

PLANNING COMMISSION
January 30, 2013
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, January 30, 2013**, beginning at 10:02 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
Jeb Hale	Present
Elizabeth Lustberg	Present
Ron Miller	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
Joe Haberman, Planning & Development Review Manager	Present
Mitch Harvey, Comp Plan Manager	Present
Steven Biel, Senior Planner	Present
Rey Ortiz, Planning and Biological Plans Examiner Supervisor	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

Mr. Wolfe swore in County staff and all members of the public intending to speak at this meeting.

CHANGES TO THE AGENDA

There were no changes to the agenda.

APPROVAL OF MINUTES

Motion: Commissioner Wiatt made a motion to approve the minutes of the October 18, 2012, November 14, 2012 and November 28, 2012 meetings. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

New Items:

1.Hany Haroun Property, Proposed Denny’s, 97630 Overseas Highway, Key Largo, Mile Marker 97.6: A request for approval of a 6COP SRX (Restaurant – Beer, Wine and Liquor, no package sales) Alcoholic Beverage Special Use Permit. The subject property is legally described as Block 1, Lots 6 through 13, Mandalay (PB1-194), Key Largo, Monroe County, Florida, having real estate number 00554190.000000.
(File 2012-139)

(10:05 a.m.) Ms. Bauman presented the staff report. Ms. Bauman reported that the applicant is requesting approval of a 6COP license to be able to sell beer, wine and liquor at the property that is currently under renovation and will open up to be a new Denny’s. Ms. Bauman described the property and the history of the property. There are two surrounding properties that have 6COP licenses. Staff recommended approval with conditions. Those conditions were then outlined.

The applicant, Hany Haroun, was present. Mr. Haroun informed the Commissioners that Denny’s is trying to open as many stores as possible with alcoholic beverages licenses even though alcoholic beverage sales at Denny’s are very low.

Chair Werling asked for public comment. There was none. Public comment was closed.

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

2.Levine Property, 311 Little Miss Muffet Lane, Key Largo, Mile Marker 96.4: A request for approval of a variance of one (1) foot, eight (8) inches from the required five (5) foot side yard setback along the southern property line in order to construct an addition to an existing residence. The subject parcel is legally described as Lot 62, Wynken-Blynken & Nod Estates (PB5-97), a subdivision of a Portion of Government Lot 2, Section 12, Township 62 South, Range 38 East, Key Largo, Monroe County, Florida, having real estate number 00486630.000000.
(File 2012-136)

(10:12 a.m.) Mr. Biel presented the staff report. Mr. Biel reported that this is a request for a variance of one foot eight inches from the required five-foot side yard setback along the southern property line in order to construct an addition to an existing residence that will be demolished. As a result the side yard setback along the southern property line will be three feet four inches. Mr. Biel then described the property and the history of the property. In 1982 a building permit was not built to the approved plans. The structure is consistent with the plans in terms of design

and dimensions, but it was shifted for an unknown reason one foot eight inches south of the approved footprint. It would be difficult to redesign the proposed structure to be in compliance with the five-foot setback without more substantial demolition. Given the mass of the structure, the setback would be visually indistinguishable to most viewers at five feet as opposed to the three feet four inches. This piece of property in the URM has a ten-foot front and shoreline setback due to the lot being less than 4,000 square feet. Pictures of the property were shown to the Commissioners. Everything for this three-story addition is going to be demolished except the columns, and staff believes that would have less impact as opposed to tearing out the columns and putting in new columns. Staff recommended approval for the variance if certain conditions are met. Those conditions were then outlined.

Mr. Haberman explained to Commissioner Miller that the ten-foot side yard setback mentioned in the memorandum was an error. Commissioner Miller questioned the discrepancy between the application and the memorandum regarding whether this is to improve accessibility or not. Mr. Wolfe explained that the applicant may have put that in the application, but that is not a relevant consideration for the Planning Department. There is a special variance for improvements related directly to accessibility that is handled differently.

Gay Marie Smith was present on behalf of the applicant. Ms. Smith thanked staff for their help in this matter. Ms. Smith explained for Commissioner Miller that the economic hardship to remove these columns is great and the new garage is being brought into conformance with the setbacks as much as possible. Three letters from neighbors who have no objection to the proposed development have been submitted.

Chair Werling asked for public comment. There was none. Public comment was closed.

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

3. Bluewater Key RV Property, 2950 Overseas Highway (US 1), Saddlebunch Key, Mile Marker 14: An appeal to the Planning Commission concerning an administrative decision of the Senior Director of Planning & Environmental Resources dated April 25, 2012 denying a request to recognize three (3) RV spaces as lawful and exempt from the Rate of Growth Ordinance (ROGO) permit allocation system. The subject property is legally described as Lots 1 through 80, Tract A, Tract B, Tract C and Tract D, Saddlebunch Recreational Vehicle Park (Plat Book 7, Page 51), Monroe County, Florida, having real estate numbers 00120490.000101 through 00120490.000187, 00159790.0000000 and 00159800.000000.
(File 2012-074)

(10:27 a.m.) Mr. Ortiz presented the staff report. Mr. Ortiz reported that the appellant is appealing a decision by the Director of Planning set forth in a letter of development rights determination dated April 25, 2012. The appeal is specifically for part of Tract D of the Saddlebunch Recreational Vehicle Park. The property and a history of the property were described. The decision being appealed is specifically regarding three worker campsites or RV spaces that were not lawfully established within the approved permits as required by code. Growth Management was unable to find any records on file approving the existence of said

worker campsites. There are only approvals on file for 80 RV spaces. Staff recommended upholding the decision of the Director of Planning.

