

PLANNING COMMISSION
September 26, 2012
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, September 26, 2012**, beginning at 10:04 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

STAFF

Townsley Schwab, Senior Director of Planning and Environmental Resources	Present
Susan Grimsley, Assistant County Attorney	Present
Steve Williams, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mayte Santamaria, Assistant Director of Planning and Environmental Resources	Present
Joe Haberman, Planning & Development Review Manager	Present
Tiffany Stankiewicz, Development Administrator	Present
Rey Ortiz, Planner	Present
Emily Schemper, Planner	Present
Gail Creech, Planning Commission Coordinator	Present

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Gail Creech confirmed receipt of all necessary paperwork.

COUNTY RESOLUTION 131-91 APPELLANT TO PROVIDE RECORD FOR APPEAL

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

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: Commissioner Wiatt made a motion to approve the meeting minutes of August 29, 2012. Commissioner Hale seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

New Items:

1. Non-Residential Floor Area Allocation: The Planning Director is requesting recommendations from the Planning Commission, to the Board of County Commissioners, for the amount of commercial floor area to be available for the annual NROGO allocation for Year 21, beginning July 13, 2012 and ending July 12, 2013.
File 2012-108

(10:06 a.m.) Ms. Stankiewicz presented the staff report. Ms. Stankiewicz reported that this is a report for the annual NROGO for Year 21. The Planning Department is recommending that 51,429 square feet of commercial area be made available. In the Lower and Upper Keys sub-area, the maximum amount of nonresidential floor area available for Year 21 shall be 44,700 square feet divided into 33,525 square feet per small allocation and 11,175 square feet for large allocations. The unused balance for the first allocation period shall be held in reserve for the second allocation period in their respective categories. In the Big Pine and No Name sub-area, the maximum amount available of nonresidential floor area for Year 21 shall be 6,729 square feet per small allocation, and the unused balance from the first allocation each year shall be held in reserve and rolled over to the second period. The Planning Department recommends approval.

Chair Werling asked for questions from the Commissioners. There were none. Chair Werling asked for public comment. There was none.

Motion: Vice Chair Wall made a motion for approval. Commissioner Hale seconded the motion. There was no opposition. The motion passed unanimously.

2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING POLICIES 101.4.21, 101.4.22, 101.4.23, 101.4.24, 101.4.25 AND CREATING POLICY 101.4.26 TO ESTABLISH A COMMERCIAL FUTURE LAND USE CATEGORY; AND REVISE THE “FUTURE LAND USE DENSITIES AND INTENSITIES” TABLE TO INCLUDE A COMMERCIAL (COMM) FUTURE LAND USE CATEGORY, CORRESPONDING ZONING CATEGORIES, AND ESTABLISH THE DENSITY AND INTENSITY STANDARDS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY; PROVIDING FOR THE FILING WITH THE SECRETARY OF STATE AND FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE INCLUSION IN THE MONROE COUNTY 2010 COMPREHENSIVE PLAN.
File 2012-120

(10:08 a.m.) Ms. Schemper presented the staff report. Ms. Schemper reported that this is a request by the County to establish a new commercial future land use map (FLUM) category that is primarily commercial and does not include a residential component. Currently the only two FLUM categories that allow commercial are the mixed use commercial fishing and mixed use commercial, which both include a residential component. The County regulates new residential growth primarily to maintain 24-hour hurricane evacuation clearance time, which is supported by Florida Statutes and the comp plan, and any amendments have to be consistent with this requirement. The creation of this exclusive commercial FLUM category can provide alternative uses of private property that do not include a residential component and, therefore, do not contribute to increases in hurricane evacuation times. This proposed commercial FLUM category can also assist the County in enhancing economic sustainability and addressing nonconformities.

Ms. Schemper further reported that when the County was developing its issues for the Evaluation and Appraisal Report (EAR), the Department of Economic Opportunity (DEO) sent a letter to the County encouraging the County to consider the establishment of a commercial land use designation. When the current comp plan and zoning was adopted, multiple properties with existing commercial land uses became nonconforming due to the adopted maps, which this new FLUM would address. This proposed amendment is also consistent with the recent discouragement amendment, which discourages private applications for future land use changes which increase allowable density and intensity. It provides an alternative land use category that does not necessitate increasing the residential density on property. The proposed amendment includes creating a new policy which establishes the principal purpose of the commercial future land use category, and it also amends current Policy 101.4.22, which is the future land use density and intensity table.

Ms. Schemper further reported that on August 28, 2012 the Development Review Committee (DRC) reviewed and discussed this proposed amendment and confirmed its consistency with the 2010 comp plan, the Florida Statutes and principles for guiding development. The DRC recommended approval of the proposed text amendment. Today staff recommends approval of the proposed amendment.

