

GRANGER CONSTRUCTION

MEETING WITH CITY OF EUSTIS

Monday, November 25, 2013

Counsel for Granger Construction:

Richard S. Bergholtz, Esquire
Potter Clement Bergholtz Alexander
308 East Fifth Avenue
Mount Dora, FL 32757
Phone: 352-383-4186
Email: rsb@bergholtzlaw.com

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GRANGER CONSTRUCTION / CITY OF EUSTIS

Background Facts

By way of background facts, as you know Granger Construction ("Granger"), is the Owner of two commercial properties located at 2755 South Bay St. and 2785 South Bay St., in Eustis, Florida. Two buildings are located on each of the respective properties.

1. The commercial buildings at 2755 South Bay St. were constructed on or about 2005 and one building has 7 commercial business units under lease.

2. Whereas, the buildings at 2785 South Bay St. were built in 2001 and one building has 5 commercial business units under lease.

3. Before the buildings were built, Granger applied for and received permits on each of the two buildings from the City of Eustis and Granger installed a single master meter per building, pursuant to the prevailing Ordinance (Ordinance No. 85-27).

4. Pursuant to the law, since the completion of the construction on the two buildings, Granger has been billed monthly based on the water consumption of all unit owners in a single bill that was sent to him and paid by him on behalf of all unit owners in the approximate amount of \$40 or less a month. See July 10, 2013 bill for 2755 South Bay for water service from June 5, 2013 to July 8, 2013 with one water availability charge: (*See Exhibit "A"*)

5. On or about August 9, 2013, Granger received a bill from the City of Eustis for the billing, from July 8, 2013 to August 9, 2013 for his building located at 2755 South Bay St. (*See Exhibit "B"*)

6. This was the first time, the City charged unit prices on the basis of seven units for water availability and sewer availability. The multiple water availability and sewer availability per unit charges escalated the cost for the utility services by over 10 times the prior amount from \$40.00 to \$493.60 per month on one building.

7. When reviewing the history of the laws, more specifically Ordinance Number 564 (1975) as amended by Ordinance Number 85-27 (1985), (*See Composite Exhibit "C"*), the language provides that:

"an office building with five or more units may have a single meter when the billing for consumption through that meter will be billed to one individual or company or corporation who will bear the sole responsibility for payment of the bill."

8. This is the law that was implemented by the City and followed by Granger since the completion of the construction and has been the continuing basis for the calculation of the charges for utilities to Granger by the City pursuant to the

GRANGER CONSTRUCTION / CITY OF EUSTIS

single meter requirements for one single available charge and consumption of water on all units for a period of many years until the recent billings.

9. The City now asserts notwithstanding the existing law, including the 2003 Water Availability Fee Ordinance No. 03-105 (*See Exhibit "D"*), the implementation of the law, the prior conduct, and billings, and Granger's reliance and detriment in following the law, that the City has the authority to change the billing.

10. Granger does not object to paying the total amount of the consumption charges for the water services for all business unit consumers as he always has nor does he object to paying for sewer charges per consumption. However, we do object to paying an individual water and sewer availability charge per unit and the consumption charges under the circumstances that present itself in this case.

11. Notwithstanding the foregoing, we recognize that the City may have some authority for trying to enforce an availability charge. However, we question if, and how the City has dealt with other commercial owners that are similarly situated.

12. As you may know, Mr. Granger is a reputable businessman who has long-term written leases with its tenants whereby he is obligated to pay for the utility services of his tenants. These leases were entered into based upon the understanding of the City's single meter law, the water availability fee, and how the City implemented the same. According to Florida law, an Owner may assert the doctrine of equitable estoppel against a municipality, just as it may against a natural person, where the municipality committed an act or omission which, the Owner relied upon to his detriment and changed his financial position. (*See Exhibit "E"*) It seems prudent for the City to mandate multiple meters and require the availability charges to be paid by unit owners with multiple meters that are constructed now and in the future as long as the City tells the Owner what the requirements are when a utility account goes into service. However it seems disingenuous, unfair and inequitable that the City acknowledging its mistake (*See Composite Exhibit "F"*) can now correct it and cause great financial harm to Granger Construction. We believe under the circumstances that Granger based upon equitable estoppel principles may have established a vested right or interest that cannot be defeated or lessened.

13. It also appears that the Water and Sewer Availability Fee Ordinances were not enacted until 2003 and that they were scheduled to go into law after passing. There appears no language in either Ordinance for the application that the law be applied retroactively. Therefore, the City should not be looking to charge Granger different utility charges on his building located at 2785 South Bay that went into service in 2001.

