

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from) DOCKET NO. 910621-WU
Florida Public Service Commission) ORDER NO. 25326
regulation for a sewer plant in Lee) ISSUED: 11/12/91
County by Forest Park Property Owner's)
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

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING REQUEST FOR EXEMPTION

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

On October 18, 1991, Forest Park Property Owner's Association, Inc., (Forest Park) informed the Commission that it had purchased Vista Villages, Inc. (Vista Villages). We advised Forest Park that Vista Villages was in violation of Section 367.071(1), Florida Statutes, by selling its facilities without prior approval of the Commission. On March 29, 1991, Forest Park filed an application for transfer of certificate from Vista Villages to Forest Park. Docket No. 910467-SU was opened to process the transfer application. The transfer application was incomplete and a deficiency letter was sent to Forest Park. Docket No. 910467-SU remains open pending additional information and correction of the deficiencies.

On January 18, 1991, we received Forest Park's request for an exemption from Commission regulation under Section 367.022(7), Florida Statutes. This docket was opened to address Forest Park's exemption application. With the application, Forest Park submitted an affidavit stating that: Forest Park is a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes, and that it would limit its service to 284 members of the association who own and control it, to 149 non-members and to four (4) units outside the park.

DOCUMENT NUMBER-DATE

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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.

Section 367.022(7), Florida Statutes, provides for an exemption from Commission regulation of "[n]on-profit corporations, associations, or cooperatives providing service solely to members who own and control such corporations, associations, or cooperatives." The criteria which an applicant must meet before an exemption can be granted include submitting an affidavit stating that: (1) the corporation is non-profit, providing service solely to members who own and control it; (2) whether it provides water service, wastewater service or both; and (3) specifying the service area. Additionally, the applicant must submit its Articles of Incorporation as filed with the Secretary of State and its Bylaws, which documents must clearly show the requirements for membership, the members' voting rights and the circumstances under which control passes to the non-developer members. Finally, the applicant must provide proof of its ownership of the utility facilities and the land upon which the facilities will be located.

Since Forest Park was serving non-members, it did not meet the statutory requirement of providing service solely to its members. On February 14, 1991, Forest Park was informed that in order for the association to be exempt, the by-laws and articles of incorporation would have to be amended to reflect that service would be provided only to members of the association. In an effort to correct the deficiencies, on May 13, 1991, Forest Park made its second request for recognition of exempt status under Section 367.022(7), Florida Statutes. However, Forest Park remains unable to meet the requirements of the Statute because it provides service to approximately 153 customers who are not members of the association.

Further, on September 12, 1991, we received a copy of an agreement, whereby, the County and North Fort Myers agree to provide wastewater service to the residents of Forest Park. According to the agreement, Forest Park will interconnect its wastewater system with North Fort Myers.

Based on the facts as represented, we find that Forest Park Property Owner's Association does not meet the statutory requirement to serve only members, and thus is not exempt from Commission regulation under terms of Section 367.022(7), Florida Statutes.

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Based on the foregoing, it is therefore,

ORDERED by the Florida Public Service Commission that the provisions of this Order are issued as proposed agency action and shall become final, unless a person whose interests are substantially affected files an appropriate petition in the form provided by Rule 25-22, Florida Administrative Code, with the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings or Judicial Review. It is further

ORDERED that the request for an exemption from Commission regulation by Forest Park Property Owner's Association, Inc., located at 5200 Forest Park Drive, North Fort Myers, Florida 33917 for its wastewater system in Lee County, Florida, pursuant to Section 367.022(7), Florida Statutes, is hereby denied. It is further

ORDERED that this docket shall be closed if no timely protest is received from a substantially affected person.

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)

LAJ

by: Kay Hizon
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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 12/3/91.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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 of the effective date 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.