

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DOCKET NO. 981609-WS and 980992-WS**

3 **DIRECT TESTIMONY OF MICHEL E. BURTON**
4 **ON BEHALF OF D.R. HORTON CUSTOM HOMES, INC.**

4 Q. Please state your name and professional address for the record.

5 A. My name is Michael E. Burton. My professional address is Burton & Associates, Inc. at 440
6 Osceola Avenue, Jacksonville Beach, Florida 32250.

7 Q. By whom are you employed and in what capacity?

8 A. I am employed by Burton & Associates, Inc. as its President.

9 Q. Please state your education and professional experience in matters related to water and wastewater
10 utility rates and rate making.

11 A. I received a Bachelors of Industrial Engineering degree from the University of Florida in March
12 of 1970. I have over 21 years of experience in water and sewer rate making, including 10 years
13 with Arthur Young & Company, now Ernst & Young, where I last served as a Principal in charge
14 of the Firm's Florida Utility Economics Practice Area. I founded Burton & Associates 11 years
15 ago and we have specialized in water and sewer rate making since the Firm's inception. I have
16 conducted water and sewer rate studies and related financial analyses for over 60 governmental and
17 private clients. I have also served as the regulatory rate consultant for St. Johns County for 9 years
18 and as the regulatory rate consultant for Flagler County for three years.

19 Q. Have you been accepted as an expert witness in an administrative proceeding?

20 A. Yes, in cases before the St. Johns County Water and Sewer Authority, the Flagler County Utility
21 Regulatory Interim Authority and the Florida Public Service Commission.

22 Q. In what areas?

23 A. Utility rates, rate making and related issues.

24 Q. Have you been asked by D.R. Horton Custom Homes, Inc. to provide testimony in this proceeding?

25 A. Yes, I have.

DOCUMENT NUMBER-DATE

02509 FEB 22 2006

FPSC-RECORDS/REPORTING

1 Q. What is the nature of that testimony?

2 A. While I have previously developed calculations of the appropriate service availability and AFPI
3 charges for Southlake Utilities, Inc. which were submitted to the Commission over a year and a
4 half ago, I do not believe it is necessary to make those calculations again, until such time as the
5 specifics concerning growth factors and plant costs are decided. However, I do believe that the
6 same criteria that I utilized in my schedules submitted to the Commission with our attorney's letter
7 dated September 23, 1999, should be utilized in calculating the appropriate service availability and
8 AFPI charges for Southlake Utilities, Inc. on a retroactive and going-forward basis in accordance
9 with the Commission's rules and policies.

10 However, my primary purpose for providing testimony at this juncture in the case, is to discuss the
11 issue related to water and sewer plant land values.

12 As the Commission staff is well aware of many of the facts surrounding this issue, I will not
13 reiterate each and every fact leading up to the conclusion. However, it should be noted that
14 regardless of how the Utility and its related parties view the land lease situation, the transaction as
15 initially conceived and entered into and as recently revised, both were related party transactions
16 between the Utility and the landowner.

17 Originally, the Utility had requested recognition of a lease payment in the initial rates established
18 by the Florida Public Service Commission back in 1990. Built into those rates were substantial
19 lease payments based upon a very sketchy land lease from the related party landowner. The Utility
20 is now attempting to justify that land lease based upon the value of that Utility property as multi-
21 family housing property, rather than valued at its use as a Utility property site.

22 In the Rolling Oaks rate case in Docket No. 850941-WS, which resulted in Commission Order No.
23 17532, issued on May 8, 1987, the Commission refused to recognize an increase in value of
24 property(sold to the Utility years later) resulting from the development of the related party's
25 property surrounding it. The Commission also refused to recognize the market value of the

1 property at the time the Utility purchased it or began using it, but instead required that the property
2 value be recognized based upon the cost to the related party purchaser (acquired on a much earlier
3 date), escalated only for the effects of inflation since the date of purchase. That decision by the
4 Commission was ultimately upheld by the First District Court of Appeal by Order No. 87-1070,
5 issued on July 13, 1988.

