STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BLUEWATER KEY RV OWNERSHIP PARK
PROPERTY OWNERS ASSOCIATION,
INC.,

Appellant,

vs. Case No. 13-1245

MONROE COUNTY PLANNING
COMMISSION,

Appellee.
_____/

FINAL ORDER

Pursuant to section 102-185(f), Monroe County Code (M.C.C.), Appellant, Bluewater Key RV Ownership Park Property Owners Association, Inc., (Bluewater or Appellant), seeks review of Monroe County Planning Commission (Commission) Resolution No. P07-13, which was passed and adopted by the Commission on January 30, 2013, and rendered on March 1, 2013. The Appeal to the Hearing Officer was filed by Bluewater with the Monroe County Planning & Environmental Resources Department on February 28, 2013.

Resolution No. P07-13 denied Bluewater's appeal of a Letter of Development Rights Determination that had been issued by the Monroe County Growth Management Division on April 25, 2012. The Letter of Development Rights Determination determined that three improved recreational vehicle lots located on property owned by

Bluewater, referred to as worker camper sites, were not lawfully established at the time of the approval of the underlying recreational vehicle park plat.

A three-volume Record of the underlying proceeding, consisting of pages 000001 through 000440, was filed on April 15, 2013. Bluewater filed a Motion for Extension of Time to File Initial Brief, which was granted, and the Initial Brief was thereafter timely filed on May 13, 2013. The Commission filed a Motion for Extension of Time to File Answer Brief, which was granted, and the Answer Brief was thereafter timely filed on June 17, 2013. Bluewater filed a Motion for Extension of Time to File Reply Brief, which was granted, and the Reply Brief was thereafter timely filed on June 28, 2013. Oral argument was heard by video teleconference at facilities in Marathon and Tallahassee on September 30, 2013. The parties waived their right to file proposed final orders.

ISSUES

Bluewater raises four issues on appeal: (1) whether the Commission erred in failing to recognize that the three disputed recreational vehicle lots were auxiliary "worker camper" sites that were not subject to individual permitting under the land development code; (2) whether the Commission failed to apply an applicable statute of limitations; (3) whether the Commission is estopped from denying approval for the three disputed recreational vehicle spaces under the 2003 "McGarry letter"; and

(4) whether the Commission erred in retroactively applying the 1992 Monroe County Residential Rate of Growth Ordinance (ROGO), to activities approved by the 1989 plat approval. For the reasons expressed below, the Commission did not depart from the essential requirements of the law when it rendered Resolution No. P07-13.

BACKGROUND

The Bluewater Key RV Resort is located at 2950 U.S. Highway 1 on Saddlebunch Key in Monroe County, Florida. The Bluewater Key RV Resort came into existence as the Saddlebunch RV Park, envisioned and developed in the late 1980s by Lloyd Good. For purposes of this Final Order, the property will be described as the "RV Park" or "Bluewater," regardless of its name at the time of a described event.

Near the front gate of the RV Park, on common parcels known as Parcel C and Parcel D, are improved spaces for three recreational vehicles (RVs) to park and hook up to Bluewater services. Those three lots form the basis for the dispute herein.

The Commission asserts that the three lots are unpermitted RV lots and, since they have never been permitted, are subject to the ROGO.

Bluewater asserts that the lots are, and have been, used by persons providing upkeep of the RV Park common areas, and services to Bluewater's lot owners, and that those "worker

camper" sites constitute accessory uses for the Bluewater property. Alternatively, Bluewater asserts that the lots were known to the Commission at the time of the 1989 plat approval thus preventing the Commission from taking action regarding the lots under a statute of limitations; that the lots are the subject of an "amnesty" agreement memorialized by a 2003 "McGarry letter"; and that the application of the 1993 ROGO to the lots would constitute an unlawful retroactive application of the ROGO.

Evidence in the Record of the Commission Hearing

The Commission's position largely hinges on the lack of any contemporaneous evidence of the existence of the disputed worker camper lots, and the lack of any effort or intent on the part of Mr. Good to identify or account for the worker camper lots during the permitting process. Thus, according to the Commission, the lots were never permitted, do not lawfully exist, and may not be rebuilt or be exempt from the ROGO.

Preliminary approvals and notices for the development of the RV Park included the following:

- On April 6, 1987, the Utility Board of the City of Key West provided Mr. Good with a notice of availability of electrical service sufficient to serve a recreational park of 80 units.

- On June 22, 1987, an impact fee summary was prepared for the proposed RV Park. The fees assessed included those for transportation, community park, library, police, and solid waste

services. Impact fees were assessed for 80 transient residential units, and one permanent residential unit. No impact fees were assessed for the worker camper lots.

