

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Amendment of Certificates Nos. 298-W and 248-S in Lake County by JJ's Mobile Homes, Inc.	)	DOCKET NO. 921237-WS
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In Re: Investigation Into Provision of Water and Wastewater Service by JJ's Mobile Homes to its Certificated Territory in Lake County.	)	DOCKET NO. 940264-WS ORDER NO. PSC-94-1223-PHO-WS ISSUED: October 6, 1994
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Pursuant to Notice, a Prehearing Conference was held on June 27, and September 30, 1994, in Tallahassee, Florida, before Commissioner Julia L. Johnson, as Prehearing Officer.

APPEARANCES:

F. MARSHALL DETERDING, ESQUIRE, Rose, Sundstrom & Bentley, 2548 Blairstone Pines Drive, Tallahassee, Florida, 32301  
On behalf of JJ's Mobile Homes, Inc.

JACK SHREVE, ESQUIRE, JOHN ROGER HOWE, ESQUIRE, and H.F. MANN, II, ESQUIRE, The Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida, 32399-1400  
On behalf of The Office of Public Counsel.

JOHN L. DI MASI, ESQUIRE, Graham, Clark, Jones, Pratt & Marks, 369 North New York Avenue, Post Office Drawer 1690, Winter Park, Florida, 32789  
On behalf of George Wimpey of Florida, Inc.

GARY J. COONEY, ESQUIRE, Blair & Cooney, P.A., Post Office Box 130, Tavares, Florida, 32778  
On behalf of the City of Mount Dora.

SUZANNE F. SUMMERLIN, ESQUIRE, MARGARET E. O'SULLIVAN, ESQUIRE, and MARC S. NASH, ESQUIRE, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida, 32399-0863  
On behalf of the Commission Staff.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

PRENTICE PRUITT, ESQUIRE, Florida Public Service  
Commission, 101 East Gaines Street, Tallahassee, Florida  
32399-0862  
On behalf of the Commissioners.

\*Gary J. Cooney, Leon Bibb, and Steven Raimondi were  
excused from appearing at the September 30, 1994,  
Prehearing Conference.

PREHEARING ORDER

I. CASE BACKGROUND

JJ's Mobile Homes, Inc., (JJ's or utility), is a class C  
utility located in Lake County, Florida. JJ's provides water and  
wastewater service to customers in Mt. Dora, Florida. As of  
December 31, 1993, the utility served approximately 300 water and  
wastewater customers.

On December 7, 1992, the utility filed an application to amend  
its water and wastewater certificates to include two parcels of  
land which were part of the Country Club of Mt. Dora (country  
club). That application was assigned Docket No. 921237-WS.  
Several homeowners filed objections to the application and the  
matter was set for hearing on May 5, 1993. The Office of Public  
Counsel (OPC) and the City of Mt. Dora (Mt. Dora or city),  
intervened in the docket. The hearing was continued upon motion of  
the parties, on the grounds that a sale of the utility to the city  
was pending. The sale was not consummated, and the matter was set  
to be heard on December 13, 1993. On Staff's own motion and  
without objection, George Wimpey of Florida, Inc. (Wimpey or  
developer) intervened in the docket. The December 15, 1993,  
hearing was cancelled when the parties again informed the  
Commission that a sale of the utility was likely. When the sale  
was not completed by March 1, 1994, the matter was again  
rescheduled for hearing.

On July 22, 1993, Wimpey filed a complaint against JJ's for  
failure to provide service to its development in the country club.  
By Order No. PSC-94-0272-FOF-WS, issued March 9, 1994, the  
Commission dismissed the complaint, but initiated an investigation  
docket (Docket No. 940264-WS) in order to address JJ's provision of  
service in its entire territory. Because Dockets Nos. 921237-WS  
and 940264-WS address similar issues, the dockets were  
consolidated. These matters were set for hearing on July 13-14,  
1994. A Prehearing Conference was held on June 27, 1994. On July  
1, 1994, JJ's filed a motion for continuance, on the grounds that  
because an issue was raised at a relatively late date, it required

additional time to file rebuttal testimony and prepare for the hearing. The parties stipulated that they would not object to a continuance. Order No. PSC-94-0858-PCO-WS, issued July 15, 1994, granted the motion to continue and reestablished key dates. For formal hearing is now set for October 13-14, 1994, in Lake County, Florida.