SERVICE ADDRESS

2755 S RAY ST A-H

ACCOUNT NUMBER	CYCLE	BILL DATE	PAST DUE AFTER
----------------	-------	-----------	----------------

10423-38196

02-24

7/10/13

8/05/13

Last Bill Amount 36.51
 Payments 36.51-
 Adjustments .00
 Balance Forward .00
 Previous Balance Due

Rate Class : COMMERCIAL

Service	Period	Days	Meter Number	Mult	Units	Current	Previous	Usage	
WA	6/05/13	7/08/13	33	1410069928	10.00	GALS	15300	15100	2

Service	Consumption	Charge	Total
WA AVAILABILITY CHARGE		4.00	
WA WATER	2.00	1.00	
TOTAL WATER			23.49
ST STORM WATER	6/05/13 - 7/08/13	4.00	2.00
UTILITY TAX			2.35
Total Current Charges			37.84
Previous Balance/Past Due			0
Total Account Balance			37.84

Pay 42.49 After 8/05/13

QUARTERLY CLEAN UP WEEK FOR INSIDE CITY RESIDENTS WILL BE AUG 1 - 17, 2013. BE SURE ITEMS ARE OUT ON YOUR PRIMARY TRASH DAY & NO HAZARDOUS ITEMS.

TO AVOID A \$5 OR 5% PENALTY, PLEASE PAY CURRENT CHARGES ON OR BEFORE DUE DATE. ANY AMOUNT SHOWN AS A PREVIOUS/PAST DUE BALANCE IS DUE IMMEDIATELY AND SERVICE MAY BE SUBJECT TO DISCONNECTION. IF PAYMENT HAS BEEN MAILED, PLEASE DISREGARD, OR CALL OUR OFFICE FOR MORE INFORMATION.

PLEASE RETURN THIS PORTION OF BILL WITH PAYMENT.
 RETAIN BOTTOM PORTION FOR YOUR RECORDS.
 MAKE CHECK PAYABLE TO: CITY OF EUSTIS
 P.O. BOX 1946
 EUSTIS, FL 32727-1946

SERVICE ADDRESS			
2755 S BAY ST A-H			
ACCOUNT NUMBER	CYCLE	BILL DATE	PAST DUE AFTER
10423-38196	02-24	8/09/13	9/04/13

Total Current Charges 493.60
 Previous Balance/Past Due .00
 Total Account Balance 493.60
 Previous Balance Due on
 Pay 518.28 After 9/04/13



GRANGER CONSTRUCTION
 PO BOX 1190
 EUSTIS FL 32727-1190



CITY OF EUSTIS
 10 S. EUSTIS ST.
 EUSTIS, FLORIDA 32726
 (352) 589-4333
 www.eustis.org

PLEASE RETURN UPPER PORTION OF BILL WITH YOUR PAYMENT

SERVICE ADDRESS			
2755 S BAY ST A-H			
ACCOUNT NUMBER	CYCLE	BILL DATE	PAST DUE AFTER
10423-38196	02-24	8/09/13	9/04/13
Rate Class : MUTLI-COMMERCIAL			

Last Bill Amount 37.49
 Payments 37.49-
 Adjustments .00
 Balance Forward .00
 Previous Balance Due

Service	Period	Days	Meter Number	Mult	Units	Current	Previous	Usage
WA	7/08/13	8/06/13	29	1410069928	10.00	GALS	14000	5000
WA	WATER					4.00		
WA	TODAY WATER							141.00
SW	WATER CONSUMPTION					224.85		
SW	TOTAL SEWER					24.71		165.71
ST	STORM WATER					14.00		14.00
	UTILITY TAX					24.72		165.71

Total Current Charges 493.60
 Previous Balance/Past Due .00
 Total Account Balance 493.60
 Pay 518.28 After 9/04/13

CITY OFFICE WILL BE CLOSED MONDAY, SEPTEMBER 2ND IN HONOR OF LABOR DAY. THERE WILL BE NO WASTE COLLECTION OR LAPOX DAY. MONDAY, SEPTEMBER 2ND, 2013 IS MANTON DAY FOR GARBAGE, RECYCLING AND YARD DEBRIS WILL BE DELAYED SEPTEMBER 3RD, 2013. PLEASE DRIVE SAFELY AND HAVE A WONDERFUL HOLIDAY.

