



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: October 11, 1996
TO: Alice Crosby, Division of Legal Services
 Division of Records and Reporting
FROM: Patricia Brady, Division of Water and Wastewater *pb [signature]*
RE: Docket No. 941044-WS, Resolution of Board of County Commissioners of Charlotte County declaring Charlotte County subject to the provisions of Chapter 367, Florida Statutes - Request for exemption for provision of wastewater service by RIVER FOREST VILLAGE, INC.

On December 1, 1994, an application for a nonprofit exemption from regulation by the Florida Public Service Commission was filed on behalf of River Forest Village, Inc. (River Forest or Corporation) pursuant to Section 367.022(7), Florida Statutes. The application was signed by Mr. J. Albert Thomas who is the President of River Forest's Board of Directors and the primary contact person for the application. Mr. Thomas' address, as well as the physical location and mailing address for River Forest, is 4300 Riverside Drive, Punta Gorda, Florida 33982 (813/639-3311). This location is in Charlotte County.

In accordance with Section 367.022(7), Florida Statutes, and Rule 25-30.060(2) and (3)(g), Florida Administrative Code, Mr. Thomas filed a statement that River Forest is a nonprofit corporation providing service solely to members who own and control it and that the Community will do its own billing for wastewater service. Water is provided by the City of Punta Gorda directly to the homeowners. Mr. Thomas has acknowledged that he is aware of the penalty pursuant to Section 837.06, Florida Statutes, for knowingly making false statements in writing with the intent to mislead.

River Forest is a 204 unit mobile home community where residents are also shareholders of the Corporation. According to Mr. Thomas, when the Corporation formed, a "Corporate Resolution" was used as the Article of Incorporation. Since the Corporate Resolution does not provide information on the organizational structure of the Corporation, Mr. Thomas indicated that the By-Laws are used as the controlling document. The By-Laws show the requirements for membership and that member voting rights are one vote per unit of ownership. In addition to a copy of the Corporate Resolution and the By-Laws, the application contained a copy of a Lease Agreement. Due to the unusual nature of the documents provided with the application, staff asked Mr. Thomas to provide an additional statement affirming that River Forest only provides service to members which own and control the Corporation.

- ACK _____
- AFA _____
- APP _____
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In response to staff's letter of deficiency, Mr. Thomas provided the following statement:

That all members of River Forest Village, INC. are provided utility service, and that each member is a shareholder in the Corporation. Each member in the corporation is entitled to One (1) vote per share.

Based on all the above, staff issued a memorandum to legal on September 26, 1995, recommending that an administrative order be issued granting River Forest Village, Inc., a nonprofit exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes.

Because Mr. Thomas' supplemental statement did not specifically state that River Forest was not providing service to non-members, legal staff sent another deficiency letter. Based on follow-up discussions with River Forest and the attorney for River Forest, Mr. Jack Hackett, it was learned that one of the mobile homes receiving service from River Forest was not a shareholder in the Corporation. However, each tenant of River Forest is required to sign the Lease Agreement provided with the application including the tenant who is not a shareholder. Since the charges for water and wastewater service are not specifically contained in rent, legal staff determined that River Forest would qualify for a landlord-tenant exemption.

On December 14, 1995, an application for a landlord-tenant exemption pursuant to Section 367.022(5), Florida Statutes, was received on behalf of River Forest. The application was signed by Mr. Thomas and included the same basic information provided in the first paragraph of this memorandum. In accordance with Section 367.022(5), Florida Statutes and Rules 25-30.060(2) and (3)(e), Florida Administrative Code, in existence at the time of the filing, the revised application included a statement that River Forest provides utility service solely to its tenants and that the charges for service are non-specifically contained in rent. By signing the application, Mr. Thomas acknowledged, again, that he is aware of the penalty pursuant to Section 837.06, Florida Statutes, for knowingly making false statements in writing with the intent to mislead.

Section 2.08(C)(14) of the Administrative Procedures Manual grants staff the administrative authority to approve requests for determination of exempt status that are clear-cut and without controversy. Staff finds the application in compliance with statutory requirements and without apparent controversy. Staff recommends that an administrative order be issued granting River Forest Village, Inc., a landlord-tenant exemption from Commission regulation pursuant to Section 367.022(5), Florida Statutes. Staff also recommends that the order require River Forest, or any successors in interest, to notify the Commission within 30 days of any change in circumstances or method of operation which causes it to no longer qualify for exemption pursuant to Section 367.022, Florida Statutes. The docket should remain open to process additional applications for exemption.