## II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 367.156, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 367.156, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 367.156, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

#### Post-Hearing Procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together

total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

### III. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

### IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
Timothy A. Hochuli	Utility	1, 2, 3, 4, 6, 7, 9, 10, 12, 14, 15, 16, 17
Thomas J. Walden	OPC	9, 16, 17, 18, 19, 20
Thomas E. Williams, II	"	16, 17, 20

Jordan W. Hypes	"	1, 2, 3, 5, 6, 7, 9, 16, 17, 20
Richard Bowles	Wimpey	1-20
Rod J. Stroupe	Mt. Dora	9, 10, 11, 12, 14, 15
Robert E. Farner	"	9, 10, 11, 12, 14, 15
Steven Raimondi	Homeowners	1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 14, 15
Leon Bibb	"	1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 14, 15
Roberto Ansag	Staff	4
Clarence Anderson	"	4

Rebuttal

Timothy A. Hochuli	Utility	
Robert C. Nixon	"	5, 7, 8, 9, 10, 11, 14, 16, 17
James Schuster	"	7, 14

\*The utility further reserves the right to call such witnesses as necessary for rebuttal to direct testimony of witnesses who have not pre-filed testimony.

V. BASIC POSITIONS

UTILITY: The Application of JJ's to extend its certificated service territory into the two relatively small parcels for which it has applied is in conformance with Commission statute and rule. The continued service to JJ's existing territory and to the two small parcels



requested in its Extension Application is in the public interest and existing service should continue and the extension should be granted. The quality of service JJ's renders to its existing customer base is satisfactory and JJ's can and will continue to provide such satisfactory service to its service territory in the future. The provision of service to the existing service territory and to the two additional parcels by JJ's is the most efficient, economical and expeditious method for rendering service to those territories. No viable alternative for the provision of service to the existing or proposed additional territories exist. JJ's has the technical and financial ability to provide service for which it is currently certificated and has applied.

OPC:

Before the Commission can evaluate whether JJ's Mobile Homes, Inc., should be permitted to expand its territory, it must first identify JJ's current service area. JJ's purchased the assets of Dora Pines Mobile Home Park in 1980 and transferred the certificate held by Dora Pines to JJ's. Dora Pines was only authorized to serve the 135 lots at the mobile home park pursuant to the grandfather certificate it received in 1977. Section 367.171, Florida Statutes, did not authorize the Commission to grant a certificate for a larger area. The transfer of Certificates 298-W and 248-S from Dora Pines to JJ's in 1980 could not have given JJ's a larger service area than that lawfully possessed by Dora Pines. Therefore, JJ's is not authorized to serve outside the mobile home park. Given these facts, the expansion requested by JJ's is inappropriate and, since the territory in question is included within the City of Mt. Dora's Chapter 180 utility district, the city should serve the areas at issue in this proceeding.

Even if the Commission determines that JJ's certificates cover the entire service territory, the territory at issue is better served by Mt. Dora. Public Counsel believes that Mt. Dora is in a better position to serve the territory both from a financial and technical viewpoint. The addition of plant to serve additional customers in the territory would be a duplication of Mt. Dora's facilities that are already in place and ready to serve existing as well as future customers with very little incremental cost as compared to the investment that would need to be made by JJ's Mobile Homes Inc.

WIMPEY: JJ's application for amendment to its certificated area should not be granted. JJ's has failed to provide the required and requested information necessary to determine whether it has the ability, in terms of construction, plant expansion, physical land expansion, financial, cost and quality, to service the entire Country Club through build-out. JJ's is aware that the Country Club calls for 780 units, plus a clubhouse, maintenance barn and starter shack. It is a fact that the needs of the Country Club at build-out will dwarf the actual present capacity of JJ's wastewater treatment facility. JJ's has not provided the plant expansion and construction schedules necessary to determine whether it, in fact, has the ability to service the entire area at build-out. Wimpey's main goal is to ensure that the water and wastewater service to the Country Club is provided when and as needed at the highest quality and at a reasonable cost. JJ's, to date, has not demonstrated, that it can meet this goal. In the absence of such demonstrated proof, JJ's should not be allowed to expand its certificated area.

MT. DORA: The City of Mt. Dora has the absolute right under Chapter 180 to serve the two (2) territories being sought by JJ's. Mt. Dora also stands ready, willing, and able to serve the Country Club of Mt. Dora and all other customers of JJ's should JJ's not be able to do so, or should the Commission give Mt. Dora the opportunity to do so.

