

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by COUNTRY COVE	)	DOCKET NO. 890234-WU
HOMEOWNERS ASSOCIATION for exemption	)	ORDER NO. 21333
from FPSC regulation for a water	)	ISSUED: 6-5-89
facility in Brevard 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 INDICATING EXEMPT STATUS OF  
COUNTRY COVE HOMEOWNERS ASSOCIATION

BY THE COMMISSION:

Country Cove Development, Inc. (Country Cove or the developer), is developing a subdivision of single family homes in Brevard County. The developer formed a not-for-profit corporation known as Country Cove Homeowners Association, Inc. (the association) which will own and operate the development's water facility for the benefit of all property owners within the subdivision. Construction of the water facility is scheduled to begin upon the acquisition of the proper construction permits by the developer.

Prior to issuing a utility construction permit, the Department of Environmental Regulation (DER), pursuant to Section 367.031, Florida Statutes, requires a certificate from the Commission authorizing the association to provide water service or proof of exemption from regulation by the Commission. Therefore, on February 14, 1989, legal counsel for the association submitted a letter to the Commission requesting that we acknowledge to the Department of Environmental Regulation (DER) that the subject water facility would be exempt from our regulation. Attached to the letter were a duly executed affidavit from the president of the homeowners association alleging the nonprofit status of the association, and a copy of the association's Articles of Incorporation.

Article V of the Articles of Incorporation provides that, "Every person or entity who is a record owner of a fee or undivided interest in any parcel which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association." This Article further provides that, "Membership shall be appurtenant to and may not be separated from ownership of any parcel . . .".

Article VI of the Articles of Incorporation provides that the homeowners association shall have two (2) classes of voting membership: Class A member(s) who shall consist of all lot owners (except the developer), and who shall be entitled to one (1) vote for each lot owned; and, Class B member(s) who shall consist of the developer, and who shall be entitled to three

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(3) votes for each lot owned. This Article also states that the Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier: When Class A membership equal the total votes outstanding in the Class B membership; or, on January 1, 1992. In other words, the ownership and responsibility for the development's water system will be transferred from the developer to the homeowner's association when seventy-five percent (75%) of the lots are sold, or on January 1, 1989, whichever occurs first.

Section 367.022(7), Florida Statutes, provides that "Nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives" are exempt from our regulation.

Based on the facts as represented, we find that since the actual transfer of the subject water facility to the homeowner's association will occur within a reasonable time after construction of the water system is completed, and that the homeowners association will be owned and controlled by its members, such water facility qualifies for exemption from our regulation under the above-cited Section 367.022(7), Florida Statutes.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based on the facts as represented, the request by Country Cove Homeowners Association, 619 Dundee Circle, West Melbourne, Florida 32904 for exemption from Commission regulation is hereby approved pursuant to Section 367.022(7), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation of the subject water facility, Country Cove Homeowners Association, or its successor(s) 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 shall be closed.

By ORDER of the Florida Public Service Commission  
this 5th day of June, 1989.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

JRF

by: Kay Flynn  
Chief, Bureau of Records