FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Coggin-O'Steen Land Company for Declaratory Statement regarding reimbursement of connection fees by JACKSONVILLE SUBURBAN UTILITIES CORPORATION in Duval County	DOCKET NO. 911157-WS ORDER NO. PSC-92-0379-FOF-WS ISSUED: 5/19/92

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
J. TERRY DEASON
SUSAN F. CLARK
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION

ORDER RESOLVING RULE 25-22.032 CUSTOMER COMPLAINT OF COGGIN-O'STEEN LAND COMPANY AGAINST JACKSONVILLE SUBURBAN UTILITIES CORPORATION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-212.029, Florida Administrative Code.

BACKGROUND

On November 18, 1991, the Duval County Circuit Court issued an Order abating action on Coggin-O'Steen Land Company's ("Coggin") Complaint for Declaratory Relief against Jacksonville Suburban Utilities Corporation ("Jax Suburban") pending submission of that suit to this Commission. Coggin then filed the instant Complaint for Declaratory Relief ("complaint").

The Complaint alleges that Coggin entered into two developer agreements with Jax Suburban dated respectively May 30, 1990 and September 17, 1990. Copies of these are attached as Exhibit "A" and "B" to the complaint. Although neither of them had been signed by Jax Suburban, the executed agreements had previously been filed by Jax Suburban following their execution and were determined by staff to be in compliance with the utility's existing service availability policy.

DOCUMENT NUMBER-DATE
05047 MAY 19 1992
FPSC-RECORDS/REPORTING

In paragraphs 5 through 10 of the complaint, Coggin describes the first of the two developer agreements (Agreement 1), which provided for the construction of water and sewer lines extensions and improvements by Coggin and its joint venturer, Necdet Senhart (Senhart), as illustrated in the portion of the attached diagram so identified (Attachment 1). The refundable advance provision of this agreement, paragraph 7, provided for reimbursement to the joint venturers by future developers hooking directly into these extensions of their pro rata shares of the construction costs of the extensions on the basis of the "front footage" of each such future developer's property directly adjacent to the facilities installed, "whenever feasible". This in turn, reflects Rule 25-30.530(3)(c)(2), which states:

> If more than one customer is to be served by a facility, the costs to be charged to a particular customer shall be determined according to the hydraulic demand of that customer or in accordance with some other acceptable method reasonably related to the cost of providing service. [e.s.]

Staff reviewed Agreement 1 after it was executed and found it to be in accordance with Commission rules, orders and policies. Notably, Coggin has not raised any challenge to the provisions of Agreement 1 and, consistent with that, has not sought to join its joint venturer, Senhart, in this action.

In paragraphs 11 through 13 of the Complaint, Coggin describes the second of the two developer agreements (Agreement 2) which provided for the construction by Coggin of those water and sewer lines extensions illustrated in the portion of the attached diagram so identified (Attachment 1).

The refundable advance provision of this agreement, paragraph 18, provided for reimbursement to Coggin by future developers hooking directly into these extensions of their pro rata shares of the construction costs of the extensions on the basis of the "hydraulic capacity and demand" of each such future developer, "whenever feasible".

Staff reviewed Agreement 2 after it was executed and found it to be in accordance with Commission rules, orders and policies. At the essence of Coggin's instant complaint are its claims as to the proper interpretation of the refundable advance provision of Agreement 2, at paragraph 18 thereof. Coggin maintains inter alia, that the calculation of refunds thereunder should not be according to "hydraulic capacity and demand" but by "front footage".

Moreover, Coggin contends that the future developers referred to in Agreement 2 must reimburse Coggin not merely their pro rata shares of the cost to Coggin of the extensions in Agreement 2, but the total cost of Coggin's construction in both Agreement 2 and Agreement 1. In support of its theory, Coggin argues that the benefits of the facilities it constructed pursuant to Agreement 2 would not have existed but for the construction which occurred pursuant to Agreement 1. Moreover, Coggin asserts that its interpretation of paragraph 18 of Agreement 2 is consistent with an understanding Coggin arrived at in discussions about this subject with Jax Suburban prior to the execution of Agreement 2.

