

Diamond Williams

100439-WS

From: Tonya Simpson [TSimpson@RSBattorneys.com]
Sent: Monday, April 18, 2011 3:00 PM
To: Filings@psc.state.fl.us
Cc: Shannon Hudson; Curtis Williams; Lydia Roberts; Ralph Jaeger; Bart Fletcher; Andrew Maurey; EChotas@deanmead.com
Subject: Rainbow Springs Utilities, L.C. Docket No. 100439-WS
Attachments: _0418144702_001.pdf

- a. F. Marshall Deterding, Esquire

Rose, Sundstrom & Bentley, LLP

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PHONE: 877-6555

- b. Rainbow Springs Utilities, L.C.; Application for Approval of Revised Service Availability Policy and Charges; PSC Docket No. 100439-WS

- c. Rainbow Springs Utilities, L.C.

- d. 3 page letter and 1 page attachment (4 total pages)

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April 18, 2011

Shannon J. Hudson
Division of Economic Regulation
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Rainbow Springs Utilities, L.C. (the "Utility"); PSC Docket No. 100439-WS;
Application for approval of revised service availability policy and charges; Staff's Data
Request
Our File No. 29030.01

Dear Ms. Hudson:

Thank you and the other members of the staff for the additional time you provided to us to address issues raised by the staff and by Mr. Chotas on behalf of CCW of Marion County, LLC. We have been accumulating information and preparing calculations in order to provide detailed responses to the inquiries in the Staff's Third Data Request and to address the issues raised by Mr. Chotas in his February 16, 2011 and March 4, 2011 letters. However, it has become apparent to the Utility as a result of the tenor of the questions raised by staff and through our various meetings, that the staff is hesitant to consider the Utility's long-term growth plans given the current state of development within the Rainbow Springs service territory. That hesitancy may be in part due to the decreased usage of the Utility's capacity from its peak in 2007.

We and the Utility believe that the application as filed, and as further supported by the additional data accumulated and provided, represents appropriate long range planning for the timely and efficient provision of services to the Utility's certificated service territory. The Utility recognizes that, if the current economic conditions continue in the area, it is unclear as to when economic circumstances will change sufficiently to justify the construction of the various facilities that underlie the majority of the increase in service availability charges that they have

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proposed. In light of these facts, the reduced demand for service for the properties now owned by Mr. Chotas' group (from the request of their predecessor) as evidenced by his February 16, 2011 letter and the impression of your staff's current positions, we believe that it would not be fruitful to continue with the application at this time. Instead we hereby withdraw the application and will re-file our request for change in service availability charges once we see increased demand for services (whether from customers who are not currently using their existing service or new customers) and development activities within the service territory.

We would like, however, to take this opportunity to address some of the issues raised by Mr. Chotas so that the staff is not left with the wrong impression concerning the state of development activities within the Utility's service territory. We have outlined those comments below:

1. In his letter of March 4, 2011, Mr. Chotas refers in Paragraph (1) to the Vikings Management Developer Agreement related to the Juliette Falls Development. In his statements, Mr. Chotas first notes that the area is not served by Rainbow Springs, despite the fact that it is within Rainbow Springs Utilities' service territory. Mr. Chotas cites as the reason for this that "the Utility's charges were in excess of the Juliette Falls developer owners' capacity to pay and therefore its homeowner's association now owns Utility facilities which provide required service." This is an inaccurate statement. Rainbow Springs Utilities was set to take over operation of the newly constructed water and wastewater treatment facilities within the Juliette Falls Development and had an agreement whereby it would do so. However, because of changes in the construction of those plant facilities and the method of operation that the developer incorporated in constructing those facilities, the cost to operate them would have resulted in a substantial loss to Rainbow Springs Utilities for many years until the development reached a substantial percentage of build out. As such, in order not to burden all of the Utility's customers with the additional costs of operating those facilities at low usage levels, Rainbow Springs Utilities declined to accept those facilities at the time they were placed in service. While these facilities are currently being operated by the homeowner's association (controlled by the developer), only a very few connections are currently receiving service through them.

As noted in Mr. Chotas's letter, none of the proposed additions to the customer base at Rainbow Springs Utilities utilized in our application included any costs or connections from the Juliette Falls development.

