

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT AND SOLANGEL VERDE,

Petitioners,

vs.

Case No. 19-1605

MONROE COUNTY PLANNING
COMMISSION,

Respondent.

AMENDED FINAL ORDER TO ACKNOWLEDGE ADDITIONAL PETITIONERS'
COUNSEL AT HEARING

On July 18 and 19, 2019, Robert E. Meale, Administrative Law Judge of the State of Florida, Division of Administrative Hearings (DOAH), conducted the final hearing by videoconference in Marathon and Tallahassee, Florida.

APPEARANCES

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For Respondent: Peter H. Morris, Esquire
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STATEMENT OF THE ISSUE

The issue is whether Petitioners are entitled to an after-the-fact building permit for work done to their manufactured home on Big Pine Key following Hurricane Irma.

PRELIMINARY STATEMENT

On January 7, 2019, Petitioners filed with Respondent an application for a permit to "put [a storm-damaged] trailer back on foundation on roadside end"--work¹ that already had been completed. Attached to the application was a letter from a licensed professional engineer, some photographs of metal straps and concrete block stacks for elevating and anchoring the trailer, and a crude drawing of a cross section of one stack supporting an I-beam forming part of the trailer's chassis.

By letters dated January 31 and February 22, 2019,² Respondent denied Petitioners' application for an after-the-fact permit. The letter advises that, as a nonconforming use, the trailer is subject to Respondent's Substantial Improvement/Substantial Destruction (SI/SD) ordinance, so that, if the damage equals or exceeds 50% of its value, the trailer must be demolished. The letter raises other issues, but, at the hearing, Respondent limited the issue to whether the damage from the storm plus the unpermitted improvements equaled or exceeded the 50% threshold in the SI/SD ordinance.

On March 21, 2019, Petitioners filed an administrative appeal of the decision. On March 25, 2019, Respondent referred the file to DOAH, pursuant to a contract between Respondent and DOAH.

At the hearing, Petitioners called six witnesses and offered into evidence 16 exhibits: Petitioners Exhibits A through G, I through O, Q, and T. Respondent called three witnesses and offered into evidence 23 exhibits: Respondent Exhibits A through W. All exhibits were admitted.

The court reporter filed the transcript on September 17, 2019. The parties timely filed proposed final orders by November 12, 2019.

FINDINGS OF FACT

1. On June 24, 2014, Petitioners paid \$115,000³ to acquire title to a lot in unincorporated Monroe County bearing the address of 31480 Avenue F, Big Pine Key (Lot). The Lot is in the Avenues neighborhood within the Sands subdivision, which consists of site-built and manufactured homes. The Lot measures 100 feet deep and 40 feet wide. Because the back 20 feet of the Lot is submerged bottom of a canal, the effective area of the lot is 80 feet deep by 40 feet wide. The Lot is at the southern end of Big Pine Key, just north of Route 1.

2. About 400 feet--or six lots--to the east of the Lot is water that connects to the open waters of the Atlantic Ocean

about two miles to the south and to the Gulf of Mexico a greater distance to the north. The landward extent of the canal at the back of the Lot extends three or four lots to the west. The Avenues neighborhood features an alternating series of evenly spaced canals and lettered avenues, all running in an east-west direction. The six canals are of roughly equal dimensions. The canal behind the Lot is the second closest to the ocean.

3. The Lot is in Federal Emergency Management Agency (FEMA) flood zone AE, indicative of a relatively high risk of flooding. The base flood elevation of the Lot is nine feet above mean sea level.⁴ The base flood elevation is the elevation specified for a structure to avoid floodwaters from the base flood event, which is the flooding projected to result in a flooding event with an annual probability of occurrence of 1%.⁵ The prevailing elevation of the Sands subdivision is only three feet above mean sea level, so that the base flood event would inundate the subdivision by an average of about six feet of water.

4. The AE zone is associated more with rising and wind-driven water. The VE zone, which extends from the water to a point three lots east of the Lot, is associated with the stronger water forces of surging water. These zones reflect the projected relative risks to structures posed by the depth of a

flood and the energy of the water column in terms of velocity and, where applicable, wave action.

