



Public Service Commission

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

DATE: July 19, 2000
TO: Division of Records and Reporting
FROM: Division of Legal Services (Van Leuven) *SV*
RE: Docket No. 990988-WS - Investigation into the retention of the certificated area of Mad Hatter Utility, Inc. located on Lake Thomas and School Road in Pasco County.

Please file the attached letter, with attachments, dated July 18, 2000, in the docket file for the above-referenced docket.

DTV/dm

cc: Division of Regulatory Oversight (Clapp, Messer, Redemann - with map)

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- CAF _____
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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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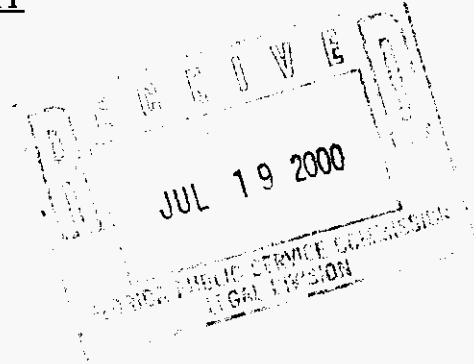
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TALLAHASSEE, FLORIDA 32302-1567

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July 18, 2000
VIA HAND DELIVERY

ROBERT M. C. ROSE
OF COUNSEL

Tyler Van Leuvan, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0873



Re: Mad Hatter Utility, Inc.
Our File No. 28023.01

Dear Tyler:

Attached is a copy of the Application as originally received from the owner of the property on School Road in Land O' Lakes, Florida in Mad Hatter's service territory as you requested. I am also attaching my response letters and the additional letters which I received from the Trustee as a follow up to that original Application.

Finally, I am attaching a copy of my letter to Mr. John Gallagher, County Manager, inquiring about the availability of bulk wastewater services from the County for service to this area, and the only response I have received so far is the May 5, 2000 letter from Mr. Charles H. Samarkos indicating that Ms. Hale would contact me after her return. I have thus far heard nothing from Ms. Hale.

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
cc: Mr. Larry DeLucenay

mad\vanleuvan.ftr

Hallmark Land Trust

10/4/99

(813) 949-6251
Fax (813) 949-9658

September 28, 1999

Mr. Larry DeLucenay, President
Mad Hatter Utility, Inc.
1900 Land O' Lakes Blvd.
Lutz, FL 33549

**Re: Application for Service to the Property Located On
School Road, Land O' Lakes, Florida**

Dear Mr. DeLucenay:

We own approximately 107 acres of property located on School Road, Land O' Lakes, Pasco County, Florida. This property appears to be located within the PSC certificated are of Mad Hatter Utility, Inc. This letter is our application for water and waste water service and extension thereof.

In support of the application, enclosed please find:

1. A legal description of the property.
2. A survey of the property.
3. A development plan

Additionally, we are providing the following information:

1. The present zoning classification of the property is R-3.
2. The intended use and development of the property including densities and types of uses are single family houses, 2.57 units per acre.
3. The name and address of the person or entity making the application for the extension of service is Carl Anderson, agent for Paul Pritchard, Trustee.
4. The nature of the applicant's title is fee simple title.
5. It is estimated that service will be needed within one year of this date.

Please notify me within thirty (30) days of your receipt of this application whether Mad Hatter Utility, Inc. can make service available and by what date such service can be made available and the estimated costs of providing such services. If the service cannot be made available within a reasonable time, please advise of the reasons why service cannot be made available and provide an estimate of when it can be made available. Thank you for your attention to this matter.

Sincerely,



Carl Anderson
Agent for Paul Pritchard, Trustee

EXHIBIT 'A'

Lake Julia
School Rd

LEGAL DESCRIPTION

DESCRIPTION:

The Northwest one-quarter of the Northwest one-quarter of Section 13, Township 26 South, Range 18 East, and that part of the Northeast one-quarter of the Northwest one-quarter of said section described as follows: Beginning at the Northeast corner of the Northwest one-quarter of the Northwest one-quarter of Section 13, Township 26 South, Range 18 East, run thence East 210.8 feet more or less to right of way of State Road #45 (formerly State Road #5) and also known as Federal Highway #41, thence Southeasterly along said right of way 600 feet; thence Southwesterly 561.7 feet more or less to a point on the Western boundary of said Northeast one-quarter of Northwest one-quarter of said Section, 978 feet South of POINT OF BEGINNING, thence North 978 feet to POINT OF BEGINNING.

