

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by W.T.C. COMMUNITY) DOCKET NO. 891075-SU
ASSOCIATION, INC. for exemption from) ORDER NO. 22072
FPSC regulation for a sewer treatment) ISSUED: 10-19-89
facility in Collier County)
_____)

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
W.T.C. COMMUNITY ASSOCIATION, INC.

BY THE COMMISSION:

W.T.C. Community Association, Inc. (W.T.C. or the Association) is a nonprofit corporation which will provide interim sewer service solely to its members, the owners of residential units in the World Tennis Center. Pursuant to Section 367.031, Florida Statutes, before the Department of Environmental Regulation (DER) will issue a construction permit, it requires either a certificate authorizing service or proof that the utility is not subject to the regulation of this Commission. Therefore, by letter and affidavit received August 22, 1989, W.T.C. has requested recognition of its exempt status.

Upon review of evidence submitted, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or sewer facilities, if they qualify under the appropriate section of Chapter 367, Florida Statutes. W.T.C. requested recognition of its exempt status under Section 367.022(7), Florida Statutes.

In response to our request, W.T.C. submitted additional documents, such as an affidavit, letters, By-laws, Articles of Incorporation, Declaration of Restrictive Covenants, Conditions, Restrictions and Easements, Assignment of Sewer Facilities Lease, Sewer Treatment Plant Lease, Amendment to the Sewer Plant Lease, and letter from the Developer relinquishing Class B membership. The information shows that W.T.C. is a

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nonprofit corporation that will provide sewer service solely to its members. The members will own and control the Association when approximately fifty (50) percent of the lots are sold. The sewer facility and underlying land are held by W.T.C. in a long-term lease subject to terminate ninety (90) days after a governmental agency makes sewer facilities available to the development's homeowners. Further, the Association is responsible for billing its members for sewer service, and the sewer facility is located on-site.

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. W.T.C. may have a total of seven (7) phases. Each phase is considered a separate subclass, and each subclass will elect one director to the Board of Directors. Presently, the majority of lots in three of the sewer phases are owned by individual lot owners. Construction of the fourth phase is scheduled to be completed December 31, 1989. After half of the lots in the fourth phase are sold, the members will own and control the nonprofit corporation. Based upon the facts as represented, we find that W.T.C. is exempt from our regulation under the terms of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances or method of operation, the owner(s) of W.T.C., or any successor(s) in interest, must inform the Commission within thirty days of such change, so that we may determine whether exempt status is still appropriate.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, W.T.C. Community Association, Inc., located at 4800 Airport Road North, Naples, Florida 33942, is hereby exempt from Commission regulation pursuant to the terms of Section 367.022(7), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation of W.T.C. Community Association, Inc.'s sewer facility, the owner(s) of W.T.C. Community Association, Inc., or any successor(s) in interest, shall inform the Commission within thirty days of such change. It is further

ORDERED that this docket be closed.

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By ORDER of the Florida Public Service Commission,
this 19th day of OCTOBER, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MAB

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 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.