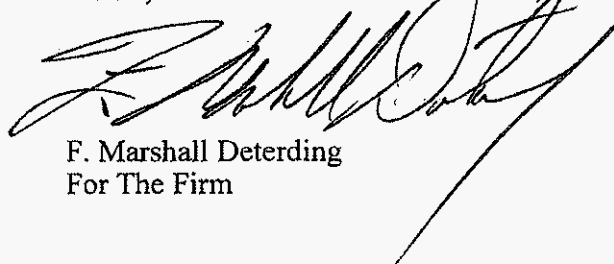
2. In Paragraph (3), Mr. Chotas notes that while Rainbow IV Partners, RLLP has received PUD rezoning of tracts within the Utility's service territory, there has been no approval of PUD rezoning by the County to date. Upon further

investigation, review and discussion with the Marion County Growth Management Director and other persons within the Growth Management Department at Marion County, we have determined that the Rainbow Springs DRI development order and the development entitlements associated with that development order remain in full force and effect and are recognized as valid by the Marion County Board of County Commissioners until December 31, 2012 (see attached letter dated March 10, 2011 from Jimmy Massey, the Director of Growth Management with Marion County). It is also our understanding that there are currently bills pending before the legislature to further extend those development approvals beyond the December 31, 2012 deadline.

As to the Cold Springs Village Development which Mr. Chotas references, we wish to be clear that Rainbow Springs Utilities has never in any way relied upon service to that property which is outside of its certificated service territory as an underlying basis for its proposed increase in service availability charges. The Cold Springs Villages FQD application and Development Order specifically addresses the service of water and wastewater to be provided by Cold Springs Villages and most likely by the Cold Springs Villages Community Development District. There is no anticipation or reliance for service to be provided to those properties by Rainbow Springs Utilities, L.C.

As noted, by this letter, Rainbow Springs Utilities, L.C. hereby officially withdraws its Application for an Increase in Water and Wastewater Service Availability Charges. Should you or any members of the staff have any questions in this regard, please let me know.

Sincerely,
ROSE, SUNDBSTROM & BENTLEY, LLP



F. Marshall Deterding
For The Firm

FMD/tms

cc: Office of Commission Clerk
Office of General Counsel (Jaeger)
Division of Economic Regulation (Williams, Roberts, Fletcher, Maurey)
Elias N. Chotas, Esquire



Marion County
Board of County Commissioners

Growth Management ♦ Planning

2710 E. Silver Springs Blvd.
Ocala, FL 34470
Phone: 352-438-2600
Fax: 352-438-2601

March 10, 2011

Chuck A. Pigeon, P.E.
Pigeon-Roberts & Associates, LLC
925 SE 17th Street, Suite A
Ocala, FL, 34471

RE: Rainbow Springs Development of Regional Impact (DRI) (DCA File No. ADA-500-028)
2009 Florida Senate Bill 360; Chapter 2009-96, Laws of Florida
Two (2) Year Extension of Phasing & Buildout Dates

Dear Mr. Pigeon:

Marion County Growth Management received your December 2010 letter submitted on behalf of the various owners of the Village of Rainbow Springs DRI regarding extension of the project's phasing and buildout dates. This letter is confirmation that the Villages of Rainbow Springs DRI has qualified for the 2-year development extension authorized by 2009 Senate Bill No. 360 as approved by the Florida Legislature.

The Village of Rainbow Springs DRI's phasing and buildout dates are hereby extended as follows:

- 1) The Phase II Completion Date is extended from December 31, 2010, to December 31, 2012.
- 2) The DRI Buildout Date is extended from December 31, 2010, to December 31, 2012.

Marion County does not require that a DRI Notice of Proposed Change be filed solely to reflect these authorized date extensions; instead, incorporation of the extensions in the Development Order may be deferred until such time as other related changes to the DRI are submitted. The Developer may elect to record a Notice of DRI Extension in the Marion County Public Records, with this letter accompanying the recording as an exhibit; however such a filing is not required.

If you have any further questions in relation to this matter, please contact Christopher Rison, AICP, Senior Planner, by phone or via email at christopher.rison@marioncountyfl.org.

Sincerely,


Jimmy Massey
Growth Management Director

Xc: Bruce Day, WRPC
Harold Horne, Dunnellon Com. Dev. Dir.
Guy Minter, County Attorney
DRI DO File
DRI Reading File

Ray Eubanks, DCA
Emily Howard, DCA
Sam Martsolf, Zoning Manager
DRI Correspondence File
Outgoing Correspondence File

SB 360 Buildout Extension Confirmation Ltr 3-10-2011.docx

"Meeting Needs by Exceeding Expectations"

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