Coggin has set out 13 requests for relief on p. 5-8 of the Complaint, including the substantive issues discussed above, the question of Commission jurisdiction and the question of whether Jax Suburban has over-estimated the cost of future improvements and required over-building of the extensions.

In response, Jax Suburban has filed a Motion to Intervene, a Motion to Dismiss, a Motion for More Definite Statement, and a Request for Oral Argument. Jax Suburban alleges that the substance of the complaint is not properly the subject of a declaratory statement, the agreements attached are not signed by both parties and that there has been a failure to join indispensable parties, i.e., those hooking up to the water and sewer line extensions. In addition, Jax Suburban alleges that the complaint is so vague as to require a more definite statement from Coggin. In addition to these procedural requests, Jax Suburban, in paragraphs 7 and 8 of its responsive Motions, disputes Coggin-O'Steen's suggested interpretations, and alleges that Coggin is, at bottom, "not satisfied with having the refunds calculated in accordance with the plain and clear provisions of the Developer Agreements."

DISCUSSION

We have jurisdiction to resolve this controversy as a customer complaint pursuant to Rule 25-22.032, F.A.C. As a Rule 25-22.032, F.A.C. customer complaint, this is not the proper subject of a Declaratory Statement petition because it is primarily concerned with a dispute about refundable advance agreements between Coggin and Jax Suburban as governed by Rule 25-30.560, F.A.C.

Because the dispute is handled as a Rule 25-22.032 customer complaint, it is unnecessary to grant intervention status to Jax Suburban. The resolution of the dispute also does not require the filing of signed copies of the agreements with the complaint, since signed copies were filed for staff review shortly after execution of the agreements.

Resolution of this customer complaint does not require joining those hooking up to the water and sewer line extensions at issue in Agreement 2 or Coggin's joint venturer in Agreement 1, since the sole point of dispute is evidently the proper interpretation of the refundable advance provision in Agreement 2. A more definite statement is also not required because none of the aspects of the complaint listed as vague by Jax Suburban are implicated by the refundable advance provision in Agreement 2, the language at issue.

Though Jax Suburban's Motion to Dismiss is denied, treating the dispute as a customer complaint constitutes implicit agreement with Jax Suburban's argument that the complaint is not properly the subject of a declaratory statement action. Moreover, deeming the declaratory statement petition as more properly a customer complaint provided an opportunity for both sides to address the Commission.

As to the substance of the complaint, we reject Coggin's assertion that the refundable advance clause in Agreement 2 is properly interpreted to provide for the reimbursement to Coggin for all of its expenditures under both agreements and the calculation of refunds by front footage rather than by hydraulic share in Agreement 2. The refundable advance provision of Agreement 2 does not refer or relate to any construction costs incurred by Coggin under Agreement 1. Further, calculation of refunds by hydraulic share is explicitly required by paragraph 18 of Agreement 2.

Both agreements were reviewed and approved by Staff. Agreement 2 explicitly provides for calculation of refunds based on hydraulic share. We find no intent in Agreement 2 to provide refunds to Coggin for costs incurred under Agreement 1.

Coggin, however, maintains that the benefits of its construction pursuant to Agreement 2 could only be available because of construction by Coggin (and Senhart) pursuant to Agreement 1. Therefore, Coggin reasons that future developers hooking up to the "Agreement 2" extension should reimburse their pro rata shares of all of Coggin's costs under both agreements.

We reject this theory on a number of grounds. First, Coggin entered into Agreement 1 and does not contest the terms of that agreement, including the refundable advance provision at paragraph 7 thereof. Moreover, the executed Agreement 1 was reviewed and approved by Staff. Therefore, the refundable advances as to the "Agreement 1" construction are, and should be, governed by the terms of that agreement rather than nullified, modified or amended because of a different, separate and non-applicable agreement.