Chair Werling disclosed her husband was the contractor that cleared the property many years ago and she has no financial interest or stake in the outcome of this proceeding.

Mr. Wolfe described items delivered after the five-day cutoff. Lee Rohe, attorney for the appellant, objected to anything being submitted at this late date and time. The authors of both letters were present to speak, making it a moot point.

Upon questioning by Mr. Rohe, Mr. Ortiz testified that his task was to handle the procedure for the appeal and the letter of development rights determination and the purpose of the land development regulation (LDR) was used to discover the rights associated with the site. Although the words “lawfully established” are in the staff report, Mr. Ortiz does not know when that term first appeared in the code. Mr. Ortiz stressed that his task was to handle the appeal and in reviewing documents did not see additional information other than 80 platted lots for this site. Building permits are not the only kind of permission from the County looked for when trying to determine whether something is lawfully established. The term “other official approval” contains certain criteria and is part of the application used for a ROGO exemption letter. Mr. Ortiz is unaware whether Bluewater Key RV Resort when it first started its development received a master permit for electric and water.

Mr. Rohe then commenced his presentation to the Commissioners. Mr. Rohe stated that when this park was developed as an ownership resort RV park in the late ‘80s Monroe County Code did not contemplate such a property. The developer set out to get 80 lots platted with common properties. An aerial photo from 1990 was submitted depicting that the work camper sites existed at that time. Mr. Rohe explained how it is customary for RV parks to accommodate work campers. During the park development there was a constant flow of Monroe County code inspectors going through the park and nobody ever red-tagged the work camper sites. Not until 2008 did the association receive its first notice of violation. Mr. Rohe described a 2003 letter from Tim McGarry, a previous Growth Management Director, as an “amnesty letter.” Mr. McGarry and several staff members at that time decided that anything older than four years that might be a violation would be immune from code enforcement prosecution. Mr. Rohe believes the inspection sheets in the materials show that there was an inspection made of not only all the lots back in 2003, but also the common properties, which would constitute official approval. The association paid \$200,000 back in April of 1999 for the two tracts of common properties on the site and never would have made that purchase if the work camper sites were believed to be in violation of County code. A request for a letter of development rights determination was submitted because of a Circuit Court case pending. After two years an answer from the County was received that the work camper sites are not legitimate because they were not “lawfully established.” Mr. Rohe stated that using ROGO and the lawfully established concept on work camper sites that existed before the existence of ROGO is an application of the law retroactively and is a due process violation. Mr. Rohe recited Don Craig’s testimony as stating that back in the ‘80s accessory uses under the code for RV districts included owner/employee residential dwelling units, no more than one permit residential unit per three RV spaces, up to 10 percent of total spaces allowed or in existence. The intent was to allow some permanent RV uses so long as

the uses were employees of that particular park. Mr. Rohe then pointed out that the park owners did not have to apply for individual building permits because the developer's permit for the park was a blanket or master permit for electric and water. The only thing that the new lot owners had to do was set up an account in their name for the electric and water.

Commissioner Wiatt pointed out that the blanket permit was for 80 lots. Mr. Rohe countered that under the zoning accessory uses were allowed, so it would be more than just 80 lots being served by utilities. Mr. Rohe clarified for Commissioner Wiatt that a work camper site is where somebody parks their work camper at a location on common property and works within the resort on whatever needs to be done. These work camper sites are provided with electricity, water and sewage because their lines were run under the master permit. The associated support utilities for these sites were available when this property was originally developed into 80 sites. Commissioner Miller pointed out that the certificate of occupancy dated September of 1989 approved an 80-unit RV park and impact fees were assessed for 80 transient residential RV spaces. Mr. Rohe confirmed for Commissioner Miller that nobody would lose their homes as a result of this decision, but the work campers would lose their sites.

Chair Werling asked for public comment.

Richard Nageotte, property owner and member of the Board of the association, stated that he has owned his lot for over 20 years. Mr. Nageotte understood when he bought his property that the work camper sites were an accessory use under the RV zoning category as part of the approved development plan. Mr. Nageotte clarified that the 1 to 80 lots were the only lots that were platted for sale or rent. The work camper sites are not platted for sale or rent and are in the common area. The reason no building permits were found for the 1 to 80 platted lots is because they were part of a master development plan. Hundreds of inspectors have come in the park and there were never any violations recorded previously. If the association had known that the work camper sites were unpermitted, they would not have expended \$200,000 to purchase them. Mr. Nageotte described the 2003 meeting attended by numerous County officials. Residents were told that any unpermitted items in the park over four years old were grandfathered in and did not need individual permits. Mr. Nageotte believes it would be unconscionable for the Planning Commission to affirm this development rights determination after 24 years of the camper sites existing. Mr. Nageotte then asked to submit his statement along with two letters he received from Monroe County. Mr. Nageotte explained to Commissioner Wiatt that the "amnesty letter" was not limited to the 80 lots and included the common areas. The importance of an RV park having work campers available 24/seven was explained.

