

State of Florida



Public Service Commission

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

DATE: May 18, 2000
TO: Division of Records and Reporting
FROM: Division of Legal Services (Christensen)
RE: Docket No. 991486-WU - Investigation into retention of certificated area of Ellis & Company, Ltd. (Holiday Mall) by Floralino Properties, Inc. *W*

Please file the attached letter dated May 15, 2000, in the docket file for the above-referenced docket.

PAC/dm

cc: Division of Water and Wastewater (Redemann, Walden, Messer)

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DOCUMENT NUMBER-DATE
 06184 MAY 18 2000
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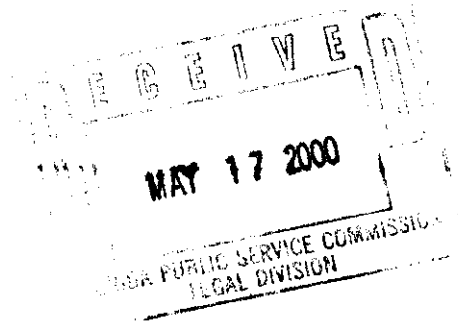
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IN REPLY REFER TO:

May 15, 2000

Tampa

Patricia A. Christensen
Senior Attorney
PUBLIC SERVICE COMMISSION
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850



Re: Docket No. 991486-WU - Investigation into retention of certificated area of Ellis & Company, Ltd. (Holiday Mall) by Floralino Properties, Inc.

Dear Ms. Christensen:

Although we disagree that Ellis & Company, Ltd., has not already requested adequate service from Floralino Properties, Inc., we wish to advance this matter as expeditiously as possible and have, therefore, written to Floralino Properties today to demand that the utility notify us, in writing, of its ability to provide the service. This demand is in accordance with your May 9, 2000 letter, which we received today. A copy is attached.

Let me point out, however, several facts which clearly indicate that Ellis requested this service from Floralino nearly one year ago. Floralino and Ellis jointly participated in testing of Floralino's water system in June 1999 to determine its sufficiency to service the sprinklers in the existing retail facilities as well as the new Kash N' Karry. Therefore, a request for service was made and the specific needs were conveyed to Floralino. A letter from Ellis' attorney following the test stated:

"My client has advised me that an inspection and test was conducted . . . when you were present, to determine the ability of your water system to provide the necessary flow and pressure to properly protect the Holiday Mall and its tenants in the event of a fire. That test reflected that your system was not adequate and would fail to protect the shopping center and its tenants in the event of a fire."

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See July 15, 1990 letter from Donald R. Hall to Mr. Tony Tubolino. Mr. Tubolino responded to this by having his son call Mr. Hall to state that Floralino would turn on its interconnect with Pasco County in the event of an emergency. Mr. Hall responded, by letter dated July 30, 1999, "This is not sufficient fire protection for the Holiday Mall since if there is a fire at the Mall, there would need to be an immediate water supply sufficient to meet the needs for fire protection." Floralino was also provided with copies of the fire safety testing performed by Taylor Fire Protection, Inc., which specified the service that was needed.

If there had been no request for the service to be provided, this testing and these communications would never have taken place. Floralino's response to the request was not the type of response that your letter suggests, but states that the test "was not representative of the flow and pressure capacity" of the water system. After further discussion, Floralino's response was to state, "If you wish to purchase the water rights to service Holiday Mall, it may be for sale." Floralino then offered to let Ellis purchase the rights for \$65,000.

Ellis' attorney then wrote to the Florida Public Service Commission on August 16, 1999, complaining about the lack of adequate fire protection service stating:

"My client is very concerned about the safety of the existing Tenants, together with the guests and invitees at the Holiday Mall. In addition, my client is further concerned about the fire safety and adequate water protection once the new Kash N' Karry store has been completed.

* * *

It would be appreciated if you could furnish me with your concurrence in this matter no later than ten days from the date of this letter."

Your letter states that Ellis has not complained about the lack of adequate service, and states that staff has contacted Department of Environmental Protection who stated that it had not received any pressure complaints. As shown above, Ellis did complain to the Public Service Commission, in writing, on August 16, 1999. On September 2, 1999, Ellis complained to the Fire Marshall of Pasco County. On September 24, Ellis' attorney also wrote to Tom Walden of the Public Service Commission, following up on telephone conversations they had had. Mr. Walden wrote to Floralino on September 27 stating, "If Floralino cannot provide the water service needed, a release is the easiest method to use to resolve this inquiry." Floralino's response, once again, was not to offer to provide the service, but to issue a release as to fire protection only, conceding it could not provide adequate service. No effort, whatsoever, was made to provide the service needed to the Mall.

