

PLANNING COMMISSION
March 28, 2012
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, March 28, 2012**, beginning at 10:01 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL by Gail Creech

PLANNING COMMISSION MEMBERS

Denise Werling, Chair	Present
Randy Wall, Vice Chair	Present
Jeb Hale	Present
Elizabeth Lustberg	Present
William Wiatt	Present
Ron Demes, Ex-Officio Member	Present

STAFF

Townsley Schwab, Senior Director of Planning and Environmental Resources	Present
Susan Grimsley, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Joe Haberman, Planning & Development Review Manager	Present
Mitch Harvey, Comp Plan Manager	Present
Jerry Smith, Assistant Building Official	Present
Tiffany Stankiewicz, Development Administrator	Present
Barbara Bauman, Planner	Present
Gail Creech, Planning Commission Coordinator	Present

COUNTY RESOLUTION 131-91 APPELLANT TO PROVIDE RECORD FOR APPEAL

County Resolution 131-92 was read into the record by John Wolfe.

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Gail Creech confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

All staff members intending to speak were sworn in by John Wolfe.

CHANGES TO THE AGENDA

There were no changes to the agenda.

APPROVAL OF MINUTES

Motion: Vice Chair Wall made a motion to approve the minutes of the February 6, 2012 meeting. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

Motion: Commissioner Lustberg made a motion to approve the minutes of the February 29, 2012 meeting. Commissioner Wiatt seconded the motion. There was no opposition.

MEETING

New Items:

1.A public hearing to consider and finalize the ranking of applications in the Dwelling Unit Allocation System for the October 13, 2011 through January 12, 2012 ROGO quarter (2nd Quarter Year 20). Allocation Awards will be allocated for all unincorporated Monroe County. (File 2011-088)

(10:04 a.m.) Tiffany Stankiewicz recommended approval for residential dwelling unit allocations Lower Keys applicant ranked 1, Big Pine/No Name Key applicants ranked 1 through 2 based on mitigation available from Monroe County, Upper Keys applicants ranked 1 through 15. Ms. Stankiewicz also recommended approval of Big Pine/No Name Key affordable housing moderate income category applicants ranked 1 through 4.

Chair Werling asked for public comment. There was none.

Motion: Commissioner Hale made a motion to approve. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

2.A public hearing to consider and finalize the ranking of applications for Non-Residential Floor Area for all unincorporated Monroe County for the NROGO Period 1 of year 20 July 13, 2011 through January 12, 2012. Allocation Awards will be allocated for all unincorporated Monroe County. (File 2011-087)

(10:06 a.m.) Tiffany Stankiewicz recommended approval of NROGO allocations for Year 20, Period 1 to be awarded to applicants located in Unincorporated Monroe County, excluding Big Pine and No Name Key, ranked 1 through 6, requesting an overall combined total of 4,452 square feet of floor area, and in the Big Pine/No Name Key sub-area, applicant ranked 1, requesting a total of 2500 square feet of floor area.

Chair Werling asked for public comment. There was none.

Motion: Vice Chair Wall made a motion to approve. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

3.NROGO amending PC recommendations to BOCC (to revise BOCC resolution)
(File 2011-087)

(10:07 a.m.) Tiffany Stankiewica presented the staff report. Ms. Stankiewicz reported that staff is requesting the rescission of Planning Commission Resolution P33-11 and recommendation to the BOCC to allow all accumulated NROGO square footage from prior years in the Big Pine/No Name Key sub-area to be available for year 20 and reaffirming the previous recommendation for the Lower and Upper Keys NROGO square footage to be made available for Year 20. The revised recommendation is a total of 56,539 square feet of maximum amount of available non-residential floor area for the annual NROGO allocation for Year 20 to be distributed as follows: Lower Keys/Upper Keys area, the maximum amount available for the annual NROGO will be 44,700 square feet. Year 20 began July 13, 2011 and will end on July 12, 2012. The first allocation period will end on January 12th and the second allocation period will end on July 12th. The first allocation period shall have 3,525 square feet for small allocations and 11,175 for large allocations. The unused balance for the first allocation shall be made available for the second allocation period and their respective categories. Big Pine/No Name sub-area, the amount of floor area available for Year 20 shall be 11,839 square feet for small allocations. The first allocation shall allow 2500 square feet and the unused balance from the first allocation period, if any, shall be available for that second allocation period ending July 12. The second allocation shall include the unused balance from the first period plus 9,339 square feet. Staff recommended approval

Chair Werling asked for public comment. There was none.