AND

The South one-half of the Northwest one-quarter of the Southwest one-quarter of the Southwest one-quarter; Southwest one-quarter of the Southwest one-quarter of the Southwest one-quarter; Southeast one-quarter of the Southwest one-quarter of the Southwest one-quarter, less the North 210 feet of the East 420 feet thereof; and the South 210 feet of the North 420 feet of the Southwest one-quarter of the Southeast one-quarter of the Southwest one-quarter lying West of the paved road, in Section 12, Township 26 South, Range 18 East, Pasco County, Florida

AND

The East three-fourths of the Northeast one-quarter of the Northeast one-quarter of Section 14, Township 26 South, Range 18 East

AND

The West one-quarter of the Northeast one-quarter of the Northeast one-quarter of Section 14, Township 26 South, Range 18 East, LESS the South 414 feet thereof, all lying in Pasco County, Florida, less maintained right-of-way for Drexel Road.

AND

That part of the South 237 feet of the Southwest one-quarter of the Southeast one-quarter of the Southwest one-quarter of Section 12, Township 26 South, Range 18 East, lying West of the Old State Road #5 in Pasco County, Florida.

Above described property contains 106.96 acre of land, more or less.

RECORD VERIFIED
JED PITTMAN
Clerk Circuit Court, Pasco County

JUL 2

CLERK

5:8

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ROBERT M. C. ROSE
OF COUNSEL

October 22, 1999

VIA U.S. MAIL

Mr. Carl Anderson
Agent for Paul Prichard, Trustee
Hallmark Land Trust
19235 U.S Highway 41 North
Lutz, Florida 33549

Re: Mad Hatter Utility, Inc.
Application for Service to Property Located on School Road, Land O' Lakes, Florida
Our File No. 28023.01

Dear Mr. Anderson:

I am an attorney representing Mad Hatter Utility, Inc. and I have been asked by its President, Larry DeLucenay, to respond to your letter of September 28, 1999 which Mr. DeLucenay received on October 4, 1999. Based upon the Florida Public Service Commission Rule applicable to applications for service and the Utility's tariff requirements, we must ask for additional clarification of some of the information provided in your letter in order to properly respond. I have outlined below the additional information we will need in order to respond to your initial application for service:

1. The "development plan" that you have supplied is a drawing of a proposed subdivision which is dated 1986. There is no discussion about the size of the homes involved, the location of water, wastewater and reclaimed water facilities, the number (if any) of commercial facilities, or whether this is the only plan for development which you have. Was this "development plan" prepared by you or your client or the current landowner? Have any of the proposals for development changed, including location of streets? If not, please give us further information concerning the sizing of not only the lots and homes, but of the proposed water, wastewater facilities and reclaimed water to be constructed and donated in accordance with the Utility's

Mr. Carl Anderson
October 22, 1999
Page 2

standard policy. Drawings of these facilities showing sizing and location will be necessary at some point in time, and if not, in order for the Utility to conduct initial review. Where may we obtain this design information?

2. Please provide us with copies of all the agency information or applications submitted in order to obtain development approval from the local and state building and development authorities. Also, provide copies of current approvals and permits for this development plan.
3. Please give us the name of the project engineer responsible for designing the development and the water and wastewater facilities, so that we may contact him or her and discuss in more detail the specifics related to construction of those facilities.
4. Though it is not our responsibility under our Service Availability Policy, we have prepared an inquiry of the County concerning the availability of additional wastewater capacity to serve this area in accordance with our agreement for bulk wastewater service from Pasco County Utilities. We have attempted to estimate the flows of wastewater treatment that will be necessary in order to serve this area in our inquiries of the County. To the extent the County is unable or unwilling to provide that bulk service, we will work out with you a suitable location for water wells and treatment facilities internal to the development. Your 1986 "preliminary plat" appears to recognize a need for such land and the apparent location of such water facilities is referenced on the "preliminary plat" at the northeast corner of the property.
5. We will also need to discuss with you the possibility of providing on-site sewage treatment and disposal service and an appropriate location for construction of those facilities as well. This is an alternative we may need to pursue in order to provide you service in the most efficient manner possible, if in fact the availability of County bulk services is too difficult, inefficient, or substantially more time consuming than construction of onsite facilities. Your "preliminary plat" as submitted, appears to envision the location of these wastewater facilities on the northwest corner of the property. Please provide more details as to the size and location (legal description) of the area envisioned for this purpose, including all engineering, soil studies, or plans.