Second, our rules, pursuant to which each future developer reimburses its pro rata share of "Agreement 2" construction costs, would be violated if those future developers were actually reimbursing more than their pro rata shares of Coggin's "Agreement 2" costs because costs of other construction directly serving others and governed by a different refundable advance agreement were added. See Rule 25-30.530(3)(c)(2).

Moreover, by the terms of Agreement 2, paragraph 27(b), Coggin's alleged "understandings" with Jax Suburban as to these issues cannot have the effect of altering the plain meaning of Agreement 2, paragraph 18:

> This Agreement supersedes all previous agreements or representations either verbal or written, heretofore in effect between Developer (Coggin) and service company (Jax Suburban) and made with respect to the matters contained herein ... [e.s.]

In addition, the claim that Agreement 2 provides for reimbursement of Coggin's total costs is incorrect for another independent reason. Since no future developer owes more than its pro rata share of the costs of even the "Agreement 2" construction, let alone the construction costs under both agreements, the claim for reimbursement of total costs is inconsistent with Commission rules. This is illustrated by the work papers on refundable advances (Attachment 2) and letter of June 19, 1991 (Attachment 3) supplied by Jax Suburban.

Both documents illustrate the calculation of pro rata shares for each future developer directly hooked up to the "Agreement 2" extensions constructed by Coggin. Since 6 of the 57 estimated "equivalent residential connections (ERCs)" belong to Coggin's own vacant land, at least some of the pro rata cost share belongs to Coggin itself. Hence, total reimbursement of even the "Agreement 2" costs would be incorrect.

Further, Coggin has advised staff that it included reimbursement for construction in its sales price of land to Toys-R-Us, Taco Bell and McDonalds, thus removing another 34 ERC's from consideration. What remains is not total reimbursement of even "Agreement 2" construction, but only 17/57 of that amount. Accordingly, pursuant to Agreement 2, we concur with Jax Suburban's calculation that Coggin is due a total refund of $31,308.05, on connection of those 17 ERC's should the future developers connect to the line prior to expiration of the refund obligation period.

In view of the foregoing, we accordingly reject Coggin's interpretation of Agreement 2, paragraph 18, line one as providing for the total reimbursement of all of Coggin's construction costs under both agreements. Not only does the wording itself not say that, but an interpretation along those lines would violate Commission rules, as explained above.

We also conclude that Jax Suburban did not improperly require over-building of the extension called for in Agreement 2. Jax Suburban required that a 12" water main and an 8" wastewater gravity line be constructed to provide water and wastewater service to the extension, a requirement Coggin believes resulted in lines that are oversized.

The 8" wastewater line is not oversized since this is the minimum size line which would represent good engineering design practice. Jax Suburban claims that it was required to construct 12" water mains in accordance with the Land Development Procedures Manual for the City of Jacksonville. Section 2.4.3 of this manual states that "distribution mains in non-residential areas shall be a minimum of 12 inches in diameter, unless they are in a closely interconnected gridiron, in which case they shall be a minimum of 8 inches in diameter." Thus, Jax Suburban did not require Coggin to construct an oversized water main since the 12" line was the minimum size which could be built in compliance with the Land Development Procedures Manual.

It is therefore

ORDERED by the Florida Public Service Commission that the Commission has jurisdiction to resolve this controversy as a Rule 25-22.032, F.A.C. customer complaint. It is further

ORDERED Jacksonville Suburban Utilities Corporation's Motion for Definite Statement, Motion to Dismiss and Motion to Intervene are denied. It is further

ORDERED that the refundable advance clause of Agreement 2 at paragraph 18 thereof provides solely for pro rata reimbursement by future developers of construction costs incurred by Coggin-O'Steen Land Company under Agreement 2 and for the calculation by hydraulic share of those refunds where feasible. It is further

ORDERED that Coggin-O'Steen was not improperly required to over-build the extension described in Agreement 2. It is further

ORDERED that this Order shall become final and the docket shall be closed unless an appropriate petition for formal

proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the notice of Further Proceedings or Judicial Review.

