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M E M O R A N D U M

June 12, 1996

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (OROSBY) *LJS*
RE: DOCKET NO. 941044-WS - RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY DECLARING CHARLOTTE COUNTY SUBJECT TO THE PROVISIONS OF SECTION 367, FLORIDA STATUTES - REQUEST FOR EXEMPTION FROM FLORIDA PUBLIC SERVICE COMMISSION REGULATION FOR PROVISION OF WASTEWATER SERVICE BY LANDINGS ON LEMON BAY PROPERTY OWNERS ASSOCIATION, INC.

0774-FOF

Attached is an Order Indicating Exempt Status of Landings on Lemon Bay Property Owners Association, Inc. to be issued in the above-referenced Docket. (Number of Pages in Order - 3) (Document No. 941044S.ALC)

alc

Attachment

cc: Division of Water and Wastewater
(Massey-Azpell)

o/l

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of the Board) DOCKET NO. 941044-WS
of County Commissioners of) ORDER NO. PSC-96-0774-FOF-WS
Charlotte County Declaring) ISSUED: June 17, 1996
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 Landings on Lemon Bay)
Property Owners Association,)
Inc.)
_____)

ORDER INDICATING THE EXEMPT STATUS OF
LANDINGS ON LEMON BAY PROPERTY OWNERS ASSOCIATION, INC.

BY THE COMMISSION:

On Landings on Lemon Bay Property Owners Association, Inc. (Landings) filed a request for recognition of its exempt status, pursuant to Section 367.022(7), Florida Statutes, and Rule 25-30.060(3), Florida Administrative Code, as a corporation providing service solely to its members. Landings is located at 2424 Placida Road, Englewood, Florida. Landings provides wastewater service to members of the Association located in Charlotte County. Water service is provided by Englewood Water District. Ms. Mary G. Markham, President, and Mr. William B. Cottingham, Director, filed the application on behalf of Landings. The primary contact person is Mr. Jack Handler.

Upon request and sufficient proof, the Commission will issue an order indicating the exempt status of water or wastewater systems if they qualify under the appropriate provision of Section 367.022, 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 corporations, associations, or cooperatives are not subject to regulation by the Commission as a utility, nor subject to the provisions of Chapter 367, Florida Statutes, except as expressly provided.

Landings initially had difficulty in providing sufficient proof of land ownership pursuant to Rule 25-30.060(3)(g), Florida Administrative Code. At the time of the applicant's filing, that rule required, inter alia, that an applicant provide sufficient

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proof of ownership of the utility facilities and land associated with those facilities. Landings could not provide the appropriate warranty deed or other proof of ownership.

At the time of Landings' filing, revisions to Rule 25-30.060, Florida Administrative Code, were being considered. We have now amended Rule 25-30.060(3)(g) to remove the requirement of proof of ownership. By Order No. PSC-96-0134-POF-WS, issued January 30, 1996, we gave notice of our adoption of the revisions to that rule. We find it appropriate to review Landings' application pursuant to the revised rule, and find that the applicant has complied with the revised provisions of Section 367.022(7), Statutes, and Rule 25-30.060, Florida Administrative Code. Specifically, the application includes a statement that Landings will provide water service solely to members who own and control it. Control of the Association passed to the non-developer members on November 22, 1988.

Landings was formed pursuant to Chapter 617, Florida Statutes. Therefore, pursuant to Rule 25-30.060(3)(g)(3), it has provided its articles of incorporation as filed with the Secretary of State, its bylaws, and a description of the voting rights and their location in the articles of incorporation and the bylaws. Each customer of Landings receives one vote.

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, Ms. Markham and Mr. Cottingham acknowledged that they are 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 Landings is exempt from our regulation pursuant to Section 367.022(7), Florida Statutes. Accordingly, Landings is not subject to our jurisdiction. However, the owner of Landings or any successors in interest are hereby put on notice that if there is any change in circumstances or method of operation, it should inform this Commission within 30 days of such change so that its non-jurisdictional status may be reevaluated.

It is, therefore,

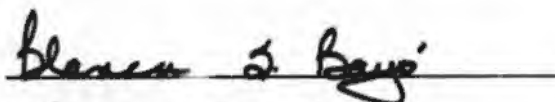
ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Landings on Lemon Bay Property Owners Association, Inc., 2424 Placida Road, C202, Englewood, Florida 34224-5450, is hereby exempt from Commission regulation

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pursuant to the provisions of Section 367.022(7), Florida Statutes.
It is further

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

By ORDER of the Florida Public Service Commission, this 17th
day of June, 1996.



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 120.59(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, 2540 Shumard Oak Boulevard, Tallahassee,

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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.