

ORIGINAL

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Speaker



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April 29, 2004

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Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0870

RE: Docket No. 030102-WS

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Direct Testimony of Donna DeRonne filed on behalf of the Citizens of the State of Florida for filing in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Burgess  
Deputy Public Counsel

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- ECR Enclosures
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Authority to Sell, )  
Assign or Transfer Utility Facilities of THE )  
WOODLANDS OF LAKE PLACID, L.P. )  
and Application to transfer Majority )  
Organization Control of L.P. Utilities )  
Corporation to CAMP FLORIDA )  
PROPERTY OWNERS ASSOCIATION, INC. )

Docket No. 030102-WS  
Filed: April 29, 2004

DIRECT TESTIMONY OF  
DONNA DERONNE

Respectfully submitted,  
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1 DIRECT TESTIMONY OF DONNA DERONNE  
2 ON BEHALF OF THE CITIZENS OF FLORIDA  
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
4 DOCKET NO. 030102-WS  
5

6 INTRODUCTION

7 Q. WHAT IS YOUR NAME, OCCUPATION AND BUSINESS ADDRESS?

8 A. My name is Donna DeRonne. I am a Certified Public Accountant licensed in the State  
9 of Michigan and a senior regulatory consultant at the firm of Larkin & Associates,  
10 PLLC, Certified Public Accountants, with offices at 15728 Farmington Road, Livonia,  
11 Michigan 48154.

12

13 Q. PLEASE DESCRIBE THE FIRM LARKIN & ASSOCIATES, PLLC..

14 A. Larkin & Associates, PLLC, is a Certified Public Accounting and Regulatory Consulting  
15 Firm. The firm performs independent regulatory consulting primarily for public  
16 service/utility commission staffs and consumer interest groups (public counsels, public  
17 advocates, consumer counsels, attorneys general, etc.). Larkin & Associates, PLLC, has  
18 extensive experience in the utility regulatory field as expert witnesses in over 400  
19 regulatory proceedings, including numerous electric, gas, water and wastewater and  
20 telephone utility cases.

21

22 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC  
23 SERVICE COMMISSION?

24 A. Yes. I have testified before the Florida Public Service Commission on several prior

25

1 occasions. I have also testified before several other state regulatory commissions.

2

3 Q. HAVE YOU PREPARED AN APPENDIX DESCRIBING YOUR QUALIFICATIONS  
4 AND EXPERIENCE?

5 A. Yes. I have attached Appendix I, which is a summary of my regulatory experience and  
6 qualifications.

7

8 Q. ON WHOSE BEHALF ARE YOU APPEARING?

9 A. Larkin & Associates, PLLC, was retained by the Florida Office of Public Counsel (OPC)  
10 to review the application submitted by The Woodlands of Lake Placid, L.P. (Company)  
11 for approval to sell, assign or transfer utility facilities to Camp Florida Property Owners  
12 Association, Inc. and for approval to transfer majority organizational control of L.P.  
13 Utilities Corporation to Camp Florida Property Owners Association, Inc. Accordingly,  
14 I am appearing on behalf of the Citizens of Florida (Citizens).

15

16 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

17 A. The purpose of my testimony is to address the proposed transfer of Certificate No. 620-  
18 W and 533-S by the Petitioner in this docket.

19

20 Q. WHAT IS THE STANDARD THAT THE PSC SHOULD APPLY IN DETERMINING  
21 WHETHER TO ALLOW THIS TRANSFER?

22 A. The standard is specified in Section 367.071 of the Florida Statutes. The most relevant  
23 provisions of that statutory section states:

24

25

1                   (1) No utility shall sell, assign, or transfer its certificate of  
2 authorization, facilities or any portion thereof, or  
3 majority organizational control without determination  
4 and approval of the commission that the proposed sale,  
5 assignment, or transfer is in the public interest and that  
6 the buyer, assignee, or transferee will fulfill the  
7 commitments, obligations, and representations of the  
8 utility.

6 Q. IS IT YOUR INTENTION TO MAKE A LEGAL INTERPRETATION OF THIS  
7 STATUTE?

8 A. No, it is not. I do intend, however, to discuss the factual circumstances in this case that  
9 I believe are relevant to the determination of "the public interest."

10

11 Q. DO YOU BELIEVE THE COMMISSION SHOULD APPROVE THE TRANSFER OF  
12 CERTIFICATE NOS. 620-W AND 533-S?

13 A. No, I do not. The transfer is clearly against the public interest.

14

15 Q. HAVE YOU SPOKEN TO THE UTILITY'S CUSTOMERS ABOUT ANY OF THE  
16 ISSUES THAT YOU WILL ADDRESS IN THIS TESTIMONY?

17 A. Yes, I have spoken to the customers on several occasions. During the utility's  
18 unsuccessful attempt to challenge the results of the recent Staff Assisted Rate Case  
19 (SARC), I visited Lake Placid and had discussions with customers. More recently, on  
20 March 31, 2004, I visited Camp Florida Resort for the specific purpose of discussing  
21 this proposed transfer. In an extraordinary turnout, more than seventy-five residents of  
22 Camp Florida gathered at one resident's home to give their input about the proposed  
23 transfer. These residents, as owners of lots in the Camp Florida Resort, are members  
24 of the Camp Florida Property Owners Association. The meeting lasted about two hours,

25

1 and everyone in attendance was invited to speak his or her mind.

2

3 Q. WAS THERE A CONSENSUS?

4 A. There was far more than a consensus. Of the many people who spoke, there was  
5 unanimous agreement that they vehemently opposed the transfer.

6

7 Q. IN HIS DIRECT TESTIMONY, LP UTILITIES WITNESS JOHN LOVELETTE  
8 STATES THAT THE MAJORITY OF CUSTOMERS OF THE WATER AND  
9 WASTEWATER SYSTEM AGREED WITH THE PROPOSED TRANSACTION.  
10 GIVEN YOUR ABOVE STATEMENT, HOW CAN MR. LOVELETTE'S  
11 ASSERTION BE ACCURATE?

12 A. According to page 11 of Mr. Lovelette's testimony, of the 397 votes in the Property  
13 Owners Association, 276 voted in favor of the transfer, 85 voted against the transfer and  
14 36 votes abstained. Each lot within Camp Florida Resort has one vote in POA matters.  
15 While it is correct that the majority of the lots voted in favor of the transaction, the  
16 majority of the individual customers did not. Highvest Corporation, for which Mr.  
17 Anthony Cozier makes the management decisions, owns 246, or 62%, of the 397 lots.  
18 As a result, Highvest Corporation essentially has full control of the decisions made by  
19 the POA as it has 62% of the votes.

20

21 Q. WHAT REASONS WERE GIVEN BY THE INDIVIDUAL LOT OWNERS, WHICH  
22 ARE MEMBERS OF THE POA, TO OPPOSE THE TRANSFER?

23 A. Various customers gave a number of valid reasons for their opposition. I would  
24 paraphrase and categorize the reasons as follows:

25

1           1.       They believe that they should not be forced to put up money to purchase a  
2                    business.

3

4           2.       They believe that they should not be forced into a relationship of business co-  
5                    ownership with someone whose ethics they seriously question.

6

7           3.       They believe that they should not be forced to put up their money to purchase a  
8                    business whose management is incompetent or has allegiances that are counter  
9                    to the financial health of the business.