- On July 28, 1987, a Certificate of Compliance with the Monroe County comprehensive plan was issued to Mr. Good for an "80 Unit RV Park." The Certificate of Compliance allowed Mr. Good to proceed with obtaining other necessary permits for the development of the RV Park.

- Prior to June 1987, Mr. Good submitted a Notice of Intent to Construct Works Pursuant to General Permit to the South Florida Water Management District. The works to be constructed or altered under the general permit were "80 improve[d] sites for r/v, pool, laund[]ry (5 washers, 5 dryers) and a recreation room (Building)." No mention was made of additional permanent, improved RV lots to serve the worker campers.

Over the course of the following two years, a number of building permits were issued by the Monroe County Building Department for, among other things, the construction of a sewage treatment plant and associated mains and facilities, site preparation, road paving and drainage, and the provision of facilities for the electrical service. Each of the permits identified the improvements as serving an 80-unit RV Park.

On July 20, 1988, Mr. Good submitted a Monroe County Application for Plat Approval, Vacation, or Resubdivision for the Saddlebunch Recreational Vehicle Park, which was described as

consisting of 80 RV lots. Aside from the 80 RV lots, the application identified "Other" areas as "Streets," "Park," and "Utility Areas." No mention was made of the worker camper lots.

On April 27, 1989, the Commission, by its adoption of Resolution 01-89, approved the plat for the RV Park, authorizing the creation of 80 RV lots.

On September 21, 1989, Mr. Good wrote the Commission to discuss the common areas associated with the RV Park, and the extent to which they should be considered as accessory uses exempt from impact fees. In his letter, Mr. Good discussed a pool and recreation building as being accessory uses for the RV Park. The recreation building was described as containing "a manager's apartment, a laundry room for the lot owner's use, two bathrooms, and a large meeting hall. The use is clearly accessory and necessary to the RV spaces and will not constitute an increase in intensity or use." Mr. Good concluded his letter by stating that:

> Lastly this recreation building, pool and manager's apartment were permitted as of right as accessory uses under section 9.5-244(a)(3) and constitute a necessary component of the RV Park itself. Without this type of structure or use the Recreational Vehicle Park would not function
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> within its purpose . . . as an area "suitable for development of destination resorts for recreational vehicles.
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> I request that the Rec building, pool and manager's apartment be exempt from impact

> fees as accessory uses under the plan, and submit that any impact fees assessed and payable for each of the 80 RV spaces covers all reasonable impacts for these uses.

No mention was made of the worker camper lots as accessory uses. No provision was made to account for reasonable impacts of the worker campers or for any increase in intensity or use at the RV Park occasioned by the occupancy of the worker campers.

Finally, on September 27, 1989, the Monroe County Building Department issued a Certificate of Occupancy for the RV Park. The Building Permit and fee schedule attached thereto makes note of the 80 transient residential (RV) spaces and the permanent residential unit, but makes no mention of the improved worker camper lots.

McGarry Letter

In 1993, Timothy McGarry, the Monroe County Director of Growth Management, along with a number of county officials, met with residents of the RV Park regarding unpermitted improvements to the RV lots that had been made by some of the residents. The attendees toured the property.

On May 1, 2003, Mr. McGarry sent a letter to the "Bluewater Key RV Resort Property Owner." The emphasis of the McGarry letter was on appurtenant structures associated with the 80 RV lots, i.e., tiki huts, storage facilities, walkways, spas, and the like. There was no discussion of any of the RV Park common areas.

Bluewater asserts that the McGarry letter, in and of itself, created an amnesty for any unpermitted improvements. To the contrary, the McGarry letter advised owners to contact the Growth Management Division to set up an appointment for an inspection of unpermitted improvements in order to identify and provide a mechanism for their approval. If an owner failed to contact the county or take steps to bring their property into compliance by June 30, 1993, "the County will follow up with further inspections and pursue possible code enforcement action, if warranted." As stated by Joe Haberman, the Monroe County Planning and Development Review Manager, the letter had the effect of acting as a "stay of prosecution" rather than a blanket amnesty.

On May 3, 2003, Bluewater acknowledged receipt of the McGarry letter, and noted that "each owner has until June 30th to contact the county to set up an inspection of their lot for possible code non-compliance." The letter continued with Bluewater indicating that it would "send a written copy (of the McGarry letter) to each owner so that they can make their own determination of what course of action they want to pursue."

There is no evidence in the record of this proceeding to suggest that Bluewater ever contacted Monroe County to advise it of the worker camper lots. Thus, the remedies for unpermitted

improvements provided in the McGarry letter are not applicable or available to remedy any unpermitted improvement of the worker camper lots.

