

MEMORANDUM

ORIGINAL

April 23, 1998

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (FERGUSON) *CF*
RE: DOCKET NO. 980307-WS - APPLICATION FOR CERTIFICATE TO
PROVIDE WATER AND WASTEWATER SERVICE IN ORANGE COUNTY BY
ZELLWOOD STATION CO-OP, INC.

Please file the attached letter with attachments, dated April 23, 1998, in the docket file for the above-referenced docket.

CF/dr

Attachment

cc: Division of Water and Wastewater
(Lowe, Dunbar, Walker, Redemann)
Division of Legal Services (Brubaker)

ACK _____
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FPSC-RECORDS/REPORTING

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

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ADMINISTRATION
MAIL ROOM

Re: Docket No. 980307-WS

Florida Public Service Commission

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LEGAL DIVISION

RESPONSE TO LETTER
3/30/98 from
Cleveland Ferguson III
Staff Attorney

The undersigned object to issuance of a certificate to Zellwood Station Co-op, Inc. on the following grounds:

1. The Co-op is a non-profit Corporation chartered to operate a cooperative housing association. Ownership of a share in the Co-op is a condition precedent to obtaining and exercising the privilege of a 99 year lease, which is the residence (home) of the undersigned.
2. The fact that the Co-op was operating, or intended to operate, a public utility, and that the home of the undersigned would be subjected to liabilities for the operation of such a business enterprise was concealed at the time of purchase.
3. The Charter does not authorize the operation of a Public Utility Company and such operation is ultra vires. Such operation should be committed to some entity other than a cooperative housing organization.
4. The fact that purchasers of a share in the Co-op were in fact purchasing a share in a Public Utility Company was not revealed. Although, shareholders are liable for losses of the operation by assessment against their homes, they can derive no income or profit, from the share ownership, even if the operation should be profitable according to the provisions of Section 501(C), US Internal Revenue Code.
5. There is no need for the Co-op to have a certificate in that Section 367.022 Florida Statutes, specifically exempts non-profit associations or cooperatives providing service solely to its members, a fact situation easily accomplished by some slight internal reorganization which has been previously suggested to the officers. Certain officers instead state that operation of the utility company is mandated by the St. John Water

Management district. The Water Management District presumably does have the power to require water meters to measure individual usage and some means of punishment to overusers, but it does not have power to require the Co-op to operate a Public Utility Company. It is the sale of water by the Co-op which results in the loss of the exemption mentioned above, a fact which was, or should have been recognized, by the Organizing Attorneys and the Organizing Officers, and should have and could have been avoided.

6. Neither the shareholders, to the best of undersigned's knowledge, nor the undersigned, have ever been afforded the opportunity vote on the ownership, or manner of operation, of the water and sewer facility at Zellwood Station, and certainly never on the issue of whether to engage in the operation of a Public Utility Company. The facts giving rise to operation of a Utility Company result from the neglect of the officers to recognize the effect of their method of operation and refusal to take any steps to place the operation under the exemption of Section 367.022, Florida Statutes.

Having fully set forth our objections to the issuance of a certificate and recognizing the certain futility of our objections, we elect to stand on the self evident facts which will fully appear as determinations are made in the establishment of the existence of the Co-op as a legal entity entitled to a certificate. Accordingly we will individually present no evidence other than the letters attached hereto and a copy of the Charter. We do join however with others, if any, who are objecting.


We respectfully request that if the Certificate is granted, that sufficient findings of fact be included in the order to establish the fact as to why the Co-op is a Public Utility under the law, subject to jurisdiction of the Commission, and not exempt; and that the Certificate be definite as to the area in which the Co-op shall exercise the privileges of the Certificate, i.e. that it be limited to serving only members of the Zellwood Station Community Association, which includes the shareholders of the Co-op and the Condominium owners, or their respective lessees, and not any outside customers.

We would further request that no sales of water or other services commence until such time as all homes have water meters installed; and then that monthly meter readings and billings be required such that usage will be known and paid for as it occurs, according to the custom of utility companies generally, rather than periodic lump sum billing for overusage.

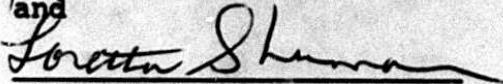
We waive notice of any and all other proceedings in this

matter, reserving nonetheless the right to seek such judicial relief as to this and other matters as appropriate.