Upon questioning by Mr. Williams, Mr. Nageotte stated that some work campers stay for years and others are seasonal, but RVs are not on those work camper sites full-time. Mr. Nageotte then explained the reason for calling Bluewater the most investigated community in Monroe County is because of some neighbors who constantly call Code Compliance out and the difficulties and expense this has caused the community. Mr. Nageotte stated that he has not read Don Craig's deposition and cannot answer whether an accessory use would require a permit from the County. Mr. Nageotte stressed that documents were not submitted to the County asking for permission for 83 lots because there are only 80 platted lots and the rest of the property was bought with the work camper sites on it. Mr. Nageotte again asked to submit his letters. Commissioner Lustberg

explained that by speaking to the Commission Mr. Nageotte's statement becomes part of the proceedings. Mr. Williams then explained the importance of submitting documents in a timely manner. Mr. Wolfe suggested Mr. Nageotte's letter be read into the record by someone during public comment.

Ron Lacroix, property owner and vice-president of the association, stated he has owned his property in Bluewater for 23 years. For the past 35 years he has been a commercial builder and developer. When buying in Bluewater the amenities, which included the work camper sites, was an important consideration. An as-built infrastructure plan of Bluewater dated August '89 was shown which included the infrastructure for the work camper sites. The infrastructure shown on the plans is capable of accommodating at least ten work camper sites. Mr. Lacroix explained the process gone through to get permits for a new office trailer on the property, which required existing utilities, and the existing utilities were from the work camper sites adjacent to the new office. Mr. Lacroix stated the owners of Bluewater contribute a lot of money in taxes every year to the community and it would be disastrous if the work camper sites were eliminated. Commissioner Wiatt asked for documentation that would indicate that those work camper sites were identified during the permitting process of the 80 lots. Mr. Lacroix responded that the sewer and water to the work camper site areas would show that.

Upon questioning by Mr. Williams, Mr. Lacroix stated that an aerial photo can distinguish whether an RV unit is occupied or not by depicting which units are connected to utilities, but they are not included on the site plan and the as-built only shows services were installed. Mr. Haberman then explained to Commissioner Wiatt that plat maps are not supposed to show development, but only how the land is going to be subdivided. A site plan would have been submitted with the master site work permits submitted, which showed 80 lots and included a copy of the recently approved plat map. The site plan does not indicate any activity in terms of RVs occupied on Tract D, only utilities in the area where the work camper sites are.

Suellen Schwobel, Bluewater property owner, asked the Commissioners to allow the work camper sites at Bluewater Key RV Resort. Ms. Schwobel stated she was present in 2003 when the County officials toured the entire resort and did not see any problems with the work camper sites. Ms. Schwobel pointed out that when the resort was developed work camper sites were the solution to providing affordable housing to those who work in the resort and they provide an important part of Bluewater's ability to attract and retain employees to take care of guests and owners at the park. Bluewater owners provide a significant contribution to Monroe County's tax base each year and require virtually nothing from the County in return. Commissioner Miller responded that the developer could have applied for deed-restricted affordable housing and not pay any impact fees, but he did not.

Wayne Wuerl, property owner at Bluewater, stated that Bluewater has a very large common area with all the amenities that were developed as part of the entire resort. Mr. Wuerl showed that Bluewater Key RV Resort is listed as the best campground in the Keys. Without work campers Bluewater will not retain that status.

Alicia Putney pointed out that this is not a motorhome park where the motorhome spaces are dwelling units that go through ROGO, but this is an RV resort that was permitted as a unit with the ancillary features.

William Ogle, property owner at Bluewater, clarified that Tract C and part of Tract D were sold together under a deed in April of '89. Also, when these lots are leased out by the owners bed taxes are paid to the County.

Skip Oetzel, property owner in Bluewater, stated that he has background in civil engineering. Mr. Oetzel stated the work camper sites existed over 20-plus years ago. An eight-inch sewer line was installed for these three work camper sites, which indicates the line was intended for more than one site. Mr. Oetzel asked the Commissioners to allow Bluewater to keep the three work camper sites.

Mike Hecht read into the record the letter from Mr. Nageotte to Timothy McGarry indicating that Mr. Nageotte does not have improvements on his property less than four years old.

