

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by EASTRIDGE PARTNERS,)	DOCKET NO. 881585-SU
LTD. for exemption from FPSC regulation)	ORDER NO. 21319
for a temporary sewage treatment)	ISSUED: 6-2-89
plant in Collier County.)	

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
PLANTATION HOMEOWNERS ASSOCIATION OF
COLLIER COUNTY, INC.

BY THE COMMISSION:

Eastridge Partners, Ltd. (Eastridge or the developer) is a Florida limited partnership currently developing a multi-unit, residential development in Collier County which will be known as Plantation. Since no sewage treatment facilities are available in the immediate area, the developer plans to construct a temporary sewage treatment plant to serve the residents of Plantation.

Pursuant to Section 367.031, Florida Statutes, before Department of Environmental Regulation (DER) will issue a construction permit, it requires either a certificate authorizing the entity to provide sewer service or proof of exemption from regulation by this Commission.

Therefore, on December 22, 1988 we received a letter and affidavit from Eastridge alleging that the plant would be operated by the Plantation Homeowners Association of Collier County, Inc. (homeowners association), and requested that Eastridge be found exempt from regulation by this Commission pursuant to Section 367.022(7), Florida Statutes. The request for exemption was scheduled for consideration by the Commission at the May 16, 1989 Agenda Conference; however, at the conference, we noted that Eastridge did not qualify for exemption under Section 367.022(7), Florida Statutes, since Eastridge was not a nonprofit corporation. Further, we observed that no documentation was provided indicating that the developer had conveyed, or granted a long-term lease, to the homeowners association with respect to the land underlying the sewage treatment plant, and the plant itself. The matter was deferred so that the homeowners association could be given an opportunity to correct the legal deficiencies in its request for exemption.

Subsequently, on May 22, 1989, the homeowners association filed an affidavit executed by its president in support of its exemption request. Specifically, the affidavit alleged that:
 1) Plantation will not collect any specific charge from the

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unit owners for sewer service; 2) Any compensation received for sewer service will be nonspecifically contained in unit owners' periodic assessments; 3) At the time, fifty-one (51%) of the units of Plantation are sold, the developer shall transfer control of the sewer system to the homeowners association; 4) The homeowners association shall have immediate and continued use and access to the subject sewage treatment plant; 5) Pursuant to Article VI of the homeowners association's Articles of Incorporation, the developer and owners of the units within the development shall each be entitled to one vote for each lot owned by such developer or owner.

Further, on May 30, 1989, the developer, Mr. Carl Fernstrom, provided our staff with a duly executed lease agreement in which the developer leased the land beneath the temporary sewage treatment plant, as well as the plant itself, to the homeowners association for a period of ninety-nine (99) years commencing May 25, 1989. The developer also appeared at the May 30, 1989 Agenda Conference and informed us that the homeowners association would be providing the actual billing to the lot owners for the sewer service.

Section 367.022(7), Florida Statutes, provides that "Nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives ..." are not subject to our regulation. On the facts as represented in the revised filings, we find the homeowners association to be exempt from our regulation under Section 367.022(7), Florida Statutes.

It is, therefore,

ORDERED by the Florida Public Service Commission that the Plantation Homeowners Association of Collier County, Inc. is exempt from regulation by this Commission pursuant to Section 367.022(7), Florida Statutes. It is further

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

ORDERED that Docket No. 881585-SU is hereby closed.

By ORDER of the Florida Public Service Commission
 this 2nd day of June, 1989.

STEVE TRIBBLE, Director
 Division of Records and Reporting

(S E A L)

by Kay Flynn
 Chief, Bureau of Records

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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 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.