

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for Exemption) DOCKET NO. 950281-WS
from Florida Public Service) ORDER NO. PSC-96-1348-FOF-WS
Commission Regulation for) ISSUED: November 18, 1996
Provision of Water and)
Wastewater Service in Citrus)
County by Beverly Hills)
Community Association, Inc.)
_____)

ORDER INDICATING EXEMPT STATUS
OF
BEVERLY HILLS COMMUNITY ASSOCIATION, INC.

BY THE COMMISSION:

On March 14, 1995, Beverly Hills Community Association, Inc., (Beverly Hills or Association) filed an application for exemption from regulation by the Florida Public Service Commission pursuant to Section 367.022(7), Florida Statutes. The application was signed by Mr. Bennie D. Taylor as President of the Association. The primary contact person is Mr. Geoffrey D. Withers, 111 North Orange Avenue, Suite 1075, Orlando, Florida 32801, telephone 407 648 5740. The physical location, mailing address and service territory for Beverly Hills is 4005 North Forrest Ridge Boulevard, Beverly Hills, Florida 34465. This location is in Citrus County.

In accordance with Section 367.022(7), Florida Statutes, and Rule 25-30.060(3)(g), Florida Administrative Code, Beverly Hills states that it is a nonprofit corporation providing water and wastewater service solely to members who own and control it. Beverly Hills provides water and wastewater service to its members through a bulk service agreement with Rolling Oaks Utilities, Inc., which we approved in Order No. PSC-96-0596-FOF-WS, issued May 7, 1996. The application contained copies of Beverly Hills' Declaration of Covenants, Conditions and Restrictions (Declaration), Articles of Incorporation, and By-Laws. As filed, the Association's documents were not compliant with our rules regarding voting rights and developer turnover of control. However, by subsequent modifications, discussed below, the Association's documents have become compliant. Mr. Taylor signed the application, thereby acknowledging 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.

Beverly Hills was incorporated on November 27, 1991, as a nonprofit corporation formed by George Wimpey of Florida, Inc.,

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(developer), pursuant to Chapter 617, Florida Statutes. The developer is now known as Morrison Homes of Florida, Inc. The Association was designed as a "master association" to serve several Laurel Ridge subdivisions together with additional "neighborhoods." The legal description of the "Eligible Properties" which may be annexed under the terms of the Declaration involves approximately 1,600 acres for a total of 2,400 units at buildout. The developer estimates the timeframe for buildout of the development to be at least 15 years.

The Association's First Amendment to Declaration of Covenants, Conditions and Restrictions provided for control to pass to non-developer members the earlier of 75% conveyance of properties, December 31, 2031, or when the developer so determines. On March 9, 1995, the Association advised us that the Declaration had been further amended to change the December 31, 2031, date for passing control to November 27, 2010, or 15 years from incorporation. Rule 25-30.060(3)(g)3.c., Florida Administrative Code, requires that developer control, "must not exceed seven years from the date of incorporation unless the Commission finds that special circumstances justify a longer time."

In addition to the problem of the turnover timeframe, the Association's documents as originally filed set forth three voting classes: Class A, residential, Class B, developer and Class C, commercial. Each member of the voting classes had one vote per unit of ownership on all Association matters. However, the developer had an additional two votes for each vote which may be cast by a Class A or Class C voting member. Rule 25-30.060(3)(g)3.b., Florida Administrative Code, requires that "voting rights shall be one vote per unit of ownership or other voting rights if the Commission finds they are fair and nondiscriminatory so that the members have equitable control of the corporation."

Currently only two subdivisions, Laurel Ridge Number One and Laurel Ridge Number Two, have been annexed into the Declaration for a total number of two hundred and sixty nine (269) lots. Annexation of additional eligible property is optional and may never occur. On September 24, 1996, the developer provided a statement that more than 75% of the voting units will be owned by persons other than the developer by December 31, 1998, which would meet the seven year guideline in our rules. Following our approval of the developer's bulk service agreement with Rolling Oaks, by the Association's Second Amendment to Declaration of Restrictions for Morrison Homes of Florida, Inc., and Amendment to Articles of Incorporation, filed with us on September 10, 1996, the developer created a separate class of voting membership--Class D, bulk

ORDER NO. PSC-96-1348-FOF-WS
DOCKET NO. 950281-WS
PAGE 3

service utility voting rights. Class D voting membership provides for one vote per unit of ownership for all members of Classes A through C on utility matters only.

The Association's application is in compliance with statutory requirements. Accordingly, we find Beverly Hills Community Association, Inc., exempt from Commission regulation pursuant to Section 367.022(7), Florida Statutes. We put Beverly Hills, or any successors in interest, on notice that, if there is any change in circumstances or method of operation that causes it to no longer qualify for exemption pursuant to Section 367.022, Florida Statutes, it should inform us within 30 days of such change so that its status may be reevaluated.

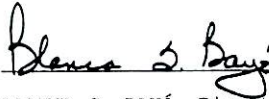
Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Beverly Hills Community Association, Inc., is hereby exempt from Commission regulation pursuant to Section 367.022(7), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation affecting its exemption, Beverly Hills Community Association, Inc., is hereby put on notice to inform the Commission of such change within 30 days. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 18th day of November, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

ORDER NO. PSC-96-1348-FOF-WS
DOCKET NO. 950281-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, 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.