HOME OWNERS: JJ's present wastewater capacity is limited to 95,000 gallons per day (gpd). For JJ's to serve the country club, this capacity must be expanded to over 210,000 gpd based on the average usage if 280 gpd per ERC. The wastewater expansion, and other expansion requirements, has been estimated to range in cost from approximately \$1.4 million to \$2.2 million by two consulting engineering firms. JJ's was initially constructed as a Class C utility to provide service to a mobile home community of mostly part time residents, not a large, permanent residential community as the country club, which requires much greater amounts of potable water and wastewater usage all year long. Mt. Dora has sufficient capacity and stands ready, able, and better equipped to serve the country club. If JJ's is permitted to expand its facilities to serve the country club, this would be redundant to the city's facilities and would require JJ's



to receive a sufficient rate of return on investment that present and future customers of JJ's must support through higher rates. This expansion would also be a duplication of service which could be provided for by a better provided, Mt. Dora, and to whom the residents pay taxes. The pass-through rates for water and wastewater charged to the homeowners in Phase I are not equitable. The rates presently charged to Dora Pines customers and what would be charged to customers going into Phase II of the country club will be lower than in Phase I. This is due to the existing bulk rate agreement between JJ's and Wimpey. The bulk rate agreement has resulted in relieving JJ's of direct responsibility to residents in delivering quality water, and has provided the utility a means of "finger-pointing" to Wimpey.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions. The information gathered through discovery and prefiled testimony indicates, at this point, that JJ's should continue to serve its currently approved territory and that JJ's request to amend its currently approved territory should be granted. However, a final determination cannot be made until the evidence presented at hearing is analyzed.

## VI. ISSUES AND POSITIONS

**ISSUE 1:** Does JJ's currently have the additional plant capacity to serve the water and wastewater needs of its entire existing territory, as well as the additional territory requested in its application for amendment?

### POSITIONS

**UTILITY:** No. It would be imprudent for JJ's to have invested in that much excess capacity at this early date in the development of its service territory. The Utility's current flows through its sewer plant equate to approximately one-third of its rated capacity. In accordance with the DEP requirements, the Utility will begin planning toward expansion when that facility's flows reach approximately 50% of its rated capacity. The

water capacity versus flow indicates an even lower percentage of capacity currently being utilized.

OPC: No.

WIMPEY: JJ's does not have the additional plant capacity to serve the water and wastewater needs of the Country Club at build-out. The issue is not whether JJ's has the present plant capacity to provide service to the entire service area, but rather whether JJ's has the ability to expand additional plant capacity as and when needed.

MT. DORA: JJ's cannot adequately serve the territories currently held.

HOME OWNERS: JJ's does not have the capacity to provide service in the existing service area.

STAFF: No. While JJ's has the capacity to serve the current demands of the additional territory and its current certificated areas, JJ's does not have the plant capacity to serve the water and wastewater needs of the entire territory at build-out.

ISSUE 2: If JJ's does not have the current plant capacity to serve either its entire existing territory or the requested additional territory, does it have the ability to expand its facilities?

POSITIONS

UTILITY: Yes, the Utility has the ability to expand those facilities and intends to do so as and when needed.

OPC: No position pending further development of the record.

WIMPEY: JJ's does not have the ability to expand its facilities. This position is based on the premise that JJ's has not provided any information to Wimpey of its ability to expand its facilities, despite requests for such information. Wimpey believes that JJ's has overcommitted for the actual capacity which it presently has. JJ's has not provided Wimpey its construction schedule for plant expansion, therefore, Wimpey, does not believe that JJ's has the ability to expand its plant facilities. JJ's is aware that the Country Club calls for 780 units, plus a

clubhouse, maintenance barn and starter shack. It is a fact that the needs of the Country Club at build-out will dwarf the actual present capacity of JJ's wastewater treatment facility. JJ's does not have the ability to expand its plant facilities even though JJ's is aware that such expansion will be necessary. JJ's does not have the physical land area necessary to expand its water and wastewater services to the entire Country Club at build-out. Alternatively, the acquisition of additional land will be cost prohibitive and will affect the quality and cost of the service of the wastewater services to the Country Club. JJ's will be not be able to store and dispose of the treated effluent for the Country Club at build-out. There is no excess capacity in the golf course ponds to store the treated effluent. All ponds are designed to meet MSSW permit requirements for water quality detention and storm runoff attenuation.

MT. DORA: JJ's cannot adequately service the territories sought, or even the territories currently held.

HOME

OWNERS:

JJ's has insufficient land available to provide the necessary holding ponds for wastewater. The homeowners are concerned that JJ's wastewater may be disposed of through irrigation on the golf course or stored in neighborhood storm water retention ponds. JJ's, at present, is transporting effluent wastewater to the Eustis area for disposal.

