

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from	)	DOCKET NO. 900155-SU
FPSC regulation for a sewage treatment	)	ORDER NO. 23012
facility in Monroe County by Melon's	)	ISSUED: 5-31-90
Plaza.	)	
	)	

ORDER INDICATING THE EXEMPT STATUS OF  
MELON'S PLAZA

BY THE COMMISSION:

Larry A. Thomas is President and sole shareholder of Gulf Horizon Corp., which owns a proposed commercial development to be known as Melon's Plaza. Melon's Plaza (Applicant) will have on site a sewage treatment and disposal system. Pursuant to Section 367.031, Florida Statutes, before the Department of Environmental Regulation (DER) will issue a permit for the construction of any new water or wastewater facility, it must receive either a certificate authorizing the system to provide service or an order recognizing that the system is not subject to the regulation of the Commission. Accordingly, by letter and affidavit received February 28, 1990, Larry A. Thomas, on behalf of Melon's Plaza, requested recognition of the proposed system's nonjurisdictional status.

Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or wastewater facilities if they qualify under the appropriate section of Chapter 367, Florida Statutes. The applicant originally requested recognition of its nonjurisdictional status under Section 367.021(12), Florida Statutes. However, after review we believe it is more appropriate to treat the application as one for exemption under Section 367.022(5), Florida Statutes. Section 367.022(5), Florida Statutes, states that landlords providing service to their tenants are exempt from Commission regulation.

The applicant submitted a new affidavit dated April 6, 1990, which set forth the reasons why Melon's Plaza should be exempt under Section 367.022(5), Florida Statutes, as well as a proposed lease agreement. However, by letter dated May 10, 1990, Staff Counsel expressed concern that the proposed lease did not meet statutory requirements. The applicant responded with an affidavit dated May 15, 1990, in which he averred to make the necessary changes to the lease.

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The affidavits and proposed lease show that: a commercial development to be known as Melon's Plaza will have on site a sewage treatment and disposal system; Melon's Plaza will provide sewer service solely to its tenants; and Melon's Plaza will not collect any specific charge for sewer service from its tenants, as those charges will be nonspecifically included in the tenants' rents.

Based upon the facts as represented, we find that Melon's Plaza is exempt from our regulation under the terms of Section 367.022(5), Florida Statutes. However, should there be any change in circumstances or method of operation, the owner of Melon's Plaza or any successor in interest must inform the Commission within thirty days of such change, so that we may determine whether exempt status is still appropriate.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Melon's Plaza, located at Mile Marker 86.7, Old Highway, Plantation Key, Florida, is hereby exempt from Commission regulation pursuant to the terms of Section 367.022(5), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation of Melon's Plaza's sewer facility, the owner of Melon's Plaza, or any successor in interest, shall inform the Commission within thirty days of such change. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission,  
this 31st day of MAY, 1990.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

MF

by: Kay Flynn  
Chief, Bureau of Records

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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 or sewer 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.