

T

ERVIN, VARN, JACOBS, ODOM & ERVIN

ATTORNEYS AT LAW

305 SOUTH GADSDEN STREET

TALLAHASSEE, FLORIDA

32301

LEROY COLLINS
OF COUNSEL

RICHARD W. ERVIN
OF COUNSEL

P. O. DRAWER 1170 (32302)

TELEPHONE (904) 224-9135

TELECOPIER (904) 222-9164

ROBERT M. ERVIN
WILFRED C. VARN, P.A.
JOSEPH C. JACOBS
F. PERRY ODOM, P.A.
THOMAS M. ERVIN, JR.
C. EDWIN RUDE, JR., P.A.
C. EVERETT BOYD, JR., P.A.
MELISSA FLETCHER ALLAMAN
ROBERT M. ERVIN, JR.
STUART E. GOLDBERG
WILLIAM H. GARVIN III
J. STANLEY CHAPMAN

ORIGINAL
FILE COPY

March 29, 1991

VIA HAND DELIVERY

Mr. Steve Tribble
Director - Records and Reporting
Florida Public Service Commission
101 E. Gaines Street
Room 107
The Fletcher Building
Tallahassee, Florida 32399-08

RE: Docket No. 910056-PU
H. Geller Management Corp.

Dear Mr. Tribble:

Please find enclosed herewith the direct testimony and the exhibits of the following witnesses in the above-reference matter filed by H. Geller Management Corporation.

- ACK _____
 - AFA _____
 - APP _____
 - CAF _____
 - CMU _____
 - CTR _____
 - EAG _____
 - LEG _____
 - LIN _____
 - OPC _____
 - RCH _____
 - SEC _____
 - WAS _____
 - OTH _____
1. Herm Geller 03109-91
2. Susan Tucker 03110-91
3. Charles Parmelee 03111-91
4. Carl Parker 03112-91

Thank you for your assistance.

Sincerely,

C. Everett Boyd, Jr.
C. Everett Boyd, Jr.

RECEIVED & FILED

EPSC BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

03109 MAR 29 1991

EPSC-RECORDS/REPORTING

1 Q: Please give your name and business address.
2 A: My name is Herm Geller. My business address
3 is 8141 54th Avenue North, St. Petersburg,
4 Florida, 33209.
5
6 Q: What is your present occupation or business
7 pursuit?
8 A: I am president of H. Geller Management
9 Corporation, a Florida corporation. Our
10 principal areas of operation are condominium
11 association and management services.
12
13 Q: Please give us a brief description of your
14 personal and business background.
15 A: I attended public schools in Massachusetts
16 and, as a young man, was employed in several
17 different jobs in the sales and management
18 field. In the 1950's, I moved my family to
19 Florida and entered into a construction and
20 real estate development business.
21
22 Q: How long have you been in the Pinellas County
23 area?
24 A: I worked in Dade County until 1964, where I
25 was involved in single family residential,

1 Q: Tell us about the Terrace Park - Five Towns
2 project.

3 A: In the early 1970's I joined, as a major
4 stockholder, Metrocare, Inc., (AMEX), and
5 began the development of Terrace Park of Five
6 Towns on a 135 acre site on 54th Avenue North
7 in St. Petersburg that I saw as a great site
8 for a housing project directed to the middle
9 income retirement market. I envisioned a
10 project that would offer retired people
11 housing with essentially a fixed level of
12 maintenance expenses. The prospects at that
13 time of double digit inflation of maintenance
14 or operating expenses that could grow out of
15 control represented a great source of fear to
16 senior citizens planning their retirement. In
17 1976, I bought Metrocare's share of Terrace
18 Park of Five Towns and formed Herm Geller
19 Enterprises, Inc.

20

21 Q: How was Terrace Park - Five Towns structured
22 to address this problem?

23 A: The first part of the philosophy at Terrace
24 Park - Five Towns was to build and offer for
25 sale moderately priced condominium units. Most

1 courts located throughout the development.
2 There are also two recreational - community
3 centers in the community which together have
4 over 31,000 square feet of space, including
5 full commercial kitchens, dining facilities,
6 televisions, game rooms and many other
7 facilities. The main recreational building
8 also has full saunas, hot-tub, whirlpool and
9 spa-type facilities.

10

11 Q: Are separate memberships or user fees charged
12 for the use of those facilities?

13 A: No. All residents pay a single monthly
14 maintenance fee that includes all services and
15 facilities, with unlimited use - subject only
16 to very reasonable rules as to hours of
17 operation. A key part of the Terrace Park -
18 Five Town place was to ensure a single monthly
19 maintenance fee to cover all services and
20 facilities, with very specific limitations on
21 the amount and method of which that fee can be
22 increased.