Carl Schwobel, property owner at Bluewater, asked the Commissioners to reverse staff's determination regarding the employee work camper sites at Bluewater. Mr. Schwobel stated that having on-site living accommodations for a manager and employees is a necessity for an RV park to run efficiently and successfully. Bluewater's rental program for owners who make their lots available has honored 2,300 rental reservations, which demands having some employees on site 24/seven. Elimination of these employees living in the resort would harm the resort's rental income and would seriously jeopardize the safety and security of the resort and its occupants. The guests that the rental program brings to the area make a significant contribution financially to the local economy. Mr. Schwobel can find no positive effects of not having the work camper sites. Finally, Mr. Schwobel pointed out that Planning staff stated that Bluewater's new office trailer did not fall under ROGO, and that new office is in the same area as the work camper sites. Upon questioning by Ms. Grimsley, Mr. Schwobel clarified that the new office trailer was a replacement of something that had existed many years ago.

Joyce Newman, resident of Big Pine Key, recognized that in times past Monroe County had County rules and had County actions and they were not always congruent with each other. Ms. Newman remembers that the developer of Bluewater had very little respect for planning regulations and expressed empathy for the people having to deal with this negative legacy.

Chair Werling asked for further public comment. There was none. Public comment was closed.

Mr. Williams asked to have Mr. Haberman testify. Upon questioning by Mr. Williams, Mr. Haberman testified that he has been the Planning and Development Review Manager for the past five years. Mr. Haberman explained that the 2003 "amnesty letter" was following a lot of code violations that were issued for more than just lawful establishment. Mr. Haberman believes it was a stay of prosecution, not necessarily a statement that everything there was legal. Many Bluewater residents took advantage of the letter to come in and get permits approved and inspected. The letter did not grant approval or acceptance on behalf of the County for the three work camper sites. The code has changed, but there was prior language that said there could be

accessory dwelling units, but as Mr. Craig testified in deposition they would have required permits. No permits were found on file approving the work camper sites or reference to them and no documentation has been found showing more than 80 units on the site. The reason the work camper sites were denied is because they were approved without the benefit of a permit. The ROGO issue is only pertinent because since '92 it would have been documented through a ROGO allocation if they were lawful. Under the 1986 code, which this project was approved under, an unlawful structure cannot be permitted unless it is done after the fact, which the County has not been asked to consider yet. The as-built and the original site plans in general both show 80 lots, which match the plat, which matched the previous plan. Even though in the late '80s, early '90s standards were generally more lax, the actual permit approval always indicates what was permitted. Mr. Haberman feels comfortable that staff has a complete history of what was permitted at Bluewater and nothing in the County's documentation mentions the work camper sites. The work camper sites would have required a building permit as the other common areas of the property received.

Mr. Rohe then questioned Mr. Haberman. Mr. Rohe suggested Mr. Haberman is guessing as to what the planners back then meant when they issued a permit or did not issue a permit. Mr. Haberman responded that the code at that time required a permit for use. As far as what would have been required in an application, Mr. Haberman is making an educated guess based on his knowledge of how things operate within the Planning Department. Mr. Haberman does not believe this site was approved under a master permit. Lots 1 through 80 were shown on the master site work permit and Bluewater received a certificate of occupancy for an 80-unit park and were presumably inspected for 80 units. Mr. Haberman clarified for Mr. Rohe that he was not at the 2003 meeting with County officials, but it was explained to staff after that meeting how to handle the permits that came in following the meeting as it was explained in the "amnesty letter." The letter applied to the whole park, but the people who came in for the permits were mostly lot owners. Mr. Haberman disagreed that the inventory taken of the lots and common property when the 2003 agreement was reached lists more than 80 lots, but agreed it does show common areas. Lot numbers 82 through 86 were used on the inventory for convenience, but are actually common areas.

Chair Werling pointed out that the violations referred to in Mr. McGarry's letter are clearly spelled out as site improvements on the properties. Mr. Rohe asked Mr. Haberman where he obtained the definition for "lawfully established?" Mr. Haberman answered that a lawfully established ROGO exemption is within the ROGO section of the code, but it is also a standard definition used in planning for things that were approved with a permit. "Lawfully established" would include other official approval in the context of ROGO exemptions.

Upon questioning by Mr. Williams, Mr. Haberman testified that Bluewater has several common areas under several real estate numbers. Mr. Haberman believes the numerical values 81 through 86 were used by the chart creator to put additional information into the chart other than lot numbers. Mr. Haberman clarified that a plat approval is not a site plan approval and the building permit history would be relied upon to determine what exists at Bluewater.

Commissioner Lustberg asked if it would be feasible to deed-restrict and grant ROGO approvals to affordable housing on these work camper sites. Mr. Haberman reminded the Commission that

the applicant has the right to try to prove that these sites are lawful. If in the future the applicant makes a request for employee housing, in the form of a commercial apartment it can be deed-restricted as affordable and it can be permitted, but it cannot be an RV.

In closing Mr. Rohe reminded the Commissioners that back when this development was built and approved in the late '80s the code provision then allowed for some permanent RV uses so long as the uses were for employees of that particular park. Mr. Rohe believes the Planning Department made a mistake in terms of analyzing this from the standpoint of a ROGO definition of "lawfully established" because that term did not even come about until the ROGO ordinance was adopted in the '90s.