Ms. Stankiewicz assured Vice Chair Wall that the 2500 square foot cap on individual allocations was still in effect.

Motion: Vice Chair Wall made a motion to approve. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

4.CVS, 99434 Overseas Highway, Key Largo, Mile Maker 99: A request for approval of a 2APS (beer and wine package only) alcoholic beverage special use permit. The subject property is legally described Block 10, Lots 56 through 68, Sunset Cove, (PB1-165), Key Largo, Monroe County, Florida, having real estate number 00504850.000000.
(File 2012-012)

(10:11 a.m.) Barbara Bauman presented the staff report. Ms. Bauman reported that the applicant is requesting approval for a 2APS beer and wine package only alcoholic beverage special use permit to allow retail sales of beer and wine, no consumption on premises. Ms. Bauman described the property. A history of variances granted on the property was recited. Staff recommended approval with conditions, which conditions were then outlined.

Vice Chair Wall inquired into the ability to use the pharmacy drive-through when a delivery is taking place. Mr. Schwab interjected that the site is designed and approved so that the customers can drive through and make it to the pharmacy window if there are no storage elements or trash in the loading zone. Currently there is a large metal container in the loading zone. Mr. Schwab

suggested a condition be included that there can be no storage of any sort in the loading zone. Mr. Haberman added in response to a question by Commissioner Lustberg that there is no requirement for CVS to have a drive through, it was something they asked for as part of the conditional use.

Ed Scales, Esquire was present on behalf of the applicant. Mr. Scales stated that CVS would agree to a condition that the loading zone shall not be used for storage. CVS is requesting to use about 80 square feet of retail space in the store for beer and wine, off premises only. Mr. Scales then touched on the five criteria the Planning Commission must consider in reviewing the application.

Jennifer Amy, store manager, was present and was sworn in by Mr. Wolfe. Ms. Amy testified that she has been employed by CVS for 16 years. Ms. Amy described the services the Key Largo CVS provides. The drive through will not be used for alcohol sales and there will be no on-premises consumption of alcohol. Deliveries of beer and wine will be made to the store twice a week using the loading zone in the rear of the building. No complaints regarding deliveries to the store of any type have been made in the four years Ms. Amy has been the store manager. The condition of prohibition of any storage in the loading zone behind the store is acceptable to CVS. Customers request beer and wine at the Key Largo CVS almost daily. Ms. Amy informed Commissioner Wiatt that the truck making beer and wine deliveries is the same size as the general CVS warehouse delivery truck.

Jack Mullin, district manager for CVS, was present and sworn in by Mr. Wolfe. Mr. Mullin testified that the beer delivery trucks are smaller than the CVS warehouse delivery trucks. Mr. Mullin is district manager of 17 stores located from County Walk by the Miami Zoo down to Key West. Fifteen out of those 17 stores sell alcohol. Mr. Mullin is unaware of any problems associated with the sale of alcohol in those stores on the immediate vicinity. Mr. Mullin has no objection to the conditions in the staff report or the seventh condition discussed today. Mr. Mullin assured Ms. Grimsley that CVS is agreeable to getting rid of the storage container in the loading zone prior to signing the resolution.

Barbara Mitchell, planner, was present on behalf of the applicant and was sworn in by Mr. Wolfe. Ms. Mitchell gave the Commissioners a brief description of her education and background. Ms. Mitchell described the FLUM and zoning of the subject property. Ms. Mitchell opined that the requested use would not have any effect on those properties within a 500-foot radius of the subject property. The requested use is consistent with the Monroe County land development regulations applicable to the property, the comprehensive plan and with the other uses of other properties within a 500-foot radius of the store. Ms. Mitchell believes CVS' application meets each of the five criteria outlined for the Commissioners to consider when acting on an application such as this.

Chair Werling asked for public comment. There was none.