5. When they acquired the Lot, Petitioners also acquired the title to a 56-foot by 12-foot 1970 Ritz-Craft, Inc., manufactured home located on the Lot (Trailer). Originally purchased for about \$2000, the Trailer has been located on the Lot continuously since at least December 28, 1971, when a predecessor-in-interest of Petitioners filed with the Monroe County property appraiser's office a Declaration of Mobile Home as Real Property. When acquired by Petitioners, the Trailer still had many of its original fixtures, including the original Formica counter, bathroom, and trailer tub, and the finished floor was composed of vinyl strips glued together, the walls were covered in wood paneling, and the kitchen cabinets were made of wood. Given practices prevailing in the industry at the time of the manufacture of the Trailer, the subflooring, cabinets, and unfinished counters were likely particleboard, which is highly susceptible to water damage, and the walls were likely plywood, although these components may have been replaced over the years.

6. The front of the Trailer is the 12-foot end facing Avenue F to the north, and the back of the Trailer is the 12-foot end facing the canal to the south. Abutting one side of

the Trailer is a freestanding wood deck measuring 16 feet by 8 feet.

7. At all material times, the Trailer's foundation has consisted of stacks of concrete blocks forming piers under the Trailer. These stacks elevate the Trailer so that the finished floors were about three feet above grade. If the elevation of the Lot approximated the average elevation in the Sands subdivision, without regard to wave action and tide, storm surge would need to exceed six feet to submerge the finished floors of the Trailer.

8. In their first three years of ownership, Petitioners performed the usual maintenance on the Trailer, including a paint job, but did not alter the components described above. The only major work took place in May 2017 when Petitioners paid \$2210 to Privateer Alliance, a certified general contractor, to disconnect their septic tank and connect to central sewer lines.

9. On September 10, 2017, Hurricane Irma, a category-four storm, made landfall at Cudjoe Key. The storm caused extensive flooding and wind damage in the Florida Keys, but especially in Big Pine Key, which is about ten miles east of Cudjoe Key. The damage along Avenue F indicated that the causative force was moving water more than from rising water, and structures east of the Lot suffered more damage than structures farther from the water.⁶

10. In compliance with a mandatory evacuation order, neither Petitioner was in the Trailer when Hurricane Irma struck. The storm inflicted the most damage to the Sands subdivision, among residential areas. On Big Pine Key, floodwaters reached five to eight feet above mean sea level, and floodwaters in the vicinity of the Trailer persisted for about 12 hours, as noted by Respondent.⁷

11. Respondent offered into evidence Composite Exhibit L, page 1, which is a map entitled, "Coastal Depth Grid." The map depicts the portion of the Avenues that includes the Lot. The map bears coloring that, according to the legend, is intended to report the flooding depths from Hurricane Irma. Although the variations in color are too slight to differentiate among the varying depths shown in the legend, Respondent construed the Coastal Depth Grid to show nine feet of floodwater over the Lot.

12. Respondent offered no predicate for the Coastal Depth Grid. To the contrary, one of Respondent's witnesses, Mary Wingate, who is a 24-year employee working in Respondent's Floodplain Office of its Building Department, testified to a more reasonable floodwater depth of five to eight feet. A floodwater depth no higher than the low end of Ms. Wingate's estimate is supported by the damage to the interior of the Trailer, as discussed below.⁸ For these reasons, the Coastal

Depth Grid is not credited as a source of a finding of floodwater of nine feet above mean sea level over the Lot.

13. Following a major storm, prior to the order allowing residents to return to their homes, building or safety inspectors visit affected areas and make initial determinations of the safety of individual residences. If a structure is determined to be unsafe, the inspector posts a red card that states, "Destroyed," so as to prevent reoccupation or re-energizing of the residence.

14. Fifty to sixty inspectors for the entire Keys started inspections in the upper keys on September 13 or 14. Reflective of the devastation caused by Hurricane Irma in the Florida Keys, three weeks passed before a building inspector visited the Lot on October 3, 2017. At that time, the building inspector, who is a licensed professional engineer, determined that the Trailer had been destroyed, so the inspector posted a red card on the Trailer. This determination was based on damage to the front of the Trailer, which was visible from the street; the inspector did not examine the interior, the utilities, or the back of the Trailer.

15. From the street, the inspector correctly determined that the walls, windows, and doors had been unaffected, but the siding and trim would require repair. For the roof and roof structure, the inspector checked boxes stating that these

elements required repair and replacement; perhaps, the seemingly inconsistent checkmarks were intended to mean that repair would be sufficient for some parts of the roof and some parts of the roof structure, but replacement would be necessary for other parts of these two elements. In fact, neither the roof nor roof structure required replacement, although the roof required the replacement of a damaged roof panel. In a brief narrative, the inspector noted on the inspection form: "Building completely off foundations & separated from entry stairs & deck."

