

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT  
IN AND FOR MONROE COUNTY, FLORIDA  
APPELLATE DIVISION

EDWIN HANDTE and  
JANICE HANDTE,

Appellants/Cross-Appellees,

Case No.: 21-AP-5-K

2787

L.T. Case No.: DOAH 20-

v.

MONROE COUNTY, FLORIDA,

Appellee/Cross-Appellant.

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**OPINION**

**THIS CAUSE** comes before the Court upon Notices of Appeal filed by Appellants/Cross Appellees Handtes and the Appellee/Cross Appellant Monroe County Planning Commission, appealing the Final Order entered by an Administrative Law Judge (ALJ) after an administrative appeal to the Division of Administrative Hearings (DOAH). The ALJ's Final Order found that the Planning Commission's Resolution No. P06-20 is contrary to law because it failed to recognize a lawful non-conforming vacation rental use of the property at issue. It further found that the property is subject to the permit and licensing requirements of section 134-1 of the Monroe County Code (MCC). The ALJ reversed and remanded the Commission's Resolution No. P06-20 for entry of a decision consistent with the Final Order. The Court **AFFIRMS** the decision of the ALJ.

The Handtes own property in Big Pine Key and in Key Largo, Florida. In 2017, the Court determined that the Handtes were lawfully entitled to

the grandfathered vacation rental use of their duplex located at 1547 Narcissus Avenue, Big Pine Key, Florida. *Edwin Handte and Janice E. Handte v. Monroe Cty.*, No. 2016-AP-4-K (Fla. 16th Cir. Ct. May 2, 2017). Based on this ruling, the Handtes filed applications for Letters of Understanding (“LOUs”) with the County’s Planning Department to obtain formal statements memorializing the Court’s ruling and recognizing the vacation rental use status of three properties: 1547 Narcissus, 1791 Narcissus, and 103365 Overseas Highway, Key Largo, Florida (the “Subject Property”). Regarding 1547 Narcissus, the Planning Department acknowledged the property as a non-conforming transient rental but required the Handtes to obtain and maintain permits and licenses as provided for in the Vacation Rental Ordinance. Regarding 1791 Narcissus and the Subject Property, the Planning Department determined that the evidence submitted did not support the establishment of the non-conforming vacation rental use at these properties. The Handtes appealed the Planning Department’s decisions to DOAH, where the ALJ ruled in favor of the Handtes in all three matters concluding that the *Handte* decision of the Circuit Court (16-AP-4-K) entitled the Handtes to a lawful non-conforming vacation rental use of their properties. The ALJ further found MCC section 134-1 requires that an annual special vacation rental permit and a vacation rental manager’s license must be obtained and maintained to lawfully continue the vacation rental use at the properties.

On June 28, 2021, the Circuit Court appellate division issued an opinion in the Big Pine Key cases affirming the ALJ’s Final Order. *Handte v. Monroe County*, Circuit Court Case Nos. 20-AP-6-K and 20-AP-8-K. On February 2, 2022, the Third District Court of Appeal (Third DCA) denied the petition for a writ of certiorari finding the Circuit Court’s decision affirming

the ALJ did not depart from the essential requirements of law. *Handte v. Monroe County*, 335 So. 3d 740 (Fla. 3d DCA 2022). In its Opinion, the Third DCA stated, “[t]he petitioners’ right to the non-conforming use of their properties as vacation rentals did not preclude the County from subjecting that use to the vacation rental permit and vacation rental manager license requirements imposed by section 134-1 of the Monroe County Code.” *Id.* at 741.

The opinions of the Circuit Court appellate division in *Handte v. Monroe County*, Circuit Court Case Nos. 20-AP-6-K and 20-AP-8-K, and the Third DCA’s Opinion *Handte v. Monroe County*, 335 So. 3d 740 (Fla. 3d DCA 2022), are dispositive of the substantive issues raised in this case. The Handtes are entitled to a lawful non-conforming vacation rental use of the Subject Property, but this does not preclude the County from subjecting that use to the vacation rental permit and vacation rental manager license requirements imposed by MCC section 134-1.

Monroe County maintains the ALJ applied the incorrect law in this case by basing this determination on the “1970 Code” when the Planning Commission based its decision on the “1973-1986 Code”. This argument mischaracterizes the ALJ’s findings. The ALJ’s reference to the 1970 code must be placed in context; the relevant portion of the Final Order reads as follows:

The circuit court opinion interpreted the then-existing zoning laws and decided that vacation rentals were not allowed or disallowed by the 1970 zoning. As such, Appellants “had a pre-existing non-conforming use which was ‘grandfathered in.’” *See Opinion, Edwin Handte*. The record showed that the history of the construction of the two duplexes on Big Pine Key, and the length of time each duplex has been continuously operating as a short-term rental, were nearly identical to the history of the Property on Key Largo. The

Commission's Resolution No. P06-20 is contrary to law in view of the prior decision of the circuit court.

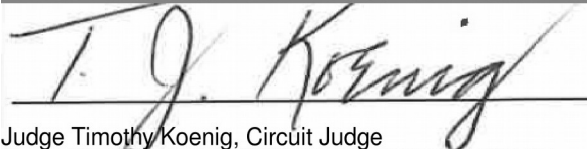
Final Order at P. 8.

The ALJ referenced the "1970 Code" because that is how the Circuit Court referenced the Code in *Edwin Handte and Janice E. Handte v. Monroe Cty.*, No. 2016-AP-4-K (Fla. 16th Cir. Ct. May 2, 2017) to differentiate between the zoning applicable to the Handtes' properties from zoning post-1986. In the Final Order, the ALJ was explaining that the holding of that case was applicable to the instant matter because the cases are nearly identical in material respects, she was not stating that a code different from the 1973-1986 Code applied to this case. In other words, the ALJ did not apply incorrect law.

Finally, the Handtes claim that Planning Commission Resolution 06-20 is legally defective for failing to include findings of fact and conclusions of law. However, the Court need not address this issue given the procedural posture of the case.

**DONE AND ORDERED** at Key West, Monroe County, this Tuesday, December 6, 2022.

44-2021-AP-000005-A0-01KW 12/06/2022 12:57:01 PM



Judge Timothy Koenig, Circuit Judge  
44-2021-AP-000005-A0-01KW 12/06/2022 12:57:01 PM

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