Motion: Vice Chair Wall made a motion to approve with the added condition that the loading zone be cleared of any storage or debris and that it will be removed before the

execution of the resolution. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTIONS 138-27 AND 138-54 PRECLUDING THE GRANTING OF ADMINISTRATIVE RELIEF IN THE FORM OF THE ISSUANCE OF A BUILDING PERMIT FOR LANDS WITHIN THE FLORIDA FOREVER TARGETED ACQUISITION OR TIER I LAND AREAS UNLESS, AFTER 60 DAYS FROM THE RECEIPT OF A COMPLETE APPLICATION FOR ADMINISTRATIVE RELIEF, IT HAS BEEN DETERMINED THE PARCEL CANNOT BE PURCHASED FOR CONSERVATION PURPOSES BY ANY COUNTY, STATE OR FEDERAL AGENCY OR ANY PRIVATE ENTITY; PROVIDING FOR NOTIFICATION OF ADMINISTRATIVE RELIEF REQUESTS TO THE DEPARTMENT OF ENVIRONMENTAL PROTECTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2011-068)

(10:41 a.m.) Mitch Harvey presented the staff report. Mr. Harvey recited the history of how the preclusion of granting of administrative relief for lands within the Florida Forever target acquisition came about. In 2011 the Florida Administrative Commission Governor and Cabinet approved a rule that required by July 1, 2012 the County adopt land development regulations that correspond to the policy that has already been adopted. Today staff is asking to amend the land development code, ROGO and NROGO sections, to include this required language regarding administrative relief to preclude the issuance of a permit as part of the administrative relief before going through exhausting the funding sources first. Mr. Harvey confirmed for Commissioner Lustberg that this is already in the comprehensive plan and this amendment just brings the land development regulations into alignment with the comprehensive plan.

Chair Werling asked for public comment. There was none.

Mr. Harvey explained the process that occurs when an application for administrative relief is made. Mr. Harvey clarified for Vice Chair Wall that there is no harm to the applicant by this process taking place. Mr. Harvey then explained to Commissioner Lustberg that the Florida Forever Lands is a state funding program for purchasing endangered habitat, which is actually not funded this year. Ms. Santamaria then added that wetlands could possibly be included in this process.

Motion: Commissioner Hale made a motion to approve. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

6. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 130-121, AIR INSTALLATION COMPATIBLE USE ZONES OVERLAY (AICUZ), TO REVISE THE REGULATIONS PERTAINING TO MILITARY AIRPORTS AND THE REFERENCED

AICUZ MAP FIGURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2012-025)

(10:52 a.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that this amendment is the first step of removing inconsistent language in the code regarding the 1977 AICUZ map and the matrix that goes with it.

Chair Werling asked for public comment. There was none.

Mr. Haberman clarified for Mr. Demes that this is only to remove any reference to the 1977 map and matrix, not any reference to the 2004 or 2007 AICUZ studies that came later. Mr. Demes pointed out that the Navy has an issue with some of the proposed changes in Policy 108.1. Mr. Demes then discussed the changes being brought about by House Rule 7075.

Motion: Vice Chair Wall made a motion to approve. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

7.AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE CHAPTER 122 FLOODPLAIN REGULATIONS, CREATING SECTION 122-10; PROVIDING INCLUSION OF UNITED STATES FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) AND UNITED STATES FISH AND WILDLIFE SERVICE (FWS) REQUIREMENTS IN FINAL PERMIT DETERMINATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2012-024)

(11:00 a.m.) Christine Hurley, Growth Management Division Director, addressed the Commissioners and recited a brief history of how the FEMA injunction list came about and how the County has dealt with it up to this point. Ms. Hurley explained that in an attempt to settle the injunction the parties in the lawsuit got together and created a settlement agreement between themselves excluding Monroe County. That agreement set into place a Fish & Wildlife biological opinion. That includes a section called reasonable and prudent alternatives (RPA). The RPA outlines everything the County or the cities within Monroe County have to do under this settlement agreement to solve the injunction. Ms. Hurley described the impacts included in the RPA. The RPA tells the local governments if impacting a certain number of acres is exceeded they are to deny the permits for construction. The County Commission objected to putting the County at risk for a takings liability since the County would be the actual entity denying the permit.

Bob Shillinger, Assistant County Attorney, was present. Mr. Shillinger described the court arenas involving this injunction and the County's role in each. Mr. Shillinger then spoke about

the unrealistic timeline imposed by FEMA in their settlement agreement. That deadline was extended six months. The County has drafted an ordinance that basically says if a property is on the new FEMA list, the County will send it to FEMA or Fish & Wildlife and let them tell the County what conditions should be on there before the County conditions a permit. The Florida Legislature adopted bills which prohibit the local governments anywhere in the state from conditioning a local government permit on a state or a federal permit, which has undercut the County's approach to this. Mr. Shillinger asked to continue this item to next month's meeting so a revised ordinance can be drafted that will reflect the new circumstances.