STAFF: Yes, JJ's has the ability to expand its facilities to meet the future needs of its territory.

ISSUE 3: Does JJ's have the technical ability to serve the water and wastewater needs of its entire existing territory, as well as the additional territory requested in the application for amendment?

POSITIONS

UTILITY: Yes, JJ's has in the past, and will continue in the future, to have the technical ability to provide service to its entire existing service territory and the additional territory requested in the amendment.

OPC: No position pending further development of the record.

WIMPEY: Although Wimpey does not take the position that JJ's does not have the technical ability to serve the water and wastewater needs of the Country Club at build-out, Wimpey disputes the fact that JJ's will not provide Wimpey with this information. Until such information is provided, Wimpey must assume that JJ's does not have the technical ability.

MT. DORA:

HOME OWNERS: No. JJ's is unable to resolve present problems and has only recently hires one individual for maintenance.

STAFF: Yes, JJ's currently has the capability to provide the technical ability to serve the territory.

ISSUE 4: Is the quality of service provided to JJ's existing territory satisfactory?

POSITIONS

UTILITY: JJ's quality of service is satisfactory in all respects.

OPC: No.

WIMPEY: The quality of water and wastewater service provided by JJ'S is not satisfactory. Moreover, JJ's cannot provide the quality of wastewater service to the Country Club through built-out at an acceptable cost and as needed.

MT. DORA: No.

HOME OWNERS: The residents of the country club have experienced problems with color, taste and odor, causing concern about the quality of water. Residents have also experienced low water pressure at different times of the day, particularly while irrigating lawns. This low water pressure raises concerns about fire protection.

STAFF: Yes. Although residents who receive service through JJ's bulk service customer have expressed concerns about the quality of water service, JJ's water and wastewater service conforms to all applicable state standards. This

issue is also dependant upon customer testimony at hearing.

**ISSUE 5:** Does JJ's have the financial ability to serve the water and wastewater needs of its entire existing territory, as well as the additional territory requested in the application for amendment?

POSITIONS

UTILITY: Yes, JJ's has such financial ability. The Utility's President and primary shareholder has the financial wherewithal to fund any needed improvements as and when needed, either through infusion of equity or through his ability to obtain debt financing for the Utility. The President and chief shareholder has committed to provide this funding when needed.

OPC: No position pending further development of the record.

WIMPEY: JJ's has not provided to Wimpey a detailed analysis of whether JJ's has the financial ability to serve the water and wastewater needs of the Country Club through build-out.

MT. DORA: No.

HOME

OWNERS: No position at this time.

STAFF: It initially appears that the combination of CIAC, donated lines, owner equity and debt financing should provide financial resources which are adequate for expansion of capacity.

**ISSUE 6:** What are JJ's anticipated construction and acquisition costs for providing wastewater service to the Country Club through build-out?

POSITIONS

UTILITY: These were provided to the Commission in answer to Interrogatories.

OPC: No position pending further development of the record.

WIMPEY: JJ's knows the requirements of the Country Club through build-out. Wimpey does not believe that JJ's has accurately and fairly calculated the true costs associated with providing quality water and wastewater service to the Country Club through build-out, taking into consideration plant expansion and land acquisition costs.

MT. DORA: Wimpey will be required to dole out approximately 3.5 million dollars to JJ's in order to possibly serve the Country Club of Mt. Dora at build out.

HOME OWNERS: No position at this time.

STAFF: No position at this time.

ISSUE 7: Will the expansion of territory adversely impact the customers in JJ's current certificated territory, either in terms of cost of service or quality of service?

POSITIONS

UTILITY: JJ's expansion of territory will not adversely affect the customers in JJ's current certificated territory. In fact, in the long run, the Utility believes that expansion will lead to cost savings in the form of economies of scale which will result near build-out in full utilization of the Utility's facilities.

OPC: Yes.

WIMPEY: WIMPEY believes that the expansion of JJ's territory will greatly impact the quality and cost of service of providing water and wastewater service to the Country Club at build-out.

MT. DORA: No.

HOME OWNERS: JJ's will have to incur significant expenses to increase capacity in order to serve its existing area and the area to which it seeks to expand. These expenses will ultimately be borne by the homeowners who reside in the country club through higher rates. JJ's has already had two rate increases.



STAFF: It initially appears that the increased capacity and inherent improvements should assure good quality of service and have no financial impact on current customers.