QUARTERLY GUMMERS WITH ALL NEEDLE POINT RESIDENTS WILL BE THE 1ST, 2ND, 3RD, 4TH, 5TH, 6TH, 7TH, 8TH, 9TH, 10TH, 11TH, 12TH, 13TH, 14TH, 15TH, 16TH, 17TH, 18TH, 19TH, 20TH, 21ST, 22ND, 23RD, 24TH, 25TH, 26TH, 27TH, 28TH, 29TH, 30TH, 31ST, 2013. BE SURE TIME SET OUT ON YOUR CURB ON THE 1ST DAY & NO LATER THAN 6:00 PM.

THE LAKE COUNTY HAZARDOUS WASTE MONTHLY MEETING WILL BE AT THE EUSTIS SQUARE SHOPPING CENTER, 314 ARDREY AVE., EUSTIS, FL 32726 ON THURSDAY, AUGUST 22, 2013 & WEDNESDAY, SEPTEMBER 4, 2013. MEETING WILL BE HELD AT 10:00 AM. ON THURSDAY, SEPT 12, 2013 - BOTH DAYS FROM 9AM - NOON. FOR MORE INFORMATION PLEASE CALL LAKE COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES 352-343-3776.

EXHIBIT "B"

Began charging per unit

6/5/75

ORDINANCE NO. 564

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF EUSTIS, FLORIDA, BY AMENDING SECTIONS 18-15 AND 18-17 OF THE CODE OF ORDINANCES OF THE CITY OF EUSTIS, FLORIDA TO ESTABLISH A NEW WATER RATE AND CHANGE BILLING PROCEDURE; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT HERewith; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION BY POSTING.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF EUSTIS:

SECTION 1. That Section 18-15 of the Code of Ordinances of the City of Eustis, Florida is hereby amended to read as follows:

Sec. 18-15. Water Service rates and charges - Established.

- a. The water rates to be charged for each living unit and business unit within the corporate limits of the City of Eustis, Florida are as follows:

Minimum monthly bill. Each monthly bill shall be rendered for an amount not less than two dollars and seventy-six cents (\$2.76) which will allow for the use of four thousand gallons of water per month.

Meter rate. The following meter rates shall be applicable to all quantities of water in excess of that allowed under the minimum bill as shown by monthly meter readings to have been delivered and the total monthly bill is the minimum monthly bill plus applicable rates per additional thousands of gallons:

<u>Monthly usage (Gallons).</u>	<u>Rate</u>
First 4,000	\$2.76
5,000 to 10,000	\$.44 per Thousand Gallons
11,000 and over	\$.34 per Thousand Gallons

- b. The water rates to be charged for each living unit and business unit outside the corporate limits of the City of Eustis, Florida are as follows:

Minimum monthly bill. Each monthly bill shall be rendered for an amount not less than four dollars and fourteen cents (\$4.14) which will allow for the use of four thousand gallons of water per month.

Meter rate. The following meter rates shall be applicable to all quantities of water in excess of that allowed under the minimum bill as shown by monthly meter readings to have been delivered and the total monthly bill is the minimum monthly bill plus applicable rates per additional thousands of gallons:

<u>Monthly usage (Gallons).</u>	<u>Rate</u>
First 4,000	\$4.14
5,000 to 10,000	\$.66 per Thousand gallons
11,000 and over	\$.51 per Thousand gallons

c. Charges and deposits.

1. Service Charge: A service charge of five dollars (\$5.00) shall be charged each time that service is restored to an inactive meter and each time that water is turned off for non-payment of bills.
2. Fire hydrant rental. The city shall pay not less than twenty dollars (\$20.00) per year per hydrant to the credit of the water system for public fire protection service.
3. Water sprinkler systems. An annual fee of seven dollars and fifty cents (\$7.50) will be charged those buildings having water sprinkler systems installed.
4. Minimum deposits. A minimum deposit of fifteen dollars (\$15.00) shall be required for each meter serving a residential property.

A minimum deposit of twenty dollars (\$20.00) shall be required for each meter serving a commercial establishment.

All applicants shall be required to make the aforescribed deposits with the utility department until such time as an acceptable credit rating has been established, as promulgated by the City Commission of the City of Eustis, Florida, and published by the Clerk.

5. Connection charge. The following connection charges shall be made for labor and materials

to bring service connections from the water mains to owners' property line:

- a. Costs to City plus ten percent (10%) for all connections in the corporate city limits.
 - b. Costs to City plus sixty percent (60%) for all connections out of the corporate city limits.
6. Separate meters. There shall be provided by the owner a separate meter for each single family living unit and business unit connected to the water system of the City of Eustis, Florida.