6 We at D.R. Horton Custom Homes, Inc. do not currently have in our possession information
7 concerning the date of original purchase or original cost of the property to the Utility's related party
8 landowner. As such, we have utilized in our calculations the assessed value of the property when
9 first devoted to public service in 1991. While we believe that the same treatment as that afforded
10 to Rolling Oaks should be utilized in this case for the same reasons outlined by the Commission
11 in that order, we have not done the additional research to determine that exact cost of the land when
12 originally purchased by the related party. It would probably be immaterially different than our
13 proposal below to the bottom line question of the appropriate Service Availability and/or AFPI
14 charges as they are affected by this issue. Instead, we have used the 1991 assessed value for the
15 property owned by the related party on a per acre basis and determined that the per acre cost of the
16 land is \$2,984 per acre for the water plant and \$1,888 per acre for the sewer plant (see Exhibit
17 MEB-1 which includes a letter from James C. Boyd, P.E. dated August 20, 1999 and attachments).
18 We then applied that cost to the land utilized in the water and sewer systems and included the total
19 cost in plant in service (\$7,544 for water and \$18,880 for sewer).

20 It should also be noted as further justification for not recognizing the inflated value of the land
21 since it became development property, that Mr. Chapman in the meeting with the undersigned and
22 with members of the Commission staff on Friday, September 10, 1999 specifically stated that the
23 reason why the property was being leased to the Utility, rather than sold to the Utility, was so that
24 the development density allowances in the development order for the entire development property
25 could be maintained. In other words, while the Utility is given the right to utilize the land for

1 Utility purposes, the developer is retaining and utilizing the development rights to that property for
2 his own use. Since those development rights constitute the great majority of the current value of
3 the real estate itself, and virtually all of the value that the Utility's appraisal report is based upon,
4 it is patently unreasonable to then try and impose that value, still retained by the developer, on the
5 Utility and its customers.

6 We believe there is also an argument to be made that the recent capitalization of the land lease was
7 done for no purpose other than to try and inflate the Service Availability charges. Whether GAAP
8 requires the capitalization of the lease with the new bargain purchase arrangement, or not, it seems
9 inappropriate to at this time allow the Utility to make that change and suddenly try and bolster their
10 existing Service Availability charges based upon that accounting rule. However, assuming,
11 without researching the issue, the correctness of their position that this lease should be capitalized,
12 we have utilized the assessed value of the property at the time the Utility got its certification from
13 the Commission to operate the water and sewer systems, and therefore, the date at which these
14 related party lands were first devoted to the public service.

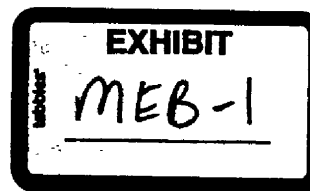
15 For the above reasons, we have very liberally utilized the 1991 assessed value for the Utility land
16 in our calculation of the appropriate land values to be considered in establishing Service
17 Availability charges.

18 Therefore, rather than use the high land cost proposed by the Utility or the slightly lower cost used
19 in the PSC's PAA Order, we believe the only reasonable land value is that outlined above for all
20 the reasons stated. Otherwise, the Utility customers are paying for development values that do not
21 exist for the Utility and, in fact, would be paying that cost twice.

22 Q. Do you have any further testimony to provide?

23 A. Not at this time.

24
25 drhorton\burton.tmy



August 20, 1999

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

Re: Southlake Utilities Investigation
Assessed Property Value
Boyd Environmental Project No. 031-A-01

Dear Mr. Deterding:

As requested in your correspondence dated August 13, 1999, we have researched the records of the Lake County Tax Collector's office to determine the assessed value of property containing the Southlake Utility sites. We obtained the following information (please also see attached copies of tax receipts):

Parent Property Containing Water Plant Site (Parcel No. 35-24-26-0001-000-00100)

<u>Year</u>	<u>Assessed Value (\$)</u>
1990	263,777
1991	265,588
1992	264,760
1993	263,981

Parent Property Containing Sewer Plant Site (Parcel No. 35-24-26-0002-000-00200)