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The process described in Rule 25-30.310 would appear to apply to new service. There was no new service being requested. There was only a test of the existing hydrants. In the only cases directly on point (cited in our response to the Motion to Dismiss), the Commission has approved deletion from service territories without going through the process you described.

As stated at the outset, we do wish to bring this matter to an expeditious conclusion, and therefore, have given the notice that you described. This is done without waiving any of Ellis' arguments that the proper requests have already been made or rights to demand release from Floralino's service territory in light of Floralino's inability to provide adequate service.

Sincerely,

A handwritten signature in cursive script that reads "Susan W. Fox". The signature is written in black ink and is positioned above the printed name.

Susan W. Fox

SWF/ce

Enclosure

STATE OF FLORIDA

Commissioners:
JOE GARCIA, CHAIRMAN
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER



DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(850) 413-6199

Public Service Commission

May 9, 2000

Mr. Gerald T. Buhr
Attorney for Floralino Properties, Inc.
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Lutz, Florida 33548-1657

Ms. Susan W. Fox
Attorney for Ellis & Company, Ltd.
Macfarlane, Ferguson & McMullen
P.O. Box 1531
Tampa, Florida 33601

Re: Docket No. 991486-WU - Investigation into retention of certificated area of
Ellis & Company, Ltd. (Holiday Mall) by Floralino Properties, Inc.

Dear Mr. Buhr and Ms. Fox:

Commission staff has reviewed this docket and the pleadings filed in this matter, and it is staff's opinion that the parties, Floralino Properties, Inc. (Floralino) and Ellis & Company, Ltd. (Holiday Mall or the Mall), have yet to engage in all the procedures necessary for the Commission to determine whether Holiday Mall should remain in Floralino's certificated territory.

Essentially, what has happened between Floralino and the Mall is that an existing customer of the utility has requested that it be deleted from the utility territory because the customer wants a service from the utility that the customer does not believe the utility can provide. It appears that this action by the customer is premature, since there has evidently never been a written request to Floralino for the service at issue. To date, staff is unaware of any written documentation showing that Holiday Mall has requested the utility to provide "adequate" service for fire flow, or complained to the utility regarding inadequate pressure. Staff has contacted the Department of Environmental Protection (DEP). DEP stated that it has not received any pressure complaints and the system is in compliance with its rules.

It is staff's opinion that the process for requesting service as described in Rule 25-30.310, Florida Administrative Code, has not yet been followed by the Holiday Mall. Since the Mall is the customer of record, it should give the utility a written request for service, or a change in service,

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Mr. Buhr and Ms. Fox

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identifying the specific needs required, including private fire protection and water pressure. If the customer/Holiday Mall has a complaint about its current service level provided by the utility, then that should also be addressed in writing. Once the Mall requests the service and the utility responds, then the staff will be better able to consider the Mall's request to be removed from Floralino's certificated area.

Therefore, staff requests that the Holiday Mall make the appropriate written request to the utility in writing within ten days of the receipt of this letter. Further, staff requests that the utility provide the appropriate written response to the Mall indicating whether the requested service can be provided and how that will be accomplished within ten days of receipt of the customer's request. Staff also requests that we receive copies of any such request and responses.

In addition, the staff must address the utility's request for deletion of its Fire Protection service tariff made on October 18, 1999. This request was encompassed in a letter, and no tariff was attached to the letter. Rule 25-9.001(3), Florida Administrative Code, states that "No rules and regulations, or schedules of rates and charges, or modifications or revisions of the same, shall be effective until filed with and approved by the Commission as provided by law." Without a tariff sheet replacing the existing tariff sheet, the request for cancellation of the Fire Protection tariff cannot be acted upon. Even though the utility has the option of filing the required tariff sheet, in light of the pending motions, Floralino may wish to consider withdrawing the cancellation request until a future time.

Please note that the opinions expressed herein are those of the staff, and do not bind the Commission in any way. If you have further questions concerning this letter, please feel free to contact me at (850) 413-6220.

Sincerely,



Patricia A. Christensen
Senior Attorney

PAC/dm

cc: Division of Water and Wastewater (Redemann, Messer)
Division of Records and Reporting