STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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HOOVER PROPERTY ISLAMORADA,      )
LLC,                             )
                                 )
     Appellant,                  )
                                 )
vs.                              )   Case No. 12-3516
                                 )
MONROE COUNTY PLANNING           )
COMMISSION AND RESIDENTS FOR     )
PROTECTING COMMUNITY CHARACTER,  )
                                 )
     Appellees.                  )
_________________________________)
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FINAL ORDER

In this administrative appeal, Appellant, Hoover Property Islamorada, LLC (Hoover or Appellant), seeks review of Monroe County (County) Planning Commission (Commission) Resolution No. P37-12 (Resolution) rendered on September 26, 2012. The Resolution upheld an administrative decision by the County Planning Director denying Hoover's two applications for site work and renovation of an office building located at 91605 Overseas Highway, Tavernier. Hoover intends to lease the building to the United States Customs and Border Protection Marine Division and Immigration and Customs Enforcement Division (ICE), both a part of the Department of Homeland Security. After a two-volume Record of the underlying proceeding was filed by the Commission Clerk, Appellant submitted an Initial Brief in support of its appeal; the Commission and Residents for Protecting Community

Character (RPCC), an unincorporated association comprised of approximately 100 homeowners in the immediate area, filed separate Answer Briefs; and Appellant filed a Reply Brief. Oral argument was heard by video teleconference at facilities in Marathon and Tallahassee on May 16, 2012.[1] The parties waived their right to file proposed final orders.

ISSUES

Appellant raises three issues on appeal: (1) whether there is competent substantial evidence to support certain findings in the Resolution; (2) whether the Commission departed from the essential requirements of the law by incorrectly applying and interpreting the definition of "public buildings"; and (3) whether the Commission denied Hoover "a fair and impartial hearing" by basing its decision "on a plebiscite from a hostile crowd." For the reasons expressed below, the Commission's Resolution is affirmed.

BACKGROUND

The property in question is slightly less than one acre in size (0.96 acres) and lies on the south side of U.S. Highway 1 at mile marker 91.6 in Tavernier. From at least January 1967 until 2009, when it relocated to new offices across the street, the Florida Keys Electric Cooperative Association maintained administrative offices at the site. A 10,300 square-foot building on the site remains vacant at this time. The building directly abuts a long-existing, stable, single-family

neighborhood in the Tavernier Historic Preservation District, the only historic district in unincorporated Monroe County. Approximately 20 single-family residences are located within 300 feet of the subject property, as well as ten vacant lots that can be developed with additional single-family homes in the future.

The property is located within the Suburban Commercial (SC) land use zoning district, the purpose of which is "to establish areas for commercial uses designed and intended primarily to serve the needs of the immediate planning area in which they are located." § 130-43, Monroe County Code (M.C.C.). Among other uses, the SC zoning district specifically allows "office uses" and "public buildings" as of right. See §§ 130-93(a)(1) and 130-93(a)(6), M.C.C. Public buildings are defined as "office and service buildings, uses or facilities owned or operated by a governmental agency, including publicly and privately owned utilities, which are compatible with or provide services to the immediate vicinity in which the building is located." § 101-1, M.C.C.

On September 13, 2011, Hoover filed with the County two building permit applications for site work and interior remodeling of the vacant building. After the renovation is completed, the building will be leased to ICE.[2] Because of national security requirements, the actual building plans are sealed, but they were reviewed by the members of the Commission and its staff prior to the Commission's decision. As described

in a letter from the Real Estate Acquisition Division of the General Services Administration (GSA), the following activities will take place at the site:

> The proposed facility will serve agency professionals involved in the administrative and investigative tasks. The office will operate with customary business hours and will not routinely require after-hours occupation of the building. As described below, most of the uses within the building provide general office support for agency personnel. A small portion of the building is set aside to process individuals that are found within the immediate vicinity and that are under investigation for customs violations. These individuals are processed at this location for transportation to other US Customs facilities outside Monroe County. No individuals are housed at the facility or kept overnight.
>
> The building will be occupied with the following uses. The majority of the building, approximately 6,830 square feet (sf) will be made up of offices, conference rooms, break rooms, fitness facilities, lockers and bathrooms for agency employees. 1,249 sf. of the building will be used for storage including file storage and FEMA storage facilities. 1,318 sf. is made up of hallways, janitor rooms and an electrical closet. 761 sf. of the building will provide a processing room and two interview rooms. 234 sf. will provide two holding cells for individuals detained in the surrounding area while transportation to other U.S. Customs facilities outside of the area is arranged. Such transportation is provided on an as-needed basis.

