

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SMART PLANNING AND GROWTH	)	
COALITION and JEFF OSBORN,	)	
	)	
Appellants,	)	
	)	
vs.	)	
	)	
MONROE COUNTY PLANNING	)	Case No. 04-1568
COMMISSION,	)	
	)	
Appellee,	)	
	)	
and	)	
	)	
NORTHSTAR ENTERPRISES RESORT	)	
CORPORATION,	)	
	)	
Intervenor.	)	
_____	)	

FINAL ORDER

Appellants, Smart Planning and Growth Coalition (Smart Planning) and Jeff Osborn (Osborn), seek review of Monroe County Planning Commission (Commission) Resolution Nos. P55-03 and P56-03, approved by the Commission on September 24, 2003, and signed by the Chair of the Commission on October 22, 2003. Appellants' appeals were timely filed and consolidated.

The Division of Administrative Hearings, by contract, and pursuant to Article XIV, Section 9.5-535, Monroe County Code (M.C.C.), has jurisdiction to consider these appeals.

Appellants filed separate Initial Briefs and Smart Planning filed a Reply Brief, which Osborn adopted. The Commission and Intervenor, Northstar Enterprises Resort Corporation (Northstar), filed separate Answer Briefs. Oral Argument was presented by telephone on September 17, 2004.

Citations to the record on appeal in Case No. 04-1568 shall be by the symbol (R) followed by a page reference. Citations to the record on appeal in Case No. 03-4720 shall be by the symbol (SR) followed by a page reference. See Endnote 2.

I. Issues

Smart Planning contends that the Commission denied it procedural due process of law and departed from the essential requirements of law by denying Appellants' counsel the right to cross-examine witnesses during the Commission hearing and in denying party status to Appellants. Smart Planning contends that there is no competent substantial evidence to support the Commission's determination to authorize the transfer of 126 Recreational Vehicle (RV) spaces from the Florida Keys R.V. Resort (the Sender site) to the Receiver site (Northstar's property and site for a proposed hotel and the subject of a Major Conditional Use) or to recognize the existence and lawful establishment of a 12-unit motel on the Receiver site. Smart Planning also contends that the Commission departed from the

essential requirements of law by ignoring the pending ordinance doctrine.

Osborn incorporates the arguments made by Smart Planning and likewise contends that there is no competent substantial evidence to support the transfer of 126 RV spaces from the Sender site and further that the moratorium adopted by the Board of County Commissioners of Monroe County (Board) prohibits the transfer of these RV spaces to the Receiver site.

## II. Background

### A. General

Northstar sought development approval for the transfer of 126 RV spaces from the off-site Sender site. Northstar filed a Sender site application with supporting documents to accomplish this request. (R95). Northstar also filed a separate application to receive Transferable ROGO Exemptions (TRES) in the form of RV spaces for the Receiver site. (R286-288). Both applications sought the approval of Minor Conditional Uses.

In a collateral proceeding before the Commission, Northstar applied for approval of a Major Conditional Use for authorization to construct 89 hotel rooms and 8,158 square feet of commercial use on the Receiver site.<sup>1</sup> On June 25, 2003, the Commission approved this application by Resolution No. P47-03. The Chair of the Commission signed this Resolution on September 10, 2003. (SR215-220). Resolution No. P47-03 is the

subject of a pending appeal in Case No. 03-4720 brought by Smart Planning and Osborn. A separate Final Order has been entered this date in Case No. 03-4720.<sup>2</sup>

B. The Sender Site Application

1. Generally

On April 21, 2003, Northstar's agent, Mr. Donald L. Craig, A.I.C.P., of The Craig Company, signed an application requesting development approval for the transfer of 126 RV spaces located at the Florida Keys R.V. Resort, Mile Marker (MM) 106.003, 106.003 Overseas Highway, Key Largo, Florida, the Sender site. Northstar requested the transfer of TREs.<sup>3</sup> (R95).

The Sender site application represents there are 13 mobile homes that will remain on the Sender site and that the proposed use of the Sender site property will be for affordable housing for moderate income levels. (R96).

The Sender site application included several documents:

1. A description of the property is included. (R100).
2. Also included is a "miscellaneous receipt" from Monroe County indicating the fees for the Sender and Receiver site applications were received on July 18, 2003. (R101).
3. Appendix A includes a commercial contract and two addendums to the commercial contract relating to the purchase and sale, in part, of the Sender site property (Northstar is the purchaser.) (R104-111).

4. Appendix B consists of 18 pages of Monroe County Property Record Cards for the Sender site property. (R113-130). These documents include building sketches and were apparently run on April 17, 2003. Page 17 in part refers to Florida Keys R.V. Resort at MM 106 and identifies 16 buildings including an office (with a date of 1973), a camp building (1973), and 13 mobile homes with varying dates and 1 mobile home identified as being used for storage. (R129). The second half of page 17 lists a "history of taxable values" from years 1982 thru 2002 for land, buildings, and miscellaneous/equipment. The document also states: "139 R.V. SITES . BA." (R129).

5. Appendix C consists of two occupational tax certificates issued by Monroe County with expiration dates of September 30, 2001, one for laundry machines and the second for a trailer park and campground at the Florida Keys R.V. Resort. These documents also state: "THIS IS ONLY A TAX. YOU MUST MEET ALL COUNTY PLANNING AND ZONING REQUIREMENTS." (R132). Appendix C also includes an "operating" permit for the Florida Keys R.V. Resort issued by the Florida Department of Health and Rehabilitation Services (DHRS) indicating, in part, 126 RV park authorized spaces and 13 mobile home park authorized spaces. (R133). This permit number 44-54-00037 has an expiration date of September 30, 1997. Also included is a Florida Department of Health (DOH) "official receipt," permit number 44-54-00037, issued September 26, 2002, for Florida Keys R.V. Resort for mobile home/RV park program and notes 13 mobile home spaces and 126 RV spaces. (R134).

6. Appendix D includes a list of adjacent property owners. (R136-139).

7. Appendix E is a site map indicating the location of the Florida Keys R.V. Resort in or around MM 106. (R141).

8. Appendix F are undated site photographs for the Florida Keys R.V. Resort indicating what purports to be RV sites, a lake, RV sites and debris collection, and the back of property and debris collection. (R143-145).

9. Appendix H is an unsealed survey from Hal Thomas a Florida registered surveyor. This appears to be a survey of the Sender site, which is described in the upper right hand portion of the survey. (R148).

