

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request For Exemption) DOCKET NO. 950786-WS
From Florida Public Service) ORDER NO. PSC-96-0040-FOF-WS
Commission Regulation For) ISSUED: January 11, 1996
Provision of Water and)
Wastewater Service in Osceola)
County by Great Oaks, Inc. d/b/a)
Whispering Pines.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER GRANTING EXEMPTION AND CLOSING DOCKET

BY THE COMMISSION:

Background

On July 10, 1995, Great Oaks, Inc. d/b/a Whispering Pines (Whispering Pines or Park) filed an application with this Commission seeking recognition of its exempt status pursuant to Section 367.022(5), Florida Statutes. Whispering Pines is a 304-unit mobile home park located at 4658 Whispering Pines Boulevard, Kissimmee, Osceola County, Florida. Mr. William J. Henry, Vice President and primary contact person, filed the application on behalf of Whispering Pines.

Whispering Pines was established in March of 1985. Each lot is allocated 2,000 gallons of water per month. According to its Prospectus, Whispering Pines can charge usage rates for water used in excess of 2,000 gallons based upon Kissimmee Utilities' current usage rates. Whispering Pines began charging Kissimmee's water rates for excessive water use in 1990 and proposed to begin charging the wastewater rate in December of 1994. After a class action suit was filed by the residents, Whispering Pines suspended the water usage rate. When the class action suit stalled, Whispering Pines renoticed the tenants in April of 1995 that water and wastewater usage charges would become effective in August of 1995 along with a general lot rent increase. As a result of that notice, a complaint was filed with the Division of Water and Wastewater.

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Upon review of the complaint, it was determined that Whispering Pines did not have a certificate or an exemption from Commission regulation. An original certificate application and an application for exemption from Commission regulation pursuant to Section 367.022(5), Florida Statutes, was sent to Whispering Pines. Whispering Pines was also informed that in order to qualify for exemption pursuant to that Section, it would have to cease charging specific rates for water and wastewater service.

As stated previously, on July 10, 1995, Whispering Pines filed an application seeking recognition of its exempt status pursuant to Section 367.022(5), Florida Statutes. The application indicated that Whispering Pines is no longer charging for water and wastewater service, and that rent has been increased to include the service.

On July 14, 1995, the Commission received a letter from Mr. W. Richard Thoreen, advising that Whispering Pines had noticed its customers that rent was being increased by \$10.00 to include water and wastewater service. Mr. Thoreen's letter questioned whether or not the \$10.00 increase in lot rent sidestepped Rule 25-30.060(3) (e), Florida Administrative Code, which states that ". . . charges for service are non-specifically contained in rental charges." We have reviewed the notice and have determined that it was intended to comply with Section 723.037, Florida Statutes, which requires a park owner to notify the residents of an increase in rent. An entity is also required to state in the notice the amount and reason for the increase. Therefore, we do not find that the notice violates Section 367.022(5), Florida Statutes, which requires the charge for water and wastewater service to be included as a non-specific portion of the rent.

Application

Whispering Pines' application was filed in accordance with Section 367.022(5), Florida Statutes, and Rule 25-30.060(2) and (3)(3), Florida Administrative Code. Section 367.022(5), Florida Statutes, states that an entity qualifies for exemption from Commission regulation if it provides service to its tenants, and there are no specific charges for the utility service.

The application indicates that Whispering Pines provides water and wastewater service solely to its tenants and the service territory is limited to the mobile home park located at 4658 Whispering Pines Boulevard, Kissimmee, Florida. Whispering Pines does not utilize a lease. The copy of the Park's Prospectus, which was provided in lieu of a lease, states Whispering Pines charges for water and wastewater service. However, all references in the

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Prospectus to charges for water and wastewater service have been removed, and the revised Prospectus is being filed with the Department of Business and Professional Regulation. Therefore, there is no longer a specific charge for water and wastewater service and all costs for such service are included as a nonspecific portion of the rent.

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

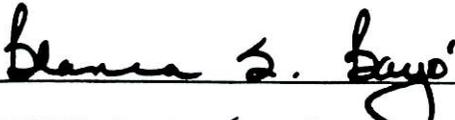
Based on the facts as represented, we find that Whispering Pines is exempt from our regulation pursuant to Section 367.022(6), Florida Statutes. However, Whispering Pines is put on notice that if there is any change in circumstance or method of operation, it should inform the Commission within 30 days of such change so that its exempt status may be reevaluated.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Great Oaks, Inc., d/b/a Whispering Pines, 4658 Whispering Pines Boulevard, Kissimmee, Florida 34758, is exempt from Commission regulation, pursuant to the provisions of Section 367.022(5), Florida Statutes. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 11th day of January, 1996.



BLANCA S. BAYÓ, 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, 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 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.