BY ORDER of the Florida Public Service Commission this 19th day of May, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

Seal

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 10, 1992.

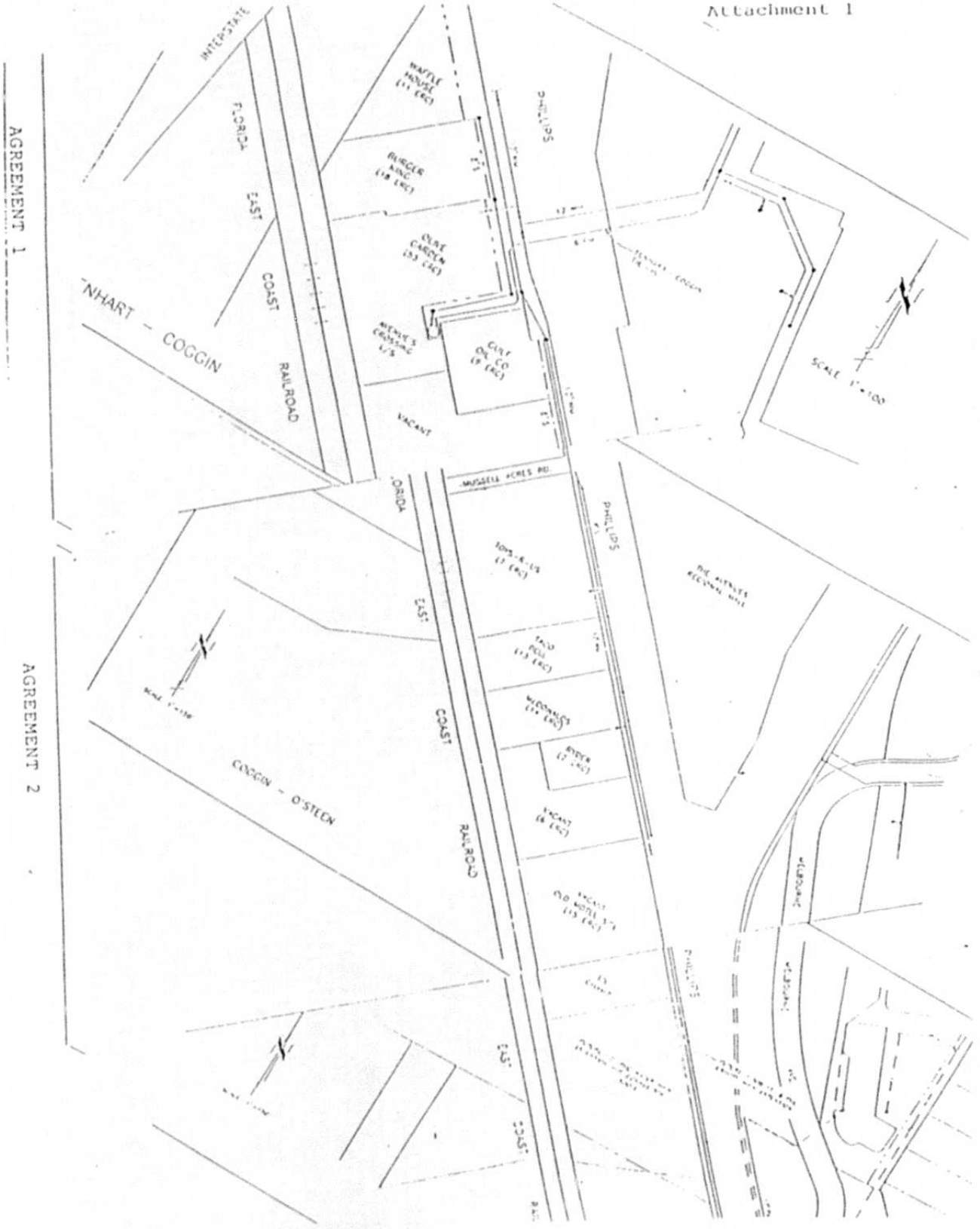
In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