10

11 Q.     DO YOU AGREE WITH THE REASONING AND THE CONCLUSIONS REACHED  
12           BY THE CUSTOMERS?

13 A.     Yes, I do.

14

15 FORCED TO PURCHASE A BUSINESS

16 Q.     WOULD YOU PLEASE ADDRESS THE FIRST ISSUE IDENTIFIED ABOVE?

17 A.     Yes. The first issue is that the residents do not feel they should be forced to purchase  
18           a business. This is an even more compelling issue when it is being run in such a fashion  
19           that it is essentially assured to go bankrupt. Not only is the utility's history one of  
20           financial failure, but its current practice renders it almost certain to repeat its history of  
21           financial failure.

22

23           At the time Staff was conducting its investigation in the SARC, the utility was owned  
24           by The Woodlands of Lake Placid, LP (whose general partner was Camper Corral, Inc.)

25

1 and the utility assets were subject to a mortgage held by Highvest Corporation.  
2 Highvest, through the foreclosure described below, also owns the rental lots in Camp  
3 Florida Resort, which are the majority of the lots. Prior to the foreclosure, these rental  
4 lots were owned by an entity owned and controlled by Mr. Anthony Cozier. Counter to  
5 any reasonable business practice, the utility chose to provide water and wastewater  
6 service (and incur all the variable costs thereon) to the lots owned by Mr. Cozier through  
7 one of his business entities, but chose not to collect any fees for the utility service.  
8 Partially as a result of this "business practice," the Woodlands of Lake Placid, L.P. could  
9 not generate enough revenue to stay current on the mortgage note covering the utility  
10 assets. At a time of its choosing, Highvest then foreclosed on the mortgage, and the  
11 utility assets were taken from the Woodlands of Lake Placid, L.P. and transferred by  
12 Highvest to the LP Utilities, Inc. As a result of the foreclosure, Highvest also became  
13 owner of the majority of the lots.

14  
15 To the best of my knowledge, L.P. Utilities is currently engaging in fundamentally the  
16 same business practice in that water and wastewater service is being provided to the  
17 rental lots, but L.P. Utilities does not collect water and wastewater revenues from  
18 Highvest for service to those lots. Collection of revenues from the majority of the lots  
19 within the resort is necessary to recover all costs incurred by the utility operations.  
20 Clearly, this practice is certain to once again lead to financial ruin.

21  
22 There may be other situations in which a utility chooses to forego a very limited amount  
23 of revenue from a particular customer, and simply absorbs that loss in the owner's  
24 bottom line. In this case, however, that practice is entirely unacceptable for two reasons.



1 First, Highvest owns 246 of the 397 platted lots in Camp Florida Resort. This is  
2 approximately 62% of the lots. Thus, the rental lots owned by Highvest consisted of a  
3 significant portion of utility's total revenue responsibility when rates were set by the  
4 Commission. No company can forego such a high portion of its revenue and continue  
5 to remain financially viable.

6  
7 Second, under this proposal, the loss from the foregone revenue would be borne by the  
8 remaining lot owners, which are members of the POA and include those who  
9 specifically voted against the transaction. The loss would be absorbed by the non-  
10 Highvest owners (i.e., the individual customer/owners) to the extent of their  
11 proportionate ownership. In other words Highvest would benefit by escaping payment  
12 of 100% of the foregone charges, but only have to bear the loss to the extent of its  
13 proportionate ownership share. Naturally, the POA (as new owner of the utility) would  
14 not object to this inequity because Highvest would approve the arrangement via  
15 exercising of its majority POA votes.

16  
17 Before long, the utility owner (the POA) would be forced to either go bankrupt and lose  
18 the utility assets, or raise new capital to fund the continuation of this inequitable  
19 arrangement. For the wastewater system, if the Petitioners proposal is adopted, the  
20 customers would be even worse off as they would no longer have the protection of the  
21 Public Service Commission. Either decision, i.e., raising new capital or bankruptcy,  
22 would be made unilaterally by Highvest with its majority control. Since this would be  
23 a capitalization decision supposedly made by the utility owners, it may be argued that  
24 it is beyond the Public Service Commission's concern for even the water system. How

1 can it be in the public interest to force the customers of the utility system to become  
2 owners of the system under such circumstances?

3

4 FORCED BUSINESS RELATIONSHIP

5 Q. WHAT ABOUT THE SECOND POINT RAISED BY THE CUSTOMERS?

6 A. The second summarized point made by the residents was that they feel they should not  
7 be forced into a relationship of business co-ownership with someone whose ethics they  
8 seriously question. Many of the individuals who spoke at the March 31, 2003 discussion  
9 felt strongly about this issue, with strong agreement from the other attendees.

10

11 Business partnerships are typically thought of in terms of voluntary arrangements – if  
12 I am leery of someone’s ethics, I can simply avoid a business partnership with that  
13 person. This is an important freedom. That freedom is a significantly more important  
14 when the business partnership involves not just co-ownerships, but also co-management  
15 of the business and co-purchasing of the product produced by the jointly owned  
16 business. A person should be able to make his own decision of whether to become  
17 entangled in such an all-encompassing fashion.

18

19 The personal autonomy over such a decision is particularly important when one has  
20 grave reservations about the ethics and motives about the potential partner. In this case,  
21 a number of customers expressed deep concerns about the ethics and motives of Mr.  
22 Cozier, the president of Highvest. Their concerns arise from the history of their  
23 interactions with Mr. Cozier in other matters. In Richard Peratoni, Sara Keller, et al, vs.  
24 Camper Corral, Inc., a Florida not for profit corporation, et al., Case No. GC 97-240, GC

25

1 98-158 (Consolidated), several of the individual lot owners, who are members of the  
2 POA, sued Mr. Cozier and Mr. Lovelette in Circuit Court. Among other findings on  
3 behalf of the plaintiffs, the Court awarded the plaintiff's \$289,934.23 plus interest in  
4 damages, along with \$96,274.06 in prejudgement interest. The Final Judgment reached  
5 a number of remarkable findings of fact, including the following:

6  
7 The representatives of the association negotiated a sale in good  
8 faith. The Parties had created an enforceable contract for sale of  
9 the property but the Defendant Cozier and the Defendant  
10 Woodlands added additional requirements and conditions to its  
11 final offer. The Defendant Cozier negotiated in bad faith and  
12 throughout the negotiation process used suspect, underhanded,  
13 unethical, and bad faith tactics to mislead the Plaintiffs to a  
14 timetable that exceeded the Statute of Limitations.

15 \* \* \* \* \*

16 4. BREACH OF FIDUCIARY DUTY: Defendants Cozier and  
17 Lovelette breached their fiduciary duties to the Plaintiffs as  
18 members of the Property Owners Association thru a variety of  
19 acts including without limitation:

20 \* \* \* \* \*

21 e. Intentionally misrepresenting the Developer's  
22 obligation for maintenance payments to the  
23 association, advising the members that the  
24 Developer had no legal obligation to pay any  
25 assessments.

f. Amending the bylaws, skirting the Covenants and  
Restrictions, to reduce the Developer's obligation  
for maintenance payments.

g. Diverting funds that should have been  
reimbursed to the members to the road reserve  
without requiring the Developer to make any  
proportionate contributions to that reserve.

\* \* \* \* \*

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- i. Continuously meeting and discussing Property Owners Association business and issues including the budget without notice to the members as required by Statute.
  
- j. Double charging for maintenance during the year 1998 by paying his own corporation Camper Corral by paying Cozier's own corporation Camper Corral, Inc. for maintenance that was not performed on behalf of the Property Owners Association.

\* \* \* \* \*

This is just a partial list of the things Mr. Cozier has done to the individual lot owners, which are members of the Property Owners Association.<sup>1</sup> How can it possibly be in the public interest to force these people directly against their will to enter into a further business partnership with someone who has already done these things to them?

