



JACK SHREVE  
PUBLIC COUNSEL

STATE OF FLORIDA  
OFFICE OF THE PUBLIC COUNSEL

c/o The Florida Legislature  
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ORIGINAL  
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RECORDS AND  
REPORTING

June 21, 1999

Ms. Blanca S. Bayó, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0870

RE: Docket No. 981781-SU

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Direct Testimony of Ted L. Bidy, P.E./P.L.S., for filing in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Reilly  
Associate Public Counsel

SCR/dsb  
Enclosures

- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMJ \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- MAS 3402
- OPC \_\_\_\_\_
- RRR \_\_\_\_\_
- REC \_\_\_\_\_
- WAW \_\_\_\_\_
- JTH \_\_\_\_\_

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FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

**DIRECT TESTIMONY OF TED L. BIDDY, P.E. / P.L.S.  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
ON BEHALF OF THE  
CITIZENS OF THE STATE OF FLORIDA  
DOCKET NO. 981781-SU**

**June 21, 1999**

DOCUMENT NUMBER-DATE

**07505 JUN 21 88**

FPSC-RECORDS/REPORTING

1 **Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?**

2 A. My name is Ted L. Bidy. My business address is 2308 Clara Kee  
3 Boulevard, Tallahassee, Florida 32303

4 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

5 A. I am self-employed as a professional engineer and land surveyor.

6 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND AND WORK  
7 EXPERIENCE?**

8 A. I graduated from the Georgia Institute of Technology with a B.S. degree in  
9 Civil Engineering in 1963. I am a registered professional engineer and  
10 land surveyor in Florida, Georgia and Mississippi and several other states.  
11 I was the vice-president of Baskerville-Donovan, Inc (BDI) and the regional  
12 manager of the Tallahassee Office from April 1, 1991 until February, 1998.  
13 I left the employment of BDI on September 30, 1998. Before joining BDI in  
14 1991, I had operated my own civil engineering firm for 21 years. My areas  
15 of expertise include civil engineering, structural engineering, sanitary  
16 engineering, soils and foundation engineering and precise surveying.  
17 During my career, I have designed and supervised the master planning,  
18 design and construction of thousands of residential, commercial and  
19 industrial properties. My work has included: water and wastewater design;  
20 roadway design; parking lot design; stormwater facilities design; structural

1 design; land surveys; and environmental permitting. I have served as  
2 principal and chief designer for numerous utility projects. Among my major  
3 water and wastewater facilities designs have been a 2,000 acre  
4 development in Lake County, FL; a 1,200 acre development in Ocean  
5 Springs, MS; a 4 mile water distribution system for Talquin Electric  
6 Cooperative, Inc. and a 320 lot subdivision in Leon County, FL.

7 **Q. WHAT ARE YOUR PROFESSIONAL AFFILIATIONS?**

8 A. I am a member of the Florida Engineering Society, National Society of  
9 Professional Engineers, Florida Institute of Consulting Engineers, American  
10 Consulting Engineers Council, American College of Forensic Examiners  
11 and the Florida Society of Professional Land Surveyors.

12 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC  
13 SERVICE COMMISSION (FPSC)?**

14 A. Yes. I have testified before the PSC for Docket Nos. 940109-WU, 950495-  
15 WS, 950387-SU, 951056-WS, 960329-WS and the remand cases Docket  
16 Nos. 950387-SU and 971065-SU on various engineering issues and used  
17 and useful analyses.

18 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE A STATE OR FEDERAL  
19 COURT AS AN ENGINEERING EXPERT WITNESS?**

1 A. Yes, I have had numerous court appearances as an expert witness for  
2 cases involving roadways, utilities, drainage, stormwater, water and  
3 wastewater facilities designs.

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5 A. The purpose of my testimony is to examine from an engineering standpoint  
6 whether it is in the public interest for North Fort Myers Utility, Inc. (NFMU  
7 or Utility) to extend its service territory to make the residents of Buccaneer  
8 Estates retail wastewater customers of NFMU, and specifically to examine  
9 the fairness and reasonableness of the proposed extension of territory to  
10 the Buccaneer Estates Mobile Home Park.