16. Perhaps due to a daunting workload, the inspector failed to notice that the back of the Trailer was still on its concrete block stacks. The front of the Trailer had been driven off its stacks, likely by storm surge, and rested about four feet from its original position, still somewhat above grade because it rested atop debris.

17. On October 14, 2019, a building inspector conducted another inspection of the Trailer and determined that the damage equaled or exceeded 50% of its assessed value, pursuant to the SI/SD ordinance, which is discussed in the Conclusions of Law. Again, this inspection did not include an examination of the interior of the Trailer.

18. The October 14 determination relied on a FEMA-supplied tool, Composite Exhibit L, page 2 (FEMA Tool), for estimating damage based on a "long-duration" saltwater inundation of a

manufactured home. Two problems preclude reliance on the FEMA Tool. First, the inspector used the above-described Coastal Depth Grid to determine that the Lot was subjected to a floodwater depth of nine feet--or six feet above the finished floor of the Trailer. Because the actual floodwater depth was substantially less than nine feet, the FEMA Tool produced an excessive estimate of damage. Second, the inspector applied the FEMA Tool to a flooding event that was not shown to be of long duration, as required for use of the tool.⁹

19. It is impossible to determine which of the two flaws in the use of the FEMA Tool produced the greater distortion in damage estimates. Even when using a more-reasonable input of three to four feet of flooding above the finished floor--i.e., six to seven feet of floodwaters--the FEMA Tool predicts that the air conditioning unit, subfloor, finished floor, and bottom cabinets would be completely destroyed. The air conditioning unit, which is installed in the wall, was undamaged, as were the bottom cabinets. The flooring components are discussed below, but were not completely destroyed. The FEMA Tool predicts near-total to total destruction of the plumbing, doors, and wall finishes, which, as discussed below, were substantially undamaged. The FEMA Tool predicts damage of 38% to 72% to the electrical system, which was undamaged. In other respects, as well, the FEMA Tool over-estimates the extent of the damage to

the Trailer. The failure of the parties to offer into evidence the FEMA tool for short-duration saltwater flooding to a manufactured home precludes a finding as to the extent to which the actual floodwaters were substantially shallower than even Ms. Wingate's estimate or the duration of inundation was very brief.

20. In either case, the repairs undertaken by Petitioners are a good measure of the damage to the Trailer, except for the finished floor. First, Petitioners rented some jacks and, with one or more friends, lifted the front of the Trailer, restacked the concrete blocks, and reset the Trailer atop them. Apparently at the same time, Petitioners also restored the wood deck to its prestorm condition. The retail value of this work was \$1000.

21. Second, the storm damaged the weatherhead or cap that shields the electric service line from the elements where the line enters the Trailer. The retail value of the work to replace the weatherhead and perform the electrical safety inspection required before the power company would restore power to the Trailer was \$1060.

22. Third, the storm caused minor damage to one or more plumbing lines. The retail value of this repair work was \$240.

23. Fourth, various exterior panels required repair or replacement due to damage. The retail value of the repairs

was \$575, and the retail value of the replacement of 16 outer panels was \$1280.

24. Fifth, the storm destroyed the skirting along the bottom of the Trailer. The retail value of this replacement work was \$1056.

25. Sixth, the retail value of minor trim repairs necessitated by the storm was \$500.

26. The retail value of the above-described work was \$5711.

27. During the same time period, Petitioners performed additional work for which they never obtained a permit. The Conclusions of Law explain the relevance of the retail value of this work, which consisted of the installation of five new windows at \$1075, the application of window sealant, caulking and hardware totaling \$295, and the installation of a new front door for \$320. The retail value of this work, which did not address floodwater damage, was \$1690. This work plus the previously described work thus totaled \$7401.

28. This leaves the finished floor and subflooring and one panel of plywood that had separated from the wall and was flopping. The plywood paneling is de minimis. One panel of wall plywood separated from the wall, although it is unclear how that happened, and the repair would represent an insignificant expense, even if the panel had to be replaced.