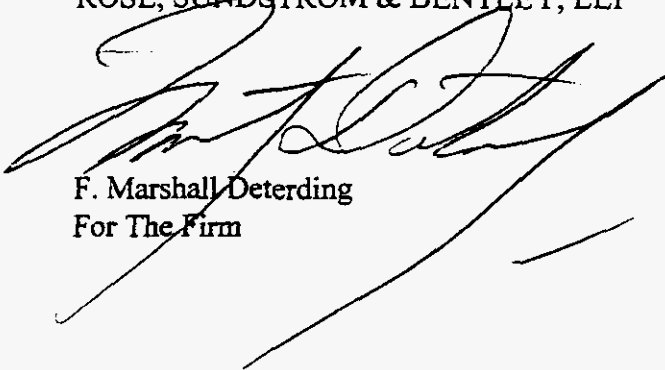
As soon as you provide us with the above information, we can move forward with providing you the required response to your Application for Service. However, it should be noted that we can in fact provide service within a reasonable time to the property as requested. However, we will need assurances that you do intend to move forward with development immediately after we invest time,

Mr. Carl Anderson
October 22, 1999
Page 3

effort and monies in the construction of necessary facilities to serve that property. Should you have any questions with regard to the additional information needed, please let me know. We look forward to receiving this additional information as soon as possible so that we can provide you with a detailed response to your request and move forward quickly to ensure the availability of service in a timely manner.

Sincerely,

ROSE, SUNDBSTROM & BENTLEY, LLP



F. Marshall Deterding
For The Firm

FMD/tmg

cc: Mr. Larry DeLucenay

mad\anderson.ltr

99 15:17 FR MAD HATTER UTILITY 813 949 2146 TU 18506564029
1/99 10:02 8
003

Hallmark Land Trust

813-949-8251
Fax 813-949-8658

Mr. Larry Delucenay, President
Mad Hatter Utility, Inc.
1900 Land O' Lakes Blvd.
Lutz, FL 33549

December 22, 1999

Via fax and certified mail

*Re: Application for Service to the Property Located
on School Road, Land O' Lakes, Florida*

Dear Mr. Delucenay:

This is in response to the letter from your attorney, Mr. Deterding, dated October 22, 1999. In that letter Mr. Deterding proposed two options for obtaining utility services to the subject property: Obtaining of additional bulk wastewater capacity from the County or construction of an on-site sewage treatment facility. The second option, an on-site sewage treatment facility, is unacceptable for two reasons. First, the site does not have room for such a facility and for a field for disposal of the effluent. Nor do I believe you own any suitable property in the vicinity, as you once did. Secondly, we do not want a wastewater treatment plant in the vicinity of this development.

In regard to the first option, obtaining additional bulk wastewater capacity from the County, your attorney stated in his letter that Mad Hatter was making an inquiry of the County as to whether it would provide additional wastewater capacity. Please let me know the outcome of that inquiry. If the County will not provide additional capacity, then it is obvious that Mad Hatter will not be able to provide utilities to this property.

Section 1.20 of your tariff provides that application for service may be made initially "in writing by a letter announcing that intent." We made that inquiry in writing by our letter of September 28, 1999. Section 1.21 of your tariff provides "Company shall respond to all initial information requests from authorized representatives within thirty (30) days to inform applicant whether service can be rendered within a reasonable time period." The response from your lawyer did not satisfy this requirement. This is our second letter to inquire whether Mad Hatter can serve this property within a reasonable time period and to request rates and charges. I request your prompt answer. If Mad Hatter cannot provide

19235 U.S. Hwy 41 North • Lutz, Florida 33549

evidence that it can serve this property in a reasonable time and at a reasonable cast, then this property should be released from the franchise.

Thank you for your cooperation and for your prompt response.

