

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by TOLL GATE COMMERCIAL)	DOCKET NO. 880910-SU
CENTER PROPERTY OWNER'S ASSOCIATION for)	
exemption from Florida Public Service)	ORDER NO. 20558
Commission regulation of a sewer system)	
in Collier County.)	ISSUED: 1-6-89
-----)	

The following Commissioners participated in the disposition of this matter:

KATIE NICHOLS, Chairman
 THOMAS M. BEARD
 GERALD L. GUNTER
 JOHN T. HERNDON
 MICHAEL MCK. WILSON

ORDER INDICATING THE EXEMPT STATUS OF TOLL GATE
 COMMERCIAL PROPERTY OWNER'S ASSOCIATION, INC.

BY THE COMMISSION:

Toll Gate Commercial Center is a commercial real estate development in Collier County. The Toll Gate Commercial Property Owner's Association, Inc. (the owner's association) is to own and operate that development's sewer utility. The engineer for that utility has requested recognition by us of its exemption from our regulation.

Pursuant to Section 367.031, Florida Statutes (1987), before issuing construction permits for a water and sewer utility, the Department of Environmental Regulation requires either a certificate from us authorizing that utility service or proof of its exemption from our regulation. As a matter of practice, upon request and sufficient proof, we will issue an order indicating the exempt status of qualifying water and sewer facilities. This particular request is for an exemption by reason of Section 367.022(7), Florida Statutes (1987), which provides that "nonprofit corporations, associations, or cooperatives providing service solely to members who own and control" such entities are exempt from Commission regulation.

This request is supported by two affidavits and other documentation from the developer of Toll Gate Commercial Center. The affidavits state that the owner's association is a not-for-profit corporation organized under Florida law and that it will provide sewer but not water service solely to its members. The copies of the owner's association's by-laws and articles of incorporation submitted to us show that the members will control it, the members being the purchasers of building sites in the development.

The articles of incorporation initially provided for permanent developer control, but that provision was amended by the developer while this request was pending. The articles of incorporation, as amended, are consistent with our policy that for a utility to be considered exempt by reason of Section 367.022(7), Florida Statutes (1987), the turnover of control from the developer to the members must occur when a majority of lots have been sold or at a percentage not substantially greater than a majority.

Under the facts and circumstances as represented in the developer's affidavit and other documents submitted, we find that the owner's association is a nonprofit corporation which

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is to provide utility service solely to its members who will own and control it. The Toll Gate Commercial Property Owner's Association, Inc. sewer utility is found to be exempt under Section 367.022(7), Florida Statutes (1987).

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the developer's affidavit and other documentation submitted in support of this request for exemption, that the Toll Gate Commercial Property Owner's Association, Inc., whose mailing address is 3936 Tamiami Trail North, Suite A, Naples, Florida 33940, is an exempt utility under Section 367.022(7), Florida Statutes (1987). It is further

ORDERED that should there be any change in circumstances or method of operation, the Toll Gate Commercial Property Owner's Association, Inc., or its successor(s) in interest, shall inform this Commission within thirty days of such change so that a determination may be made as to whether exempt status is still appropriate. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission,
this 6th day of JANUARY, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

KJM

by: Kay Flynn
Chief, Bureau of Records