SECTION 2. That Section 18-17 of the Code of Ordinances of the City of Eustis, Florida is hereby amended to read as follows:

Sec. 18-17. Billing procedure.

Bills for sewer and water services shall be rendered monthly for all consumers within the corporate city limits. Bills for sewer and water service will be rendered monthly for all consumers outside the corporate city limits.

Failure of the user to receive a monthly bill shall not release or diminish the obligation of the user with respect to timely payment thereof. If any bill shall not be paid before the thirtieth day following the original date of billing, an additional charge equal to one dollar (\$1.00) shall be added thereto. If any bill shall not be paid within thirty (30) days from the original date of billing the sewer and water service shall be disconnected by the city.

In the event service is disconnected for non-payment of bills, the premises or using activity shall be disconnected from the sewer and water system of the city, and remain disconnected until the same, plus the aforementioned additional one dollar (\$1.00) charge, plus a reconnection charge of five dollars (\$5.00) is paid in full.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. Should any section or part of a section of this ordinance be declared invalid by any court of competent jurisdiction, such adjudication shall not apply or affect any other provision of this ordinance, except to the extent that the

entire section or part of the section may be inseparable in meaning and effect from the section to which such holding shall apply.

SECTION 5. This ordinance shall become effective at 12:01 o'clock A.M., on the 6th day of June, A.D. 1975, upon its passage, adoption, approval and publication by posting according to law.

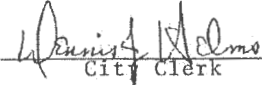
PASSED, ORDAINED and APPROVED, in regular session of the City Commission of the City of Eustis, Lake County, Florida, this the 5th day of June, A.D. 1975.

CITY COMMISSION OF THE
CITY OF EUSTIS, FLORIDA



Mayor-Commissioner

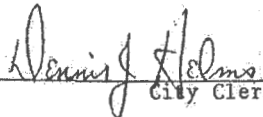
ATTEST:



City Clerk

CERTIFICATE OF POSTING

The foregoing Ordinance No. 564 is hereby approved, and I hereby certify that I published the same by posting one (1) copy hereof at the City Hall, one (1) copy hereof at the Eustis Memorial Library, and one (1) copy hereof at the Eustis Chamber of Commerce; all within the corporate limits of the City of Eustis, Lake County, Florida.



City Clerk

PUBLIC HEARING 6/20/85

1st READING 6/6/85

2nd & Final Reading 6/20/85
ORDINANCE NO. 85-27

AN ORDINANCE AMENDING SECTION 18-15 (D)(6), OF THE CODE OF ORDINANCES OF THE CITY OF EUSTIS, FLORIDA TO ADD MASTER WATER METERS; PROVIDING FOR SEVERABILITY, REPEALING ALL ORDINANCES IN CONFLICT HERewith; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR PUBLICATION BY POSTING.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF EUSTIS, FLORIDA.

SECTION 1. Section 18-15(D)(6), is amended in its entirety to read as follows:

Seperate Meters. The City shall require a seperate meter for each single family living unit, each mobile home and each business unit. However, the City may allow a multi-family living structure or project, mobile home rental park, recreational vehicle park, shopping center, or office building with five (5) or more units to have a single master meter when the billing for consumption through that meter will be to one individual or company or corporation who will bear sole responsibility for payment of the bill.

The connection cost of the single master meter shall be equal to that cost charged, if seperate one inch meters were installed on a per unit, per meter basis. If the property owner and the City were to elect to install seperate meters at a later date, that amount initially paid for the master meter would be credited toward the seperate meter connection charge at the time the change is requested. The City reserves the right to make the final decision as to whether a master meter or a single per unit meter will be required in any given situation.

SECTION 2. All Ordinances or part of Ordinances in conflict herewith are hereby repealed.

SECTION 3. Should any section or part of a section of this Ordinance be declared invalid by any court of competent jurisdiction, such adjudication shall not apply or affect any other provision of this ordinance, except to the extent that the entire section or part of the section may be inseperable in meaning and effect from the section to which such holding shall apply.

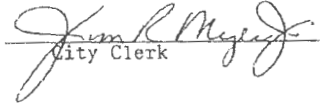
SECTION 4. This ordinance shall become effective at 12:01 o'clock a.m., on the 21st day of June A.D., 1985, upon its passage, adoption, approval and publication by posting according to law.

PASSED, ORDAINED and APPROVED, in Regular Session of the City Commission of the City of Eustis, Lake County, Florida, this the 20th day of June, A.D., 1985.

