

MEMORANDUM

December 10, 1996

**RECEIVED**  
DEC 13 1996  
11-30

TO: DIVISION OF RECORDS AND REPORTING  
FROM: DIVISION OF LEGAL SERVICES (CROSSBY) *JHS*  
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 FROM FLORIDA PUBLIC SERVICE COMMISSION REGULATION FOR PROVISION OF WATER AND WASTEWATER SERVICE BY GASPARILLA WATER ASSOCIATION, INC.

FPSC-RECORDS/REPORTING

1519-F08

Attached is an Order Indicating the Exempt Status of Gasparilla Water Association, Inc. to be issued in the above referenced docket. (Number of Pages in Order - 4) (Document No. 941044D.ALC)

Attachment

cc: Division of Water and Wastewater  
(Von Fossen)

*Called - left message  
3:20  
sent 2. mail*

[ Date 11/28/94  
Do. No 11971 ]

*3/1*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of the Board ) DOCKET NO. 941044-WS  
of County Commissioners of ) ORDER NO. PSC-96-1519-FOF-WS  
Charlotte County Declaring ) ISSUED: December 13, 1996  
Charlotte County Subject to the )  
Provisions of Chapter 367, )  
Florida Statutes - Request for )  
Exemption from Florida Public )  
Service Commission Regulation )  
for Provision of Water and )  
Wastewater Service by Gasparilla )  
Island Water Association, Inc. )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

ORDER INDICATING THE EXEMPT STATUS OF  
GASPARILLA ISLAND WATER ASSOCIATION, INC.

BY THE COMMISSION:

On November 28, 1994, Gasparilla Island Water Association, Inc. (Gasparilla Island) filed a request for recognition of its exempt status, pursuant to Section 367.022(7), Florida Statutes. Gasparilla Island is located on Linwood Road, Placida, Florida. Mr. Charles A. Smylie, President, filed the application on behalf of Gasparilla Island. The primary contact person is Mr. Darell Polk.

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,

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wastewater service, or both; and who will do the billing. 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.

In its application, Gasparilla Island stated that it is a nonprofit corporation organized pursuant to Chapter 617, Florida Statutes. Gasparilla Island, which was formed under Chapter 617, Florida Statutes, provided its Articles of Incorporation as required by Section 25-30.060(3)(g), Florida Administrative Code. That rule requires the articles of incorporation reflect the voting rights of the members. Such voting rights must be one vote per unit of ownership or other voting rights if the Commission finds they are fair and reasonable. According to Gasparilla Island's Articles of Incorporation, in order to ensure that the members have equitable control of the association, each member has one vote regardless of the number of units owned. We find these voting rights to be reasonable and fair.

In addition, although the application stated that Gasparilla Island serves only its members who own and control it, the Articles also provide for the sale of surplus water after the needs of the members are satisfied. Upon being advised that to qualify for exemption it could serve only members, Gasparilla Island provided an affidavit that it provides service only to its members, and that it does not now and will not in the future sell surplus water to nonmembers. Gasparilla Island also indicated that it will provide its own billing.

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. Smylie 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 Gasparilla Island is exempt from our regulation pursuant to Section 367.022(7), Florida Statutes. However, the members of Gasparilla Island 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.

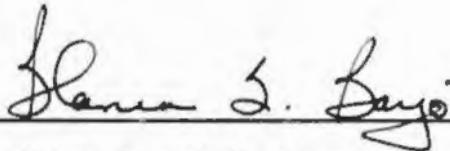
It is, therefore,

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ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Gasparilla Island Water Association, Inc., Post Office Box 326, Boca Grande, Florida 33921-0326, is hereby exempt from Commission regulation 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 13th day of December, 1996.



A handwritten signature in cursive script, reading "Blanca S. Bayó", is written over a horizontal line.

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, 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.