

MEMORANDUM

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March 15, 1995

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (EDMONDS) *SAJ*

RE: DOCKET NO. 941044-WS - Resolution of Board of Commissioners of Charlotte County declaring Charlotte County subject to provisions of Chapter 367, Florida Statutes - Request for exemption for provision of water and wastewater service by Forest Park Condominium Association, Inc.

0388-FOF

Attached is an ORDER INDICATING THE EXEMPT STATUS OF FOREST PARK CONDOMINIUM ASSOCIATION, INC., to be issued in the above-referenced docket. Please issue this order as is. (Number of pages in Order - 4)

SKE/dp

Attachment

cc: Division of Water and Wastewater (Coker)

I: 941044-F.SKE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of Board of) DOCKET NO. 941044-WS
Commissioners of Charlotte) ORDER NO. PSC-95-0388-POF-WS
County declaring Charlotte) ISSUED: March 22, 1995
County subject to provisions of)
Chapter 367, Florida Statutes -)
Request for exemption for)
provision of water and)
wastewater service by Forest)
Park Condominium Association,)
Inc.)

ORDER INDICATING THE EXEMPT STATUS OF
FOREST PARK CONDOMINIUM ASSOCIATION, INC.

BY THE COMMISSION:

On September 27, 1994, the Board of County Commissioners of Charlotte County adopted Resolution No. 94-195, pursuant to Section 367.171, Florida Statutes, declaring that, as of September 27, 1994, the water and wastewater utilities in that County shall become subject to the provisions of the Water and Wastewater Regulatory Law, Chapter 367, Florida Statutes. The resolution was acknowledged by this Commission on November 28, 1994, by Order No. PSC-94-1451-POF-WS. Pursuant to Section 367.131, Florida Statutes, a utility subject to the jurisdiction of this Commission must obtain a certificate of authorization or an order recognizing the exempt status of the system.

On November 28, 1994, this Commission received an application from the Forest Park Condominium Association, Inc. (Forest Park or utility) for a nonprofit association exemption pursuant to Section 367.022(7), Florida Statutes, and Rule 25-30.060, Florida Administrative Code. The utility's physical location and mailing address is 4260 Placida Road, Englewood, Florida 34224. The application was signed by Mr. Robert Farley, President of the Association and primary contact person for Forest Park. His mailing address is 4260 Placida Road #16A, Englewood, Florida 34224.

Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or wastewater systems if they qualify under the appropriate provision of Chapter 367, Florida Statutes. The application was filed in accordance with Section 367.022(7), Florida Statutes, and Rules 25-30.060(1), (2), and (3)(g), Florida Administrative Code.

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Section 367.022(7), Florida Statutes, states that nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit entities are exempt from Commission regulation. 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; whether it provides 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 clearly show the requirements of membership, the members' voting rights, and the circumstances under which control passes to the nondeveloper members.

In its application, Forest Park stated that it is a nonprofit condominium association; that it will provide service solely to its members who own and control it; and that it will provide wastewater service for which it will provide its own billing. The service area is specified as being the physical address of the utility mentioned above. Forest Park provided a sample deed of a unit owner, along with the Declaration of Condominium which shows that each unit owns an undivided percentage share of the common elements, and that the land upon which the wastewater treatment facilities are located are part of the common elements. These documents show that Forest Park is entitled to use of the land upon which the treatment facilities are located. Furthermore, Forest Park has attached its Articles of Incorporation as filed with the Secretary of State and the Bylaws, which documents clearly show the requirements for membership, and that the members' voting rights are one vote per unit of ownership. The documents do not show when control passes to the nondeveloper members. However, Mr. Farley provided an affidavit, dated February 7, 1995, stating that control of the Association has passed to the nondeveloper members and remains with the nondeveloper members.

In addition, pursuant to Section 837.06, Florida Statutes, and Rule 25-30.060(2)(f), Florida Administrative Code, anyone knowingly making a false statement in writing with the intent to mislead is guilty of a misdemeanor. By signing the application, Mr. Farley acknowledged that he is aware of Section 837.06, Florida Statutes, and the penalties for making false statements in the application.

Based upon the facts as represented, we find that Forest Park Condominium Association, Inc., is exempt from Commission regulation pursuant to the provisions of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances or method of

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its wastewater system, Forest Park or its successor(s) in interest shall notify the Commission within thirty days of such change so that we may reevaluate Forest Park Condominium Association, Inc.'s exemption status.


Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Forest Park Condominium Association, Inc., 4260 Placida Road, Englewood, Florida 34224, is hereby exempt from Commission regulation pursuant to the provisions of Section 367.022(7), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation, a representative of Forest Park Condominium Association, Inc. shall inform the Commission within thirty days of such change so that the utility's exempt status may be reevaluated. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 22nd day of March, 1995.



BLANCA S. BAYO, Director
Division of Records and Reporting

(S E A L)

SKE

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 and/or wastewater 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.