

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Exemption Request by BRETTONE)	DOCKET NO. 891144-SU
PARK PROPERTY OWNERS ASSOCIATION,)	ORDER NO. 22298
INC.)	ISSUED: 12-11-89
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McWILSON
 THOMAS M. BEARD
 BETTY EASLEY
 JOHN T. HERNDON

ORDER INDICATING EXEMPT STATUS

BY THE COMMISSION:

Bretonne Park is a planned unit development ("PUD") currently being developed in Collier County. The Bretonne Park Property Owners Association, Inc., ("association"), is a nonprofit Florida corporation made up of Bretonne Park subdivision property owners. One purpose of the association is to operate a sewage treatment plant and collection system to serve the Bretonne Park PUD.

By letters of September 20, 1989 and October 20, 1989, the association's attorney requested that the association be found exempt from this Commission's jurisdiction. In support of this request the following documents were submitted: an affidavit dated September 11, 1989; an amended affidavit dated October 19, 1989; the Articles of Incorporation of the association; a copy of the sewer plant and land lease; and a copy of the development order for the Bretonne Park PUD issued by Collier County. Section 367.022(7), Florida Statutes, provides an exemption from this Commission's jurisdiction for a nonprofit association providing service solely to members who own and control the association.

The Articles of Incorporation, ("Articles"), establish the association as a nonprofit corporation. Article V provides that every record owner of a fee or undivided fee interest in any lot or unit in the Bretonne Park development is a member of the association. Article IV states that a purpose of the association is to own, operate, and maintain the sewage treatment plant and collection system serving the Bretonne Park development. That article further provides that management and control of the plant/system shall be by the Board of Directors

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until such time as more than 50% of the lots and units are conveyed by the developer. At that time, ownership and control shall transfer to a committee of 3 individuals elected by a majority of the then existing lot and unit owners. For the purpose of said election, each lot and unit owner shall have one vote per lot or unit owned. Thus, control of the plant and collection system will pass from the developers when over 50% of the lots and units are sold.

The October 19, 1989 affidavit submitted by the President of the association states that the plant/system will serve only the Bretonne Park development and that the association will operate the plant/system and bill its members for sewer service. The executed lease is an absolute lease of the plant to the association. The lease is not subject to termination until 90 days after the date Collier County makes central sewage facilities available to the Bretonne Park development. The October 19, 1989 affidavit and the PUD development order document that the County has required conveyance of collection system to the County, which will then lease the system back to the Association until the County's central sewer system is available to the Bretonne Park development.

Based on the above discussion, we find that the association is a nonprofit association that will provide sewer service solely to its members who will own and control it. Therefore, we find it appropriate to issue an order indicating the exempt status of the association pursuant to Section 367.022(7), Florida Statutes. However, in the event of any change in circumstances or method of operation that might affect its exempt status, the association, or its successor in interest, shall inform the Commission within 30 days of such change.

It is, therefore

ORDERED by the Florida Public Service Commission that the above described sewage service provided by the Bretonne Park Property Owners Association, Inc. is exempt from our jurisdiction pursuant to Section 367.022(7), Florida Statutes. It is further

ORDERED that in the event of any change in circumstances or method of operation that might affect its exempt status, the association, or its successor in interest, shall inform this Commission within 30 days of such change. It is further

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ORDERED that Docket No. 891114-SU is hereby closed.

By ORDER of the Florida Public Service Commission
this 11th day of DECEMBER, 1989.

STEVE TRIBBLE, DIRECTOR
Division of Records and Reporting

(S E A L)

DAS

by: Kay Flynn
Chief, Bureau of Records

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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 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.