<u>Year</u>	<u>Assessed Value (\$)</u>
1990	309,550
1991	309,550
1992	309,550
1993	250,081

Based on tax maps, we estimate the parent acreage for the water plant site to be approximately 89 acres, and the parent property for the wastewater plant site to be approximately 164 acres. The following table provides per acre costs for each year, based on assessed property value and the aforementioned estimated acreage:

1

Mr. F. Marshall Deterding

August 20, 1999

Page 2

<u>Year</u>	<u>Water Plant Parent Property (\$/acre)</u>	<u>Wastewater Plant Parent Property (\$/acre)</u>
1990	2,964	1,888
1991	2,984	1,888
1992	2,975	1,888
1993	2,966	1,525

The original value of the parent properties have already been provided by Southlake (see attached excerpt). The water plant parent property (acquired 1951) was valued at \$65 per acre, while the wastewater plant parent property (acquired 1962) was valued at \$1,087 per acre.

The values of the Well Site A and Well Site E properties have also been provided by Southlake (see attached excerpts). Well Site A was leased in 1998 and has a book value of \$140.00. Well Site E was purchased in 1996 for \$20,000.00.

Based on assessed value in 1991, the water treatment plant property would be valued at \$7,544 (2.528 acres @ \$2,984 per acre). Similarly, the wastewater plant property would be valued at \$18,880 (10 acres @ \$1,888 per acre).

Marty, we trust that this information assists Mike Burton in preparing his accounting analysis. By copy of this correspondence, we are also requesting that Mike advise us if he needs any further information from this office in order to complete his analysis.

Sincerely,

Boyd Environmental Engineering, Inc.



James C. Boyd, P.E.
President

cc: Mr Ralph Spano
Mr. Mike Burton

Sent via fax and US Mail, 8/20/99



BOB MCKEE
LAKE COUNTY TAX COLLECTOR

REAL ESTATE 1990 1783399.0000
NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS

ACCOUNT NUMBER	ESCROW CD	ASSESSED VALUE	EXEMPTIONS	TAXABLE VALUE	MILLAGE CODE
3524260001-000-00100		263,777	185,000	78,777	0005

SOUTHLAKE DEVELOPMENT LTD
734 AVENIDA CUARTA #101
CLERMONT FL 34711

35-24-26
NE 1/4 E OF HWY--LESS BEG 1615
.38 FT W OF NE CORNER OF SEC
RUN W 200 FT TO E R/W LINE OF
HWY 27, S 20DEG 05MIN E 155.48
FT, N 69DEG 55MIN E 7 FT, S
See Additional Legal on Tax Roll

PLEASE PAY IN U.S. FUNDS TO BOB MCKEE LAKE COUNTY TAX COLLECTOR - P.O. BOX 327, TAVARES, FL 32778-0327

If Paid By	Nov 30 1990	Dec 31 1990	Jan 31 1991	Feb 28 1991	Mar 31 1991
Please Pay	1,346.70	1,360.73	1,374.75	1,388.78	1,402.81

Paid 11/28/90 Receipt #8024861.0001 \$1,346.70

BOB MCKEE
LAKE COUNTY TAX COLLECTOR

REAL ESTATE 1991 1783399.0000
NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS

ACCOUNT NUMBER	ESCROW CD	ASSESSED VALUE	EXEMPTIONS	TAXABLE VALUE	MILLAGE CODE
3524260001-000-00100		265,588	185,000	80,588	0005

1991 706318 CORRECTION

SOUTHLAKE DEVELOPMENT LTD
734 AVENIDA CUARTA #101
CLERMONT FL 34711

35-24-26
NE 1/4 E OF HWY--LESS BEG
1615.38 FT W OF NE CORNER OF SEC
RUN W 200 FT TO E R/W LINE OF
HWY 27, S 20DEG 05MIN E 155.48
FT, N 69DEG 55MIN E 7 FT, S
See Additional Legal on Tax Roll

