

MEMORANDUM

March 10, 1995

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PSC-RECORDS/REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (VACCAP) *TV* *AS*

RE: DOCKET NO. 941044-WS - RESOLUTION OF BOARD OF COMMISSIONERS OF CHARLOTTE COUNTY DECLARING CHARLOTTE COUNTY SUBJECT TO PROVISIONS OF CHAPTER 367, FLORIDA STATUTES - REQUEST FOR EXEMPTION FOR PROVISION OF WATER AND WASTEWATER SERVICE BY WESTCHESTER WOODS CONDOMINIUM ASSOCIATION, INC.

0336-fof

Attached is an ORDER INDICATING THE EXEMPT STATUS OF WESTCHESTER WOODS CONDOMINIUM ASSOCIATION, INC. AND CLOSING DOCKET with attachments, to be issued in the above-referenced docket. (Number of pages in Order - 4)

TV/ji

Attachment

cc: Division of Water and Wastewater (Edwards)

I: 941044-B.TV

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of Board of) DOCKET NO. 941044-WS
Commissioners of Charlotte) ORDER NO. PSC-95-0336-POF-WS
County declaring Charlotte) ISSUED: March 10, 1995
County subject to provisions of)
Chapter 367, Florida Statutes -)
Request for exemption for)
provision of water and)
wastewater service by)
WESTCHESTER WOODS CONDOMINIUM)
ASSOCIATION, INC.)

ORDER INDICATING THE EXEMPT STATUS OF
WESTCHESTER WOODS CONDOMINIUM ASSOCIATION, INC.

BY THE COMMISSION:

On November 28, 1994, Westchester Woods Condominium Association, Inc., (Westchester) filed a request for recognition of its exempt status, pursuant to Section 367.022(7), Florida Statutes. Westchester is located at 22481 Westchester Blvd., Port Charlotte, Florida 33980. Westchester's president, John Hughes, filed the application on behalf of Westchester.

Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or wastewater systems if they qualify under the appropriate provision of Chapter 367, Florida Statutes. The application was filed in accordance with Section 367.022(7), Florida Statutes.

Section 367.022(7), Florida Statutes, states that nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit entities are exempt from Commission regulation. Before an exemption of this nature may be granted, the applicant requesting the exemption must file with the Commission a statement specifying the following: that the corporation is nonprofit; providing service solely to the members who own and control it; whether it provides water service, wastewater service, or both; who will do the billing; and the service territory. Additionally, the applicant must submit its Articles of Incorporation as filed with the Secretary of State and its Bylaws. These documents must show clearly the requirements of membership, the members' voting rights, and the circumstances under which control passes to the nondeveloper members.

DOCUMENT NUMBER-DATE

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In its application, Westchester stated that it is a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes; that it will provide service solely to its members who own and control it; and that it will provide wastewater service for which it will provide its own billing. Water service will be provided by Charlotte County Utilities. The service area is 22481 Westchester Boulevard, Port Charlotte, Florida 33980. Westchester has attached its Articles of Incorporation and By-Laws showing the requirements for membership and that the members' voting rights are one vote per unit of ownership. Control of the corporation has already passed to the members, who have 100% ownership of the condominium. Westchester has provided a recorded Declaration, setting forth that the land and facilities are part of the common elements. In addition, Westchester has provided a recorded Warranty Deed of one of the members which shows that the member owns an undivided share in the common elements, thereby, establishing proof of Westchester's ownership of the facilities and continued use of the land where the facilities are located.

In addition, pursuant to Section 837.06, Florida Statutes, and Rule 25-30.060(2)(f), Florida Administrative Code, anyone knowingly making a false statement in writing with the intent to mislead is guilty of a misdemeanor. By signing the application, John Hughes acknowledged that he is aware of Section 837.06, Florida Statutes, and the penalties for making false statements in the application.

Based upon the facts as represented, we find that Westchester Woods Condominium Association, Inc., is exempt from Commission regulation pursuant to the provisions of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances or method of operation, a representative of the Association must inform the Commission within thirty days of such change, so that we may reevaluate Westchester Woods Condominium Association, Inc.,'s exempt status.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Westchester Woods Condominium Association, Inc., 22481 Westchester Blvd., Port Charlotte, FL 33980 is hereby exempt from Commission regulation pursuant to the provisions of Section 367.022(7), Florida Statutes. It is further

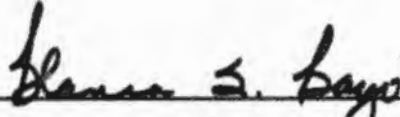
ORDERED that should there be any change in circumstances or method of operation, a representative of Westchester Woods Condominium Association, Inc., shall inform the Commission within thirty days of such change so that Westchester Woods Condominium

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Association, Inc.'s exempt status may be reevaluated. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 10th day of March, 1995.



BLANCA S. BAYO, Director
Division of Records and Reporting

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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 and/or wastewater 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.