

State of Florida



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

DATE: August 22, 2003
TO: Division of the Commission Clerk and Administrative Services
FROM: Office of the General Counsel (Gervasi)
RE: Docket No. 020640-SU - Application for certificate to provide wastewater service in Lee County by Gistro, Inc.

Please file the attached letter from David M. Owen, Chief Assistant County Attorney, of the Lee County Southwest Florida Board of County Commissioners, dated August 5, 2003, in the docket file for the above-referenced docket.

RG/dm

cc: Division of Economic Regulation (Brady)

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 **LEE COUNTY**
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

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County Manager

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County Attorney

Diana M. Parker
County Hearing
Examiner

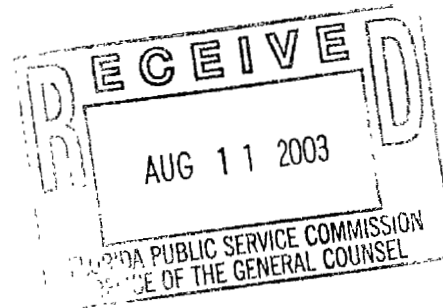
August 5, 2003

William E. Sundstrom, Esq.
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G. Donald Thomson, Esq.
General Counsel - BSU, Inc.
3461 Bonita Bay Blvd., Suite 220
Bonita Springs, Florida 34134

and

Rosanne Gervasi, Esq., Senior Attorney
Office of General Counsel
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850



**RE: FRITZ HOLZBERG, D/B/A FOREST MERE JOINT VENTURES, INC.
("GISTRO") / FIRST HOME BUILDERS, INC.
[LEE COUNTY CASE NO. 02-11718 CA-JHS]**

Ladies & Gentlemen:

I am providing each of you with the latest installment in the above matter (July 30, 2003 letter from Fritz Holzberg to my Commissioners). Apparently, the case between First Home Builders and Forest Mere either did not go to arbitration or mediation in May, 2003 as directed in Judge Seals' March 25, 2003 letter, or the issues were not resolved at either the arbitration or mediation.

The County is maintaining its position articulated back in December of 2001 (attached), that its action in issuing the building permits is one that is ministerial in nature, and relates to the availability of capacity for either potable water or wastewater treatment to be provided to prospective customers.

FOREST MERE--FIRST HOME BLDERS sund.thom.gerv.wpd

William E. Sundstrom, Esq.
G. Donald Thomson, Esq.
Rosanne Gervasi, Esq.
August 5, 2003
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**RE: FRITZ HOLZBERG, D/B/A FOREST MERE JOINT VENTURES, INC.
("GISTRO") / FIRST HOME BUILDERS, INC.
[LEE COUNTY CASE NO. 02-11718 CA-JHS]**

The County will defend any lawsuit brought by Mr. Holzberg through his counsel, should they make the decision to file such an action.

If there are further correspondences to the County from either Mr. Holzberg or his counsel, I will so advise.

Cordially,

A handwritten signature in black ink, appearing to read "David M. Owen". The signature is fluid and cursive, with a large initial "D" and "O".

David M. Owen
Chief Assistant County Attorney

DMO/dm
Attachments

xc: James G. Yaeger, County Attorney
John J. Renner, Chief Assistant County Attorney
James Lavender, Director, Public Works Administration
Mary Gibbs, Director, Community Development
Rick Diaz, P.E., Director, Lee County Utilities
Robert Stewart, Director, Code Enforcement
Michael Fink, Esq.
Mark A. Boyle, Esq.
Michael W. Leonard, Esq.
Fred Partin, General Manager, Bonita Springs Utilities, Inc.