PLEASE PAY IN U.S. FUNDS TO BOB MCKEE LAKE COUNTY TAX COLLECTOR - P.O. BOX 327, TAVARES, FL 32778-0327

If Paid By	Nov 30 1991	Dec 31 1991	Jan 31 1992	Feb 29 1992	Mar 31 1992
Please Pay	1,414.35	1,429.08	1,443.81	1,458.55	1,473.28

Paid 12/02/91 Receipt #9952613.0001 \$1,414.35
11/30/91 P&I Date

BOB MCKEE
LAKE COUNTY TAX COLLECTOR

REAL ESTATE 1992 1783399.0000
NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS

ACCOUNT NUMBER	ESCROW CD	ASSESSED VALUE	EXEMPTIONS	TAXABLE VALUE	MILLAGE CODE
3524260001-000-00100		264,760	185,000	79,760	0005

SOUTHLAKE DEVELOPMENT LTD
734 AVENIDA CUARTA #101
CLERMONT FL 34711

35-24-26
NE 1/4 E OF HWY--LESS BEG
1615.38 FT W OF NE CORNER OF SEC
RUN W 200 FT TO E R/W LINE OF
HWY 27, S 20DEG 05MIN E 155.48
FT, N 69DEG 55MIN E 7 FT, S
See Additional Legal on Tax Roll

PLEASE PAY IN U.S. FUNDS TO BOB MCKEE LAKE COUNTY TAX COLLECTOR - P.O. BOX 327, TAVARES, FL 32778-0327

If Paid By	Nov 30 1992	Dec 31 1992	Jan 31 1993	Feb 28 1993	Mar 31 1993
Please Pay	1,546.02	1,562.13	1,578.23	1,594.34	1,610.44

Paid 11/06/92 Receipt #0004928.0001 \$1,546.02

BOB MCKEE
LAKE COUNTY TAX COLLECTOR

REAL ESTATE 1993 1783399.0000
NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS

ACCOUNT NUMBER	ESCROW CD	ASSESSED VALUE	EXEMPTIONS	TAXABLE VALUE	MILLAGE CODE
3524260001-000-00100		263,981	185,000	78,981	0005

SOUTHLAKE DEVELOPMENT LTD
734 AVENIDA CUARTA #101
CLERMONT FL 34711

35-24-26
NE 1/4 E OF HWY--LESS BEG
1615.38 FT W OF NE CORNER OF SEC
RUN W 200 FT TO E R/W LINE OF
HWY 27, S 20DEG 05MIN E 155.48
FT, N 69DEG 55MIN E 7 FT, S
See Additional Legal on Tax Roll

PLEASE PAY IN U.S. FUNDS TO BOB MCKEE LAKE COUNTY TAX COLLECTOR - P.O. BOX 327, TAVARES, FL 32778-0327

If Paid By	Nov 30 1993	Dec 31 1993	Jan 31 1994	Feb 28 1994	Mar 31 1994
Please Pay	1,645.99	1,663.13	1,680.28	1,697.42	1,714.57

BOB MCKEE
LAKE COUNTY TAX COLLECTOR

REAL ESTATE 1990 1412528.0000
NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS

ACCOUNT NUMBER	ESCROW CO	ASSESSED VALUE	EXEMPTIONS	TAXABLE VALUE	VILLAGE CODE
3524260002-000-00200		309,550	279,300	30,250	0005

SOUTHLAKE DEVELOPMENT LTD
2215 RIVER BLVD
JACKSONVILLE FL 32204

35-24-26
BEG AT NW COR OF SEC RUN S 660
FT, E 660 FT, S 330 FT, E 660
FT, S 330 FT, E 990 FT, S 660
FT, E 330 FT, S 1320 FT, E 660
FT, S 660 FT, E TO SW COR OF NE
See Additional Legal on Tax Roll

PLEASE PAY IN U.S. FUNDS TO BOB MCKEE LAKE COUNTY TAX COLLECTOR - P.O. BOX 327, TAVARES, FL 32778-0327

If Paid By	Nov 30 1990	Dec 31 1990	Jan 31 1991	Feb 28 1991	Mar 31 1991
Please Pay	503.79	509.04	514.28	519.53	524.78