ISSUE 8: Are the rates to the master metered customers adequate and equitable? If not, should they be revised?

POSITIONS

UTILITY: The rates currently charged to the master metered customers are in accordance with the utility's currently approved tariff and the only rates that the utility may charge such customer under that tariff. These are also the rates agreed to in the Developer Agreement between the utility and the developer. If there is an inequity or inadequacy to such rates, it is in favor of the customers in Phase I. The utility would be willing to consider a base charge based on the base facility charge for a 5/8" customer, multiplied times the number of ERCs behind that master meter if there were controls in place to allow accurate determination and reporting of the number of ERCs behind that meter each month.

OPC: The rates are not equitable and should be revised. Currently the rates charged are the utility's general service rates, with no cap on the wastewater maximum gallonage charge.

WIMPEY: The rates are too high and should be revised.

MT. DORA: No.

STAFF: Staff believes that the rates to the master metered customers are not necessarily equitable and should be reviewed and possibly revised.

HOME

OWNERS: JJ's rates are inequitable and discriminatory. JJ's bulk rates are significantly higher than residential rates established at the mobile home park, even though the bulk service does not require JJ's to read meters or bill the individual customers. JJ's tariff for Phase I does not provide a cap for sewage treatment. Homeowners have sustained two rate increases since October of 1992 because of so-called "non-controllable expenses" incurred by JJ's.

**ISSUE 9:** Is it in the public interest for JJ's to continue to serve its entire existing territory, or should some of its territory be deleted?

**POSITIONS**

**UTILITY:** JJ's has provided in the past and will continue to provide water and sewer service in accordance with all applicable standards. JJ's currently owns the facilities in Phase II.1 and II.2 of the Country Club of Mt. Dora and has constructed and planned facilities in order to serve the entire certificated service territory. No other proposed provider of service can provide service to the territory as economically or as efficiently as can JJ's.

**OPC:** If the Commission agrees with Public Counsel on Issue 17, JJ's is only authorized to serve the mobile home park, so it is unnecessary to delete any territory. If, however, the Commission believes JJ's is entitled to all the territory it claims under its current certificates, then all territory outside the mobile home park should be deleted.

**WIMPEY:** No. JJ's cannot provide the level of quality of service at the right cost to the Country Club through build-out. Until such time as JJ's has proven it has the ability to provide the service at a cost sensitive price, an alternate service provider would be appropriate.

**MT. DORA:** No. The City of Mt. Dora can serve the entire area currently being served by JJ's, and any additional area within the City's Chapter 180 utility district, more efficiently, thus providing better service at a lower price.

**HOME**

**OWNERS:** No. We are residents of the City of Mt. Dora and are within the Chapter 180 utility district.

**STAFF:** It initially appears that JJ's is providing adequate service in the territory and appears able to continue that service through build-out.

**ISSUE 10:** Is it in the public interest to grant JJ's the additional territory requested in its application for amendment?

POSITIONS

UTILITY: It is in the public interest to grant JJ's application.

OPC: No. As OPC has stated, JJ's certificated territory is limited to the mobile home park. Even if the Commission finds that the currently certificated area is as JJ's claims, JJ's should not be allowed to extend its territory.

WIMPEY: It is not in the public interest to grant JJ's its application for amendment.

MT. DORA: No. A grant of additional territory to JJ's would violate Chapter 180, Florida Statutes, and would result in service of a lesser quality being provided to residents of the City at a higher price.

HOME

OWNERS: No. It is not in the homeowners interest. We have higher rates and the utility requires a higher cost to expand. This is a duplication of the City's service.

STAFF: Yes. The proposed additional territory represents a fairly small portion of the current territory. Furthermore, JJ's is already serving a portion of the proposed additional territory.

**ISSUE 11:** Would the granting of the additional territory be in competition with or a duplication of another system? If so, is that system adequate to meet the needs of the proposed territory?

POSITIONS

UTILITY: The granting of the additional territory to JJ's would not be in competition with, or a duplication of, another system. If anything, given the geographical proximity of the systems and the lay-out of the various systems, it is the city's system that would be a duplication of JJ's rather than the other way around. In any case, the city's system is "inadequate" to meet the needs of the proposed territory. Service by JJ's to the territory in question is the most efficient, economical and desirable

method of service to said territory. The city's system is inadequate and/or Mr. Dora is unable to provide reasonably adequate service. No viable alternatives, as a matter of sound planning, fact, or applicable Florida law, exists for the provision of service to the proposed extension territories. Mt. Dora may not, pursuant to the case of City of Mt. Dora v. JJ's Mobile Homes, 579 So. 2d 219 (Fla. App. 5th DCA 1991) and Section 180.06, Florida Statutes, render water and/or sewer service to the territories here at issue. Furthermore, Mt. Dora may not, as a matter of Florida statutory case law, provide water and/or sewer service to the proposed extension territories. No, the grant of the additional territory requested would not be in competition or duplication of any other system. There is no other system available to provide service to territorial pieces of property which JJ's proposes to extend to. In fact, JJ's is already providing service to one of those areas through a bulk service arrangement.