Bluewater argues that the worker camper lots were open and obvious to anyone on the property. Thus, the inspectors should have seen the worker campers, and cited the owner of the RV Park for a violation had there been any problem. The evidence supports a finding that the worker camper lots were improved as early as 1987 and, for some of the time, were occupied by RVs. However, the record lacks evidence of any specific information provided by Bluewater to the inspectors regarding the use or permanence of the RVs. Certainly during the 1987-1989 period of construction, it would not have been out of the ordinary for there to have been any number of construction trailers and vehicles on the site. After that time, the evidence provided to the Commission was that the worker campers came and went. In the absence of some actual notice to Monroe County regarding the use and permanence of the worker campers, knowledge of the use cannot be attributed by supposition.

Chapter 138, Article II of the Monroe County Code establishes the ROGO. Section 138-21 generally provides that the ROGO applies to all residential dwelling units for which a building permit is required, and for which building permits were not issued prior to July 13, 1992. Section 138-22 establishes

types of development not affected by the ROGO, none of which are applicable in this case.

On April 23, 2010, Bluewater filed a Request for a Letter of Development Rights Determination, and requested acknowledgement from Monroe County that the Bluewater RV Park included 85 residential units that were lawfully in existence and therefore exempt from further allocation decisions under the ROG. The 85 dwelling units included the 80 RV lots that were created and sold to individuals, the permanent manager's apartment, an 81st RV lot,[1/] and the three worker camper lots.

Bluewater contends that the disputed worker camper lots were subject to the various building permits issued for the RV Park between 1987 and 1989, which resulted in the September 27, 1989, issuance of the Certificate of Occupancy. Bluewater asserts that the Commission erred in determining that the worker camper lots were not lawfully permitted or approved, and are, therefore, not exempt from the ROGO permit allocation system, as reflected in Resolution No. P07-13.

On April 25, 2012, the Senior Director of Planning and Environmental Resources issued the Letter of Development Rights Determination which found that the RV Park lawfully consisted of 80 transient residential dwelling units and one permanent residential dwelling unit, and which determined that the worker campers lots, having not been lawfully established, were not exempt from the ROGO permit allocation system.

On May 15, 2012, Bluewater timely appealed the Letter of Development Rights Determination to the Commission. Bluewater filed a number of memoranda in support of its appeal.

The staff of the Growth Management Division prepared a report dated January 13, 2013, in which it continued to support the Letter of Development Rights Determination, and the denial of the exemption of the worker camper lots from the ROGO permit allocation system.

The hearing was set for January 30, 2013, and was properly noticed by Bluewater. On January 30, 2013, the Commission conducted a hearing on the appeal.

At the hearing, the Commission was represented by Steve Williams of the Monroe County Attorney's Office. Rey Ortiz, the Planning and Biological Plans Examiner Supervisor, presented the staff report to the Commission. Counsel for Bluewater was allowed to question staff, and to make a presentation on behalf of Bluewater. The Transcript of the hearing notes several "unidentified speakers," who by the context of the statements appeared to be owners of one or more of the 80 permitted lots in the RV Park. Testifying at the hearing were members of the Commission staff, including Mr. Ortiz and Joe Haberman; Richard Nageotte, an RV lot owner and member of the Bluewater board of directors; Ron LaCroix, an RV lot owner and vice-president of Bluewater; Suellen Schwobel, an RV lot owner; Wayne Wuerl, an RV lot owner; Alicia Putney, who appeared to be an RV lot owner;

William Ogle, who owned several RV lots; Skip Oetzel, an RV lot owner; Mike Hecht, who read a letter from Mr. Nageotte into the record; Carl Schwobel, an RV lot owner and president of Bluewater; and Joyce Newman, a resident of Big Pine Key.

At the conclusion of the hearing, the Commission voted unanimously to deny to appeal and uphold the April 25, 2012, Letter of Development Rights Determination. That decision is memorialized in Resolution No. P07-13 rendered on March 1, 2013.

The Resolution made the following findings of fact:

> 1. The administrative decision appealed is a determination that three existing RV spaces on part of Tract D were not lawfully established. In addition, the appellant asserted that the County's "statute" of limitations would have barred the County from requiring an after-the-fact "building permit' four years after the RV's arrived at the site; and
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> 2. RV spaces are a type of *dwelling unit*. As defined in Monroe County Code Section 101-1, a *dwelling unit* is one (1) or more rooms physically arranged to create housekeeping establishment for occupancy by one (1) family with separate toilet facilities. Further, as defined in Monroe County Code Section 138-19(a), a *residential dwelling unit* is a dwelling unit as defined in Monroe County Code Section 101-1, and expressly includes the following other terms also specifically defined in Section 101-1: lawfully established hotel room, campground spaces, mobile homes, transient residential units, institutional residential units (except hospital rooms) and live-aboards. Further, RV spaces are *transient residential units.* As defined in Monroe County Code Section 101-1, a *transient residential unit*, is a *dwelling unit* used for transient housing such as a hotel or motel room, or space for

parking a recreational vehicle or travel trailer; and

3. There are no records in the Growth Management Division's file approving the existence or right to have any [sic] the subject RV spaces; and