CITY COMMISSION OF THE
CITY OF EUSTIS, FLORIDA

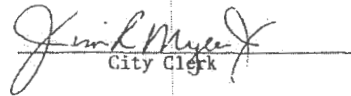
[Signature]

ATTEST:


City Clerk

CERTIFICATE OF POSTING

The foregoing Ordinance No. 85-27, is hereby approved and I hereby certify that I published the same by posting one (1) copy hereof at the City Hall, one (1) copy hereof at the Eustis Memorial Library, one (1) copy thereof at the Eustis Community Center; all within the corporate limits of the City of Eustis, Lake County, Florida.


City Clerk

ORDINANCE NO. 03-105

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF EUSTIS, FLORIDA; AMENDING CHAPTER 94 ARTICLE IV ADDING SECTION 94-194 OF THE CODE OF ORDINANCES OF THE CITY OF EUSTIS; PROVIDING FOR USER CHARGE SYSTEM FOR THE CITY OF EUSTIS POTABLE WATER SYSTEM; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR PUBLICATION ACCORDING TO LAW.

WHEREAS, Florida Statute Chapter 180 provides local municipalities with the authority to establish and operate water utility systems; and

WHEREAS, The City Commission has through the City Manager authorized a study of the City of Eustis water system to determine both immediate and long term revenue requirements of these utility systems; and

WHEREAS, The City Commission finds that recommendations in The Water and Wastewater Rate Study completed September 16, 2003 by Public Resources Management Group, Inc. are appropriate in order to establish uniformity in the water, wastewater and reclaimed water utility billing systems; and

WHEREAS, The City Commission has determined that it is necessary to amend the ordinance governing the water utility system for The City of Eustis to meet the needs identified by the study and to provide for uniformity with other utility billing systems in the City of Eustis.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF EUSTIS, FLORIDA.

Section 1. Chapter 94 Article IV is hereby amended adding Section 94-194 of the Code of Ordinances of the City of Eustis to read as follows:

Sec. 94-194 Water Utility User Charge System.

The City shall establish rates, fees, surcharges, potable water availability charges and other charges for usage of the city water system by resolution with a complete list of rates and fees kept on file in the City Clerk's office. This user charge system shall:

- (1) Produce adequate revenue to fund all operation, maintenance, and replacement and debt service costs of the water system and provide for a capital improvement account for the water system as required by county, state and water management district regulations.
- (2) Be based upon each user paying its proportionate share of operation, maintenance and replacement costs of the water system
- (3) Include an adequate financial management system to accurately account for revenues from and expenditures for the water system.
- (4) Establish availability charge. For purposes of this section a potable water availability charge is a charge by the City Commission for the availability of potable water service provided by the City to a property. Potable water service is deemed available to a property if a water meter is located at the property regardless of whether the property is actively receiving potable water service. The charge shall be billed in the water utility bill of the consumer for those accounts which are actively receiving potable water service and in a water

utility bill to the owner of the property for those meters not actively receiving potable water service.

- (5) Establish Water Conservation Rates. For purposes of this section Water Conservation Rates are surcharges which apply to all residential water usage above 8,000 gallons per month and all irrigation usage (residential and commercial) at such a time as the St. Johns River Water Management District declares a water shortage. Said rate surcharges shall apply automatically without further notice at such time as a water shortage is declared by the St. Johns River Water Management District and the applicable percentage shall be determined by the declared severity of the water shortage and assessed as a percentage of billing rate for usage above 8,000 gallons.
- (6) Establish Impact Fees by Resolution based on Equivalent Residential Units to be assessed for every new connection to the City of Eustis Water System.
- (7) Effective June 1, 2005 water service rates provided in subsections (1) – (6) of this section shall be increased or decreased June 1 of each year to reflect any percentage increase or decrease in the previous calendar year in the published Municipal Cost Index.

Section 2. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 3. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not effect the validity of the remaining sections, sentences, clauses or phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. It is the intention of the City Commission of the City of Eustis that the provisions of this Ordinance shall become and be made a part of the City of Eustis Code of Ordinances and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Section", "Article" or such other appropriate word or phrase to accomplish such intentions.

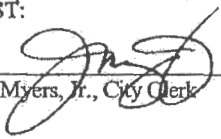
Section 5. This Ordinance shall become effective immediately on passing.

Section 6. This Ordinance shall be published in accordance with the requirements of law.

