

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for)
Certificate to provide)
wastewater service in Lee County,) Docket No. 020640
Florida by GISTRO, INC.)
_____)

OBJECTION TO APPLICATION AND
PETITION FOR FORMAL ADMINISTRATIVE HEARING

BONITA SPRINGS UTILITIES, INC., ("BSU"), by and through its undersigned attorneys and pursuant to Rule 28-106.201, Florida Administrative Code, files this objection to the application of Gistro, Inc. for a wastewater certificate in Lee County, Florida, and in support thereof states:

1. The agency affected is the Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, Docket No. 020640.

2. The name, address and telephone number of the Petitioner is:

BONITA SPRINGS UTILITIES, INC.
11860 East Terry Street
Bonita Springs, Florida 32159
(941)992-0711

3. The name and address of the person authorized to receive notices and communications in respect to this application is:

Martin S. Friedman, Esquire
Rose, Sundstrom & Bentley, LLP
650 S. North Lake Boulevard, Suite 420
Altamonte Springs, Florida 32701
(407)830-6331
(407)830-8522 fax
mfriedman@rsbattorneys.com

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4. Petitioner did not receive notice of the Application, but learned of it from its attorneys' routine check of new Commission dockets on or about July 3, 2002.

5. The disputed issues of material fact known at this time are as follows:

- a) Whether BSU has the ability to continue to provide wastewater service to the customers within the proposed certificated territory.
- b) Whether BSU has the ability to provide wastewater service to the undeveloped lots within the proposed certificated territory.
- c) Whether Gistro, Inc.'s application meets the requirements of law.
- d) Whether Gistro, Inc. has the financial and technical ability to operate a wastewater utility.

6. The following is a concise statement of facts:

In January, 1991, BSU and Forest Mere Joint Venture (with Mr. Holzberg signing as its authorized representative) entered into a Sewer Capacity Resale Agreement, a copy of which is attached. BSU subsequently began providing wastewater service to the development in question, but elected not to accept the collection system since it was not up to BSU's standards. BSU is presently billing the individual customers within this development and has the ability and right pursuant to *City of Mount Dora v. JJ's Mobile*

Homes, 579 So.2d 219 (Fla. 5th DCA 1991) to serve the undeveloped lots within the subdivision.

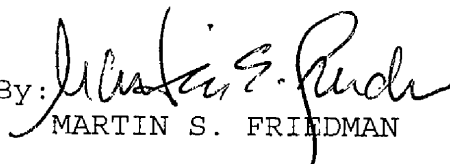
If Gistro, Inc. is seeking a certificate to bill the residents using the collection system for the cost of operation and maintenance of the collection system, then BSU does not object to the granting of a certificate to Gistro, Inc. However, if Gistro, Inc. is seeking a certificate to provide the wastewater service that BSU is providing and has the ability to continue to provide, then BSU does object.

7. Section 367.045, Florida Statutes, requires denial of Gistro's application if it is to replace BSU as the provider of wastewater service.

WHEREFORE, if Gistro, Inc. is seeking a wastewater certificate to provide wastewater service directly to the residents within the territory, and not just for the expense of operating and maintaining the collection system, then BSU requests this Commission deny that application.

Respectfully submitted on this
24th day of July, 2002, by:

ROSE, SUNDSTROM & BENTLEY, LLP
650 S. North Lake Boulevard
Altamonte Springs, Florida 32701
(407) 830-6331

By: 
MARTIN S. FRIEDMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail on this 24th day of July, 2002, to:

Roseanne Gervasi, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Mr. J. Fritz Holzberg
Gistro, Inc.
Post Office Box 110131
Naples, Florida 34108



MARTIN S. FRIEDMAN

SEWER CAPACITY PRESALE AGREEMENT

THIS AGREEMENT, made and entered into on the date set forth below, by and between Bonita Springs Water System, Inc., 11860 East Terry Street, Bonita Springs, Florida 33923 ("Service Company"), and

FOREST MERE JOINT VENTURE
26511 SOUTHERN PINES DRIVE
BONITA SPRINGS, FL 33923
Telephone No. 813-598-3994
("Customer")

WHEREAS, Service Company has undertaken to construct and operate a central sanitary sewer collection, transmission, treatment, and disposal system in the Bonita Springs area ("Sewer System") which has capacity available to serve Customer; and,