OPC: Yes. The city can serve at a much lower incremental cost to the country club of Mt. Dora customers than JJ's can. It would also duplicate the service available from the City of Mt. Dora, which is adequate to meet the needs of the proposed extension of territory.

WIMPEY: No entity is currently providing service to the "additional territory." Therefore, there would not be competition or duplication. Rather, the issue is what entity can provide the best service at the lowest cost to the additional territory, including the entire Country Club of Mt. Dora.

MT. DORA: Yes. A grant of additional territory to JJ's would violate Chapter 180, Florida Statutes. It would place JJ's in direct competition with the City of Mt. Dora which has a system which is more than adequate to meet the needs of the expansion territory and in fact, the entire territory served by JJ's.

HOME OWNERS: There will be a duplication of service caused by JJ's expansion, as the city stands ready to serve the country club. The city has excess capacity in its water treatment system and its wastewater treatment and disposal systems

STAFF: Although the Mt. Dora has expressed interest in serving both requested territories, the expansion of Mt. Dora's system would be duplicative as JJ's is currently serving one territory and is immediately adjacent to the second territory. Staff has no position at this time as to whether the Mt. Dora has a system adequate to meet the needs of the proposed territory.

ISSUE 12: Is the additional service territory which is the subject of JJ's Application for Amendment of Water and Wastewater Certificate encompassed within the City of Mt. Dora's Chapter 180 utility district?

POSITIONS

UTILITY: JJ's is without knowledge as to whether or not it is within the City of Mt. Dora's Chapter 180 utility district. However, to the extent it is within the City's district, the local Circuit Courts, have ruled and been upheld by the District Court of Appeal, that the City has no right to serve within the certificated service territory of JJ's Mobile Homes, Inc.

OPC: Yes.

WIMPEY: The additional service territory is encompassed within the City's utility district.

MT. DORA: Yes. The additional territory sought by JJ's is a part of the City of Mt. Dora's Chapter 180 District.

HOME

OWNERS: Yes. We are within the Chapter 180 utility district.

STAFF: No position at this time.

ISSUE 13: Can the Commission authorize a utility to extend its certificated service territory into an area encompassed by a municipality's Chapter 180 utility district?

POSITIONS

UTILITY: Yes, there is no bar to the Commission authorizing a Utility to extend its certificated service territory into a municipality's Chapter 180 utility district, and in fact, it would be imprudent under these circumstances not

to authorize such an extension. In point of fact, Section 180.06(9), Fla. Stat., prevents service to any portion of the Country Club by the City because JJ's operates a utility or system in the territory immediately adjacent thereto and has not consented to such service by the City.

OPC: No.

WIMPEY: No position at this time.

MT. DORA: The PSC cannot prevent a Florida municipality from providing utility service to a portion of the municipality's chapter 180 utility district which was not awarded to another utility provided prior to the establishment of the Chapter 180 utility district. Furthermore, the PSC should not prohibit citizens of a Florida municipality from utilizing the utility services of the municipality available to them, when they desire to do so.

HOME

OWNERS: No position at this time.

STAFF: No position at this time.

ISSUE 14: Can Mt. Dora serve the Country Club of Mt. Dora at a cost less than JJ's?

POSITIONS

UTILITY: No, the cost for the City of Mt. Dora to provide service would be substantially higher for all customers and the Developer.

OPC: Yes. The City can serve at a much lower incremental cost than JJ's.

WIMPEY: No position at this time.

MT. DORA: Yes.

HOME

OWNERS: Yes. Based on a comparison of cost from reports of the City's engineer, JJ's engineer, and Wimpey's engineer.

STAFF: No position at this time.



**ISSUE 15:** Is the City of Mt. Dora capable of providing bulk service to the Country Club of Mt. Dora instead of JJ's building additional plant?

