

However, prior to that, on December 21, 1992, Island Dunes also filed an application for grandfather certificate. At that time, Island Dunes informed staff that it believed the wastewater operation may be exempt, but was filing the certificate application in order to preserve its grandfather rights in case the exemption request was denied. As a result, the grandfather application has been on hold pending the outcome of the request for exemption.

Island Dunes was established on August 10, 1981, as a phased condominium development consisting of seven buildings and a country club in St. Lucie County. It was incorporated in 1983 as a nonprofit corporation pursuant to Chapter 617, Florida Statutes. Of the seven buildings, only two remain to be developed. One is complete and the other is under construction and will be complete by July, 1997. At buildout, the utility will serve approximately 540 condominium units and a club house. Island Dunes operates all recreational amenities such as the golf course, tennis courts, clubhouse and the wastewater plant. According to a letter from Island Dunes' attorney dated April 16, 1996, there is one set of books for these activities and members are assessed on a yearly basis for all these operations.

With the exception of turnover of control, which is discussed below, the application for exemption meets all requirements for exemption pursuant to Section 367.022(7), Florida Statutes, and Rule 25-30.060(1), (2) and (3), Florida Administrative Code. Island Dunes is a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes. Within its application, Island Dunes provides a statement that it furnishes wastewater service solely to members of the corporation. The applicant provided copies of its Articles of Incorporation as filed with the Secretary of State and the Bylaws which clearly indicate the requirements for membership, and that the members' voting rights are one vote per unit of ownership.

According to Rule 25-30.060(3)(g), Florida Administrative Code, in effect at the time, to be exempt, turnover had to pass: (1) at 51 percent ownership by the nondeveloper members or, (2) at some greater percentage delimited by a time period not to exceed 5 years from the date of incorporation. This rule did not appear to allow for any Commission discretion regarding turnover time. According to the documents provided by the applicant, developer control of the corporation will not terminate until 90% of the building units have been completed. Since Island Dunes was incorporated in 1983 and turnover of control to nondeveloper members had not occurred, the applicant did not meet the rule requirement for exemption. However, based on discussions at agenda

conferences involving other cases, we had directed our staff to revisit that rule requirement to allow for our discretion regarding turnover of control to member customers.

Subsequently, Rule 25-30.060(3)(g), Florida Administrative Code, was amended to provide, in pertinent part:

In circumstances where the applicant is a nonprofit corporation formed by a developer pursuant to Chapter 617, Florida Statutes, it must provide documentation showing that control has passed or, if not, the circumstances under which control of the corporation will pass to nondeveloper members. The time must not exceed seven years from the date of incorporation, unless the Commission finds that special circumstances justify a longer time. (Emphasis supplied)

The rule amendment clearly gave us authority to approve a longer turnover time if circumstances warrant.

Pursuant to the above-referenced rule, Island Dunes provided the following justification for a longer turnover time:

1. The purpose of this rule is to prevent developer abuse, which simply does not exist in this case and residents have not complained of any such abuse;
2. This is a phased development and although incorporation originally occurred in 1983, it is not unusual for a development of this size to take over seven years to complete; and
3. Turnover of control to the owners will occur not later than July 1997. It would be inefficient and expensive to subject Island Dunes to Commission regulation for this short of a period based on a strict seven-year standard.

We are not aware of any complaints of the residents. In addition, we note that according to the Declaration of Covenants, the developer has the obligation of funding, permitting and causing the construction of any improvements to the wastewater system as required to provide service to new units until the maximum number of allowable units is attained. As noted above, currently Island

Dunes' books are kept based on the operation of all amenities. If Island Dunes is subject to Commission regulation, it would have to totally change its books and records at some expense. It would also be subject to Commission reporting and regulatory assessment fee requirements which would be an additional expense. These additional expenses would result in increased costs to the Island Dunes residents.

Based on the above, we find that Island Dunes demonstrated sufficient special circumstances to justify a longer turnover time as allowed by Rule 25-30.060(3)(g), Florida Administrative Code. Based on the facts as represented, we find that Island Dunes is exempt from Commission regulation, pursuant to the provisions of Section 367.022(7), Florida Statutes.

CLOSING OF DOCKETS

With this granting of an exemption, there is no need to process the grandfather application and both Dockets Nos. 921002-SU and 921279-SU shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Island Dunes Country Club, Inc., 8735 South Ocean Drive, Jensen Beach, Florida 34957, is exempt from Commission regulation, pursuant to the provisions of Section 367.022(7), Florida Statutes. It is further

ORDERED that Dockets Nos. 921002-SU and 921279-SU shall be closed.

By ORDER of the Florida Public Service Commission, this 7th day of March, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Selig
Chief, Bureau of Records

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(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.