Paid 11/28/90 Receipt #8024858.0001 \$503.79

BOB MCKEE
LAKE COUNTY TAX COLLECTOR

REAL ESTATE 1991 1412528.0000
NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS

ACCOUNT NUMBER	ESCROW CO	ASSESSED VALUE	EXEMPTIONS	TAXABLE VALUE	VILLAGE CODE
3524260002-000-00200		309,550	279,300	30,250	0005

SOUTHLAKE DEVELOPMENT LTD
2215 RIVER BLVD
JACKSONVILLE FL 32204

35-24-26
BEG AT NW COR OF SEC RUN S 660
FT, E 660 FT, S 330 FT, E 660
FT, S 330 FT, E 990 FT, S 660
FT, E 330 FT, S 1320 FT, E 660
FT, S 660 FT, E TO SW COR OF NE
See Additional Legal on Tax Roll

PLEASE PAY IN U.S. FUNDS TO BOB MCKEE LAKE COUNTY TAX COLLECTOR - P.O. BOX 327, TAVARES, FL 32778-0327

If Paid By	Nov 30 1991	Dec 31 1991	Jan 31 1992	Feb 29 1992	Mar 31 1992
Please Pay	507.01	512.30	517.58	522.86	528.14

Paid 11/18/91 Receipt #8019258.0001 \$507.01

BOB MCKEE
LAKE COUNTY TAX COLLECTOR

REAL ESTATE 1992 1412528.0000
NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS

ACCOUNT NUMBER	ESCROW CO	ASSESSED VALUE	EXEMPTIONS	TAXABLE VALUE	VILLAGE CODE
3524260002-000-00200		309,550	279,300	30,250	0005

SOUTHLAKE DEVELOPMENT LTD
2215 RIVER BLVD
JACKSONVILLE FL 32204

35-24-26
BEG AT NW COR OF SEC RUN S 660
FT, E 660 FT, S 330 FT, E 660
FT, S 330 FT, E 990 FT, S 660
FT, E 330 FT, S 1320 FT, E 660
FT, S 660 FT, E TO SW COR OF NE
See Additional Legal on Tax Roll

PLEASE PAY IN U.S. FUNDS TO BOB MCKEE LAKE COUNTY TAX COLLECTOR - P.O. BOX 327, TAVARES, FL 32778-0327

If Paid By	Nov 30 1992	Dec 31 1992	Jan 31 1993	Feb 28 1993	Mar 31 1993
Please Pay	508.19	513.48	518.77	524.07	529.36

Paid 11/06/92 Receipt #0004931.0001 \$508.19

BOB MCKEE
LAKE COUNTY TAX COLLECTOR

REAL ESTATE 1993 1412528.0000
NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS

ACCOUNT NUMBER	ESCROW CO	ASSESSED VALUE	EXEMPTIONS	TAXABLE VALUE	VILLAGE CODE
3524260002-000-00200		250,081	223,980	26,101	0005

SOUTHLAKE DEVELOPMENT LTD
2215 RIVER BLVD
JACKSONVILLE FL 32204

35-24-26
BEG AT NW COR OF SEC RUN S 660
FT, E 660 FT, S 330 FT, E 660
FT, S 330 FT, E 990 FT, S 660
FT, E 330 FT, S 1320 FT, E 660
FT, S 660 FT, E TO SW COR OF NE
See Additional Legal on Tax Roll

PLEASE PAY IN U.S. FUNDS TO BOB MCKEE LAKE COUNTY TAX COLLECTOR - P.O. BOX 327, TAVARES, FL 32778-0327

If Paid By	Nov 30 1993	Dec 31 1993	Jan 31 1994	Feb 28 1994	Mar 31 1994
Please Pay	440.24	444.82	449.41	453.99	458.58

In response to Audit Document Requests CV-6 and CV-9, dated March 17, 1999 and March 24, 1999, respectively, the utility provided a copy of a capital lease, including subsequent amendments, for 12.53 acres and provided its supporting calculation of the value of this lease at \$760,855.

a. What was the original purchase price of this land when Robert L. Chapman, II, and Elisabeth Chapman purchased it?

