STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROCK HARBOR MARINA, INC.,	)	
	)	
Appellant,	)	
	)	
vs.	)	Case No. 11-4994
	)	
MONROE COUNTY PLANNING COMMISSION,	)	
	)	
Appellee,	)	
	)	
and	)	
	)	
FLORIDA KEYS QUALITY FOODS, INC., d/b/a MANDALAY OCEANFRONT GRILL & TIKI AND MORGAN OCEAN SUNRISE, LLC,	)	
	)	
Intervenors.	)	
	)	

FINAL ORDER

Appellant, Rock Harbor Marina, Inc. (Rock Harbor or Appellant), seeks review of Monroe County Planning Commission (Commission) Resolution No. P17-11 (Resolution) dated August 4, 2011, which approved the application of Intervenor, Florida Keys Quality Foods, Inc., d/b/a Mandalay Oceanfront Grill & Tiki (Florida Keys), for a 5SRX Alcoholic Beverage Special Use Permit. A two-volume record of the underlying proceeding was filed on October 20, 2011. In support of its appeal, on December 2, 2011, Appellant submitted an Initial Brief. The Commission, joined by Florida Keys, submitted an Answer Brief on February 17, 2012. Appellant submitted a Reply Brief on March 14, 2012. Intervenor,

Morgan Ocean Sunrise, LLC (Morgan), the owner of the subject property, was authorized to intervene on February 24, 2012, but did not file a brief. Oral argument was heard by video teleconferencing at facilities in Marathon and Tallahassee on April 16, 2012.

ISSUES

Appellant raises three issues on appeal: (1) whether the findings in the Resolution are supported by competent substantial evidence; (2) whether the Commission departed from the essential requirements of the law by failing to apply the correct law in evaluating the application; and (3) whether due process violations occurred during the staff review and Commission hearing process.

BACKGROUND

On January 8, 2008, Monroe County (County) approved an application by Ocean Sunrise Associates, LLC, for a major conditional use permit (MCU) for a single-phase development on a 3.29-acre parcel situated on parts of Blocks 2, 3, and 4, Mandalay Subdivision, Key Largo. When fully developed, the development will consist of 22 permanent residential dwelling units, three transient dwelling units, 3,782 square feet of commercial retail floor space, and 12 boat slips, and it will be located on the Atlantic Ocean side of U.S. Highway 1, also known as the Overseas Highway. (In November 2007, the County approved a development agreement giving conceptual approval of a site plan

to redevelop the parcel.) Under the terms of the MCU, the owner has four years to apply for its first building permit, and up to ten years to obtain its first certificate of occupancy. To date, much of the property remains vacant. There is no evidence that Appellant contested the MCU or development agreement.

Since the late 1940s, a retail restaurant (operating under different names and with different owners) has occupied a part of the property. The most recent restaurant went out of business around 2009, leaving vacant the building in which it was located. From 1997 until it closed, the former restaurant had a 2COP alcoholic beverage license, which allowed beer and wine sales on premises, and "to-go" package sales. According to the Commission staff's examination of state records, the beer and wine license was "closed" in March 2010. The restaurant site sits just southeast of the intersection of Second Avenue, which runs from U.S. Highway 1 to the Atlantic Ocean, and Second Street, which runs in an east-west direction just north of the site. Besides the vacant building, a diving shop and another unit with several residents are located in another building facing Second Street just northeast of the restaurant. A condominium resort, Mariner's Club Key Largo, lies on the south side of the property (across Second Avenue) and within walking distance of the restaurant, a boat rental business is located across from the site on the property to the east, and a vacant lot (once occupied by a mobile home park) which is part of the larger parcel is

across the roadway (Second Street) to the north. Although he did not give a precise location, Appellant's owner, Sam Stoia (incorrectly spelled as Stoya in the Transcript), stated that he is the adjacent property owner to the larger parcel and owns other properties within the area.

After the MCU permit was issued, in August 2009 ownership of the property was acquired by Morgan. The new owner has an agreement to lease to Florida Keys the property on which the former restaurant was located, which intends to renovate the building and operate a new restaurant on the premises. The leased property consists of approximately 39,900 square feet of the 3.29-acre parcel, or around 0.92 acres, and is located on Lots 1 and 2, Block 4, at mile marker 97.6, 80 East Second Street, Key Largo. Excluding the portion of the leased property that is "bay bottom," the actual size of the restaurant site is 18,265 square feet, or around 0.41 acres. All restaurant improvements must be consistent with the development agreement approved in 2007, the MCU permit issued in 2008, and current County codes. The restaurant building and outdoor seating areas lie within the Suburban Commercial zoning district and the Mixed Use/Commercial land use category, which are appropriate for that type of use.