Respectfully submitted this 21st day of April, 1998.


Benjamin T. Shuman

and



Loretta Shuman
3856 Parway Rd.
Zellwood, FL 32798
Shareholders, Lot 1341

cc: Zellwood Station Co-Op, Inc.
2126 Spillman Drive
Zellwood, FL 32798

Cleveland Ferguson, III Esq.
Staff Attorney
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

LAW OFFICES
BENJAMIN T. SHUMAN
611 N. PINE HILLS ROAD
ORLANDO, FLORIDA
32808

(407) 295-4701

VIA HAND DELIVERY

March 3, 1997

ZELLWOOD STATION CO-OP, INC.
ATTN: OFFICERS AND DIRECTORS
2126 Spillman Drive
Zellwood, FL 32798-9799

Dear Ladies and Gentlemen:

Much to my chagrin, at no time during negotiations for purchase, nor between date of contract and date of closing, was I informed of the actual conditions at Zellwood Station. In fact, it seems that the known facts were well concealed. I have heard similar statements made by other purchasers.

After purchase, I heard some rumors from neighbors which materialized into facts. I started trying to discover essential facts to evaluate the security of my investment. I discovered that the ship had already hit the sand. Upon further inquiry, I learned that the sand was in fact a legal quagmire. This description is approximately consistent with descriptions applied by various board members from time to time who were supposedly "in the know" and who seemingly vented their spleen against the legal profession for having created the quagmire. I feel safe in saying that if the ship is not extricated from the quagmire, it will eventually be wholly consumed.

To the purpose of commencement of the process of extrication, I request and urge the appointment of an ad hoc committee to proceed according to a well defined agenda. The committee should be representative of the entire community. I listened carefully at the recent FYI meeting during which Attorney Tom Cloud presented a program apparently intended to inject fear into residents and stress complacent compliance. That meeting caused me to be concerned enough to research questions. The urgency in creating the committee is commanded by the output at that meeting and the out cry following.

ZELLWOOD STATION CO-OP, INC.
ATTN: OFFICERS AND DIRECTORS
March 3, 1997
Page 2

I suggest the following items of agenda for the ad hoc committee to be prioritized as follows:

1. To investigate and evaluate the means by which the Water and Sewer department can become exempt from the jurisdiction of the Public Service Commission as specifically authorized by Section 367.022, Florida Statutes.

(It is noted that it is eminently proposed to spend \$24000.00 for a rate determination case. Exemption would eliminate the necessity for rate cases. If the exemption is not achieved the residents will be paying for water consumption at a rate determined by a state agency and we will ultimately be paying utility taxes on the bills at the rate of 10% to Orange County, Florida. Further, future rate cases will surely occur from time to time at needless expense. Ownership of the water and sewerage system by the (or a) community association owned by all persons owning land or having a proprietary lease would effect the exemption. It was never the intent of the Co-op to become a utility company. It was left vulnerable to statutory definition by poor planning)

2. To investigate and evaluate a means to effect water conservation without billing for consumption such as will satisfy the SJWMD.

(SJWMD is conservation agency Their requirement of the installation of meters is a reasonable imposition which results from a people problem within our own ranks. However, billing for consumption is not a conservation necessity because there are alternative means equally or more effective. Fines imposed with escalations for repeat offenses enforced by liens against property would be quite effective. Water Bills are a great matter of concern to many, but not to those who are fortunate enough to be financially carefree. Water Bills are a common debt to the utility company and would not be secured by liens. Water cut off would be the only effective means of enforcing collection.)

3. To investigate and evaluate all agreements concerning water and sewer hook up between early on developers of ZS and Orange County to determine the advisability of renewal of said agreements or repudiation of the same.

ZELLWOOD STATION CO-OP, INC.
ATTN: OFFICERS AND DIRECTORS
March 3, 1997
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(Regrettably I have not, within available time, had the opportunity to obtain a copy of the agreements. I inquired of Russ Swanson at the FYI meeting and he advised that he had not seen the agreements before they were displayed by Tom Cloud. My research on this subject is therefore limited to generalities. Suffice it to say that such agreements are not cast in stone. There have been a number of instances where the same have been held to be unenforceable against developments, sometimes based on constitutional issues and sometimes on practical considerations. I would think that none of us are interested in building or rebuilding a facility and then giving it to Orange County.)