4. Pursuant to Monroe County Code Section 110-140, a building permit is required for any work specified in Monroe County Code Chapter 6 (Buildings and Construction) and any change in the intensity, density, or use of land authorized as a permitted as-of-right use under [the Land Development Code]. A RV space affects intensity, density, and use. Therefore, a building permit was required to establish any additional RV spaces; and

5. RV spaces established without the benefit of permit(s) are not considered lawful and not exempt from the Residential Rate of Growth Ordinance (ROGO) permit allocation system; and

6. On April 23, 2010, Bluewater Key RV Ownership Park Owners Association, Inc. applied to the Planning & Environmental Resources Department for a Request for a Letter of Development Rights Determination; and

7. On April 25, 2012, the Senior Director of Planning & Environmental Resources, Townsley Schwab, issued a Letter of Development Rights Determination to Bluewater Key RV Ownership Park Property Owners Association determining that only 80 transient residential dwelling units (in the form of RV spaces on Lots 1-80) and one (1) permanent residential dwelling unit (in the form of an apartment) are lawfully-established; and

8. In the April 25, 2012 Letter of Development Rights Determination, it was specifically determined that there was not adequate evidence that the three RV spaces on part of tract D were lawfully established; and

> 9. Pursuant to Monroe County Code Section 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 regulations of the Monroe County Code, except for appeals regarding the floodplain management provisions . . . .

The Resolution made the following Conclusions of Law:

> 1. The administrative appeal was processed and heard by the Planning Commission in a manner consistent with the provisions of the Monroe County Code; and
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> 2. Based on the information provided in the April 25, 2012 Letter of Development Rights Determination (and attachments thereto), the three RV spaces, or worker camper sites, were not lawfully established with an approved permit(s) as required by the Land Development Code. There are no records in the Growth Management Division's files approving the existence or right to have any of the subject RV spaces. Therefore, as the RV spaces were established without the benefit of permit(s), and they are not considered lawful and they are not exempt from the Residential Rate of Growth Ordinance (ROGO) permit allocation system; and
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> 3. Regarding the Appellant's reference to a statute of limitations, the provision is related to Code Compliance and, as such, not a relevant consideration to the subject administrative decision. . . .

The Resolution concluded by resolving that:

> The preceding Findings of Fact and Conclusions of Law support [the Commission's] decision to [sic] denying an administrative appeal by Bluewater Key RV Ownership Park Property Owners Association and affirming an administrative decision by Townsley Schwab, Senior Director of Planning & Environmental

> Resources, that the three (3) recreational vehicle spaces, referred to by [Bluewater] as worker camper sites, were not lawfully established and established without the benefit of permit(s) on property legally described as part of Tract D, Saddlebunch Recreational Vehicle Park (Plat Book 7, Page 51), Monroe County, Florida, having real estate number 00120490.000184.

On February 28, 2013, Bluewater timely appealed the Commission's decision.

## LEGAL DISCUSSION

Pursuant to a contract between the Division of Administrative Hearings (DOAH) and Monroe County, DOAH has jurisdiction to review by appeal the action of the Commission pursuant to section 102-213, M.C.C.

In rendering a final order, the undersigned is subject to the following standard of review:

> Within 45 days of oral argument, the hearing officer shall render an order that may affirm, reverse or modify the order of the planning commission. 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.

§ 102-218(b), M.C.C.

The standard of review under section 102-218(b), M.C.C., is substantially similar to the certiorari standard applied by Article V courts. That standard has been applied to mean "that 'applied the correct law' is synonymous with 'observing the essential requirements of law.'" Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 530 (Fla. 1995); see also Miami-Dade Cnty. v. Omnipoint Holdings, Inc., 863 So. 2d 195, 199 (Fla. 2003); Wolk v. Bd. of Co. Comm'rs, 117 So. 3d 1219, 1223-1224 (Fla. 5th DCA 2013). The correct law may derive from the Monroe County Code of Ordinances. Wolk v. Bd. of Co. Comm'rs, 117 So. 3d at 1224.

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); see also Town of Manalapan v. Gyongyosi, 828 So. 2d 1029, 1032 (Fla. 4th DCA 2002)("The 'competent substantial evidence' standard of review . . . 'is tantamount to legally sufficient evidence.'"). So long as there is competent substantial evidence supporting the findings made by the Commission in reaching its decision, those findings 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). Whether the record also contains competent substantial evidence to support a different result is irrelevant. Clay Cnty. v. Kendale Land Dev., Inc., 969 So. 2d 1177, 1181 (Fla. 1st DCA 2007). The scope of review regarding the competent substantial evidence standard requires only that the undersigned:

> review the record to assess the evidentiary support for the agency's decision. Evidence contrary to the agency's decision is outside the scope of the inquiry at this point, for the reviewing court above all cannot reweigh the "pros and cons" of conflicting evidence. While contrary evidence may be relevant to the wisdom of the decision, it is irrelevant to the lawfulness of the decision. As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended.