29. One of the Petitioners testified that there was water damage on the floor at the front of the Trailer extending across the front room and into the living area, where it discolored the bottom four inches of a sofa cover and left a muddy residue. At the back of the trailer, Petitioner found a water mark about one-half inch high along metal bunkbeds. According to this witness, the walls bore no dirt or mud, and neither they nor the cabinets were damaged by the water, but the vinyl floor tiles separated by no more than 1/8th of an inch due to ungluing from exposure to the water. This testimony is credited. The floodwater that entered the Trailer left a silty deposit on the floor, so it was relatively easy to determine the vertical reach of any floodwater that entered the Trailer, and the limited damage to the roof and sides of the Trailer does not appear to have allowed significant, if any, amounts of rain water into the Trailer.

30. The crucial questions, which are left unanswered in this record, involve the extent of the work necessary to restore the finished floor and subflooring to their prestorm condition and the retail value of the cost of this work. One of Petitioner's witnesses was David Koppel, who is a licensed professional engineer with considerable experience in the assessment of damages, partly from a 22-year career with Respondent. In December 2018, Mr. Koppel inspected the

foundation, tie-downs, interior and underneath of the Trailer, both flooring units, and the walls and cabinets and concluded that the structural elements were "sound" and everything was intact as it was built, except for a little "swelling and separation" of the finished floor, which Mr. Koppel testified was so minor that its repair or replacement would be left to the owners' choice. Mr. Koppel opined that all work had been performed in conformance with the 1970 Building Code, which was in effect when the original building permit was issued.

31. Mr. Koppel's testimony is problematic in two regards.¹⁰ He mistook the vinyl floor for a wood floor, and he misidentified the referent as the owners' preference instead of the prestorm condition, as explained in the Conclusions of Law. Otherwise, Mr. Koppel's testimony is credited. There is no evidence that Petitioners repaired or replaced any of the items that Mr. Koppel inspected, prior to his inspection, so he would have found any damage, such as rot or mildew, that would have developed in the intervening 15 months between the storm and his inspection. This leaves as the sole open question as to damages the retail value of the cost of the work to repair or replace the damaged portion of the finished floor--an issue that is not addressed in the record.

32. Lastly, it is necessary to determine the prestorm value of the Trailer. The property appraiser assessed the

Trailer at \$17,769. After a 20% adjustment, as discussed in the Conclusions of Law, Respondent increased the value of the Trailer to \$21,323.

33. Petitioners' witness, an experienced real estate appraiser, testified that the Trailer was worth \$53,618, using the cost approach to value. Her total estimate of the cost of the structure, if new, was \$73,450, which she reduced by \$19,832 for depreciation.

34. Petitioners' appraiser never explained why she estimated only \$20,000 or 27% for depreciation for a 50-year-old manufactured home. Her appraisal also lacked comparable sales to back up her cost approach to value and never took into account published sources of market values for used manufactured homes. Petitioners' evidence does not persuade that a manufactured home, parked beside the ocean for 50 years, is worth today over \$50,000. Thus, Petitioners failed to overcome the adjusted assessed value of \$21,323. However, the proved retail value of the work associated with damage and improvements of \$7401 is less than 50% of the value of the Trailer of \$21,323.

35. Following the storm, Petitioners and contractors performed the above-described work. By May 12, 2018, Respondent initiated an investigation into the substantial unpermitted work that Petitioners had undertaken. On June 8, 2018, Respondent

issued a Notice of Violation/Notice of Hearing for July 26, 2018 (NOV). The NOV alleges the unpermitted work and requires corrective action of obtaining an after-the-fact or demolition permit.

36. The hearing before the special magistrate took place on September 27, 2018. At the hearing, as stated in Petitioners Exhibit F, Respondent's counsel advised the special magistrate:

This one isn't terribly complicated or terribly difficult in that we just need the after the fact permit so that the inspections can be performed to make sure that the utilities are connected, safely reconnected, reattached. It's currently on the blocks in the proper situation, hopefully it doesn't happen again.

The NOV proceeding concluded with the parties' agreement that Petitioners would file an application for an after-the-fact permit, although the discussion indicates that Respondent was focusing exclusively on the necessity of a permit to replace the Trailer on its concrete block stacks and to replace the wood deck to its original position abutting the Trailer. The after-the-fact permitting process then ensued, as described in the Preliminary Statement.

CONCLUSIONS OF LAW

37. DOAH has jurisdiction to issue a final order, pursuant to a contract with Respondent. Monroe County Land Development Code (Code) section 122-9(a) authorizes DOAH "to hear and decide

appeals from administrative actions regarding the floodplain management provisions of this Land Development Code." Code section 122-9(b) authorizes a property owner to initiate an appeal.