Commissioner Wiatt stated in the late '80s those camper sites would have had to have been permitted and they were not. Mr. Rohe responded that they were permitted the same as Lots 1 through 80 under a master permit and, even if they were not, the 2003 McGarry agreement with the park makes anything older than four years immune from prosecution. Commissioner Wiatt pointed out that the things that may have been forgiven at the time did not include anything that had to do with density or a dwelling and the developer did not apply for the permit under the code at the time. Commissioner Hale read from Mr. Craig's deposition stating that there needed to be a building permit.

Commissioner Lustberg read aloud Mr. McGarry's letter and pointed out that it refers to individual property owners and their pieces of land and does not discuss allowing unpermitted structures that are dwelling units in the common area. Mr. Rohe noted the language regarding the four-year statute of limitations on code enforcement actions. Mr. Wolfe pointed out that this proceeding is about an appeal of a letter of determination of development rights, not a code enforcement matter. Mr. Rohe believes this violates due process because the law cannot be applied backwards. Mr. Rohe maintained the work camper sites would have been covered under the master permit for electric, water and sewer. Commissioner Wiatt believes the permit was for 80 units only, and because the discussion is about dwelling units and there is now a density issue makes it a different scenario and takes it out of the "amnesty letter." Mr. Rohe believes Bluewater residents were misled by the County and are being penalized by the County using a current code retroactively. Mr. Williams responded that the developer misled the County by never disclosing to the County the work camper sites as an accessory structure.

Mr. Williams then made his final comments. Mr. Williams stated that staff has diligently gone through their records and has found no reference to the work camper sites. All that Mr. Rohe can point to for the existence of these three units is a table created by the County to show code issues. There are no plats for Lots 81 through 83 and there were no impact fees paid for them. The County is not retroactively applying new law to the '80s, as it was never lawful to build an unpermitted structure. Mr. Williams asked the Commissioners to follow staff's recommendation and uphold the Planning Director's decision.

Chair Werling stated that she believes the accessory area was only to be used as a staging area for construction when the project was being built. The original intent was for 80 units with the accessory uses as stated on the paperwork and nothing more.

Motion: Commissioner Miller made a motion to deny the appeal and uphold the decision of the Planning Director based on the testimony heard today and the evidence in the record. Commission Wiatt seconded the motion. The roll was called with the following results: Commissioner Hale, Yes; Commissioner Lustberg, Yes; Commissioner Miller, Yes; Commissioner Wiatt, Yes; and Chair Werling, Yes. The motion passed unanimously

A recess was held from 1:28 p.m. to 2:05 p.m.

4-a. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS REVISING PROVISIONS OF THE MONROE COUNTY CODE CONCERNING THE NON-RESIDENTIAL RATE OF GROWTH ORDINANCE (NROGO); AMENDING THE FOLLOWING MONROE COUNTY CODE SECTIONS: SECTION 138-47, NONRESIDENTIAL RATE OF GROWTH ORDINANCE; SECTION 138-48; GENERAL PROVISIONS; SECTION 138-49, TYPE OF DEVELOPMENT AFFECTED; SPECIAL REQUIREMENTS; SECTION 138-50, TYPE OF DEVELOPMENT NOT AFFECTED; SECTION 138-51, NROGO ALLOCATIONS; ESTABLISHING NEW DEFINITIONS; REVISING THE TYPES OF DEVELOPMENT AFFECTED AND NOT AFFECTED; REVISING THE REGULATIONS TO INCREASE THE NUMBER OF NROGO ALLOCATION PERIODS IN A NROGO YEAR FROM TWO ALLOCATION PERIODS TO FOUR ALLOCATION PERIODS; INCREASING THE MAXIMUM AMOUNT OF SQUARE FOOTAGE FOR AN ALLOCATION; 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 2012-013)

(2:05 p.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that this is the first of two NROGO related ordinances to be presented today. This ordinance is driven by staff's ongoing process of trying to figure out how to improve NROGO for everyday permit seekers. The main purpose is to simplify NROGO, staying within the parameters of the comprehensive plan. In the comp plan there is a controlled total amount given out in a given year. The one to 239 ratio confuses most people. Since the number is going to be 197 units pretty statistically, staff multiplied that out and put the true number in there so it was not as confusing. Also in the comp plan is that NROGO must be competitive. The point system of NROGO is verbatim from the comp plan. There is a broad policy in the comp plan that describes what is subject to NROGO and what is exempt, so staff was careful not to exempt anything else. The main thing staff is proposing is to give NROGO out four times a year, consolidating the four NROGO quarters as proposed to be the same as ROGO. Another thing being proposed by staff is an increase in the maximum amount able to be received in a given quarter. There are two ways to speed this process up: Giving it out more frequently staying within the 40,000, or to give out more. It still would be competitive and go to the highest performing applications and would still be capped to a degree. Each quarter would be capped at one-fourth of the annual application. Right now staff is working on clarifying language in NROGO on a building cap of 10,000 square feet for new and existing, unless in a CommuniKeys or overlay district, which requires Board approval. The site would still be capped by the density and the permitted use standards.