Dusseau v. Metro. Dade Cnty. Bd. of Co. Comm'rs, 794 So. 2d 1270, 1276 (Fla. 2001).

I. Whether the three disputed recreational vehicle spaces were auxiliary "worker camper" sites that were not subject to permitting.

Section 138-19(a), M.C.C., establishes definitions to be applied to the ROGO as follows:

> Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
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> * * *
>
> *Lawfully established for ROGO/NROGO exemption* means a residential dwelling unit or nonresidential floor area that has received a permit or other official approval from the

> division of growth management for the unit and/or nonresidential floor area.
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> * * *
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> *Residential dwelling unit* means a dwelling unit as defined in section 101-1, and expressly includes the following other terms also specifically defined in section 101-1: rooms, hotel or motel, campground spaces, mobile homes, transient residential units, institutional residential units (except hospital rooms) and live-aboard vessels.

Section 101-1, M.C.C., establishes definitions to be used in construing chapter 138, Article II, which include the following terms that are pertinent to this proceeding:

> *Accessory use* or *accessory structure* means a use or structure that:
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> (1) Is subordinate to and serves an existing principal use or principal structure; and
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> (2) Is subordinate in area, extent and purpose to an existing principal use or principal structure served; and
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> (3) Contributes to the comfort, convenience or necessity of occupants of the principal use or principal structure served; and
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> (4) Is located on the same lot/parcel or on a lot/parcel that is under the same ownership as the lot/parcel on which the principal use or principal structure is located; and
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> (5) Is located on the same lot/parcel or on a contiguous lot/parcel as an existing principal use or principal structure, excluding accessory docking facilities that may be permitted on adjacent lots/parcels pursuant to section 118-12; and
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> (6) Is located in the same land use (zoning) district as the principal use or principal structure, excluding off-site parking

facilities pursuant to section 114-67 Accessory uses include the utilization of yards for home gardens, provided that the produce of the garden is for noncommercial purpose. In no event shall an accessory use or structure be established prior to the principal use to which it is accessory. Accessory uses shall not include guest units or any other potentially habitable structures. Habitable structures are considered to be dwelling units as defined in this section.

* * *

*Development* means the carrying out of any building activity, the making of any material change in the use or appearance of any structure on land or water, or the subdividing of land into two or more parcels.

(1) Except as provided in subsection (3) of this definition, for the purposes of this chapter, the following activities or uses shall be taken to involve "development":

* * *

b. A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices or dwelling units in a structure or on land;

* * *

(2) The term "development" includes all other activity customarily associated with it. When appropriate to the context, "development" refers to the act of developing or to the result of development. Reference to any specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this definition.

(3) For the purpose of this chapter, the following operations or uses shall not be taken to involve "development":

a. Work involving the maintenance, renewal, improvement or alteration of any structure, if the work affects only the color or decoration of the exterior of the structure or interior alterations that do not change the use for which the structure was constructed;

b. Work involving the maintenance of existing landscaped areas and existing rights-of-way such as yards and other nonnatural planting areas;

c. A change in use of land or structure from a use within a specified category of use to another use in the same category unless the change involves a change from a use permitted as of right to one permitted as a minor or major conditional use or from a minor to a major conditional use;

d. A change in the ownership or form of ownership of any parcel or structure;

e. The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land unless otherwise specifically required by law; or

f. The clearing of survey cuts or other paths of less than four feet in width and the mowing of vacant lots in improved subdivisions and areas that have been continuously maintained in a mowed state prior to the effective date of the plan, the trimming of trees and shrubs and gardening in areas of developed parcels that are not required open space and the maintenance of public rights-of-way and private accessways

existing on the effective date of the ordinance from which this chapter is derived or approved private rights-of-way.

(4) The term "development" also means the tourist housing use or vacation rental use of a dwelling unit, or a change to such a use (i.e., conversion of existing dwelling units to vacation rental use). Vacation rental use of a dwelling unit requires building permits, inspections and a certificate of occupancy.

* * *

*Dwelling unit* means one or more rooms physically arranged to create a housekeeping establishment for occupancy by one family with separate toilet facilities. The abbreviation "DU" means dwelling unit.

* * *

*Residence or residential use,* as applied to any lot, plat, parcel, tract, area or building, means used or intended for use exclusively for dwelling purposes, but not including hotel rooms.

* * *

*Transient residential unit* means a dwelling unit used for transient housing such as hotel or motel room, seasonal residential unit, or space for parking a recreational vehicle or travel trailer.