GISTRO INC.
A FLORIDA CORPORATION

P.O.BOX 110 131
NAPLES FL.34108
(239) 495 8089 VOICE
(239) 495 8089 FAX

July 30, 2003

John Albion
Dough St Cerny
Andrew Coy
Ray Judah
Bob Janes
Lee County Commissioners

COMMISSIONER

JOHN ALBION

RE. Forest Mere Joint Venture Sewer Collection System located at
Forest Mere development Southern Pines Dr. Bonita Springs FL. 34135

Dear County Commissioners

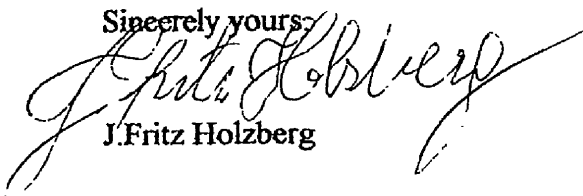
Forest Mere Joint Venture which consists of myself and my family are the owners of the sewer collection system at Forest Mere here in Lee County, Florida. This system was built in 1984 and since that time has remained with the family members. In October 2001 we were informed that Lee County Building Department was issuing building permits for the construction of new homes in Forest Mere without obtaining our consent to tie in to the sanitation system.

We have requested that the Building Department stop issuing building permits for this area unless they first obtain our consent to tie into the system. Our repeated requests have gone unanswered and since that time approximately 80 permits have been issued. The only letter of consent that is being obtained is from Bonita Springs Utilities, which is the processor of the affluent but Forest Mere Joint Venture Inc., still owns the lines and the lift stations within the development and therefore the building department should obtaining our consent before allowing builders or individual residents to build in the subdivision.

This case is currently pending before Judge Seals in the Lee County Circuit Court and we would respectfully request that Lee County suspend the issue of any new building permits until this matter can be finally resolved. I have instructed my attorney to begin the litigation process against the County if my request continues to be ignored. I reserve the right to claim damages at a future date.

Should you have any questions or comments, please feel free to contact me.

Sincerely yours:




J.Fritz Holzberg

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: December 21, 2001

TO: Bobby Stewart, Director
Code Enforcement

FROM: 
David M. Owen
Chief Assistant County Attorney

RE: **AC-12-14, POTABLE WATER AND WASTEWATER TREATMENT AVAILABILITY
LETTERS FOR THE FOREST MERE/SPRING LAKES DEVELOPMENTS**

Bobby;

You have asked substantially whether the attached potable water and wastewater treatment services letters of availability from the Bonita Springs Utility Company ("BSU") are sufficient and legally correct for the purposes of Lee County Administrative Code 12-4, paragraph 4.

The short answer is yes; and you may issue permits for home development upon their receipt from the developer(s)/contractor(s) submitting same.

Briefly, I am aware of the on-going dispute between Mr. Fritz Holzberg and BSU concerning the connection agreement between the parties. Although Mr. Holzberg may still own the internal water and wastewater distribution and collection lines for the developments, he is not the actual provider of potable water or sewer services, which were contracted to BSU some years ago.

The purpose of AC-12-4 is to provide the County with tangible evidence that potable water and wastewater treatment services are available at the time of permitting from the volumetric basis, i.e., whether sufficient capacity is available from the utility provider (which owns the potable water production and wastewater treatment plants and facilities for providing such services) for the home or duplex to be actually served.

Upon demonstration from the actual private utility provider (the "service availability letters"), the County may issue the appropriate, requisite permits for the construction of the residence(s).

In this case, Mr. Holzberg is not the actual utility provider, even though he may own the interior utility lines for the developments. The actual utility services are provided to the residences by BSU. His issues with utility service to the customers in the Forest Mere and Spring Lakes Developments are solely between himself, the owners of the residences and BSU.

Bobby Stewart
December 21, 2001
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RE: AC-12-14, POTABLE WATER AND WASTEWATER TREATMENT AVAILABILITY
LETTERS FOR THE FOREST MERE/SPRING LAKES DEVELOPMENTS

The County has no authority in this ^{THIRD} situation to deny permits to a developer/contractor requesting permits for home construction based upon ~~third~~ party issues between BSU, Mr. Holzberg and the ultimate consumer(s) (homeowners) in the Forest Mere or Spring Lakes sub-divisions.