23

24 Q: Is the development company, Herm Geller
25 Enterprises, Inc., involved in operating the

1 A: Yes. I wanted to make sure all of the
2 residents understood that the developer Herm
3 Geller Enterprises, Inc. is a separate and
4 distinct company from the management company
5 that would be involved with the project and
6 actually be operating the project in a
7 management capacity. The Service and
8 Management Agreement - the "Management
9 Contract" - entered into with each condominium
10 homeowner's association, contained a very
11 specific statement in bold print explaining
12 that the developer (Herm Geller Enterprises,
13 Inc.) is a separate company. Article XIV(e)
14 of the Management Contract states as follows:

15 Developer and Maintenance are
16 separate entities. The failure
17 of the developer to perform his
18 duties or contractual
19 obligations or warranties shall
20 not affect the obligations of
21 the unit owner as to his
22 payment of this monthly
23 maintenance fees, so long as
24 the maintenance company is
25 fulfilling its obligations

1 transaction each purchaser was given a copy of
2 the contract and signed the signature space of
3 the last page reflecting their approval and
4 consent of the contract and agreement to abide
5 by its terms. We wanted to make sure that
6 each new resident was made aware of the
7 arrangements for operating and maintaining the
8 community. And, of course, the fixed
9 maintenance fees without any automatic cost of
10 living increases was a key part of the Terrace
11 Park - Five Towns philosophy, so the contract
12 arrangements were a major factor in all of the
13 sales efforts.

14

15 Q: Let's turn back, Mr. Geller, to the economics
16 of the Terrace Park - Five Towns project.
17 Explain the concept of the single fixed
18 monthly maintenance fee.

19 A: The idea was, very simply, to allow the
20 residents' monthly maintenance fee to be an
21 essentially identifiable, fixed cost item.
22 Many of the residents are on a fixed income,
23 so I knew it was important that their monthly
24 expenses not be subject to radical increases.
25 The plan was for the single maintenance fee to

1 cover just about all of their non-personal
2 expenses. The residents pay the electricity
3 bill for their own unit, their personal
4 expenses like food and insurance on their
5 personal belongings, while basically all other
6 operational costs associated with their
7 building and the project are included within
8 the maintenance fee.

9

10 Q: You've discussed the recreational facilities.
11 What other facilities and services are
12 encompassed by the residents' maintenance fee?

13 A: H. Geller Management Corp. maintains full
14 \$1,000,000.00 liability insurance for the
15 entire project along with fire and other
16 hazard insurance on all of the buildings,
17 which includes the condominium units
18 themselves. The hot water boilers in each
19 building are maintained by our company. All
20 lawns and shrubbery service of the extensive
21 common grounds in the 135 acre development is
22 provided under the Management Contract. Also
23 included are maintenance and repair of the
24 master television antenna and amplifier system
25 for all 34 buildings, all garbage and trash

1 increase, which averaged \$3.00 per unit,
2 constituting just over a 4% increase. Of
3 course, as the base fee has increased each
4 year, the increase as a percentage declined.
5 Ignoring any other changes in the fee, the
6 annual increase on January 1, 1991, amounted
7 to right at 2.75%, much below the consumer
8 price index. But the important point, is that
9 the annual increase is a fixed amount not
10 withstanding any higher increase in the costs
11 of living or consumer price index. The
12 residents know exactly what that increase will
13 be and can plan their personal budget
14 accordingly.

15

16 Q: Explain how the Management Contract provides
17 for certain other increases in the event of
18 specific changes in the cost of operating the
19 project.

20 A: In developing the Terrace Park - Five Towns
21 concept, I knew that some costs would
22 increase, costs over which H. Geller
23 Management Corporation would have little or
24 no control. The first category of expenses is
25 the cost of sewer service. That service

1 insurance costs jump around so much, I'm not
2 sure who can explain it. The concept that I
3 developed was to tie specific levels of
4 increases in these 5 costs to fixed amounts of
5 increase in the maintenance fees. For
6 instance, Article VI(e) of the Jefferson
7 Building Management Contract provides for a
8 \$10.00 increase in the maintenance fee for the
9 building in the event the charge paid by the
10 Management Company for trash removal increases
11 by ten percent. A key part of the Terrace
12 Park - Five Towns plan was that any increase
13 in the trash expense for the Management
14 Company of less than 10% would result in no
15 increase in the monthly fee; the Management
16 Company would have to absorb that increase
17 with no increase in the management fee. Now
18 I believe that over the past eleven years
19 there have been two increases in the trash
20 expense -- one of 15% and another of 30%.
21 Under the Management Contract that constitutes
22 four increases of 10% and allows for a total
23 increase in the maintenance fee for the
24 building of \$40.00. Broken down to each unit,
25 that represents an average increase in the