11 **Q. HOW MANY WASTEWATER CONNECTIONS ARE THERE IN THE  
12 BUCCANEER ESTATES MOBILE HOME PARK?**

13 A. Presently, there are 971 mobile homes located within the park plus two  
14 clubhouse buildings.

15 **Q. PREVIOUSLY, HOW WAS THE WASTEWATER FROM BUCCANEER  
16 ESTATES COLLECTED AND TREATED?**

17 A. Since the establishment of Buccaneer Estates in about 1974, the various  
18 owners of the park have operated a wastewater collection system and  
19 treatment plant on the Buccaneer Estates property.

20 **Q. PREVIOUSLY, HOW WERE THE WASTEWATER RATES CHARGED TO  
21 THE RESIDENTS OF BUCCANEER ?**

1 A. Wastewater collection and treatment was charged to the residents as a  
2 part of their monthly lot rent under Chapter 723, Florida Statutes, titled  
3 Mobile Home Park Lot Tenancies.

4 **Q. WHAT WAS THE MONTHLY RATE THE OWNER (SNOWBIRDLAND**  
5 **VISTAS, INC. AND MHC-DeANZA FINANCING LIMITED PARTNERSHIP)**  
6 **CHARGED THE RESIDENTS OF BUCCANEER FOR WASTEWATER**  
7 **SERVICES JUST PRIOR TO THE PARK'S WASTEWATER COLLECTION**  
8 **SYSTEM BEING INTERCONNECTED WITH NFMU'S SYSTEM?**

9 A. The monthly charge for Wastewater service which was included in the  
10 monthly base rent payable under each resident's lot rental agreement was  
11 \$6.07, according to a Notice of Pass-Through Charges furnished to all  
12 residents of Buccaneer Estates by the owner on August 24, 1998.  
13 (See Exhibit F to Direct Testimony of Utility witness A. A Reeves)

14 **Q. UNDER THE PROPOSED TAKE OVER OF BUCCANEER ESTATES BY**  
15 **NFMU, HOW MUCH WOULD THE AVERAGE RESIDENT IN**  
16 **BUCCANEER PAY TO NFMU FOR WASTEWATER SERVICE EACH**  
17 **MONTH?**

18 A. According to a notice from Buccaneer Mobile Estates dated May 14, 1993,  
19 the average household in Buccaneer uses 4-6,000 gallons of water each  
20 month. (See Exhibit TLB-1) Assuming that each resident is charged for  
21 5,000 gallons of wastewater each month, the average monthly charge to a

1 resident by NFMU would be their approved base rate of \$10.98 per month  
2 plus \$3.98 per 1,000 gallons usage. This would amount to an average per  
3 lot charge of \$30.88 per month which is over a 400% increase in the  
4 average resident's monthly wastewater bill.

5 **Q. UNDER THE INTERCONNECTION PLAN DEvised BY THE PARK**  
6 **OWNER AND NFMU, WOULD THERE BE ANY OTHER CHARGES FOR**  
7 **WASTEWATER SERVICE IMPOSED UPON LOT RESIDENTS OF**  
8 **BUCCANEER?**

9 **A.** Yes. Each lot resident is being asked to pay a \$462 "Per Site Connection  
10 Cost" ( See Exhibit F, Notice of Pass-Through Charges to direct testimony  
11 of utility witness, A. A. Reeves.) This proposed charge to the residents may  
12 be paid over an 8 year period at a rate of \$7.01 per month which includes  
13 interest at 10%. Therefore the total wastewater bill to the average lot  
14 resident would be \$30.88 plus \$7.01 or \$37.89 per month. This total  
15 monthly wastewater cost would amount to a 524% increase for the average  
16 resident for the next 8 years.

17 **Q. WHAT IS THE ANNUAL REVENUE THAT NFMU WOULD RECEIVE IF**  
18 **THIS UTILITY IS ALLOWED TO TAKE OVER THE BUCCANEER**  
19 **ESTATES MOBILE HOME PARK?**

20 **A.** NFMU annual revenue from this takeover would be 971 lots times an  
21 average monthly charge of \$37.89 for the first eight years for an annual

1 revenue of \$441,494 and an average monthly charge of \$30.88 for the  
2 years following with the annual revenue amounting to \$359,814.