Based on these incidents, as well as others I have not recounted, customers question the ethics and motives of Mr. Cozier. When this validated level of distrust exists, it cannot be in the public interest to force people into a business partnership. Commissioners and Staff need only ask themselves whether they would consider it in the public interest if they were forced into such a business relationship. I recommend that the Commissioners read the list of findings by the Circuit Court, which is provided as Exhibit \_\_ (DD-3), attached to this testimony.

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<sup>1</sup>The dollar award was overturned by the District Court because the amount of damages was based on the effects as applied to the total park, while only a small number of those residents brought suit. Nevertheless, none of the Circuit Court's findings of fact were disturbed by the Appellate Court. A copy of both Circuit Court and District Court decisions are attached to this testimony as Exhibit \_\_ (DD-3) and Exhibit \_\_ (DD-4).

1 CONFLICTING ALLEGIANCE OF THE UTILITY MANAGEMENT

2 Q. WOULD YOU PLEASE ADDRESS THE THIRD POINT RAISED BY THE  
3 CUSTOMERS?

4 A. Yes. Many customer expressed their concern with the management of the utility. In a  
5 proper business setting, management exercises a fiduciary obligation to the owner(s) of  
6 that business. This is an indispensable component of acceptable business practice. It  
7 is also important to understand that the management must have its allegiance to the  
8 business owner(s) in their capacity as owners of that business, rather some other capacity  
9 or interest that an owner might also happen to have.

10

11 In this case, the homeowners have every reason to be concerned about this factor. The  
12 utility has been run and managed by Mr. John Lovelette. The Application proposes that  
13 Mr. Lovelette continue to manage the utility business. The utility, under Mr. Lovelette's  
14 watch, has not collected charges for water and wastewater services from Highvest as the  
15 current owner of the rental lots or the prior owner of the rental lots, which was an entity  
16 owned by Mr. Cozier. To the best of my knowledge this practice continues. As I  
17 described earlier, this deficiency led directly to the prior foreclosure on the utility assets.  
18 This was a fundamental business failure.

19

20 The business failure, of itself, is bad enough, but the continued refusal to rectify the  
21 situation is even worse. To the best of my knowledge, the utility still is not collecting  
22 water and wastewater charges from Highvest, so the financial duress continues. One  
23 would expect a utility manager to charge Highvest to prevent a second financial ruin.

24

25

1 The obvious problem, of course, is that Mr. Loyelette exercises his allegiance to Mr.  
2 Cozier personally, rather than to the financial well-being of the company he manages.  
3 The transfer Petition proposes to have Mr. Lovelette continue as the manager of the  
4 utility operations. Since Mr. Lovelette was managing the utility operations that were  
5 foreclosed upon, there is no reason to believe that the utility will be managed any  
6 differently.

7  
8 Once again, it is obviously contrary to the public interest to force customers, directly  
9 against their will, to purchase a utility that is and will continue to be managed by  
10 someone who will not have an allegiance to them as owners, and who has proven to be  
11 unable to run a solvent utility operation.

12

13 GOING CONCERN ISSUE

14 Q. ARE THERE ANY ADDITIONAL FACTS THAT DEMONSTRATE THAT THE  
15 TRANSFER OF THE UTILITY ASSETS TO THE CAMP FLORIDA PROPERTY  
16 OWNERS ASSOCIATION IS NOT IN THE PUBLIC INTEREST?

17 A. Yes. The issue of potential bankruptcy of the business was addressed previously. I wish  
18 to provide some further compelling facts to the Commission with regards to this issue.  
19 Under the method by which L.P. Utilities proposes to sell and transfer the wastewater  
20 facilities to the POA, it would not be possible for the POA to make the full mortgage  
21 payment on the wastewater facilities and pay on-going wastewater system operating  
22 costs under the current wastewater rates that were set and approved by the Commission  
23 in its Order No. PSC-03-1051-FOF-WS. This makes it highly possible for the POA to  
24 default on the proposed mortgage for the purchase of the wastewater facilities absent a

25

1 significant increase in the amount to be collected from customers, which are POA  
2 members, for wastewater service. It clearly is not in the public interest to set up the sale  
3 and transfer in such a way that a default on the proposed mortgage is virtually  
4 guaranteed absent a significant increase in the rates charged.

5

6 Q. WOULD YOU PLEASE DISCUSS THE PROPOSED MORTGAGE THAT WOULD  
7 BE USED TO PURCHASE THE WASTEWATER ASSETS BY THE POA ALONG  
8 WITH THE ANNUAL FINANCIAL IMPACT OF THE PROPOSED MORTGAGE ON  
9 THE POA?

10 A. Yes. According to LP Utilities' witness John Lovelette's direct testimony in this case,  
11 at page 9, the POA would acquire the wastewater system assets for \$191,523, with the  
12 entire purchase price paid in the form of a note to be executed by the POA. The POA  
13 would then pay the note in quarterly installments of principle and interest over a ten-year  
14 period at 6.99% interest per year. The note terms are identified in Mr. Lovelette's  
15 testimony and also provided for in the Agreement for Purchase and Sale provided as  
16 Exhibit "B" of Exhibit \_\_ (JHL-1) to his testimony, at page 1. Under the terms, the  
17 quarterly payments would be \$6,694.96, resulting in total annual mortgage payments by  
18 the POA of \$26,779.84.

19

20 Q. WHO WOULD HOLD THE NOTE ON THE WASTEWATER PROPERTY?

21 A. According to the proposed Agreement for Purchase and Sale identified above, as well  
22 as the Company's Application in this case, the note payable would be to Anbeth  
23 Corporation and would be secured by a first mortgage and a promissory note in favor  
24 of Anbeth Corporation of the real property and improvements comprising the

25

1 wastewater system. As indicated in Commission Order No. PSC-03-1051-FOF-WS, at  
2 pages 17 and 18, "Anbeth Corporation is a corporate business entity, whose  
3 officers/directors and shareholder is a trust formed by Anthony Cozier and his wife,  
4 Elizabeth Cozier." Mr. Cozier and his wife are the effective owners and sole decision  
5 makers for Anbeth Corporation.

6  
7 Q. YOU PREVIOUSLY INDICATED THAT IT WOULD NOT BE POSSIBLE FOR THE  
8 POA TO PAY THE FULL MORTGAGE PAYMENT ON THE WASTEWATER  
9 ASSETS AND SYSTEM OPERATING COSTS ABSENT A SIGNIFICANT  
10 INCREASE IN THE AMOUNTS COLLECTED FROM THE POA MEMBERS FOR  
11 THE WASTEWATER SERVICE. WOULD YOU PLEASE EXPLAIN THIS  
12 STATEMENT?

13 A. Yes. Under the proposed loan terms, the annual required payments to Anbeth  
14 Corporation for principle and interest would be \$26,779.84. On Exhibit\_\_(DD-1),  
15 Schedule 1, attached to this testimony, I provide an analysis of the ability of the POA  
16 to make this annual payment from the wastewater revenues in addition to the costs of  
17 operating the wastewater system. The schedule utilizes the adjusted operating costs  
18 contained in the schedules provided with Commission Order No. PSC-03-1051-FOF-  
19 WS in the recent Staff Assisted Rate Case. As shown on line 15 of Schedule 1, the  
20 annual level of recurring operation and maintenance expenses for operating the  
21 wastewater system, assuming no impacts from inflation, non-recurring items or salary  
22 and wage increases to employees since the time of the rate case, is \$27,967. This  
23 excludes costs that will discontinue due to the system no longer being regulated under  
24 LP Utility's proposal, such as regulatory commission expense. The amount of annual



1 operating costs increases to \$32,493 once property taxes and payroll taxes applicable to  
2 the wastewater plant are considered. If the annual amount of mortgage payments are  
3 added to this based on the terms contained in the Agreement for Purchase and Sale, the  
4 annual cash requirements would be \$59,273. It is important to note that this amount is  
5 based on the annual level of cash costs of the operations and debt payment and does not  
6 include expenses associated with non-cash items, such as depreciation. Nor would it  
7 include costs that may be needed for capital, such as replacement of wastewater plant  
8 components.