38. Code section 122-9(e) provides that DOAH shall consider the appeal "pursuant to [Florida Administrative Code] Rule 28-106.201(3). This rule directs an agency to refer to DOAH a petition involving "disputed issues of material fact" with a request that DOAH assign an administrative law judge to "conduct the hearing."

39. The nature of this proceeding is important because it determines the burden of proof, as well as the standard of proof and the scope of admissible evidence. If this proceeding is an appeal, it is not a de novo hearing, but instead a review of the administrative action taken by Respondent to determine if the action is supported by competent substantial evidence and presumably imposes on Petitioners, as the appellants, the burden of overturning the denial of their after-the-fact permit. If the proceeding is a de novo hearing, it is governed by the preponderance standard, the parties may introduce evidence not already considered by Respondent, and the burden of proving SI/SD is on Respondent, as discussed below.

40. The reference to rule 28-106.201(3) seems to incorporate a traditional DOAH factfinding hearing. The process

leading up to the transmittal of the file to DOAH did not afford the parties an opportunity to develop a factual record, apart from Petitioners' filing of a few documents and Respondent's disposition of Petitioners' request for a permit. Until Respondent denied the after-the-fact permit, Petitioners would not even have been aware of the specific issues in their case. Also, to limit the DOAH proceeding to an appeal of Respondent's already-taken administrative action would duplicate the judicial review that is already available in this case,¹¹ rather than assign to DOAH duties more consistent with its traditional responsibilities of factfinding and quasi-adjudicating.

41. Because this proceeding is a de novo hearing on an application for a permit, the applicant generally has the burden of proof, but the agency has the burden of proving any affirmative ground for denial. Osborne Stern & Co. v. Dep't of Banking & Fin., 670 So. 2d 932, 934 (Fla. 1996); Clearwater v. Abdullaj, 474 So. 2d 1290, 1291 (Fla. 2d DCA 1985) (in denying an application for rezoning, the city failed to satisfy its burden of proving that the residential development rights for a larger parcel, of which the subject parcel was a part, had been exhausted by the city's earlier zoning approval of a master site plan).

42. The parties do not dispute that the Trailer is a "nonconforming structure," as defined in Code section 122-3;¹²

among other possible matters, the Trailer fails to conform to the present requirements for anchoring and finished-floor elevation. The point of this case is that the Trailer would have to be demolished or brought up to current Building Code requirements, if the work to repair the damage and to make improvements equaled or exceeded 50% of the value of the Trailer.

43. Code section 122-4(a) generally requires that new construction and "substantial improvements" within an area of special flood hazard meet applicable floodplain development requirements, including anchoring and finished-floor elevation. Effectively addressing the Trailer, Code section 122-4(b)(4)(f) provides:

An existing manufactured home that is damaged or otherwise in need of repair, reconstruction, improvement, or replacement the value of which meets or exceeds 50 percent of the value of the manufactured home without the repair, reconstruction, improvement or replacement shall not be repaired, reconstructed, improved or replaced

44. "Substantial improvement" means:

any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed.

§ 122-4.

45. "Substantial damage" means:

damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. All structures that are determined to be substantially damaged are automatically considered to be substantial improvements, regardless of the actual repair work performed. If the cost necessary to fully repair the structure to its before damage condition is equal to or greater than 50 percent of the structure's market value before damages, then the structure must be elevated (or flood proofed if it is non-residential) to or above the base flood elevation (BFE), and meet other applicable NFIP requirements. Items that may be excluded from the cost to repair include plans, specifications, survey costs, permit fees, and other items which are separate from the repair. Items that may also be excluded include demolition or emergency repairs (costs to temporarily stabilize a building so that it's safe to enter to evaluate and identify required repairs) and improvements to items outside the building, such as the driveway, septic systems, wells, fencing, landscaping and detached structures.

§ 122-4.

46. Lastly, "market value" means:

the county property appraiser's value of the structure plus 20 percent. A uniform appraisal report for determination of market value submitted by the applicant may be used if the county Building Official considers such appraisal consistent with local construction costs. Where appraisal is not accepted because it appears to be

inconsistent with local construction costs an applicant may request review by an independent third party appraiser duly authorized by the county. The cost of independent review shall be borne by the applicant. The reviewing appraiser shall determine if the appraisal value reasonably reflects an appropriate value of the structure. The independent appraiser's determination shall be in writing. Professionals preparing appraisal shall be required to possess certifications as state certified residential appraisers for appraising one to four family residential properties and state certified general appraisers for all other properties including commercial and multi-residential.