## 2. Staff Memoranda

Mr. J. G. Buckley, a Planner, and Mr. Niko Reisinger, a Biologist, submitted a Memorandum dated June 9, 2003, to the DRC regarding the Sender site application. (R191-194). The DRC considered the Sender site application on June 17, 2003, and unanimously recommended approval. (R195-198).

On August 26, 2003, Mr. Buckley and Mr. Reisinger prepared a similar Memorandum for the Commission regarding the Sender site application. (R200-202). The Memorandum restated that Northstar proposed to transfer 126 TREs in the form of 126 RV spaces off-site with 77 of the TREs utilized to develop an 89-room hotel on the Receiver site. (R200).

The Memorandum stated that the Sender and Receiver sites are in the Suburban Commercial land use (zoning) district with the future land use map designation of Mix Use/Commercial. The Sender site is described as disturbed with isolated native trees

and the Receiver site is described as disturbed with scattered native growth. The Memorandum describes the community character of the immediate vicinity of the Sender and Receiver sites.

(R201).

The Memorandum sets forth an analysis of the Sender site as follows:

The sender site, a 9.8-acre parcel at Mile Marker 106 contains the Florida Keys RV Park, a Florida State licensed RV Park. The site has been determined, by the Planning Department, to have 126 RV spaces that are eligible for transfer off-site. The site also has a license for thirteen (13) mobile homes that are not part of this transfer. The property is zoned Suburban Commercial and the current use is a non-conforming one. The Biologist has determined the site to be disturbed with some scattered native trees. There is no hammock on the property. The sender site is equivalent to the receiver site in terms of environmental sensitivity. Only 77 of the 126 RV spaces will be transferred to the designed receiver site. The remaining 49 spaces will be held in reserve until a suitable receiver site is found.

(R201).

After analyzing provisions of the Monroe County Code, i.e., Article IV, Section 9.5-120.4.(b)a.i)-iii), M.C.C. (R160-165), and having found the Sender site to be in compliance with these Land Development Regulations and Article III, Section 9.5-65, M.C.C., the Planning and Environmental Resources Staff recommended approval for the transfer of 126 RV spaces off-site, with 77 TREs going to the Receiver site. (R200-202). See also (R73).

### 3. The Public Hearing

On September 24, 2003, the Commission considered the Sender site application. The Commission considered Northstar's Receiver site application later on the same day at a separately convened public hearing. (R232).

During the public hearing on the Sender site application, the central issue was whether there were 126 RV spaces on the Sender site that are eligible for transfer from the Sender site.

During the public hearing, there were numerous witnesses testifying for and against approval of the Sender site application. The Commission also considered documentary evidence.

A summary of the relevant testimony and evidence follows.

On September 2, 1987, the Department of Health and Rehabilitative Services (DHRS) conducted an inspection of the Barefoot Key R.V. Resort (Barefoot), which is also known as the Florida Keys R.V. Resort. Permit number 44-037-87 is noted on this report. This inspection report indicated that there were authorized spaces for 75 RVs and 44 mobile homes. (R214).

The DHRS issued an "operating permit" (permit number 44-037-88) with an expiration date of September 30, 1988, for the site and identified 75 Park RVs and 44 mobile home park authorized spaces. (R215).



On August 1, 1990, Barefoot made an application to the DHRS for a permit (permit number 44-037-90) for 75 RV spaces and 44 mobile home spaces. This was an annual renewal. (R206). On August 1, 1990, the DHRS issued another inspection report for the site noting authorized spaces for 75 RVs and 44 mobile homes, with 101 occupied spaces. (R216).

In or around September of 1991, the DHRS issued an "operating permit" (permit number 44-037-92) to Florida Keys R.V. Resort noting 96 RV Park authorized spaces and 28 mobile home park authorized spaces. This permit had an expiration date of September 30, 1992. (R217).

On or about December 2, 1992, a DHRS application form for mobile home permit and recreational vehicle park permit, permit number 44-037-92, was filled out in the name of Florida Keys R.V. Resort, requesting a capacity change from 96 RVs and 28 mobile homes to 132 RVs and 13 mobile homes. The owners are listed as Edward J. and Laurie S. Mertens. (R14-15)(SR578). See pages 14-15, infra, regarding Mr. Buckley and Mr. Craig's explanations of, what appears to be, this document.

The DHRS issued another "operating permit" (permit number 44-037-93) with an expiration of September 30, 1993, for 75 RV Park authorized spaces and 44 mobile home park authorized spaces. (R204, 218).

On July 15, 1994, the DHRS issued another RV Park and mobile home inspection report (permit number 44-037-93), which has the number 75 with a line through it and replaced with the number 126 for authorized RV spaces and the number 44 with a line through it and a designation of 13 authorized mobile home spaces with a total of 65 RV and 15 mobile home occupied spaces. The owners are listed as Edward J. and Laurie S. Mertens. (R205). See also (R55-56)(SR85, 580). There is no evidence in the record to indicate why the numbers were stricken and replaced with the other numbers. Id. However, under the section of the inspection report designated "comments and instructions," there is a handwritten notation stating: "New operating permit must show correct allocation of spaces." (R205)(SR580).

The DHRS issued another "operating permit" (permit number 44-54-00037) to the Florida Keys R.V. Resort in care of the owner, Risky Inc., with an expiration date of September 30, 1997, indicating 126 RV Park authorized spaces and 13 Mobile Home Park authorized spaces. (R133, 219).

On September 26, 2000, the Department of Health (DOH) issued an "official receipt," permit number 44-54-00037, to Florida Keys R.V. Resort and noted 126 RV spaces and 13 mobile home spaces. The permit expired on September 30, 2001. (R220).

On September 27, 2001, Mr. Edward Koconis, A.I.C.P, Island Planning Team Director, advised Mr. Craig of the following:

After reviewing the history of Florida Keys RV Park including permit records and State of Florida Department of Health operating permits, as well as several visits to the site with other members of Planning staff, it is the decision of this department that Florida Keys RV Park has 13 mobile home spaces and 126 RV spaces.

Therefore, these units may be transferred to the Blue Lagoon site provided that any and all activity is in compliance with the Year 2010 Comprehensive Plan and the Monroe County Code, particularly Section 9.5-120.4, which is the section dealing with transferring development off-site.