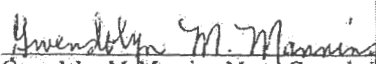
PASSED, ORDAINED AND APPROVED in Regular Session of the City Commission of the City of Eustis, Lake County, Florida, this 18th day of December, 2003.



ATTEST:


Jim R. Myers, Jr., City Clerk

CITY COMMISSION OF THE CITY OF EUSTIS


Gwendolyn M. Manning, Mayor-Commissioner

22 Fla. Jur 2d Estoppel and Waiver § 105

Florida Jurisprudence, Second Edition
Database updated November 2013

Estoppel and Waiver
by Kimberly C. Simmons, J.D.

- I. Estoppel
 - C. Estoppel in Pais or Equitable Estoppel
 - 4. Persons or Bodies Subject to, or Affected by, Equitable Estoppel
 - b. Particular Bodies Subject to, or Affected by, Equitable Estoppel
 - (2) Governmental Entities
 - (b) Particular Governmental Entities
 - (iii) Municipal Corporations

[Topic Summary](#) [Correlation Table](#) [References](#)

§ 105. Generally

West's Key Number Digest

West's Key Number Digest, [Estoppel](#) ¶62.4

Although the general rule is that estoppel will not be applied to prevent or hinder the exercise of municipal functions, exceptions are made where right and justice demand it.[FN1] Thus, the principles of equitable estoppel, in a proper case, may be invoked against a municipality,[FN2] including a city,[FN3] as if it were an individual.[FN4] Estoppel against a municipality is allowed when to do so will not embarrass the municipality in its capacity as a governing body, operate to prevent it from exercising its police power,[FN5] or impede its proper conduct of public affairs.[FN6] Thus, simply stated, in certain circumstances, the doctrine of equitable estoppel may be applied against municipalities in the exercise of their proprietary functions.[FN7]

Illustration: In an action brought by a city to foreclose upon certain property owned by a county for an unpaid sewer line assessment, the city was properly found estopped to enforce its lien where an employee of the county had telephoned the City Clerk's office to inquire about the existence of any liens, assessments, or unpaid taxes, and had been informed by a city employee who was authorized to supply lien information that there were no liens or claims by the city of any kind against the property.[FN8] However, a city was not equitably estopped from refusing to recognize a strip club, which provided adult entertainment by nude women, as private for purposes of the claim of the club owner, dancers, and members that the club was private and that the city was violating their First Amendment rights by enforcing a statute prohibiting lewd acts because the city's issuance of an occupational license designating the club as private was not, without more, a representation as to a material fact, and the city's issuance of a occupational license designation did not lead to a limitation on the city's duty to enforce laws against lewdness.[FN9]

The doctrine of equitable estoppel may be invoked against a local government when a property owner in good faith, upon some act or omission of the government, has made such a substantial

EXHIBIT "E"

change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right he or she acquired.[FN10] Furthermore, the doctrine of equitable estoppel may be invoked against a municipality on behalf of parties who do not yet actually own the property affected.[FN11]

CUMULATIVE SUPPLEMENT

Cases:

Under Florida law, equitable estoppel may be invoked against a local government when a property owner has made such a change to his position or incurred such obligation and expense in reliance upon the act or omission of the government that it would be unjust or inequitable to destroy the right that he has acquired. South Florida Equitable Fund, LLC v. City of Miami, Fla., 770 F. Supp. 2d 1269 (S.D. Fla. 2011).

City was estopped from arguing that city employee failed to exhaust his administrative remedies before bringing Whistle-blower's Act claim and should have filed a petition for certiorari from civil service board's decision, given that, at civil service board meeting, employee's attorney appeared and was informed, incorrectly, by board that it had no jurisdiction and attorney for board and attorney for city both concurred with board's decision; city could not at the board hearing tell employee the board had no jurisdiction and then at the summary judgment hearing on employee's Whistle-blower's Act claim argue that the board did have jurisdiction and that employee failed to exhaust his administrative remedies. West's F.S.A. § 112.3187(8)(b). Browne v. City of Miami, 948 So. 2d 792 (Fla. Dist. Ct. App. 3d Dist. 2006).

[END OF SUPPLEMENT]

[FN1] City of Fort Lauderdale v. Lauderdale Indus. Sites, Inc., 97 So. 2d 47 (Fla. Dist. Ct. App. 2d Dist. 1957).

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A.L.R. Library

Estoppel of municipality as to encroachments upon public streets, 44 A.L.R.3d 257.

[FN2] Willumsen v. Horton, 307 So. 2d 833 (Fla. Dist. Ct. App. 2d Dist. 1975).

