

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by BRIARCREST SUBDIVISION)	DOCKET NO. 880108-SU
for exemption from FPSC regulation for a)	ORDER NO. 20616
sewer system in Lee County.)	ISSUED: 1-18-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER INDICATING THE EXEMPT STATUS OF
 BRIARCREST HOMEOWNERS ASSOCIATION, INC.

BY THE COMMISSION:

Briarcrest Subdivision (Briarcrest) is a residential community that is to be constructed in Lee County, Florida. In order to serve the needs of the community, the developer intends to construct a sewage treatment plant, for which it needs a construction permit from the Department of Environmental Regulation (DER). Pursuant to Section 367.031, Florida Statutes, before DER will issue a construction permit, it requires either a certificate authorizing service or an order indicating that the utility is exempt from the regulation of this Commission.

By letter dated January 8, 1988, Briarcrest requested that the sewage treatment plant be found exempt from the Commission's regulation under the nonprofit association exemption, Section 367.022(7), Florida Statutes. Attached to the letter was an affidavit reciting the facts upon which the asserted exempt status was based and a description of the proposed plant location.

The staff of this Commission found a number of deficiencies in the filing and made several allowances for Briarcrest to cure these deficiencies. On November 9, 1988, the developer of Briarcrest submitted copies of the Articles of Incorporation and bylaws for the Briarcrest Homeowners Association, Inc. (Association), a copy of the Covenants, Conditions and Restrictions for Briarcrest Subdivision and a revised affidavit.

According to its revised filing, Briarcrest claims that the Association will be exempt from this Commission's regulation under the nonprofit association exemption, Section 367.022(7), Florida Statutes. Under that section, a nonprofit association that provides service solely to members who own and control it is exempt from the Commission's regulation.

The Articles of Incorporation provide for the incorporation of the Association as a nonprofit corporation. Under Article III, each person who is a record owner of a fee or an undivided fee interest in a Briarcrest lot, unless held solely for security purposes, is a member of the Association. Membership is appurtenant to and is not separable from the interest in the property. Pursuant to Article 2, Section 2.3 of the Declaration of Covenants, Conditions and Restrictions, members are entitled to one vote for each lot owned.

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Under Article 2, Section 2.2 of the Declaration of Covenants, Conditions and Restrictions, turnover of the Association to the non-developer members will take place at the earliest of either the sale and conveyance of ninety percent of the total lots or eighteen months from the date that the plat is approved by Lee County, whichever occurs first.

The affidavit states that the Association is a nonprofit corporation that will provide sewer service solely to members, that compensation for the service will be non-specifically contained in the homeowners' monthly assessments and that the plant will be located in Briarcrest Subdivision.

Based upon the above, we find that, under the facts as presented herein, the Association will be exempt from the regulation of this Commission pursuant to Section 367.022(7), Florida Statutes, as a nonprofit association providing service solely to members who own and control it. Nevertheless, should there be any change in circumstances or method of operation, the Association, or its successor(s) in interest, must inform this Commission within thirty days of such change so that we may evaluate whether its exempt status is still appropriate.

It is, therefore,

ORDERED by the Florida Public Service Commission that, under the facts as presented herein, Briarcrest Homeowners Association, Inc. will be exempt from the regulation of this Commission pursuant to the nonprofit association exemption, Section 367.022(7), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation, Briarcrest Homeowners Association, Inc., or its successor(s) in interest, must inform this Commission within thirty (30) days of such change so that we may evaluate whether its exempt status is still appropriate. It is further

ORDERED that Docket No. 880108-SU be and is hereby closed.

By ORDER of the Florida Public Service Commission,
this 18th day of JANUARY, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

by: Kay Seligson
Chief, Bureau of Records