RB:OR911157.cc

Attachment 1



RYDER REBATE Attachment 2
TO COGGIN IF PAID
ON F/F REBATE

		W		S	
COGGIN -	980' ÷ 1130'	X 23.0523	$22,511.29	X 43.4137	$ 42,
RYDER -	150' ÷ 1130'	X 23.0523	$3,457.48	X 43.4137	$ 6,5

WATER
$ 25515.81 WM
533.33 Hyd (1) 1/3
26,049.14
1130' = 23.0523 PER FRONT FOOT

SEWER
$ 49057.50
1130' = 43.4137 PER FRONT FOOT

DEV. COST
COGGIN - $ 65,136.72
RYDER - $ 9,969.54

5-3-91

MOTEL SITE — TERESA PETTY
PHILLIPS HWY / SS BLVD — 388-2063

50 ROOMS
1 OFFICE
51 X 100 GPD/ROOM = 5100 GPD = 14.57 ERC's
350 = (15)

PLANT CAP RESV FEE

W - 15 ERC's X 100 = 1500 =
S - 15 ERC's X 472 = 7080 =
S/T $8580

METER & SERVICE

(1) 2" SERVICE @ $330
(1) 2" METER @ $357
S/T $687

OFFSITE REBATE

W - 15 ERC's @ $447.65 $6714.75
S - 15 ERC's @ $860.67 $12,910.05
S/T $19,624.80
$28,891.80

TOTAL

COGGIN REBATE

1. BOOKED VALUE FROM W&S UTILITY

A.	WATER	SEWER
	$ 22,810	$44,394.50
IHSP	389	448
PR/MH	173	199
TRANS	37	42
S/T	23,409	45,083.50
9.0%	2106.81	Acquisition 3974.00
TOTAL	$25,515.81	49,057.50
	($25,516)	($49,058)

25516 / 57 ERC's = $447.65 PER ERC

49058 / 57 = $860.6 PER E

6-18-91

25,516 / 70 ERC's $364.51

49,058 / 70 $700.8

PMC

SERRAT AND COBBIN - O'STEEN LAND CO.

THE AVENUES CROSSING - PHILLIS HWY

WATER CONSTRUCTION COST	$ 40,866.00
ADM + INSPECTION	3,971.00
TOTAL	44,837.00

723.15 ÷ 44,837.00 = $ 62.00 PER FRONT FOOT

SEWER CONSTRUCTION COST	38,295.00
LIFT STATION	58,500.00
ADM + INSPECTION	7,276.00
	$ 106,071.00

723.15 ÷ 106,071 = $ 146.65

PARCEL # 1	136.24'
PARCEL # 2	185.72'
PARCEL # 3	230.00'
PARCEL # 4	171.00'
	723.15'