3 **Q. WHAT FINANCIAL GAIN WOULD THE OWNER OF BUCCANEER**  
4 **REALIZE FROM THIS PROPOSED TAKEOVER?**

5 **A.** The Wastewater Agreement between the Owner of Buccaneer and NFMU  
6 which is attached as an exhibit to the direct testimony of utility Witness A.  
7 A. Reeves calls for NFMU to pay to the owner the sum of \$585,589. The  
8 sum of \$448,602 was required to be paid by NFMU to the park owner upon  
9 the execution of the Agreement , with the remaining balance of \$136,987  
10 to be paid to the owner for the collection system, 90 days after the owner  
11 provided notice to the residents concerning the Wastewater Agreement  
12 and an alleged right to collect a pass-through charge from the residents.  
13 NFMU was immediately reimbursed for its initial payment to the owner,  
14 because the Agreement also required the owner to pay NFMU the sum of  
15 \$448,602 as full payment for NFMU's tariffed service connection charges  
16 for the 971 connections, upon the execution of the Agreement. The  
17 Agreement also provides that the owner assign to NFMU the owner's  
18 alleged right to collect a pass-through charge of \$448,602 from the  
19 Buccaneer residents, pursuant to the provisions of Chapter 723, Florida  
20 Statutes. The Assumption and Assignment Agreement that provides for this  
21 assignment is attached to the Agreement as Exhibit "G".



1 Q. HAS THE OWNER IN FACT PAID NFMU's SYSTEM CAPACITY  
2 CHARGES ON BEHALF OF THE 971 RESIDENTS TO NFMU?

3 A. Yes. Pursuant to the requirements of the Agreement, the owner has fully  
4 paid these system capacity charges payable to NFMU under its tariff, if the  
5 Commission deems it is in the public interest to permit NFMU to extend its  
6 service territory to include Buccaneer Mobile Home Estates.

7 Q. IS THE ASSESSMENT OF NFMU's SERVICE CONNECTION CHARGES  
8 AN ISSUE PROPERLY BEFORE THE COMMISSION IN THIS DOCKET?

9 A. No. That issue is moot. If the Commission decides that it is not in the  
10 public interest to permit NFMU to extend its service area to Buccaneer  
11 Mobile Home Estates, NFMU will have no legal right to collect any service  
12 connection charges, making it moot. If the Commission decides that it is  
13 in the public interest to permit NFMU to extend its service territory to  
14 Buccaneer, the system connection charges have already been fully paid,  
15 therefore the issue remains moot. The Commission has absolutely no  
16 jurisdictional authority to decide whether it is appropriate for a pass-through  
17 charge to be collected from the residents of Buccaneer Mobile Home  
18 Estates, under Chapter 723, Florida Statutes.

19 Q. DO YOU HAVE AN OPINION OF WHY SUCH A COMPLICATED AND  
20 COMPLEX METHOD OF CHARGING THE SYSTEM CAPACITY  
21 CHARGES WAS DEVISED BY NFMU AND THE OWNER?

1           A.    Yes.  It would appear that NFMU had no right to assess these system  
2                    connection charges since Buccaneer is not within its service territory.  The  
3                    scheme devised by NFMU and the owner of Buccaneer for the owner to  
4                    charge the residents a pass-through charge and then assign to NFMU the  
5                    right to collect these charges was simply a back door method to try to  
6                    legalize an otherwise illegal charge.

7           **Q.    DO YOU HAVE AN OPINION AS TO THE FAIRNESS AND REASON-**  
8                    **ABLENESS TO THE RESIDENTS OF BUCCANEER OF THE PROPOSED**  
9                    **TAKEOVER OF WASTEWATER SERVICES BY NFMU?**

10          A.    Yes.  First, the proposed system connection charges are totally unfair and  
11                   unreasonable to the residents since they are already connected to a  
12                   wastewater system which has been serving them for many years.  
13                   Secondly, it would have been much better for the residents to continue to  
14                   be served by Buccaneer if a major portion of the wastewater plant had not  
15                   been prematurely dismantled.  Even after the dismantlement of this plant,  
16                   there are alternatives to providing service to these customers which are  
17                   superior and more in the public interest than making them retail customers  
18                   of NFMU.