R., 298-99.

After reviewing the applications, the Senior Director of Planning & Environmental Resources, Townsley Schwab, advised

Hoover by letter that the applications had "failed" (i.e., were denied) because (a) the proposed facility was not intended primarily to serve the needs of the immediate planning area, as required by section 130-43; and (b) based upon the plans submitted, the proposed facility was not compatible with the immediate vicinity, a requirement for qualifying as a "public building" under section 101-1. R., 296.

In making these determinations, Mr. Schwab determined that the "immediate planning area" is "Lower Key Largo (Tavernier)," as reflected on a comprehensive plan document, R., 300; and he used a 300-foot radius around the subject property as "the immediate vicinity." R., 290. Because the terms "immediate vicinity" and "vicinity" are not defined in the Code or comprehensive plan, a 300-foot radius was deemed to be appropriate as it is the typical standard for neighbor notification of pending special approvals. Id. The parties agree that one of Mr. Schwab's duties is to interpret Code provisions such as these. See § 102-21(b)(2)(h), M.C.C.

Hoover then timely filed an appeal to the Planning Commission, R., 151-156, which scheduled a hearing on August 31, 2012. At the appeal hearing, besides receiving legal advice and argument from all counsel, the Commission heard testimony by Joseph Haberman, the County Planning and Development Review Manager, who explained the staff report; Hoover's chief financial officer, Mr. Trickey; RPCC's professional land use planner,

Mr. Stuncard; and eighteen members of the public, all of whom opposed the applications. R., 1-139.

At the conclusion of the hearing, the Commission voted unanimously to deny the applications. This decision was memorialized by Resolution No. P37-12 issued on September 26, 2012. R., 146-150. The Resolution made the following findings of fact:

> 1. The subject property is located within two different Land Use District map boundaries. The parcel identified by real estate number 00506940.000000 is designated as Suburban Commercial (SC) and the parcels identified by real estate numbers 00506890.000000 and 00506860.000000 are designated as Improved Subdivision (IS); and
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> 2. The subject property is located within two different Future Land Use Map category boundaries. The parcel identified by real estate number 00506940.000000 is designated as Public Facilities (PF) and the parcels identified by real estate numbers 00506890.000000 and 00506860.000000 are designated as Residential Medium (RM); and
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> 3. There is an existing building on the subject property, located on the parcel identified by real estate number 00506940.000000; and
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> 4. There is not a building permit on file in the Building Department's records for the building's initial construction. The earliest building permit on file is Building Permit #12440, issued on January 17, 1967 for an addition to an existing building identified as "FLA. KEYS ELECT. COOP. OFFICE." Building plans within the file show the building in a manner near its current configuration; and

5. On September 13, 2011, the property owner applied for a building permit for site work associated with a proposed federal government building on private property (file #113-4530). The application was reviewed and consequently failed by Planning & Environmental Resources Department staff; and

6. Also on September 13, 2011, the property owner applied for a building permit for interior remodeling of an existing building associated with a proposed federal government building on private property (file #113-4533). The application was reviewed and consequently failed by Planning & Environmental Resources Department staff; and

7. During review of file #113-4530, the Planning Department staff determined that prior to approval of any building permit affecting the appearance of the site, a special certificate of appropriateness by the Historic Preservation Commission would be required; and

8. On November 9, 2011, an agent of the property owner applied for the required special certificate of appropriateness; and

9. On December 9, 2011, the Planning & Environmental Resources Department issued a letter requesting additional information for staff to review the special certificate of appropriateness application and building permit applications; and

