

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from)
 Florida Public Service Commission)
 regulation for a water system in)
 Lake County by BELLA VISTA)
 COMMUNITY ASSOCIATION, INC.)

DOCKET NO. 900860-WU

ORDER NO. 24125

ISSUED: 2-18-91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 BETTY EASLEY
 FRANK S. MESSERSMITH
 MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTIONORDER DENYING REQUEST FOR EXEMPTION

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

By letter filed October 24, 1990, Bella Vista Community Association, Inc. (Bella Vista or applicant), requested an exemption from Florida Public Service Commission regulation pursuant to Section 367.022(7), Florida Statutes. Included with Bella Vista's request were copies of its Articles of Incorporation, and an affidavit averring the facts upon which its asserted status is based.

Under Section 367.022(7), Florida Statutes, "[n]onprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives" are exempt from this Commission's regulation. However, for an entity to qualify under Section 367.022(7), Florida Statutes, it must first be a nonprofit corporation, association, or cooperative.

According to Bella Vista's Articles of Incorporation, Bella Vista was formed under the Florida General Corporation Act which is Chapter 607 of the Florida Statutes. Chapter 607, Florida Statutes, governs Florida corporations generally. However, to

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qualify as a nonprofit entity, the applicant must have been formed under Chapter 617, Florida Statutes. Moreover, the Secretary of State has Bella Vista's corporate charter filed under Chapter 607, Florida Statutes. Bella Vista has not provided the Commission with any additional information indicating that it is a nonprofit organization as defined by Chapter 617, Florida Statutes.

Furthermore, Bella Vista's Articles of Incorporation state in Article IV that "[t]he holders of the outstanding capital stock shall be entitled to receive . . . dividends payable either in cash, in property or in shares of the capital stock of the corporation." That language is inconsistent with Section 617.011(2), Florida Statutes, which prohibits a nonprofit corporation organized upon a stock share basis from paying dividends to its members/shareholders. Section 617.011(2), Florida Statutes, provides in pertinent part:

(2) A corporation organized upon a stock share basis shall issue shares of stock in denominations provided in its articles of incorporation . . . No dividend shall be paid, and no part of the income of the corporation shall be distributed to its shareholders, directors, or officers.

Consequently, Bella Vista has not demonstrated that it is a nonprofit association.

In addition to the above, Bella Vista has failed to correct other deficiencies found in its application. Among the additional deficiencies were Bella Vista's failure to provide the Commission with a warranty deed, in the name of Bella Vista, conveying ownership of the facilities and the land that the facilities sit on or proof of when control passes from the developer(s) to Bella Vista. These and other deficiencies remain uncorrected even after the expiration of several deadline extensions requested by Bella Vista.

Upon consideration of the foregoing, we find that Bella Vista does not qualify under Section 367.022(7), Florida Statutes, as a nonprofit association which is exempt from the Commission's regulation. Bella Vista must, therefore file an application for a certificate within six (6) months of the date of this Order.

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It is, therefore,

ORDERED by the Florida Public Service Commission that the request by Bella Vista Community Association, Inc., for exemption from Florida Public Service Commission regulation for a water system in Lake County is hereby denied. It is further

ORDERED that Bella Vista Community Association, Inc., shall file an application for an original certificate within six (6) months of the date of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final, unless an appropriate petition in the form provided by Rule 25-22.029, Florida Administrative Code, is received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that this docket shall be closed if no protest is timely filed.

By ORDER of the Florida Public Service Commission, this
18th day of FEBRUARY, 1991.

STEVE TRIBBLE, Director
 Division of Records and Reporting

(S E A L)

by: Kay Ferguson
 Chief, Bureau of Records

NRF

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

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should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 11, 1991.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.