19          **Q.    WHAT BETTER ALTERNATIVES ARE AVAILABLE FOR WASTEWATER**  
20                    **TREATMENT FOR BUCCANEER ESTATES THAT WOULD BE MORE**

1           **FAIR AND REASONABLE TO THE BUCCANEER RESIDENTS AND**  
2           **THUS MORE IN THE PUBLIC INTEREST?**

3           **A.**    I believe that there are two better alternatives, with the first being that  
4           Buccaneer continue to charge the residents for sewer service as a part of  
5           the rent payment after restoring the treatment plant or by becoming a bulk  
6           customer of NFMU. The second alternative is for the owner of Buccaneer  
7           to just cease operations, turning the wastewater facilities over to Lee  
8           County, pursuant to Section 367.165, Florida Statutes, if it is permitted to  
9           do so by Chapter 723, Florida Statutes, and its lease agreements with the  
10          residents, and then the Buccaneer Homeowners Association could take  
11          over the treatment plant and collection system and either operate the  
12          wastewater facilities or operate the collection system and become a bulk  
13          customer of NFMU.

14  
15          Either alternative would result in considerable savings to the residents of  
16          Buccaneer.

17          **Q.**    **ARE THERE ANY PRACTICAL CONSIDERATIONS WHICH WOULD**  
18          **PREVENT THE BUCCANEER HOMEOWNERS ASSOCIATION FROM**  
19          **BEING ABLE TO PERFORM THE OPTIONS AVAILABLE UNDER THE**  
20          **SECOND ALTERNATIVE?**

1           A.    No. The Homeowners Association can employ engineering consultants  
2                    and wastewater system operators to design, permit and operate these  
3                    facilities just as well as a utility company can. Economic considerations will  
4                    dictate which option is best for the customers.

5           **Q.    WHICH ONE OF THE ALTERNATIVES WHICH YOU MENTIONED**  
6                    **WOULD BE BEST FOR THE RESIDENTS OF BUCCANEER?**

7           A.    We don't know yet. We have requested information from both the owner  
8                    and NFMU. Upon receipt of this discovery, we will evaluate the available  
9                    options and include these analyses in supplemental testimony which we  
10                   will file later.

11          **Q.    IN YOUR INVESTIGATION OF THIS MATTER, DID YOU FORM AN**  
12                    **OPINION AS TO WHETHER THE FORMER BUCCANEER WWTP**  
13                    **COULD HAVE HAD ITS APPLICATION FOR RENEWAL OF OPERATING**  
14                    **PERMIT APPROVED BY THE FLORIDA DEPARTMENT OF**  
15                    **ENVIRONMENTAL PROTECTION (FDEP)?**

16          A.    Yes, the operating permit could have been renewed through approval of  
17                    the FDEP Ft. Myers office in a routine manner. The permit application was  
18                    filed on June 3, 1998 by consulting engineers, Riddle-Newman in a timely  
19                    manner for renewal of the WWTP operating permit which was due to expire  
20                    in November, 1998. The FDEP had furnished comments on the  
21                    application on July 20, 1998 listing 13 specific items to be furnished for the

1 application to be complete. At an interview that I conducted on May 6,  
2 1999, Mr. Andrew Barienbrock of FDEP's Ft. Myers office stated that the  
3 permit could have been renewed if the requested information had been  
4 furnished to the FDEP.

5 **Q. WHAT ELSE DID MR. BARIENBROCK SAY AT THE INTERVIEW ON**  
6 **MAY 6, 1999?**

7 **A.** Mr. Barienbrock stated that the treatment facility had basically been in  
8 compliance over the years, but that the plant did experience hydraulic  
9 overloading occasionally during heavy rainfalls due to excessive inflow  
10 and infiltration in the collection system. He furnished copies of the plants  
11 monthly operating reports for all of 1997 & 1998 up to the end of  
12 September, 1998 when the plant ceased to operate.

