

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption
from Florida Public Service
Commission regulation for
provision of water service in
Pinellas County by Mariner
Village/Tarpon Cove Community
Association, Inc.

DOCKET NO. 951561-WU
ORDER NO. PSC-98-1630-FOF-WU
ISSUED: December 7, 1998

ORDER INDICATING EXEMPT STATUS OF
MARINER VILLAGE/TARPON COVE COMMUNITY ASSOCIATION, INC.
AND CLOSING DOCKET

BY THE COMMISSION:

On December 18, 1995, Mariner Village/Tarpon Cove Community Association, Inc. (MVTC or Association) filed an application with this Commission requesting recognition of its exempt status pursuant to Section 367.022(7), Florida Statutes. The Association is located at 1531 West Klosterman Road, Tarpon Springs, Florida 34689. Mr. Steven H. Mezer, Attorney, filed the application on behalf of MVTC. The primary contact person is Mr. Jeffrey R. D'Amours.

Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or wastewater systems if they qualify under the appropriate provision of Chapter 367, Florida Statutes. The application was filed in accordance with Section 367.022(7), Florida Statutes.

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; and who will do the billing.

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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.

In its application, MVTC provided copies of its Articles and Bylaws, which reflect that it is a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes. Upon review of the application, and Articles and Bylaws, it was determined that MVTC did not qualify for exemption pursuant to Section 367.022(7), Florida Statutes.

MVTC's service area is a gated community within the City of Tarpon Springs. Wastewater service is generally provided throughout the community by the City of Tarpon Springs (City). The City provides water service only to the entrance of the community.

The gated community consists of two condominium associations, Mariner Village Cluster Condominium (132 units) and Tarpon Cove Condominium Association (188 units), and 18 single family lots in Mariner Village Subdivision. Only 12 of the single family lots receive service. Both of the condominium associations are members of MVTC, which was set up in the early 1980's to maintain and allocate the costs of common services such as water, street lights, guard house and lawn care. When MVTC was formed, it was contemplated that the 18 single family lots in the subdivision would belong to MVTC through a homeowners' association. The homeowners were, however, unable to reach an agreement to form such an association. MVTC has been reading the meters and billing the single family homes the rates charged by the City plus additional fees for providing common services. Thus, the Association has been providing service to nonmembers for compensation.

In an effort to resolve the matter so that it would qualify for exemption, the MVTC agreed to allow the homeowners to join the association individually. After lengthy negotiations between MVTC and the individual homeowners, an Agreement was drawn up and signed by the parties. As a result, all of the homeowners are now members of MVTC. The Agreements and Joinders signed by the individual lot owners have been recorded with the Pinellas County Public Records office.

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According to the Articles and Bylaws and the agreements signed by the individual homeowners, each of the condominium associations has three votes; the Mariner Homes subdivision has one vote. This is consistent with the vote set forth in the Articles and Bylaws. Based on the number of customers in each entity, we find that the vote is fair and nondiscriminatory.

Therefore, MVTC is now in compliance with Rules 25-30.060(2) and (3)(g), Florida Administrative Code, which was in effect at the time of the filing. MVTC is providing water service solely to members who own and control it. Turnover of developer control has long since occurred.

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. Mezer acknowledged he is aware of Section 837.06, Florida Statutes, and the penalties for making false statements in the application.

Based on the facts as represented, we find that MVTC is exempt from our regulation pursuant to Section 367.022(7), Florida Statutes. However, the owner(s) of MVTC or any successors in interest are put on notice that if there is any change in circumstance or method of operation which causes it to no longer qualify for exemption pursuant to Section 367.022, Florida Statutes, it should inform the Commission within 30 days of such change so that its status may be reevaluated.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Mariner Village/Tarpon Cove Community Association, Inc., 1531 West Klosterman Road, Tarpon Springs, Florida 34689, is hereby exempt from Commission regulation pursuant to the provisions of Section 367.022(7), Florida Statutes. It is further

ORDERED that this Docket is hereby closed.

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By ORDER of the Florida Public Service Commission, this 7th
day of December, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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 Director, Division of Records and Reporting, 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 Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This

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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.