I have appended a copy of the exemption statute, a few cases exemplary of the type litigation arising out of public vs. private water and sewer service, and a case construing the exemption statute (adverse to the developer in that case).

This presentation is purposely kept brief. If you have no interest in pursuing the matters herein suggested, then so be it. If you are interested in discussing these suggestions and my reasons for making them, I will make time. And Further, I would be willing to lend some assistance to the committee, if one is appointed.

It is my belief that maintaining the status quo and continuing to be led down the primrose path is detrimental to the concept that was intended by the owner purchase of Zellwood Station.

Very truly yours,

Benjamin T. Shuman
3856 Parway Road
Zellwood, FL 32798

Enclosures



ZELLWOOD STATION CO-OP, INC.

2126 SPILLMAN DRIVE
ZELLWOOD, FLORIDA 32798-9799
407-886-0000



March 6, 1997

Mr. Benjamin T. Shuman
3856 Parway Road
Zellwood, Florida 32798

Dear Mr. Shuman:

On behalf of the Co-op Board of Directors, I acknowledge receipt of your letter dated March 3, 1997 regarding your suggestions in reference to the water service at Zellwood Station.

Your suggestions will be, or have already been, addressed.

Thank you for your concern.

Sincerely,

Gloria Holt
Park Manager

cc: Irving Perkins, president

LAW OFFICES
BENJAMIN T. SHUMAN

611 N. PINE HILLS ROAD
ORLANDO, FLORIDA
32808

(407) 295-4701

VIA HAND DELIVERY

March 12, 1997

ZELLWOOD STATION CO-OP, INC.
ATTN: OFFICERS AND DIRECTORS
2126 Spillman Drive
Zellwood, FL 32798-9799

Ladies and Gentlemen:

I received the letter from PM Gloria Holt advising that my suggestions and recommendations had been or were being handled. My suggestions and recommendations have not yet been made.

I got the impression from a telephone call that I received, and the letter, that my attempt to render assistance (gratis) on an issue of great importance to all of the people of Zellwood Station Community may have been viewed with skepticism, suspicion, perhaps even antagonism.

I assure you that my offer is based solely upon willingness to help, motivated only slightly by generosity and more significantly by my own personal interest to avoid whenever possible many of those things that I was led to believe I was avoiding when I purchased into the Co-op, including but not limited to water and sewer bills and taxes on the same all set by government.

My qualifications to assist in such matters I believe are unique. In the course of 46 years of law practice I have had a variety of experience ranging from serving as City Attorney for various Cities to serving as General Counsel for approximately ten years for a state agency (The Florida Real Estate Commission). I have been involved in budgeting preparation and presentation on the local and state level; I have negotiated franchises with utility companies; I was responsible for drafting and enforcing rules to regulate the advertising and sale of real estate developments which entailed seeing that their advertising statements fairly represented the developments promised as well as that fulfillment of the promises was adequately assured and secured; I worked with various committees during the drafting of the initial legislation creating the Florida Land Sales Board and legislation which initially authorized the creation of condominiums in Florida; I served for a couple of years as Chairman of the Florida Bar Administrative Law Committee during the formative period of the present administrative law procedures act under which all administrative law procedures are conducted, including but not limited to proceedings before the public service commission and the St Johns Water Management District; and I have handled cases as lead Counsel in most of the Circuit Courts, all of the appellate Courts, and the Supreme Court, of the State of Florida. More recently, I have served on the Florida Bar Trust Law Committee and the Land Trust Committee of the Real Property and Probate Law Section of the Florida Bar. Even more recently, I limit my office time to 4 days a week and limit my practice primarily to real estate, trusts, probate avoidance and probate, business contracts, corporations, and general office practice.

ZELLWOOD STATION CO-OP, INC.
ATTN: OFFICERS AND DIRECTORS
March 12, 1997
Page 2

Having now given you the longest dissertation that I have ever written about myself, if you wish to accept my offer of cooperation (gratis) say so. If not, nothing further is necessary.

Very truly yours,

Benjamin T. Shuman
3856 Parway Road
Zellwood, FL 32798

State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of ZELLWOOD STATION CO-OP, INC., a corporation organized under the laws of the State of Florida, filed on July 2, 1993, as shown by the records of this office.