13  
14 The reports showed that the Buccaneer WWTP had been continuously in  
15 compliance with the permitted effluent limitations for all of 1997 and 1998.

16 **Q. DID MR. BARIENBROCK FURNISH COPIES OF ANY UNUSUAL**  
17 **OCCURANCES AT THE WWTP DURING 1998?**

18 **A.** Yes. Mr. Barienbrock furnished records of several upset malfunction  
19 reports showing plant hydraulic overload due to excessive collection  
20 system inflow and infiltration and a warning letter of March 18, 1998  
21 followed by a proposed consent order for violations consisting of lack of

1 required maintenance for several items that were discovered by FDEP  
2 during field inspections of 2/3 & 2/18, 1998.

3 **Q. IS THE INFLOW AND INFILTRATION PROBLEM REPAIRABLE AND**  
4 **WHAT DID THE UNMAINTAINED ITEMS CONSIST OF?**

5 **A.** Inflow and infiltration repair is a routine matter which all collection systems  
6 have from time to time. The maintenance items were minor items such as  
7 one lift station pump was left off, a broken chlorine line was left unrepaired  
8 for several days, and vegetation was permitted to overgrow in the  
9 percolation ponds. The Buccaneer owner should have already repaired the  
10 inflow and infiltration problems and provided routine maintenance as well  
11 as meeting its reporting requirements to FDEP.

12 **Q. DO YOU HAVE AN OPINION CONCERNING THIS MATTER AND WHY**  
13 **THE BUCCANEER OWNER CHOSE TO OPERATE THE PLANT IN**  
14 **VIOLATION OF FDEP REQUIREMENTS?**

15 **A.** There is no obvious reason why needed routine maintenance and repair  
16 items would be deferred, unless the Buccaneer owner was intentionally  
17 trying to cause the plant to be out of compliance with FDEP requirements,  
18 to help facilitate NFMU's purchase of the system.

19 **Q. WAS THERE ANYTHING ELSE OF AN UNUSUAL NATURE FOUND IN**  
20 **THE FDEP FT. MYERS FILE ON THE BUCCANEER PLANT?**

1           A.    Yes. Copies of two letters dated 11/19/97 and 7/7/98 from the law firm of  
2                    Rose, Sundstrom & Bentley to the owner of Buccaneer Estates were  
3                    obtained. In these letters the law firm advised the Buccaneer owners that  
4                    NFMU sewer service was available for Buccaneer, and that Lee County  
5                    Ordinance No. 91-01 required Buccaneer to interconnect. The second  
6                    letter even states that Buccaneer is in default of the ordinance. I found  
7                    these letters to be very unusual since Buccaneer Estates is not a part of  
8                    NFMU's approved service area (See Exhibit TLB-2) and package WWTPs  
9                    which are in compliance with FDEP permitting requirements are specifically  
10                  exempted from Lee County Ordinance No. 91-01. (See Exhibit TLB-3)

11          **Q.    DO YOU HAVE ANYTHING FURTHER TO ADD TO YOUR TESTIMONY?**

12          A.    Not at this time.

**EXHIBITS LIST**

- EXHIBIT TLB-1 Notice from Buccaneer dated May 14, 1993 showing Average Water Use Per Household as 4-6,000 Gallons Per Month
- EXHIBIT TLB-2 Letters dated 11/19/97 and 7/7/98 from law firm of Rose, Sundstrom & Bentley to Owners of Buccaneer Estates
- EXHIBIT TLB-3 Lee County Ordinance No. 91-01



**CERTIFICATE OF SERVICE  
DOCKET NO. 981781-SU**

I HEREBY CERTIFY that a correct copy of the foregoing Direct Testimony of Ted L. Biddy, P.E./P.L.S. has been furnished by U.S. Mail or hand delivery\* to the following parties on this 21st day of June, 1999.