9  
10 In the Commission's Order in the SARC, rates were set to recover an annual wastewater  
11 revenue level of \$57,334. As shown on line 21 of Schedule 1, the annual revenue  
12 amount is \$1,939 less than the amount that would need to be collected to recover the  
13 annual level of expenditures for operating the system and annual mortgage payments.  
14 This amount also assumes Highvest will be billed for and pay for the wastewater  
15 services received on the rental lots, including both base and usage charges.

16  
17 At the time of the rate case, 162 rental lots were factored into the rate design  
18 calculations. As previously mentioned, Highvest owns 246 of the 397 platted lots in  
19 Camp Florida Resort. To the best of my knowledge, and based on Mr. Lovelette's  
20 testimony, meters still have not been placed on the majority of the rental lots. I have  
21 seen no evidence that Highvest has begun to pay for water and wastewater service on  
22 the rental lots. If non-payment for wastewater service for the lots owned by Highvest  
23 continues, the cash shortfall will be significantly greater than the \$1,939 identified  
24 above.

1 Q. PLEASE EXPLAIN.

2 A. In Exhibit \_\_ (DD-1), Schedule 2, I estimated the amount of wastewater revenues from  
3 the 162 rental lots included in the rate design calculations to be \$21,591, consisting of  
4 the base facility charge and gallonage charge. If Highvest, for which Anthony Cozier  
5 is responsible for decision making, does not pay for the wastewater service on at least  
6 the 162 rental lots factored into the rate design calculations, then the \$1,939 cash  
7 shortfall would increase to a shortfall of \$23,530. The calculation of this shortfall is  
8 presented on Schedule 1. In this situation it would not be possible for the POA to pay  
9 the full mortgage payment from the wastewater revenues to be collected. Either  
10 amounts collected for wastewater service would have to be increased significantly or  
11 other POA funds would have to be used to pay the mortgage on the wastewater facilities;  
12 otherwise, there is a good chance the POA would default on the mortgage. Clearly  
13 under either scenario an increase in costs to the individual homeowners within the POA  
14 is likely. This is even exacerbated if Highvest, which is operated by Mr. Cozier, does  
15 not pay for wastewater service on the Highvest owned rental lots.

16  
17 Q. WHAT HAPPENS IF THE POA DEFAULTS ON THE MORTGAGE?

18 A. I assume Anbeth would foreclose on the mortgage, with the result being that the  
19 wastewater assets could become the property of Anbeth Corporation, or one of Mr.  
20 Cozier's other entities. As was evident in the SARC in Docket No. 020010-WS, and  
21 as was previously mentioned in this testimony, Mr. Cozier has used entities under his  
22 control to foreclose on assets of other entities controlled by him. During the time of the  
23 SARC, Highvest foreclosed on the water and wastewater assets of The Woodlands of  
24 Lake Placid, L.P. due to failure to pay mortgage payments, thereafter transferring control

25

1 of the water and wastewater assets to L.P. Utilities. All three of these entities were  
2 either owned or controlled by Mr. Cozier at the time of the transactions.

3

4 Q. COULD YOU PROVIDE A MATRIX SHOWING THE RELATIONSHIPS  
5 BETWEEN THE VARIOUS ENTITIES THAT ARE OWNED OR CONTROLLED BY  
6 MR. COZIER?

7 A. Yes. In reviewing the Petitioners proposed transfer, it is important for the Commission  
8 to consider the relationships between the various entities involved. The Commission's  
9 Order No. PSC-03-1053-PAA-WS in this docket, dated September 22, 2003, at pages  
10 7 and 8, provided a matrix which charts the relationships among the entities showing  
11 how interrelated they are. I am providing a copy of these pages from the Commission's  
12 Order as Exhibit \_\_ (DD-2) for ease of reference to the those reviewing this testimony.  
13 The entities mentioned throughout this testimony, with the exception of the Property  
14 Owners Association, are shown in this matrix. As previously mentioned, 246 of the 397  
15 votes in the Property Owners Association are controlled by Highvest, which is included  
16 in the matrix.

17

18 Q. PLEASE SUMMARIZE YOUR OVERALL RECOMMENDATION.

19 A. For all of the foregoing reasons, forcing the homeowners to purchase the wastewater  
20 assets and the stock of L.P. Utilities (thereby purchasing the water assets) is not in the  
21 public interest. The transfer should be denied.

22

23 Q. DOES THIS COMPLETE YOUR TESTIMONY?

24 A. Yes, it does.

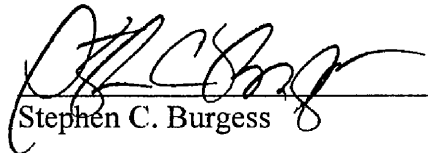
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**CERTIFICATE OF SERVICE  
DOCKET NO. 030102-WS**

I HEREBY CERTIFY that a true and exact copy of the above and foregoing Direct Testimony of Donna DeRonne has been furnished by hand delivery or U.S. Mail to the following parties of record this 29<sup>th</sup> day of April, 2004.

Katherine Fleming, Esquire\*  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Martin S. Friedman, Esquire  
Rose, Sundstrom & Bentley, LLP  
600 S. North Lake Boulevard, Suite 160  
Altamonte Springs, FL 32701

  
\_\_\_\_\_  
Stephen C. Burgess

QUALIFICATIONS OF DONNA DERONNE, C.P.A.

Q. WHAT IS YOUR OCCUPATION?

A. I am a certified public accountant and regulatory consultant in the firm of Larkin & Associates, PLLC, Certified Public Accountants, with offices at 15728 Farmington Road, Livonia, Michigan.

Q. PLEASE DESCRIBE YOUR EDUCATION AND EXPERIENCE.

A. I graduated with honors from Oakland University in Rochester, Michigan in 1991. I have been employed by the firm of Larkin & Associates, PLLC, since 1991. As a certified public accountant and regulatory consultant with Larkin & Associates, PLLC, my duties have included the analysis of utility rate cases and regulatory issues, researching accounting and regulatory developments, preparation of computer models and spreadsheets, the preparation of testimony and schedules and testifying in regulatory proceedings. I have also conducted five training programs on behalf of the Department of Defense - Navy Rate Intervention Office on measuring the financial capabilities of firms bidding on Navy assets. A partial listing of cases which I have participated in are included below:

**Performed Analytical Work in the Following Cases:**

|                                      |  |
|--------------------------------------|--|
| Docket No. 92-06-05                  | The United Illuminating Company<br>State of Connecticut,<br>Department of Public Utility Control   |
| Docket No. R-00922428                | The Pennsylvania American Water Company<br>Pennsylvania Public Utility Commission  |
| Cause No. 39498                      | PSI Energy, Inc.<br>Before the State of Indiana - Indiana Utility Regulatory<br>Commission   |
| Docket No. 6720-TI-102               | Wisconsin Bell, Inc.<br>Wisconsin Citizens' Utility Board  |
| Docket No. 90-1069<br>(Remand)       | Commonwealth Edison, Inc.<br>Before the Illinois Commerce Commission   |
| Docket Nos. 920733-WS<br>& 920734-WS | General Development Utilities, Inc. - Port Labelle<br>and Silver Springs Shores Divisions.<br>Before the Florida Public Service Commission |
| Case No. PUE910047                   | Virginia Electric and Power Company<br>(State Corporation Commission)  |
| Docket No.<br>U-1565-91-134          | Sun City Water Company<br>Residential Utility Consumer Office  |
| Docket No. 930405-EI                 | Florida Power & Light Company<br>Before the Florida Public Service Commission  |
| Docket No. UE-92-1262                | Puget Sound Power & Light Company<br>Before the Washington Utilities & Transportation<br>Commission  |
| Docket No. R-932667                  | Pennsylvania Gas & Water Company<br>Before the Pennsylvania Public Utility Commission  |
| Docket No. 7700                      | Hawaiian Electric Company, Inc.<br>Before the Public Utilities Commission of the State of<br>Hawaii  |
| Docket No.<br>R-00932670             | Pennsylvania American Water Company<br>Pennsylvania Public Utility Commission  |

|  |   |
|--|---|
| Case No.<br>78-T119-0013-94                            | Guam Power Authority vs. U.S. Navy Public Works Center, Guam - Assisting the Department of Defense in the investigation of a billing dispute.                       |
| Case No. 90-256  | South Central Bell Telephone Company<br>Before the Kentucky Public Service Commission   |
| Case No. 94-355  | Cincinnati Bell Telephone Company<br>Before the Kentucky Public Service Commission  |
| Docket No. 7766  | Hawaiian Electric Company, Inc.<br>Before the Public Utilities Commission of the State of Hawaii  |
| Docket No. 2216  | Narragansett Bay Commission<br>On Behalf of the Division of Public Utilities and Carriers, Before the Rhode Island Public Utilities Commission                      |
| Docket No. 94-0097                                     | Citizens Utilities Company, Kauai Electric Division<br>Before the Public Utilities Commission of the State of Hawaii  |
| Docket No. 5863*                                       | Central Vermont Public Service Corporation<br>Before the Vermont Public Service Board   |
| Docket No. E-1032-95-433                               | Citizens Utilities Company - Arizona Electric Division<br>Before the Arizona Corporation Commission   |
| Docket No. R-00973947                                  | United Water Pennsylvania<br>Before the Pennsylvania Public Utilities Commission  |
| Docket No. 95-0051                                     | Hawaiian Storm Damage Reserve Case<br>Before the Public Utilities Commission of the State of Hawaii   |
| Application Nos.<br>96-08-070, 96-08-071,<br>96-08-072 | Pacific Gas & Electric Company, Southern California Edison Company & San Diego Gas & Electric Co.; Phases I & II; Before the California Public Utilities Commission |
| Docket No. E-1072-97-067                               | Southwestern Telephone Company<br>Before the Arizona Corporation Commission   |

|                             |  |
|-----------------------------|--|
| Docket No. 920260-TL        | BellSouth Telecommunications Inc. - Florida<br>On Behalf of the Florida Office of Public Counsel           |
| Docket No. R-00973953       | PECO Energy Company<br>Before the Pennsylvania Public Utilities Commission                                 |
| Docket No. 5983             | Green Mountain Power Corporation<br>Before the Vermont Public Service Board                                |
| Case No. PUE-9602096        | Virginia Electric and Power Company<br>Before the Commonwealth of Virginia<br>State Corporation Commission |
| Docket No. 97-035-01        | PacifiCorp, dba Utah Power & Light Company<br>Before the Public Service Commission of Utah                 |
| Docket No. G-34930705       | Black Mountain Gas Division - Northern States Power<br>Before the Arizona Corporation Commission           |
| Docket No. T-01051B-99-105* | US West/Qwest Corporation<br>Before the Arizona Corporation Commission                                     |
| Docket No. 98-10-019        | Verizon<br>Audit Report on Behalf of California Office of<br>Ratepayers Advocates                          |
| Docket No. 991437-WU*       | Wedgefield Utilities, Inc.<br>Before the Florida Public Service Commission                                 |
| Docket No. 99-057-20*       | Questar Gas Company<br>Before the Utah Public Service Commission   |
| Docket No. 6596             | Citizens Utilities Company - Vermont Electric Division<br>Before the Vermont Public Service Board          |
| Docket No. NJ2080614        | Rockland Electric Company<br>Before the New Jersey Board of Public Service                                 |
| Docket No. 5841/5859        | Citizens Utilities Company - Vermont Electric Division<br>Before the Vermont Public Service Board          |
| Formal Case No. 1016        | Washington Gas Light Company<br>Before the Public Service Commission of the<br>District of Columbia        |



Application No. 02-12-028 San Diego Gas & Electric Company  
Before the California Public Utilities Commission

Docket No. 03-2035-02\*\* PacifiCorp - Utah Operations  
Before the Public Service Commission of Utah

**Submitted Testimony in the Following Cases**

Docket No. 92-11-11 Connecticut Light & Power Company  
State of Connecticut, Department of Public Utility  
Control

Docket No. 93-02-04 Connecticut Natural Gas Corporation  
State of Connecticut, Department of Public Utility  
Control

Docket No. 95-02-07 Connecticut Natural Gas Corporation  
State of Connecticut, Department of Public Utility  
Control

Case No. 94-0035-E-42T Monongahela Power Company  
Before the Public Service Commission of West  
Virginia

Case No. 94-0027-E-42T Potomac Edison Company  
Before the Public Service Commission of West  
Virginia

Case No. 95-0003-G-42T\* Hope Gas, Inc.  
Before the West Virginia Public Service Commission

Case No. 95-0011-G-42T\* Mountaineer Gas Company  
Before the West Virginia Public Service Commission

Docket No. 950495-WS Southern States Utilities  
Before the Florida Public Service Commission

Docket No. 960451-WS United Water Florida  
Before the Florida Public Service Commission

Docket No. 5859 Citizens Utilities Company - Vermont Electric Division  
Before the Vermont Public Service Board

Docket No. 97-12-21 Southern Connecticut Gas Company

|                                 |  |
|---------------------------------|--|
|                                 | State of Connecticut, Department of Public Utility<br>Control  |
| Docket No. 98-01-02             | Connecticut Light & Power Company<br>State of Connecticut, Department of Public Utility<br>Control   |
| Docket No. 98-07-006            | San Diego Gas and Electric Company<br>Public Utilities Commission of the State of California         |
| Docket No. 99-04-18<br>Phase I  | Southern Connecticut Gas Company<br>State of Connecticut, Department of Public Utility<br>Control    |
| Docket No. 99-04-18<br>Phase II | Southern Connecticut Gas Company<br>State of Connecticut, Department of Public Utility<br>Control    |
| Docket No. 99-09-03<br>Phase I  | Connecticut Natural Gas Corporation<br>State of Connecticut, Department of Public Utility<br>Control |
| Docket No. 99-09-03<br>Phase II | Connecticut Natural Gas Corporation<br>State of Connecticut, Department of Public Utility<br>Control |
| Docket No. 99-035-10            | PacifiCorp dba Utah Power & Light Company<br>Public Service Commission of Utah                       |
| Docket No. 00-12-01             | Connecticut Light & Power Company<br>State of Connecticut, Department of Public Utility<br>Control   |
| Docket No. 6460*                | Central Vermont Public Service Corporation<br>Before the Vermont Public Service Board                |
| Docket No. 01-035-01*           | PacifiCorp dba Utah Power & Light Company<br>Public Service Commission of Utah                       |
| Docket No. G-01551A-00-0309     | Southwest Gas Corporation<br>Arizona Corporation Commission  |
| Docket No. 01-05-19             | Yankee Gas Services Company<br>State of Connecticut<br>Department of Public Utility Control          |

