

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

IN RE:

PETITION FOR DECLARATORY STATEMENT,
Harbour Village Golf & Yacht Club Community Services Association, Inc.,
DS 2009-062444

DS 2009-077

ORDER DENYING PETITION FOR DECLARATORY STATEMENT

COMES NOW, the Director, Division of Alcoholic Beverages and Tobacco, and denies the Petition for Declaratory Statement filed by Robyn S. Braun, Esq., on behalf of Harbour Village Golf & Yacht Club Community Services Association, Inc., DS 2009-062444, and as grounds therefore state the following:

1. On November 24, 2009, Robyn S. Braun, Esq., on behalf of Harbour Village Golf & Yacht Club Community Services Association, Inc., submitted a Petition for Declaratory Statement, DS 2009-062444 to the Division of Alcoholic Beverages and Tobacco.
2. The Petition submitted by the Petitioner sought a Declaratory Statement as to the applicability of Section 561.20(7)(a)(3). Specifically, Petitioner seeks a Declaratory Statement as to whether the Association can keep its current 11C Retail Beverage License pursuant to Section 561.20(7)(a)(3), Florida Statutes, and whether the Association is already in possession of the correct alcoholic beverage license because the Division issued the Association an 11C Retail Beverage License rather than an 11GC license.
3. The Division issued the Association an 11C Retail Beverage license in 2002.

4. Furthermore, the Petition describes in detail how the Division has inspected the Grill and the community on multiple occasions since the issuance of the 11C license and the Association has passed inspection.
5. However, in June 2008, the Division notified the Association that it was in violation of Section 561.20(7)(b), Florida Statutes, by failing to maintain a bona fide regular standard golf course with a clubhouse, locker rooms and golf facilities comprising in all 35 acres of land owned or leased by the Association.
6. The Division has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes.
7. Section 120.565(2), Florida Statutes, states in pertinent part:

The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.
8. Chapter 28-105.001, Uniform Rules of Procedure provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A Petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.
9. Finally, Chapter 28.105.002(5), Uniform Rules of Procedure provides:

A petition seeking a declaratory statement shall be filed with the clerk of the agency that has the authority to interpret the statute, rule, or order at issue and shall provide the following information:

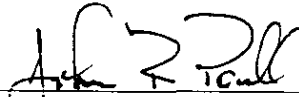
(5) A description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances.

10. On April 16, 2010, the Division entered a final order dismissing the administrative charges filed in this case against Harbour Village Golf & Yacht Club Community Services Association, Inc., thus rendering the legal issue contained in the Petition for Declaratory Statement moot.

ORDER

Based on the foregoing, it is hereby ordered that the Petition for Declaratory Statement, DS-2009-062444, shall be denied.

DONE and ORDERED this 5 day of May, 2010.



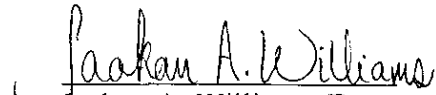
JOHN R. POWELL, DIRECTOR
Div. of Alcoholic Beverages and Tobacco
1940 North Monroe Street
Tallahassee, Florida 32399-1020
(850) 488-3223

RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH RHONDA BROWN, AGENCY CLERK FOR THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, WITHIN 30 DAYS OF THE RENDITION OF THIS DECLARATORY STATEMENT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Ms. Robyn Braun, Esq., Taylor & Carls, P.A., 150 North Westmonte Drive, Altamonte Springs, Florida 32714 this 5th day of May, 2010.


Jaakan A. Williams, Esq.
Assistant General Counsel

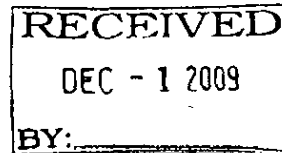
FILED	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	12/1/2009
File #	

**PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO**

DS 2009-077

In re:

HARBOUR VILLAGE GOLF & YACHT CLUB
COMMUNITY SERVICES ASSOCIATION, INC.



PETITION FOR DECLARATORY STATEMENT

Petitioner, Harbour Village Golf & Yacht Club Community Services Association, Inc. ("Association"), by and through its undersigned attorney and, pursuant to Section 120.565, Florida Statutes, and Chapter 28-105, Florida Administrative Code, hereby requests a declaratory statement from the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco ("Division") and as grounds therefore states as follows:

1. The name, address, and telephone number of the Association is as follows: Harbour Village Golf & Yacht Club Community Services Association, Inc. c/o Karla Baumann, 4622 Links Village Drive, Ponce Inlet, Florida 32127, telephone number (386) 405-3312.
2. The names, address, telephone and facsimile number of the attorney for the Association is as follows: Robyn Braun, Esq., Taylor & Carls, P.A., 150 North Westmonte Drive, Altamonte Springs, Florida 32714 Telephone: (407) 660-1040, Facsimile: (407) 660-9422
3. The Association seeks a declaratory statement concerning Sections 561.20(7)(a) and (b), Florida Statutes.
4. The Association is a nonprofit homeowners association which is responsible for the operation and management of real property located in Volusia County, Florida.

