

BEFORE THE FLORIDA PUBLIC COMMISSION

In re: Request for exemption)
from Florida Public Service)
Commission regulation for a)
water system in Sumter County)
by Fairways at Rolling Hills)
Water Authority, Inc.)
_____)

DOCKET NO. 900401-WS
ORDER NO. 23455
ISSUED: 9-10-90

The following Commissioners participated in the disposition of this matter:

- MICHAEL MCK. WILSON, Chairman
- THOMAS M. BEARD
- BETTY EASLEY
- GERALD L. GUNTER
- FRANK S. MESSERSMITH

ORDER GRANTING EXEMPT STATUS TO FAIRWAYS
AT ROLLING HILLS WATER AUTHORITY, INC.

BY THE COMMISSION:

Fairways at Rolling Hills Water Authority, Inc. (Water Authority) is a nonprofit corporation that will provide water service to a development to be known as Fairways at Rolling Hills in Sumter County. The project will be developed in phases.

On May 4, 1990, the Water Authority filed an Application for Declaration of Exempt Status with this Commission. Attached to the Application were the Articles of Incorporation of the Water Authority, its Bylaws, the Declaration of Covenants, Conditions and Restrictions for Fairways at Rolling Hills, and an affidavit from the President of the Water Authority. Subsequently, in compliance with the request for further information, the Water Authority submitted a warranty deed evidencing the Water Authority's ownership of the land upon which the utility's facilities will be located, an explanation of the plans for phased-in development of Fairways at Rolling Hills, and an affidavit from the developer stating that he had transferred title to the entire water system, including the water transmission lines, to the Water Authority.

The Water Authority requested an exemption from our regulation based upon Section 367.022(7), Florida Statutes. This section grants an exemption for nonprofit associations providing service

ORDER NO. 23455
DOCKET NO. 900401-WS
PAGE 2

solely to members who own and control them. Pursuant to Section 367.031, Florida Statutes, before the Department of Environmental Regulation will issue a construction permit for the proposed work on the water system, it requires a certificate from this Commission authorizing service, or an order recognizing that the system is exempt from regulation.

The affidavit from the President of the Water Authority states that the authority will provide service solely to its members. The Articles of Incorporation of the Water Authority provide for the incorporation of the Authority as a nonprofit corporation. Pursuant to Article V, the owner of each lot within the development automatically becomes a member of the Water Authority. Each member is entitled to one vote for each lot owned.

The developer has one vote for each lot in the platted portions and one vote for each lot to be platted in the unplatted portions of the development. Under the one-lot, one-vote provision of the Articles, control by the nondeveloper members of the Water Authority should occur when more than one-half of the lots have been sold.

The information submitted by the developer indicates that development of all phases is anticipated and plans, preparations and some construction have taken place. We believe that this information evidences the developer's good faith intention to phase in the full development as expeditiously as possible. Thus, it appears that there should be no unreasonable time period before control of the Water Authority passes to lot owners other than the developer.

The Water Authority's Bylaws provide that the Board of Directors of the Water Authority shall be responsible for the administration of the water system. Article III provides that the Board is responsible for the collection of all fees and assessments and for establishing the water service fee and capital assessments. The authority is also responsible for billing. The Declarations of Covenants provides that a "connection fee" shall be paid by each lot buyer to the developer. However, the developer explained that this is merely an add-on to the lot sales agreement and thus, the developer will not provide any utility service.

Upon consideration of the facts as discussed above, we find that the Water Authority is exempt from our regulation pursuant to Section 367.022 (7), Florida Statutes, as a nonprofit corporation providing service solely to members who own and control it.

ORDER NO. 23455
DOCKET NO. 900401-WS
PAGE 3

However, should there be any change in circumstances or method of operation, the Water Authority, or its successor(s) in interest, shall notify this Commission within thirty days of such change so that we may reevaluate its regulatory status.

Based upon our past practices, the Water Authority is required to record this order with the Clerk of the Court for Sumter County. Such recordation will provide constructive notice to the public, and specifically, to any potential purchaser within the development, of the exempt status of the Water Authority.

It is therefore

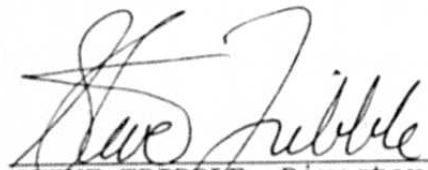
ORDERED by the Florida Public Service Commission that Fairways at Rolling Hills Water Authority, Inc. is exempt from this Commission's regulation under Section 367.022(7), Florida Statutes, as a nonprofit corporation providing service solely to members who own and control it. It is further

ORDERED that should there be any change in circumstances or method of operation, Fairways at Rolling Hills Water Authority, Inc. or its successor(s) in interest, shall notify this Commission within 30 days of such change so that we may reevaluate its regulatory status. It is further

ORDERED that Fairways at Rolling Hills Water Authority, Inc. shall record this order with the Clerk of the Court for Sumter County. It is further

ORDERED that this docket be and is hereby closed.

By ORDER of the Florida Public Service Commission, this
10th day of SEPTEMBER, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

(SEAL)

ASD

ORDER NO. 23455
DOCKET NO. 900401-WS
PAGE 4

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.