With the consent of Morgan, on April 25, 2011, Florida Keys filed with the Commission an application for a 5SRX Alcoholic Beverage Special Use Permit to be used in conjunction with its

restaurant. Approval of the application simply means that Florida Keys may then file an application with the Florida Department of Business and Professional Regulation, which actually issues the license. The license will allow the sale of alcoholic drinks (hard liquor) to diners on premises after the new restaurant opens, but unlike the beer and wine license held by the former restaurant, package sales will be prohibited. The application also included a list of all property owners within a 500-foot radius of the restaurant property, as required by the Monroe County Code (M.C.C.).

After evaluating the application, on May 23, 2011, the staff submitted a report to the Commission for its meeting on June 8, 2011, when the application would be considered. The report recommended that the application be approved with the following five conditions:

> A. Alcoholic Beverage Special Use Permits issued by virtue of the Monroe County Code shall be deemed to be a privilege running with the land. The sale of the real property which has been granted an Alcoholic Beverage Special Use Permit shall automatically vest the purchaser thereof with all rights and obligations granted or imposed to or on the applicant. Such privilege may not be separated from the fee simple interest in the realty.
>
> B. In the event that the holder's license by the Department of Business and Professional Regulation of the State of Florida expires and lapses, this Alcoholic Beverage Special Use Permit approval shall be null and void as

> of the date of that expiration. Additional approval by the Planning Commission shall be required to renew the Alcoholic Beverage Special Use Permit.
>
> C. All alcohol sales and consumption shall occur only within seating areas approved by the Monroe County Planning & Environmental Resources Department.
>
> D. Prior to the issuance of a resolution approving any Alcoholic Beverage Special Use Permit, the property owner shall resolve the code compliance issues associated with open code case CE11040046 and be in complaint [sic] to the satisfaction of the Director of Planning & Environmental Resources and the Director of Code Compliance.
>
> E. Prior to opening the restaurant, with or without an alcoholic beverage permit, the Planning & Environmental Resources Department shall require that the applicant apply for and receive a building permit to install the parking as shown on the approved site plan by Professional Design Associates, Inc. and Hill Glazier Architects dated October 29, 2007, which includes 12 parallel parking spaces along the rights-of-way of 2nd Avenue and 9 angled parking spaces (one of which is to be ADA compliant). Parking lot landscaping associated with the parking spaces shall also be required. The applicant cannot deviate from the approved site plan without an approved minor deviation, major deviation or amendment to the major conditional use permit. The level of review is based on the scope of work to be revised. In addition, any modifications must be in compliance with the provisions of the major use permit and development agreement.

Section 3-6(e), M.C.C., requires that the Commission give "due consideration" to the following factors, where applicable, before rendering a decision to grant or deny a liquor permit:

> (1) The effect of such use upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises. For the purposes of this section, "premises" means the entire project site of a shopping center;
>
> (2) The suitability of the premises in regard to its location, site characteristics and intended purpose. Lighting on the permitted premises shall be shuttered and shielded from surrounding properties, and construction of such permitted properties shall be soundproofed. In the event music and entertainment are permitted, the premises shall be air conditioned;
>
> (3) Access, traffic generation, road capacities, and parking requirements;
>
> (4) Demands upon utilities, community facilities and public services; and
>
> (5) Compliance with the county's restrictions or requirements and any valid regulations.

In its report, the staff noted that each factor had been considered and concluded that all requirements had been met. Among other comments, the report stated that "[c]ommercial retail uses, which include restaurants, are permitted" on the property and that no other businesses in the vicinity hold an alcoholic special use permit; that if "additional or replacement lighting is installed, [the building] shall be required to be shuttered and shielded from surrounding properties"; that "the building shall be air-conditioned" to buffer event music and entertainment; that although the applicant did not submit a traffic impact study with its application, the "traffic impact

was approved under the previous [MCU] permit application"; that "based on [traffic] studies generated for similar applications," the staff "does not anticipate that an approved 5SRX alcoholic beverage special use permit will significantly or notably increase traffic to the site," which is already approved for commercial retail/restaurant use; that before the restaurant can open, the applicant must "apply for and receive a building permit to install the parking as shown on the approved site plan"; that any deviations from the site plan with respect to parking "must be in compliance with the provisions of the development agreement"; and that the applicant "cannot deviate from the approved site plan without an approved minor deviation, major deviation or amendment to the [MCU] permit."

