

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from) DOCKET NO. 900231-SU
Florida Public Service Commission) ORDER NO. 23259
regulation for a sewage treatment) ISSUED: 7-27-90
system in Monroe County by)
SUGARLOAF SHORES ESTATES PROPERTY)
OWNERS ASSOCIATION, INC.)
_____)

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER
FRANK S. MESSERSMITH

ORDER INDICATING EXEMPT STATUS OF SUGARLOAF
SHORES ESTATES PROPERTY OWNERS ASSOCIATION, INC.

BY THE COMMISSION:

BACKGROUND

Pursuant to Section 367.031, Florida Statutes, before the Department of Environmental Regulation (DER) will issue a construction permit, it requires either a certificate authorizing service or an order indicating that the utility is not subject to the regulation of this Commission. Therefore, by letter dated March 30, 1990, Lloyd A. Good, Jr., the developer of a proposed fifty-five-lot, single-family residential subdivision to be known as Sugarloaf Shores Section C, requested an exemption from Florida Public Service Commission regulation for the project's wastewater system pursuant to Section 367.022(7), Florida Statutes.

By letter dated April 17, 1990, the applicant submitted the following documents: the proposed homeowners association's Articles of Incorporation, the proposed homeowners association's Bylaws, the subdivision's proposed Declaration of Restrictions and Protective Covenants, proof of the developer's ownership of the land upon which the wastewater facilities will be located, and a statement declaring who would do the billing for the wastewater service.

DOCUMENT NUMBER-DATE

06757 JUL 27 1990

FPSC-RECORDS/REPORTING

EXEMPTION

Section 367.022(7), Florida Statutes, provides that "[n]onprofit corporations, associations, or cooperatives providing service solely to members who own and control such corporations, associations, or cooperatives" are not subject to this Commission's regulation. In our interpretation of this provision, we have required that control of the association transfer from the developer member to the nondeveloper members at some point in time close to the sale of fifty percent of the lots involved or within some other reasonable time.

In the present case, the applicant's documents make adequate provision for the transfer of control. Article 5, Section 1, of the proposed Articles of Incorporation states, "No person except an Owner or Developer, as such terms are defined in the Declaration, is entitled to membership in the Association; and all Owners and the Developer shall be members of the Association as provided in the Declaration." Article 5, Section 2, of the proposed Articles of Incorporation states, "Each owner who holds record title to a lot under the Declaration shall be a Member of the Association." Article 6 of the proposed Articles of Incorporation addresses voting rights. It states, "All members shall be entitled to one (1) vote for each lot owned." Therefore, we find that there will be a transfer of control of the Association from the developer to the nondeveloper members upon the sale of fifty-one percent of the lots.

The March 26, 1990, affidavit submitted by the applicant states that: the corporation will be nonprofit, it will provide service solely to members who own and control it, it will provide wastewater service only, and its service area will be confined to the subdivision. On April 19, 1990, the applicant submitted a statement specifying that the association will do the billing for the wastewater service.

The developer submitted a deed as proof that he owns the land upon which the utility facilities will be located. The developer has not conveyed this property to the association, as it is not yet incorporated. Article 4, Section 4, of the Declaration states that the developer retains the right to hold title to any of the common areas (which would include the wastewater facilities and land) up until the time that the developer sells fifty percent of the lots. Since the presence

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of this right is contrary to our policy that an association has to have title to or a long-term lease on its properties from the association's inception, we required assurance from the developer that the property would be conveyed to the association and that this right in the Declaration would not be exercised.

Accordingly, the developer submitted an affidavit, dated June 11, 1990, wherein he averred to the following:

(1) That he shall convey or shall cause any entity under his control to convey fee simple title of all common areas associated with the utility, including the sewer plant, the land upon which the plant is located, and the sewer system, to the Sugarloaf Shores Property Owners Association, Inc., upon the sale of the first lot in said development; and

(2) That he shall cause to be amended Article 4, Section 4, of the Declaration of Restrictions and Protective Covenants for Section "C" Extension Lower Sugarloaf Key so that it no longer reserves unto the Developer the right to retain title to common areas associated with the utility.

Conveyance of the utility property upon the sale of the first lot in the development is consistent with Commission policy.

Based on the facts as represented, we find that the Sugarloaf Shores Estates Property Owners Association, Inc., qualifies under Section 367.022(7), Florida Statutes, as a nonprofit association which is exempt from this Commission's regulation.

Furthermore, we require that the applicant record this order with the Clerk of the Court for Monroe County. Such recordation will provide constructive notice to the public and, specifically, to potential purchasers of lots in the development of the exempt status of the wastewater system.

It is, therefore,

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ORDERED by the Florida Public Service Commission that based upon the facts as represented, Sugarloaf Shores Property Owners Association, Inc., Sugarloaf Blvd., Sugarloaf Key, Florida 33044, is exempt from Florida Public Service Commission regulation pursuant to Section 367.022(7), Florida Statutes. It is further

ORDERED that Sugarloaf Shores Estates Property Owners Association, Inc., or its successor(s) in interest shall inform this Commission within 30 days of any change in the circumstances or method of operation of the system which might affect its exempt status so that the exempt status may be reevaluated. It is further

ORDERED that Sugarloaf Shores Estates Property Owners Association, Inc., shall record this Order with the Clerk of the Court for Monroe County. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission
this 27th day of JULY, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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.