

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by the CORPORATE SQUARE) DOCKET NO. 881494-SU
 OF NAPLES OWNERS ASSOCIATION, INC. for)
 exemption from FPSC regulation for a) ORDER NO. 21334
 sewer treatment plant in Collier County)
) ISSUED: 6-5-89

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 THE EXEMPT STATUS OF THE
 CORPORATE SQUARE OF NAPLES OWNERS ASSOCIATION, INC.

BY THE COMMISSION:

Corporate Square is an existing commercial park in Collier County, which is currently served by a septic system. The local health department has stopped issuing building permits due to its belief that the septic system is reaching full capacity. Accordingly, the developer of Corporate Square intends to construct a sewage treatment plant, for which it needs a construction permit from the Department of Environmental Regulation (DER). Pursuant to Section 367.031, Florida Statutes, before DER will issue a construction permit, it requires either a certificate authorizing service or proof of the utility's exemption from this Commission's regulation.

By letter dated November 11, 1988, Corporate Square requested that the Corporate Square of Naples Owners Association, Inc. (Association) be found exempt from the regulation of this Commission pursuant to the nonprofit association exemption, Section 367.022(7), Florida Statutes. Under that section, nonprofit associations which provide service solely to members who own and control it are exempt from the regulation of this Commission. Attached to Corporate Square's request were copies of the Articles of Incorporation for the Association, its bylaws and an affidavit reciting the facts upon which its asserted status was based. According to the documentation submitted, it did not appear that the Association was a nonprofit corporation. Corporate Square was informed of this deficiency and, on March 15, 1989, it filed amended Articles of Incorporation and bylaws.

The amended Articles of Incorporation provide for the incorporation of the Association as a nonprofit corporation. Under Article 5, each parcel or building site owner in Corporate Square is an automatic member of the Association. Membership is appurtenant to and not separable from ownership. Pursuant to Article 5.2, each member is entitled to one vote for each parcel or building site owned. Under a one-lot one-vote system, turnover to the non-developer members of the Association should occur at the first annual meeting after more than one-half of the parcels have been sold. The affidavit states that the plant will be deeded to the Association and that the Association will provide service solely to members.

Based upon the facts as presented herein, we find that the Association is exempt from this Commission's regulation pursuant to Section 367.022(7), Florida Statutes, as a

DOCUMENT NUMBER-DATE
 05594 JUN-5 1989
 FPSC-RECORDS/REPORTING

ORDER NO. 21334
DOCKET NO. 881494-SU
PAGE 2

nonprofit association providing service solely to members who own and control it. However, should there be any change in circumstances or method of operation, the Association, or its successor(s) in interest, shall inform this Commission within thirty days of such change so that we may re-evaluate its regulatory status.

It is, accordingly,

ORDERED that the Corporate Square of Naples Owners Association, Inc. is exempt from the regulation of this Commission under Section 367.022(7), Florida Statutes, as a nonprofit association providing service solely to members who own and control it. It is further

ORDERED that, should there be any change in circumstances or method of operation, Corporate Square of Naples Owners Association, Inc., or its successor(s) in interest, shall inform this Commission within thirty (30) days of such change so that we may re-evaluate its regulatory status. It is further

ORDERED that Docket No. 881494-SU be and is hereby closed.

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

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

by: *Kay DeLeon*
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

ORDER NO. 21334
DOCKET NO. 881494-SU
PAGE 3

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.