Commissioner Lustberg stated that she understands not wanting to have land use maps that allow for increased density, but pointed out that the amount of dwelling units the County has is governed by ROGO, not by the comp plan and land development regulation maps, and wants to double-check that there are no plans to get rid of ROGO any time soon. Ms. Santamaria interjected that the hurricane evacuation guidelines are governed by ROGO, but one issue that has to be considered is all of the land use designations have potential density. Staff believes for the next ten years the County will get approximately 1900 allocations, but will not know that until the administration confirms the number. So rather than recommending categories that could increase that density potential, this proposed amendment provides this other use where people will still have a viable use for their property without that potential want and need for ROGO allocations.

Commissioner Lustberg then questioned whether the County fears taking liabilities on all of the residential density that is allowed through the FLUMs and the land development regulations, but

not supplied by ROGO, and also wondered if there are any potential takings issues associated with changing a property's FLUM to a category that does not allow for residential where it is currently allowed. Commissioner Lustberg asked to see a map showing where these properties that would receive a commercial FLUM which would create a buffer to Tier I properties might be useful. Commissioner Lustberg also asked if the increased intensity allowed in the commercial zone, even though not an increased density, would disturb the Tier I lands that they are buffering? Commissioner Lustberg believes intensity allowances should be lowered in this commercial FLUM.

Next Commissioner Lustberg asked if a map can be supplied showing where these nonconformities are located and what their future land use maps can be to determine if this is an appropriate FLUM for these parcels. Commissioner Lustberg asked, while the County is trying to allow these nonconformities to conform through having a FLUM change, is there a way to do that while capping the intensity at what currently exists on the property. Ms. Santamaria began by responding that in terms of providing a buffer to Tier I properties, the proposed Policy 101.4.21 should list a maximum FAR of .15, which is more restrictive. Commissioner Lustberg clarified that she was speaking of a commercial FLUM designation that would buffer a Tier I land that would not necessarily be a Tier I land itself. Ms. Santamaria believes it could potentially be both scenarios and staff would have to evaluate it at the time of the application. In NROGO, Tier I properties have a score of zero, so they would still have to compete to develop anything if it is a Tier I.

Commissioner Lustberg pointed out one reason for having this FLUM category not raised in the staff report would be to deal with military compatibility. Ms. Santamaria stated that this is partly to address that issue, and the Navy has expressed gratitude that the County is moving forward with this type of category. Commissioner Lustberg asked for clarification whether the language of the policy is encouraging highway-oriented sales and service along US-1 or if it is limiting it to US-1. Ms. Santamaria answered that this is not to limit, but to encourage this in those areas.

Commissioner Lustberg next asked if the language of Policy 101.4.21 and Policy 101.4.22 allowed pre-existing residential and transient uses on a property that is changed to a commercial-only FLUM, if new ones at that point can be added, or does it mean that a property cannot receive a commercial-only FLUM unless it contains no transient or residential units. Mr. Haberman answered that this amendment, as it is written right now, would only apply to new development.

Commissioner Lustberg commented that no drawbacks to this amendment were raised, and then pointed out that a potential concern would be possible takings liabilities if somebody's ability to put residential units on their property is removed, and believes this is something that should be looked at. Ms. Santamaria clarified that there are no maps rights now because the County is not re-designating any particular property in the county, but is just establishing another category for an applicant to have as an option to apply for. Staff is, through the EAR, looking at conflicts between the code and the comp plan in terms of the map amendments, but is not processing any of those at this stage. Mr. Wolfe pointed out that any proposed map amendments would come before the Planning Commission when applied for.

Commissioner Lustberg agreed that this category is needed, but believes more information is needed about potential changes to the other intensities in the other categories before moving on this one. Ms. Santamaria explained that staff is moving forward with this amendment because of the other outstanding issues that this could help staff address. Commissioner Wiatt asked for the rationale behind having a maximum intensity of .5 for this category when mixed use commercial is .45. Ms. Santamaria explained that this was to balance out the fact that the potential of residential and hotel transient development is being taken away with allowing more commercial, trying to make it more equivalent between removing uses, but creating this exclusive category. This category could be more appealing to someone and help move them away from a mixed use, which includes residential.

Chair Werling asked for public comment.