Martin S. Friedman, Esquire  
Rose, Sundstrom & Bentley, LLP  
2548 Blairstone Pines Drive  
Tallahassee, FL 32301

Jennifer Brubaker, Esquire\*  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Mr. Donald Gill  
674 Brigantine Blvd.  
North Ft. Myers, FL 33917

Mr. Joseph Devine  
688 Brigantine Blvd.  
North Ft. Myers, FL 33917

Mr. Ronald Ludington  
509 Avanti Way Blvd.  
North Ft. Myers, FL 33917



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Stephen C. Reilly  
Associate Public Counsel

EXHIBIT TLB-1

EXHIBIT TLB-2

LAW OFFICES  
ROSE, SUNDSTROM & BENTLEY, LLP  
2548 BLAIRSTONE PINES DRIVE  
TALLAHASSEE, FLORIDA 32301  
(850) 877-6555

CHRIS H. BENTLEY, P.A.  
F. MARSHALL DETERDING  
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MAILING ADDRESS  
POST OFFICE BOX 1567  
TALLAHASSEE, FLORIDA 32302-1567  
TELECOPIER (850) 856-4029

November 19, 1997

Mr. Larry Knight  
Mobile Home Communities  
28050 U.S. Highway 19, North  
Suite 406  
Clearwater, Florida 34621

Re: Buccaneer Village Mobile Home Park  
Wastewater Treatment Plant

Dear Mr. Knight:

On several previous occasions we have advised you, on behalf of our client, North Fort Myers Utility, Inc. ("NFMU") that central sanitary sewer service is available to the Buccaneer Village community in North Fort Myers, and further, that NFMU has a 16 inch force main abutting the entire northern perimeter of the subject Park. The first such notice was by my letter of November 18, 1996 to Paul Adams of STES, your agent. Therefore, pursuant to Lee County Ordinance No. 91-01, you are again reminded that Buccaneer had one year from that date of Notice of Service Availability from the central system (NFMU) to interconnect.

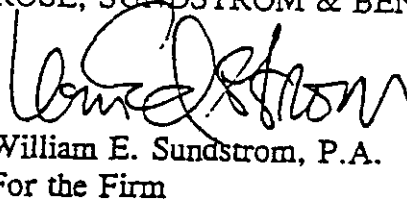
Further, we note that the Florida Department of Environmental Protection Operating Permit for the subject facility expires on November 23, 1998, which coincides with the second anniversary of your date of mandatory interconnect. The cost and expense, and six month lead time involved in preparing an application for renewal of the operating permit for the subject wastewater treatment plant is substantial. According to our client's information, the wastewater treatment plant at Buccaneer Village cannot pass the required mounding test at the percolation ponds, and further (on information and belief) the plant cannot handle, either hydrologically or biologically, the through-put of the system during both the peak months of occupancy and also the peak rainfall months. Therefore, it is only proper that we begin at this time designing the most favorable interconnect terms and conditions that we can on behalf of the subject Park and its residents.

Mr. Larry Knight  
November 19, 1997  
Page 2

I look forward to working with you in negotiating an acceptable service agreement.

Sincerely,

ROSE, SUNDSTROM & BENTLEY, LLP



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

WES:jmt

cc: David Fell, Esq., MHC  
A. A. Reeves, NFMU

! File: Buccaneer-WWT

Law Offices

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KEVIN L. SHEPPY  
WILLIAM E. SUNDBSTROM, P.A.  
DANIEL D. TRIMOR, P.A.  
KEN L. WELBARTON

July 7, 1998

David W. Fell, Esq.  
Associate General Counsel  
Manufactured Home Communities, Inc.  
Two North Riverside Plaza  
8th Floor  
Chicago, Illinois 60606

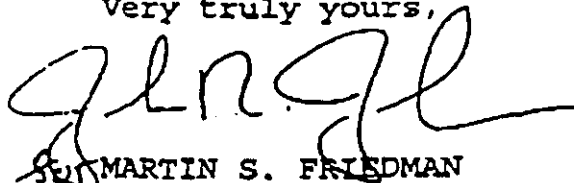
Re: Buccaneer Village Mobile Home Park  
Wastewater Treatment Plant

Dear Mr. Fell:

This letter is to formally advise you, on behalf of our client, North Fort Myers Utility, Inc. ("NFMU") that central sanitary sewer service is available to the Buccaneer Village community in North Fort Myers, and further, that NFMU has a 16 inch force main abutting the entire northern perimeter of the subject Park. The initial demand was by this firm's letter of November 18, 1996 to Paul Adams of STES, your agent. Therefore, pursuant to Lee County Ordinance No. 91-01, you are again reminded that Buccaneer had one year from that date of Notice of Service Availability from the central system (NFMU) to interconnect. You are now in default of that Ordinance.

