

M E M O R A N D U M

JUNE 20, 1997

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3:00

FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CROSBY) *WJ*

RE: DOCKET NO. 941044-WS - RESOLUTION OF BOARD OF COMMISSIONERS OF CHARLOTTE COUNTY DECLARING CHARLOTTE COUNTY SUBJECT TO THE PROVISIONS OF CHAPTER 367, FLORIDA STATUTES - REQUEST FOR EXEMPTION FROM FLORIDA PUBLIC SERVICE COMMISSION REGULATION FOR PROVISION OF WASTEWATER SERVICE BY LEMON BAYVIEW EAST CONDOMINIUM ASSOCIATION, INC.

0780-FUF

Attached is an ORDER INDICATING THE EXEMPT STATUS OF LEMON BAYVIEW EAST CONDOMINIUM ASSOCIATION, INC. to be issued in the above referenced docket. (Number of Pages in Order - 3)

ALC:mw

Attachment *48*

cc: Division of Water and Wastewater
(Coker)

I: 941044A.ALC

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution of Board of
Commissioners of Charlotte
County declaring Charlotte
County subject to the provisions
of Chapter 367, Florida Statutes
- Request for exemption from
Florida Public Service
Commission regulation for
provision of wastewater service
by Lemon Bayview East
Condominium Association, Inc.

DOCKET NO. 941044-WS
ORDER NO. PSC-97-0780-FOF-WS
ISSUED: July 1, 1997

ORDER INDICATING THE EXEMPT STATUS OF
LEMON BAYVIEW EAST CONDOMINIUM ASSOCIATION, INC.

BY THE COMMISSION:

On December 5, 1994, Bayview East Condominium Association, Inc. (Bayview) filed a request for recognition of its exempt status, pursuant to Section 367.022(7), Florida Statutes. Bayview provides wastewater service to twenty units in the condominium community. Water service is provided by Englewood Water District. Bayview is located at 53 Bay Heights Avenue West, Englewood, Florida. Mr. Roy J. Russell, Director and Treasurer of the Association, and primary contact person, filed the application on behalf of Bayview.

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; whether it provides water service, wastewater service, or both; and who will do the billing.

DOCUMENT NUMBER-DATE

06612 JUL-15

FPSC-REG/ADJ/REPORTING

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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.

From a review of the application and information provided by the Division of Corporations of the Department of State, it was determined that the corporation had been dissolved for several years. Because another entity had been incorporated under the name, Bayview East Condominium Association, Inc., the Association reincorporated on March 17, 1995, as Lemon Bayview East Condominium Association, Inc. (Lemon Bayview East).

Lemon Bayview East provided copies of its Articles and Bylaws, which reflect that it is a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes. According to the application, Lemon Bayview East provides wastewater service only to its members who own and control it. As stated previously, water service is provided by Englewood Water District.

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, Mr. Russell acknowledged that he 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 Lemon Bayview East is exempt from our regulation pursuant to Section 367.022(7), Florida Statutes. However, the members of Lemon Bayview East 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Lemon Bayview East Condominium Association, Inc., 53 Bay Heights Avenue, West, Englewood, Florida 34223, is hereby exempt from Commission regulation pursuant to the provisions of Section 367.022(7), Florida Statutes. It is further

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

By ORDER of the Florida Public Service Commission, this 1st day of July, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

ALC

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.