1 building, or 21 cents per unit. In effect,
2 the 4.8% increase in cost above the 5%
3 threshold is not passed on to any degree to
4 the residents. Third, the concept itself is
5 simply not designed or intended to track or
6 pass through specific costs to the residents,
7 again except for the sewer provision. There
8 are many operating costs throughout the
9 development that increase regularly, and
10 invoke no contractual increase in the
11 maintenance fee. The recent mandated
12 increases in the minimum wage are a good
13 example. In addition, there can be other
14 significant increases in costs generally that
15 far exceed the 2.75% - 4% increase allowed
16 under the contract. Therefore, I specifically
17 intended the five categories of costs
18 identified in Article Vi of the Contract not
19 be a means of "charging" for those specific
20 costs items or tracking those costs, but
21 rather to serve as an index of general cost
22 levels that would permit small, occasional
23 increases in the maintenance fee over the life
24 of the contract.

1 A: It certainly shouldn't be. The Terrace Park -
2 Five Towns entire development is served by
3 two main looped gas meters. The Management
4 Contract calls for H. Geller Management
5 Corporation as the Management Company to
6 furnish to all units gas for cooking and
7 heating at no extra charge beyond the regular
8 maintenance fee. The Commission's Rule 25-
9 7.071 does not require condominiums built
10 before January 1, 1987, to have separate
11 meters for each unit. Rule 25-7.071(3) does
12 not require sub-metering and has no
13 restriction on the manner in which a customer
14 of record may allocate its cost of gas among
15 the unit owners. More importantly, Jefferson
16 Building residents do not pay for gas used in
17 their units. They receive a bill for their
18 monthly maintenance fee, period. There is no
19 charge for gas. The residents may use their
20 gas as much as they like, it has no bearing on
21 their maintenance fee. It is simply one of the
22 multitude of services included with the
23 management and service obligations, by
24 contract, of H. Geller Management Corporation.
25

1 Corporation in providing the services. This
2 arrangement is exactly the same as any other
3 condominium, apartment building, shopping
4 center or mall that collects a maintenance
5 fee, or rent, and provides a collection of
6 services.

7

8 Q: What about Article VI(d) of the Management
9 Contract; does that mean the residents are
10 paying for electricity?

11 A: No. As I explained before, that provision is
12 only a means of providing occasional increases
13 in the maintenance fee -- of a fixed \$15.00
14 for the Jefferson Building or 31 cents per
15 unit per month -- in the event of a 5%
16 increase in the KWH rate charged by Florida
17 Power Corporation. Although obviously related
18 to the rate of electric costs, the provision
19 in no way creates a fee or charges for
20 electricity. It does provide a modest
21 increase in the maintenance fee, an increase
22 intended to help cover increases in all
23 operating costs, just as to the other four
24 categories. If there is up to a 4.9% increase
25 in electric rates, H. Geller Management

1 only costs that are passed on are sewer costs.
2 If the sewer charges go up \$5.00 per toilet
3 per month, the residents' maintenance fees
4 will go up \$5.00 per toilet per month. In all
5 other cases the contract merely uses the event
6 of a 5% increase in per KWH rates to impose an
7 increase in the maintenance fee of 31 cents
8 per unit per month, or \$15.00 for the whole
9 Jefferson Building. Mr. Falk also ignores the
10 fact that the Management Contract provides no
11 change in the maintenance fee if the per KWH
12 rate increases by 3% or 4%, or if consumption
13 increases at all.

14
15 Q: At page 4 of his testimony Mr. Falk refers to
16 a "hallmark" budget provided by H. Geller
17 Management Corporation. Did H. Geller
18 Management Corporation provide such a budget?