The document number of this corporation is N93000003092.

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Tenth day of September, 1993



CR2EO22 (2-91)

Jim Smith

Jim Smith
Secretary of State

**ARTICLES OF INCORPORATION
OF
ZELLWOOD STATION CO-OP, INC.**

A Not-For-Profit Florida Corporation

I, the undersigned, for the purposes of forming a Not-for-Profit corporation under the laws of the State of Florida, and in compliance with the requirements of Chapter 617 and Chapter 719, Florida Statutes, hereby certify as follows:

ARTICLE I

NAME

The name of this corporation is:

ZELLWOOD STATION CO-OP, INC.

The principal office address is:

**2126 Spillman Drive
Zellwood, Florida 32798.**

ARTICLE II

REGISTERED AGENT/OFFICE

The name of the Initial Registered Agent of this corporation is:

**Lee Jay Colling
Attorney-at-Law**

The street address of the initial registered office of this corporation is:

**First Union Tower, Suite 700
20 North Orange Avenue
Orlando, Florida 32801.**

ARTICLE III

PURPOSE AND POWERS

This corporation does not contemplate pecuniary gain or profit to the members thereof, and the specific and primary purposes for which this corporation is formed are:

- A. *For the advancement of charitable purposes by the distribution of its funds for such purposes.*
- B. *To operate in such manner as will qualify it as an exempt organization under Section 501(c) of the Internal Revenue Code of 1954, as amended, or under any corresponding provisions of any subsequent federal tax laws, covering the distributions to organizations qualified as tax-exempt organizations under the Internal Revenue code, as amended.*
- C. *To represent its members in the Zellwood Station, their successors and assigns, pursuant to the provisions of Chapter 719, Florida Statutes.*
- D. *To negotiate for, acquire, finance, and operate the mobile home park on behalf of its members.*
- E. *To convert the mobile home park, once acquired, to a cooperative form of ownership. Upon acquisition of the property, the Corporation shall be the entity that operates and manages a cooperative and offers cooperative parcels for sale or lease in the ordinary course of business.*
- F. *To contract, sue or be sued with respect to the exercise or non-exercise of its powers. For these purposes, the powers of the Corporation include, but are not limited to, the maintenance, management, and operation of the park property.*
- G. *To institute, maintain, settle, or appeal actions or hearings in its name on behalf of its members concerning matters of common interest, including, but not limited to, the common property; structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving the park property; and protests of ad valorem taxes on commonly used facilities. In addition, the Corporation shall have all of the applicable powers specified in Chapters 617, 607, and 719, Florida Statutes.*

- H. *To make and collect assessments and to lease, maintain, and replace the common areas upon purchase or lease of the mobile home park.*
- I. *To purchase lots in the park and to acquire and hold, lease, mortgage and convey them.*
- J. *To modify or move or create any easement for ingress and egress or for the purposes of utilities if the easement constitutes part of, or crosses, the park property upon purchase or lease of the mobile home park.*

ARTICLE IV

MEMBERSHIP

Membership in this Corporation shall be limited to persons who have purchased Membership Certificates in the Corporation. Upon the transfer of a Membership Certificate, either voluntarily or by operation of law, the transferee shall become a member of the Corporation if all the requirements for membership have been met.

ARTICLE V

PERPETUAL EXISTENCE

This Corporation shall have a perpetual existence unless sooner dissolved according to law.

ARTICLE VI

DIRECTORS

The Powers of this corporation shall be exercised, its properties controlled and its affairs conducted by a Board of Directors, consisting of not less than three (3) persons. The initial number of directors of the corporation shall be eleven (11); provided however, that such number may be changed by a By-Law duly adopted.

The directors named herein as the first Board of Directors shall hold office until the first annual meeting of the membership at which time an election of directors shall be held. The manner in which the Directors shall be elected will be determined in the By-Laws.