10. In the April 24, 2012 letter, following a review by Planning & Environmental Resources Department staff, the Senior Director of Planning & Environmental Resources Department determined that the County is unable to approve the building permit applications for the following reasons:

(a) The property is located within a Suburban Commercial (SC) land use district. According to Monroe County Code Section 130-43, "the purpose of the SC district is to

establish areas for commercial uses designed and intended primarily to serve the needs of the immediate planning area in which they are located." Based on the plans submitted, the proposed facility does not fulfill this purpose, as the proposed facility is not intended primarily to serve the needs of the immediate planning area of Lower Key Largo (Tavernier), designated as Planning Area/ Enumeration District #15 in Monroe County Year 2010 Comprehensive Plan Technical Document Chapter 2.2.

(b) Public buildings may be permitted in the SC district. As defined in Monroe County Code Section 101-1, "public buildings means [sic] office and service buildings, uses or facilities owned or operated by a governmental agency, including publicly and privately owned utilities, which are compatible with or provide services to the immediate vicinity in which the building is located." Based on the plans submitted, the proposed facility is not compatible with the immediate vicinity; and

11. An agent of the appellant responded to the December 9, 2011 request by providing additional information. Following a further review of the initial and additional information, on April 24, 2012, the Planning & Environmental Resources Department issued a letter stating that the Department was unable to approve the building permit applications; and

12. On May 24, 2012, the appellant filed an application for an administrative appeal to the Planning Commission, requesting that the Planning Commission overturn the decisions by the Senior Director of Planning & Environmental Resources; and

13. As set forth in §102-21(b)(2)h. of the Monroe County Code, the planning director has the authority and duty to render interpretations of the Monroe County Comprehensive Plan and the Monroe County Land Development Code.

> 14. Pursuant to §102-185 of the Monroe County Code, the Planning Commission shall have the authority to hear and decide appeals from any decision, determination or interpretation by any administrative official with respect to the provisions of the Land Development Code and the standards and procedures hereinafter set forth, except that the Board of County Commissioners shall hear and decide appeals from administrative actions regarding the floodplain management provisions; and
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> 15. Planning & Environmental Resources Department staff recommended to uphold the decision of the Senior Director of Planning & Environmental Resources; and
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> 16. In the August 22, 2012 staff report, following a further review by Planning & Environmental Resources Department staff, the Senior Director of Planning & Environmental Resources Department determined that the County is unable to approve the permit applications for the additional reason:
>
> In 1993, the facility on the property was owned and operated by a public utility. As a result, the County applied the Public Facilities (PF) designation. Monroe County Comprehensive Plan Policy 101.4.13 states the principal purpose of the Public Facilities (PF) land use category is to provide for land owned by public utilities and service providers. The current owner is not a public utility or service provider. In addition, the proposed occupant is not a public utility or service provider. Therefore, the proposed use is inconsistent with Policy 101.4.13[.]

R., 147-149. It also included the following pertinent conclusions of law:

> 2. Based on the Monroe County Code, the information provided within the sworn testimony, documents, photographs and other documentation provided by Monroe County, the appellant and public, the proposed facility

> would not be consistent with the purpose as set forth in § 130-43 of the Monroe County Code;
>
> 3. Based on the Monroe County Code, the information provided within the sworn testimony, documents, photographs and other documentation provided by Monroe County, the appellant and the public, the proposed facility would not be consistent with the definition of public facility as set forth in § 101-1 of the Monroe County Code;

R., 150. Although the staff report recommended a third reason for denying the applications -- that the proposed use was inconsistent with the Future Land Use Map -- the Commission voted to uphold the denial of the applications for the reasons cited in the two conclusions.

On October 26, 2012, Hoover timely appealed that decision. R., 142-145. The filing of the appeal automatically stays the effectiveness of the Resolution pending the outcome of this appeal. § 102-220, M.C.C.