The BSU letters of service availability (all dated October 11, 2001) as provided to the County are legally sufficient for the purposes of AC-12-4 and the issuance of the applicable County permits for the construction of the specified homes.

If you have any other questions or issues with respect to this matter, please feel free to contact me at your convenience.

DMO/plm
Enclosures

cc: James G. Yaeger, County Attorney
Joan Henry, Assistant County Attorney
Jim Lavender, Director, Public Works
Mary Gibbs, Director, Community Development
Rick Diaz, P.E., Director, Utilities
 ^{Parson}
Fred Parson, General Manager, BSU
G. Donald Thompson, Esquire, General Counsel, BSU
William Sunstrom, Esquire, Rose, Sundstrom & Bentley, LLP

ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS

CATEGORY:

Codes and Building Services

CODE NUMBER:

AC-12-4 ✓

TITLE:

Single Family and Duplex Permitting Procedures

ADOPTED:

1/27/82

AMENDED:

8/31/94

ORIGINATING DEPARTMENT:

Codes and Building Services/Attorney

PURPOSE/SCOPE:

This Administrative Code sets out the minimum submission requirements necessary to successfully complete the permitting process for single family and duplex dwellings. It also sets out some of the basic requirements concerning the job site.

POLICY/PROCEDURE:

1. Three (3) copies of plot plan showing roof overhang as well as the basic structure outline, showing setbacks from the lot lines to the building(s) also showing placement of driveways, septic tank, drainfield, will be required with building permit application.
2. For construction in flood zones or seaward of the coastal construction line, a certified survey indicating the flood zone(s), coastal construction line and elevation of existing land will be necessary. If the construction is seaward of the coastal construction line and a state permit is required, a copy of the Department of Environmental Protection permit will be needed prior to issuance of the permit.
3. One (1) copy of an applicable variance or other special approvals must be provided.
- ✓ 4. Application for septic tank may be applied for at the time of building application. A well affidavit must be signed and notarized. A well permit and well inspection will be necessary before a certificate of occupancy will be issued. ✓ If construction is located on private water and/or sewer, a letter must be submitted from the private utility company verifying availability for site submitted.
5. Plans must be signed and sealed by a Florida Registered Architect or Engineer or in compliance with SSTD 10-93 and a 10-93 checklist submitted for each set. Plans must be submitted on standardized sheets drawn to scale. The plans must bear the following specific information:
 - (a) Elevation for front, rear, right and left sides
 - (b) Foundation plan
 - (c) Floor plan
 - (d) Lateral breakdown (typical wall section from roofing through to foundation and NGVD Elevation)
 - (e) Duplex must have a tenant separation wall of UL Design or equal
 - (f) Location of electric and plumbing

AC-12-4 Continued

- (g) Conventional roof framing layout
If trusses, include engineered truss layout from truss manufacturer
 - (h) Windows and garage doors installation
 - (i) Energy calculations and cover sheet
6. Any dwelling located in a Coastal Zone must have plans designed in accordance with the Lee County Coastal Construction Code and be certified by an architect or engineer registered in the State of Florida.
 7. Building permit application completed in its entirety. Contractor must show either State Certification or Lee County Certificate of Competency.
 8. An owner/builder must sign an affidavit of self-use to be submitted at the time of requesting a building permit. He must be able to do all the work himself or use a Lee County licensed contractor.
 9. Additional permits will be required for LP gas, well, septic tank, lawn sprinkler system, pool, pool enclosure, fence, solar heating and interior fire sprinkler systems, if applicable.
 10. After issuance of building permit and before footing inspection is requested, the job site must have sanitary facilities for workmen and a trash container.
 11. Permits must be posted in plain view at the job site and protected from the weather.
 12. All changes to the approved drawings must be submitted and approved prior to commencement of work.
 13. Reinspection fees will be charged for all recalls and turndowns.
 14. Buildings may not be occupied until the final inspection has been completed and a certificate of occupancy issued, at which time the power company will be notified to connect permanent power.