Sincerely yours,



Carl Anderson
Agent for Paul Pritchard, Trustee

c. Doug Bramlett
Assistant County Administrator for Utilities Services
Utilities Services Branch
Public Works/Utilities Bldg. S-205
7530 Little Road
New Port Richey, FL 34654

Ms. Billie Messer
Public Service Commission
2540 Shumart Oak Blvd.
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David Smolker, Esq.
Brickleyer, Smolker and Bolves, P.A.
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April 28, 2000

ROBERT M. C. ROSE
OF COUNSEL

VIA FACSIMILE AND U.S. MAIL

John J. Gallagher
Pasco County Administrator
7530 Little Road
New Port Richey, FL 34654

Re: Mad Hatter Utility, Inc.
Service to 107 Acre Parcel Between School Road and Drexel Road
Land O' Lakes, Pasco County
Our File No. 28023.01

Dear Mr. Gallagher:

Mad Hatter Utility, Inc. has in recent months been contacted by a representative of the owners of a 107 acre parcel of land located in Sections 12, 13, and 14 of Township 26 South, Range 18 East, Pasco County, Florida. This property bounded by School Road and Drexel Road on the east and west respectively. I have attached a simple location map with a rough sketch of the property for your reference.

This property formerly known as Lake Talia Estates has been in the service territory of Mad Hatter Utility and its predecessors for many years (well before execution of the Bulk Service Agreement between Mad Hatter and Pasco County, dated February 11, 1992) and continues to be in that certificated area.

Under the terms of the Bulk Service Agreement between Mad Hatter Utility, Inc. and Pasco County, the purpose and intent of that Agreement as stated therein under Section 1 is "to provide for central public sewer services to existing homes and structures and future homes and structures located in the certificated service area of Mad Hatter Utility, Inc. and to provide for additional assurances of timely payment to the County of all costs incurred in the provision of such service by the County.....all Terms and Conditions contained herein shall be read and interpreted in a manner consisted with and in furtherance of this purpose and intent." As you are no doubt aware, Section 2 of the February 1992 Agreement provides that the County shall provide bulk wastewater treatment services in the amount of 350 gallons per day (annual average) to Mad Hatter. However, the

Mr. John J. Gallagher
April 28, 2000
Page 2

Agreement further provides under Subparagraph (D) of that same section that "the County agrees to treat wastewater in excess of 350,000 gallons per day pursuant to this Agreement, provided sufficient unused and uncommitted capacity is available at the County's wastewater treatment facilities as determined by the County and all appropriate permits have been obtained by Mad Hatter from state regulatory agencies." While last year my inquiry about the County's willingness to provide additional capacity for another project were met with a response from your attorney, Ms. Marion Hale (a copy of which is attached), which expressed several reasons why the County did not have an obligation to provide such bulk service capacity. I will try to briefly outline below the Utility's position with regard to each of the issues raised by Ms. Hale, and specifically why the circumstances are different in this case, or why the Agreement does not provide as Ms. Hale has proposed, at least as to the parcel of property we are requesting service for herein:

1. Ms. Hale's first comment was that Mad Hatter had exceeded the 350,000 gallon cap from the 1992 Agreement. As I outlined above, that cap is in no way absolute and in fact, the Agreement specifically provides for additional capacity to be provided under Section 2(D) it "provided sufficient unused and uncommitted capacity is available at the County's wastewater treatment facilities." It is my understanding that the County does have additional uncommitted capacity at this time.
2. Ms. Hale's letter further implies that "additional capacity is not available at the County's Land O' Lakes subregional wastewater treatment plant." As you are no doubt aware, that treatment plant is not the only treatment plant the Utility has providing wastewater service to this area, and as such, I do not believe Ms. Hale's letter was responsive to the requirements of the Agreement or to our request last year. Such a statement certainly is not responsive to the requirements of Section 2(D) of the 1992 Agreement.
3. Ms. Hale further notes that the 1992 Agreement limits the County's obligation to provide service to an area not only within Mad Hatter's certificated service territory, but also an area described in Exhibit 3 to the Agreement. I am well aware that the parties have not been able to agree on what exactly constituted Exhibit 3, however, it is quite clear and easily demonstrated that the area proposed for which we are requesting bulk service herein, is within the certificated service territory of Mad Hatter Utility and was in that territory long before execution of the 1992 Bulk Service Agreement. While I do not believe that area shows up in the map that I previously received from your office that is alleged to be Exhibit 3 to the Agreement, I do not believe the wording of the reference to Exhibit 3 within Section 6(C) can reasonably be read to overrule the general purpose of the Agreement which was to provide bulk service to Mad Hatter's certificated service territory.