LEGAL ANALYSIS

Pursuant to a contract between the Division of Administrative Hearings (DOAH) and the County, DOAH has jurisdiction to consider this appeal under section 102-213. The hearing officer "may affirm, reverse or modify the order of the planning commission." § 102-218(b), M.C.C. The hearing officer's order 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. Thus, DOAH's review of a Commission decision is limited by the Code to a two-part review: whether the Commission's decision is based on competent substantial evidence, and whether the decision departed from the essential requirements of the law. Unlike the three-tier judicial review of final administrative action by a circuit court, procedural or due process violations may not be considered. See, e.g., Osborn v. Monroe Cnty. Planning 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"). Therefore, an argument by Appellant that it was denied a fair and impartial hearing due to "[t]he hostile, ill-informed, but unanimous opposition" of the public witnesses is not within the scope of this appeal.

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). So long as there is competent substantial evidence supporting the findings, both implicit and explicit, made by the Commission in reaching its decision, they will be sustained. 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). In determining whether the Commission's decision is supported by competent substantial evidence, the hearing officer cannot 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. Thus, it is immaterial that the record contains evidence supporting the view of the Appellant so long as there is any competent substantial evidence supporting the findings made by the Commission in reaching its decision. Fla. Power & Light Co., 761 So. 2d at 1093.

These concepts are particularly relevant here because there are conflicts in the evidence and the Commission resolved these conflicts contrary to Hoover's position.

A. Point I

Appellant contends that the Resolution is not supported by competent substantial evidence in three respects: the Commission erroneously assumed that the lessee will be operating a "detention facility" on the site; a repealed comprehensive plan map was used to determine the "immediate vicinity" around the property; and the Commission relied on improper, unsubstantiated comments from members of the public to support its decision. At oral argument, Appellant withdrew its contention that a repealed map was improperly used to determine the immediate vicinity around the property.

Hoover first asserts that the County incorrectly assumed that the proposed use of the building was a "detention facility." This argument is directed at a determination in the staff report, and relied upon by the Commission, that the facility could not qualify as a public building under section 101-1 because "any facility which involves the detention of individuals would not be compatible with the immediate single-family area."[3] R., 291. Contrary to Appellant's claim, however, there is no finding in the Resolution that the intended use is a "detention facility."

While the exact plans of the facility are sealed due to national security requirements, the record shows that the

proposed facility contains more than one holding room, an armory, and a secure loading bay. R., 351. The general public cannot access the property. In a letter supporting the applications, the GSA acknowledged that a "small part of the building is set aside to process individuals found within the immediate area and that are under investigation for customs violations"; that the building will contain "a processing room and two interview rooms"; and that there will be "two holding cells for individuals detained in the surrounding area while transportation to other U.S. Customs facilities outside of the area is arranged." R., 298-299. Also, Hoover's chief financial officer testified that "[i]f a suspect is brought into the facility, they will be interviewed[,]" a process that "takes about three to five hours, after which the suspect may be taken to the county jail, to a federal facility or released." R., 31.

At the same time, there was testimony by RPCC's expert planner describing the nature and character of the immediate vicinity as a "small town" residential area, designated as a historic district by the County because of its unique characteristics, and who opined that the intended use would not be compatible with the immediate vicinity. The special character of the neighborhood was further corroborated by the testimony of various residents. Notably, the building is separated from the closest single-family homes by only "a ten-foot-wide street." R., 69. Therefore, the Commission had competent substantial

evidence to support its determination that the proposed facility would "not be compatible with the immediate vicinity." R., 148-149. The fact that there is contrary testimony by Hoover's representative that the facility could coexist with the neighborhood is immaterial. Haines City Cmty. Dev., 658 So. 2d at 530.

Appellant also contends that the Commission's decision was improperly influenced by public comments at the hearing, which were based on inaccurate information and not supported by any evidence. Appellant cites to testimony by members of the public who characterized the facility as a "jail," "detention center," and the like, claimed that it would generate nighttime traffic, disturbances, and high intensity illumination, and made other unsubstantiated assertions.