19 A: No. As I referred to at page 7, the developer
20 Herm Geller Enterprises, Inc. prepared and
21 filed with the Florida Division of Land Sales
22 and Condominiums a prospectus or public
23 offering statement for the Jefferson Building
24 Condominium. That prospectus was also made
25 available to prospective purchasers of

1 will directly correlate to the operating
2 expenses incurred by the association, as costs
3 go up the maintenance fees will go up. There
4 is a direct pass through of maintenance costs.
5 Indeed, a homeowners' association has no
6 source other than its residents - members from
7 which to recoup its operating expenses.
8 Secondly, Mr. Falk has conveniently deleted
9 the essential term "estimated" in referring to
10 the budget. The condominium law requires
11 developers to include an estimated budget in
12 the condominium prospectus, a document
13 prepared before or as the building is
14 constructed and occupied. To take any
15 information in the estimated budget and
16 conclude that it represents a reliable level
17 of any expense is simply not fair, not
18 realistic and not supportable.
19 In the instance of Terrace Park - Five Towns,
20 the monthly maintenance fees are fixed by the
21 contract, and have no relationship to the
22 costs actually incurred by the Management
23 Company (except for sewer charges).
24 Nevertheless, the staff at the Division
25 insisted that some form of estimated budget be

1 Q: Mr. Falk also provides at pages 11 through 13
2 of his testimony an analysis of sorts of the
3 gas expense for the Jefferson Building. Do
4 you have any comments about that testimony?

5 A: Yes, I do. As I stated before, I don't
6 believe the gas issue is properly before the
7 Commission. First, Mr. Falk again relied upon
8 the "initial budget" in his calculations, and
9 therefore is off-the-mark from the beginning.
10 The balance of Mr. Falk's so called "audit"
11 conclusions are so replete with erroneous
12 assumptions and calculations to be totally
13 unreliable. The fundamental deficiency in
14 those calculations, however, is that it
15 totally ignores the use of gas throughout the
16 development other than in the condominium
17 units themselves. Substantial amounts of gas
18 are used in the recreational facilities for
19 heating, hot water, gas stoves in kitchens,
20 hot tubs and heated swimming pools. Mr.
21 Falk's distorted approach again ignores the
22 total concept of the development; all of the
23 myriad of services and facilities are provided
24 to residents for the single maintenance fee
25 without any limitation on consumption.

existing under the laws of the State of Florida, party of the second part, hereinafter called the "Association".

W I T N E S S E T H:

WHEREAS, the parties hereto desire to enter into an Agreement for the performance of maintenance and provide designated services as hereinafter described in behalf of TERRACE PARK OF FIVE TOWNS NO. 15, a Condominium.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations, each to the other in hand paid, the receipt whereof is hereby acknowledged, the parties agree as follows:

I. That this Service and Maintenance Agreement shall run from the 1st day of January, 1979, to the 1st day of January, 1993.

II. The Service and Maintenance Contractor shall provide the following services:

(a) Carry and pay for public liability insurance for a minimum coverage of One Million Dollars (\$1,000,000.00) single bodily injury and/or property damage; and insurance covering fire and extended coverage on the building consisting of forty-eight (48) units as provided for and subject to all of the conditions of paragraph 17 of the Declaration of Condominium, save and except Paragraph 17(b)(3). It is specifically understood by all parties herein that insurance covering fire and extended coverage on the building shall cover the physical building itself as shown in the original architectural plans, together with the common elements thereon, but shall not cover extras installed at the expense of the unit owners such as paneling, wallpaper and awnings, shutters and screens on patios, balconies and carports, nor the personal effects and/or personal property of the condominium unit owner, such as rugs (standard carpeting supplied by Developer is insured by Service and Maintenance Contractor), drapes and curtains, furniture and other items commonly included within the homeowners policy. The amount of insurance coverage provided under the Service and Maintenance Contract shall be as determined between the Service and Maintenance Contractor and the insurance company being utilized at the time and satisfactory to same. The Service and Maintenance Contractor shall not be responsible for providing additional coverage, but the Board of Directors of the Condominium Association shall supply, from time to time, at its own expense, additional coverage and should the insurance company request additional insurance, then said additional coverage shall be paid for by the unit owners. The maintenance fee for each unit owner will be subject to conditions and fee adjustments for insurance coverage as specified in Paragraph VI. All insurance policies supplied by the Service and Maintenance Contractor carry a \$100.00 deductible clause which would apply to each claim and said deduction shall be borne by the Association.

(b) Shall furnish gas for cooking and heating to each individual condominium unit, and shall supply the condominium units

LAW OFFICES

PARKER AND PARKER

3835 CENTRAL AVENUE

POST OFFICE BOX 16336

ST. PETERSBURG, FLORIDA 33713

EXHIBIT "B"

Association. Maintenance fees are subject to the conditions and fee adjustments as specified in Paragraph VI.