Mr. Haberman explained to Commissioner Lustberg that even a property in an overlay district is subject to the overarching cap that the County can only give out 40,000 a year. The one to 239 ratio stays the same as it is now. To change that ratio would require a comp plan change. Ms. Santamaria explained that Keith & Schnars in doing the comp plan update has done some studies of past NROGO allocations and determined that because the process is so difficult in terms of the 2500 square foot blocks every six months, that it discourages people from even applying because it takes so long to either redevelop or create a new business. Another thing that they have analyzed is the floor area ratio and the County's existing businesses today, and very few of them even develop to the current floor area ratio. One of Keith & Schnars' suggestions in the EAR document is to possibly increase the open space ratios to decrease that floor area ratio.

Commissioner Miller stated he would like to see a market analysis done of what the economic impact of this would be. Ms. Santamaria responded that staff did not believe a market study was needed since the parameters are not being changed, just the frequency with which it will be available. Mr. Haberman assured Commissioner Lustberg that any special standards established for a designated overlay area in a community master plan that may supersede, modify or supplement the standards established for NROGO would have to be very specific language and would come before the Planning Commission and the BOCC before it could get approved.

Mr. Haberman explained how the di minimus concept would work. Di minimus is only available as long as there is square footage in the bank to give out. It would be tracked almost like a checking account. Mr. Haberman reiterated that the main goal of staff is to make it easier for people to come in and do small improvements, keeping in mind the project has already been approved when it enters NROGO. Mr. Haberman clarified that di minimus is what can be done without even going into NROGO.

Commissioner Miller questioned the rationale behind exempting things like boat barns if allocations will be given out at a higher rate. Mr. Haberman explained that the exemption of boat barns is already in existence because they were removed from the definition of nonresidential floor area. That section of code is being changed and the Planning Commission could make a recommendation as a body to address that, but staff wants to handle the issue of what is exempt separately from this ordinance. Staff is trying to address the major issues in NROGO and then there might be some issues staff will have a second revision on once it is in practice. Mr. Haberman stated that this ordinance is in line with Policy 101.3.1 of the comp plan.

Mr. Haberman explained to Commissioner Lustberg that the amount of NROGO available is based on the amount of ROGO available, not necessarily the amount utilized. Mr. Haberman cited a reason for ending up with a bank of NROGO is because NROGO has only been in effect since 2002 and not many people have been building over the past few years for economic reasons. Another reason is it is considered cumbersome by builders to the point where they do not want to pursue it.

Chair Werling asked for public comment.

Alicia Putney provided some background of NROGO. Between 1990 and 1993 the 2010 comp plan was being written and the 239 square foot ratio was based on the amount of floor area permitted per residential unit between 1986 and 1990. Between '90 and '93 an increase in the amount of square feet both in ROGO and in commercial being sought by people was seen. ROGO was enacted in '92, but the amount of commercial floor area per residential allocation exceeded the ratio of 239 by five times over. In 1996 there was in excess of 400,000 square feet ahead of that formula. That is why in 1996 there was a moratorium, and it took until 2000 to issue enough ROGO allocations to catch up with the 239 ratio. In 1997 the County hired a company to do a baseline study of the economic needs and there was a second study that was initiated in 2001. Ms. Putney recalls that neither study fulfilled the requirements of the comp plan requiring a market analysis. Ms. Putney stressed how much pressure there was and how creative staff was in trying to figure out ways to slow development, the first being the adoption of ROGO and the second being the adoption of NROGO. Ms. Putney believes it has been a success.

Ms. Putney would like to see some provisions made for a certain percentage of the NROGO square feet strictly for new construction or redevelopment for existing businesses. Ms. Putney stated that the changes that have been brought forward by staff are reasonable changes and she would like to see it made easier for existing businesses. Ms. Putney questioned the purpose of the NROGO bank when NROGO has slowed down the development and there has not been a lot of competition for the amount of allocations or square feet available now. Ms. Putney believes that taking the byproduct of successful planning, which is the unused commercial square feet, and using it to create further development does not make sense. Ms. Putney recited a number of questions for staff.

Mr. Haberman explained that there is no universal cap on development, it is going to depend on the uniqueness of the site in terms of how much acreage or the types of uses it has. There are building cap sizes in different zoning districts. The definition of nonresidential floor area is not being changed, only clarified. Mr. Haberman further clarified that the one to 239 ratio is in the comp plan and the market analysis would be determinative if that ratio is appropriate. Ms. Santamaria explained that the BOCC did discuss the ratio through the EAR process, and through the adoption of the EAR in May 2012 it stated because the total amount of this existing ratio has not been used they did not want to increase that amount. If there is still a demand and people feel it is still too cumbersome, the County would undertake that market study.

Ms. Putney stated she would like to receive more information before this banking proposition is put into effect. Mr. Haberman again reiterated that NROGO is for approved projects only. Ms. Putney voiced her concern with relying on a development review process to handle development because that process often becomes a political process. Mr. Williams pointed out that the BOCC has asked for the Planning Commission's input before they discuss it at their February meeting.

Joyce Newman was present on behalf of Last Stand. Last Stand believes that this agenda item should not be approved in its present form. One concern is with the process, as this appears to be something that has been proceeding outside the public process. Another concern is that substantively it appears to be inconsistent with the intent of the comp plan. Last Stand requested that this item be denied.