|  |  |
|--|--|
| Docket No. 01-035-23<br>Interim (Oral testimony) | PacifiCorp dba Utah Power & Light Company<br>Public Service Commission of Utah                       |
| Docket No. 01-035-23**                           | PacifiCorp dba Utah Power & Light Company<br>Public Service Commission of Utah                       |
| Docket No. 010503-WU                             | Aloha Utilities, Inc. - Seven Springs Water Division<br>Before the Florida Public Service Commission |
| Docket No. 000824-EI*                            | Florida Power Corporation<br>Before the Florida Public Service Commission                            |
| Docket No. 001148-EI**                           | Florida Power & Light Company<br>Before the Florida Public Service Commission                        |
| Docket No. 01-10-10                              | United Illuminating Company<br>Connecticut Department of Public Utility Control                      |
| Docket No. 02-057-02*                            | Questar Gas Company<br>Public Service Commission of Utah   |
| Docket No. 020384-GU*                            | Tampa Electric Company d/b/a Peoples Gas System<br>Before the Florida Public Service Commission      |
| Docket No. 020010-WS                             | The Woodlands of Lake Placid, L.P.<br>Before the Florida Public Service Commission                   |
| Docket No. 020071-WS                             | Utilities, Inc. of Florida<br>Before the Florida Public Service Commission                           |
| Docket No. 03-07-02                              | Connecticut Light & Power Company<br>State of Connecticut, Department of Public Utility<br>Control   |
| Docket No. 030438-EI*                            | Florida Public Utilities Company<br>Before the Florida Public Service Commission                     |
| Docket No. 03-11-20                              | Southern Connecticut Gas Company<br>State of Connecticut, Department of Public Utility<br>Control    |

\* Case Settled

\*\* Testimony not filed/submitted due to settlement

Analysis of Ability of Camp Florida Property Owners Association, Inc.  
to Pay Mortgage on Wastewater Property Under Current Rates

Docket No. 030102-WS  
Exhibit\_\_ (DD-1)  
Schedule I

| <u>O&amp;M Expenses, as Adjusted by Commission:</u>               |   | <u>Amount</u> |                |
|---|---|---------------|----------------|
| 1   | Salaries & Wages - Employees  | 8,865         | (1)            |
| 2   | Sludge Removal Expense  | 1,683         | (1)            |
| 3   | Purchased Power   | 2,854         | (1)            |
| 4   | Chemicals   | 2,780         | (1)            |
| 5   | Contractual Services - Professional   | 1,697         | (1)            |
| 6   | Contractual Services - Testing  | 2,627         | (1)            |
| 7   | Contractual Services - Other  | 3,427         | (1)            |
| 8   | Rents   | 479           | (1)            |
| 9   | Transportation Expense  | 829           | (1)            |
| 10  | Insurance Expense   | 616           | (1)            |
| 11  | Regulatory Commission Expenses  | 724           | (1)            |
| 12  | Miscellaneous Expenses  | 2,110         | (1)            |
| 13  | Total O&M Expenses, as adjusted by Commission   | 28,691        |                |
| <u>Less: Expenses that would discontinue</u>                      |   |               |                |
| 14  | Regulatory Commission Expenses  | (724)         | Line 11        |
| 15  | Annual Level of O&M Expenses - Assumes no inflation,<br>non-recurring items or wage increases to employees                                | 27,967        |                |
| <br><u>Taxes Other Than Income, as Adjusted by Commission (2)</u> |   |               |                |
| 16  | Property Taxes  | 3,608         |                |
| 17  | Payroll Taxes   | 918           |                |
| 18  | Annual Mortgage Payment Based on Proposed Agreement<br>for Purchase and Sale (\$191,523 mortgage for 10 years<br>@ 6.99%, paid quarterly) | 26,780        |                |
| 19  | Minimum Amount that Must be Collected to Recover Expenditures<br>and Pay Mortgage Payments  | 59,273        |                |
| 20  | Revenue Requirement Approved by Commission and<br>Used to Calculate Current Rates   | 57,334        | (1), (3)       |
| 21  | Annual Cash Shortfall w/ 10-year mortgage at 6.99%  | (1,939)       |                |
| 22  | Additional Shortfall if Bills are Not Paid on 162 Rental Lots   | (21,591)      | See Schedule 2 |
| 23  | Total Shortfall if Bills are Not Paid on Rental Lots  | (23,530)      |                |

Notes/Source:

(1) From PSC Order No. PSC-03-1051-FOF-WS

(2) Excludes Regulatory Assessment Fees

(3) This amount assumes 100% of the revenues approved by the Commission are collected. In other words, 100% of the projected revenues assumed by the Commission in calculating rates for rental lots owned by Highvest would have to be billed for and collected.

The above analysis excludes depreciation, which is a non-cash item. It also does not consider possible additions that may be needed to the plant, such as replacement items, with the exception of amounts that may be included in the O&M expenses above.

Estimate of Revenue Requirement Allocated to Rental Lots

Docket No. 030102-WS  
 Exhibit\_\_(DD-1)  
 Schedule 2

|   | Description   | Amount    | Amount |                  |
|---|---|-----------|--------|------------------|
| 1   | Number of Rental Lots at Time of SARC   | 162       |        |                  |
| 2   | Base Facility Charge (BFC), per Order   | \$ 6.53   |        |                  |
| 3   | Monthly BFC from Rental Lots  | 1,058     |        | Line 1 x Line 2  |
| 4   | Annual BFC from Rental Lots   | 12,694    | 12,694 | Line 3 x 12      |
| 5   | Estimated Annual Usage on Rental Lots (000s of gallons)                       | 4,177     |        | Line A.7 / 1,000 |
| 6   | Gallonge Charge per 1,000 gallons, per Order                                  | \$ 2.13   |        |                  |
| 7   | Estimated Annual Gallonge Charge  | 8,896     | 8,896  |                  |
| 8   | Estimate of Wastewater Revenues from Rental Lots<br>Factored into Rate Design |           | 21,591 |                  |
| <u>Estimate of Annual W/W Consumption on Rental Lots:</u> |   |           |        |                  |
| A.1   | Total Estimated Test Year GS Water Consumption, per Staff                     | 5,671,977 | (1)    |                  |
| A.2   | Wastewater Factor   | 80%       |        |                  |
| A.3   | Staff Estimated Test Year GS W/W Consumption                                  | 4,537,582 |        |                  |
| A.4   | Total GS Customers, per Staff   | 176       | (1)    |                  |
| A.5   | Average W/W Consumption per GS Customer                                       | 25,782    |        |                  |
| A.6   | Number of Rental Lots   | 162       |        |                  |
| A.7   | Estimate of Annual W/W Consumption on Rental Lots                             | 4,176,638 |        |                  |

(1) Provided in response to Petitioner's First Request for Production to Staff, Request 3, in SARC Docket No. 020010-WS.

