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January 17, 1992

VIA HAND DELIVERY

Mr. Steve C. Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

420063-WS

RE: Docket No. _____; Request For Exemption from PSC regulation
by the Stewart/Barth Utility in Lake County, Florida


Dear Mr. Tribble:

Enclosed for filing please find the original and two copies
of an Application For Exemption filed on behalf of the Stewart/
Barth Utility. Any correspondence or pleadings in this matter
should be sent to my attention at the address listed above.

Should you have any questions or concerns, please do not
hesitate to contact me at your earliest convenience.

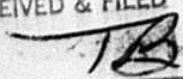
Sincerely,

ROSE, SUNDSTROM & BENTLEY


John L. Wharton, Esq.
For The Firm

JLW/lm
Encl.

RECEIVED & FILED


FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

00699 JAN 17 1992

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Request For Exemption from)
PSC regulation by the Stewart/Barth) Docket No.
Utility in Lake County, Florida.) Filing Date:
_____)

APPLICATION FOR EXEMPTION

The Stewart/Barth Utility, by and through undersigned counsel, hereby files this Application For Exemption pursuant to Rule 25-30.060, Fla. Admin. Code, and in furtherance thereof would supply the following information:

1. The name of the system owners are Mr. Robert Barth and Mr. Charles Stewart of Lake County, Florida.

2. The physical address of the system is 500 Baywood Blvd., Mount Dora, FL.

3. The mailing address of the applicants are as follows:

Charles R. Stewart, co-owner
37936 Highway 19
Umatilla, FL 32784

Robert L. Barth, co-owner
4590 North Hwy. 19-A
Mt. Dora, FL 32757

4. The name, address, and phone number of the primary contact person for the purposes of this exemption request is:

John L. Wharton, Esq.
Rose, Sundstrom & Bentley
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(904) 877-6555

5. The applicant is co-owned by Mr. Stewart and Mr. Barth. The applicant is not a corporation despite that designation on certain engineering documents provided herewith.

6. Mr. Stewart and Mr. Barth are aware that pursuant to § 837.06, Fla. Stat., whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084, Fla. Stat.

7. The Stewart/Barth Utility is requesting a combined exemption based on the unique facts and circumstances of the utility, past Commission interpretation of § 367.022, Fla. Stat., and evolving Commission policy. Stewart/Barth Utility has received from the staff certain draft/form affidavits for the appropriate exemptions and has drafted a combined affidavit for a combined exemption under § 367.022(5) and § 367.022(6) and the same is attached hereto as Exhibit "A". Upon approval of the draft affidavit by the staff, an executed affidavit will be immediately filed.

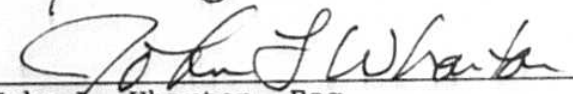
8. Stewart/Barth has also forwarded to James E. McRoy, Staff Engineer, certain documents as follows:

- A) Certain correspondence from the Department of Environmental Regulation regarding the permit for the Stewart/Barth Utility.
- B) Certain domestic wastewater treatment plant monthly operating reports and drinking water treatment plant daily summaries, a complete original schematic of the water and wastewater system and general piping plan, site plan and certain engineering layouts for the extended aeration sewage treatment plant for the Stewart/Barth Utility, Inc., as prepared by Wicks

Consulting Services, Inc. of Tavares, Florida 32776-3809, Contact person: Mr. Kenneth Wicks.

9. Also enclosed, as Exhibit "B", is a Statement of Law and Pertinent Policies whereby counsel for the Stewart/Barth Utility sets forth the position of the applicant as to why the Commission should grant its request for the combined exemption pursuant to § 367.022, Fla. Stat.

DATED this 17th day of January, 1992.


John L. Wharton, Esq.
ROSE, SUNDSTROM & BENTLEY
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(904) 877-6555

cc. Matthew Feil, Esq.
John Williams
James McRoy
Robert Barth
Charles Stewart

C) As to service to the RV parks, Stewart/Barth will not collect any specific charges for service from its guests/tenants.

D) As to the RV parks, all compensation received for service will be a non-specific portion of a periodic rent charge.

E) Stewart/Barth Utility will provide both water and wastewater service.

F) The only portion of Stewart/Barth Utility's service other than to the RV parks owned by Mr. Stewart and Mr. Barth will be to the condominium complex known as Baywood Condominiums. The service to the 30 Baywood Condominiums constitutes service to 100 or fewer persons.

G) Stewart/Barth Utility's service area will be limited to the RV park owned by Mr. Stewart, the RV park owned by Mr. Barth, and the 30 units of the condominium complex known as Baywood Condominiums.

Affiant further states that the information given herein is true and correct to the best of his knowledge and belief.

Charles Stewart

Sworn to and subscribed
before me on this _____
day of _____, 1992.

Notary Public
State of Florida at Large

My Commission Expires:

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STATEMENT OF LAW AND PERTINENT POLICIES

- Past PSC Policy On The Issue

On April 2, 1991, the PSC denied the Stewart/Barth Utility's initial request for exemption (Order No. 24311). That Order noted that the applicant would have three customers: A RV park owned by Mr. Stewart, a RV park owned by Mr. Barth and 30 units of a condominium complex known as Baywood Condominiums. The Order acknowledged that as to service to the RV parks, the utility "would appear to be exempt under the landlord/tenant or public lodging exemptions in § 367.022, Fla. Stat."