POSITIONS

UTILITY: No, not only is the City of Mt. Dora prohibited by court order from doing so, but the cost of such service from the City would exceed that of JJ's providing constructing additional plant and providing such service. JJ's not only has a contractual and legal right, but a contractual obligation to provide that service.

OPC: Yes.

WIMPEY: No position at this time.

MT. DORA: Yes. The City is certainly capable of providing bulk service to the Country Club of Mt. Dora.

HOME OWNERS: Yes.

STAFF: No position at this time.

**ISSUE 16:** Is JJ's application in compliance with the Commission's rules, statutes, and non-rule policies?

POSITIONS

UTILITY: Yes. JJ's application is in compliance with the Commission's rules, statutes, and non-rule policies.

OPC: No. JJ's is requesting an extension of territory that JJ's is not presently authorized to serve. The Commission's rules, statutes, and non-rule policies do not provide for such a request. See OPC's position in Issue 12.

WIMPEY: No position at this time.

MT. DORA: No. JJ's application violates Chapter 180, Florida Statutes.

HOME OWNERS: No position at this time.

STAFF: Yes.

ISSUE 17: What area is JJ's currently authorized to serve pursuant to Certificate No. 298-W and Certificate No. 248-S?

POSITIONS

UTILITY: The area described in its certificate and in Orders No. 8044 and No. 9853. Despite the statutory references in both the form application submitted by the predecessor Utility in Docket No. 770402-WS and in the Order granting certificates (Order No. 8044), the certificates were actually issued pursuant to Section 367.041 and 367.051, Florida Statutes, rather than 367.171, Florida Statutes. This minor error in the Order does not change the effectiveness of the Order or the correctness of the territory granted in Order by reference to the Appendix "A" to the Order.

OPC: JJ's authorized service area is limited to the 135 lots formerly served by Dora Pines Mobile Home Park. Certificates 298-W and 248-S were originally awarded to Dora Pines by Order No. 8044, issued November 16, 1977, in Docket No. 770402-WS(AP), in response to Dora Pines' application for a grandfather certificate pursuant to Section 367.171, Florida Statutes (1977). The PSC was only authorized by Section 367.171(1)(b) to grant grandfather certificates "for the area served by such utility on the day this chapter becomes applicable to it." That area encompassed only the 135 lots in the mobile home park then being served by Dora Pines. The certificate transfers to JJ's in 1980 could not have conveyed a service area more extensive than that which Dora Pines was lawfully entitled to serve at the time of the transfer.

WIMPEY: No position at this time.

MT. DORA: JJ's authorized service area is limited to the 135 lots formerly served by Dora Pines Mobile Home Park. Certificates 298-W and 248-S were originally awarded to Dora Pines by Order No. 8044, issued November 16, 1977, in Docket No. 770402-WS(AP), in response to Dora Pines' application for a grandfather certificate pursuant to Section 367.171, Florida Statutes (1977). The PSC was only authorized by Section 367.171(1)(b) to grant grandfather certificates "for the area served by such

utility on the day this chapter becomes applicable to it." That area encompassed only the 135 lots in the mobile home park then being served by Dora Pines. The certificate transfers to JJ's in 1980 could not have conveyed a service area more extensive than that which Dora Pines was lawfully entitled to serve at the time of the transfer.

HOME

OWNERS: No position at this time.

STAFF: The territory authorized in its Commission approved territory as specified in its legal description, pursuant to Orders No. 8044 and No. 9853, and all subsequently issued orders.

ISSUE 18: Did the Commission, either directly or by the administrative action of its staff, have the statutory authority in 1977 to grant certificates for an area larger than that being served by a utility at the time Section 367.171, Florida Statutes, became applicable to the utility?

POSITIONS

UTILITY: AS stated in Issue 17, Section 367.171, Florida Statutes, was not the applicable statutory provision under which the certificates were issued to JJ's predecessor in 1977, despite the references to such statute in the form application and order. However, to the extent the Commission determines that those certificates were issued pursuant to that subsection, the answer to the question posed depends upon the meaning of the words "being served." The Commission did have the authority in 1977 to grant the certificate and the service territory which was granted under either Section 367.041 or 367.051, Florida Statutes, or 367.171, Florida Statutes.

OPC: No.

WIMPEY: No position at this time.

MT. DORA: No.

HOME

OWNERS: No position at this time.

STAFF: No position at this time.

ISSUE 19: Did Order No. 8044, issued November 16, 1977, in Docket No. 770402-WS, authorize Dora Pines to serve outside the mobile home park?

POSITIONS

UTILITY: Yes.

OPC: No.