Section 138-21 describes the type of development affected by the ROGO as follows:

The residential ROGO shall apply to all residential dwelling units for which a building permit is required by this chapter and for which building permits have not been issued prior to July 13, 1992, except as otherwise provided herein.

Section 138-22 establishes types of development not affected by the ROGO, and provides, in pertinent part, as follows:

> The residential ROGO shall not apply to the development described below:
>
> (1) **Redevelopment on-site.** Redevelopment, rehabilitation or replacement of any lawfully established residential dwelling unit or space that does not increase the number of residential dwelling units above that which existed on the site prior to the redevelopment, rehabilitation or replacement shall be exempt from the residential ROGO system.

When read in its entirety, the Monroe County Code establishes a process by which a residential dwelling unit, which includes an RV as a transient residential unit, may be exempt from the ROGO, provided that the residential dwelling unit was lawfully created, as evidenced by a permit or other approval. The Commission determined, based on competent, substantial evidence in the record, including the testimony offered at the hearing, that the worker camper lots had not been lawfully created, and were thus not exempt from the ROGO.

II. Whether the Commission's approval of the Letter of Development Rights Determination and denial of Bluewater's appeal departed from the essential requirements of the law.

Resolution No. P07-13 sustained Letter of Development Rights Determination, and determined correctly that the disputed worker camper lots had been established without the benefit of permits and were therefore not exempt from the ROGO permit allocation system. The findings are consistent with chapter 138, M.C.C.,

which establishes the ROGO, and section 101-1, which defines the words, terms, and phrases used in the ROGO. Bluewater has neither alleged nor argued that the decision of the Commission was taken without regard to the procedural requirements and protections to be afforded to one challenging the Commission's action. Bluewater's disagreement hinges on the substance of the Commission's action. As set forth herein, the Commission applied the correct law and acted in accordance with the competent substantial evidence before it when it sustained the Letter of Development Rights Determination, and thus did not depart from the essential requirements of the law in taking its action.

III. Whether the Commission was bound by an applicable statute of limitations.

The issue before the undersigned is the determination of the number of existing units that were lawfully created pursuant to past permitting decisions, or were created before the permits were required. If the disputed RV lots were not lawfully created, they are not exempt from the ROGO permit allocation system.

This case is not a code enforcement proceeding designed to mete out fines and penalties for violations of the Monroe County Code. The issue of whether a statute of limitations might apply to prevent a code enforcement officer from issuing a notice of infraction upon discovery of a code violation, and whether any applicable statute of limitations would run from the date of the

creation of the violation or from the date of discovery of the violation, are not issues before the undersigned.

As to the applicability of a statute of limitations to a fundamentally administrative proceeding as is the one at issue, it is well established that statutes of limitation do not apply. Cf. Sarasota Cnty. v. Nat'l City Bank, 902 So. 2d 233, 234-235 (Fla. 2nd DCA 2005)(". . . the statutes of limitation in chapter 95 do not apply to administrative license revocation proceedings. . . . Nothing in section 95.11(3)(c) suggests that the legislature intended it to apply to quasi-judicial proceedings initiated pursuant to any administrative law, and we are inclined to conclude the same as to all of chapter 95. Enforcement proceedings brought under part I of chapter 162 are administrative actions that simply are not subject to the statute of limitations provided in section 95.11(3)(c)."); Stoky v. Monroe Cnty., Fla., Case No. 00-0377DRI (Fla. DOAH Oct. 12, 2001)("The Stokys argue that their application for a permit to reconstruct the screened porch must be approved because [it] had been in place for more than four years. This argument is rejected as without merit. The only support the Stokys cite in their argument is the decision of the Circuit Court for the Sixteenth Judicial Circuit in LaTorre v. Monroe County, Case No. 96-1109, (October 6, 2000), . . . that the four-year statute of limitations bars a code-enforcement action. The action in the instant case is not a code-enforcement action, and the Stokys did

not present any argument to establish that any statute of limitation bars the County from denying an application for a building permit.").

Based on the foregoing, the Letter of Development Rights Determination is not prohibited by the application of a statute of limitations.

IV. Whether the Commission is estopped from denying approval for the three disputed worker camper lots under the 2003 "McGarry letter."

Bluewater asserts variously that the Commission is estopped from determining that the worker camper lots were not lawfully established due to the May 1, 2003, "McGarry letter," or that the passage of time since the worker camper lots were first used on the property warranted the application of the doctrine of laches to prevent the Commission from taking any action inconsistent with a determination of their lawful existence.

As set forth in the findings of fact, at no time did Bluewater advise Monroe County of the existence of the worker camper lots. It was not until 2010, when Bluewater made application for a determination as to the number of dwelling units that could be rebuilt and exempt from the ROGO, that the worker camper lots were revealed. Thus, the application of estoppel or laches against the Commission to prevent its action is based on Bluewater's view of what the Commission should have

known, or on knowledge attributed to the Commission based on conjecture and supposition, rather than on actual and direct knowledge.