(R166).<sup>4</sup>

During the public hearing, Commission Chair Jerry Coleman denied Appellants party status and the opportunity to cross-examine witnesses. Appellants were allowed to submit questions for witnesses through the Chair. (R17-21, 38)(SR3-21, 50).

Mr. Buckley discussed the staff's recommendation regarding the Sender site application. This was the first time staff prepared a TRE staff report. Staff was satisfied that the Sender site application should be approved. (R3-5).<sup>5</sup>

Ms. Conaway, testified during the hearing. Ms. Conaway stated that before the middle of the 1980's, it was "very difficult to find any records at all" pertaining to particular land uses. (R24). See also (SR148).

Staff evaluated several types of documents and other information in order to assess whether 126 RV spaces were in existence on the Sender site as of January 4, 1996, were accounted for in the hurricane evacuation model, which forms the basis of ROGO, and whether they were lawfully established.

Ms. Conaway explained that she could not find a permit per se that was issued by a Monroe County planning department entity recognizing the number of RV spaces on the Sender site. Therefore, she looked at other information including the operating permit issued by the DHRS with an expiration of September 30, 1997, which indicated that there were 126 RV Park authorized spaces and 13 mobile home park authorized spaces. (R31-32, 45, 133, 219). A DOH official receipt indicated 126 RV spaces, but Ms. Conaway stated that would relate to the maximum number of RV spaces that could be on the Sender site. (R46, 134). (Ms. Conaway stated that staff "work[s] with the Health Department." (R25)).

Ms. Conaway clarified that the DOH/DHRS licenses/official receipts are based on the concerns of these departments for sewage capacity, but the officials also visit the site. (R45-46).

Ms. Conaway stated that staff also looked at aerial photographs that are a part of the research they performed. She indicated that it was "almost impossible to count spaces in the

aerial" photographs, but that was something they looked at to find out how the property was used. (R33).

The property record cards were used to show the other uses on the property. (R33). Ms. Conaway stated that the property appraiser cards of record show 13 mobile homes, but not the number of RV spaces on the Sender site. (R27). Ms. Conaway explained that the occupational licenses (R132) do not provide the number of RVs, only that the property was a trailer park and campground. (R30).

Referring to page 17 of the property appraiser cards, for Ms. Conaway, it was important that the history went back to 1982 and that there were camp buildings, for example, on the Sender site. (R35, 129). Mr. Craig explained that page 17 also mentions 13 mobile homes, although the number of mobile homes is not at issue. (R34).

Mr. Buckley also stated that Ms. Dianne Bair, the Flood Plain Administrator, was asked in 1992 to make a list of all mobile homes and RV parks. Her unofficial count indicated in a memo to Mr. Timothy McGarry, Director of Growth management, dated September 24, 2003, that Florida Keys R.V. Resort, formerly Barefoot Key Resort in 1992, had 124 spaces (28 RVs and 96 mobile homes). Mr. Buckley clarified that the numbers were transposed on Ms. Bair's memo (R231) and should reflect 96 RV spaces and 28 mobile homes. (R37). See also (R217)(SR 578).

This memo is consistent with the September 1991, "operating permit" and the December 2, 1992, application discussed at page 9, supra; however, the memo is not an official Monroe County document. Id.

Ms. Conaway relied on the DHRS operating permit, the DOH official receipt, the occupational tax receipts, the property appraisers record cards, and other information recited above in reaching her determination that there were 126 RV spaces on the Sender site property in or around 1996. (R36).<sup>6</sup>

Mr. Bud Cornell testified that he had a history of being associated with the Sender site property. He sold it the last three times. He testified that the property was purchased (by the last two purchasers) because it had 126 RV spaces and 13 mobile home spaces. (R60-61)(SR107-110). Mr. Craig reiterated, "[t]hose RV spaces are there." (R62-63).

Mr. Buckley testified that he reviewed a document issued by the DHRS in 1992 that accounts for 132 RV spaces on the Sender site for the purpose of the hurricane evacuation log, although the Planning Department determined that only 126 RV spaces were qualified. Mr. Buckley clarified that the 1992 document "was an application [sic] was approved by HRS. It reflects the ensuing licenses which all reflect from that point in time on 126 RV spaces and 13 mobilehomes [sic]. It was - just to clarify." Mr. Craig explained, "basically it's an application and

inspection report." (R5, 14-16). The 1992 application appears to be in the record on appeal at (SR 578), although Mr. Buckley advised the Commission that he did not believe it was in their packet because he received it the morning of the public hearing. (R5). See page 9, supra.

There was also testimony and argument of Appellants' counsel in opposition to Northstar's Sender site application. For example, Ms. Sheryl Bower, A.I.C.P., who has a master's degree in urban planning, expressed very strong concerns regarding the number of RV spaces on the Sender site. In part, Ms. Bower opined that the Sender site was "over-density already. They can accommodate 78 RVs on that property." Based on her review of licenses and other documents of record, Ms. Bower stated that the number of RV spaces, for example, 75 RV spaces listed on several documents, could not have been increased without the approval of a conditional use. (R47-50). See Endnote 9. See also (R 54-56, for Mr. Rob Cook's testimony).

Ms. Bower and Mr. Lee Rohe, representing Smart Planning, also stated that the proposed transfer of RV spaces violated the moratorium adopted by the Board. (R51-53).

After hearing argument of counsel, Chair Coleman concluded, without dissent, that the moratorium issue would not be heard. (R52).

After hearing all of the evidence, the Commission approved the Sender site application with Commissioner Werling voting no. (R72). But see (R93, Resolution No. P55-03, showing Commissioner Werling voting in the affirmative.) The Commission found that 126 RV spaces were in existence on the Sender site as of January 4, 1996, were accounted for in the hurricane evacuation model that forms the basis of ROGO, and were lawfully established. The Commission concluded that 126 RV spaces are eligible and may be transferred off-site. The Commission concluded that the 13 mobile home spaces would remain on the Sender site. (R72-73, 92).

C. Receiver Site Application

1. Generally

Northstar submitted an application for development approval for the transfer of ROGO exemptions to the Receiver site. This application is dated April 21, 2003, and is signed by the agent for Northstar, Mr. Craig. (R286-288).

The application indicated, in part, that the Receiver site is expected to have 89 hotel rooms utilizing 77 TREs for 77 of the 89 hotel rooms. (R287). The land use district for the Receiver site is Suburban Commercial. Northstar indicated that the present use of the property included a 12-unit motel, 45-unit mobile home park, various retail commercial, single-family homes, and a restaurant. The proposed use of the property is



for a resort hotel with a restaurant. No affordable housing units are associated with the Receiver site. (R287).