ORDER NO. PSC-03-1053-PAA-WS

DOCKET NO. 030102-WS

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sole officer and shareholder of Camper Corral, Inc., is R. Anthony Cozier. The transfer application contains an explanation that Woodlands borrowed funds from the Nancy Ayres Charitable Remainder Unit Trust to purchase the utility facilities. The note for this loan was later assigned to Highvest, whose sole shareholder is Nancy Ayres and whose president is R. Anthony Cozier. The assertion is made in the application that the utility failed to meet its obligations under the loan, and therefore Highvest filed for judicial foreclosure of its security. The Woodlands did not defend against that lawsuit. The final judgment of foreclosure was entered by default on August 7, 2002, and Highvest purchased the utility facilities and associated real property at a foreclosure sale. The Clerk of the Court issued Highvest a Certificate of Title on September 27, 2002. Four days later, on October 1, 2002, Highvest transferred its interest in the utility facilities and associated real property to LPUC, whose sole shareholder is Anbeth Corporation. Anbeth Corporation is solely owned by a trust formed by R. Anthony Cozier and his wife, Elizabeth Cozier. The following matrix charts the relationships among these entities.

| Entity                         | Shareholders,<br>Members, Partners   | Officers, Directors |
|--------------------------------|--|---------------------|
| Woodlands of Lake Placid, L.P. | Camper Corral, Inc., general partner<br>R. Anthony Cozier, limited partner | R. Anthony Cozier   |
| Camper Coral, Inc.             | R. Anthony Cozier, sole shareholder  | R. Anthony Cozier   |

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DOCKET NO. 030102-WS  
PAGE 8

|                                    |  |  |
|------------------------------------|--|--|
| Highvest Corporation               | Nancy Ayres, sole shareholder                          | R. Anthony Cozier - President<br>John H. Lovelette - Vice President<br>Teresa A. Lovelette - Secretary |
| Anbeth Corporation                 | Trust formed by R. Anthony Cozier and Elizabeth Cozier | R. Anthony Cozier - Director<br>Elizabeth Cozier - Director  |
| L. P. Utilities Corporation (LPUC) | Anbeth Corporation, sole shareholder                   | R. Anthony Cozier - Director<br>John H. Lovelette - Director<br>Teresa A. Lovelette - Director         |

The entities listed above are interrelated. The office, management, and personnel of the utility will remain essentially unchanged. There will be no change in the operations or level of service. The entities involved in this case functioned as the alter egos of Anthony Cozier in the decision by Highvest to foreclose on the Woodlands' mortgage and purchase the Woodlands' utility assets at the foreclosure sale; in the decision by the Woodlands not to defend against the foreclosure; and in the decision by Highvest to sell, and LPUC to purchase, the Woodlands utility. Mr. Cozier admitted under oath in the SARC hearing in Docket No. 020010-WS that he made the ultimate decisions for The Woodlands, for Highvest, and for LPUC. Mr. Cozier also admitted that he made the decision that Highvest would foreclose on the Woodlands because of the Woodlands' liabilities and obligations.<sup>6</sup>

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<sup>6</sup> See May 28, 2003 SARC Technical Hearing transcript, Vol. 2, TR-169-173, in Docket No. 020110-WS (Attachment A to this Order)



IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR HIGHLANDS COUNTY, FLORIDA

RICHARD PERANTONI, SARA KELLER, et al,

Plaintiffs,

vs.

CASE NO. GC 97-240  
GC 98-158  
( CONSOLIDATED)

CAMPER CORRAL, INC., a Florida not  
for profit corporation, et al.

Defendant.

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FINAL JUDGMENT

THIS MATTER came before the Court for Trial February 23 thru February 26, 2000. Plaintiffs, in the cases consolidated for Trial, sought the following relief:

1. A Declaration defining the common area of the Camp Florida Resort.
2. A Declaration as to the validity of the Use Agreement authorizing use of the recreational facilities by the Plaintiffs.
3. A Declaration of the Parties rights under the Declaration of Covenants and Restrictions concerning conveyance of the recreational facilities to the Property Owners Association, and injunctive relief directing that the recreational facilities be sold to the Property Owners Association.
4. Money damages against Defendants Cozier and Lovelette for breach of fiduciary duty.
5. A Declaration as to determining the obligation of the Developer, Camp Florida Resort L.P., to pay its share of assessments to the Property Owners Association; Whether the 1998 Budget for Camp Florida Property Owners Association, Inc. was valid and accurate.
6. Whether the Defendant Camp Florida Property Owners Association, Inc. had the authority to place liens against Plaintiffs' lots, determine that an amendment to the bylaws of the Defendant Property Owners Association was illegal, invalid and void, and determine disposition of the funds deposited into the Registry of the Court by Plaintiffs.

7. An award of reasonable Attorney's Fees and reimbursement of costs.

Based upon the evidence presented at Trial, a review of the court file, the written arguments, closing statements and memoranda of the parties, the Court makes the following findings of fact:

1. COMMON AREA: The Court finds that the Common Area for Camp Florida Resort is as defined in the Plat and replat of that subdivision. Specifically, the Court finds that all property not designated as lots on the Plat and Replat are to be owned by the Home Owners Association as common elements. The language contained in the Plat and Replat is not in conflict with the language contained in the Declaration of Covenants and Restrictions for the subdivision. The language is clear, unequivocal, and unambiguous and requires no construction.
2. USE AGREEMENT: The Use Agreement is not void nor invalid. The Use Agreement would terminate upon the conveyance of the subject described property, specifically the recreational facilities. The Use Agreement did not terminate. The Use Agreement grants the Common Recreation Association a non exclusive right to use the recreational facilities as defined in the Use Agreement for the duration of the life of the Declaration of Covenants and Restrictions upon the payment of a pro rata share of actual costs and expenses incurred by the use of the facility.
3. SALE OF RECREATIONAL FACILITIES: The Declaration of Covenants and Restrictions authorized the purchase of recreational facilities by the Common Recreation Association. The representatives of the association negotiated a sale in good faith. The Parties had created an enforceable contract for the sale of the property but the Defendant Cozier and the Defendant Woodlands added additional requirements and conditions to the final offer. The Defendant Cozier negotiated in bad faith and throughout the negotiation process used suspect, underhanded, unethical, and bad faith tactics to mislead the Plaintiffs to a timetable that exceeded the Statute of Limitations. As a result, the Defendants Cozier and Woodlands are equitably estopped from their reliance on the Statute of Limitations.

4. BREACH OF FIDUCIARY DUTY: Defendants Cozier and Lovelette breached their fiduciary duties to the Plaintiffs as members of the Property Owners Association thru a variety of acts including without limitation:
- a. Charging back rent on the recreational facilities paid to the Defendant Woodlands
  - b. Charging back office management payments and paying the Developer.
  - c. Accepting the common area as described in the Covenants and Restrictions without conveyance of the recreational facilities.
  - d. Continuously paying assessments beyond the due date.
  - e. Intentionally misrepresenting the Developer's obligation for maintenance payments to the association, advising the members that the Developer had no legal obligation to pay any assessments.
  - f. Amending the bylaws, skirting the Covenants and Restrictions, to reduce the Developer's obligation for maintenance payments.
  - g. Diverting funds that should have been reimbursed to the members to the road reserve without requiring the Developer to make any proportionate contributions to that reserve.
  - h. Entering into a Lease Agreement for the recreational facility without any authorization under the governing documents, paying the Woodlands \$63,000.00 per year.
  - i. Continuously meeting and discussing Property Owners Association business and issues including the budget without notice to the members as required by Statute.
  - j. Double charging for maintenance during the year '998 by paying his own corporation Camper Corral by paying Cozier's own corporation Camper Corral, Inc. for maintenance that was not performed on behalf of the Property Owners Association.
5. DEVELOPER'S OBLIGATION TO PAY ASSESSMENTS: The Declarations of Covenants and Restrictions direct that each lot owner should pay a proportionate or pro rata share of the

maintenance assessments required to maintain the common area. The Developer agreed to use the 1/396th rule (proportionate share) in the Budget for 1997 and thereafter. The language contained in the Declaration is clear and unambiguous. The 1998 Budget, limiting the assessment payments due by the Developer is void and invalid. Plaintiffs are entitled to distribution of the funds placed into the Registry of the Court herein by them.

