



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: September 25, 1995

TO: Ralph Jaeger, Division of Legal Services
Division of Records and Reporting

FROM: Patricia Brady, Division of Water and Wastewater *pb* *SMGM*

RE: Docket No. 941044-WS, Resolution of Board of County Commissioners of Charlotte County declaring Charlotte County subject to the provisions of Chapter 367, Florida Statutes - Request for exemption for provision of wastewater service by FANTASY ISLAND CONDOMINIUM ASSOCIATION, INC.

On May 17, 1995, an application for a nonprofit exemption from regulation by the Florida Public Service Commission was filed on behalf of Fantasy Island Condominium Association, Inc. (Fantasy Island or Homeowners Association) pursuant to Section 367.022(7), Florida Statutes. The application was signed by Ms. Cora de Jonge as the Secretary/Treasurer of the Homeowners Association. Ms. de Jonge is also the primary contact person. Ms. de Jonge's address, as well as the mailing address for Fantasy Island, is listed as 2767 North Beach Road, #208, Englewood, Florida 34223 (813/475-2108). The physical location and service territory of Fantasy Island is listed as 2765 North Beach Road, Englewood, Florida 34223. This location is in Charlotte County.

In accordance with Section 367.022(7), Florida Statutes, and Rule 25-30.060(2) and (3)(g), Florida Administrative Code, Ms. de Jonge filed a statement that Fantasy Island Condominium Association, Inc. is a not for profit corporation providing service solely to members who own and control it and that Fantasy Island will do its own billing for wastewater service. Water is provided by the Englewood Water District directly to the homeowners. Ms. de Jonge has acknowledged that she is aware of the penalty pursuant to Section 837.06, Florida Statutes, for knowingly making false statements in writing with the intent to mislead.

Fantasy Island is a 28 unit condominium association. Control of the Homeowners Association passed from the developer, Trio Englewood, Inc., to the nondeveloper members on April 27, 1991. Currently the developer still owns 5 units. Although the turnover has occurred, there is no document assigning the utility facilities to the Homeowners Association. Instead, Fantasy Island's Declaration of Condominium was set up such that each member retains 1/28th share in ownership of the common elements. The utility facilities are treated as a common element. To show proof of such ownership, Ms. de Jonge provided a copy of a homeowner's deed. According to the deed, the developer conveyed to the homeowner the condominium unit "together with an undivided 1/28th interest in the common elements and all other appurtenances as set forth in the Declaration of Condominium and provided by law."

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The application included a copy of Fantasy Island's Article of Incorporation as filed with the Secretary of State and its By-Laws. These documents clearly show the requirements for membership and that member voting rights are one vote per unit of ownership. As previously discussed, a copy of a 1/28th property deed was provided as proof that the homeowners communally own the utility facilities and the land upon which the facilities are located.

Section 2.08(C)(14) of the Administrative Procedures Manual grants staff the administrative authority to approve requests for determination of exempt status that are clear-cut and without controversy. Staff finds the application in compliance with statutory requirements and without apparent controversy. Staff recommends that an administrative order be issued granting Fantasy Island Homeowners Association, Inc. a nonprofit exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes.

Staff also recommends that the order require Fantasy Island to notify the Commission within 30 days of any change in circumstances or method of operation of its water or wastewater systems so that its exempt status may be reevaluated. The docket should remain open to process additional applications.

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