Northstar indicated that it had filed a Major Conditional Use application in November of 2002, which is the subject of the appeal in Case No. 03-4720. (R288). As in the case with the Sender site application, the record does not indicate precisely when the Receiver site application was filed. However, there is competent substantial evidence to support a conclusion that the Receiver site application was filed on or about April 21, 2003. See Endnote 3.

The Receiver site application was submitted with an Appendices A-G as follows:

1. Appendix A consists of several warranty deeds. (R296-305).
2. Appendix B consists of Monroe County property record cards. (R307-323).
3. Appendix C consists of a list of adjacent property owners. (R325-329).
4. Appendix D is an aerial photograph that includes the project site and adjacent property. (R331).
5. Appendix E contains undated site photographs of the receiver site, including: Blue Lagoon at U.S. 1; an interior picture, existing residential, commercial; a vacant interior parcel; a vacant parcel to the Bay; existing storage area; and Stan & Mary's Restaurant. (R333-337).

6. Appendix F is an unsealed survey of the Receiver site dated September 21, 2001. (R339-340).

7. Appendix G is a site plan dated May 2, 2002. This document has a drawing number of A-1. (R342).

2. Staff Memoranda

Mr. Buckley and Biologist, Ms. Julie Cheon, submitted a Memorandum to the DRC dated June 6, 2003, pertaining to the Receiver site application. (R360).<sup>7</sup> This Memorandum stated that Northstar has proposed to develop an 89-room hotel with amenities and proposed to transfer (pursuant to the Sender site application) 126 TREs in the form of 126 RV spaces off-site with 77 of the TREs being utilized to develop the 89-room hotel at the Receiver site. Id.

The land use (zoning) district designations are the same for the Sender and Receiver sites, i.e., Suburban Commercial, and both sites share the same future land use map designation, i.e., Mixed Use/Commercial. The Receiver site consists of 8.1 acres and Sender site consists of 9.8 acres. The Receiver site is disturbed with scattered native growth and the Sender site is disturbed with isolated native trees. Staff characterizes the community character of the immediate vicinity of the Receiver site as a mix of uses including conforming and non-conforming residential, commercial retail, and a Florida Keys Aqueduct Authority (FKAA) water storage facility. (R361).

Staff determined that the proposed development of the Receiver site is consistent with the mix of uses that composes the community character of the immediate vicinity; that there was no empirical evidence that the proposed use would adversely affect the value of the surrounding properties; that there was adequate water and electricity for the proposed use based on letters of coordination issued from the FKAA and the Florida Keys Electrical Coop; that the project will have on-site waste water treatment plant; that there was no indication that the proposed use would adversely impact any of the listed public facilities; that there was no empirical evidence that Northstar does not have the financial resources or the technical capacity to complete the development as proposed; and that the proposed development will not adversely affect a known archeological, historical, or cultural site. (R362-363).

Staff also determined that the Receiver site is composed of four-aggregated parcel zoned as Suburban Commercial. "The habitat has been determined by the Biologist to be disturbed with some scattered native trees; there is no hammock on-site. The receiver site has been determined by the Biologist to be of comparable environmental quality as the sender site. Both are disturbed with some native vegetation but neither site has any hammock." (R363).

Staff analyzed the Receiver site application for compliance with a Receiver site receiving TREs from the Sender site.

(R363-364). See Art. IV, § 9.5-120.4(b)a.(1)a.(i) and (ii), M.C.C. (R162-163).

The Planning and Environmental Resources staff recommended approval for the receivership of 77 RV spaces to the designated receiver site based upon staff's determination that the Receiver site application complied with the applicable criteria. (R364). See also (R372).

On June 17, 2003, the DRC considered the Receiver site application, and unanimously approved the application. (R365-368).

3. Northstar Submits Additional Information: the 12-unit motel

The Commission approved Northstar's request for a Major Conditional Use to develop an 89-room hotel on the Receiver site. (SR215-220). In approving this project, the Commission expressly stated (as a condition) that Northstar "shall document the existence of the twelve-unit motel formerly on-site via a valid Florida license. If documented, then [Northstar] shall need 77 Transferable ROGO Exemptions (TRE[s]) to construct eighty-nine (89) hotel units; if not documented then [Northstar] shall utilize 89 TRE[s] to construct eighty-nine (89) units prior to the issuance of a building permit." (SR218). (During the public hearing on the Major Conditional Use application,

Mr. John Wolfe explained that the Commission had "been asked in here to find that these 12 units exist. That's pretty clear." (SR 144). However, during the public hearing on the Major Conditional Use Application (Case No. 03-4720), the Commission was not satisfied with the evidence regarding the 12-unit motel issue and, as a result, imposed the condition. (SR148).)

On or about July 17, 2003, Mr. Craig sent a letter with attachments to Mr. Buckley providing additional information regarding Northstar's claim of the existence of the 12-unit motel, 45-unit mobile home park, and a marina on the Blue Lagoon property that is part of the Receiver site. (R169, 348).

The information provided by Mr. Craig included several documents including a letter from Mr. Anthony Perez, a Management Review Specialist with the Department of Business and Professional Regulation, who advised Monroe County Building & Zoning by letter dated July 13, 2000, "that Blue Lagoon Resorts Int'l, Inc., owner & operator Blue Lagoon Resorts located at 99096 Overseas Highway, Key Largo, Florida, had a state operational license with our Division through 1998. This 12-unit motel, Control # 54-01633 H, at this time ceased operations and no further business has taken place thus its state license was cancelled. At any future date when a suitable structure that meets all Monroe County building & zoning codes is constructed and approved our Division will license and regulate

according, and reissue a minimum of a 12-unit motel license." A copy of the "license account" for the same control number is consistent with Mr. Perez' letter. (R348, 350-351).

The Department of Business Regulation (DBR) issued a license to "R & R Publishing Inc. Blue Lagoon Resort Motel & Mar" with an expiration of October 1, 1992, indicating 12 motel units with a license number 54 01633H-Transient. (R254, 352). This is the same number referred to in Mr. Perez' July 13, 2000, letter although it is referred to as a control number rather than a license number. The DOH issued separate operating permits to Blue Lagoon Resorts International, Inc., both indicating 45 mobile home spaces and 0 RV spaces, with expiration dates of October 1, 1999. (R353). See also (R354). The DHRS issued an "operating permit" to "Blue Lagoon Resort & Marina R & R Publishing, Inc. - owner" indicating 45 mobile park and 0 RV park authorized spaces. The expiration date is not legible. (R355).