As pointed out by the County, the Commission has no control over the content of public comments. Under Appellant's logic, the Commission would be forced to vet each speaker before a meeting, allow only those it considered to be "informed" to offer comments, and prevent "uninformed" members of the public from participating. However, the Commission's responsibility is to afford all participants due process, place the proper weight, if any, upon the testimony of public speakers, and base its decision on competent substantial evidence. See Carillon Cmty. Residential v. Seminole Cnty., 45 3d 7, 10 (Fla. 5th DCA 2010)(participants in quasi-judicial proceeding are entitled to

some measure of due process). These same due process measures are embodied in CS/CS/SB 50, which creates new section 286.0114, Florida Statutes, requiring that members of the public be given a reasonable opportunity to be heard by a board or commission before it takes official action on a proposition. If approved by the Governor, the law takes effect October 1, 2013.

Appellant cites several cases which hold that opinions of neighbors, without more, do not constitute competent substantial evidence. See, e.g., City of Apopka v. Orange Cnty., 299 So. 2d 657, 660 (Fla. 4th DCA 1974)(error to deny special exception application where evidence in opposition to application was in the main laymen's opinions unsubstantiated by any competent facts); Pollard v. Palm Bch. Cnty., 560 So. 2d 1358, 1359-60 (Fla. 4th DCA 1990)(Stone, J., dissenting)(lay witnesses' speculation about potential "traffic problems, light and noise pollution," and general unfavorable impacts of a proposed land use are not considered competent substantial evidence). But cf. Metro. Dade Cnty. v. Section II Prop. Corp., 719 So. 2d 1204, 1205 (Fla. 3d DCA 1998), rev. denied, 735 So. 2d 1287 (Fla. 1999)(fact-based testimony of neighbors regarding incompatibility of project with surrounding neighborhood, coupled with site plan and drawings, constituted competent substantial evidence to support denial of exception).

The Commission's decision was not based solely or even primarily on the comments of the lay witnesses, as Appellant

suggests. Among other things, the Commission relied on a detailed staff report, the building plans submitted by Hoover, the expert testimony of Mr. Haberman and Mr. Stuncard, and the testimony of Hoover's chief financial officer, who candidly acknowledged that the facility contained holding cells, interview room, and armory, and that suspects would be detained and held for questioning for up to five hours. Even if the public comments deemed to be objectionable by Appellant are disregarded in their entirety, there is ample competent substantial evidence in the record to support the challenged findings.

B. Point II

Hoover argues that the Commission departed from the essential requirements of the law in two respects: by misinterpreting the definition of "public buildings" in section 101-1; and by finding that the provision of services must be exclusively for the "immediate vicinity" in which the building is located, while forbidding the provision of services in additional areas, including the "immediate planning area" in section 130-43.

"Public buildings" are defined in section 101-1 as:

> office and service buildings, uses or facilities owned or operated by a governmental agency, including publicly and privately owned utilities, which are compatible with or provide services to the immediate vicinity in which the building is located.

All parties agree that the facility will be operated by a governmental agency, thereby satisfying the first part of the definition. Appellant contends, however, that if the facility is compatible with the immediate vicinity, <u>or</u> if it provides services to the immediate vicinity, the requirements of the definition have been met.[4] Therefore, Appellant argues that even if the Commission's determination that the facility is not compatible with the neighborhood is sustained, the Commission must still issue a permit because the facility will provide services to the immediate vicinity.

By concluding that the intended use "would not be consistent with the definition of a public facility [building] as set forth in § 101-1," the Resolution implicitly found that the facility is not compatible with, nor will it provide services to, the immediate vicinity. R., 150. This conclusion is drawn from fact-based evidence that the facility's primary purpose is to serve as a staging area for agents to apprehend (both on water and land), temporarily detain, and process individuals suspected of engaging in a wide range of unlawful activities. Notably, Hoover's witness described ICE's "primary mission" as promoting "homeland security and public safety through the criminal and civil enforcement of federal laws governing border patrol, customs, trade, and immigration." R., 24. None of these activities can be reasonably construed as providing a specific benefit or service to those persons residing within a 300-foot

radius of the building, as contemplated by the Code. There is competent substantial evidence to support the Commission's determination that the proposed facility is inconsistent with both components of section 101-1. The Commission did not misapply or misconstrue the provision.

