

MEMORANDUM

January 27, 1997

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FPSC-RECORDS/REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (~~CROSBY~~) *YFS*

RE: DOCKET NO. 941044-WS - RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY DECLARING CHARLOTTE COUNTY SUBJECT TO THE PROVISIONS OF SECTION 367, FLORIDA STATUTES - REQUEST FOR EXEMPTION FROM FLORIDA PUBLIC SERVICE COMMISSION REGULATION FOR PROVISION OF WASTEWATER SERVICE BY CHARLOTTE BAY RESORT AND CLUB, INC.

0103 fop

Attached is an Order Indicating Exempt Status of Charlotte Bay Resort and Club, Inc. to be issued in the above-referenced Docket. (Number of Pages in Order - ~~41~~ 3)

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Attachment

cc: Division of Water and Wastewater
(Coker)

I: 941044E.ALC

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of the Board) DOCKET NO. 941044-WS
of County Commissioners of) ORDER NO. PSC-97-0103-FOF-WS
Charlotte County Declaring) ISSUED: January 27, 1997
Charlotte County Subject to the)
Provisions of Section 367,)
Florida Statutes - Request for)
Exemption from Florida Public)
Service Commission Regulation)
for Provision of Wastewater)
Service by Charlotte Bay Resort)
and Club, Inc.)

ORDER INDICATING EXEMPT STATUS
OF CHARLOTTE BAY RESORT AND CLUB, INC.

BY THE COMMISSION:

On January 5, 1995, Charlotte Bay Resort and Club, Inc. (Charlotte Bay) filed an application with this Commission for recognition of its exempt status, pursuant to Section 367.022(6), Florida Statutes. Charlotte Bay is a time share condominium entity located at 23128 Bayshore Road, Charlotte Harbor, Florida. Ms. Patricia Buckles, Secretary of the Board of Directors/Resort Manager and primary contact person, filed the application on behalf of Charlotte Bay.

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(4), Florida Statutes, and Rule 25-30.060(3)(d), Florida Administrative Code.

Upon review of the application, it was determined that Charlotte Bay does not qualify for exemption pursuant to Section 367.022(6), Florida Statutes. From the information provided, it appears that Charlotte Bay qualifies for exemption pursuant to Section 367.022(4), Florida Statutes, which states that public lodging establishments providing service solely in connection with service to their guests are exempt from Commission regulation.

On May 8, 1995, Charlotte Bay refiled its application requesting recognition of its exempt status pursuant to Section 367.022(4), Florida Statutes. The application indicates that

DOCUMENT NUMBER-DATE

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Charlotte Bay provides wastewater service only to its guests and there is no separate charge for utility service. The application also included a copy of a license issued to Charlotte Bay by the Division of Hotels and Restaurants, Department of Business and Professional Regulation (DBPR). Water service is provided by Charlotte Harbor Water Association.

In addition, pursuant to Section 837.06, Florida Statutes, and Rule 25-30.060(2)(d), 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, Ms. Buckles acknowledged that she is aware of Section 837.06, Florida Statutes, and the penalties for making false statements in the application.

Because Charlotte Bay is a time share condominium entity with different individuals owning the use of a condominium for a period of time (one week to 30 days) during the year, at first glance, it does not strictly comply with the requirements of Section 367.022(4), Florida Statutes. To enable us to make a final determination as to whether or not Charlotte Bay qualifies for exemption pursuant to Section 367.022(4), Florida Statutes, we contacted the Bureau of Time Share Condominiums and the Hotel and Restaurant Division of DBPR. According to these divisions of DBPR, time share condominiums are considered public lodging establishments because the residents are transient (not staying more than 30 days).

Based on the facts as represented, we find that Charlotte Bay is exempt from our regulation pursuant to Section 367.022(4), Florida Statutes. However, the owner(s) of Charlotte Bay 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,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Charlotte Bay Resort and Club, Inc., 23128 Bayshore Road, Charlotte Harbor, Florida 33980, is exempt from Commission regulation, pursuant to the provisions of Section 367.022(4), 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 27th
day of January, 1997.



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 120.569(1), 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.