Mr. Craig also attached a copy of an occupational license issued by Monroe County with an expiration of September 30, 1992, issued to Blue Lagoon Marina with a notation that the "licensee was hereby licensed to engage in the business profession or occupation of [] marina" at 99096 Overseas Highway, part of the Receiver site. (R356). Other Monroe County occupational licenses dated September 30, 2003, pertained

to trailer park/campground, water sport rentals, marina and storage, merchandise vending, and retail/grocer at the same address of 99096 Overseas Highway. (R357-359). See also (R181-190, for other licenses).

Regarding this issue, Ms. Conaway's January 25, 2002, letter of understanding to Mr. Craig, in paragraph 2, page 2 of 6, stated: "There was a hotel license for a 12-unit hotel on the Blue Lagoon resort site (Parcel C) that was valid in 1994-1995. It is not clear where these motel units were located on the site. These transient units may be credited toward the proposed project." (SR376). Compare with (SR382, 386, and 389). (Mr. Koconis' letters to Ms. Joy Martin of January 22, 2001, and to Mr. Craig of March 6, 2001, stated, in part: "There was a hotel license for a 12-unit hotel on the Blue Lagoon Resort site that was valid in 1994-1995. It is not clear where these motel units were located on the site. These transient units may be credited provided that the motel was permitted and the hotel license has been maintained." (R375)(SR382).)

#### 4. The Public Hearing

On September 24, 2003, the Commission conducted a public hearing regarding the Receiver site application. (R232).

Mr. Buckley briefly presented the item for consideration. (R234-235). The Commission, consistent with the prior ruling, denied Smart Planning and Osborn party status and denied them

the opportunity to cross-examine witnesses although questions could be submitted through the Chair. (R237-241). In advising the Commission on this issue, Mr. Wolfe relied on Article III, Section 9.5-46, M.C.C., which provides hearing procedures for applications for development approval. (R239)(SR3-9). Smart Planning and Osborn were offered the opportunity to, and did offer evidence before the Commission regarding the Receiver site application.

During the public hearing, there was evidence, documentary and testimonial, which supported and detracted from the approval of the Receiver site application. Smart Planning and Osborn objected to the Receiver site application, in part, because of the lack of evidence indicating that there was a 12-unit motel on the Receiver site and the applicability of the pending ordinance doctrine. Ms. Bower and others also opposed the application.

By letter dated July 17, 2003, Mr. Craig provided documentation to Mr. Buckley, in part relating to Northstar's claim of the existence of the 12-unit motel. (R169). See pages 20-23, supra, and Endnote 5.

The Buckley/Reisinger Memorandum (Sender site) of August 26, 2003, and the Buckley/Cheon Memorandum (Receiver site) of August 26, 2003, do not mention the existence of the 12-unit motel. (R200-202; 370-372). See also Endnote 7.



However, Mr. Buckley and Ms. Cheon prepared a Memorandum to the Commission, dated May 9, 2003, analyzing Northstar's Major Conditional Use application. (SR 486-492). In particular, they describe the proposed use and size of the site, in part, as follows: "Parcel "C" (Blue Lagoon Parcel) contained the Blue Lagoon Resort. The Blue Lagoon Resort had a valid operating permit for 45 mobile homes as well as a hotel license for a 12-unit motel." (SR487). See also (SR489, "[t]he site has twelve (12) transient units from the Blue Lagoon motel.") Staff recommended a finding of fact that the subject site contains a mix of uses including a 12-motel unit motel." (SR490). As noted herein, the Commission required Northstar to document the existence of the 12-unit motel. (SR218).

Notwithstanding, there was testimony and documentary evidence received and considered by Commission during the public hearing on the Receiver site application. See (R19-20, 24-25 for Mr. Buckley's initial explanation (during the public hearing on the Sender site application) of the direction staff received from the Commission. See also (R253).) However, during the public hearing on the Receiver site application, Mr. Andrew Tobin, Osborn's counsel, specifically asked staff to identify the evidence they relied on to determine the existence of the 12-unit motel. (R253). Chair Coleman advised that Mr. Tobin, could ask that question because the Commission had asked staff

to "research that very same question." (R253). Mr. Buckley responded that staff received direction "to provide a license for a hotel." Mr. Buckley advised the Commission that the license he reviewed was issued by the DBPR, with an expiration date of October 1, 1992, indicating that it was issued to "R & R Publishing Inc. Blue Lagoon Resort Motel & Mar" referencing 12 motel lodging units. (R19-20, 24-25, 253-254, 345, 352). Ms. Conaway advised the Commission that staff asked Mr. Craig to provide them with information which resulted in Mr. Craig's July 17, 2003, letter with attachments. (R254, 348, 359). Mr. Craig included, among other documents, a copy of the DBR license. (R352).

It appears that Mr. Buckley and other planning staff relied on the information provided by Mr. Craig on July 17, 2003, as well as three previous letters of understanding that were incorporated into the Commission's consideration of the original Major Conditional Use application submitted by Northstar, "all of which referred to a license for 12-unit motel, although the location of those units are not clearly defined." (R254-255). See also (SR375-386, 570-577, 603).

Mr. Buckley advised the Commission that he believed he was only required to present a license to the Commission: "that was the direction, no additional research was done on that." (R255). See Endnote 5.

Mr. Craig reiterated that they presented the Commission "with each and every license that [they] had that [they] could find in the record trail" pertaining to the 12-unit motel. (R263)(SR130-131). He also referred to the testimony of Mr. Bill Cullen who testified during the public hearing on the Major Conditional Use. Id. See also (SR100-103).<sup>8</sup> Referring to the hotel units, Mr. Craig stated: "They were in the big building that was on the middle of the site that you have property record cards for. Also in that large house that is there, it still remains there. If you can't see that by walking out on the site then perhaps you need glasses." (R263). But see (R249, 253)(SR81-86), for Mr. Rob Cook's testimony and (SR61-62) for Ms. Bower's testimony.) Mr. Cook's research indicated that the licensure file with DBPR (formerly DBR) regarding the 12-unit motel was closed in or around October 1, 1998. (SR81-82, 562). Compare with (R345, 352-DBR license for the 12-motel units, expiration October 1, 1992). Mr. Cook's testimony is consistent with Mr. Perez' July 13, 2000, letter, which indicated that the 12-unit motel was licensed through 1998 and had ceased operation. (R346).