WHEREAS, Customer would like to receive service from the Sewer System for the following units located on its property described in Exhibit "A":

<u> </u> mobile home	<u> </u> condominium
<u> </u> recreational vehicle	<u> 155 </u> single-family
<u> </u> commercial	<u> 120 </u> multi-family

WHEREAS, the parties wish to enter into this Agreement in order to secure the provision of service pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of ten dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The recitations herein are true and correct as stated.
2. The Customer hereby declares its intent to connect to the Sewer System within sixty (60) days of written notification from Service Company that capacity is available and the connection can be made. Service Company shall bear the cost of extending a sewer transmission main to a point abutting Customer's Property. Customer shall be responsible for, and bear the cost of, connection to the Sewer System's transmission main, which connection may be made by Service Company at its option.

3. Customer's obligation to connect to the Sewer System is conditioned upon Service Company providing service to the Property in the capacity set forth herein, without the payment of any connection charge, service availability charge or aid for new construction fee. Service Company has advised Customer that the failure to reserve capacity during the presale period may result in the subsequent payment of a substantial connection charge as a condition for the purchase of capacity and service.

4. Except as set forth in paragraph 8 herein, this Agreement evidences the binding obligation of both Customer and Service Company, their respective successors and assigns, for connection of existing units on the Property to the Sewer System. Customer warrants and represents that it has the authority to enter into this Agreement and to bind the Property as set forth herein.

5. Customer agrees that units on the Property shall, upon the Sewer System being made available for connection by Customer, be responsible for payment of monthly rates and charges on a take or pay basis. The rates and charges shall be those published in a tariff available from Service Company and shall be identical to rates charged to other customers in the same class of service as Customer. Monthly service charges shall include payment for treatment of all domestic wastewater introduced into the Sewer System from within the Property.

6. At Service Company's option, Customer shall convey to Service Company the on-site collection system serving the Property prior to the commencement of service from Sewer System. Such conveyance shall be by deed, bill of sale or other documents satisfactory to Service Company accompanied by appropriate easements or other property rights necessary to provide service to the Property.

7. Service Company shall provide sanitary sewer service to the Property in a manner consistent with federal, state and local regulatory requirements regarding the provision of such service. Customer shall introduce only domestic sanitary sewage from the Property into the Sewer System.

8. Service Company has advised Customer that it must achieve a minimum level of presold capacity in order to make financially feasible the provision of sanitary sewer service to Customer without payment of a connection charge. If Service Company is unable to presell that minimum capacity, and issue tax-exempt bonds of sufficient quality and amount to finance and construct the Sewer System, this Presale Agreement shall be null and void.

9. Service Company and Customer agree that this presale offer of capacity without connection charge payment, and the scope of this Agreement, apply only to existing customers within the Property receiving sewer service and those reasonably anticipated to be connected to the Sewer System within 12 months of the date that service is available, provided, however, that as to customers not connected to the Sewer System as of that date, that nevertheless monthly service fees are paid to the Sewer System on their behalf. Any customers for which monthly fees are paid for said 12 continuous months and which are not so connected to the Sewer System at the end of said 12-month period after service is so available, shall be entitled to a credit for such 12 months' payments against Service Company's connection charge in effect as of the date of actual connection.

10. It is anticipated that sewer service should be available to the property between 12 and 18 months from the time of execution hereof. For planning purposes, Customer hereby advises Service Company that it anticipates having 70 occupied units requiring sanitary sewer service as of January 1, 1992, and 205 additional occupied dwelling units requiring sanitary sewer service as of January 1, 1993.

11. This Agreement was delivered on _____, 1990 and shall constitute an offer which must be accepted within 30 days. This Agreement shall be effective upon execution.

IN WITNESS WHEREOF, the parties hereto enter into this Agreement as of the date written above.

BONITA SPRINGS WATER SYSTEM, INC.

T. Harvey Haines
T. HARVEY HAINES, President
Date 1/15/91

WITNESSES:

Mary Ann Liguori
J.M. O'Keefe

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10/8/90/tm

J. Fred Kelly
Its Authorized Representative
Date Jan 2, 1991

WITNESSES:

Mary Ann Liguori
Sandra J. Coffey