

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of LOST TREE	)	DOCKET NO. 891261-SU
UTILITY CORPORATION for transfer	)	
of sewer system to LOST TREE VILLAGE	)	ORDER NO. 22591
PROPERTY ASSOCIATION, request for	)	
exemption from FPSC regulation, and	)	ISSUED: 2-21-90
cancellation of Certificate No. 56-S	)	
in Palm Beach 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 APPROVING TRANSFER OF MAJORITY ORGANIZATIONAL  
 CONTROL AND INDICATING THE EXEMPT STATUS OF  
 LOST TREE VILLAGE PROPERTY OWNERS ASSOCIATION, INC.

Case Background

Lost Tree Utilities Corporation (Utility) is a Class C utility which provides wastewater service to Lost Tree Village, a residential community consisting of approximately 294 homes. During 1988, the Utility realized operating revenues of \$102,425 and an operating loss of \$3,807. On September 22, 1989, the Utility was converted into a nonprofit corporation.

On October 16, 1989, Lost Tree Club, Inc., the Utility's parent, entered into a stock purchase agreement with Lost Tree Village Property Owners Association, Inc. (Association), a nonprofit corporation, by which the Association purchased all of the outstanding stock of the Utility. By its terms, the agreement was subject to this Commission's approval. On November 2, 1989, the Association filed an application for transfer of majority organizational control and a request for exempt status.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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Application For Transfer

The application is in compliance with Section 367.071, Florida Statutes, and Rules 25-30.030 through 25-30.040, Florida Administrative Code. In particular, the notarized application contains:

- a) A check in the amount of \$150 which, upon calculation, equates to the correct filing fee under Section 367.141, Florida Statutes;
- b) A legal description of the service territory as required under Rule 25-30.035(3)(i), Florida Administrative Code;
- c) Proof of notice to all customers of record as required under Rule 25-30.030(2)(g), Florida Administrative Code; and
- d) Proof of notice to all interested governmental and regulatory agencies, all utilities within a four-mile radius of the territory to be served, and proof of advertisement in a newspaper of general circulation in Palm Beach County, as required under Rule 25-30.030, Florida Administrative Code.

No objections to the requested transfer have been received and the time for filing such has expired.

A review of the Association's financial statement for 1989 reveals that it has capital in the amount of \$1,253,969. The Association has hired Utility Caretakers, Inc. to operate the utility. We are informed that Utility Caretakers, Inc. has operated water and wastewater plants in both Palm Beach and Martin County for approximately twenty years and has four licensed wastewater operators and three licensed water operators.

Based upon the discussion above, it appears that the Association has the capital and expertise necessary to provide the customers of the Utility with quality service and that the transfer is in the public interest. We, therefore, approve the transfer.

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#### Rate Base

The transfer of common stock, in this instance, does not alter the Utility's asset and liability accounts. Accordingly, we do not believe that it is necessary to establish levels of rate base as of the date of the transfer.

#### Request For Exempt Status

In addition to the application for transfer, the Association also requested that, subsequent to the transfer, it be found exempt from our regulation under Section 367.022(7), Florida Statutes, the nonprofit corporation exemption. Under that section, nonprofit corporations which provide service solely to members who own and control the corporation are not subject to this Commission's regulation. Along with its request, the Association provided copies of its Articles of Incorporation, its Bylaws, and an affidavit reciting the facts upon which its asserted status is based.

The Articles of Incorporation provide for the incorporation of the Association as a nonprofit homeowners' association. The affidavit states that the utility will provide service solely to members who own and control the Association. We note that Lost Tree Village is essentially built-out. There is, therefore, no developer control of the Association. We also note that the Utility owns all of the treatment facilities and that the stock purchase agreement requires Lost Tree Club, Inc. to provide the association with a ninety-nine year lease for the utility sites. Should the Association cease providing service, however, the lease shall become null and void.

Based upon the facts as presented herein, we find that the Association is exempt from this Commission's regulation under Section 367.022(7), Florida Statutes, as a nonprofit corporation providing service solely to members who own and control it. Since we have found the Association to be exempt from our regulation, we also find it appropriate to require it to return Certificate No. 56-S to this Commission within thirty days for cancellation. Moreover, should there be any change in circumstances or method of operation, the Association, or its successor(s) in interest, shall inform this Commission within thirty days of such change so that we may reevaluate its regulatory status.

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It is, therefore,

ORDERED by the Florida Public Service Commission that the transfer of majority organizational control from Lost Tree Club, Inc. to Lost Tree Village Property Owners Association, Inc. is hereby approved. It is further

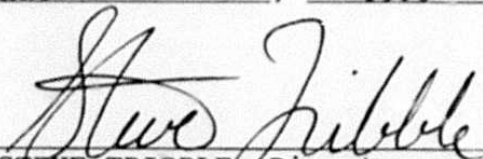
ORDERED that Lost Tree Village Property Owners Association, Inc. is exempt from this Commission's regulation under Section 367.022(7), Florida Statutes, as a nonprofit corporation providing service solely to members who own and control it. It is further

ORDERED that Lost Tree Village Property Owners Association, Inc. shall return Certificate No. 56-S to this Commission within thirty (30) days of the date of this Order. It is further

ORDERED that, should there be any change in circumstances or method of operation, Lost Tree Village 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. 891261-SU be and is hereby closed.

By ORDER of the Florida Public Service Commission  
this 21st day of FEBRUARY, 1990.

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

RJP



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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.