Ron Miller listed his questions as: How does this fit in with smart growth in the comp plan; how does this alleviate the affordable housing problem; is there any treatment for Tier III-A properties; and is there another existing FLUM that could be used to get rid of nonconformities? Mr. Miller is concerned that this policy does not protect environmentally sensitive land unless allocations are terminated. Ms. Santamaria clarified that smart growth listed in the comp plan which establishes the tier system and this commercial category are two separate controlling mechanisms. The future land use category defines the uses and the amount of use that you could build on the property, and then a separate tier designation gives you points to compete for residential or nonresidential development. Mr. Miller stated that the main premise behind smart growth is that you have residential in with the commercial to reduce urban sprawl, which this commercial category does not allow you to do. Mr. Miller also pointed out that there is not enough land in the Keys to separate the commercial and residential uses. Mr. Miller further pointed out that areas along US-1 are the suitable places for affordable housing. Ms. Santamaria mentioned that this is provided as an option for applicants to consider. Because Monroe County is linear and because the County is restricted based on hurricane evacuation, these competing issues have to be balanced. The Planning Commission will have to evaluate each application as it comes before the Planning Commission.

Chair Werling stated that because this is just another option which comes before numerous bodies of people to evaluate makes her more comfortable and not as concerned about this amendment. Commissioner Wiatt views this as a tool against density, although not the perfect tool, and may help the County mitigate some of the takings concerns as well. Commissioner Wiatt believes this is a good option to pursue on a case-by-case basis that will allow the County to back off of density. Vice Chair Wall believes the primary issue is takings, because the dwelling unit allocations are locked down and controlled by ROGO. Commissioner Wiatt pointed out that if those allocations can be developed in a less dense manner, there will be less takings potentially.

Commissioner Lustberg stated that it seems until the County moves out from being under ROGO, this really does not have anything to do with hurricane evacuation, but has to do with takings and how much density is allowed on a property, which affects theoretical units throughout the County, which affects how many theoretical takings suits there are. Commissioner Lustberg questioned whether having commercial-only with higher intensity and

not density, moving use away from having better planning practices, makes sense. Commissioner Lustberg's other concern is if density is removed from Tier III properties by changing them to commercial-only, ROGO allocations may eventually be allocated somewhere which might be a less ideal place, like Tier I properties. Vice Chair Wall commented that the tier designation system is a really strong mechanism to keep allocations from going to Tier I properties.

Mr. Miller again voiced his concern of eventually giving allocations to Tier I properties. Vice Chair Wall cited the allocations historically given to point out the effective control the tier designation system has. Mr. Miller described a scenario that came out of the hurricane evacuation committee that would increase allocations going to Tier I properties. Ms. Santamaria argued that what a future analysis will be for hurricane evacuation cannot be anticipated, and reiterated that this proposed category provides another viable use a property owner could potentially build on their parcel.

Commissioner Lustberg believes that if the County decides that they wish to initiate changing a property's FLUM to commercial-only with no residential component for the purposes of protecting next-door Tier I lots, that those areas should have lower intensity than .5. Ms. Santamaria explained that might be addressed when creating the zoning categories that will rein in the scope and uses, and the intensity as well. Commissioner Lustberg then stated that a nonconforming commercial structure's intensity should be capped at their current intensity when changed to a commercial-only FLUM. Ms. Santamaria responded that that will have to be evaluated by the County Attorney. Ms. Santamaria then explained that NROGO still has caps on building size, so the tier, the ROGO, the NROGO, FLUM and zoning categories are all interrelated, making development pretty restricted in the Keys to begin with.

Ms. Santamaria clarified for Commissioner Lustberg that the discouragement proposal recently adopted by the BOCC would still require a property owner of a nonconforming property to comply with that policy. Commissioner Lustberg asked if that property owner agreed to limit the intensity, would the County not require them to comply with all requirements of the policy. Ms. Santamaria answered again that would have to be evaluated by the County Attorney. Commissioner Lustberg then asked if a property owner within the military fly zone would have trouble getting a FLUM designation changed because that language is not in the amendment. Ms. Santamaria explained that this is an umbrella category that applies countywide, not specific to the military area. Each application has to be evaluated on its merits when it comes before staff and the Planning Commission.

Commissioner Lustberg thanked staff for taking the time to answer all of her questions to make her feel better about what is before the Planning Commission, but she would still feel better about voting on this after seeing proposed changes and analysis of the intensities being looked at for the other categories. Ron Miller added that growth management should not be tied to hurricane evacuation and believes we should be protecting the Keys using the carrying capacity studies.

Chair Werling closed public comment.