Chair Werling asked for further public comment. There was none. Public comment was closed.

Mr. Haberman explained to Commissioner Lustberg that the exclusion of overlay areas is just a planning tool that can be used and the code has “notwithstanding” language that trumps this exclusion. There are no overlay districts that have specific caps, so there is not an overlay district that would allow greater than a 10,000 or 50,000 square foot building. Staff is trying to make the overlay district language and NROGO rules consistent. Mr. Haberman does not agree that this ordinance would make it easier to have a project with a box store over 50,000 square feet. It makes the cap language much tighter to apply to new and existing structures. To overcome the caps a developer would have to pursue an overlay or find a large site that has a large amount of commercial, tear it down and rebuild it. The Planning Commission can recommend denial of an application by finding the use or appearance of the building inconsistent with the community character as part of a conditional use.

Commissioner Lustberg asked why the amount of nonresidential floor area which may be transferred to any one site has been increased. Mr. Haberman responded that it was increased to encourage tearing down old buildings and transferring the allocation rather than to go through the process from scratch. Commissioner Lustberg believes this new ordinance is designed to direct buildings to places that are better suited for commercial or nonresidential development and is something that should be encouraged instead of having somebody having to enter the NROGO process. Commissioner Miller agreed. Commissioner Miller would like to see an analysis of how many square feet can be placed in one area and how many of those areas exist to get some idea how much square footage can be moved around before advising the BOCC on this matter.

Commissioner Lustberg overall likes increasing the number of times a year allocations are given out from two to four times and increasing the amount that somebody can get so the public can move forward in getting their projects done, but is concerned with having the exception of the maximum square footage for the overlay districts. Mr. Haberman stated he can add language in a superseding land development regulation which would apply and reminded Commissioner Lustberg that they would be reviewed on a case by case basis.

Ms. Santamaria asked for the Commissioners’ suggestions and/or revisions to this document for input at the BOCC discussion on this ordinance in February. Commissioner Lustberg requested that recommendations be made to the BOCC now, but final judgment be withheld until the information that Commissioner Miller requested is received at the next Planning Commission meeting. Commissioner Lustberg recommended keeping the change in the timetables to four times a year, changing the allocations to 10,000 and the various housekeeping changes that streamline the process. The Planning Commission would like to reevaluate the total number of NROGO that can be transferred from one site to another and possibly increase it, and also asked staff to look at tightening the language Mr. Haberman suggested regarding overlay districts.

Motion: Commissioner Wiatt made a motion to continue Item 4-a to the February 27, 2013 Planning Commission meeting. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

4-b. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS REVISING PROVISIONS OF THE MONROE COUNTY CODE CONCERNING THE NON-RESIDENTIAL RATE OF GROWTH ORDINANCE (NROGO); AMENDING THE FOLLOWING MONROE COUNTY CODE SECTIONS; SECTION 138-47, NONRESIDENTIAL RATE OF GROWTH ORDINANCE; SECTION 138-52, APPLICATION PROCEDURES FOR NROGO; SECTION 138-53, EVALUATION PROCEDURES FOR NONRESIDENTIAL FLOOR AREA ALLOCATIONS; ESTABLISHING NEW DEFINITIONS; ESTABLISHING A MECHANISM TO ALLOCATE NONRESIDENTIAL FLOOR AREA UNALLOCATED IN PREVIOUS YEARS; 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 2012-013)

(3:30 p.m.) Mr. Haberman presented the staff report. Mr. Haberman noted there is some crossover between this ordinance and the previous one in terms of the definition section. Mr. Haberman reported that staff is trying to create a concept of how to go back and acquire square footage that has not been allocated. The comp plan allows this, but does not say how to achieve it. The reason staff wants to create the bank is because the one to 239 ratio was in part because an analysis was done of how many dwelling units and how much square footage there was at that time. The general consensus was the public liked that ratio. One could argue it is inconsistent with the comp plan to not give it out unless the ratio was changed. Staff has written this ordinance as simply as possible so as to not make it too complex. Staff included that the Planning Commission would be where these allocations would be awarded. The comp plan requires the system to be competitive, so staff included language to state the projects would be scored and allocations awarded based on the scoring.

Mr. Haberman explained that in the seven years he has been with the County all of the NROGO available has never been given out. Commissioner Wiatt suggested that property owners of existing developments be given higher points. Mr. Haberman likes this idea, but stated the definition of an existing development would need to be tightened up. Another way to show preference other than through points needs to be figured out because the point system is based on the comp plan. Ms. Grimsley agreed that legally preference can be given to existing development owners.

Ms. Santamaria reminded the Commissioners that the di minimus proposed in the previous amendment comes out of this bank, if it is established, and would enhance the local small businesses by allowing them to receive 2,000 square feet directly from the bank without competing. Commissioner Lustberg suggested having a separate bank within the bank for di minimus as well as businesses that already exist that wish to expand to the degree that they need to apply for NROGO. Mr. Haberman stressed the need for a definition of what “existing” is to accomplish this. The Commissioners suggested 50 percent towards existing versus new.