(c) Shall be responsible for the payment of sewer service charges to all of the said condominium units to the corporate sovereign having jurisdiction over said sewer services, subject to the conditions and fee adjustments as specified in Paragraph VI. Sewer lines within the building or within the limits of the common elements must be maintained and replaced at the expense of the Association. Sewer blockages are the responsibility of the Association.

(d) Shall maintain and care for the lawn and shrubbery and all walkways within the common elements of the condominium property. However, the Service and Maintenance Contractor shall not be responsible for any damages caused by vandalism, or by an act of God, which shall include, but not be limited to, wind, flooding, hurricane and freezing, and/or natural causes.

(e) Shall be responsible for the maintenance and service of the television antenna and the amplifier servicing the various condominium units, but not the replacement of same.

(f) Shall provide garbage and trash collections, which collections shall be limited to two pickups per week, subject to the conditions and fee adjustments as specified in Paragraph VI.

(g) Shall furnish the necessary repairs and maintain the exterior appearance of the condominium building against ordinary wear and tear, and shall be responsible only for painting exterior doors and any other exterior trim surfaces, but shall not be responsible for repainting any exterior masonry of the said building and/or public walkways and exterior walls.

(h) Shall agree to keep the condominium building and the areas included in the common elements "broom swept" clean, and shall maintain the utility rooms situated in the building(s).

(i) Shall provide the following roof maintenance:

(A) From time to time, should minor leaks occur in the roof, then it shall be the responsibility of the Service and Maintenance Contractor to repair said minor leaks, limited to a cost of One Hundred Dollars (\$100.00) within a six (6) months period. In no instance is it to be construed that the Service and Maintenance Contractor is responsible for replacement necessitated by damage caused by storm, wind, hurricane, frost, freezing, vandalism and/or natural causes.

(B) Shall keep roof broom swept, which shall not include the replacement of said roof.

(j) Shall cause to contract with a qualified maintenance elevator company wherever applicable for the service and

~~the contract is in full force and effect, and, providing the Association and none of its members are in default of payment, a recreational area to be used by the condominium unit owners for recreational and social purposes, under the supervision and control of the Service and Maintenance Contractor, however, ownership of such recreational area shall remain with the Developer and/or Service and Maintenance Contractor and shall have the exclusive right to use said recreational area for promotional purposes. The recreation area shall consist of the following facilities: shuffleboard courts, swimming pools, recreational hall, billiard room, sauna baths, steam rooms and meeting rooms. Kitchen facilities are located within the recreational hall. The Service and Maintenance Contractor agrees to provide one person who will have the sole right and responsibility for the scheduling of all functions which are programmed for the various recreational facilities provided for herein for the condominium unit owners, or the Developer and/or Service and Maintenance Contractor, and also will be responsible for scheduling all functions programmed by the different clubs and/or organizations that may be formed by those living within the condominium complex. Nothing herein contained shall be construed to require the Service and Maintenance Contractor to oversee the various programs initiated by the clubs or organizations, or supply any items or requirements for the performance and functions of said clubs or organizations, such as billiard table tops, etc. The Service and Maintenance Contractor has the right to provide for such recreation facilities through contractual agreement with another party, i.e. the owner of the recreation facilities, but at no additional cost to unit owners.~~

III. The Service and Maintenance Contractor recognizes that from time to time various clubs and/or organizations may be formed by the condominium unit owners wherein said organization may require their members to pay nominal dues and fees for the financial assistance in the performance of their functions; and, it is to be specifically understood that the Service and Maintenance Contractor shall in no way be responsible for the collection of these dues and/or fees or the enforcement of the same; but, however, any such fees and dues assessed by the various clubs and/or organizations referred to herein shall be subject to the approval at all times of the said Service and Maintenance Contractor. All functions and activities shall at all times be conducted within the constraints of Government regulations, and the rules as outlined in this Service and Maintenance Agreement.

IV. That the Service and Maintenance Contractor covenants and agrees, subject to insurance conditions and fee adjustments as provided in Paragraph VI, to procure and keep in force public liability and workmen's compensation insurance to protect the Service and Maintenance Contractor and the Association from any claim or damage to persons or property or for an injury to any employee of Service and Maintenance Contractor incurred while Service and Maintenance Contractor or its workmen are performing any duties under the terms of this Agreement for a minimum coverage of One Million Dollars (\$1,000,000.00) single limit bodily injury and/or property damage.

V. The Service and Maintenance Contractor shall not under any circumstances be liable under or by reason of this Agreement,

LAW OFFICES

PARKER AND PARKER

1000 CENTRAL AVENUE

POST OFFICE BOX 10000

ST. PETERSBURG, FLORIDA 33710