Mr. Bud Cornell also provided the Commission with a two-page document dated March 17, 2003, and testified regarding the 12-unit motel issue. (R259-260)(SR107-110, 593-594).

Ms. Conaway was satisfied with the documentation of record including, but not limited to, the information provided by Mr. Craig with the July 17, 2003 letter. (R253-254). See Endnote 5.

Toward the end of the public hearing on the Receiver site application, Chair Coleman stated:

Thank you Mr. Thomes. It's coming back to me staff and fellow commissioners when we were here in June I believe on this project we did not -- our directions were defined -- all the other evidence about the 12 units had already been entered. It wasn't just this one '92 receipt. Our directions we were approving a project with the caveat, not a condition, the caveat that you were to satisfy the Planning Director that the 12 units, in your normal how you would be satisfied, existed. It was not to bring to this proceeding here today the burden of proving 12 units. Okay. So that has been almost injected maybe, and if you go back and look, unfairly because we approved this project. And this is just moving 77. And the question of the existence of the 12 units was a caveat that make sure while we are approving this if it isn't bring it back. That's my recollection, okay. We didn't say we are going to retry this thing again. And it's unfair to say this one license -- I know there was a lot more evidence. There's direct testimony that was resolved in that other meeting. With that we are bringing it to the board.

(R265-266).

Immediately thereafter, Commissioner David Ritz, Mr. Buckley, and Ms. Conaway had a question and answer session regarding whether other negative or positive

points should have been awarded. (R267-269). See also (R260-262). With these clarifications by staff, Commissioner Ritz moved to approve the staff recommendation that received a second by Commissioner Mapes. The Commission unanimously approved staff's recommendation, i.e., to approve the Receiver site application. (R269-270).

The Commission's approval of the Major Conditional Use (including the 89-unit hotel) was specifically conditioned on Northstar's documenting the existence of the 12-unit motel formerly on-site via a valid Florida license. If documented, Northstar's needed 77 TREs to construct the hotel. (R266)(SR218). The Commission ultimately approved Northstar's request for the receivership of 77 TREs. (R283). But, the Commission did not make any specific finding pertaining to the 12-unit motel issue. (R281-284).

Nevertheless, staff recommended the receivership of 77 TREs having been satisfied of the existence of the 12-unit motel. By approving the Receiver site application as recommended by staff and having considered the evidence regarding the existence of the 12-unit motel, the Commission implicitly approved this determination by staff. While Appellants objected to the competency and sufficiency of the evidence on this issue, Appellants did not object to the Commission's consideration of

the issue during consideration of the Sender and Receiver site applications.

### III. Legal Discussion

The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties pursuant to Article XIV, Section 9.5-535, M.C.C. The hearing officer "may affirm, reverse or modify the order of the planning commission." Art. XIV, § 9.5-540(b), M.C.C. The scope of the hearing officer's review under Article XIV is as follows:

The hearing officer's order may reject or modify any conclusion of law or interpretation of the Monroe County land development regulations or comprehensive plan in the planning commission's order, whether stated in the order or necessarily implicit in the planning commission's determination, but he may not reject or modify any findings of fact unless he first determines from a review of the complete record, and states with particularity in his order, that the findings of fact were not based upon competent substantial evidence or that the proceeding before the planning commission on which the findings were based did not comply with the essential requirements of law.

Id. "The hearing officer's final order shall be the final administrative action of Monroe County." Art. XIV, § 9.5-540(c), M.C.C.

In DeGroot v. Sheffield, 95 So. 2d 912 (Fla. 1957), the court discussed the meaning of "competent substantial evidence" and stated:

We have used the term "competent substantial evidence" advisedly. Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. . . . In employing the adjective "competent" to modify the word "substantial" we are aware of the familiar rule that in administrative proceedings the formalities and the introduction of testimony common to the courts of justice are not strictly employed. . . . We are of the view, however, that the evidence relied upon to sustain the ultimate findings should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent, the "substantial" evidence should also be "competent."

Id. at 916. (citations omitted).

A hearing officer (administrative law judge) acting in his or her appellate review capacity is without authority to reweigh conflicting testimony presented to the Commission or to substitute his or her judgment for that of the Commission on the issue of the credibility of witnesses. See Haines City Community Development v. Heggs, 658 So. 2d 523, 530 (Fla. 1995).

The question on appeal is not whether the record contains competent substantial evidence supporting the view of the appellant; rather, the question is whether competent substantial evidence supports the findings made by the Commission. Collier Medical Center, Inc. v. Department of Health and Rehabilitative

Services, 462 So. 2d 83, 85 (Fla. 1st DCA 1985). See also  
Dusseau v. Metropolitan Dade County, Board of County  
Commissioners, 794 So. 2d 1270, 1275-1276 (Fla. 2001); Dorian v.  
Davis, 874 So. 2d 661, 663 (Fla. 5th DCA 2004). In Dusseau,  
supra, the court stated:

the "competent substantial evidence" standard cannot be used by a reviewing court as a mechanism for exerting covert control over the policy determinations and factual findings of the local agency. Rather, this standard requires a reviewing court to defer to the agency's superior technical expertise and special advantage point in such matters. This issue before the court is not whether the agency's decision is the "best" decision or the "right" decision or even a "wise" decision, for these are technical and policy-based determinations properly within the purview of the agency. The circuit court has no training or experience -- and is inherently unsuited -- to sit as a roving "super agency" with plenary oversight in such matters.

Dusseau, 794 So. 2d at 1275-1276.

The issue of whether the Commission "complied with the essential requirements of law" is synonymous with whether the Commission "applied the correct law." Haines City Community Development, 658 So. 2d at 530.

Appellants contend that they were denied procedural due process of law and that the Commission departed from the essential requirements of law by denying the Appellants party status and the right to cross-examine witnesses during the



Commission hearings. Under the Monroe County Code, the review criteria are limited and do not include consideration of whether procedural due process was afforded by the Commission. Because the decision to grant or deny a permit is a quasi-judicial action, Appellants may, if they wish, seek review of this final order by filing a petition for the writ of certiorari with the appropriate circuit court. See Upper Keys Citizens Association and Florida Keys chapter Izaak Walton League of America v. Monroe County and Florida Keys Electric Cooperative Association, Inc., Case No. 01-3914 (DOAH March 5, 2003), and cases cited therein at page 31.