Commissioner Lustberg would like to somehow limit the extent that these allocations could be immediately appropriated. Mr. Haberman stated that staff decided they did not want to do that

based on the fact that the project is already approved by the time it gets to NROGO. Also, if it is capped it could affect the time frame of the conditional use permit, which could affect concurrency. Mr. Haberman refreshed the Commissioners' memories of the sizes of different box stores typically. Mr. Haberman informed Commissioner Lustberg that although a couple of big projects have come forward, the typical projects coming forward are very small developments, less than 10,000 square feet per building. Discussion continued regarding how to give existing businesses an advantage in the process. Commissioner Wiatt suggested making the allocations non-transferable for a period of time.

Chair Werling asked for public comment.

Joyce Newman, Big Pine Key resident, urged the Commissioners to be very cautious about unintended consequences.

Alicia Putney applauded the Commissioners for working together and giving so much consideration to this ordinance. Ms. Putney suggested that the intent in NROGO to promote the upgrading and expansion of existing small scale businesses to retain the predominantly small scale character of nonresidential development in the Keys could be tied in to using the bank for existing businesses. Ms. Putney recommended to start anew with this ordinance and have the bank start with a balance of zero and carry it forward. Ms. Putney thinks that level of service should tie into the development review of these large projects. Ms. Putney supports the idea of working toward an ultimate cap on the size of a building and an ultimate cap on the size of a project to protect the community character of the Keys.

Chair Werling asked for further public comment. There was none. Public comment was closed.

Commissioner Lustberg would like existing businesses to receive special consideration, and would also like to see redevelopment encouraged as opposed to new development. Ms. Santamaria stated that zoning categories as well as the tier categories will help control that. Commissioner Wiatt suggested setting aside 50 percent of the banked NROGO square footage allotment to promote expansion of existing small businesses. Commissioner Lustberg asked if it would be possible to set aside one-third of the bank for di minimus, one-third for redevelopment of existing buildings and then one-third for new construction. Mr. Haberman commented that the number in the bank is going to go up and down depending on competitiveness in NROGO. Mr. Haberman explained to Commissioner Miller that placing a cap on redevelopment would require a separate text amendment.

Motion: Commissioner Lustberg made a motion to send recommendations to the BOCC for their discussion and continue this item to the February 27, 2013 Planning Commission meeting. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS TO AMEND THE CAPITAL IMPROVEMENT ELEMENT TO UPDATE TABLE 4.1, THE 5-YEAR SCHEDULE OF CAPITAL IMPROVEMENTS WITHIN THE YEAR 2010 MONROE COUNTY COMPREHENSIVE PLAN, PURSUANT TO

163.3177(3)(a) AND 163.3177(3)(b), FLORIDA STATUTES; 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; PROVIDING FOR AN EFFECTIVE DATE.

(File 2013-007)

(4:19 p.m.) Mr. Harvey presented the staff report. Mr. Harvey reported that Section 163.3177(3)(a) of Florida Statutes requires local governments to include a schedule of capital improvements which identifies projects necessary to ensure any adopted level of service standards are achieved and maintained for a five-year period. Section 163.3177(3)(b) allows local governments to amend their capital improvements plan on an annual basis. What is before the Commission is a proposed ordinance that shows the County's new capital plan, which is reflected in the current budget which was approved by the BOCC on September 13, 2012. If approved, it will be incorporated as part of the comp plan used to review future applications.

Mr. Harvey pointed out that there has been an allocation of \$50 million of State bond money which has been freed up to be applied for wastewater. The County's portion of the money, about \$30 million, will be applied to the Cudjoe regional system. In addition, the voters in November approved the infrastructure improvement tax extension. There is also restore money associated with the BP oil spill which will be distributed to the County. The recently completed draft of the public facilities capacity report concluded that there are no major deficiencies that have been identified in the County's levels of service.

Mr. Harvey explained to Commissioner Wiatt that \$30 million has been earmarked totally for wastewater, but funding for storm water will become clearer as the County starts to receive money from the infrastructure sales tax and from the restore money.

Chair Werling asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Miller made a motion to accept the report. Commissioner Hale seconded the motion. There was no opposition. The motion passed unanimously.

GROWTH MANAGEMENT COMMENTS

Mr. Schwab introduced a new planner hired by the County, Matt Coyle. Ms. Santamaria gave a brief update on the comp plan. Ms. Santamaria reported that a deliverable was received from the County's consultant based on all comments received through the EAR process. An internal review is occurring presently. Special DRC meetings will be held February 13, 14 and 15, 2013 to review the initial drafts. Staff hopes to take it to the Planning Commission in special meetings in June, July and August.

Chair Werling welcomed the new Planning Commissioner, Ron Miller

Commissioner Miller nominated Denise Werling to be Chair for the upcoming year. Commissioner Wiatt seconded the nomination. Commissioner Hale nominated Commissioner Wiatt as Vice Chair. Chair Werling seconded the nomination.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 4:29 p.m.