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[FN3] City of Gainesville v. Bishop, 174 So. 2d 100 (Fla. Dist. Ct. App. 1st Dist. 1965).

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[FN4] Sun Cruz Casinos, L.L.C. v. City of Hollywood, Fla., 844 So. 2d 681 (Fla. Dist. Ct. App. 4th Dist. 2003); Council Bros., Inc. v. City of Tallahassee, 634 So. 2d 264, 90 Ed. Law Rep. 894 (Fla. Dist. Ct. App. 1st Dist. 1994).

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[FN5] Willumsen v. Horton, 307 So. 2d 833 (Fla. Dist. Ct. App. 2d Dist. 1975).

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[FN6] Florida East Coast Ry. Co. v. City of Miami, 186 So. 2d 533 (Fla. Dist. Ct. App. 3d Dist. 1966).

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[FN7] Killearn Properties, Inc. v. City of Tallahassee, 366 So. 2d 172 (Fla. Dist. Ct. App. 1st Dist. 1979).

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[FN8] City of Coral Springs v. Broward County, 387 So. 2d 389 (Fla. Dist. Ct. App. 4th Dist. 1980).
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[FN9] Dreamland Ballroom and Social Dance Club, Inc. v. City of Fort Lauderdale, 789 So. 2d 1099 (Fla. Dist. Ct. App. 4th Dist. 2001).
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[FN10] Coral Springs Street Systems, Inc. v. City of Sunrise, 371 F.3d 1320 (11th Cir. 2004) (applying Florida law).

- As to elements of equitable estoppel, see § 35.
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[FN11] City of Tamarac v. Siegel, 399 So. 2d 1124 (Fla. Dist. Ct. App. 4th Dist. 1981).
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City of Eustis

Water Customer Service

P.O. Box 1946 • Eustis, Florida 32727-1946 • (352) 589-4333

RE COPY

July 25, 2013

Granger Construction
P O Box 1190
Eustis, FL 32727-1190

RE: Utility Services for 2755 S Bay Street A - H
Account #10423-38196

TO WHOM IT MAY CONCERN:

This letter is to inform you that in reviewing your Utility account we have found that even though City Sewer is provided to the above address, the City has not been billing your utility account sewer charges. We have verified with our City staff that City sewer is definitely available to your property. Therefore, we have started sewer charges as of your last read, and these new charges will be reflected in your next City of Eustis Utility billing statement. Our current monthly Commercial sewer charges are; \$32.80 Availability Charge per residential unit, plus Consumption Charges of \$3.52 per thousand gallons of sewer, based on your water usage.

In addition, we have changed the number of Commercial units you are billed for from (1) one to (7) seven, based on the addressing for the location and our investigations. The combination of both will show a large increase in your monthly billing since we bill availability charges for all services based on the number of units. So if any of this information is not correct, please contact us immediately.

We apologize for the delay in catching these errors, as sewer charges and the number of units should have been changed when the Certificate of Occupancy on the new building was received. We are not sure exactly why these charges were not started or changed at that time.

If you have any questions, please contact me at the above number, or e-mail me at customerservice@ci.eustis.fl.us.

Sincerely,

Rhonda Smith
Interim Customer Service Supervisor

MIP
Encs.



City of Eustis

Water Customer Service

P.O. Box 1946 • Eustis, Florida 32727-1946 • (352) 589-4333

July 25, 2013

Granger Construction
P O Box 1190
Eustis, FL 32727-1190

RE: Utility Services for 2765 S Bay Street
Account #10423-38194

TO WHOM IT MAY CONCERN:

This letter is to inform you that in reviewing your Utility account we have found that even though City Sewer is provided to the above address, the City has not been billing your utility account sewer charges. We have verified with our City staff that City sewer is definitely available to your property. Therefore, we have started sewer charges as of your last read, and these new charges will be reflected in your next City of Eustis Utility billing statement.

Our current monthly Commercial sewer charges are; \$32.80 Availability Charge per residential unit, plus Consumption Charges of \$3.52 per thousand gallons of sewer, based on your water usage.

We apologize for the delay in catching this error, as sewer charges are usually started when the Certificate of Occupancy on a new building is received, so we are not sure exactly why these charges were not started at that time.

If you have any questions, please contact me at the above number, or e-mail me at customerservice@ci.eustis.fl.us.

Sincerely,

Rhonda Smith
Interim Customer Service Supervisor

MIP
Encs.