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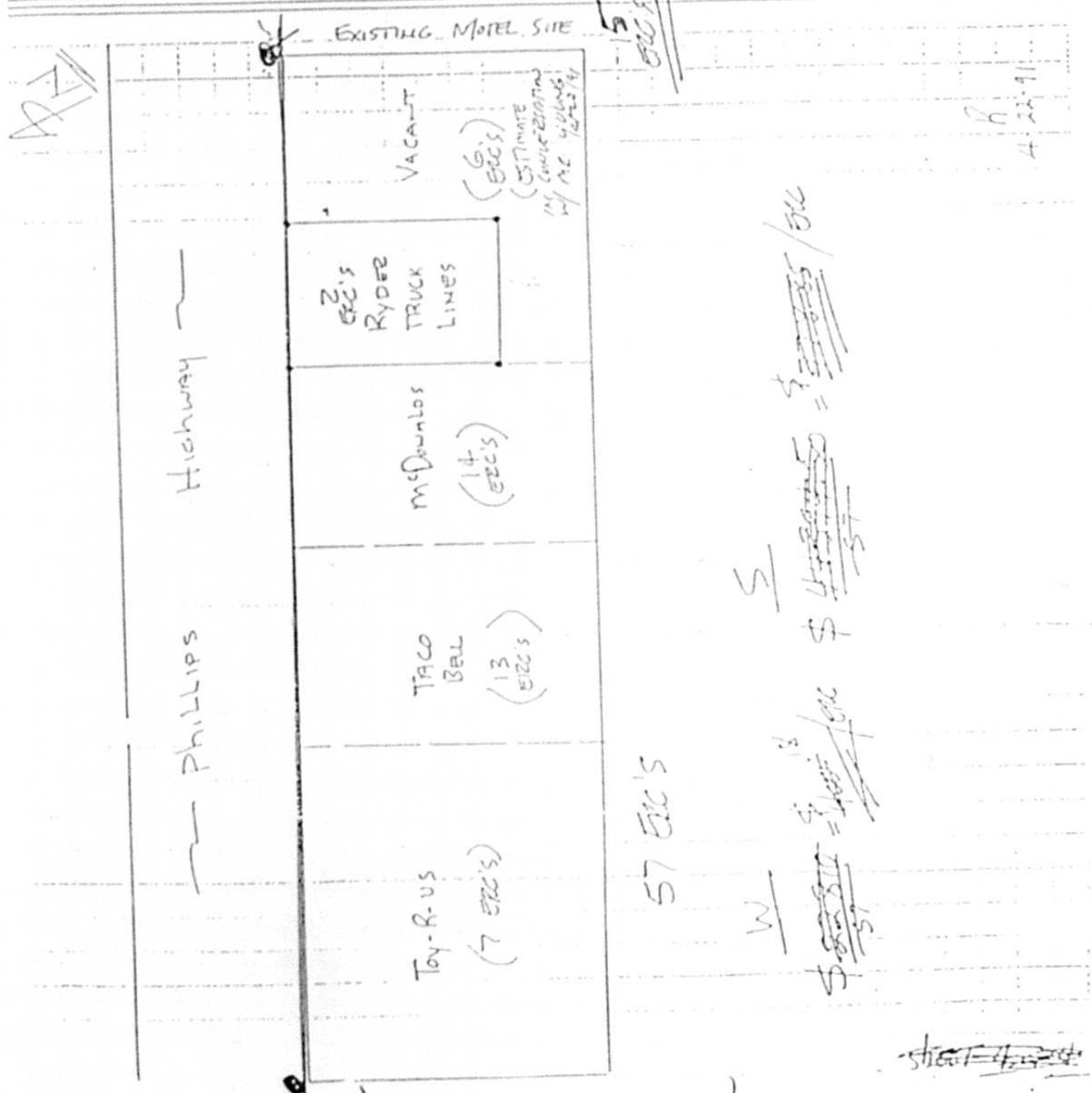
ADMINISTRATIVE OFFICES:
(407) 855-8598 — FAX (407) 857-1787

P.O. BOX 590148
ORLANDO, FLORIDA 32859-0148

11114 SATELLITE BLVD.
ORLANDO, FLORIDA 32821

DISTRIBUTION CENTERS

11124 SATELLITE BLVD., ORLANDO, FLORIDA 32821	(407) 855-8510	FAX (407) 240-1901
2300 COUNTRY CLUB RD., SANFORD, FLORIDA 32771	(407) 322-7995	FAX (407) 322-8233
1101 W. 17TH STREET, RIVIERA BEACH, FLORIDA 33404	(407) 848-4396	FAX (407) 845-7267
1008 NORTHWEST 51ST STREET, FT. LAUDERDALE, FLORIDA 33309	(305) 771-4708	FAX (305) 771-4711
6761 26TH COURT, EAST, SARASOTA, FLORIDA 34243	(813) 756-8765	FAX (813) 756-2036
16601 OLD U.S. 41, SOUTH FORT MYERS, FLORIDA 33912	(813) 267-2262	FAX (813) 267-1545
8863 PHILLIPS HIGHWAY, JACKSONVILLE, FLORIDA 32224	(904) 262-2502	FAX (904) 268-4970



