

State of Florida



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: September 26, 2002
TO: Division of the Commission Clerk and Administrative Services
FROM: Office of the General Counsel (Gervasi) *GG*
RE: Docket No. 020640-SU - Application for certificate to provide wastewater service in Lee County by Gistro, Inc.

Please file the attached facsimile transmittal from Bill Sundstrom, Esquire, dated September 25, in the docket file for the above-referenced docket.

RG/dm

cc: Division of Economic Regulation (Brady, Redemann)

1\020640fm2 rg

DOCUMENT NUMBER DATE
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FPSC-COMMISSION CLERK

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TELECOPY COVER SHEET

DATE: September 25, 2002 OUR FILE NO.: 20989.10 PAGES: 4

TO: David M. Owen TELECOPY NUMBER: 941-335-2606
Rosanne Gervasi TELECOPY NUMBER: 413-6225
Fred Partin TELECOPY NUMBER: 941-947-7460
Don Thomson TELECOPY NUMBER: 941-498-6225
Robert Burandt TELECOPY NUMBER: 941-542-9203
Martin Friedman TELECOPY NUMBER: 407-830-8522

FROM: Bill Sundstrom CONTACT PERSON: Jackie

SUBJECT: Bonita Springs Utilities, Inc.

MESSAGE: _____

Please notify us immediately if not received properly:
 (850) 877-6555

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September 25, 2002

ROBERT M. C. ROSE
WAYNE L. SCHLEPPELBEIN
Of CounselVia Telecopy and MailDavid M. Owen, Esquire
Chief Assistant County Attorney
Lee County, Florida
Post Office Box 398
Fort Myers, Florida 33902

Re: Bonita Springs Utilities, Forest Mere Subdivision

Dear David:

In continuing our research as to the issue of legal title to and right to beneficial use in the wastewater collection system within the Forest Mere Subdivision, we came across the attached page from the Declarations and Covenants for the subdivision. In particular, Article V, entitled "Easements Over the Properties" provides:

SECTION 1. Easements:

The Declarant or its successors in interests do hereby establish and create for the benefit of the Association and for all owners from time to time of The Properties, and do hereby give, grant and convey to each of the aforementioned, the following easements, licenses, rights and privileges:

.....

(ii) Rights to connect and make use of utility lines, wires, pipes, conduits, cable television lines, sewers and drainage lines which may from time to time be in or along the streets and roads or other areas of The Properties and (if the owners of the land upon which section of lines, wires, pipes, conduits, cable television lines, sewers or drainage lines are located neglect to keep them adequately maintained) the rights to maintain and repair the same.

David M. Owen, Esq.
September 25, 2002
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As you can see from the attached, this document is recorded in the Public Records of Lee County.

It would appear, therefore, that the Developer, or itself and its successors, dedicated the wastewater collection lines to the benefit of the lot owners. Further, the Developer signed a presale agreement with Bonita Springs Utilities, conveying to Bonita Springs Utilities the right and obligation to treat the raw wastewater generated within the subdivision. Further, the Developer made representations and warranties to lot purchasers as to their ability to use the subject lines and now that same Developer, or its successor in interest, is denying those rights to the owners of the benefitted properties.

Excuse me, but it appears from the above, that what we have here is a situation of "Case Closed."

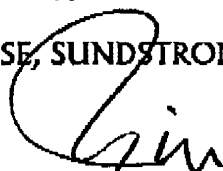
I have provided a copy of my previous letter to you relative to the Sheriff's Deed to the wastewater collection system to counsel for the Forest Mere Subdivision and invited him to respond. I am providing the same courtesy at this time.

It certainly overwhelmingly appears that Mr. Holzberg's (i) claim of ownership, (ii) claim that there are others trespassing on his collection system, and (iii) claim of ability to plug lines, etc., are baseless.

Should you have any questions or comments concerning the above, please do not hesitate to contact me.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP



William E. Sundstrom, P.A.
For the Firm

WES:jmt

Attachment

cc: Fred Partin
Don Thomson
Rosanne Gervasi
Robert Burandt
Martin Friedman

1718 33222

ARTICLE V
EASEMENTS OVER THE PROPERTIES

SECTION 1. Easements.

The Declarant or its successors in interest do hereby establish and create for the benefit of the Association and for all owners from time to time of The Properties, and do hereby give, grant and convey to each of the aforementioned, the following easements, licenses, rights and privileges:

(i) Right of Way for Ingress and Egress by vehicles or on foot, in, through, over, under and across the streets, roads, and walks (as they may be built or located in the future) for all purposes and (if the owners of a section of a street, road or walkway fail to maintain the throughway) the right to maintain and repair the same;

(ii) Rights to connect and make use of utility lines, wires, pipes, conduits, cable television lines, sewers and drainage lines which may from time to time be in or along the streets and roads or other areas of The Properties and (if the owners of the land upon which section of lines, wires, pipes, conduits, cable television lines, sewers or drainage lines are located neglect to keep them adequately maintained) the rights to maintain and repair the same.

