

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Request for exemption from |) | DOCKET NO. 900201-SU |
| Florida Public Service Commission |) | ORDER NO. 23260 |
| regulation for a sewer system in |) | ISSUED: 7-27-90 |
| Lee County by WORTHINGTON WASTE |) | |
| WATER, INC. |) | |
| |) | |

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

ORDER INDICATING EXEMPT STATUS OF
WORTHINGTON WASTE WATER, INC.

BY THE COMMISSION:

BACKGROUND

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 an order indicating that the utility is not subject to the regulation of this Commission. Therefore, by correspondence received March 15, 1990, Worthington Waste Water, Inc., (3W or applicant) requested an exemption from Florida Public Service Commission regulation pursuant to Section 367.022(7), Florida Statutes. 3W is a homeowners association formed for the purpose of owning and operating a wastewater treatment system which will serve a proposed seven hundred and ninety-nine (799) lot and unit development in Lee County to be known as Worthington Country Club.

The applicant submitted additional materials with a letter dated April 20, 1990. The applicant again submitted revised materials with a letter dated June 5, 1990. (Unless otherwise indicated, all references to any of the applicant's materials shall be to those materials submitted with the June 5th letter.)

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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The pertinent materials to be considered in this case are as follows: 3W's Articles of Incorporation; 3W's proposed Articles of Amendment; 3W's proposed Bylaws; the Master Declaration of Covenants, Conditions and Restrictions for Worthington Country Club; a proposed deed from the developer corporation to 3W conveying title to the land upon which the wastewater facilities will be located; an affidavit dated March 6, 1990; and an affidavit dated June 26, 1990.

EXEMPTION

Section 367.022(7), Florida Statutes, provides, "Nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such corporations, associations, or cooperatives" are not subject to this Commission's regulation. In our interpretation of this provision, we have required that control of the association transfer from the developer member to the nondeveloper members at some point in time close to the sale of fifty percent of the lots involved or within some other reasonable time.

In the present case, the applicant's documents make adequate provision for the transfer of control. Article 5, Section A, of the Articles of Incorporation states, "Every person or entity who is a record owner of a fee or undivided fee interest in any land, lot or unit in the development as defined in and which is subject to the declaration . . . shall be a member of the association." The Articles and Bylaws (specifically Article 5, Section B, of the Articles; Article 5, Section B, of the proposed Amended Articles; and Section 2 of the proposed Bylaws) provide for two classes of members, class A members and class B members. Class A members are owners of lots or units within the Worthington Country Club area except for the developer. A class A member is entitled to one vote for each lot or unit he/she owns. There is only one class B member, the developer. The class B member is entitled to eleven votes for each lot it owns within the development. However, class B membership ends and is converted to class A membership upon the happening of either of the following two events, whichever occurs first: (i) Thirty days after the closing of title to fifty percent of the lots and units within the development, or (ii) Thirty days after the developer elects to terminate the class B membership. Additionally, Article 4, Section 4.11, of the proposed Amended Articles states, "The declarant shall elect all members of the board of directors until such time as more than fifty percent of the combined total lots and units . . . in the Worthington Country Club

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development have been conveyed by the developer of Worthington Country Club, at which time the board of directors shall be elected by a majority of the then-existing lot and unit owners." Therefore, it appears that there will be a transfer of control of the association from the developer member to the nondeveloper members upon the sale of fifty-one percent of the lots.

The March 6, 1990, affidavit submitted by the applicant states that: 3W is a nonprofit homeowners association which will provide wastewater service solely to its members who will own and control it. A subsequent letter from the applicant indicated that the Worthington Master Association will do the billing for wastewater service provided by 3W.

The applicant also submitted an affidavit dated June 26, 1990, wherein the developer avers to convey the property upon which the wastewater treatment plant is to be located to 3W upon the commencement of construction of the wastewater plant or upon the closing of the sale of the first lot or unit within the development. Conveyance at either of these points in time is consistent with past Commission decisions.

Based on the facts as represented, we find that the applicant qualifies under Section 367.022(7), Florida Statutes, as a nonprofit association which is exempt from our regulation.

Further, we hereby require that the applicant record the Commission's Order issued herein with the Clerk of the Court for Lee County. Such recordation will provide constructive notice to the public, and specifically, to any potential purchaser of the exempt status of the wastewater system in the Worthington Country Club development.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Worthington Waste Water, Inc., is exempt from the Florida Public Service Commission regulation pursuant to Section 367.022(7), Florida Statutes. It is further

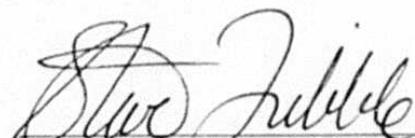
ORDERED that Worthington Waste Water, Inc., or its successor(s) in interest shall inform this Commission within thirty (30) days of any change in the circumstances or method of operation of the system which might affect its exempt status so that the exempt status may be reevaluated. It is further

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ORDERED that Worthington Waste Water, Inc., shall record this Order with the Clerk of the Court for Lee County. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission this 27th day of JULY, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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

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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.