

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SKRS MANAGEMENT, LLC,

Petitioner,

vs.

Case No. 18-0383

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

*AMENDED AS TO DATE ISSUED

Respondent.

AMENDED RECOMMENDED ORDER

Pursuant to notice, a disputed fact hearing in this cause was held by video teleconference between sites in Tampa and Tallahassee, Florida, on March 13, 2018, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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For Respondent: Marc Daniel Taupier, Esquire
Department of Business
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STATEMENT OF THE ISSUE

Whether SKRS Management, LLC's, Application for New Alcoholic Beverage License, as amended, should be approved.

PRELIMINARY STATEMENT

On May 31, 2017, SKRS Management, LLC (Petitioner), filed an Application for New Alcoholic Beverage License (Application) with the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (Respondent/Division). The Division advised Petitioner of its intent to deny the Application and Petitioner timely filed a request for administrative hearing. On January 22, 2018, the matter was referred to the Division of Administrative Hearings (DOAH) for a disputed fact hearing.

During the hearing, Petitioner offered the testimony of its only witness, David Balot. The Division offered the testimony of Christopher Carson, chief of field services, and Damon Larry, its assistant chief of licensing. Petitioner's Exhibits 1 through 29 were admitted into evidence. Division Exhibits A through G were also admitted into evidence. Official recognition was given to sections 509.013 and 561.01, Florida Statutes (2017).^{1/}

A transcript of the disputed fact hearing was filed with DOAH on March 28, 2018. On April 9, 2018, each party filed a Proposed Recommended Order (PRO).

FINDINGS OF FACT

I. The Two Parcels

1. Petitioner is a management company that owns and operates Siesta Key Beachside Resort & Spa (Resort). The Resort is comprised of a total of five buildings, with four of the buildings located at 215 Calle Miramar, Sarasota, Florida (parcel 1), and a single building located at 5311 Ocean Boulevard, Sarasota, Florida (parcel 2).

2. The two parcels are separated by Calle Miramar, which is a public right of way used as a street. At no point do the boundary lines of the two parcels adjoin, abut, or in any way touch one another.

3. The buildings on parcel 1 have a total of 38 rooms/units available for rent. The single building on parcel 2 has a total of 15 rooms/units available for rent.

4. For license classification purposes, section 509.242 provides, in part, that "[a] public lodging establishment shall be classified as a hotel, motel, nontransient apartment, transient apartment, bed and breakfast inn, timeshare project, or vacation rental." It is undisputed that both parcels contain buildings that are public lodging establishments.

5. Section 509.013 provides, in part, as follows:

(4) (a) "Public lodging establishment"
includes a transient public lodging
establishment as defined in

subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

* * *

(7) "Single complex of buildings" means all buildings or structures that are owned, managed, controlled, or operated under one business name and are situated on the same tract or plot of land that is not separated by a public street or highway.

6. Consistent with sections 509.013 and 509.242, and given that parcels 1 and 2 are "separated by a public street," the Department of Business and Professional Regulation, Division of Hotels and Restaurants, issued a motel license for each parcel.

II. Application for New Alcoholic Beverage License

7. On May 31, 2017, Petitioner filed its Application with the Division. Petitioner's Application identifies "511 OCEAN BLVD AND 213 CALLE MIRAMAR" as the addresses for the premises to be licensed.

8. Section 561.18 provides, in part, that "[a]fter the application has been filed with the local district office supervisor, the district supervisor shall cause the application to be fully investigated, both as to qualifications of the applicants and a manager or person to be in charge and the premises and location sought to be licensed."

9. Pursuant to its statutory obligation to investigate "the premises and location sought to be licensed," on or about June 6, 2017, the Division conducted an investigation of the premises to be licensed and determined:

1. The location of this property has 2 addresses, 5311 Ocean Blvd. and 213 Calle Miramar;
2. The locations are NOT CONTIGUOUS and are divided by a roadway (Calle Miramar) that is a public street that allows motor vehicle traffic to travel to other businesses and residents on the roadway;
3. The roadway is not a private road that runs between the 2 locations; and
4. One location in itself does not meet the requirements for the total number of rooms.

