

THE GLENN PLANNING GROUP INC.  
STEVEN C. GLENN, CLU, MSFS  
CHARTERED FINANCIAL CONSULTANT

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EMPLOYEE BENEFIT PLANNING  
FINANCIAL PLANNING  
INVESTMENTS  
INSURANCE

Director, Division of Records & Reporting  
Florida Public Service Commission  
2540 Sumard Oak Blvd.  
Tallahassee, Florida, 32399-0850

ORIGINAL  
FILE COPY

October 31, 1996

Re : Application for Original Certificate by Point Water and Sewer (PW&S)  
Scenic Point Lane, Orange Park, Florida

941321-WS

Dear Sir:

As President of the Point Property Owners Association (PPOA), one of two users of the water & wastewater treatment plant (W&STP) referenced above, I am writing you to strongly oppose the granting of a Certificate of Operation to any member of the Yonge family or their controlled corporations. As a thirteen-year resident, and frequent PPOA officer, I have first hand knowledge of the Yonge family's history of misdealing at the Point. A number of them are listed below.

(1) When I purchased my unit from Jim Yonge's (JEY) sales agent, Karen Yonge Carr, I was informed that the W&STP was used by two entities, Whitney's Marine and PPOA. I was assured that the costs were fairly and equitably split between both users. When the owners at the Point assumed control of the association from JEYs daughters in 1985 -1986, we learned that Whitney's was billed only \$100/mth, with the PPOA paying the balance. We later learned that JEY owns the land under Whitney's and is leasing it to the marina operator. Once JEY's Certified Operator (Tom Ryan) installed a meter to better allocate each users pro rata expense, we found out how much Whitney's had been undercharged, and we had been overcharged.

(2) As a continuation of #1 above, the 1987 Board of the PPOA was able to prove that JEY had overcharged the association by \$16,000 for W&STP services from 1982 - 1986. This was caused by the clever handling of the PPOA checkbook by JEY's two daughters, Karen and Margie. Apparently, rather than charge the residents of PPOA the Kingsley Water & Sewer Company benchmark rates, as required by the Covenants & Restrictions, they passed on 100% of the operating costs of the plant to the individual homeowners, minus the inadequate contribution from Whitney's. In negotiations with JEY's attorney, David King of Orange Park, the PPOA received an out of court settlement of \$12,000 from JEY in 1988.

(3) As the Owner/Operator of the W&STP since the early 1980's, the Yonge family has consistently disregarded the lawful edicts of a variety of governmental agencies, including the EPA (dechlorinator 1987), DEP (permit 1992) and the PSC (lawsuit against the PPOA

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for the alleged non payment of their illegal water and sewer charges) A copy of this recent lawsuit is enclosed.

- (4) Both JEY and his wife, Vanda, have given incorrect information to regulatory authorities about the proper ownership of the W&STP. In an apparent attempt to sidestep their responsibility as Owner/Operators of the plant, Vanda told the DEP that the PPOA purchased the plant, JEY told the EPA that he gave it to us. JEY even sent the deed conveying title of the common property to the Association in 1983 as proof of the

transfer. The EPA did discover, however, that JEY had entered into a contract for sale of that same plant to Tom Ryan in 1988. The purchase price was \$500.00, and the sale was never consummated due to permitting problems with the dock (Whitney;s) that carries the sewer outfall line into the river.

- (5) As you know, the current applicant, John Yonge of Point Water & Sewer, has attempted to collect "his" exorbitant fees by threatening to discontinue water service to the residents at the Point. It is my understanding that he cannot charge for water and sewer services until he/his company is approved by the PSC, and the rate structure is sanctioned. We are, however once again forced to defend ourselves against another expensive, unwarranted lawsuit.
- (6) The Yonge family is attempting to charge the 19 residents of the Point \$3000/mth for water and sewer services. This comes to \$158/mth/unit. I suspect that these rates are unwarranted, punitive, unjustified, and without precedent anywhere in the state of Florida.
- (7) At this point in time, it appears as if the plant in question is in need of repair. We have been informed that one of the blowers is currently out of service, and the outfall line is sagging into the St. Johns River..

Based on an analysis of the irresponsible behavior of the Yonge family in its development of the Point, and their lackadaisical approach to water and sewer management, the Board of Directors must respectfully request that John Yonge's application to operate a water and wastewater utility be denied. Additionally, I feel that operation of the plant in question should be turned over to the Clay County Water and Sewer Authority until both the Point and Whitney's are able to connect up with the more efficiently run municipal service.

Respectfully Submitted,

Steven C. Glenn  
President, Point Property Owners Association

cc: John Yonge  
4753 Raggedy Point Road  
Orange Park, Florida, 32073

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

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

CASE NO. 96-1954-CA

Plaintiff,

DIVISION: 3

vs.

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

Defendants.

