

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for exemption) DOCKET NO. 931189-WU
from Florida Public Service) ORDER NO. PSC-94-0523-FOF-WU
Commission regulation for) ISSUED: May 2, 1994
provision of water service in)
Brevard County by WINGATE)
RESERVE HOMEOWNERS ASSOCIATION,)
INC.)
_____)

ORDER INDICATING THE EXEMPT STATUS OF
WINGATE RESERVE HOMEOWNERS ASSOCIATION, INC.

AND

CLOSING DOCKET

BY THE COMMISSION:

On December 13, 1993, Wingate Reserve Homeowners Association, Inc., (Wingate) filed a request for recognition of its exempt status, pursuant to Section 367.022(7), Florida Statutes. Wingate is located at 5354 Highway 1A, Melbourne Beach, Florida. David Cragg, Vice President, filed the application on behalf of Wingate. The primary contact person is David Cragg or Anita Cragg, President.

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. Before an exemption of this nature may be granted, the applicant requesting the exemption must file with the Commission a statement specifying the following: that the corporation is nonprofit; providing service solely to the members who own and control it; whether it provides water service, wastewater service, or both; who will do the billing; and the service territory. Additionally, the applicant must submit its Articles of Incorporation as filed with the Secretary of State and its Bylaws. These documents must show clearly the requirements of membership, the members' voting rights, and the circumstances under which control passes to the nondeveloper members.

DOCUMENT NUMBER-DATE

04102 MAY-23

FPSC-RECORDS/REPORTING

In its application, Wingate Reserve stated that it is a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes, that it will provide service solely to its members who own and control it, and that the Association will provide water service for which it will provide its own billing. The service area is limited to the Wingate Reserve subdivision. The Association provided a recorded indenture with several mortgages on the property. The law firm of Mosley, Wallis, & Whitehead, P.A., conducted a title search and determined that fee simple title of the property is vested in Wingate. This title grants Wingate the use of the land upon which the facilities are located. In addition, it provided a copy of a bill of sale verifying that the Association purchased and owns the water plant facilities, thereby establishing proof of ownership of the facilities and continued use of the land where the facilities are located. Wastewater service will be provided by septic tanks.

In addition, pursuant to Section 837.06, Florida Statutes, and Rule 25-30.060(2)(f), Florida Administrative Code, anyone knowingly making a false statement in writing with the intent to mislead is guilty of a misdemeanor. By signing the application, Mr. Cragg acknowledged that he is aware of Section 837.06, Florida Statutes, and the penalties for making false statements in the application.

Based upon the facts as represented, we find that Wingate is exempt from Commission regulation pursuant to the provisions of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances or method of operation, a representative of the Association, or any successors in interest, must inform the Commission within thirty days of such change, so that we may reevaluate Wingate's exempt status.

It is, therefore,

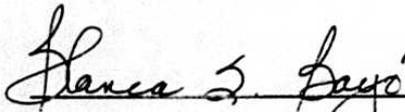
ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Wingate Reserve Homeowners Association, Inc., 232 Fifth Avenue, Indiatlantic, Florida 32903, is hereby exempt from Commission regulation pursuant to the provisions of Section 367.022(7), Florida Statutes. It is further

ORDERED that should there be any change in circumstances of or method of operation, a representative of Wingate Reserve Homeowners Association, Inc., or any successors in interest, shall inform the Commission within thirty days of such change so that Wingate's exempt status may be reevaluated. It is further

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ORDERED that this Docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 2nd
day of May, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MSN

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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.