§ 122-4.

47. For the reasons set forth in the Findings of Fact, Respondent has failed to prove that the total cost of the work described above equals or exceeds 50% of the market value of the Trailer. Petitioners thus are entitled to an after-the-fact permit.

ORDER

It is

ORDERED THAT the Monroe County Planning Department shall issue an after-the-fact permit for the work described above.

DONE AND ORDERED this 4th day of December, 2019, in
Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of December, 2019.

ENDNOTES

^{1/} As used in this final order, "work" refers to all labor, materials, and equipment used for all repairs and improvements.

^{2/} Petitioners claimed not to have received the earlier letter, so Respondent resent it to give Petitioners a chance to challenge the denial.

^{3/} Nothing in the record suggests that this was not an armslength transaction. The identity of the grantor was J.W.B. Investments L.L.C., a Maryland limited liability company. One year earlier, the improved Lot sold for \$110,000. Previous sales prices of the improved Lot were \$48,500 in early 1987 and \$45,000 in late 1986.

^{4/} Actually, it is nine feet NGVD (National Geodetic Vertical Datum), but, for present purposes, 0 NGVD may be regarded as mean sea level.

^{5/} This is also referred to as the 100-year flooding event.

^{6/} The trailers on the south side of Avenue F immediately west of the Lot suffered only minor damage. The trailers immediately

east of the Lot on the south side of Avenue F occupy a canalfront lot, whose trailer was destroyed, and a streetside lot, whose trailer was driven off its foundations. The trailer to the east of these trailers was completely destroyed. The improvement on the south side of Avenue F closest to the water was gone.

The pattern was slightly different on the north side of Avenue F, where some of the damage would be associated with a different canal. The westernmost trailer, one or two lots west of the Lot, was gone. The trailer immediately across from the Lot suffered foundation problems. The trailer to the east was off its foundation, and the trailer to the east of this trailer was destroyed.

^{7/} Respondent's proposed final order, para. 22.

^{8/} This finding assumes that the Trailer was unable to float a sufficient time and vertical distance effectively to reduce the depth of the floodwater.

^{9/} This may have been a material omission. Strictly for the purpose of determining the materiality of this omission, the administrative law judge takes official notice of a FEMA publication entitled, "Final Report: Depth-Damage Relationships for Structures, Contents, and Vehicles and Content-to-Structural Value Ratios (CSV) in Support of the Donaldsonville to the Gulf, Louisiana, Feasibility Study (March 2003)" <https://www.mvn.usace.army.mil/Portals/56/docs/PD/Donaldsv-Gulf.pdf>. Containing a table similar to the FEMA Tool, as well as another table for short-duration inundation, the report states, at page 8, that "short duration" is one day and "long duration" is one week.

^{10/} At the hearing, Respondent raised the prospect that the Trailer had been installed on the Lot without a building permit because Petitioner could not find a copy of the permit in its files. Testimony established that, in the intervening 50 years, the building permit may have been lost. Assuming that Respondent timely raised this issue, the administrative law judge declines to find that the Trailer's installation on the Lot was unpermitted in the first place.

^{11/} In Broward Cnty. v. G.B.V. Int'l, 787 So. 2d 838, 843 (Fla, 2001), the court noted that Florida courts have used the common law writ of certiorari to review actions of local governments that are not otherwise subject to judicial review under chapter 120, Florida Statutes. Tier-one certiorari review, which is

typically performed by a circuit court, is to determine whether the local government provided procedural due process, the proceeding met the essential requirements of the law, and the findings and determination are supported by competent substantial evidence.

Respondent's election to use the services of DOAH may respond to the requirements in G.B.V. International for a written order with findings and a formal reason for the decision. Broward Cnty. v. G.B.V. Int'l, 787 So. 2d at 846. It is unclear whether Respondent's letters denying the after-the-fact permit satisfy these requirements.

^{12/} All citations to the Monroe County Floodplain Development Code are from the online version at https://library.municode.com/fl/monroe_county/codes/land_development_code?nodeId=CH122FLMA_S122-4STISBUPEARSPFLHA

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NOTICE OF RIGHT TO JUDICIAL REVIEW

Any aggrieved party, including Monroe County, may have appellate rights with regard to this Final Order. As final administrative action, this Final Order is subject to judicial review by common law petition for certiorari to the circuit court in and for Monroe County, Florida.