5. The Association is also the managing member of B & K, LLC ("B&K") which owns the Harbour Village Yacht Club Bar & Grill (the "Grill") located within the real property, known as Harbour Village, governed by the Association.

6. Harbour Village contains 671 residences, a yacht club (where the Grill is located), a par three golf course, a 142-slip deep water marina, tennis courts, clubhouses with heated swimming pools, a fishing pier, beach club on the Atlantic Ocean and over one mile of scenic walkways through conservation areas.

7. The Grill provides a casual social atmosphere for members to gather for entertainment. Owners in Harbour Village purchased their residences in reliance upon the amenities provided to the community, including the Grill.

8. On or about June 5, 2002, B & K applied for an 11C Retail Beverage License with the Division.

9. On the License Application, B & K represented that the type of license requested was the "Golf Club License," series 11C.

10. The application also included the floor plan of the Grill and a site plan of the Harbour Village Golf and Yacht Club Community, where the Grill is located.

11. Before August 9, 2002, Ronald Sullivan with the Division performed a site inspection to determine if the property and the Grill complied with the statutory requirements for possession of an 11C license.

12. At the time the site inspection was conducted, the golf course and its facilities were not completely constructed.

13. In an email to the Division's Bureau of Licensing, dated August 9, 2002, Mr. Sullivan represented that the site inspection had been completed and that the Grill has passed the inspection.

14. Shortly thereafter, the Division issued the Grill an 11C Retail Beverage License.

15. In 2004, the golf course and its facilities were completely constructed per the site plan that had been provided to the Division with the license application

16. Since the license was issued, the Division has inspected the Grill and the community on multiple occasions. It was not until an inspection on June 2008, that the Division notified the Association that it was in violation of Section 561.20(7)(b), Florida Statutes, by failing to maintain a bona fide regular standard golf course with a clubhouse, locker rooms and golf facilities comprising in all 35 acres of land owned or leased by the Association.

17. Since the license was issued in 2002, the Division led the Association to believe it had the correct license. As the property consists of the same amenities as were represented in the license application and inspected by the Division during the application process, the Association had no reason to believe otherwise.

18. Pursuant to the Division's own licensing chart, a golf club license is indicated by the initials 11CG. However, a simple club license is indicated by the initials 11C.

19. Pursuant to Section 561.20(7)(a)(3), Florida Statutes, a club license may be issued to "nonprofit corporations or clubs devoted to promoting community, municipal or county development or any phase of community, municipal, or county development."

20. In a prior Recommended Order by the Florida Division of Administrative Hearings ("DOAH"), *Lake Padgett Estates East Property Owners Association, Inc. v. Department of Business and Professional Regulation, Division of Beverage*, Case No., 76-299 (March 24, 1976), DOAH concluded that a housing development with a common recreation area would be entitled to a club license as defined in Section 561.20(7)(a)(3), Florida Statutes.

21. The Association wishes to retain its current 11C Retail Beverage license based upon Section 561.20(7)(a)(3), Florida Statutes, and the *Lake Padgett* case that it is entitled to a club license despite the fact that its original application stated it requested a golf club license. A question remains as to whether the Association can keep its current 11C Retail Beverage License pursuant

to Section 561.20(7)(a)3, Florida Statutes, for nonprofit corporations despite the fact that the Association's application requested a golf club type of license.

22. A question also remains as to whether the Association is already in possession of the correct license because it was issued an 11C license as opposed to an 11GC license.

23. The Division has filed an administrative complaint against the Association based upon the allegation that it does not qualify for a golf club license. However, the Division has agreed to allow the Association to file this Petition to resolve this controversy.

WHEREFORE, the Petitioner, Harbour Village Golf & Yacht Club Community Services Association, Inc, respectfully requests the Division to issue a declaratory statement addressing the issues set forth above.

DATED this 24th day of November, 2009.

Respectfully submitted,



ROBYN S. BRAUN, ESQ. #048746
Florida Bar No.: 154504
TAYLOR & CARLS, P.A.
150 N. Westmonte Drive
Altamonte Springs, FL 32714
Telephone: (407) 660-1040
Facsimile: (407) 660-9422
Attorney for Petitioner, Harbour Village Golf
& Yacht Club Community Services
Association, Inc.