6. VAUIDTY OF THE AMENDMENT TO THE BYLAWS: The bylaws of the Camp Florida Common Recreation is a Common Recreational Association and the Property Owners Association provide a procedure for amending the bylaws. There was evidence, and a lack of evidence, clearly showing that the amendment in dispute, which lowered an ultimately eliminated the Developer's obligation to pay any assessments, was not enacted according to the stated procedure. Additionally, the evidence is clear that Defendant Cozier was self dealing and not acting in the best interest of the Property Owners Association, in the enactment of the amendment to the bylaws.
7. LIENS: Any and all Liens placed against the property of any and all Plaintiffs by the Home Owners Association were based upon improper assessments and are therefore, void.
8. ATTORNEY'S FEES AND COSTS: The Declaration and Florida Statutes each contain provisions for an award of Attorney's Fees and reimbursement of costs to the prevailing party in this litigation. The Court finds the Plaintiffs to be the prevailing parties.
9. INIUNCTIVE RELIEF: As to Plaintiffs claims for injunctive relief, the Court finds that the Plaintiffs suffered irreparable harm and had no adequate remedy at law.

It is therefore ORDERED AND ADJUDGED that:

- 1 The common area of the subdivision known as Camp Florida Resort is declared to be that as described in the Plat of said subdivision recorded in Plat Book 15 page 52 in the Public Records of Highlands County, Florida, specifically note 5 stating that all property not shown as lots is to be considered as common elements to be owned by the Home Owners Association. This includes the property not contained in the description of common area

in the Declaration of Covenants and Restrictions, which is contiguous to US Highway 27, and all improvements thereon.

2. The Court declares that the Use Agreement between the owner of the recreational facilities, the Woodlands, and the Common Recreation Association is not void nor invalid. The Use Agreement did not terminate. The Use Agreement grants the Common Recreation Association a non exclusive right to use the recreational facilities as defined in the Use Agreement, for the duration of the life of the Declaration of Covenants and Restrictions, upon the payment of each lot owners pro rata share of actual costs and expenses incurred by the use of the facility. The Use Agreement can also be terminated by a purchase of the recreational facility as defined in the Use Agreement, by the Common Recreation Association.
3. The Court declares that the owner of the recreational facilities, Defendant Woodlands, and the Common Recreation Association created an enforceable contract for the sale of the recreational facilities as defined in the Use Agreement. The conveyance failed as a result of bad faith conduct by the Woodlands and its representative Cozier. The Common Recreation Association has the right to purchase the recreational facilities pursuant to the 1996 appraisal entered into evidence herein. Specific performance in favor of Plaintiffs and the Common Recreation Association is hereby granted.
4. PRO RATA SHARE OF EXPENSES / BYLAW AMENDMENT: The declaration of Covenants and Restrictions require each lot owner, including Camp Florida Resort, L.P. the Developer, to pay its Pro rata Share of expenses of maintenance of the common area, defined as 1/397th of the total expenses, per lot. The 1998 amendment to the bylaws reducing and eventually eliminating the Developer's obligation is invalid and void. The 1998 Budget is void.
5. BREACH OF FIDUCIARY DUTY: Both Defendants Cozier and Lovelette breached their respective fiduciary duty to the members of each association and the Plaintiffs. The Plaintiffs have suffered monetary damages as a result. Therefore, the Plaintiffs shall have and recover from Defendants Cozier and Lovelette the sum of \$289,934.23, which shall accrue interest

at the legal rate, together with \$96,274.06 in prejudgment interest, for all of which let execution issue.

6. LIENS AND DEPOSITS IN REGISTRY OF COURT: Any and all Liens placed against any lots in Camp Florida Resort owned by the Plaintiffs, by the Property Owners Association, the Common Recreation Association, are void and unenforceable. Plaintiffs are entitled to disbursement of all funds deposited into the Registry of the Court, pursuant to any Court Orders entered in these proceedings.
7. ATTORNEY'S FEES AND COSTS: The Court reserves jurisdiction to enter an award of Attorney's fees and reimbursement of costs to Plaintiffs as the prevailing parties herein.

DONE AND ORDERED in Chambers at BARTON Florida this 10 day of August, 2000..

J. DALE DURRANCE  
J. DALE DURRANCE  
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail to the parties listed below this 10 day of August, 2000.

James V. Lobozzo, Jr., Esq.  
329 South Commerce Avenue  
Sebring, Florida 33870

Clifford R. Rhoades, Esq.  
227 North Ridgewood Drive  
Sebring, Florida 33870

Joseph T. Patsko, Esq.  
P.O. Box 2151  
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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

CAMPER CORRAL, INC., CAMP )  
FLORIDA RESORT, L.P., THE )  
WOODLANDS AT LAKE PLACID, )  
L.P., R. ANTHONY COZIER, and )  
TERRI LOVELETTE, )

Appellants, )

v. )

CASE NO. 2D00-5230

RICHARD PERANTONI, SARA )  
KELLER, and ELIZABETH TAYLOR, )

Appellees. )

Opinion filed December 12, 2001.

Appeal from the Circuit  
Court for Highlands County;  
J. Dale Durrance, Judge.

Clifford R. Rhoades of Clifford R.  
Rhoades, P.A., Sebring, and  
Raymond T. Elligett, Jr., of Schropp,  
Buell & Elligett, P.A., Tampa, for  
Appellants.

James V. Loboizzo, Jr., of James V.  
Loboizzo, Jr. P.A., Sebring, for  
Appellees.

WHATLEY, Acting Chief Judge.

Camper Corral, Inc., Camp Florida Resort, L.P., The Woodlands at Lake Placid, L.P., R. Anthony Cozier, and Terri Lovelette (the appellants) challenge a final judgment entered against them in the action filed by Richard Perantoni, Sara Keller, and Elizabeth Taylor (the appellees) for an injunction and for damages for breach of fiduciary duty related to the operation of Lake Placid Camp Florida Resort, a recreational vehicle community.<sup>1</sup> The only issue raised in this appeal is the propriety of the damage award against Cozier and Lovelette. We reverse.

Cozier is the president of Camper Corral, which is the successor developer of Lake Placid Camp Florida Resort. Cozier is the vice-president and Lovelette is the secretary of the Board of Directors of Camp Florida Property Owners Association, Inc. and Camp Florida Commons Recreation Association, Inc. The final judgment declared that the appellees should recover approximately \$386,000 from Cozier and Lovelette based on a finding that Cozier and Lovelette breached their fiduciary duties to the members of the resort's recreation and property owners' associations and to the appellees, who are members of the associations.

"It is . . . elementary that damages will be awarded only to the extent supported by the well-pleaded allegations of the complaint." Hooters of Am., Inc. v. Carolina Wings, Inc., 655 So. 2d 1231, 1233 (Fla. 1st DCA 1995). "[T]here must be some reasonable basis in the evidence to support the amount [of damages] awarded. Furthermore, it is incumbent upon the party seeking damages to present evidence to

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<sup>1</sup> The final judgment was also entered in a declaratory action that was consolidated with this case. The appellees did not name Cozier and Lovelette as defendants in the declaratory action, and no damages were sought in that action.



justify an award of damages in a definite amount." Smith v. Austin Dev. Co., 538 So. 2d 128, 129 (Fla. 2d DCA 1989) (citations omitted).

The appellees did not bring this action as a derivative action on behalf of the associations. The appellees neither alleged nor proved that they suffered any individual losses as a result of the breaches by Cozier and Lovelette of their fiduciary duties. Rather, all of the allegations against these two appellants were of harm suffered by the associations. The appellees are not entitled to the damages the associations suffered as a result of Cozier's and Lovelette's breaches of their fiduciary duties:

Accordingly, we reverse that part of the final judgment awarding the appellees damages against Cozier and Lovelette.

NORTHCUTT and GREEN, JJ., Concur.