On June 8, 2011, the Commission continued the matter to the next Commission meeting on June 22, 2011. At that meeting, the staff again recommended that the application be approved subject, however, to two additional conditions, identified in the report as paragraphs F and G, which read as follows:

> F. Prior to the application for the alcoholic beverage license with the Department of Business and Professional Regulation, the applicant shall have an assignment of lease or sublease approved by the Board of County Commissioners in accordance with the lease between BOCC and the Pinellas Holding Corporation dated the 12th of November 1997, recorded in the Book 1736 at Page 1428 of the official records of Monroe County.

G. No package retail sales on site.

The staff also submitted into the record an email dated June 21, 2011, from its traffic consultant, Rajendran Shanmugan, a professional engineer who had previously discussed the application with staff and opined that there would be no difference in trip generation based on the serving of alcoholic beverages or the type of alcoholic beverages. He based this opinion on the fact that the ITE [Institute of Transportation Engineers] Trip Generation manual, which is used to develop traffic studies for restaurants, "has trip generation rates for types of restaurants (Quality, Sit-down, or High Turnover), but not based on serving of alcoholic beverages OR types of alcoholic beverages." He added that he knew of no literature or data that indicate the difference in trip generation rates depending on the type of alcoholic beverage served in the restaurant.

After hearing testimony from staff, the applicant and its expert and attorney, Rock Harbor's principal (Mr. Stoia), agent, and attorney, and nine members of the public, and after considering the evidence and argument of counsel, by a 4-0 vote the Commission approved the application, subject to the six conditions recommended by staff. Its decision is memorialized in the Resolution dated August 4, 2011, which made the following findings of fact:

1. The subject property is divided within three Land Use Districts: a Mixed Use (MU) district (RE 00554420.000000), an Urban Residential (UR) district (RE 00554670.000000, RE 00554740.000000 and RE 00554730.000000) and a Suburban Commercial (SC) district (RE 00554740.000000); and

2. Consistent with the boundary lines of the Land Use Districts, the subject property is divided within two Future Land Use Map (FLUM) categories: Mixed Use Commercial (MC) (RE 00554420.000000 and RE 00554740.000000) and Residential High (RH)(RE 00554670.000000, RE 00554700.000000 and RE 00554730.000000); and

3. The restaurant building and seating areas are located on the parcel identified as RE 00554740.000000, which is within the Suburban Commercial (SC) district and the Mixed Use/Commercial (MC) FLUM category; and

4. In 2006, a Letter of Understanding and Development Rights Determination established that 22 permanent market-rate residential units, 11 transient residential units, 5,138 SF [square feet] of non-residential floor area and 12 boat slips had been lawfully-established on the subject property; and

5. In 2007, Monroe County entered into a development agreement with Ocean Sunrise Associates LLC which, in part, provided conceptual approval of a site plan to redevelop the subject property. Approval of the development agreement was memorialized by Monroe County Board of County Commissioners Resolution #493-2007; and

6. In 2008, the Planning Commission approved a request by Ocean Sunrise Associates LLC for a major conditional use permit in order to develop the subject property into a resort area, consisting of 22 permanent, market-rate dwelling units, 3 transient dwelling units, 3,782 SF of commercial retail non-residential floor area, 12 boat slips and associated amenities. The approval and conditions were

memorialized in Planning Commission Resolution #P69-07. This approval applied to the redevelopment of the entire subject property and was reliant on the additional approval of the 2007 development agreement and the concurrently filed variance application; and

7. As of the date of this resolution, the redevelopment agreement and 2008 major conditional use permit has not been completed; and

8. Resolution #493-2007 was passed and adopted on November 14, 2007. The resolution and corresponding development agreement were filed and recorded on January 18, 2008. Per the development agreement, the effective date was 30 days after the recorded agreement was received by the state land-planning agency. The State of Florida Department of Community Affairs received the recorded document on February 5, 2008; therefore the effective date is March 6, 2008. Per item 2 of page 7 of the development agreement, the agreement shall remain in effect for an initial period of 10 years, commencing on the effective date, and per item 12 of pages 17 through 18, the owner shall have up to 4 years to obtain the first building permit and up to 10 years to obtain the first Certificate of Occupancy; and

