



Public Service Commission

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

DATE: June 4, 1996

TO: Alice Crosby, Division of Legal Services
Division of Records and Reporting

FROM: Angela Massey-Azpell, Division of Water and Wastewater *AMA*

RE: Docket No. 941044-WS; Request for exemption from Florida Public Service Commission regulation for provision of water and wastewater service in Charlotte County by LANDINGS ON LEMON BAY.

On November 23, 1994, Landings on Lemon Bay filed a request for an exemption pursuant to Section 367.022(7), Florida Statutes, as a nonprofit corporation. Landings on Lemon Bay provides wastewater to its residents. The water service is provided by Englewood Water District, Englewood, Florida.

Landings on Lemon Bay requested the exemption after the Commission received jurisdiction over Charlotte County on September 27, 1994. It filed its request pursuant to Section 367.022(7), Florida Statutes and Rules 25-230.060(1), (2) and (3), Florida Administrative Code. At the time of application, the applicant was unable to provide adequate proof of land ownership. Commission Rules required that the applicant 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 continue use of the land, such as a 99-year lease. Because of inadequate proof of land ownership this requirement was not satisfied, therefore, this exemption request did not comport with the provisions of Rule 25-30.060(3)(g), Florida Administrative Code.

Since Landings on Lemon Bay did not meet the provisions of Rule 25-30.060, Florida Administrative Code, the decision regarding Landings on Lemon Bay's exempt status was deferred pending the revision of Rule 25-30.060, Florida Administrative Code. The rule has been revised the the proof of land ownership provision has been removed from the rule. According to the revised Commission Rules regarding nonprofit exemptions, when the applicant is a nonprofit corporation formed pursuant to Chapter 617, Florida Statutes, it must provide:

- a. The articles of incorporation as filed with the Secretary of State and the bylaws which documents must demonstrate that it provides service solely to members who own the corporation;

A description of the voting rights and their location in the articles of incorporation and the bylaws. The voting rights shall be one vote per unit of ownership or other voting rights if the Commission finds they are fair and nondiscriminatory so that members have equitable control of the corporation.

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In addition, 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 the 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.

We believe Landings on Lemon Bay now meets the requirements for an exemption pursuant to 367.022(7), Florida Administrative Code. Since Landings on Lemon Bay was organized pursuant to Chapter 617, Florida Statutes, it filed its Articles of Incorporation, its Bylaws and its Declaration of Covenants and Restrictions. These documents show the the corporation provides service solely to members who own and control it and that the voting rights are one vote per unit of onwership.

With regard to turnover of control to the nondeveloper members, we have received written confirmation that turnover occured on November 22, 1988, and the applicant has signed a statement that he is aware of the requirements of Section 837.06, Florida Statutes, regarding false statements.

Therefore, based on the above, an order should be issued within thirty days indicating the exempt status of Landings on Lemon Bay. The docket should remain open to process additional applications. Should any change in circumstances or method of operation occur, Landings on Lemon Bay, or any successors in interest, should be required to notify the Commission within thirty days so that Landings on Lemon Bay's exempt status may be reevaluated.

I:landlemon.ama