

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from )	DOCKET NO. 910091-SU
FPSC regulation for a wastewater )	
system in Collier County by )	ORDER NO. 24408
Wingsouth/Shadowwood Sewage )	
Treatment Association, Inc. )	ISSUED: 4-22-91
_____ )	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
 J. TERRY DEASON  
 BETTY EASLEY  
 GERALD L. GUNTER  
 MICHAEL MCK. WILSON

ORDER INDICATING EXEMPT STATUS OF  
WINGSOUTH/SHADOWWOOD SEWAGE TREATMENT ASSOCIATION, INC.

BY THE COMMISSION:

Upon request and sufficient proof, this Commission will issue an order indicating the nonjurisdictional or exempt status of water or wastewater facilities, if they qualify under the appropriate section of Chapter 367, Florida Statutes. By Order No. 23463, issued September 11, 1990, the Commission denied the exemption request of Wingsouth/Shadowwood Sewage Treatment Association, Inc., (Wingsouth or applicant), which claimed exempt status under Section 367.022(7), Florida Statutes, (nonprofit entities).

Wingsouth's exemption request was denied, basically, because of the two-tiered voting structure of its association. Under its two-tiered voting structure, lot/unit owners in the utility's service area were members of the wastewater association, but had no voting rights. The only association members with voting rights were the subassociations controlling the individual parcels in the service area and the owner(s) of any parcels for which no subassociation had been formed. The Commission objected to the two-tiered structure stating that "the members actually receiving the service [should] be the members who own and control the [wastewater] association through their votes."

On January 28, 1991, a second exemption request was filed for Wingsouth under the nonprofit entity exemption. The renewed

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request was based upon a proposed reorganization. This Order addresses this new request.

Under Section 367.022(7), Florida Statutes, "Nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives" are exempt from Florida Public Service Commission regulation. In our interpretation of this provision, we have required that control of the nonprofit entity transfer from the developer member to the nondeveloper members at some point in time close to the sale of fifty percent of the lots/units in the development or within some other reasonable time.

Upon reviewing the proposed amendment to the applicant's Articles of Incorporation, we think that control of the association will pass to the nondeveloper members upon the sale of fifty-one percent of the lots/units in the service area. The applicant's initial service area will consist of three parcels. Two of the parcels are condominium developments--one of 228 units and the other of 59 units--and the third is a tract of 11 unplatted lots. According to the proposed amendment to Article III, Section A., "Every Owner of any lot, tract, parcel or condominium unit located within the initial Service Area shall be members of the Association." Article III, Section B, states that each member is entitled to one vote for each lot or condominium unit he owns. Under this voting scheme, the transition of control from developer to nondeveloper members will occur naturally once a majority of the lots/units are sold.

Under the applicant's original Articles of Incorporation, votes were allocated amongst the subassociations for or owner(s) of the parcels in the service area based upon each parcel's planned unit density. Aside from objecting to the tiered voting arrangement, we were concerned with the fact that one of the parcels in the service area was particularly large, up for sale, and wholly undeveloped. The original Articles allocated 330 of the total 628 votes to the owner of that parcel. That owner could have dominated the association through his/her voting power for years to come even though service would not be received until some indeterminable time in the future. The applicant solved this problem in its proposed amended articles by excluding that parcel from the initial service area and excluding its owner from membership. According to the proposed amendment to Article II, Section B, that large parcel is a mandatory expansion area, and

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lot/unit owners in that parcel will become voting members of the wastewater association when they are ready to hook up.

In an affidavit dated December 26, 1990, the president of the association attests that Wingsouth is a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes; that Wingsouth will provide service solely to its members who will own and control it; and that Wingsouth will provide wastewater service only. According to Wingsouth's counsel, the wastewater association will do the billing for the service.

With the application, the applicant submitted a copy of a deed dated March 29, 1990, as proof that it owns the land upon which the facilities are located. The grantor of the deeded property was the receiver of one of the developers originally involved with the project. The conveyance to the applicant is subject to the condition subsequent that if the property ceases to be used as the site for the wastewater facility, the fee simple interest shall revert to the grantor. We believe that such a condition subsequent is not inconsistent with Commission policy. Commission policy requires that an exemptee own the property being used for utility purposes. The applicant here owns the property only so long as the land is used for utility purposes. If the property ceases to be used for utility purposes, there is no need to require that the exemptee continue to own it.

Based on the facts as represented, we find that Wingsouth qualifies under Section 367.022(7), Florida Statutes, as a nonprofit association which is exempt from Commission regulation. As is our practice for exemptions of this nature, we require that Wingsouth record the order entered in this docket with the Clerk of the Court for Collier County. Recordation in the official public records of the County will provide constructive notice to the public, and specifically, to any potential purchaser of a lot/unit in the developed area, of the exempt status of the wastewater system.

It is, therefore

ORDERED that by the Florida Public Service Commission that, based upon the facts as represented, Wingsouth/Shadowwood Sewage Treatment Association, Inc., in Collier County is hereby exempt

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from Commission regulation pursuant to Section 367.022(7), Florida Statutes. It is further

ORDERED that should there be any change in the circumstances or method of operation of its wastewater system, Wingsouth/Shadowwood Sewage Treatment Association, Inc., or any successor in interest shall inform the Commission within thirty days of such change. It is further

ORDERED that Wingsouth/Shadowwood Sewage Treatment Association, Inc., shall record this Order in the official public records of Collier County. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission this 22nd  
day of APRIL, 1991.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

MJF

by Kay Feign  
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.