida, do hereby certify that acknowledgment has been received from the Secretary of State on this 11th day of January, 1991, at 8:48 a.m., of the filing of Lee County Ordinance No. 91-01 duly adopted by the Board of County Commissioners at their meeting held on the 2nd day of January, 1991.

Given under my hand and seal, at Fort Myers, Florida, this 14th day of January, 1991.

CHARLIE GREEN  
CLERK, Circuit Court  
Lee County, Florida

BY Clara C. [Signature]  
Deputy Clerk