Mr. John J. Gallagher
April 28, 2000
Page 3

Finally, I believe it is the County's desire and charge to provide wastewater services to any person requesting those services within the County's boundaries. It would be inappropriate for you to deny service to Mad Hatter for resale within its certificated service territory. While there are certainly outstanding issues between Mad Hatter Utility and the County, I would hope that those would not get in the way of the County Utilities Department meeting its obligation not only under the 1992 Agreement, but also to a citizen of Pasco County in requesting that he be provided wastewater service in a nondiscriminatory manner.

I would appreciate your prompt attention to this matter and hopefully we can begin to work out the terms under which service will be provided to this parcel, as quickly as possible. The Utility is considering, as an alternative, the construction of onsite facilities. However, while considering its options, we wanted to determine what the County's position would be with regard to the provision of bulk service as an alternative. I appreciate your prompt response to this inquiry.

In addition, I am filing today a Public Records Request (by separate letter) pursuant to Section 119, in order to find out the status of any development permits or orders from the County related to this property. I have provided therein a Legal Description of the property for your staff's ready reference. If you have any questions with regard to either of these issues, please let me know.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP



F. Marshall Deterding
For The Firm

FMD\vmg

cc: Mr. Larry DeLucenay, President

JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.
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*OF COUNSEL

PLEASE REPLY TO CLEARWATER

FILE NO. 36164.93201

August 9, 1999

Telecopier
F. Marshall Deterding, Esq.
Rose, Sundstrom & Bentley
2548 Blairstone Pines Drive
Tallahassee, FL 32301

Re: Mad Hatter Utility, Inc.

Dear Marty:

John Gallagher has sent to me a copy of your letter to him of July 22 regarding Mad Hatter's request to provide service to two additional parcels outside of its Public Service Commission certificated territory. As I know you are well aware, Mad Hatter has exceeded the 350,000 gallon cap in the parties' 1992 agreement and thus the County need not provide any additional service to Mad Hatter. Furthermore, the 1992 agreement limits the County's obligation to provide service to an area not only within Mad Hatter's PSC certificated territory but also it is described on Exhibit 3 to the agreement.

As Mad Hatter is aware, there is no additional capacity at the County's Land O'Lakes subregional wastewater treatment plant. Furthermore, the County does not believe that Mad Hatter is able to provide service to the parcels. The County has service available to those parcels and will provide it if the property owners so request. As I am sure you are aware, Mad Hatter cannot provide service outside of its PSC certificated territory without violating Florida law.