WIMPEY: No position at this time.

MT. DORA: No.

HOME

OWNERS: No position at this time.

STAFF: No position at this time.

ISSUE 20: Did the 1980 transfer of certificates 298-W and 248-B from Dora Pines to JJ's authorize JJ's to serve outside the mobile home park?

POSITIONS

UTILITY: Yes, that transfer order did authorize service outside the mobile home park. Even if it is determined, contrary to the evidence and law, that the territorial description contained in Order No. 8044 was not the certificated territory of JJ's as a result of the granting of the original certificate, the Commission does have the authority to grant additional territory in a transfer proceeding, in the public interest.

OPC: No.

WIMPEY: No position at this time.

MT. DORA: No.

HOME

OWNERS: No position at this time.

STAFF: No position at this time.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Timothy A. Hochuli	Utility	TAH-1	Resume.
"	"	TAH-2	Copy of application as filed with attachments.
"	"	TAH-3	Two pages of additional maps which clarify the facilities that are in place in the proposed extension area of Phase I.
	"	TAH-4	Circuit and appellate court case documents from the case of <u>City of Mt. Dora v. JJ's Mobile Homes</u> of which JJ's will request the panel take judicial notice.
Rod J. Stroupe	Mt. Dora	RJS-1	Exhibit A, ordinance establishing Mt. Dora's Chapter 180 utility district.
"	"	RJS-2	Exhibit B, map showing the relationship of the various areas involved herein.
Robert E. Farner	"	REF-1	Exhibit C, Robert E. Farner's resume.
Leon Bibb	Homeowners	LB-1	Photograph.
	"	LB-2	Photograph.

	"	LB-3	Photograph.
	"	LB-4	Photograph.
	"	LB-5	Composite exhibit of engineering summary by Mock, Roos & Associates, dated 3/5/93.
	"	LB-6	Letter from Jerry Chapdelaine, dated 11/9/92
	"	LB-7	Letter from Thomas M. Beard dated 1/22/93
Roberto Ansag	Staff	RA-1	Composite exhibit to the testimony of Roberto Ansag.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Rebuttal</u>			
Robert C. Nixon	Utility	RCN-1	Financial Statement of Jordan Hypes.
Timothy Hochuli	"	TAH-1	Resume
		TAH-2	Analysis of pressure tests conducted 11/9/93 - 11/11/93.
		TAH-3	Permit application submitted to Florida Dept. of Air and Water Pollution Control, 5/15/72
		TAH-4	Comparison of facilities costs.
		TAH-5	Plot of legal descriptions (Composite exhibit)



TAH-6            Summary of water  
                  quality test  
                  conducted 10/14/93.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

There are no proposed stipulations.

IX. PENDING MOTIONS

On August 22, 1994, Commission Staff filed a Motion to Quash Notice of Taking Deposition and for a Protective Order. On August 31, 1994, Wimpey filed a response to the motion. At the September 30, 1994, Prehearing Conference, counsel for Wimpey advised the Prehearing Officer that the subpoena may be withdrawn if the parties reach a settlement of the case by October 5, 1994. If the subpoena is not withdrawn by that date, the Prehearing Officer will rule upon the motion.

On September 20, 1994, OPC filed a motion to compel James O. Collier to answer deposition questions and produce documents referred to at the September 13, 1994, deposition. A ruling shall be made following JJ's response to this motion, which must be filed by October 3, 1994.

On September 14, 1994, JJ's filed a Request for Confidential Treatment. On September 20, 1994, OPC filed an objection to that motion. On September 29, 1994, Staff notified JJ's of the facial deficiencies contained in its confidentiality request. At the September 30, 1994, Prehearing Conference, JJ's agreed to provide a response to OPC's objection which would address the deficiencies by October 3, 1994. A ruling shall be made on this motion following JJ's response.

X. RULINGS

Staff's Motion To Strike was denied at the June 27, 1994, Prehearing Conference.

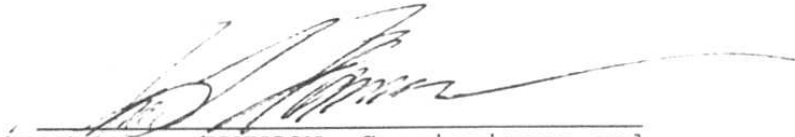
It is therefore,

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that this Prehearing Order shall govern the conduct of

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these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 6th day of October, 1994.



JULIA L. JOHNSON, Commissioner and  
Prehearing Officer

( S E A L )

MEO/MSN

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.