Ms. Hurley then informed the Commissioners about the revisions that Fish & Wildlife over the past couple months have made, including mitigation and predetermining certain parcels could come off the list, which would help the County administratively.

Mike Roberts, Administrator, Environmental Resources, explained to Commissioner Wiatt that the County's ordinance for mitigation is based on the amount of vegetation removed, not a square footage, and two to one replacement is required for every tree that is on the list as a native or rare species.

Mr. Shillinger assured Commissioner Lustberg that the changes that Fish & Wildlife have made that make things easier for the County are consistent with the settlement agreement.

Chair Werling asked for public comment. There was none.

Motion: Commissioner Lustberg made a motion to continue this item to the April 25, 2012 meeting. Commissioner Hale seconded the motion. There was no opposition. The motion passed unanimously.

8. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE CHAPTER 122 FLOODPLAIN REGULATIONS, CLARIFYING AND DELETING CERTAIN PROVISIONS; CREATING SECTION 122-7 FLOODPLAIN CERTIFICATE OF COMPLIANCE PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2012-023)

(11:26 a.m.) Christine Hurley, Growth Management Division Director, again addressed the Commissioners and explained that this agenda item also deals with the floodplain management regulations. Ms. Hurley provided some history of the County's floodplain regulations. Since 2003 the County has had a program that FEMA required the County to inspect downstairs enclosures no matter what kind of permit was applied for. FEMA agreed that the County should change the County's program and ordinance to eliminate the Inspection on Building Permit Program, but required a replacement program. So the County adopted a new resolution that eliminated the Inspection on Building Permit Program and replaced it with a Certificate of Compliance Program. If staff determines a downstairs enclosure is in compliance, the property

owner would receive a certificate of compliance. Along with that the property owner would be required to record a non-conversion easement in their title. It is anticipated that this program will provide land records that inform buyers of the non-conversion agreement and they will know what was legally allowed in the downstairs. The County still has in effect the Pilot Program, which is the program the County uses that requires a property owner to have that inspection in order to keep their flood insurance.

Ms. Hurley explained that other important changes in the ordinance are definitions of “illegal structures” and definitions of “nonconforming structures” have been created. The definition of “limited storage” has been refined to be completely consistent with FEMA regulations. The definition of “market value” has also been refined. The definition of “substantial damage” and the definition of “substantial improvement” have been refined as well. Other clarifications made in the ordinance were outlined. One outstanding item in the ordinance is the substantial improvement question relative to additions that go on top of the structure that is below base flood. That will be clarified before this gets before the BOCC.

Ms. Hurley assured Commissioner Wiatt that this is the absolute minimum the County can get away with with FEMA. Ms. Hurley again described for Vice Chair Wall the three programs that will trigger an inspection not of the homeowner’s initiation as the Pilot Program and the Transfer of Ownership Inspection Program, both mandatory, and the Certificate of Compliance, which is voluntary.

Chair Werling asked for public comment. There was none.

Motion: Vice Chair Wall made a motion to approve. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

GROWTH MANAGEMENT COMMENTS

Mayte Santamaria reported that the EAR document is being updated based on the Planning Commission’s recommendations as well as the BOCC’s. A complete new version is expected in April and a special meeting is going to be requested possibly late May to adopt that with the BOCC.

Ms. Santamaria then gave a brief update on the hurricane evacuation work group meetings. Ms. Santamaria described the project. There have been two work group meetings with the Department of Economic Opportunity and the third one is scheduled for April 30, 2012 in Key Largo. At that meeting scenarios of the model are going to be reviewed. The model was outlined by Ms. Santamaria. Ms. Santamaria offered to e-mail to the Commissioners the agenda item that was presented to the Board, which includes the presentation materials from the previous two meetings, some excerpts from the statewide regional model, as well as some recommended scenarios to run.

BOARD DISCUSSION

Commissioner Lustberg reminded Ms. Hurley that at the February 6, 2012 meeting Ms. Hurley suggested that she come and speak to the Commissioners about the impact of outside jurisdictional constraints and limiting the county’s exposure and liabilities in takings issues. Ms.

Hurley stated that April would be a good time since she would be at the April meeting for the floodplain item that was continued.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 11:51 a.m.