

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of Show Cause) DOCKET NO. 920348-WU
Proceedings Against BELLA VISTA) ORDER NO. PSC-93-0611-FOF-WU
HOMEOWNERS ASSOCIATION OF LAKE) ISSUED: April 21, 1993
COUNTY, INC. for Operating a)
Water System in Lake County)
Without a Certificate.)
_____)

ORDER INDICATING THE EXEMPT STATUS
OF BELLA VISTA HOMEOWNERS ASSOCIATION
OF LAKE COUNTY, INC.

BY THE COMMISSION:

Bella Vista Homeowners Association of Lake County, Inc. (Bella Vista or applicant) is a nonprofit corporation in Lake County providing water service to approximately sixteen residences. The contact person is Mr. Paul Hanna and the mailing address is Post Office Box 66, Howey-In-The-Hills, Florida 34737.

In Docket No. 900860-WU, Bella Vista requested that it be found exempt from Public Service Commission regulation pursuant to Section 367.022(7), Florida Statutes. This request was denied by Order No. 24125, issued February 18, 1991, because Bella Vista was registered as a for-profit corporation. The Commission ordered the utility to file for an exemption or an original certificate within six months.

Bella Vista did not comply with the above-referenced Order and by Order No. PSC-92-0544-FOF-WU, issued June 23, 1992, Bella Vista was ordered to file a written response which would show cause as to why it should not be fined for noncompliance with Order No. 24125 and Section 367.031, Florida Statutes. In his response, Paul Hanna, Bella Vista's President, stated that Bella Vista was a nonprofit corporation. Our Commission Staff found this statement to be incorrect after contacting the Secretary of State's Office. We informed Mr. Hanna that the utility was, in fact, registered as a for-profit corporation. Subsequently, Bella Vista amended its Articles of Incorporation and Bylaws and is now registered as a non-profit association.

On September 4, 1992, Bella Vista filed an application for exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes, as a nonprofit association. This section provides an exemption from Commission regulation for "nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such corporations, associations or cooperatives."

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Before an exemption of this nature may be granted, the applicant requesting the exemption must file with the Commission a statement specifying the following: that the corporation is nonprofit, providing service solely to the members who own and control it; whether it provides water service, wastewater service, or both; who will do the billing; and the service territory. Additionally, the applicant must submit its Articles of Incorporation as filed with the Secretary of State and its Bylaws. These documents must show clearly the requirements of membership, the members' voting rights, and the circumstances under which control passes to the nondeveloper members.

The application was filed by Bella Vista in accordance with Section 367.022(7), Florida Statutes, and Rules 25-30.060(2) and 3(g), Florida Administrative Code. The application included a statement from Bella Vista that: the corporation is non-profit; water service will be provided solely to members who own and control it; Bella Vista will do the billing; and the service area will be limited to the Bella Vista Golf and Yacht Club community.

Bella Vista provided the Articles of Incorporation as filed with the Secretary of State and the Bylaws, which clearly show the requirements for membership and that the members' voting rights are one vote per unit of ownership and that control has passed to the nondeveloper members. In addition to the application, the applicant filed a warranty deed which shows its ownership of the utility facilities and the land upon which the facilities will be located. Further, the applicant acknowledged Section 837.06, Florida Statutes, regarding false statements.

Based on the facts as represented, we find that Bella Vista is exempt from our regulation pursuant to Section 367.022(7), Florida Statutes, as a nonprofit association providing service solely to members who own and control it. In the event of any change in circumstances or method of operation that might affect its exempt status, Bella Vista, or its successor(s) in interest, shall notify this Commission within 30 days of the change so we may reevaluate its exempt status.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that Bella Vista Homeowners Association of Lake County, Inc., is exempt from Commission regulation under Section 367.022(7), Florida Statutes,


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as a nonprofit association providing service solely to its members who own and control it. It is further

ORDERED that should there be any change in circumstances or method of operation, Bella Vista Homeowners Association of Lake County, Inc., or its successor(s) in interest, shall notify this Commission within 30 days of the change so we may reevaluate its exempt status. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 21st day of April, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.