STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NORMAN WARTMAN,

Appellant,

vs. Case No. 16-0587

MONROE COUNTY PLANNING COMMISSION,

Appellee.
_____/

FINAL ORDER

Pursuant to section 102-214 of the Monroe County Land Development Code ("Code"), Appellant, Norman Wartman, seeks review of a decision of the Monroe County Planning Commission. Briefs were submitted by the parties and oral argument was presented on June 13, 2016, by video teleconference at sites in Tallahassee and Key West, Florida, before Bram D. E. Canter, the Hearing Officer assigned by the Division of Administrative Hearings ("DOAH").

PRELIMINARY STATEMENT

On June 30, 2015, the Monroe County Planning and Environmental Resources Department ("Department") received an application from Appellant for a Vacation Rental Exemption for property located at 1500 Ocean Bay Drive, Unit R-3, in Key Largo, Florida. On September 2, 2015, the application was denied by the

Department's Director. Appellant appealed the decision to the Monroe County Planning Commission.

On November 18, 2015, following public notice, a public hearing was held by the Planning Commission on the matter. At the conclusion of the hearing, the Planning Commission voted to uphold the decision of the Director. Resolution No. P37-15 was then issued by the Planning Commission on December 16, 2015, which contained findings of fact and conclusions of law pertaining to the Planning Commission's decision.

Pursuant to section 102-214 of the Code, Appellant filed an appeal of the Planning Commission's decision to a Hearing Officer. Through a contract between Monroe County and DOAH, an Administrative Law Judge was assigned to act as Hearing Officer. The record was prepared by Monroe County and filed with DOAH. The parties filed briefs and oral argument was received.

DECISION ON APEAL

In the letter to Appellant denying his application for a Vacation Rental Exemption, the Director of the Department stated:

> Pursuant to [Code] § 134-1(b)(1), the property must have a "homeowner's association" or "property owner's association" that expressly regulates or manages vacation rental uses. The subject property is a part of the Townhouses of Kawama, a "condominium" and therefore does not qualify for an exemption under the provision of [Code] § 134-1(b)(1).

Two weeks before the Planning Commission's public hearing, the Department issued a Memorandum regarding the appeal and a copy was provided to Appellant. The Memorandum discusses the homeowner's association issue as a basis for denial of the Vacation Rental Exemption, but also states a second basis for denial:

> It should be noted that even if Townhouses of Kawama was a HOA or POA, the documents (see Attachment A) submitted as proof by the Appellant do not expressly regulate or manage vacation rental uses as required by Code Section 134-1(b)(1).

Section 102-218(a) of the Code provides that the Hearing Officer may reject or modify any conclusion of law or interpretation of the Code in the Planning Commission's order, but may not reject or modify any of the findings of fact unless he states that the findings are not based upon competent substantial evidence. Resolution No. P37-15 does not make specific findings of fact regarding the central facts in dispute, but, instead, identifies the record it considered and then concludes that, based upon this record, the Director's decision to deny the application is approved. It can be reasonably inferred that the Planning Commission found the supporting facts in the Memorandum of the Department to be true and accurate.

ISSUES

Appellant contends that the only issue for determination is whether his unit is included in a qualifying homeowner's association; that the issue of whether the association expressly regulates vacation rental uses cannot be asserted in this appeal as a basis for denying Appellant's application because it was not mentioned in the Director's letter of denial. This contention fails because the decision of the Director was a ministerial decision and merely preliminary, if challenged, to a quasi-judicial proceeding before the Planning Commission. Although referred to as an appeal in section 102-185 of the Code, the Planning Commission's review is not appellate in nature because the review is not confined to the information provided to the Director of the Department. Instead, an applicant may present new argument and evidence to the Planning Commission in support of his or her application.

Appellant's receipt of the Department's Memorandum two weeks in advance of the Planning Commission hearing, setting forth two grounds for denial of the application, provided Appellant with adequate notice of the second ground for denial and adequate opportunity for Appellant to attempt to refute it. Appellant was afforded due process on the second ground for denial and it is properly before the Hearing Officer for determination.

LEGAL DISCUSSION

The homeowner's association issue was complicated by Appellant's submittal into the record of several documents pertaining to Townhouses of Kawama Condominium Association, Inc., and a document entitled "Kawama Homeowners Association (Master Association)," which states that Kawama Homeowners Association "owns, operates and regulates the use of all common areas." A master association is used in condominium management.

Appellant has the burden of proof in this proceeding to show the Planning Commission's decision was not supported by competent substantial evidence in the record. It does not matter that there may be evidence in the record, even a preponderance of the evidence as viewed by the Hearing Officer, to support the Appellant's position that Kawama Homeowners Association, Inc. is a qualifying association. It may be a qualifying association, but its status and purpose was not made clear by Appellant. There is competent substantial evidence in the record indicating that Appellant's unit is not regulated by a qualifying association.

Appellant also failed to prove he qualifies for the Vacation Rental Exemption by showing that Kawama Homeowner's Association "expressly" regulates vacation rental uses, as required by section 134-1(b)(1). Appellant argues that, because Kawama Homeowner's Association regulates the rental of units by their owners, no matter the duration of the rental, it must be found

that Kawama Homeowner's Association expressly regulates vacation rental uses. This argument fails to give the word "expressly" its ordinary and intended meaning as used in section 134-1.

Section 134-1(a) states in relevant part:

> An owner or agent is required to obtain an annual rental permit for each dwelling unit prior to renting any dwelling unit as a vacation rental, as defined in section 101-1, except as provided under subsection (b) of this section.

Section 101-1 defines "Vacation rental or unit" as a detached dwelling unit that is rented for less than 28 days.

To meet the requirement of section 134-1(b)(1) that a homeowner's association expressly regulate vacation rental uses (as defined in the Code), the association must have regulations that use a less-than-28-days-rental criterion or include an express reference to the definition of vacation rental in the Code. Otherwise, the regulation is not express. The record does not include any Kawama Homeowners Association documents that use a less-than-28-days-rental criterion or refer to the Code's definition of vacation rental.

The Planning Commission's finding that Appellant's homeowner's association does not expressly regulate vacation rental uses is supported by competent substantial evidence in the record.

It is not the role of the Hearing Officer to determine whether the regulatory scheme established in the Code is the best means to accomplish Monroe County's objectives. The Planning Commission's decision is based on competent substantial evidence and was made in a proceeding that complied with the essential requirements of law. Accordingly, it is

ORDERED that the decision of the Monroe County Planning Commission is AFFIRMED.

DONE AND ORDERED this 28th day of June, 2016, in Tallahassee, Leon County, Florida.

BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 28th day of June, 2016.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to article VI, section 102-218(c), of the Monroe County Land Development Code, this Final Order is the final administrative order of the county. It is subject to judicial review by common law petition for writ of certiorari to the circuit court in and for Monroe County, Florida.