Appellants also argue that the Commission's decision to approve the Sender site application should be reversed because there is no competent substantial evidence to support the Commission's finding that 126 RV spaces were (1) in existence as of January 4, 1996, on the Sender site; (2) were accounted for in the hurricane evacuation model which forms the basis for ROGO; and (3) were lawfully established.

The evidence on this issue is not free from doubt. Planning staff acknowledged the paucity of documents that demonstrate compliance with the criteria. In fact, there is no permit per se of record issued by a Monroe County planning department entity that approved the existence and lawful establishment of 126 RV spaces on the Sender site. (R31-32).

The term "lawfully established" is not defined in the Monroe County Code and the Commission did not affirmatively interpret this criterion.

However, Attachment A, which is part of the Sender site application, required the applicant to provide documentation including proof that the units or spaces are lawfully established and legally existing. Attachment A enumerates documentation which must be submitted and, in part, states: "Copy of Deed of Ownership, Property Record Card AND documentation that the units and/or spaces were accounted for in the hurricane evacuation model which forms the basis of ROGO (lawfully established on or before January 4, 1996) in the form of: . . .OR. . .Other relevant documentation may be used to satisfy both tests, if an applicant cannot provide the above materials, but this substitute requires approval of the Planning Director." (R98).

The staff Memoranda concluded that the Sender site application complies with the three criteria, but affords no explanation. (R194, 202). Ms. Conaway stated that they look at information "around '96"; "we are looking for from '96 to '97 when the Comprehensive Plan was determined." (R27, 31). (Chair Coleman stated: "January 1st, 1996. We want to see that they were lawfully established recognized." Id.) Ms. Conaway, referring to a state license, was asked: "does that mean that it

is authorized lawfully built spaces for Monroe County purposes?" Ms. Conaway responded: "[w]hat it means is I could not find a permit ever given here because of our permitting system. So this is what we used to determine if it is a lawfully permitted use." (R31-32).

It is not proper for the undersigned to weigh or reweigh the evidence, including but not limited to Ms. Conaway's explanation for using the 1996 date to determine whether the 126 RV spaces were in existence and "lawfully established."

Based upon a review of the entire records on appeal in Case Nos. 04-1568 and 03-4720, it is concluded that there is competent substantial evidence to support the Commission's findings that the Sender site application should be approved and that the 126 RV spaces meet the eligibility requirements of Article IV, Section 9.5-120.4(b)a.i)-iii), M.C.C. (R83). As a result, 126 RV spaces are eligible and may be transferred off-site.<sup>9</sup>

Appellants also argue that there is no competent substantial evidence to support Northstar's request for authorization to utilize the 12-unit motel toward the proposed 89-unit hotel. Northstar claims that the 12-unit motel is derived from the Blue Lagoon Motel, which allegedly was located on part of the Receiver site.

The Commission did not resolve this issue in Resolution No. P47-03. (SR216). Rather, the Commission approved Northstar's request for a Major Conditional Use for the construction of a hotel with 89 units, 8,158 square feet of commercial space and other amenities on the Receiver site. The Commission was not satisfied with the evidence regarding the 12-unit motel issue. See, e.g., (SR142-149). Mr. McGarry advised the Commission that the issue would return to the Commission. (SR148, 189).

The project was approved with the condition that Northstar document the existence of the 12-unit motel formerly on-site. Importantly, the condition further recited that if a 12-unit motel was documented, then Northstar needed 77 TREs to construct the 89 hotel units. Otherwise, Northstar needed 89 TREs to construct the 89-unit hotel prior to the issuance of a building permit. (SR148, 216).

In this case, the Commission approved what Northstar requested, i.e., receivership of 77 TREs. (R283). Staff recommended approval of the Receiver site application (the receipt of 77 TREs) because staff determined that Northstar satisfied the condition regarding proof of the existence of the 12-unit motel. (SR218). See also (SR23).

It is concluded that the Commission implicitly approved the existence of the 12-unit motel and there is competent substantial evidence to support this decision.

Finally, the Appellants contend that the Commission departed from the essential requirements of law by ignoring the pending ordinance doctrine in approving the transfer of the 126 RV spaces. The parties agree that Northstar's Major Conditional Use application filed on or about November of 2002, and Northstar's Sender and Receiver site applications filed on or about April 21, 2003, are inextricably linked. (The parties disagree when the Sender and Receiver site applications were filed. See Endnote 3.)

Resolution No. 120-2003, adopted by the Board on March 19, 2003, directed the Monroe County Planning staff "to immediately undertake such development review as is necessary to take forward to the Planning Commission as expeditiously as possible a recommendation regarding a moratorium on the transfer of (TRE's) of redevelopment rights from sender units which are RV spaces to sender units which are hotel or motel rooms, using the draft ordinance (Exhibit A) attached hereto and incorporated herein by reference as a guideline.") See Supplemental Record, Aug. 31, 2004.

The Board of County Commissioners of Monroe County (Board) adopted Ordinance No. 025-2003 on June 18, 2003, after both applications were submitted for consideration. (R224-226).

In the Project Overview of the Major Conditional Use application, Northstar stated: "The 89 rooms are created by the

use of the existing 12 motel units and the importation [sic] sufficient transferable development rights (TDRs) and Transferable ROGO Exemptions (TRES) to achieve the desired density. . . .The TDRs and ROGO exemptions have been identified and will be purchased upon completion of the development review process for this project. This transfer will be by means of Minor Conditional Use approval." (SR231). The record in Case No. 03-4720 also contained several letters from Ms. Conaway to Mr. Craig referencing Northstar's proposal to use TDRs and TRES coupled with the requested Major Conditional Use. See, e.g., (SR371-380). In particular, in a letter dated January 25, 2002, Ms. Conaway stated in part: "There was a hotel license for a 12-unit motel on the Blue Lagoon Resort (Parcel C) that was valid in 1994-1995. It is not clear where these motel units were located on the site. These transient units may be credited toward the purposed project." (SR376).

Based upon the forgoing, Northstar's Major Conditional Use application contemplated separate conditional use approval components, including both Major and Minor Conditional Use approvals, which were required to complete the entire project. As such, they are inextricably intertwined.