The first parcel was acquired by Robert L. Chapman, II, and Elisabeth Chapman in 1951. The first parcel is approximately 720 acres and contains the water plant site. The deed, a copy of which is attached as Exhibit 4A, indicates that the purchase price was \$47,000 or approximately \$65 per acre. The second parcel was acquired by Robert L. Chapman II, and Elisabeth Chapman in 1962. The second parcel is approximately 164 acres and contains the wastewater treatment plan site. According to tax stamps affixed to the deed for the second parcel, a copy of which is attached as Exhibit 4B, the consideration was \$200,000 (\$1,000 of stamps at \$0.50 per \$100 of consideration) with a resulting per acre cost of approximately \$1,087 per acre.

b. Please provide documentation for the original purchase price when Robert L. Chapman, II, and Elisabeth Chapman purchased it.

See Exhibits 4A and 4B.

c. If the lease was executed on August 17, 1993, why did the utility capitalize the lease in 1998 instead of in 1993?

The lease was amended to include a bargain purchase option in 1998. According to widely accepted accounting principles, a lease must be capitalized if it contains a bargain purchase (i.e., less than fair market value) option.

Question 5

According to Schedule F-8 of the utility's 1998 annual report, the utility reported Prepaid CIAC of \$182,628 for water and \$393,530 for wastewater. Please provide an analysis of the utility's basis for the determination of Prepaid CIAC versus Used and Useful CIAC.

The analysis is provided in attached Exhibit 5.

PARCEL 3
WELL SITE A
[Answers to 9 subparts]

(1) whether each parcel of land is used for water and/or wastewater operations;

This parcel is used for water operations.

(2) the number of acres for each parcel of land;

This parcel is .0023 acres more or less.

(3) the purchase price or lease amount/terms for each parcel of land;

This parcel is leased for 99 years with a bargain purchase option. Approximately 94 years remain. The rental payment is currently \$4,211.04 per month for land totaling 12.53 acres more or less. The pro-rata rent for the Well Site A is \$0.77.

(4) the value of each parcel of land recorded on the utility's books;

The value of this parcel as recorded on the utility's books is \$140.00.

(5) the name of the seller or lessor of each parcel of land and whether this person is related by family or other business relationship to the utility or any of the utility's owners;

The name of the lessor is Southlake Development, Ltd., a limited partnership. Southlake Development, Ltd., is not an owner of Southlake Utilities, Inc., however the general partner of Southlake Development, Ltd., is Jeffrey Cagan and Richard Driehaus and Robert L. Chapman, III, are limited partners. Jeffrey Cagan owns 15% of the common stock of Southlake Utilities, Inc. Richard Driehaus owns 15% of the common stock of Southlake Utilities, Inc. Robert L. Chapman, III, owns 10% of the common stock of Southlake Utilities, Inc. Robert L. Chapman, III, also owns a majority of the common stock of Southlake, Inc., which owns 60% of the common stock of Southlake Utilities, Inc.

(6) the year each parcel of land was purchased and/or leased;

This parcel was leased in 1998.

(7) the year each parcel of land was first used to provide utility service;

This parcel was first used to provide utility service for an auxiliary well in 1993.

(8) a description of the current and/or future use of each parcel of land; and

The current use of this parcel is as the site of the Well A, an auxiliary well. Southlake Utilities plans to bring this well on-line as a primary well in 1999.

(9) the amount of each parcel of land that is currently being used to provide utility service.

This parcel is currently being used exclusively to provide utility service.

PARCEL 4

WELL SITE E

[Answers to 9 subparts]

(1) whether each parcel of land is used for water and/or wastewater operations;

This parcel is used for water operations.

(2) the number of acres for each parcel of land;

This parcel is 5 acres more or less.

(3) the purchase price or lease amount/terms for each parcel of land;

This parcel is owned free and clear by Southlake Utilities, Inc. The purchase price was \$20,000.00.

(4) the value of each parcel of land recorded on the utility's books;

The value of this parcel as recorded on the utility's books is \$20,000.00.