9. §3-6(e) of the Monroe County Code states that the Planning Commission shall give due consideration to the following factors as they may apply to the particular application prior to rendering its decision to grant or deny the requested permit:

(1) The effect of such use upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises. For the purposes of this section, "premises" shall mean the entire project site of a shopping center; and

(2) The suitability of the premises in regard to its location, site characteristics and intended purpose. Lighting on the permitted premises shall be shuttered and shielded from surrounding properties, and construction of such permitted properties will be soundproofed. In the event music and entertainment is permitted, the premises shall be air conditioned; and

(3) Access, traffic generation, road capacities, and parking requirements; and

(4) Demands upon utilities, community facilities and public services; and
(5) Compliance with the county's restrictions or requirements and any valid regulations; and

10. §3-6(g) of the Monroe County Code provides that alcoholic beverage use permits may be granted in the following land use districts: Urban Commercial (UC); Suburban Commercial (SC); Suburban Residential (SR) where the site abuts US 1; Destination Resort (DR); Mixed Use (MU); Industrial (I) and Maritime Industries (MI). Notwithstanding the foregoing, alcoholic beverage sales may be permitted at restaurants, hotels, marinas and campgrounds regardless of the land use district in which they are located; and

11. Planning & Environmental Resources Department staff found that the applicant has demonstrated that all of the required factors shall be met and recommended approval of the application with conditions[.]

On August 26, 2011, Rock Harbor timely filed its appeal.

LEGAL DISCUSSION

Pursuant to a contract between the Division of Administrative Hearings (DOAH) and the County, DOAH has jurisdiction to consider this appeal under article VI, division 2, section 102-213, M.C.C. The hearing officer "may

affirm, reverse or modify the order of the planning commission." § 102-218(b), M.C.C. In rendering a final order, the hearing officer is subject to the following limitations:

> The hearing officer's order may reject or modify any conclusion of law or interpretation of the 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 the law.

Id. "The hearing officer's final order shall be the final administrative action of the county." § 102-218(c), M.C.C. The order must be rendered "within 45 days of oral argument." § 102-218(b), M.C.C.

The issue of whether the Commission "complied with the essential requirements of the law" is synonymous with whether the Commission "applied the correct law." Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995).

When used as an appellate standard of review, competent substantial evidence has been construed to be "legally sufficient evidence" or evidence that is "sufficiently relevant and material

that a reasonable mind would accept it as adequate to support the conclusion reached." DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957).

In determining whether the Commission's decision is supported by competent substantial evidence, the undersigned is not permitted to second-guess the wisdom of the decision, reweigh conflicting testimony presented to the Commission, or substitute his judgment for that of the Commission as to the credibility of witnesses. Haines City Cmty. Dev., 658 So. 2d at 530. Moreover, it is immaterial that the record contains evidence supporting the view of the Appellant so long as there is competent substantial evidence supporting the findings (both implicit and explicit) made by the Commission in reaching its decision. See, e.g., Fla. Power & Light Co. v. City of Dania, 761 So. 2d 1089, 1093 (Fla. 2000); Collier Med. Ctr., Inc. v. Dep't of Health & Rehab. Servs., 462 So. 2d 83, 85 (Fla. 1st DCA 1985).

A. Scope of Commission's Inquiry

Under the M.C.C., the role of the Commission in approving a liquor license application is to (a) ensure that the relevant criteria in section 3-6(e)1.-5. are satisfied, and (b) ensure that the premises are located in an appropriate land use district, as required by section 3-6(g). In doing so, the Commission does not distinguish between restaurants with or without hard liquor licenses, or beer or wine licenses.

B. Procedural or Due Process Violations

In contrast to the three-tier judicial review of final administrative action by a circuit court, see City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982), DOAH's review of a Commission decision is limited by the Code to a two-part review: whether the Commission's decision is based upon competent substantial evidence, and whether the decision departed from the essential requirements of the law. See § 102-218(b), M.C.C. See also Osborn v. Monroe Cnty. Plan. Comm., Case No. 03-4720, 2004 Fla. Div. Adm. Hear. LEXIS 2583 at *40-41 (Fla. DOAH Nov. 1, 2004)("the [Commission] review criteria are limited and do not include consideration of whether procedural due process was afforded by the Commission"); Upper Keys Citizens Ass'n v. Monroe Cnty., Case No. 01-3914, 2003 Fla. Div. Adm. Hear. LEXIS 211 at *36-37 (Fla. DOAH Mar. 5, 2003)(same). Therefore, Appellant's contention that procedural due process violations occurred during the Commission's review and/or hearing process must be raised in another forum.[1]