Motion: Vice Chair Wall made a motion to approve. Commissioner Hale seconded the motion. Commissioner Lustberg commented that in general she supports this, but at this point feels she needs to have more understanding of everything else involved. Vice Chair Wall responded that this is just one of many tools in the toolbox. Commissioner Hale agreed. **The roll was called with the following results: Commissioner Hale, Yes; Vice Chair Wall, Yes; Commissioner Lustberg, No; Commissioner Wiatt, Yes; and Chair Werling, Yes. The motion passed 4 to 1.**

3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE CHAPTER 102, ADMINISTRATION, ARTICLE III, NONCONFORMITIES, TO ADDRESS NONCONFORMITY OF WATER-DEPENDENT AND WATER-RELATED COMMERCIAL USES AND STRUCTURES AS A PRIMARY SOURCE OF ECONOMIC SUSTAINABILITY AS ADDRESSED IN THE KEY LARGO AND TAVERNIER COMMUNIKEYS PLANS, TO UPDATE THE PROVISION RELATED TO THE REGISTRATION OF NONCONFORMING USES AND STRUCTURES, 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 2012-114

(11:09 a.m.) Mr. Ortiz presented the staff report. Mr. Ortiz reported that this is a housekeeping issue to address two matters: One, to implement an existing registration process for lawful nonconforming uses and structures; and, two, to make consistent the Monroe County Code and the Key Largo and Tavernier CommuniKeys plans to recognize lawfully established water-dependent and water-related commercial uses which are identified as a source of economic sustainability within these two CommuniKeys plans. This would allow these uses, if they are destroyed or damaged, to return to the form as they exist now and not be hindered under the rules and regulations that exist in regard to their square footage.

Mr. Ortiz explained for Vice Chair Wall that the registry would be created as property owners come in for a building permit and staff deems it to be nonconforming, it would be added to the list. This is creating a registry for nonconforming structures overall and updates the code for water-dependent and economic viable uses in the CommuniKeys plan so they can come back to 100 percent.

Commissioner Wiatt asked for the rationale behind only including the Tavernier and Key Largo CommuniKeys plans in this amendment. Mr. Haberman explained that there are five CommuniKeys plans that have been approved. All of those communities have addressed their concerns. The Tavernier and Key Largo communities specifically developed their plans to state that they have a lot of nonconforming structures and uses that take place on the water and those two communities want to preserve them. The other communities did not make that determination. The CommuniKeys plans are living documents and are meant to be updated and changed over time. Commissioner Wiatt voiced concern for the communities that have not had the opportunity to put a CommuniKeys plan in place. Mr. Haberman responded that there are still rules in place for Monroe County at large to protect existing nonconformities, which is one

reason why staff would like to create this running list of legal nonconformities which would allow a property owner to redevelop under the substantial improvement rule. If this became an issue for a property owner within an area that has a CommuniKeys plan other than in Tavernier and Key Largo, they would have to take the steps of changing their plan, which at this point is considered a comprehensive plan amendment, which would mean it would come before the Planning Commission.

Chair Werling asked for public comment.

Ron Miller asked for clarification on which businesses would be considered lawfully nonconforming. Mr. Haberman explained that the water-dependent businesses in the plans are the ones that are considered lawfully nonconforming, and they must be on that list to take advantage of the regulation to improve beyond substantial improvement. The registry is a separate issue and would be a running list of all legal nonconformities. If an owner of a water-dependent business in Key Largo were not on that list, they would have to modify the Key Largo plan to get on it to take advantage of going beyond substantial improvement. Otherwise, they are held to the same rules as the community at large regarding nonconformities.

Chair Werling closed public input.

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

BOARD DISCUSSION

Vice Chair Wall asked if a method could be put in place to allow the option of an applicant receiving more than 2500 square feet in a single allocation with a public hearing so it did not have to be phased into bi-annual phases. Mr. Haberman informed the Commission that an amendment contemplating making changes to NROGO was recently taken to the DRC and will be brought before the Planning Commission at one of the upcoming meetings. Staff will be proposing some solutions, which will include allowing applicants to receive larger chunks than 2500 at once if there is no competition, and the possibility of making it available more than two times a year, which would move the process twice as fast.

GROWTH MANAGEMENT

Commissioner Lustberg asked for an update on the Rockland Key property that will be before the BOCC next month. Mr. Haberman stated that it is under legal review to determine if the changes that the applicant made are significant enough that they have to come back to this Planning Commission to be reviewed. Mr. Haberman highlighted some of the changes, which include: Going to an overlay district as opposed to changing the rules for the entire industrial district; making it geographic to the western side of Rockland Key; proposing an idea of using future allocations and unused allocations that have been stockpiled as opposed to being exempted from NROGO. The uses and the end result that the applicant is proposing stay the same. There was a meeting in the Lower Keys where the applicant explained what they want to

do, what they have researched and what they found would be suitable there, which was well attended by a number of Lower Keys residents.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 11:32 a.m.