The Division notified Petitioner that the premises did not meet the requirements for an alcoholic beverage license.

10. On or about February 5, 2018, Petitioner amended its Application and requested therein that Respondent only consider 5311 Ocean Boulevard as the premises sought to be covered by the license. An on-site investigation was again conducted by the Division and it was determined that the "[l]ocation is the same configuration as the last inspection" and that the Application should be denied because the premise (parcel 2) does not meet the minimum room requirement needed for licensure.

11. Section 561.20 of the Beverage Law^{2/} generally provides that a special license to sell intoxicating liquors may be issued to "[a]ny bona fide hotel, motel, or motor court . . . of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater . . . [and that] [t]his special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel." A special law governs Sarasota County, which lowers to 50 the minimum number of guest rooms required to be eligible for a license to sell intoxicating beverages.

12. Section 561.01(11) provides, in part, as follows:

"Licensed premises" means not only rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit

of free passage from drink parlor to other rooms over which the licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or attached to the application for the license involved and designated as such on said sketch, in addition to that included or designated by general law. The area embraced within the sketch may include a sidewalk or other outside area which is contiguous to the licensed premises.^[3/]

13. The evidence establishes that Petitioner holds two distinct motel licenses for two distinct parcels.

14. The motel located at 5311 Ocean Boulevard has only 15 guest rooms, and accordingly, this facility does not meet the 50-room minimum requirement for licensure under the Beverage Law.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

16. Section 561.02 authorizes the Division to "supervise the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of all alcoholic beverages and [further authorizes the Department to] enforce the provisions of the Beverage Law and the Tobacco law and rules and regulations of the division in connection therewith."

17. Section 561.17 authorizes the Division to consider, and otherwise act upon, applications to manufacture, bottle, distribute, sell, or in any way deal in alcoholic beverages.

18. As the applicant for a license, Petitioner is asserting the affirmative, and therefore bears the ultimate burden of proving entitlement to a license. Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

19. The standard of proof that Petitioner must meet is by a preponderance of the evidence. § 120.57(1)(j), Fla. Stat. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

20. In considering the evidence, as set forth in the Findings of Fact above, it is concluded that Petitioner did not meet its burden of proof and therefore its Application for New Alcoholic Beverage License, as amended, should be denied.

RECOMMENDATION

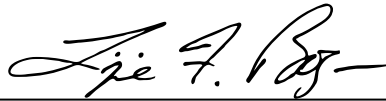
Based on the forgoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, enter a final order

denying SKRS Management, LLC's, Application for New Alcoholic Beverage License.

DONE AND ENTERED this 26th day of April, 2018, in Tallahassee, Leon County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of April, 2018.

ENDNOTES

^{1/} All subsequent references to Florida Statutes will be to 2017, unless otherwise indicated.

^{2/} Section 561.01(6) provides that "[t]he Beverage Law' means this chapter and chapters 562, 563, 564, 565, 567, and 568."

^{3/} As previously noted, Petitioner amended its application to identify parcel 2 as the purported "licensed premises." In explaining this amendment, Petitioner, in its PRO, states that "[t]he revision sought to clarify that while the application was for the entire hotel (i.e. both parcels and all 5 buildings), the 'licensed premises,' . . . would be limited to one building and parcel at 5311 Ocean Boulevard."

The amendment, while interesting in its wording, offers no substantive change to the true essence of the pending application; to wit, that the Department should disregard the fact that the two parcels in question are divided by a public road and that neither parcel, standing alone, meets the minimum

room requirement. Section 561.01(11), as it pertains to the instant matter, clearly provides that "other outside areas" (i.e. parcel 1) can only be considered when the area "is contiguous to the licensed premises." Petitioner makes no argument that parcel 1 is "contiguous" to parcel 2, and the evidence does not otherwise support such a finding. Therefore, Petitioner's evidence regarding how it operates its business, and how other entities (e.g., the gas, electric and water utilities) classify or perceive Petitioner's business operation, is irrelevant because this information fails to assist the fact-finder in addressing the statutory question of whether the parcels are contiguous.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.