

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption)
from Florida Public Service)
Commission regulation for a)
water system in Osceola County))
by LAKE MARIAN SHORES)
HOMEOWNERS' ASSOCIATION, INC.)
_____)

DOCKET NO. 920653-WU
ORDER NO. PSC-92-1428-FOF-WU
ISSUED: 12/09/92

ORDER INDICATING THE EXEMPT STATUS OF
LAKE MARIAN SHORES HOMEOWNERS' ASSOCIATION, INC.

BY THE COMMISSION:

On June 25, 1992, Lake Marian Shores Homeowners' Association, Inc. (Lake Marian or Association) filed its request for exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes. Lake Marian is located at Horizon Drive, Kenansville, Florida 34739, and it currently provides water service to 20 customers within the subdivision with capacity to serve 82 customers when fully built out. All of the customers are on septic systems, and all of the subdivision's lots will have septic tanks when developed.

Lake Marian requested that it be found exempt pursuant to Section 367.022(7) of Chapter 367, Florida Statutes. Under this section, "[N]onprofit corporations, associations, or cooperatives" are exempt from Florida Public Service Commission regulation. In addition, Rule 25-30.060 (g) states:

For an exemption pursuant to Section 367.022(7), Florida Statutes, a statement from the corporation, association, or cooperative that it is nonprofit; that it provides service solely to members who own and control it; stating whether it provides water service, wastewater service or both; specifying who will do the billing for such service; and specifying the service area. 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, that the members' voting rights are one vote per unit of ownership, and the circumstances under which control of the corporation passes to the non-developer members. Control of the corporation must pass: 1) at 51 percent ownership by the non-developer members or, 2) at some greater percentage delimited by a time period not to exceed 5 years from the date of incorporation.

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The applicant must provide proof of ownership of the utility facilities and the land upon which the facilities will be located or other proof of its right to continued use of the land, such as a 99-year lease....

In an application dated June 17, 1992, the Association states that it is a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes, that it will provide service solely to its members who own and control it, and that the Association will provide water service for which it will provide its own billing. The service area is specified as the Lake Marian Shores subdivision. The Association provided a recorded perpetual easement granting it the use of the land upon which the facilities are located. In addition, it provided a copy of a bill of sale verifying that the Association purchased and owns the water plant facilities, thereby establishing proof of ownership of the facilities and continued use of the land where the facilities are located.

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. Based upon the facts as represented, we find that Lake Marian is exempt from our regulation under the terms of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances of Lake Marian, a representative of the Association must inform the Commission within thirty days of such change, so that we may determine whether exempt status is still appropriate.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Lake Marian Shores Homeowners' Association, Inc., located at Horizon Drive, Kenansville, Florida, with the mailing address of 7771 West Oakland Park Boulevard, Suite 201, Ft. Lauderdale, Florida 33351, and with contact person Kimberly A. Juda at 1-800-688-0771, 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 of Lake Marian Shores Homeowners' Association, Inc., a representative of Lake Marian Shores Homeowners' Association, Inc. shall inform the Commission within thirty days of such change. It is further

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ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission, this 9th
day of December, 1992.



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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.