

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UF 4249

In the Matter of)	
)	
SEVENTH MOUNTAIN GOLF VILLAGE)	ORDER
WATER COMPANY)	
)	
Application for Authorization for Issuance)	
of a Note.)	

**DISPOSITION: APPLICATION APPROVED WITH CONDITIONS
AND REPORTING REQUIREMENTS**

On June 17, 2008, Seventh Mountain Golf Village Water Company (SMGV), filed an application with the Public Utility Commission of Oregon (Commission), pursuant to ORS 757.415 and OAR 860-036-0720(3), for authority to issue a Note in the amount of \$40,000. The basis for the request is detailed in Staff's Report, attached as Appendix A, and incorporated by reference.

Based on a review of the application and the Commission's records, the Commission finds that this application satisfies applicable statutes and administrative rules. At its public meeting on July 29, 2008, the Commission adopted Staff's recommendation and approved SMGV's request.

ORDER

IT IS ORDERED that the application of Seventh Mountain Golf Village Water Company for the authority to issue a Note in the principal amount of \$40,000 is approved, subject to the conditions and reporting requirements specified in Appendix A.

Made, entered, and effective JUL 31 2008.



BY THE COMMISSION:

Becky L. Beier

Becky L. Beier
Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.




**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: July 29, 2008**

REGULAR _____ CONSENT X EFFECTIVE DATE _____ N/A _____

DATE: July 22, 2008

TO: Public Utility Commission

FROM: Steve Storm 

THROUGH:  Lee Sparling,  Marc Hellman, and  Michael Dougherty

SUBJECT: SEVENTH MOUNTAIN GOLF VILLAGE WATER COMPANY:
(Docket No. UF 4249) Application for authority to issue a Note in the principal amount of \$40,000.

STAFF RECOMMENDATION:

I recommend the Public Utility Commission of Oregon (Commission) approve Seventh Mountain Golf Village Water Company's (SMGV or Company) request to issue a Note, subject to the following conditions and reporting requirements:

- 1) The Company shall provide a report indicating the final terms of the Note. The Company shall notify the Commission in advance of any substantive changes to the Notes' terms, including any material change in the principal amount, gross proceeds, payment terms, or interest rate. In the event Staff finds that any such change may in fact be material, Staff will notify the Company and the Company agrees to promptly file an application requesting a supplemental order (or other appropriate format) be issued approving the new terms and conditions.
- 2) The Company shall provide a final Report of Expenditures indicating the actual amounts expended and providing reconciliation to the principal amount of the Note.
- 3) The Commission reserves judgment on the reasonableness for ratemaking purposes of the Company's financing costs. In its next rate proceeding, the Company will be required to show that its capital costs, including embedded expenses and capital structure, are just and reasonable.

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- 4) Proceeds from the Note shall only be used for eligible activities as specified in Oregon Revised Statutes (ORS) 757.415.

DISCUSSION:

SMGV is an investor-owned water utility located in the vicinity of Bend, Oregon. The water system currently serves 181 residential customers, seven commercial customers, and approximately 25 irrigation customers.¹ On June 17, 2008, SMGV filed an application with the Commission, under Oregon Revised Statutes (ORS) 757.415 and Oregon Administrative Rule (OAR) 860-036-0720(3), for authority to issue a Note in the amount of \$40,000. The Company represents that the proceeds will be used to pay delinquent Deschutes County personal property taxes assessed on SMGV for 2002 and prior years.

These purposes are consistent with statutory requirements and are permitted under ORS 757.415.

A copy of a promissory note dated May 12, 2008, and attached to the application lists as makers:² Dale Bernards personally, Seventh Mountain Golf Village Water Company, and Braber Properties LLC. These parties are, respectively, the owner and President of the Company, the Company, and a company owned by minor sons of Dale Bernards.³ The payee is listed on the application as Cedric E Sherrer and Susan F. Sherrer, Trustees of the Cedric E. Sherrer Revocable Trust.

The promissory note also contains a clause specifying "all amounts are due and payable in full the sooner of the sale of the Water Company, the sale of the house located at 60669 Golf Village Loop or the closing of the transaction between Canterbury Commercial LLC and Priestly Holdings which was assigned by Canterbury Commercial LLC to a newly established LLC of Watumull Properties." Another clause in the promissory note specifies "(i)n any event this note is to be paid in full on or before May 12, 2009."

Additionally, the promissory note specifies the "note shall be secured in a first deed of trust on Tract A of Elkai Woods subdivision in Deschutes County, Bend, Oregon, and shall have the additional security of all personal property owned by Seventh Mountain Golf Village Water Company."

¹ See testimony of M. Dougherty in UW 124, Page 2, Lines 13 through 17.

² The maker of a promissory note, or promisor, is the party contracting to pay the counterparty, who is known as the promisee, or payee.

³ See the UW 124 direct testimony of M. Dougherty on Page 4/Line 17 through Page 5/Line1.

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Finally, the promissory note commits that if "this note is not paid when due, I/we agree to pay all reasonable costs of collection, including attorney fees for the collection of this debt."

Attached to the Company's application is a Trust Deed dated May 7, 2008, between Braber Properties LLC, as Grantor, and First American Title Insurance, as Trustee, and Cedric E. Sherrer and Susan F. Sherrer, Trustees of the Cedric E. Sherrer Revocable Trust, as Beneficiary. The Trust Deed was signed on May 8, 2008, by Dale Bernards as Managing Member of Braber Properties LLC. The property conveyed in the Trust Deed is described as "Tract "A" of Elkai Woods Townhomes, Phase VI, Deschutes County, Oregon." The Trust Deed contains language specifying the purpose; i.e.,

"For the purpose of securing performance of each agreement of Grantor herein contained and payment of the sum of Forty Thousand dollars (\$40,000.00), with interest thereon according to the terms of a promissory note of even date herewith, payable to Beneficiary or order, and made by Grantor, the final payment of principal and interest hereof, if not sooner paid, to be due and payable May 15, 2009."

Staff and Parties⁴ to the Company's general rate case UW 124 filed a Joint Stipulation on July 2, 2008. The Stipulation included resolution of two issues pertinent to the Company's current finance application, including Issue Nine:

"The Parties agree that the portion of the plant property taxes for the years 1997 through 2002 (minus any penalties and interest) included in the determination of the Revenue Requirement of \$68,186 will be amortized into rates over a six-year period."

and Issue Ten:

"The Company agrees to pay plant property taxes on a timely basis. The Parties agree that Staff will audit the Company's property tax payments for three consecutive years starting with the 2008 / 2009 plant property tax that will come due in the November 2008 time frame."

⁴ Parties to the Stipulation include the Company, Oregon Public Utility Commission Staff, and Intervenors Thomas G. Clifford, Robert J. Selder, and Leo Mottau

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Staff testimony UW 124, Staff/100, Dougherty/18 also addresses the back tax issue and states:

“Because the Company has settled the judgment lien with the County, all back taxes have been paid. The amortization of the allocated back taxes allows the Company to partially recover its expenditures in rates. However, a large portion of the back taxes and all interest and penalties are recommended to be shareholder funded.”

PROPOSED COMMISSION MOTION:

Seventh Mountain Golf Village Water Company's application for the authority to issue a Note having a principal amount of \$40,000 be approved with Staff's conditions and reporting requirements.

UF 4249 Seven Mountain Golf Village Water