The moratorium, albeit contemplated by the Board in March of 2003, was not adopted until June 18, 2003. The planning for the moratorium and the actual adoption post-date

the filing of Northstar's Major Conditional Use application and predate the letters of understanding issued by planning staff. The pending ordinance doctrine does not apply in this case. See Smith v. City of Clearwater, 383 So. 2d 681 (Fla. 2d DCA 1980), pet. dismiss., 403 So. 2d 407 (Fla. 1981).

DECISION

Based on the foregoing, the Commission's decisions in Resolution Nos. P55-03 and P56-03 are AFFIRMED.

DONE AND ORDERED this 1st day of November, 2004, in Tallahassee, Leon County, Florida.



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CHARLES A. STAMPELOS  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 1st day of November, 2004.

ENDNOTES

<sup>1/</sup> See Jeff Osborn and Smart Planning and Growth Coalition v. Monroe County Planning Commission and Northstar Resort Enterprises Corporation, Case No. 03-4720 (DOAH November 1, 2004) at page 45 n.3.

<sup>2/</sup> Although the Commission approved the Major and Minor Conditional Uses requested by Northstar by separate Resolutions, it is apparent that the evidence in both cases is inextricably

linked and should be considered in this appeal. For example, in Resolution No. P47-03, the Commission approved Northstar's request for a Major Conditional Use for the construction of a resort hotel with 89 units, 8,158 square feet of commercial space and other amenities on the Receiver site. However, the Commission required Northstar to "document the existence of the twelve-unit motel formerly on-site via a valid Florida license. If documented, then [Northstar] shall need 77 Transferable ROGO Exemptions (TRE[s]) to construct eighty-nine (89) hotel units; if not documented then [Northstar] shall utilize 89 TRE[s] to construct eighty-nine (89) units prior to the issuance of a building permit." (SR218). The Commission did not determine in Case No. 03-4720 whether a 12-unit motel existed on the Receiver site and further did not resolve any Sender/Receiver site issues in Resolution No. P47-03. However, there is evidence regarding the 12-unit motel issue compiled in the record in Case No. 03-4720. Smart Planning's unopposed motion to supplement the record with the record on appeal, Volumes 1-4, in Case No. 03-4720, is granted. Johnson v. State, 660 So. 2d 648, 653 (Fla. 1995).

<sup>3/</sup> The record on appeal in Case No. 04-1568 does not indicate when this application was actually filed with the Monroe County Planning and Environmental Resources Department. However, on April 29, 2003, Mr. Timothy Nicholas Thomes, counsel for Northstar, advised Mr. Tim McGarry and Ms. K. Marlene Conaway, Growth Management Division, that the Northstar application was filed "prior to any proposed consideration of the moratorium on the transfer recreational vehicle spaces to hotel and motel units off-site." Mr. Thomes also renews a request for expediting consideration of Northstar's transfer application dated April 21, 2003. (R167). On June 11, 2003, Ms. Jill Patterson requested a hearing before the Development Review Committee (DRC) scheduled for June 17, 2003, with respect to items one and two relating to Northstar's Sender and Receiver site applications. (R168, 344). Biologist, Mr. Niko Reisinger, and Planner, Mr. J. G. Buckley, submitted a Memorandum dated June 9, 2003, to the DRC summarizing the Sender site application. The DRC considered the Sender site application at a meeting held June 17, 2003. (R197). Apparently, the Sender and Receiver site application fees were not received by Monroe County until July 18, 2003. (R101). Based on this chronology, it appears that there is competent substantial evidence to support a conclusion that the Sender site application was filed on or about April 21, 2003.



<sup>4/</sup> During the public hearing on the Sender site application, Ms. Conaway explained that under the regulation, she had the authority to make this determination. Usually every letter has her name on it. She was surprised that the Koconis letter (R166) did not "because this one was researched a number of times even before Embassy Suites there was another hotel looking to do similar things. So people have been counting out there for a long time." (R71).

<sup>5/</sup> Mr. Buckley also stated: "The Director of Planning [Ms. Conaway] is comfortable, based on the commission's direction, that the documentation of the 12 units existing then did require Northstar to transfer 77 TREs rather than the full total of 89. So that's why we are considering the transfer of 126 RV spaces with 77 of those spaces going toward the receiver site for the proposed Northstar hotel." (R4, 16). Mr. Wolfe also clarified that the Commission (during the public hearing on the Major Conditional Use) asked staff to "clarify the receiver site of 12 units. That would determine whether or not 77 units had to be transferred in or 89. So they went back and found the license from the state on the 12." (R24). See also pages 20-27, infra, for more discussion of the 12-unit motel issue.

<sup>6/</sup> Attachment A, which is part of the Sender site application, required the applicant to provide documentation including proof the units or spaces are lawfully established and legally existing. Attachment A enumerates documentation which must be submitted and, in part, states: "Copy of Deed of Ownership, Property Record Card AND documentation that the units and/or spaces were accounted for in the hurricane evacuation model which forms the basis of ROGO (lawfully established on or before January 4, 1996) in the form of: . . .OR. . .Other relevant documentation may be used to satisfy both tests, if an applicant cannot provide the above materials, but this substitute requires approval of the Planning Director." (R98).

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<sup>7</sup>/ On August 26, 2003, Mr. Buckley and Ms. Cheon submitted a Memorandum to the Commission that is substantially the same as the Memorandum submitted to the DRC, which is incorporated by reference herein. (R370-372). Staff made the same recommendation. (R372).

<sup>8</sup>/ Bill Cullen owns the property immediately adjacent to the Receiver site. He testified that he moved to Key Largo in the 1960's and is quite familiar with the Receiver site and the surrounding area. He also stated: "Twelve motel units were there and I'll gladly testify under oath as to their location and existence any time you would like." (SR102).

<sup>9</sup>/ Even if it was determined that 126 RV spaces did not meet the criteria for transfer, the evidence, including the testimony of Ms. Bower, supports the eligibility of 75 to 78 RV spaces on the Sender site. See pages 8-10, 15, supra. Further, while he relied on the expertise of Ms. Bower, Mr. Tobin thought the Sender site could only have 10 units per acre. The Sender site is "9.8 upland acres" which could yield 98 RV spaces if Mr. Tobin's analysis is applied. (R41, 191, 200).

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NOTICE OF RIGHTS

Pursuant to Article XIV, Section 9.5-540(c), M.C.C., this Final Order is "the final administrative action of Monroe County." It is subject to judicial review by common law petition for writ of certiorari to the circuit court in the appropriate judicial circuit.