



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: December 26, 1996
TO: Division of Records & Reporting
FROM: Kathleen M. Johnson, Attorney, Division Of Legal Services *KMJ*
RE: Docket No. 961321-WS - Application for certificates to provide water and wastewater service in Clay County by Point Water and Sewer, Inc.

Please file the attached letter, with attachments, from Douglas H. Reynolds, Esquire, dated November 27, 1996, in the above referenced docket.

KMJ/mw

cc: Division of Water and Wastewater (Brady, Redemann)

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

DOCUMENT NUMBER-DATE

13791 DEC 30 96

FPSC-RECORDS/REPORTING

RECEIVED
FLORIDA PUBLIC
SERVICE COMMISSION

LAW OFFICES

Cox & Reynolds

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS

SAVINGS OF AMERICA BUILDING, 10TH FLOOR

96 DEC -2 PM 9:31 3875 NORTH FEDERAL HIGHWAY

FORT LAUDERDALE, FLORIDA 33308

MAIL ROOM

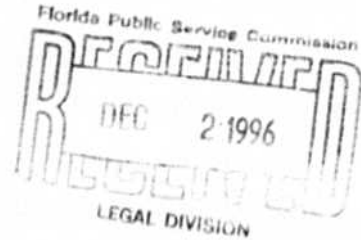
TELEPHONE (954) 491-5220

TELECOPIER (954) 491-0702

November 27, 1996

VIA FACSIMILE: (904) 413-6250
AND REGULAR U.S. MAIL

Kathleen M. Johnson, Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Sumard Oak Boulevard
Tallahassee, Florida 32399-0850



RE: Point Water & Sewer, Inc. v. Point Property Owner's Association
Case No. 96-1954-CA

Dear Kathleen:

We are in receipt of your letter dated November 22, 1996.

Please accept this letter as a written statement of our representation of Point Water & Sewer, Inc.

Please find enclosed a copy of the Court's Order dated November 8, 1996 and the Defendant's Motion.

As I advised you by telephone today, we are sending today by courier our application for a staff assisted rate case.

Please accept this letter as an emergency request for rate consideration and determination. The primary customer of this utility, the Point Property Owner's Association, insists that we continue to provide water service without payment. Obviously, this places a substantial hardship on this small utility.

We implore your agency and yourself to act in the best interest of all concerned and determine emergency temporary rates.

Very truly yours,


DOUGLAS H. REYNOLDS

DHR:pdI

Enclosures

cc: Point Water & Sewer

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR CLAY
COUNTY, FLORIDA

CASE NO.: 96-1954-CA
DIVISION: B

POINT WATER AND SEWER, INC.,
a Florida corporation,

Plaintiff,

vs.

THE POINT PROPERTY OWNERS
ASSOCIATION, INC., a Florida
corporation,

Defendant.

DEFENDANT'S MOTION FOR CLARIFICATION OF, OR AMENDMENT
TO, TEMPORARY INJUNCTION

Defendant, The Point Property Owners Association, Inc., a Florida corporation ("Association"), moves this Court for entry of an order clarifying, or amending, the temporary injunction entered herein on November 8, 1996, and in support of this motion alleges:

1. Paragraph 3 of the temporary injunction requires Defendant Association to pay the sum of \$32,921.86 for the period from March, 1995 through October, 1996, as a condition to effectiveness of the injunction.

2. It appears that the sum of \$32,921.86 includes amounts for insurance costs that were never incurred by Plaintiff for the period in question. At the hearing on November 6, 1996, the

evidence was uncontradicted that no insurance had been acquired by Plaintiff to date. While insurance costs are a reasonable expense of operating the plant, Defendant should not be required as a condition to the injunction to pay for retroactive costs that were never incurred. Defendant has no objection to paying for reasonable costs of insurance coverage incurred prospectively.

3. The evidence at the hearing on November 6, 1996 was uncontradicted that Whitney's Marina historically uses 29%-35% of the water and sewer service of the plant as measured by a separate meter for Whitney's usage. (See chart of actual costs, a copy of which is attached hereto, received into evidence) John Yonge did not dispute this percentage of usage. However, Yonge admitted that Whitney's was being charged only \$300.00 a month at the present time for water and sewer service.

4. The temporary injunction should take into consideration income properly recoverable from Whitney's Marina for the period from March 1995 through October 1996 as well as for service provided by Plaintiff in the future. As written, the temporary injunction requires Defendant to pay 100% of Plaintiff's costs for those items listed in paragraph 2 of the injunction.

5. The Defendant Association may not be financially able to comply with the requirements of the temporary injunction, as

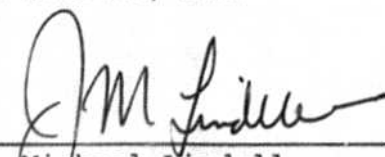
written, within the time frames established by that injunction. In such event, Association requests clarification that the effect of such failure will be to lift the temporary injunction but not expose Defendant to punishment for contempt of court.

6. Defendant Association desires access to all invoices, statements and canceled checks in Plaintiff's possession relating to those costs which Association is required to pay pursuant to the temporary injunction. Although Defendant has repeatedly demanded such documentation in the past, the same is still not forthcoming. Defendant Association requests this Court to amend its temporary injunction to require Plaintiff to furnish all invoices, statements, cancelled checks and other relevant documents which substantiate the costs that are being billed to Association.

WHEREFORE, Defendant Association respectfully requests clarification of, or amendment to, the temporary injunction in the foregoing respects.

HAYES & LINDELL, P.A.

By: _____


J. Michael Lindell
Florida Bar No. 262226
620 Blackstone Building
233 East Bay Street

Jacksonville, Florida 32202
(904) 353-5000

Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Douglas H. Reynolds, Esquire, Cox & Reynolds, Savings of America Building, 10th Floor, 4875 North Federal Highway, Fort Lauderdale, Florida 33308 by telecopier and regular U.S. Mail, postage prepaid, this 19 day of November, 1996.



Attorney

Point\Motion.Cla

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
CLAY COUNTY, FLORIDA

CASE NO: 96-1954-CA

DIVISION: CV-B

POINT WATER AND SEWER, INC.,
a Florida corporation,

Plaintiff,

vs.

THE POINT PROPERTY OWNERS ASSOCIATION
INC., a Florida corporation,

Defendant.

TEMPORARY INJUNCTION

This matter came to be heard on defendant's Motion for Temporary Injunction and plaintiff's Motion to Compel Payment, and the Court having heard testimony and received evidence, considered argument of counsel, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED:

1. Plaintiff is directed to continue to provide to defendant water and sewer service in accordance with the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Provisions for Party Wall of the Point until further order of court.

2. Defendant shall pay for the service provided by plaintiff by paying the costs of (a) the service technician; (b) chemicals tests and maintenance; (c) taxes and regulatory expenses; and (d) insurance.

3. The costs to be borne by defendant and unpaid for the months of March 1995 through October 1996, totalling \$32,921.86 shall be paid within 30 days from the date of this order.

4. Defendant shall pay all future monthly bills within 20 days of receipt of same.

5. The terms of this order are without prejudice to either

party seeking an adjustment in the charges ordered herein after receipt of a ruling by the Public Service Commission.

DONE AND ORDERED at Green Cove Springs, Clay County, Florida,
this 8th day of November, 1996. **ORDER ENTERED**

NOV. 8 - 1996

~~/s/ ROBERT M. FOSTER~~
ROBERT M. FOSTER
CIRCUIT JUDGE

Copies to:

Douglas H. Reynolds, Esq.
J. Michael Lindell, Esq.