The Order went on to state,

The obstacle to granting a landlord-tenant exemption in this case is that the utility currently serves the condominiums, and these condominiums are not owned wholly or in part by the utility's owners. Thus, for that portion of the service area, the utility's owners are not the landlords. If the utility's owners are not the landlords for all of the customers served by the systems, the landlord-tenant exemption cannot apply.

The PSC has, on more than one occasion, combined exemption subsections in order to carry out the Legislature's intent that certain utilities be exempt from regulation. We submit this is a proper case for such a combined exemption.

For instance, in a case where the facts were very similar to the Stewart/Barth situation, the Commission found that Colony Mobile Home Park was serving approximately 200 mobile homes where payment for service was included in the lot rental and "that portion of the utility's service area (was) exempt from the Commission's jurisdiction under § 367.022(5), Fla. Stat." The Commission went on to find that,

"Colony Mobile Home Park is also serving 29 water and 31 sewer customers outside the park and is receiving compensation for such service. Upon review of the capacities of the water and sewer systems, we find the utility does not retain sufficient capacity to serve more than 100 persons for specific compensation."

In Re: Jurisdictional Status of Continental Homes Parks, Inc. d/b/a Colony Mobile Home Park, Docket No. 840124-WS, Order No. 13259.

Accord: *In Re: Request by Bonita By the Sea Hotel for exemption from FPSC regulation for a sewer system in Lee County. Order No. 19474.*

The Central Lakes Declaratory Statement

On December 18, 1990, the Commission issued a declaratory statement in the case of *In Re: Petition of Central Lakes Corporation for a Declaratory Statement Regarding its Exempt Status under 367.022(7), Florida Statutes, Order No. 23897 (12/18/90)*. Accepting the fact that declaratory statements are limited to their facts and that the *Central Lakes* case differs appreciably from *Stewart/Barth's* request, there are several sound legal and policy arguments within the declaratory statement which are pertinent to this application.

Examining *Central Lakes* proposal to combine two activities, each non-jurisdictional when viewed in a vacuum but which would probably not fit under a delineated exemption when viewed together, the Commission decided not to strictly construe the exemption subsection of Chapter 367 and held that,

The better reasoned position is the one argued by *Central Lakes*: a wastewater utility entitled to an exemption from regulation should not lose that exemption when it provides wastewater service that would not be subject to the Commission's regulatory authority in the first place.

The Commission noted that Chapter 367 should be construed in order to preserve the sense or purpose of the law and the general policy dictated therein and that the law should be read in a manner that yields a rational, sensible result and avoids an interpretation that produces unreasonable consequences. *Central Lakes*, at 4. The Order went on to note,

The Water and Wastewater Regulatory Law should be read as a whole and the terms of the non-profit corporation exemption should not be interpreted mechanistically to impose regulatory jurisdiction on activity that the Legislature clearly did not intend to regulate.

The Legislature did not intend to regulate the provision of all water and wastewater service. (emphasis in original)

The Commission recognized in *Central Lakes* that it had agreed in the past, under certain circumstances, to a combination of exemptions or an application of multiple exemptions to a water

and wastewater system. *Central Lakes*, at 5. Finding "that the circumstances presented in (the Central Lakes) petition do not contradict the primary purpose and intent of the Water and Wastewater Regulatory Law," the PSC found that it could identify "no harm to the public interest" in granting the combined exemption. *Central Lakes*, at 5. Therefore, the Commission held that Central Lakes would remain entitled to an exemption as long as it did not change the facts and circumstances as presented in its petition.

We submit that in the case of Stewart/Barth, as in *Central Lakes*, there is no harm to the public interest in finding that a combined exemption is appropriate and that the same would not contradict the primary purpose and intent of Chapter 367. Central Lakes was engaging in an exempt activity and proposed to engage in a second exempt activity which might not qualify, when viewed together, for an exemption if § 367.022 was strictly construed. The fact that Stewart/Barth has come to the Commission presently engaging in such dual activities should not mandate a different result. In other words, if Stewart/Barth was clearly non-jurisdictional because it was only serving the RV parks (and therefore qualified for the landlord/tenant or public lodging exemptions) and it came to the Commission and proposed to render service to the Baywood Condominiums only, the situation would be much more analogous to *Central Lakes*.

The Commission has combined exemptions in the past in recognition of the fact that the Legislature clearly communicated, in § 367.022, Fla. Stat., that certain types of utilities did not require the Commission's thorough regulatory oversight. The situation of Stewart/Barth Utility would seem to present a circumstance where no possibility of abuse exists. The RV park side of the utility service is clearly non-jurisdictional as recognized by Order No. 24311. The other aspect of the utility's service (to the Baywood Condominiums) is rendered at no charge, per se, but rather under a contractual agreement wherein the Baywood Condominium Association pays a small, flat fee to the utility's operators. In any case, the order granting the exemption would assumably contain its usual language that any changes which would affect the exemption on the part of the utility should be reported to the PSC.

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1/10/91/lm