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**COMPLAINT**

COMES NOW, Plaintiff, **POINT WATER AND SEWER, INC.**, a Florida corporation, (hereinafter referred to as "Plaintiff"), and sues Defendant, the **Point Property Owners Association, Inc.**, a Florida corporation (hereinafter referred to as "Defendant"), and states as follows:

1. Plaintiff, **POINT WATER AND SEWER, INC.**, a Florida corporation, at all times relevant to the events described in this Complaint engaged in business in Clay County in the State of Florida and currently maintains its principal place of business at 4753 Raggedy Point Road, Orange Park, Clay County, Florida 32073.
2. Defendant, **THE POINT PROPERTY OWNERS ASSOCIATION, INC.**, is a Florida corporation organized and existing pursuant to the laws of the State of Florida. Defendant maintains its principal place of business at 324 Scenic Point Lane, Orange Park, Clay County, Florida 32073. Defendant is a Florida corporation which is composed of an association

of persons who own townhome units at a townhouse subdivision in Orange Park, Clay County, Florida, known as the "Point." Defendant is subject to the personal jurisdiction and venue of this Court.

3. Venue is proper in Clay County, Florida, where the cause of action accrued and where Defendant maintains its principal place of business.

4. This is an action for damages that exceed \$15,000.00, exclusive of interest, court costs and attorney's fees.

5. On or about May 1981, James Yonge (hereinafter referred to as "Yonge"), and PDY, Inc., a Florida corporation, as the owners of certain real property, which was ultimately developed as The Point (hereinafter referred to as the "Point"), entered into an Amended and Restated Declaration of Covenants, Conditions, Restrictions and Provisions for Party Wall of the Point (hereinafter referred to as the "Declaration"), a true copy of which is attached hereto as Exhibit "A". The Declaration reflected that Yonge and PDY, Inc., as owners of the Point, planned to develop same as a townhouse subdivision consisting of thirty-four (34) townhouse lots, and that, therefore, they were declaring that all of the Point would be subjected to certain limitations, easements, restrictions, reservations, covenants and conditions which would run with the land and inure to the benefit of subsequent owners of any of the Point.

6. Among other things, the Declaration provided:

**ARTICLE XIII**  
**WATER AND SEWER**

Section 1. The Declarant (PDY, Inc.), its successors and assigns, shall have the exclusive and perpetual responsibility and right to provide water and sewer service for all users within the Townhouses and other improvements constructed on the subject property.

Section 2. The Owners of the respective units and the Association shall pay for such water and sewer service the going rates presently and hereafter charged for water and sewer services by private utility companies in Clay County, Florida. If any dispute arises as to the going rates, then the rates charged by Kingsley Service Company to its residential customers in Clay County, Florida, shall be used as the going rate.

Section 3. The Declarant, its successors and assigns, shall operate the water and sewer system in accordance with applicable laws, rules and regulations of all governmental bodies having jurisdiction thereof...

Section 5. In the event the Declarant or any user of the water and sewer system shall default in the performance of any of the agreements and covenants herein set forth, then the aggrieved party shall have the right to pursue such remedies as are available and the losing party shall pay all costs of any proceeding hereunder, including attorney's fees.

7. In or about 1981 through 1982, the Point was developed and subsequently occupied. As part of the development, a wastewater treatment plant (hereinafter referred to as the "WWTTP"), was installed to provide water and sewer services to this individual townhouse units built at The Point (hereinafter referred to as the "Units").

8. On or about February 1988, Yonge, Defendant, and the property Owners (or their predecessors-in-interest), entered into a Second Amendment to Amended and Restate Declaration of Covenants, Conditions, Restrictions, and Provisions for the Party Wall of the Point (hereinafter referred to as the "Second Amendment"). The Second Amendment deleted Section 2 of Article XIII of the Declaration and replaced it with the following:

[Section 2.] The owners of the respective Units through and with the Association shall pay for such water and sewer service. The amount paid shall be the equivalent of all of the operating, supply, maintenance, utility, testing, analysis, replacements, modifications and regulatory costs necessary for the proper and efficient operation of the water and sewer plants in compliance with all Federal, state and local regulations.

A copy of the Second Amendment is attached hereto as Exhibit "B".

9. On March 1, 1995, the Plaintiff undertook the operation of WWTP pursuant to an assignment of rights and authorization by IGR, Inc., a Florida corporation, which had succeeded to all of the rights and duties assigned to the Declarant under Article XIII of the Declaration.

**COUNT I  
BREACH OF CONTRACT**

10. This is an action for damages for breach of contract in an amount greater than \$15,000.00, exclusive of interest, court costs and attorney's fees.

11. Plaintiff realleges and reavers all allegations set forth in paragraphs 1 through 9 above, inclusive, and by reference makes them a part of this Count as though fully set forth herein.

12. Plaintiff performed all of its obligations under the above-mentioned Agreement as amended and has satisfied all conditions precedent before bringing this action.

13. Defendant has materially breached the above-referenced Agreement as amended by failing to make payments when due and after Plaintiff fully performed its obligations under the Agreement as amended.

