

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by TIMBER LAKE CLUB	)	DOCKET NO. 881401-SU
AT SUMERWOOD, A CONDOMINIUM, for an	)	ORDER NO. 20997
exemption from FPSC regulation for a	)	ISSUED: 4-7-89
sewer system in Collier County.	)	

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, CHAIRMAN  
 THOMAS M. BEARD  
 BETTY EASLEY  
 GERALD L. GUNTER  
 JOHN T. HERNDON

ORDER ACKNOWLEDGING EXEMPT STATUS  
OF TIMBER LAKE CLUB AT  
SUMERWOOD AND CLOSING DOCKET

Timber Lake Club at Sumerwood, A Condominium, is a project proposed by GMA Development Corporation for Collier County. The engineer for this project, Mr. John Asher, of William C. McAnly and Associates, P.A., requested by letter dated October 19, 1988, that this Commission grant the project's sewer system "non-jurisdictional" status. Mr. Asher's letter stated that the project should be considered non-jurisdictional because the sewage treatment plant that will serve the project is a temporary on-site system intended to operate only until Collier County can provide such sewer service and the service will be provided solely to residents of the Timber Lake Club Condominium. Also, the letter stated that GMA Development Corporation is responsible for all operation costs. Mr. Asher's letter was accompanied by an affidavit signed by Mr. Jacob Nagar, President of GMA Development Corporation, a survey and plot plan of Timber Lake Club Condominium, and a water and sewer composite plan for the project.

Our review of the request for "non-jurisdictional" status indicated that the more appropriate request was for "exempt" status pursuant to Section 367.022(7), Florida Statutes, which provides an exemption for nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations or cooperatives. Subsequently, the developer submitted a second affidavit signed by Mr. Nagar and copies of the Declaration of Condominium, the Articles and the By-Laws of Timber Lake Club at Sumerwood, A Condominium.

We reviewed these documents and determined that the second affidavit requested an exemption pursuant to Section 367.022(7), Florida Statutes. The first version of Article XII of the By-Laws of the Timber Lake Club Condominium Association, Inc., that was submitted provided for transfer of control of the condominium association from the developer when the first of the following events occurred:

- A. Three years after 50 percent (50%) or more of the units have been conveyed to purchasers;
- B. Three months after 90 percent (90%) or more of the units have been conveyed to purchasers;

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- C. When all of the units have been completed, some of the units conveyed to purchasers and none of the others are being offered for sale by the Developer in the ordinary course of business.
- D. When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business; whichever occurs first, the Developer shall be entitled to elect at least one member of the Board as long as it holds for sale in the ordinary course of business at least five percent (5%) of the units.

We reviewed the above provisions and concluded that the transfer of control of the association from the developer to the condominium unit owners would not occur at a point that fits the statutory requirement. This Commission has consistently expressed concern that an association applying for an exemption must, as the statute requires, own and control the water or sewer facilities involved. This concern has resulted in our scrutinizing the transfer of control provisions, on a case by case basis, to assure that the transfer of control of the association from the developer occurs at some point close to the sale of 50% of the lots or units involved or within some other reasonable time period that effectuates the intent of Section 367.022(7), Florida Statutes. Although the provisions in the first filing are taken from Chapter 718, Florida Statutes, that governs the formation and operation of condominiums, it is clear that Chapter 367, Florida Statutes, addresses a wholly different concern, the regulation of water and sewer utilities. Subsequent to our review of the above provisions, the developer submitted a modification of Article XII of the Timber Lake Club Condominium Association's By-Laws that amended paragraph A above by providing for transfer of control thirty days after 50% or more of the units have been conveyed to purchasers. The revised version also deleted paragraph B above.

In addition, Section 3 of Article XII provides that the actual transfer of control shall take place not more than sixty days after the time that unit owners other than the developer are entitled to elect a majority of the directors of the association. This sixty day period is to allow the developer time to have an audit performed to facilitate the transition of control, according to the developer's counsel.

We believe that the revised version of Article XII of the Association's By-Laws provides for transfer of control of the Association, and thereby control of the sewage treatment plant, in a time period that is reasonable and consistent with the statutory requirement. Therefore, we find that Timber Lake Club at Sumerwood, A Condominium, will be exempt from Florida Public Service Commission regulation pursuant to Section 367.022(7), Florida Statutes. Since there is no further need for this docket to remain open, this docket shall be closed.

Based on the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that, based on the facts as represented, the proposed sewer system of Timber Lake Club at Sumerwood, A Condominium, located at Timber Lake Circle, Naples, Florida 33942, will be exempt from this Commission's regulation under Section 367.022(7), Florida Statutes. It is further

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ORDERED that should there be any change in circumstances or method of operation of the subject sewer system, Timber Lake Club at Sumerwood, or its successor in interest, shall inform this Commission within thirty (30) days of such change so that we may determine whether our decision herein is still appropriate. It is further

ORDERED that this docket is hereby closed.

By Order of the Florida Public Service Commission,  
 this 7th day of April, 1989.

STEVE TRIBBLE, Director  
 Division of Records and Reporting

( S E A L )

SFS

by: Kay Flynn  
 Chief, Bureau of Records

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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.