Even if the issues labeled as "due process" violations are more in the nature of "procedural" irregularities that can be decided here, as Appellant suggested at oral argument, its contentions are unavailing. First, it argues that the Commission issued a "defective notice" by not providing notice of the application and hearing to all property owners within 500 feet of the affected premises, as required by sections 3-6(d)(2) and (3),

M.C.C. However, no claim was made at the meeting that the notice was defective; Mr. Stoia acknowledged that he personally received a notice of the meeting by mail; Mr. Stoia, his counsel, and witnesses were allowed to fully participate at the Commission meeting; and Rock Harbor cited no real prejudice arising from any purported defect. Notably, there is no evidence that any adjacent property owner complained that a notice was not received. Assuming arguendo that there was a defect in the notice, it was waived by Appellant. See City of Jacksonville v. Huffman, 764 So. 2d 695, 696-97 (Fla. 1st DCA 2000); Schumaker v. Town of Jupiter, 643 So. 2d 8, 9 (Fla. 4th DCA 1994), rev. denied, 654 So. 2d 919 (Fla. 1995). Likewise, a claim that Appellant's procedural rights were violated because the Commission and staff relied upon ten documents not made a part of the record at the hearing is rejected.[2] Virtually all of these documents relate to the development history of the property since 2004; they appear to be public records compiled by the Commission or County and readily available to Appellant; no prejudice was shown by the staff's failure to physically attach them to the staff report or request that they be made a part of the record at the meeting; and most were referred to for the purpose of giving background information on the property and were not necessary to reach a decision on the merits of the instant application. Finally, Appellant contends that its procedural rights were violated because the applicant submitted a "defective and

fraudulent site plan" with its application, which misrepresented the size of the restaurant, the dimension of the structures, and the parking calculations. However, the site plan for the new restaurant is governed by the MCU and related approvals, which are not subject to review in this proceeding. In other words, the site plan must comply with all requirements of those approvals, regardless of any other calculations, numbers, or drawings that accompanied the application. Thus, even if these procedural "irregularities" occurred, there was no prejudice to Appellant.

C. Competent Substantial Evidence

Appellant contends that there is no competent substantial evidence to support the Commission's findings that the issuance of the license comports with the criteria in section 3-6(e), M.C.C.[3] See Initial Brief, pp. 15-20. These findings must be sustained if there is any competent substantial evidence in the record to support them. Fla. Power & Light Co., 761 So. 2d at 1093.

The first criterion requires that due consideration be given to "[t]he effect of [the proposed] use upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises." § 3-6(e)(1), M.C.C. The record shows that the site has been used as a restaurant for decades; that the previous lessee held a 2COP license authorizing the sale of beer and wine to diners as well

as package sales; that the only change in usage will be the sale of mixed drinks, without package sales; and that the existing commercial use comports with all County land use and zoning requirements. Also, the character of the immediate neighborhood and surrounding properties is mixed use, including commercial retail, offices, marina, and residential uses, and a restaurant selling beer and wine has coexisted with these uses for many years. There is competent substantial evidence to support the Commission's finding that there will be no adverse impacts on the surrounding properties or immediate neighborhood.

Section 3-6(e)(2), M.C.C., requires that the Commission consider the "suitability of the premises in regard to the location, site characteristics and intended purpose." The record shows that the location and intended purpose will not change in any material manner, and that the site characteristics remain essentially the same. There is testimony that the vacant building has become an eyesore; that "shady people were starting to move into the neighborhood and take over that area"; and that Florida Keys has "cleaned it up." Also, the issuance of the license is conditioned on the applicant shielding the surrounding properties from any additional or replacement lighting that will be installed on the premises. While Appellant contends that the staff report failed to identify the size of the outdoor seating area for the restaurant, and that the decision will violate the MCU, the new restaurant must conform to the previously-approved

MCU and development agreement before operations begin. There is competent substantial evidence to support a finding that the premises are suitable for the issuance of a liquor license, given the location, site characteristics, and intended purpose.

