

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for) DOCKET NO. 951154-WU
exemption from Florida Public) ORDER NO. PSC-95-1436-FOF-WU
Service Commission regulation) ISSUED: November 27, 1995
for provision of water service)
in Orange County by Montpelier)
Village Club, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER INDICATING EXEMPT STATUS OF MONTEPELIER VILLAGE CLUB, INC.,

AND

CLOSING DOCKET

BY THE COMMISSION:

Background

Montpelier Village Club, Inc. (hereinafter Montpelier or homeowners association), is a homeowners association which oversees the operation of an irrigation system to homeowners in the community of Montpelier Village in Orange County. Potable water and wastewater service are provided by the County. The irrigation system was installed by the developer prior to construction of the homes and automatically irrigates each lot unless the line on the property is capped. Water for the irrigation system comes from a private well and is provided to members of the homeowners association for a monthly charge to operate and maintain the system.

After the developer turned over ownership of the irrigation system to the homeowners association, approximately 25 of 365 homeowners chose not to receive the service and agreed to allow the line on their property to be capped. One homeowner, however, refused both to join the homeowners association and also to allow the homeowners association access to her property to cap the line. Therefore, that homeowner is receiving irrigation service without making any payments. The homeowners association has placed a lien

DOCUMENT NUMBER-DATE

11810 NOV 27 85

FPSC-RECORDS/REPORTING

on the homeowner's property against which the homeowner has brought suit in civil court.

The attorney for the homeowner filing the suit contacted Commission staff regarding the regulatory status of Montpelier Village Club, Inc. Our Staff determined that the homeowners association had neither a certificate to charge for irrigation service nor an exemption from regulation in accordance with Section 367.031, Florida Statutes. Since, we had determined in East Central Florida, Order No. PSC-92-0104-FOF-WU, that we had statutory responsibility over nonpotable water systems, forms were sent to Montpelier to either allow it to apply for a certificate or an exemption. The homeowners association chose to file for a nonprofit exemption pursuant to Section 367.022(7), Florida Statutes.

Exemption Application

On September 25, 1995, Montpelier filed an application with this Commission for recognition of its exempt status, pursuant to Section 367.022(7), Florida Statutes. Montpelier is a homeowners association located at 5605 Mormon Drive, Orlando, Florida 32821 (Orange County). Mr. John Davis, President of Montpelier, and primary contact person, filed the application on behalf of Montpelier. The address for Mr. Davis is 10567 Montpelier Circle, Orlando, Florida 32821.

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. Except as described below, the application was filed in accordance with Statute 367.022(7), Florida Statutes, and Rules 25-30.060(2) and (3)(g), Florida Administrative Code.

Mr. Davis filed a statement that Montpelier is a nonprofit corporation intending to provide service solely to members who own and control it. Montpelier's Articles of Incorporation and By-Laws were attached to the application and clearly show the requirements for membership and that the members' voting rights are one vote per unit of ownership. Control passed from the developer (International Community Corporation) to the non-developer members in 1985. A warranty deed was provided as proof of ownership of the utility facilities and the land upon which the facilities are located. 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. Davis has acknowledged that he is aware of the penalty pursuant to Section 837.06, Florida Statutes, for knowingly making false statements in writing with the intent to mislead.

Section 367.022(7), Florida Statutes, exempts from regulation:

nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives.

Pursuant to its Articles of Incorporation and By-Laws, Montpelier intended to provide service solely to members who owned and controlled the homeowners association. However, Montpelier's irrigation system preceded the development of the community and irrigates the land automatically. The design of the system does not allow for individual homes to be selectively by-passed. Consequently, if a homeowner chooses not to become a member of the homeowners association, the only way Montpelier can avoid providing service is to access the homeowners' property to cap their line.

In the case at hand, one homeowner chose not to become a member of the homeowners association and also refused to allow the homeowners association to come on her property to cap the line. Therefore, Montpelier is providing service to the homeowner without compensation. To recover its costs, the homeowners association placed a lien on the homeowners property which the homeowner has challenged in court.

In a similar situation, this Commission issued a declaratory statement regarding Central Lake Utilities Corporation (Central Lake) in Docket No. 900516-WU, whereby Central Lake asked the Commission if it would still be entitled to exempt status as a nonprofit corporation if it provided wastewater treatment service for no compensation to a nonmember. The Commission answered the question in the affirmative by Order No. 23897, issued December 18, 1990. In that order, the Commission specifically said:

The Legislature did not intend to regulate the provision of all water and wastewater service. It only intended to regulate the provision of water and wastewater service sold to the public. The jurisdictional definition of the word "utility" in section 367.021(12), Florida Statutes, provides that only those who offer water and wastewater service to the public for compensation will be considered utilities subject to the provisions of the Water and Wastewater Regulatory Law.

Also, in Order No. 24044, issued on January 29, 1991, in Docket No. 900814-WU, the Commission denied an exemption to Zellwood Water Users, Inc. (Zellwood), because Zellwood was providing service to two nonmembers for compensation. In denying the exemption, the Commission stated, "this Commission has consistently required that service be provided only to members of the non-profit entity unless the service to non-members is provided without compensation, see Order No. 23897."

Based on the foregoing, Montpelier Village Club, Inc., shall be granted an exemption pursuant to Section 367.022(7), Florida Statutes, for service to its members. We further acknowledge that provision of irrigation service to a nonmember without compensation is non-jurisdictional pursuant to Section 367.021(12), Florida Statutes.

However, there appears to be some question as to whether Montpelier will receive compensation from a nonmember through its pending lawsuit. Therefore, in the event of any change of circumstances or method of operation, Montpelier, or its successors in interest, shall notify the Commission within 30 days of such change so that its continued exempt status can be reevaluated.

Based on the foregoing, it is, therefore,

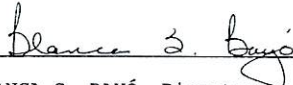
ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Montpelier Village Club, Inc., 5605 Mormon Drive, Orlando, Florida 32821, is exempt from Commission regulation for its service to its members pursuant to the provisions of Section 367.022(7), Florida Statutes, and is not subject to this Commission's jurisdiction for its service to a nonmember without compensation pursuant to Section 367.021(12), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation, the owner of Montpelier Village Club, Inc., or any successors in interest, shall inform this Commission within 30 days of such a change so that we may reevaluate its exempt or nonjurisdictional status. It is further

ORDERED that Docket No. 951154-WU is hereby closed.

ORDER NO. PSC-95-1436-POF-WU
DOCKET NO. 951154-WU
PAGE 5

By ORDER of the Florida Public Service Commission, this 27th
day of November, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RRJ

Dissent: Commissioner Diane K. Kiesling dissents from the
Commission's decision in this docket.

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, 2540 Shumard Oak Boulevard, Tallahassee,
Florida 32399-0850, 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.