Estoppel

With regard to the allegation that the Commission was estopped by its prior actions, or lack thereof, from determining that the unpermitted worker camper lots were not exempt from the ROGO, it is well established that:

> The burden is on the party asserting estoppel to prove facts giving rise to estoppel. See Jarrad v. Assocs. Discount Corp., 99 So. 2d 272, 277 (Fla. 1957) ("The burden of proving all the facts essential to the working of an estoppel rests on the party asserting it or on whose behalf it is applied." (citing First Nat'l Bank of Arcadia v. Savarese, 101 Fla. 480, 134 So. 501 (Fla. 1931))); Flanigan's Enters., Inc. v. Barnett Bank of Naples, 614 So. 2d 1198, 1200 (Fla. 5th DCA 1993) ("It is well established that when estoppel is raised as a defense, the burden of proof is on the party asserting it." (citing Ennis v. Warm Mineral Springs, Inc., 203 So. 2d 514 (Fla. 2d DCA 1967))); State v. Hadden, 370 So. 2d 849, 852 (Fla. 3d DCA 1979) ("The burden of proving an estoppel rests on the party invoking it, and every fact essential to estoppel must be proved." (citing Erwin v. Dekle, 60 Fla. 56, 53 So. 441 (Fla. 1910))); Ennis v. Warm Mineral Springs, Inc., 203 So. 2d 514, 519 (Fla. 2d DCA 1967) ("The burden of proving estoppel rests upon the party invoking it." (citing Connelly v. Special Rd. & Bridge Dist. No. 5, 99 Fla. 456, 126 So. 794 (Fla. 1930))).

City of Jacksonville v. Coffield, 18 So. 3d 589, 596 (Fla. 1st DCA 2009). In that case, the First District Court of Appeal

continued its analysis of the doctrine of estoppel by holding that:

> Equitable estoppel is appropriate where the proof shows "(1) a property owner's good faith reliance (2) on some act or omission of the government and (3) a substantial change in position or the incurring of excessive obligations and expenses so that it would be highly inequitable and unjust to destroy the right he acquired." Equity Res. Inc. v. County of Leon, 643 So. 2d 1112, 1117 (Fla. 1st DCA 1994) (quoting Franklin County v. Leisure Props., Ltd., 430 So. 2d 475, 479 (Fla. 1st DCA 1983)). In a land use context, we said:
>
> > One party will not be permitted to invite another onto a welcome mat and then be permitted to snatch the mat away to the detriment of the party induced or permitted to stand thereon. A citizen is entitled to rely on the assurances or commitments of a zoning authority and if he does, the zoning authority is bound by its representations, whether they be in the form of words or deeds. . . .
>
> Id. at 1120 (quoting Town of Largo v. Imperial Homes Corp., 309 So. 2d 571, 573 (Fla. 2d DCA 1975)). Thus a necessary precondition for equitable estoppel against the government is a governmental act or omission that invites a citizen "onto a welcome mat."

Id. at 597.

It is equally well established that equitable estoppel is to be applied against governmental entities only in rare instances and under exceptional circumstances. Monroe Cnty. v. Hemisphere Equity Realty, 634 So. 2d 745, 747 (Fla. 3rd DCA 1994).

This case therefore presents no rare or exceptional circumstance that would warrant the application of estoppel against the Commission. Rather, this case involves nothing more than an unpermitted and undisclosed improvement to property that, upon its discovery, was found to be unauthorized and therefore ineligible for an exemption from an applicable land use ordinance. The fact that the Monroe County Growth Management Division offered to work with RV Park property owners to resolve disputes over disclosed unpermitted improvements did not create a blanket amnesty for all unpermitted improvements. Thus, the McGarry letter did not create an equitable bar regarding the previously undisclosed worker camper lots.

Bluewater cites to the case of Castro v. Miami-Dade Code Enforcement, 967 So. 2d 230 (Fla. 2007), as supporting the application of estoppel in this case. The assertion fails due to the fact that Castro involved the county's issuance of a permit for a specific improvement, i.e. a family room addition. There was no question that the permit authorized the family room, as did subsequent permits for the re-roofing of the family room and for iron works involving the family room. When, more than 20 years later, it came to the attention of the county that the family room violated a setback, the county attempted to take enforcement action for the alleged code violation and to require that the family room addition be demolished. In that case, the Court determined that the county's knowing issuance of the permit

for the construction of the family room, among other considerations, warranted the application of equitable estoppel to prevent the county's intended action.

