

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by HIDEAWAY COUNTRY)	DOCKET NO. 881376-SU
CLUB PROPERTY OWNERS ASSOCIATION, INC.)	
for an exemption from Florida Public)	ORDER NO. 21005
Service Commission regulation for a)	
sewer system in Lee County)	ISSUED: 4-7-89
)	

The following Commissioners participated in the disposition of this matter:

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

ORDER INDICATING THE EXEMPT STATUS OF HIDEAWAY
 COUNTRY CLUB PROPERTY OWNERS ASSOCIATION, INC.

BY THE COMMISSION:

Hideaway Country Club (Hideaway) is a residential community in Lee County (County) that has been in existence since approximately 1984. At the time of its inception, the County informed Hideaway that it would not be able to provide wastewater service for a number of years. Therefore, Hideaway constructed its own wastewater treatment plant. Although it provided no proof, Hideaway states that it was determined to be exempt at that time.

At this time, current and projected demand threaten to outstrip the plant's capacity. Since the County's ability to timely provide such service is still questionable, Hideaway believes that it would be prudent to stand ready to expand capacity, 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 proof that the utility is exempt from the regulation of this Commission.

By letter dated October 18, 1988, Hideaway requested that Hideaway Country Club Property Owners Association, Inc. (Association) be found exempt from the Commission's regulation under the nonprofit association exemption, Section 367.022(7), Florida Statutes. Attached to its letter was an affidavit reciting the facts upon which its asserted exempt status are based and the Articles of Incorporation and Bylaws for the Association.

Under Section 367.022(7), Florida Statutes, 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 3, each person who is a record owner of a condominium unit is a member of the Association. Membership is appurtenant to and not separable from the interest in the property. According to the affidavit, sewer service is provided solely to the Association.

Under Article 8 of the Articles of Incorporation, the initial board shall consist of three directors, all developer-

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related. Currently, the board is comprised of five directors. Pursuant to Section IV(B) of the Bylaws, the directors are elected by the members at the annual meeting. Pursuant to Section III(D) of the Bylaws, each owner is entitled to one vote for each unit owned. In addition to its votes for each unowned unit, the developer is entitled to one extra vote. Accordingly, the Association should be turned over to the non-developer members at the first meeting after one unit more than one-half of the total units is conveyed to a non-developer member of the Association. However, under Section IV(B) of the Bylaws, the developer has the right to elect a majority of the directors as long as it is guaranteeing the budget of the Association.

By letter dated January 26, 1989, Staff requested further information regarding turnover of the Association to the non-developer members. By letter dated January 31, 1989, Hideaway informed Staff that, at the last annual meeting of the Association, two non-developer members were elected to the board. Additionally, Hideaway informed Staff that a transition committee has been formed and that a 1989 turnover is likely. Further, Hideaway stated that, in any event, the Association will be turned over to the non-developer members on or before October 15, 1991.

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

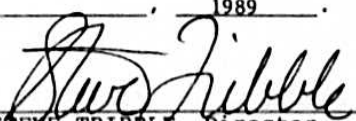
It is, accordingly,

ORDERED by the Florida Public Service Commission that, according to the facts as presented herein, Hideaway Country Club Property Owners Association, Inc. is 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. It is further

ORDERED that, should there be any change in circumstances or method of operation, Hideaway Country Club Property Owners Association, Inc., or its successor(s) in interest, shall inform this Commission within thirty (30) days of such change so that we may reevaluate its regulatory status. It is further

ORDERED that Docket No. 881376-SU be and is hereby closed.

By ORDER of the Florida Public Service Commission,
this 7th day of April, 1989.



STEVE TRIBBLE, Director,
Division of Records and Reporting

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