

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by TARAWOOD HOME-)	DOCKET NO. 890008-WS
OWNERS' ASSOCIATION, INC. for)	
exemption from FPSC regulation for)	ORDER NO. 21332
water and sewer facilities in)	
Citrus County.)	ISSUED: 6-5-89
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, CHAIRMAN
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER INDICATING THE EXEMPT STATUS OF
TARAWOOD HOMEOWNERS' ASSOCIATION, INC.
AND CLOSING DOCKET

BY THE COMMISSION:

Mr. Robert Zablocki, who is the developer of a project known as Tarawood located in Citrus County, Florida, has requested that the Commission acknowledge the exempt status of Tarawood Homeowners' Association, Inc., pursuant to Section 367.022(7), Florida Statutes. He states that the utility system will be operated by the homeowners' association. Section 367.022(7), Florida Statutes, provides an exemption for nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations or cooperatives. The developer states that control of the homeowners' association is in the hands of the homeowners based on the fact that each lot owner has one vote. The developer submitted an affidavit, the Articles of Incorporation of Tarawood Homeowners' Association, Inc., and the Covenants and Restrictions for the lots in the development.

Our review of the developer's initial request for acknowledgement of the exempt status of this homeowners' association indicated that the developer retained five votes for each lot he owned while all the other homeowners had one vote. This Commission has consistently expressed concern that an association applying for an exemption must, as the statute requires, own and control the water or sewer facilities involved. This concern has resulted in our scrutinizing the transfer of control provisions, on a case by case basis, to assure that the transfer of control of the association from the developer occurs at some point close to the sale of 50% of the lots or units involved or within some other reasonable time period that effectuates the intent of Section 367.022(7), Florida Statutes.

Subsequently, the developer submitted amended Articles of Incorporation and Covenants and Restrictions providing one class of voting rights consisting of one vote for each lot, regardless of the owner. We reviewed these documents and

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determined that the amended documents provide for transfer of control to the homeowners at the sale of 51% of the lots in Tarawood. We find that the amended Articles of Incorporation and Covenants and Restrictions provide for transfer of control of the Tarawood Homeowners Association, Inc., and thereby control of the water and sewer treatment facilities and distribution and collection systems, in a time period that is reasonable and consistent with the statutory requirement. Therefore, we find Tarawood Homeowners' Association, Inc., to be exempt pursuant to Section 367.022(7), Florida Statutes.

Therefore, this docket is hereby closed.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based on the facts as represented, the Tarawood Homeowners' Association, Inc., located at 10770 S. Florida Avenue, Floral City, Florida 32636, is hereby exempt under Section 367.022(7), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or ownership or method of operation of the subject water and sewer facilities, Tarawood Homeowners' Association or its successor(s) in interest, shall inform this Commission within thirty days of such change so that we may determine whether our decision herein is still appropriate. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission
this 5th day of June, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

SFS

by: Kay Flynn
Chief, Bureau of Records

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

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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.