JACKSONVILLE SUBURBAN UTILITIES CORPORATION
A SUBSIDIARY OF GENERAL WATERWORKS ATLANTIC REGION

Attachment 3

644 CESERY BOULEVARD, SUITE 108, P. O. BOX 8004, JACKSONVILLE, FLORIDA 32239, (904) 725-2865

June 19, 1991

Mr. Charles Young
Coggin-O'Steen Land Company
7400 Baymeadows Way, Suite 200
Jacksonville, FL 32256

Dear Mr. Young:

As you asked in our meeting last week, I am following up with a letter about the matters we discussed.

Paragraph 18 of the Developer Agreement between Jacksonville Suburban and Coggin O'Steen Land states in part "Service Company shall refund to Developer....., solely from monies collected from said future developers tying directly into facilities installed by Developer,....." We have been told that we are not to collect these monies from Toys-R-Us, Taco Bell, McDonalds or Parcel No. 1 on the plat of Shoppes of The Avenues. If this is correct we need a notarized letter from Mr. Luther Coggin telling us not to collect these monies from the four parcels of land. Please let me know right away what we are to do on this matter.

Paragraph 18 also calls for refunds from future developers to be calculated on a "hydraulic capacity and demand" basis whenever feasible. Such a calculation is feasible for the water and sewer mains extended for your project. Initial calculations are as follows:

Water Main Contribution	$25,516.00[1]
Sewer Main Contribution	$49,058.00

Estimated Equivalent Residential Connections (ERC)

Toys-R-Us	7 ERC
Taco Bell	13 ERC
McDonalds	14 ERC
Ryder	2 ERC
Parcel No. 1	6 ERC
Motel	15 ERC
Total Estimated ERC	57 ERC

Water, $25,516[1] ÷ 57 ERC = $447.65/ERC
Sewer, $45,058 ÷ 57 ERC = $860.67/ERC

NOTE: [1] Does not include Cost of Fire Hydrants

Estimated refunds from known future developers:

Ryder - Water, 2 ERC x $447.65	=	$ 895.30
1/3 Cost of Fire Hydrant	=	533.33
Sewer, 2 ERC x $860.67	=	1,721.34
		$3,149.97
Motel - Water, 15 ERC x $447.65	=	$ 6,714.75
Sewer, 15 ERC x $860.67	=	12,910.05
		$19,624.80

Water, Estimated Refund = $ 8,143.38
Sewer, Estimated Refund = $14,631.39

There is a potential for refunds from a future developer if the water and sewer mains are extended beyond the motel site, provided we have not over estimated the fifty-seven (57) ERC in our initial calculations. Refunds cannot exceed the contributed value of the water and sewer mains.

You asked what the refunds from future developers would be if calculated on a front footage basis. Using 1,128' as the total length of the water and sewer main extensions, the calculation would be as follows:

WATER - Contributed value $25,516	÷ 1,128'	= $22.62/foot
SEWER - Contributed value $49,058	÷ 1,128'	= $43.49/foot

Ryder - Water, 150' x $22.62	=	$3,393.30
1/3 Cost of Fire Hydrant	=	533.33
Sewer, 150' x $43.49	=	6,523.50
TOTAL		$10,449.83

On a front footage basis, no refunds from a future extension of the water and sewer mains would be due as pro rata recovery is from intervening property in the 1,128 feet of the extensions. However, this front footage calculation is just an example for your information. Actual refunds will be made on the basis of hydraulic capacity as stated in the Developer Agreement.

Please let me know if you need any additional information.

Sincerely,

Philip Heil
Area Manager

PH/jc
cc: J. L. Ade