

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution of the Board of Commissioners of Manatee County declaring Manatee County subject to the provisions of Chapter 367, Florida Statutes - Request for exemption from Florida Public Service Commission regulation for provision of water and wastewater service by Fair Lane Acres, Inc.

DOCKET NO. 951235-WS
ORDER NO. PSC-97-0684-FOF-WS
ISSUED: June 11, 1997

ORDER INDICATING THE EXEMPT STATUS OF
FAIR LANE ACRES, INC.

BY THE COMMISSION:

On June 3, 1996, Fair Lane Acres, Inc. (Fair Lane) filed a request for recognition of its exempt status, pursuant to Section 367.022(7), Florida Statutes. Fair Lane provides water and wastewater service to a mobile home subdivision known as Fair Lane Acres Subdivision. Fair Lane is located at 819 49th Avenue Terrace West, Bradenton, Florida. Ms. Janis Koch, President of the Association, and primary contact person, filed the application on behalf of Fair Lane. Ms. Koch's address is 806 50th Avenue West, Bradenton, Florida 34207.

Prior to the application, the utility was operated under the name Fair Lane Utilities Company and Fair Lane Water and was owned by the developer of Fair Lane Acres Subdivision. The residents of the subdivision were represented by two separate homeowners associations. Prior to the Commission receiving jurisdiction in Manatee County, the developer and one of the associations began negotiations for the sale and purchase of the utility. Upon being advised by the Commission Staff that in order to be exempt from Commission regulation all customers of the utility would have to be members of the association, a separate association was formed under the name Fair Lane Acres, Inc. On May 8, 1996, Fair Lane purchased the assets of Fair Lane Utilities Company and Fair Lane Water. As stated previously, Fair Lane filed an application for exemption from Commission regulation on June 3, 1996.

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ORDER NO. PSC-97-0684-FOF-WS
DOCKET NO. 951235-WS
PAGE 2

Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or wastewater systems if they qualify under the appropriate provision of Chapter 367, Florida Statutes. The application was filed in accordance with Section 367.022(7), Florida Statutes.

Section 367.022(7), Florida Statutes, states that nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit entities are exempt from Commission regulation. Before an exemption of this nature may be granted, the applicant requesting the exemption must file with the Commission a statement specifying the following: that the corporation is nonprofit; providing service solely to the members who own and control it; and whether it provides water service, wastewater service, or both. Additionally, the applicant must submit its Articles of Incorporation as filed with the Secretary of State and its Bylaws. These documents must show clearly the requirements of membership, the members' voting rights, and the circumstances under which control passes to the nondeveloper members.

With its application, Fair Lane provided copies of its Articles of Incorporation and Bylaws, which reflect that it is a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes. According to the application, Fair Lane provides water and wastewater service only to its members. Because the Articles and Bylaws did not show when control passed to the members, Fair Lane provided a statement that control of the Association passed to the nondeveloper members on May 8, 1996.

In addition, pursuant to Section 837.06, Florida Statutes, and Rule 25-30.060(2)(f), Florida Administrative Code, anyone knowingly making a false statement in writing with the intent to mislead is guilty of a misdemeanor. By signing the application, Ms. Koch acknowledged that she is aware of Section 837.06, Florida Statutes, and the penalties for making false statements in the application.

Based on the facts as represented, we find that Fair Lane is exempt from our regulation pursuant to Section 367.022(7), Florida Statutes. However, the owner of Fair Lane or any successors in interest are put on notice that if there is any change in circumstance or method of operation which causes it to no longer qualify for exemption pursuant to Section 367.022, Florida Statutes, it should inform the Commission within 30 days of such change so that its status may be reevaluated.

It is, therefore,

ORDER NO. PSC-97-0684-FOF-WS
DOCKET NO. 951235-WS
PAGE 3

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Fair Lane Acres, Inc., 819 49th Avenue Terrace West, Bradenton, Florida 34207, is hereby exempt from Commission regulation pursuant to the provisions of Section 367.022(7), Florida Statutes. It is further

ORDERED that this Docket shall remain open to process additional applications.

By ORDER of the Florida Public Service Commission, this 11th day of June, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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ORDER NO. PSC-97-0684-FOF-WS
DOCKET NO. 951235-WS
PAGE 4

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater 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.