Appellant also points out that there are inconsistent geographic limitations in section 130-43 ("immediate planning area") and section 101-1 ("immediate vicinity"); and that the Commission erroneously found that the provision of services must be exclusively for the immediate vicinity in which the building is located. Appellant argues that the two conflicting geographic limitations should be harmonized, and so long as the public building provides services to both the immediate planning area and the immediate vicinity, the intended use satisfies the requirements of the Code.

To begin with, Appellant defines the immediate planning area as the entire Upper Keys stretching from the Channel 5 Bridge to the Dade County line, including the Village of Islamorada and the Towns of Tavernier and Key Largo. This area is much larger than the immediate planning area of "Lower Key Largo (Tavernier)" found to be appropriate by the Commission, a finding that is clearly supported by the record. Second, the Commission did not determine that the provision of services must be exclusively for the immediate vicinity in which the building is located. To the contrary, it specifically concluded that "the proposed facility

would not be consistent with the purpose as set forth in § 130-43." R., 150. This conclusion is drawn from fact-based evidence that the proposed "commercial" uses, described above, were not intended primarily to serve the needs of the immediate planning area of Lower Key Largo (Tavernier), as required by section 130-43. The Commission did not depart from the essential requirements of the law in construing the relevant provisions in this fashion.

C. Point III

Finally, Appellant contends that the "Commission committed error by basing its decision on the improper influence of a hostile crowd." To the extent this argument raises a due process concern, i.e., that Hoover was not afforded a fair and impartial hearing, the issue cannot be raised in this appeal. See § 102-218(b), M.C.C. To the extent Appellant is arguing that the Commission relied on unsubstantiated testimony to support its decision, this argument has been addressed in Point I.

A review of the record shows that eighteen members of the public made comments to the Commission. The comments were given in an orderly fashion, were generally brief, did not incite fellow speakers, contain threats, or rise to a level that would require involvement by law enforcement personnel.

Appellant argues, however, that the Commission relied on "crowd sentiment" and was improperly influenced by a "hostile" audience when it made its decision.[5] For example, it cites a

comment by one Commissioner during deliberations that it was "incredibly important to take into account . . . "what [the neighborhood] views are on compatibility," R., 129, while another Commissioner stated that he was "strongly swayed by the community's input." R., 131. But when the Commission finally voted on the matter, all Commissioners confirmed that their decision to uphold the denial of the applications was based on Mr. Schwab's letter, the evidence presented at the hearing, the building plans, and the testimony of all participants, including two experts. Id. The argument is rejected.

DECISION

Based on the foregoing, Resolution No. P37-12 is affirmed in all respects.

DONE AND ORDERED this 23rd day of May, 2013, 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 23rd day of May, 2013.

ENDNOTES

1/ After oral argument, Appellant filed a Notice of Supplemental Authority containing 12 pages of land use maps taken from the County's comprehensive plan, ostensibly to show that the entire Upper Keys should be used as the "immediate planning area."

2/ Since 1986, the ICE offices have been located approximately five miles south of the subject property. R., 24.

3/ While disputing the underlying premise that the facility "detains" individuals, Hoover's counsel agreed that "any facility which involves the detention of individuals would not be compatible with the single-family area." R., 19.

4/ The provision is poorly worded. As written, an intended use by a governmental agency could be clearly incompatible with the immediate vicinity, yet be entitled to a permit if it provides services to the same area. Appellant suggests that under those circumstances, the only way to deny a permit would be for the Commission to demonstrate that the intended use would be adverse to the public interest, an issue not raised here.

5/ Appellant points out that "[d]uring the hearing, a show of hands in opposition was allowed," and this influenced the Commission's decision. Initial Brief at 31. However, this was in response to a member of the public who, while testifying, asked for a show of hands of the people in the audience who opposed the applications; the request was not posed by a Commissioner. R., 82. The number of persons, if any, who raised their hands is unknown. There is no evidence that this action influenced the Commissioners in their decision-making.

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.