SECTION 2 - Reservation of Easements.

The Declarant or its successors in interest reserve the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across The Properties, for the purposes of constructing multi-family buildings on The Properties and, towards this end, reserves the right to grant and receive easements and rights-of-way in, through, under, over and across The Properties, for the installation, maintenance, and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, fuel oil and other utilities and for any other materials or services necessary for the completion of the work. The Declarant or its successors in interest also reserve the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers and drainage lines which may from time to time be in or along the streets and roads or other areas of The Properties.

ARTICLE VI
COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligations.

The Declarant, for each single family lot, townhouse unit or Condominium Unit owned by it within The Properties hereby covenants, and each Owner of any Condominium Unit, Townhouse Unit or Single Family Lot (by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance) including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any and all annual assessments or charges and any special assessments for capital improvements or major repairs; such assessments to be fixed, established and collected from time to time by the Association. All sums assessed by the Association, but unpaid, together with such interest thereon as is hereinafter provided, shall be a charge on the land and shall be a continuing lien upon The Properties against which each such assessment is made. Each such assessment, together with interest thereon and cost of collection thereof, as hereinafter provided, shall be a personal obligation of the person who was the owner of such property at the time when the assessment fell due.

ATTENTION: ROSANNE GERVASI 9-19-02

DEAR ROSANNE,
HEAR IS A LETTER I RECEIVED TODAY FROM
MILLS HOME'S. THIS LETTER SEEMS TO BE JUST THE
OPPOSITE OF WHAT I'VE FOUND OUT WITH SPEAKING
TO YOU AND PAT. MY UNDERSTANDING IS
GISTRAD IS ALLOWED TO CONNECT AND DISCONNECT AT
THEIR WILL, WOULD YOU PLEASE CLARIFY THIS FOR
ME SO I MAY KNOW WHAT STEPS TO TAKE TO
PROTECT MY FAMILY?

THANK YOU,

SINCERELY,



11584 FOREST WALK DR
BONITA SPRINGS FL 34135,

239-948-6948 HOME
239-404-5120 CELL

PLEASE CONTACT ME TOMORROW AFTERNOON
I WILL BE HOME BY 4:00 PM THANK YOU



TO: Bonita Preserve Homeowners

From: Daniel J. Mills

RE: Sewer System Vandalism

Date: September 16, 2002

Dear Homeowner,

It has come to my attention that a Mr. Fritz Holzberg and/ or agents of Mr. Holzberg have vandalized the sewer system in your neighborhood in an effort to extort money from homeowners like yourself.

First, let me assure you, that as the builder of your new home, we had received full authorization to attach to the existing sewer system from Bonita Springs Utilities (the service provider). This authorization was required as a prerequisite to obtaining a building permit from the Lee County Building Department. At no time were we told by any building official, officer of any government agency or any other duly authorized government official that any additional authorization(s) were required for the sewer hook-up. Therefore, our hook-up was fully authorized.

Second, in an effort to help in this situation, we called the State of Florida Public Service Commission and spoke to their counsel Miss Rosanne Gervasi. She stated that she did not know whether or not Mr. Holzberg did in fact own the sewer lines in Bonita Preserve, however, even if he did he could not legally (a) connect or disconnect any homeowner from the sewer lines or (b) collect any fees from anyone connecting to the lines because he was not licensed nor certificated to act as a utility. In fact, I believe they are currently looking into a complaint that he did in fact disconnect homeowners from the sewer line. If they find this to be true it is my understanding that they may fine him and possibly charge him with a criminal act.

Next, we spoke with our attorney about the situation. He informed us that we could not file any legal proceedings against Mr. Holzberg on your behalf because we are not an affected party in the situation. He said that only you and your neighbors as affected homeowners can, and should, bring suit or file legal motions against Mr. Holzberg to stop him from vandalizing the Bonita Preserve sewer system.

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Bonita Preserve Homeowners
September 16., 2002

Finally, I must concur with our attorney in suggesting that you seek legal counsel, either on your own or along with your neighbors and/or Homeowners Association, and file the required motions to stop Mr. Holzberg from vandalizing the sewer lines under penalty of imprisonment and/or fines. Also, I suggest that if you witness Mr. Holzberg or his agents (i.e. plumbing companies, individuals, etc...) disrupting your sewer service or your neighbors, please take photos or video tape of them if you can, document the act and make a formal complaint to the State of Florida Public Service Commission care of Miss Rosanne Gervasi Senior Attorney @ 1-800-413-6224 or you can write to:

State of Florida
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, Fla. 32399-0850
Attn: Miss Rosanne Gervasi

Thank you for your time. I hope I have helped you with this problem.

Sincerely,
Mills Homes



Daniel J. Mills
President