

State of Florida



# Public Service Commission


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**DATE:** September 22, 2011  
**TO:** Ann Cole, Commission Clerk - PSC, Office of Commission Clerk  
**FROM:** Patricia L. Brady, Regulatory Analyst IV, Division of Economic Regulation   
**RE:** Docket No. 100085-WU, Application for certificate to operate water utility in Lake County by Black Bear Reserve Water Corporation

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Please file the attached letter dated October 20, 2009, from Patti Daniel, Commission staff, to Martin S. Friedman, Esq., on behalf of Black Bear Reserve Homeowners Association, Inc. Thank you.

Attachment

DOCUMENT NUMBER-DATE

66864 SEP 22 =

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TIMOTHY DEVLIN, DIRECTOR  
DIVISION OF ECONOMIC REGULATION  
(850) 413-6900

# Public Service Commission

October 20, 2009

Martin S. Friedman, Esq.  
Rose, Sundstrom & Bentley, LLP  
2180 W. State Road 434, Suite 2118  
Longwood, FL 32779

**Re Black Bear Reserve Homeowners Association, Inc.'s exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes.**

Dear Mr. Friedman:

As you are aware, Section 367.022(7), Florida Statutes (F.S.), provides for an exemption from Commission regulation for nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives. As you are also aware, staff has had several inquiries over the last five years into the regulatory status of Black Bear Reserve Water Company (BBRWC) which bills the lots in the Black Bear Reserve development (BBR development) for water service. It is our understanding that wastewater service is provided by septic tanks.

In all prior inquiries, information was provided which appeared to show that all lot owners in the BBR development are voting members in their respective neighborhood homeowners associations (HOAs). The neighborhood HOAs, in turn, elect representatives to Black Bear Reserve Homeowners Association, Inc. (BBRHOA), which is the master homeowner association and sole member of BBRWC. As such, staff previously concluded that BBRWC was an exempt entity. While it appears that exemption should more correctly apply to BBRHOA, as the owner of BBRWC, the same information applies to both.

In staff's latest inquiry dated February 20, 2008, evidence was required to show that the Clar-Mart Homeowner's Association, Inc. (CMHOA) was a voting member in the BBRHOA and to indicate which lots in the Clar-Mart community were voting members in the CMHOA. Based on your response dated March 12, 2008, and additional information obtained by staff, the Clar-Mart community was developed in two phases by different developers. There appears to have been no contingency for Phase I (lots 1-14) to have membership in the BBRHOA. The Clar-Mart Homeowner's Association, Inc. (CMHOA) was established in 2006, late in the development of Phase II (lots 15-50). However, membership in the CMHOA was never required as a condition of purchasing lots and no lot owners voluntarily agreed to be members. The CMHOA was dissolved in 2008 for lack of a registered agent.

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Martin S. Friedman, Esq.  
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Simultaneous with the formation of CMHOA, a "Joinder and Consent" subjecting the lands in the Clar-Mart community to the Declaration of Covenants and Restrictions (Declaration) for BBRHOA was signed by Adams Homes of Northwest Florida, Inc. (Adams Homes) as the owner of the land. However, since a majority of the lots had been sold at that time, Adams Homes was not the owner of a majority of the land. Nevertheless, under the Joinder and Consent, a Third Amendment to the Declaration of the BBRHOA annexed the lots in the Clar-Mart community, rather than the CMHOA. Therefore, in your e-mail clarification to your March 12, 2008 response, you concluded that the lot owners in the Clar-Mart community have a means to voluntarily become direct members of the BBRHOA.

It appears that a majority of the lots in the Clar-Mart community have not volunteered to become members of the BBRHOA as there is no evidence that they are paying dues. On the other hand, it appears that they are paying the potable water bills provided by BBRWC. Based on this information, staff has concluded that BBRHOA is providing service to customers who are not members and, as such, BBRHOA is not exempt from Commission regulation. Therefore, an application for an original water certificate for BBRHOA must be filed on or before December 21, 2009. The application should be for an existing utility currently charging rates pursuant to Section 367.045, F.S. and Rule 25-30.034, Florida Administrative Code, and filed directly with the Office of Commission Clerk.

As always, if you have any questions or need further clarification, please don't hesitate to contact me at (850) 413-6808, [pdaniel@psc.state.fl.us](mailto:pdaniel@psc.state.fl.us) or Ms. Patricia Brady at (850) 413-6686, [pbrady@psc.state.fl.us](mailto:pbrady@psc.state.fl.us).

Sincerely,



Patti Daniel  
Public Utilities Supervisor  
Certification Section

PD/PB:kb

cc: Barbara Jennings  
Mark Carson  
Division of Economic Regulation (Brady, Slemkewicz, Bulecza-Banks)  
Office of the General Counsel (Brubaker)