Very truly yours,


Marion Hale

MH/jr

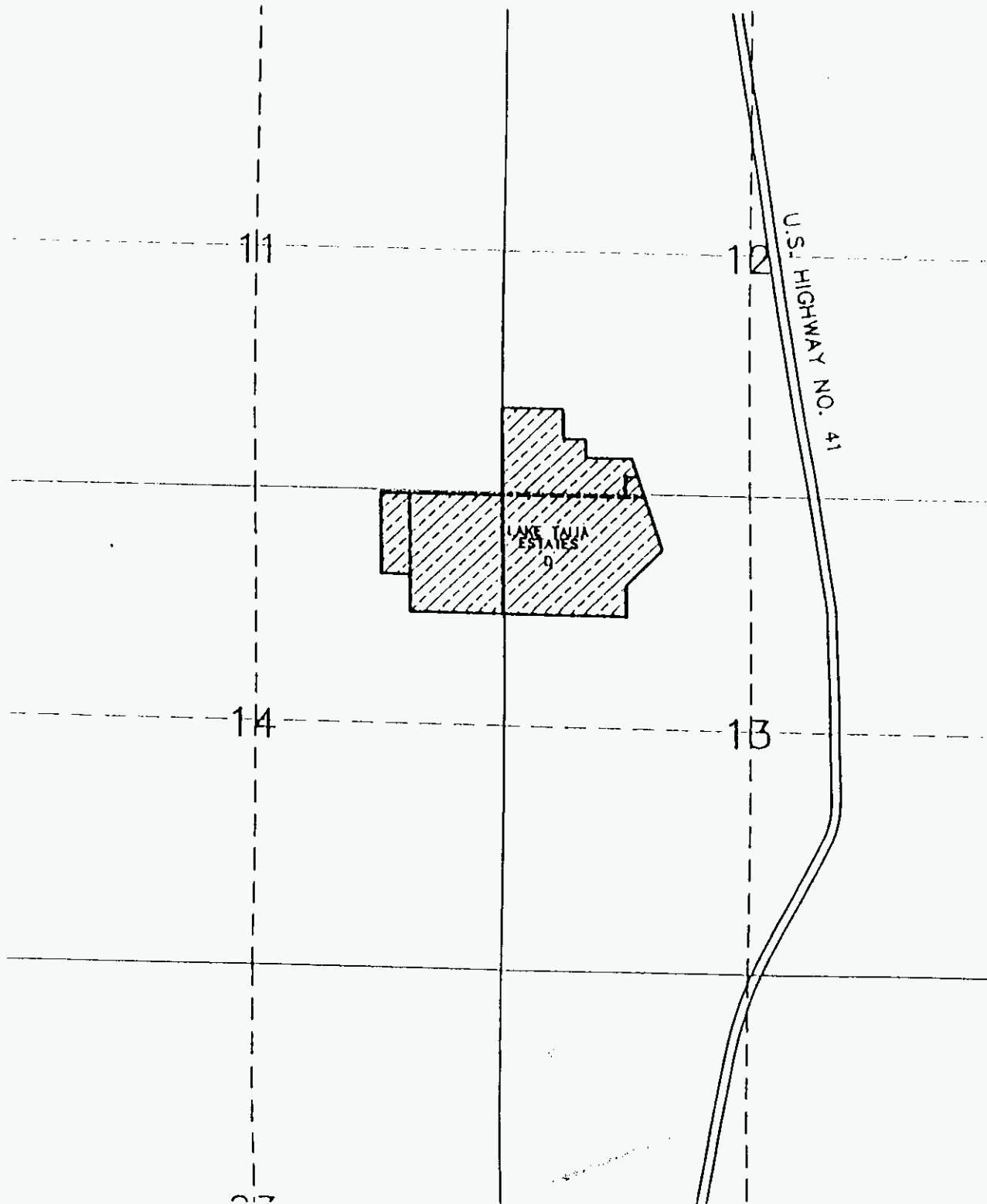
cc: Mr. John Gallagher

Mr. Douglas S. Bramlett

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ORDER NO.:

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CERTIFICATES
DOCKET NO.:
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*OF COUNSEL

PLEASE REPLY TO CLEARWATER

WRITER'S DIRECT DIAL: (727) 467-2131

WRITER'S DIRECT TELECOPIER (727) 462-0365

FILE NO. 36164.93201

VIA FACSIMILE AND U.S. MAIL

May 5, 2000

F. Marshall Deterding, Esquire
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

Re: Mad Hatter Utility, Inc.
Hallmark Land Trust – Paul Pickard, Trustee
107 Acre Parcel Located on School Road in Land O'Lakes, Pasco
County, Florida
Your File No. 28023.01

Dear Marty:

This letter is in response to your correspondence dated April 28, 2000 to John Gallagher regarding request for service. I am responding to you because Ms. Hale is in a two week trial and it is not scheduled to conclude until the end of next week.

In the meantime, I am attempting to find out information concerning the issues raised in your correspondence. Hopefully, we will be in a position to respond to your correspondence in a few days after Ms. Hale's trial concludes. I would also appreciate you copying Ms. Hale on all future correspondence to Mr. Gallagher, especially when you refer to Ms. Hale as "your attorney". Given our positive working relationship in the past, I am assuming that this was just an oversight.

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JOHNSON, BLAKELY, POPE, BOKOR, RUPPEL & BURNS, P.A.
ATTORNEYS AND COUNSELLORS AT LAW

F. Marshall Deterding, Esquire
May 5, 2000
Page 2

If you have any further questions, please feel free to give me a call.

Sincerely,



Charles A. Samarkos

CAS:kmg
cc: John J. Gallagher
Marion Hale, Esquire
212979