

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of the Board ) DOCKET NO. 941044-WS  
of County Commissioners of ) ORDER NO. PSC-96-0957-FOF-WS  
Charlotte County Declaring ) ISSUED: July 24, 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 Pelican Harbor Civic )  
Association, Inc. )  
\_\_\_\_\_ )

ORDER INDICATING THE EXEMPT STATUS OF  
PELICAN HARBOR CIVIC ASSOCIATION, INC.

BY THE COMMISSION:

On November 18, 1994, Pelican Harbor Mobile Home Park 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. Upon review of the application, it was determined that the correct name of the entity is Pelican Harbor Civic Association, Inc. (Pelican Harbor). Pelican Harbor is located at 3317 Bayside Parkway, Punta Gorda, Florida. Pelican Harbor provides wastewater service to the mobile home park known as Pelican Harbor Mobile Home Park. Water service is provided by Punta Gorda Water Company. Mr. John Burger, Director and primary contact person filed the application on behalf of Pelican Harbor.

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.

Pelican Harbor initially had difficulty in providing sufficient proof of land ownership pursuant to Rule 25-

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

At the time of Pelican Harbor's 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-FOF-WS, issued January 30, 1996, we gave notice of our adoption of the revisions to that rule. We find it appropriate to review Pelican Harbor's application pursuant to the revised rule, and find that the applicant has complied with the revised provisions of Section 367.022(7), Florida Statutes, and Rule 25-30.060, Florida Administrative Code. Specifically, the application includes a statement that Pelican Harbor will provide wastewater service solely to members who own and control it. Pelican Harbor 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 member of Pelican Harbor 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, Mr. Burger 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 Pelican Harbor is exempt from our regulation pursuant to Section 367.022(7), Florida Statutes. Accordingly, Pelican Harbor is not subject to our jurisdiction.

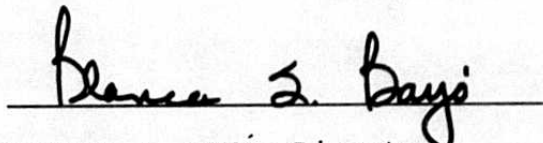
It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Pelican Harbor Civic Association, Inc., 6720 Riverside Drive, Punta Gorda, Florida 33982, 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.

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By ORDER of the Florida Public Service Commission, this 24th  
day of July, 1996.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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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, 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,

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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.