I look forward to working with you in negotiating an acceptable service agreement.

Very truly yours,



MARTIN S. FRIEDMAN  
For the Firm

MSF:brm

cc: Mr. A. A. Reeves

**EXHIBIT TLB-3**

LEE COUNTY ORDINANCE NO. 91-01

AN ORDINANCE OF LEE COUNTY, FLORIDA, TO PROVIDE FOR THE MANDATORY CONNECTION OF ON-SITE SEWAGE DISPOSAL SYSTEMS TO PUBLICLY OWNED OR INVESTOR-OWNED WASTEWATER COLLECTION SYSTEMS AFTER NOTICE THAT SUCH A SYSTEM IS AVAILABLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR AN ADMINISTRATIVE WAIVER OF THE MANDATORY CONNECTION; PROVIDING FOR PENALTIES FOR VIOLATION; PROVIDING FOR REPEAL OF ORDINANCE 76-17; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Section 1, Chapter 69-234, Laws of Florida, 1969, provides that in accordance with the provisions of Article VIII, § 1 of the Florida Constitution, counties shall have all powers of local self government including government, corporate, and proprietary powers to enable them to conduct county government, perform county functions, and render county services, and may exercise any such powers for county purposes for health, safety, or welfare of its citizens not inconsistent with general or special law; and,

WHEREAS, the Board of County Commissioners have previously adopted a Lee County Comprehensive Plan (the "Lee Plan") which incorporates the valid state and federal law objectives, which include, respectively, re-use of treated sewage effluent for groundwater recharge purposes and the elimination of as many source points of pollution as possible, as is mandated by federal public law 92-500, and this ordinance is in furtherance thereof; and

WHEREAS, the Board of County Commissioners of Lee County, Florida, recognizes that Lee County currently has, and will continue to have in the foreseeable future, far too many



package sewage treatment plants and septic tanks to allow and provide for the continued protection, planning, and management of Lee County's water resources; and,

WHEREAS, the county desires to encourage the re-use of wastewater and to prevent the increasing degradation of Lee County's water resources, both surface and ground waters resulting in a lower quality of life and potentially substantial increases in cost for water and sewerage services in the future, and to protect and provide for the continued health, safety, and welfare of the citizens of Lee County; and

WHEREAS, the Board of County Commissioners recognizes that in the general interest of the public and to promote the general health and welfare of said public it is necessary to encourage the use of publicly owned or investor-owned sewerage systems and to minimize the use of on-site sewage disposal systems.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: MANDATORY HOOKUPS TO CENTRAL SEWERAGE SYSTEMS

The Board of County Commissioners declares that it is the policy of Lee County to require that each on-site sewage disposal system in Lee County, developed under the provisions of applicable law (except approved on-site gray water systems developed under the provisions of law and administrative rules), shall connect to a public, non-profit, or investor-owned central wastewater collection system within 365 days after notification

by mail or by publication that such a system's collection lines have been installed immediately adjoining the property served by the on-site system. Upon such connection, the owner or beneficiary of such on-site system shall cease to use any other method for the disposal of sewage, sewage waste, or other polluting matter. All such connections shall be made in accordance with the applicable rules and regulations for such connections, which applicable rules and regulations may provide for, among other things, a charge for making any such connection in such reasonable amounts as shall be determined by the appropriate authority and pursuant to applicable law.

On-site sewage disposal systems other than standard septic tank systems shall be exempt from this section provided that such a system has maintained continuous compliance with all rules, orders, statutes, and/or regulations, relating to the operation and maintenance of the facility, of any regulatory agencies or governmental authorities having jurisdiction over that facility.

The Board of County Commissioners shall be the final administrative decision-making body with respect to all issues relating to the mandatory sewer connections pursuant to the terms and conditions of this Ordinance.

