



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: October 30, 1995
 TO: Marc Nash, Division of Legal Services
 Division of Records and Reporting
 FROM: Pat Brady, Division of Water and Wastewater *pb BOM*
 RE: Docket No. 941044-WS, Resolution of Board of County Commissioners of Charlotte County declaring Charlotte County subject to the provisions of Chapter 367, Florida Statutes - Request for exemption for provision of water and wastewater service by JANICE COMMERCIAL CONDOMINIUM ASSOCIATION, INC.

On February 6, 1995, an application for a nonprofit exemption from regulation by the Florida Public Service Commission was filed on behalf of Janice Commercial Condominium Association, Inc. (Janice Condo or condominium association) pursuant to Section 367.022(7), Florida Statutes. The application was signed by Mr. Doug Aber as President of the condominium association and primary contact for the application. The mailing address for the condominium association and Mr. Aber is P.O. Box 1913, Punta Gorda, Florida 33951 (813/627-2001). The physical address and service territory for Janice Condo is 23355 Janice Avenue, Charlotte Harbor, Florida 33980. This location is in Charlotte County.

ACK _____ In accordance with Section 367.022(7), Florida Statutes, and Rules 25-30.060(2) and
 AFA _____ (3)(g), Florida Administrative Code, Mr. Aber filed a statement that Janice Condo is a
 APP _____ condominium association providing service solely to members who own and control it and
 CAF _____ that the association will do its own billing for water and wastewater service. By signing the
 CMU _____ application, Mr. Aber has acknowledged that he is aware of the penalty pursuant to Section
 CTR _____ 837.06, Florida Statutes, for knowingly making false statements in writing with the intent to
 _____ mislead.

EAG _____ Janice Condo is a four-building, 28-unit commercial condominium association located
 LEC _____ in an industrial park called Whidden Industrial Park. The association's articles of
 LIN _____ incorporation were filed with the Florida Department of State in November of 1983.
 JFC _____ Control passed from the developer to nondeveloper members in March of 1988 and, at
 KCH _____ present, no units are developer-owned. Although turnover has occurred, there is no
 SEC _____ document which actually assigns the utility facilities to the condominium association.
 WAS _____ Instead, according to Article VI of the Declaration of Condominium, "each unit (owner)
 OTH _____ shall have as an appurtenance an undivided one-twenty-eight (1/28th) share in the common
 _____ elements...." Common elements are defined on Page 3 of the Declaration of Condominium
 _____ as, "all tangible personal property required for the maintenance and operation of the
 _____ Condominium, even though owned by the Association, and all portions of the condominium
 _____ property not included in the units." As proof of such ownership, a copy of a unit owner's
 _____ deed was provided which showed that the developer conveyed "an undivided interest in and
 _____ to the common elements as set forth in the Declaration of Condominium.."

The application included a copy of Janice Condo's Article of Incorporation as filed with the Secretary of State as well as its By-Laws and Declaration of Condominium. These documents clearly show the requirements for membership and that member voting rights are one vote per unit of ownership. As previously discussed, a copy of a 1/28th property deed was provided as proof that the condominium owners communally own the utility facilities and the land upon which the facilities are located.

Section 2.08(C)(14) of the Administrative Procedures Manual grants staff the administrative authority to approve requests for determination of exempt status that are clear-cut and without controversy. Staff finds the application in compliance with statutory requirements and without apparent controversy. Staff recommends that an administrative order be issued granting Janice Commercial Condominium Association, Inc. a nonprofit exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes.

Staff also recommends that the order require Janice Condo to notify the Commission within 30 days of any change in circumstances or method of operation of its water or wastewater systems so that its exempt status may be reevaluated. The docket should remain open to process additional applications.

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