Contrary to the situation before the Court in Castro, Bluewater was unable to produce a single piece of competent, substantial evidence that the worker camper lots were the subject of any permit or approval from the Commission. Rather, the permits and supporting information were limited to the 80 RV lots. Furthermore, when Mr. Good identified the accessory uses for the RV Park, he identified only the recreation building, including the manager's apartment and laundry, and the pool. No mention was made of the worker camper lots. Therefore, unlike Castro and its explicit recognition of the use being permitted, the record is devoid of any form of notice by which knowledge of the worker camper lots could be attributed to the Commission. Thus, the Castro opinion offers no support for the application of equitable estoppel in this case.

Laches

With regard to the allegation that the Commission was prevented by the application laches from determining that the unpermitted worker camper lots were not exempt from the ROGO, due to the length of time that had elapsed since RVs were first parked at the lots, it is well established that:

> . . . lapse of time alone is insufficient to support a finding of laches. The test in determining whether laches exists is

> whether the delay has resulted in injury, embarrassment, or disadvantage to any person, and particularly to the person against whom the relief is sought. Furthermore, laches is an affirmative defense. As such, the burden of proving it is on those who assert it, and it must be proved by very clear and positive evidence.

Smith v. Bithlo, 344 So. 2d 1288, 1289 (Fla. 4th DCA 1977).

More recently, the Third District Court of Appeal has described the standard for the application of laches as follows:

> The affirmative defense of laches required [the party asserting the defense] to prove four elements: (1) conduct on her part giving rise to the Code Enforcement notices of violation; (2) unreasonable delay by Code Enforcement despite knowledge of [the party asserting the defense]'s violations; (3) a lack of knowledge by [the party asserting the defense] that Code Enforcement would proceed on the violations; and (4) injury or prejudice to [the party asserting the defense] when the violations were prosecuted. . . . In this case, the special magistrate found that Code Enforcement did not have actual knowledge of [the party asserting the defense]'s violations until 2006. The trial court found that information in the records of the Monroe County Property Appraiser should have been imputed to the County Code Enforcement office. As a matter of law, however, mere notice to one independent office or agency of government is not imputed to another such office.

Monroe Cnty. v. Carter, 41 So. 3d 954, 957 (Fla. 3rd DCA 2010).

As set forth herein, there is no competent, substantial evidence to support a finding that the Commission, or any representative of Monroe County, was ever provided with specific notice of the worker camper lots. In fact, when identifying

accessory uses to be associated with the RV Park, Mr. Good identified the pool and the recreational building, both of which were permitted accessory use improvements (see description of Permit No. 891-0359), but made no mention of the worker camper lots. Furthermore, there is nothing in the descriptions of the permits issued for the property that would suggest that electric or sewer service was being provided for worker camper lots.

As set forth above, this case involves an unpermitted and undisclosed improvement to property that, upon its discovery, was found to be unauthorized and therefore ineligible for an exemption from an applicable land use ordinance. The conduct that gave rise to the Commission's action was the direct result of Bluewater's predecessor in title. The responsibility for taking action to bring property up to code runs with the land. Monroe Cnty. v. Whispering Pines Assoc., 697 So. 2d 873, 875 (Fla. 3rd DCA 1997). Given the lack of notice to Monroe County regarding the establishment of the worker camper lots, there was no unreasonable delay by the Commission in determining that the lots were not lawfully established and permitted, and were thus not exempt from the ROGO.

Based on the foregoing, Bluewater failed to demonstrate that the action of the Commission should be set aside by application of the equitable doctrine of laches.

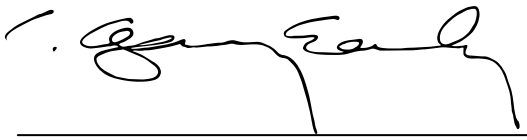
V. Whether the Commission retroactively applied ROGO standards to the activities approved by the 1989 plat approval.

As indicated herein, the Commission's action as to the development rights existing on the Bluewater property was based on whether the three improved worker camper lots were lawfully established under applicable provisions of the Monroe County Code. The Commission's determination that the lots were created without having been permitted, and that permits for the three lots were required when the Saddlebunch RV Park was approved, constituted a reasonable and permissible interpretation of the Monroe County Code. Furthermore, the Commission's decision was supported by competent substantial evidence, and the proceeding held before the Commission complied with the essential requirements of the law.

DECISION

Based on the foregoing, Resolution No. P07-13, which denied Bluewater's appeal of the April 25, 2012, Letter of Development Rights Determination, is affirmed in all respects.

DONE AND ORDERED this 15th day of November, 2013, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of November, 2013.

ENDNOTE

[1/] The 81st RV lot was determined by Resolution No. P07-13 to be not exempt under the ROGO. The lot was subsequently authorized by Minor Conditional Use Permit Development Order No. 03-13, which approved a transfer of ROGO exemption to Bluewater. The resolution of that matter has no effect on this proceeding.

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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.