

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from)	DOCKET NO. 910744-SU
Florida Public Service Commission)	ORDER NO. 25316
regulation for a wastewater treatment)	ISSUED: 11/12/91
plant in Highlands County by OAK LEAFE)	
HOMEOWNERS ASSOCIATION, INC.)	
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL MCK. WILSON

ORDER INDICATING EXEMPT STATUS OF
OAK LEAFE HOMEOWNERS ASSOCIATION, INC.

BY THE COMMISSION:

Oak Leafe Homeowners Association, Inc. (Oak Leafe) is a nonprofit corporation that will provide wastewater service to a development known as Oak Leafe Subdivision. This development consists of approximately sixty-two lots located in Highlands County. Pursuant to Section 367.031, Florida Statutes, before the Department of Environmental Regulation will issue a construction permit, it requires either a certificate authorizing service or proof that the utility is subject to the regulation of this Commission. On June 18, 1991, Oak Leafe filed an application for exempt status with this Commission. Subsequently, in compliance with the request for further information, Oak Leafe submitted an affidavit, a warranty deed evidencing Oak Leafe's ownership of the land upon which the utility's facilities will be located, its Articles of Incorporation, and its Bylaws.

Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or wastewater facilities, if they qualify under the appropriate section of Chapter 367, Florida Statutes. Oak Leafe requested recognition of its exempt status under Section 367.022(7), Florida Statutes. Section 367.022(7), Florida Statutes, states that "[n]onprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit" entities are exempt from Commission regulation.

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The affidavit, Articles of Incorporation, and Bylaws submitted by Oak Leaf show that: Oak Leaf is a nonprofit corporation that will provide wastewater solely to its members who own and control Oak Leaf; Oak Leaf will provide wastewater service only and do the billing for such service; the service area will be limited to Oak Leaf Subdivision; Oak Leaf owns and controls the utility and the land upon which the utility's facilities are located; the requirement for membership is ownership of a lot and members shall be entitled to one vote per lot owned; and transfer of control of the association from the developer member to the nondeveloper members will occur when fifty-one percent of the lots in the development are sold.

Upon consideration of the foregoing facts, we find that Oak Leaf is exempt from our regulation pursuant to Section 367.022(7), Florida Statutes. However, should there be any change in circumstances or method of operation, Oak Leaf, or any successor in interest, shall notify this Commission within thirty days of such change so that we may determine whether exempt status is still appropriate.

Oak Leaf is required to record this Order with the Clerk of the Court for Highlands County. Such recordation will provide notice to any potential purchaser within the development of the exempt status of the wastewater utility serving the Oak Leaf Subdivision.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Oak Leaf Homeowners Association, Inc.'s system, located at 501 Castile Street, Sebring, Florida 33870, is hereby exempt from Commission regulation pursuant to the terms of Section 367.022(7), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation of Oak Leaf Homeowners Association, Inc., or any successor in interest, shall inform this Commission within thirty days of such change. It is further

ORDERED that Oak Leaf Homeowners Association, Inc. shall record this Order with the Clerk of the Court for Highland County. It is further

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ORDERED that this docket should be closed.

By ORDER of the Florida Public Service Commission, this
12th day of NOVEMBER, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

NRF

By: Kay Hizon
Chief, Bureau of Records

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.