City of Eustis

Water Customer Service

P.O. Box 1946 • Eustis, Florida 32727-1946 • (352) 589-4333

July 25, 2013

Granger Construction
P O Box 1190
Eustis, FL 32727-1190

COPY

RE: Utility Services to 2817 S Grove Street
Account #10423-26348

TO WHOM IT MAY CONCERN:

This letter is to inform you that in reviewing your Utility account we have found that even though City Sewer is provided to the above address, the City has not been billing your utility account for sewer charges. We have verified with our City staff that City sewer is definitely available to your property. Therefore, we have started sewer charges as of your last read, and these new charges will be reflected in your next City of Eustis Utility billing statement.

Our current monthly Residential sewer charges are; \$23.43 Availability Charge per residential unit, plus Consumption charges of \$2.93 per thousand gallons of sewer, up to 10,000 gallons of water usage. Sewer consumption charges are based on your water consumption, but Residential tops off at 10,000 gallons. So you should never be charged for more than 10,000 gallons of sewer.

If this location is not Residential, please let us know immediately, as Lake County has this property designated as "Warehousing". If this address is not use for Residential purposes we need to know so we can change it on our billing records.

We apologize for the delay in catching this error, as sewer charges are usually started when the Certificate of Occupancy on a new building is received, so we are not sure exactly why these charges were not started at that time.

If you have any questions, please contact me at the above number, or e-mail me at customerservice@ci.eustis.fl.us.

Sincerely,

Rhonda Smith
Interim Customer Service Supervisor

MIP
Encs.

The property in question is the location where his business occupies a portion of four buildings that have Bay Street addresses. Two of the buildings are separate structures and are occupied by single businesses and have separate meters. Two of the structures house multiple units and are serviced each by a single meter. The first structure at 2755 S. Bay Street houses what we believe to be 7 single units and the second at 2785 S. Bay Street, we believe to house multiple units as well, but we have asked Mr. Granger to verify the number of units at 2785 S. Bay Street and to-date he has not provided this information. The City never charged him for the multiple units as the ordinance requires.

In summary, when a contractor (and in this case, Granger Construction) comes in and begins to build a building, the City installs a temporary, or construction, meter. Then, when the Certificate of Occupancy is issued, the water service is turned over to the new owner. In this case, the final owner was the same entity. It should also be noted that in 1985 the City passed Ordinance 85-27 that allows for multiple units to be on a master meter as long as the total bill for all are paid by one entity.

In addition to this, the City began charging per living or business unit at least a minimum bill as was provided in Ordinance 564 that was adopted in 1975, which was changed to an availability charge per living or business unit in 2003 under Ordinances 03-105, 03-106 and 03-107.

In July, staff discovered that two of the buildings were identified as Multi-unit commercial, but they were only being charged as one unit. The department sent a letter to the customer of record, which was Granger Construction. The letter stated that the City had not been billing them correctly for one of the buildings that has seven different units. Instead of a bill that only charged for water usage; their next bill would contain availability charges per unit of \$19.17 for water, \$32.80 per unit for sewer, and stormwater charges of \$12.00/unit. These charges would begin showing up in the bill that they would receive in August and they would also be charged for any amounts of water and sewer connected with the one meter. Previously, because only a water consumption bill had been paid for water on this structure, the past bills have been less than \$40.00 per month. The corrected charges equated to \$493.60 in August and \$472.65 in September.

We think that the reason that this situation occurred was that there was no Certificate of Occupancy on file in Customer Service. For this reason, there was no "trigger" to shift from the "construction" meter and charge for the multiple units. Our records show that the CO was issued on 6/14/05; however the building department does not have a copy of that either.

We apologized to Mr. Granger for the previous oversight. We are making no effort to collect any previous amounts due and would not recommend doing so at this point. But in accordance with the City Code of Ordinances, the bill presented is what the bill should be. As stated earlier, we are trying to determine how many units are in the other larger building served by a single meter, but at least the complete charges for one of those units have been billed and paid correctly.

I think that Mr. Granger's biggest problem is that he indicates that he has long term leases with tenants and provide for city utility services within the lease amount and that lease amount did not anticipate these availability charges.

Staff contacted him to advise him of our findings and have offered him some time to pay off the two bills mentioned above for the one location and to advise him that we are also looking at the second building as well. The City has never suggested or requested that the master meter be changed out to single unit meters, but merely that he will have to pay the per unit charges as defined in our code.

The charges that the city is charging are the same that any customer who owns multiple commercial or residential units is paying. We are not unfairly targeting this account but merely trying to correct an error that was discovered and will make every effort possible to work with Mr. Granger in any way to get this back on track.