

State of Florida



# Public Service Commission

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COMMISSION  
CLERK

**DATE:** March 15, 2012

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Golden, Kaproth)  
Office of the General Counsel (Brown)

*Handwritten initials:* MB, FC, ALM, MCB, JC, CRB, CA

**RE:** Docket No. 090385-WU – Application for transfer of majority organizational control of Colina Bay Water Company, LLC to Colina Bay Homeowners Association, Inc., and cancellation of Certificate No. 632-W, in Lake County  
County: Lake

**AGENDA:** 03/27/12 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Edgar

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\090385.RCM.DOC

### Case Background

Colina Bay Water Company, LLC (Colina Bay or utility) is a Class C water utility located in Lake County. The utility's water system has the capacity to serve 73 equivalent residential connections (ERCs). However, the development fell into foreclosure prior to completion, and has no customers or water revenues. The utility is located in a priority water resource caution area in the St. Johns River Water Management District.

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The utility was originally issued Certificate No. 632-W in 2006.<sup>1</sup> Mercantile Bank, a division of Carolina First Bank, subsequently foreclosed on the Colina Bay development and water system when the original owners ceased making payments on the loan from Mercantile Bank. On May 13, 2009, the Lake County Clerk of the Court issued a Certificate of Sale for the Colina Bay property, including the water facilities. No objections to the Certificate of Sale were received. On May 28, 2009, the Circuit Court issued a Certificate of Title to Colina Recovery, Inc. (Colina Recovery), a holding company of Mercantile Bank.

On July 24, 2009, Colina Recovery filed an application for authority to transfer the assets of Colina Bay and Certificate No. 632-W to Colina Recovery. In its application, Colina Recovery indicated that it intended to transfer the water system to an entity that would develop the residential community to be served by the water system. Subsequently, on September 30, 2009, Mercantile Bank sold Colina Recovery to Turtle Creek Lots, LLP. In connection with the sale of the land which constitutes the utility's service area, Mercantile Bank also transferred the stock of Colina Recovery. On February 3, 2010, Colina Recovery filed an amendment to its application to notify the Commission of the stock transfer and change in control of Colina Recovery.

Subsequently, on June 29, 2011, Colina Recovery advised the Commission that it intended to transfer the water system to Colina Bay Homeowners Association, Inc. (Colina Bay HOA or HOA), and was working toward final resolution of the transfer. Colina Bay HOA is a Florida nonprofit corporation that was incorporated on September 11, 2006, to serve the Colina Bay development. On November 21, 2011, Colina Bay HOA held a noticed meeting at which it voted to purchase the utility's stock. On December 9, 2011, Colina Recovery transferred the stock to Colina Bay HOA, but made the sale contingent upon Commission approval pursuant to Section 367.071(1), Florida Statutes (F.S.). On December 22, 2011, Colina Recovery filed a second amendment to its application to request approval of the transfer of majority organizational control to Colina Bay HOA, and cancellation of Certificate No. 632-W. The Commission has jurisdiction to consider this matter pursuant to Section 367.071, F.S., and Rule 25-30.037, Florida Administrative Code (F.A.C.).

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<sup>1</sup> Order No. PSC-06-0775-PAA-WU, issued September 18, 2006, in Docket No. 060139-WU, In re: Application for certificate to operate water utility in Lake County by Colina Bay Water Company, LLC.

**Discussion of Issues**

**Issue 1:** Should the transfer of majority organizational control of Colina Bay Water Company, LLC to Colina Bay Homeowners Association, Inc. and the cancellation of Certificate No. 632-W be approved?

**Recommendation:** Yes. The transfer of majority organizational control of Colina Bay Water Company, LLC to Colina Bay Homeowners Association, Inc. is in the public interest and should be approved, and Certificate No. 632-W should be cancelled effective December 16, 2011, which was the closing date of the sale. Colina Bay should be required to pay the minimum outstanding regulatory assessment fees (RAFs) of \$25 per year for 2010 and 2011, by March 31, 2012. (Golden, Kaproth)

**Staff Analysis:** As stated in the case background, on July 24, 2009, Colina Recovery filed an application for authority to transfer the assets of Colina Bay and Certificate No. 632-W to Colina Recovery, following foreclosure by Mercantile Bank. In its application, Colina Recovery indicated that it intended to transfer the water system to an entity that would develop the residential community to be served by the water system. On December 22, 2011, Colina Recovery amended its application to request approval of the transfer of majority organizational of Colina Bay to Colina Bay HOA, completing the transfer activities triggered by the foreclosure. The sale of stock from Colina Recovery to Colina Bay HOA closed on December 16, 2011, and was made contingent upon Commission approval.

The application is in compliance with the governing statute, Section 367.071, F.S., and other pertinent statutes and rules concerning an application for transfer. Pursuant to Rule 25-30.030, F.A.C., the application contains proof of compliance with the noticing provisions. No objections to the notice of application have been received and the time for filing such has expired.

A copy of the purchase agreement is included in the application. The water facilities have been constructed and are operational, however, the utility has no customers. As such, there are no customer deposits, guaranteed revenue contracts, developer agreements, customer advances, or leases that must be disposed of in relation to the transfer. Also, because the utility was purchased through foreclosure, Colina Recovery and Colina Bay HOA do not have access to the utility's books and records. The application indicates that after reasonable investigation, Colina Recovery and Colina Bay HOA have determined that the systems being acquired appear to be in satisfactory condition and in compliance with all applicable standards set by the Department of Environmental Protection.

Colina Bay HOA is a Florida nonprofit corporation that was incorporated on September 11, 2006, to serve the Colina Bay development. The original developer resigned from Colina Bay HOA following the foreclosure, and control of the HOA has transitioned to the current owners of the Colina Bay property. All current lot owners are members of the HOA and have voting rights. Colina Bay HOA is exempt from Commission regulation pursuant to Section 367.022(7), F.S, which provides that nonprofit associations that provide service solely to members who own and control the association are exempt from Commission regulation.

The application states that the transfer is in the public interest in that the former owners of Colina Bay ceased making payments on the loan from Mercantile Bank and Colina Recovery obtained the utility system through foreclosure. Further, the application indicates that Colina Bay HOA believes it is in the best interests of all of its members that the water system be owned and administered by the HOA for the common benefit of all of its members rather than allowing it to be owned and operated by a private third party.

The utility has filed all annual reports through 2009 and paid all RAFs through December 31, 2009. The utility has not filed an annual report for 2010, however, the utility has no customers or revenue so the annual report would be of limited value. Therefore, staff believes the utility should not be required to file an annual report for 2010. Also, if the Commission approves the transfer, the utility will not be jurisdictional as of December 31, 2011, and no annual report would be required to be filed for 2011. However, the utility should be required to pay the minimum outstanding RAFs of \$25 per year for 2010 and 2011, by March 31, 2012.

Based on the above, staff recommends that the transfer of majority organizational control of Colina Bay to Colina Bay HOA is in the public interest and should be approved, and Certificate No. 632-W should be cancelled effective December 16, 2011, which was the closing date of the sale. Colina Bay should be required to pay the minimum outstanding RAFs of \$25 per year for 2010 and 2011, by March 31, 2012.

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**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed because no further action is necessary. (Brown)

**Staff Analysis:** If the Commission approves staff's recommendation in Issue 1, this docket should be closed because no further action is necessary.