The names and addresses of the Initial Board of Directors of this corporation are:

Irving L. Perkins
4071 Cohen Drive
Zellwood, Florida 32798

Charles Goertz
3889 Diamond Oak Way
Zellwood, Florida 32798

Dr. Robert Thomson
3628 Parway Road
Zellwood, Florida 32798

Comelia Hodges
3713 Diamond Oak Way
Zellwood, Florida 32798

Dr. Kenneth Penny
3955 Cohen Drive
Zellwood, Florida 32798

Dean Cherry
2627 Fiddlewood Court
Zellwood, Florida 32798

Connie Sedlacek
2502 Putter Road
Zellwood, Florida 32798

Donald Welsh
3956 Cohen Drive
Zellwood, Florida 32798

Willard H. Jorgenrud
3902 Parway Road
Zellwood, Florida 32798

Norman Normandin
3409 Greenbluff Road
Zellwood, Florida 32798

Frank Rivers
3352 Overlook Road
Zellwood, Florida 32798

ARTICLE VII
INCORPORATOR

The name and address of the Incorporator signing these Articles of Incorporation

is:

Lee Jay Colling
First Union Tower, Suite 700
20 North Orange Avenue
Orlando, Florida 32801

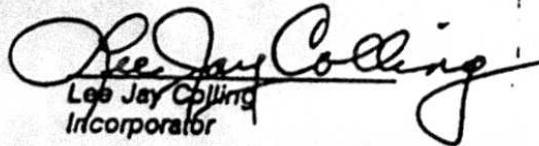
ARTICLE VIII
BY-LAWS

The power to amend or repeal the By-Laws shall be in the members. The affirmative vote of the majority of the voters present, in person or by proxy, at a meeting at which a quorum has been established, shall be necessary to exercise that power. The power to adopt the first By-Laws of the Corporation, however, consistent with the Acts, shall be in the Board of Directors. A majority vote of the Directors shall be necessary to adopt the first By-Laws. The By-Laws may contain any provisions for the regulation and management of the Corporation which are consistent with the Acts and these Articles of Incorporation.

**ARTICLE IX
AMENDMENTS**

This Corporation reserves the right to amend or repeal any provisions contained in these Articles of Incorporation, or any amendment hereto, and any right conferred upon the members is subject to this reservation. Such amendment may be proposed and adopted in the manner provided by the By-Laws of the Corporation.

The undersigned, being the Incorporator of this corporation, for the purpose of forming this not-for-profit corporation under the laws of the State of Florida, has executed these Articles of Incorporation this 30 day of June, 1993.

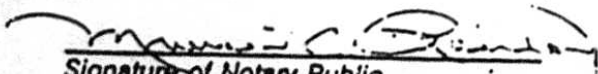

Lee Jay Colling
Incorporator

**STATE OF FLORIDA
COUNTY OF ORANGE**

Before me, this day, personally appeared Lee Jay Colling, the person described in and who executed the foregoing instrument, who, being first duly sworn and under oath, acknowledged, before me, that he is the person who executed the foregoing Articles of Incorporation, as Incorporator.

- Affiant is personally known to me, or
- Affiant produced his/her driver's license
- Affiant produced as identification:

WITNESS my hand and official seal this 30th day of June, 1993.


Signature of Notary Public

Maureen C. Beardon
Typed or Printed Name of Notary

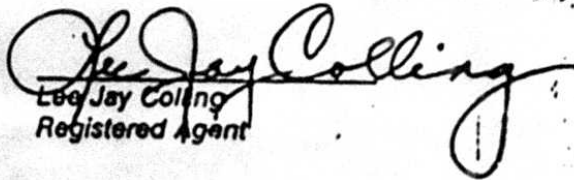
My commission expires:

NOTARY PUBLIC, STATE OF FLORIDA.
MY COMMISSION EXPIRES: Nov. 18, 1995.
CORPORATE TRUSTEES & REAL ESTATE BROKERS

ACCEPTANCE BY REGISTERED AGENT

The undersigned is familiar with and hereby accepts the duties and responsibilities as Registered Agent of ZELLWOOD STATION CO-OP, INC., Inc., which is contained in the foregoing Articles of Incorporation.

Dated this 30th day of June, 1993.


Lee Jay Colling
Registered Agent

STATE OF FLORIDA
COUNTY OF ORANGE

BEFORE ME, the undersigned authority, personally appeared Lee Jay Colling, to me known to be the person who executed the foregoing Acceptance By Registered Agent and who acknowledged to and before me that he executed such instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 30th day of June, 1993.


Signature of Notary Public

Maureen C. Zeardon
Typed or Printed Name of Notary

My commission expires:

NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXPIRES: Nov. 18, 1995.
BONDED THROUGH NOTARY PUBLIC'S OFFICE