

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 090385-WU
ORDER NO. PSC-12-0194-FOF-WU
ISSUED: April 13, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER APPROVING TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL
AND
CANCELLING CERTIFICATE NO. 632-W

BY THE COMMISSION:

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. The development fell into foreclosure prior to completion, however, and it 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.

The utility was originally issued Certificate No. 632-W in 2006.¹ 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,

¹ 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.

DOCUMENT NUMBER DATE
02253 APR 13 2012
FPSC-COMMISSION CLERK

2009, Mercantile Bank sold Colina Recovery to Turtle Creek Lots, LLP. In connection with the sale of the land that 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.

Thereafter, 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.

As explained below, we approve the transfer and certificate cancellation. We have jurisdiction pursuant to Section 367.071, F.S.

DECISION

As stated above, 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, Florida Administrative Code, 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, although at this time 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, but the utility has no customers or revenue, so the annual report would be of limited value. Therefore, we find that the utility shall not be required to file an annual report for 2010. Also, upon our approval of the transfer, the utility will not be jurisdictional as of December 31, 2011, and therefore no 2011 annual report would be required. We do find, however, that the utility is required to pay the minimum outstanding RAFs of \$25 per year for 2010 and 2011, by March 31, 2012.

Based on the above, we find that the transfer of majority organizational control of Colina Bay to Colina Bay HOA is in the public interest and we approve it. We further find that Certificate No. 632-W shall be cancelled, effective December 16, 2011, the closing date of the sale. Colina Bay shall be required to pay the minimum outstanding RAFs of \$25 per year for 2010 and 2011, by March 31, 2012.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the transfer of majority organizational control of Colina Bay to Colina Bay HOA is approved. It is further

ORDERED that Certificate No. 632-W shall be cancelled, effective December 16, 2011. It is further

ORDERED that Colina Bay HOA shall pay the minimum outstanding RAFs of \$25 per year for 2010 and 2011, by March 31, 2012. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 13th day of April, 2012.



ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 Office of Commission Clerk, 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 Office of Commission Clerk, 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.