

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from) DOCKET NO. 900954-SU
Florida Public Service Commission)
regulation for a wastewater system) ORDER NO. 24179
in Monroe County by HARBORSIDE AT)
MARATHON) ISSUED: 2-28-91
_____)

ORDER INDICATING THE EXEMPT STATUS OF
HARBORSIDE AT MARATHON

Harborside at Marathon (Harborside) is a proposed redevelopment of a former commercial fishing establishment in Monroe County. The redevelopment is expected to consist of a marina, restaurant and an eighty-eight (88) unit apartment complex. Since there are no public wastewater systems available, Harborside also proposes to provide wastewater service. Pursuant to Section 367.031, Florida Statutes, the Department of Environmental Regulation (DER) will not issue a construction permit for a new water or wastewater facility until it receives either a certificate authorizing the system to provide service or an order indicating that the system will be exempt from the regulation of this Commission.

By letter received December 4, 1990, Harborside requested that it be found exempt from our regulation under Section 367.022(5), Florida Statutes, which exempts landlords that provide service without collecting specific compensation, and Section 367.021(12), Florida Statutes, which provides the definition of a utility. Included with its letter was an affidavit, reciting the facts upon which its request is based and documentation in support thereof.

The letter, affidavit, and accompanying information show that: Harborside is a proposed redevelopment consisting of a marina, restaurant and an eighty-eight (88) unit apartment complex to be located in Marathon, Florida; the proposed redevelopment will have a wastewater treatment and disposal system on site; Harborside will provide wastewater service only; Harborside does not plan to charge for wastewater service and such service will be provided solely to the tenants of Harborside; any compensation received for service will be nonspecifically contained in boat slip rental, apartment rental and restaurant tenant's monthly rent; and the system's physical address is 800 35th Ocean Street, Marathon, Florida 33050.

DOCUMENT NUMBER-DATE

01980 FEB 28 1991

PSC-RECORDS/REPORTING

ORDER NO. 24179
DOCKET NO. 900954-SU
PAGE 2

Based upon the facts as presented above, it appears that the wastewater system, insofar as it relates to the apartment complex and restaurant, will be exempt from our regulation under the landlord-tenant exemption, Section 367.022(5), Florida Statutes. However, as for the marina, it appears that another exemption, that for public lodging establishments pursuant to Section 367.022(4), Florida Statutes, is more applicable in this case. Under that section, public lodging establishments that provide water and/or wastewater service solely in connection with providing service to their guests are exempt from the Commission's regulation. According to Harborside, the guests of the marina will be provided with short term lodging which would be on a weekly or monthly basis. Thus, based upon the facts as presented herein, it appears that the Harborside marina will be exempt from this Commission's regulation under the public lodging establishment exemption, Section 367.022(4), Florida Statutes.

Our findings are based upon the facts as presented by Harborside. Should there be any change in circumstances or method of operation, the owner of Harborside or any successor in interest must inform the Commission within thirty (30) 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, Harborside at Marathon's wastewater system, located at 800 35th Ocean Street, Marathon, Florida 33050, is hereby exempt under Section 367.022(4) and 367.022(5), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation of Harborside at Marathon's system, the owner of Harborside at Marathon or any successor in interest shall inform this Commission within thirty (30) days of such change. It is further

ORDERED that this docket be closed.

ORDER NO. 24179
DOCKET NO. 900954-SU
PAGE 3

By Order of the Florida Public Service Commission this 28th
day of February, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

NRF

by: Kay Flynn
Chief, Bureau of Records

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.