#### SECTION TWO: DEFINITIONS

(1) "Continuous Compliance" shall mean that the on-site sewage disposal system has not been out of compliance at any time during the preceding 12 months before the notification

by mail or by publication as referenced in Section One of this Ordinance; with any rule, order, statute, and/or regulation relating to the operation and maintenance of the facility of any regulatory agencies or governmental authorities having jurisdiction over that facility. If an equipment malfunction that causes a transitory or temporary violation is immediately repaired by the owners of any affected system, such malfunction shall not be deemed or construed to cause the system to be out of "continuous compliance" for purposes of Section One, herein.

(2) "On-site sewage disposal system" shall mean any sewage treatment or disposal facility not equipped for effluent re-use, whether serving individual buildings or units, or several buildings or units, which treats or disposes of human body or household type wastes. Such systems include, but are not limited to, standard septic tank systems, laundry wastewater systems, and individual "package" sewage treatment plants which are installed or proposed to be installed on land of the owner or on other land to which the owner or owners have the legal right to install a system and which primarily serves or proposes to serve the owner's property or development.

### SECTION THREE: ADMINISTRATIVE WAIVER

The requirement of mandatory connection as set forth above may be waived administratively by the County Administrator if he or she, or an authorized representative or agent, with the approval of the Department of Health and Rehabilitative Services, determines that such connection should not be

required. Any such waiver shall be limited to a specified time period, not to exceed 365 days, and shall be based on a written finding that one or more of the following conditions exists:

(A) The central wastewater system does not have sufficient capacity to serve the additional demand; or

(B) Connection to the central wastewater system imposes an undue financial hardship if such connection is made within the time period as specified in this ordinance.

#### SECTION FOUR: PENALTIES

A violation of the provisions of this Ordinance shall constitute a misdemeanor of the second degree, punishable as provided by Florida Statutes, for each day or time of occurrence. Additionally, a violation of the provisions of this Ordinance may be punishable by a civil fine of up to \$1,000.00 per day for each day or time of occurrence.

#### SECTION FIVE: REPEALER

Lee County Ordinance No. 76-17 is superseded by this ordinance and is therefore repealed and of no further force and effect.

SECTION SIX: SEVERABILITY

If any section, subsection, sentence, clause, or phrase or if any portion of this Ordinance is found for any reason to be invalid, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate and distinct, an independent provisions, and such holding shall not affect the validity of any remaining portions thereof.

SECTION SEVEN: EFFECTIVE DATE

The provisions of this Ordinance shall become effective immediately upon receipt from the Secretary of State that said Ordinance has been duly filed with the Secretary of State of the State of Florida.

THE FOREGOING ORDINANCE was offered by Commissioner Judah, who moved its adoption. The motion was seconded by Commissioner St. Cerny, and being put to a vote, the vote was as follows:

JOHN E. MANNING	<u>AYE</u>
DOUG ST. CERNY	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
VICKI LOPEZ-WOLFE	<u>AYE</u>
DONALD SLISHER	<u>ABSENT</u>

DONE AND ADOPTED this 2nd day of January, 1991.

ATTEST:

5013  
CHARLIE GREEN, CLERK

By: *Robert E. Rast*  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: *Ray Judah*  
Vice-Chairman

APPROVED AS TO FORM:

By: *[Signature]*  
Office of County Attorney

(6569x)



# Charlie Green

Clerk Of Circuit Court  
Lee County, Florida

STATE OF FLORIDA

COUNTY OF LEE

I, Charlie Green, Clerk of the Circuit Court, Lee County, and ex-Officio Clerk to the Board of County Commissioners, Lee County, Florida, do hereby certify that acknowledgment has been received from the Secretary of State on this 11th day of January, 1991, at 8:48 a.m., of the filing of Lee County Ordinance No. 91-01 duly adopted by the Board of County Commissioners at their meeting held on the 2nd day of January, 1991.

Given under my hand and seal, at Fort Myers, Florida, this 14th day of January, 1991.

CHARLIE GREEN  
CLERK, Circuit Court  
Lee County, Florida

By Clara C. Winters  
Deputy Clerk