Section 3-6(e)(3), M.C.C., requires that the Commission give due consideration to "[a]ccess, traffic generation, road capacities, and parking requirements." Based upon traffic studies prepared for similar applications, the traffic study approved under the MCU, and a review of the application by the County's traffic consultant (who opined that no additional trips would be generated by the license), the staff concluded that the liquor license would not cause adverse impacts on access, traffic generation, or road capacities. There is also testimony in the record that the sale of beer and wine "to go" by the former restaurant generated additional traffic and parking concerns in the area, which will no longer occur; and that this reduction in traffic should offset some, if not all, of any new traffic and/or parking impacts caused by serving liquor to restaurant diners. On the other hand, parking requirements are governed by a site plan previously approved with the MCU, which is not subject to review here. Notably, the license itself is expressly conditioned on Florida Keys "receiv[ing] a permit to install the parking" as shown on an approved site plan submitted in 2007, and/or to obtain an amendment or deviation to satisfy any changes

to that plan. In sum, there is competent substantial evidence to support the Commission's finding that this factor has been satisfied.

Section 3-6(e)(5), M.C.C., requires that the Commission give due consideration to "[c]ompliance with the county's restrictions or requirements and any valid regulations." The staff report indicates that as of the date it was prepared, the site and associated development are in compliance with all County requirements except one open code enforcement case, which must be resolved to the satisfaction of the County before operations can commence. There is competent substantial evidence to show that this factor was considered, and appropriately addressed, before the application was approved.

Appellant argues, however, that the case of JPM Investment Group, Inc. v. Brevard County Board of County Commissioners, 818 So. 2d 595 (Fla. 5th DCA 2002), rev. denied, 842 So. 2d 844 (Fla. 2003), requires that the Commission's decision be reversed, and that the matter be remanded back to the Commission for further consideration of factors (1) and (3). In JPM, the court affirmed a decision by Brevard County that a nonconforming restaurant could not add liquor service to existing service of beer and wine on the theory that this constituted an expansion of a nonconforming use, which was prohibited under the Brevard County Code. The Court went on to say that, as a matter of law, a change in activity from the serving of beer and wine to all

alcoholic beverages is an expansion of a "use." Id. at 599. But the building Florida Keys intends to occupy is not a nonconforming use, and even if the "use" on the property will be increased by serving hard liquor, the Commission has concluded, based upon the record presented below, that any increase in the intensity of the use will not adversely impact the surrounding neighborhood, access, traffic, or parking.

D. Departure from the Essential Requirements of the Law

Finally, Appellant contends that the Commission departed from the essential requirements of the law, that is, it failed to apply the correct law in nine respects when it approved the application. See Initial Brief, pp. 22-23.

Most of Appellant's arguments relate to the requirements of the development agreement and MCU, which were previously approved in 2007 and 2008, were never challenged, and are not subject to review here. The remaining arguments concern issues already addressed in this Final Order and are deemed to be without merit. The Commission did not depart from the essential requirements of the law when it adopted the Resolution.

DECISION

Based on the foregoing, Resolution No. P17-11, which approves Florida Key's application for a 5SRX Alcoholic Beverage Special Use Permit, is affirmed in all respects.

DONE AND ORDERED this 4th day of May, 2012, in Tallahassee, Leon County, Florida.

D. R. ALEXANDER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of May, 2012.

ENDNOTES

1/ During oral argument, the County cited a decision by the Monroe County Circuit Court holding that a special magistrate could decide constitutional issues, and address an alleged Sunshine Law violation, when reviewing decisions by the City of Key West Tree Commission. See Havlicek v. City of Key West Tree Comm., Order Granting Certiorari re: Discovery Depositions, Case No. 2009-CA-374-K (Fla. 16th Cir. Ct., Monroe County, May 13, 2009). As noted in this Final Order, however, the Monroe County Code itself limits DOAH's scope of review of Commission decisions and does not authorize consideration of due process claims.

2/ Appellant points out that ten items were referred to by the Commission and/or staff at the meeting but were not made a part of the record at that time. However, its Initial Brief only identifies nine. See Initial Brief, p. 21. These are the staff report to Major Conditional Use Resolution P69-07; Bufferyard Variance Resolution No. P68-07; Development Agreement Resolution 493-2007; Gaines Survey dated March 25, 2004; 2004/2005 Demolition Permits; 2006 Zoning Ordinance; 2006 Letter of Understanding; 2006 Resolution abandoning parts of First Street and Second Street; and 2010 Letter of Understanding.

3/ Appellant has challenged only the findings relating to factors (1)-(3) and (5).

COPIES FURNISHED:

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NOTICE OF RIGHTS

Pursuant to article VI, section 102-218(c), M.C.C., this Final Order is "the final administrative action of the county." It is subject to judicial review by common law petition for writ of certiorari to the circuit court in the appropriate judicial circuit.