14. Pursuant to the above-described Agreement as amended Plaintiff supplied water and sewer service which were valued at \$57,000.00 of which there remains the unpaid sum of \$57,000.00. This sum is presently due and owing. The above-described water and sewer service were actually provided by Plaintiff and accepted by Defendant.

15. Defendant has breached the Agreement as amended by failing to make payment when due for the months of March, 1995, through September, 1996. The current arrears owed by Defendant under the Agreement as amended is \$57,000.00. Damages will continue to accrue. All conditions precedent to the bringing of this action have been performed, have occurred or have

been waived. All notifications required under the Agreement as amended have been given or have been waived.

16. Although Plaintiff has frequently requested payment from Defendant, Defendant has refused and continues to refuse to pay the amount owed to Plaintiff.

17. Plaintiff has retained the undersigned legal counsel and is obligated to pay them a reasonable attorney's fees for their services. Plaintiff is entitled to recover attorney's fees pursuant to Section 5 of Article XIII of the Declaration.

WHEREFORE, Plaintiffs demand judgment for damages against Defendant together with court costs, interest and attorney's fees, and any other relief as this Court may deem appropriate.

**COUNT II**  
**UNJUST ENRICHMENT**

18. This is an action for damages for unjust enrichment in an amount greater than \$15,000.00, exclusive of interest, court costs and attorney's fees.

19. Plaintiff realleges and reavers all matters contained in paragraphs 1 through 4 above, inclusive, and by reference makes them a part of this Count as though fully set forth herein.

20. Plaintiff supplied water and sewer services to Defendant.

21. Plaintiff did not supply water and sewer services gratuitously, and Defendant requested said water and sewer services and accepted said water and sewer services voluntarily and knowingly.

22. Defendant has been unjustly enriched by not paying for the said water and sewer services.

**WHEREFORE**, Plaintiff requests judgment against Defendant, for the reasonable value of the above-referenced water and sewer services, interest, and costs and for any other relief this Court deems appropriate.

**COUNT III**  
**OPEN ACCOUNT**

23. This is an action on an open account for damages that exceed \$15,000.00, exclusive of interest court costs, and attorney's fees.

24. Plaintiff realleges and reavers Paragraphs 1 through 4, inclusive, and by reference makes them a part of this Count as though fully set forth herein.

25. Defendant is indebted to Plaintiff for water and sewer services provided by Plaintiff at Defendant's request in the sum of \$57,000.00 of which \$57,000.00 is due with interest since March 1, 1995, in accordance with the statements of accounts and invoices attached to the Complaint as Composite Exhibit "C" and which are incorporated herein by reference.

26. Although Plaintiff has made demand of Defendant for the payment of this account, Defendant has failed and refused to pay the sums owed.

27. Plaintiff has retained the undersigned legal counsel and is obligated to pay them a reasonable attorney's fees for their services. Plaintiff is entitled to recover attorney's fees pursuant to Section 5 of Article XIII of the Declaration.

**WHEREFORE**, Plaintiff requests judgment against Defendant for the sum of \$57,000.00, together with costs, interest and attorney's fees pursuant to the Declaration and other relief this Court deems appropriate.



**COUNT IV**  
**ACCOUNT STATED**

28. This is an action for damages that exceed \$15,000.00, exclusive of interest, court costs and attorney's fees.

29. Plaintiff realleges paragraphs 1 through 4, inclusive, and by reference makes them a part of this Count as though fully set forth herein.

30. Before the institution of this action, Plaintiff and Defendant had business transactions between them wherein Plaintiff provide water and sewer services to Defendant, who accepted same.

31. Plaintiff rendered statements of it to Defendant, copies being attached to the Complaint, marked as Composite Exhibit "C" and Defendant did not object to the statements or provide that a different amount was correct.

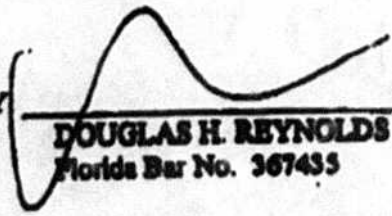
32. Defendant owed Plaintiff \$57,000.00 that is due with interest since March 1, 1995, on the accounts.

33. Plaintiff has retained the undersigned legal counsel and is obligated to pay them a reasonable attorney's fees for their services. Plaintiff is entitled to recover attorney's fees pursuant to Section 5 of Article XIII of the Declaration.

WHEREFORE, Plaintiff requests judgment against Defendant for the sum of \$57,000.00, together with court costs, interest and attorney's fees pursuant to the Declaration and any other relief as this Court deems proper.

Dated this 1st day of October, 1996.

**COX & REYNOLDS**  
**Attorneys for Plaintiff**  
**4875 N. Federal Highway**  
**10th Floor**  
**Fort Lauderdale, Florida 33308**  
**(954) 491-5220**

BY   
**DOUGLAS H. REYNOLDS**  
**Florida Bar No. 367435**