

MEMORANDUM

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February 13, 1995

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (SAGER) *ELS* *JAT*

RE: DOCKET NO. 941044-WS - Resolution of the Board of County Commissioners of Charlotte County Declaring Charlotte County Subject to the Provisions of Chapter 367, Florida Statutes - Request for Exemption for Water and Wastewater Service by Harbor Industrial Condo Association

6212-FOF

Attached is an Order Indicating Exempt Status of Harbor Industrial Condo Association to be issued in the above-referenced docket. (Number of pages in Order -3)

ELS/dp

Attachment

cc: Division of Water and Wastewater (Redemann)

I: 1044HICA.ES

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of the Board) DOCKET NO. 941044-WS
of County Commissioners of) ORDER NO. PSC-95-0212-FOF-WS
Charlotte County Declaring) ISSUED: February 16, 1995
Charlotte County Subject to the)
Provisions of Chapter 367,)
Florida Statutes - Request for)
Exemption for Water and)
Wastewater Service by Harbor)
Industrial Condo Association.)

ORDER INDICATING EXEMPT STATUS OF HARBOR INDUSTRIAL
CONDO ASSOCIATION

BY THE COMMISSION:

On December 23, 1994, Harbor Industrial Condo Association (Harbor or utility) applied for a nonprofit association exemption for its water and wastewater facility, pursuant to Section 367.022 (7), Florida Statutes. The water and wastewater system is located at 23440 Janice Avenue, Charlotte Harbor, Florida 33980. Mr. Fred McGready, the president and primary contact person, filed the application on behalf of the utility.

Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of a water system, wastewater system, or both, 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, i.e, providing service solely to its members who own and control it; whether it provides water service, wastewater service, or both; who will do the billing; and it must provide its service territory. Additionally, the applicant must submit its Articles of Incorporation and Bylaws as filed with the Secretary of State. These documents must show clearly the requirements for membership, the members' voting rights, and the circumstances under which control passes to the non-developer members.

DOCUMENT NUMBER-DATE

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In its application, Harbor stated that it is a nonprofit corporation organized pursuant to Chapters 617 and 718, Florida Statutes; that it provides service solely to its members who own and control it; and that it provides water and wastewater service for which it provides its own billing. The utility's service area is 23440 Janice Drive Avenue, Charlotte Harbor, Florida 33980. Harbor has attached its Articles of Incorporation and Bylaws showing the requirements for memberships and that the members' voting rights are one vote per unit of ownership. Control of the corporation has already passed to the members of the condominium. Harbor has provided a recorded Declaration, stating that it owns the land where the facilities are located. In addition, Harbor has provided recorded copies of the mortgages joining in Harbor's Declaration, showing that Harbor has purchased and owns the water and wastewater facilities, thereby, establishing proof of its ownership of the facilities and continued use of the land where the facilities are located.

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, Harbor acknowledged that it is aware of Section 837.06, Florida Statutes, and the penalties for making false statements in the application.

Based upon the facts as represented, we find that Harbor is exempt from Commission regulation pursuant to the provisions of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances or method of operation, a representative of Harbor must inform the Commission within thirty days of such change, so that we may reevaluate its exempt status.

Based on the foregoing, it is, therefore,


ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Harbor Industrial Condo Association, 23440 Janice Avenue, Charlotte Harbor, Florida 33980, is hereby exempt from Commission regulation pursuant to the provisions of Section 367.022(7), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation, a representative of Harbor Industrial Condo Association shall inform the Commission of such change so that its exempt status may be reevaluated. It is further

ORDERED that this docket shall remain open.

ORDER NO. PSC-95-0212-POF-WS
DOCKET NO. 941044-WS
PAGE 3

By ORDER of the Florida Public Service Commission, this 16th day of February, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

ELS

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 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.