

PLANNING COMMISSION
February 27, 2013
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, February 27, 2013**, 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
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
Emily Schemper, Senior Planner	Present
Tiffany Stankiewicz, Development Administrator	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.

CHANGES TO THE AGENDA

Item 6 will be heard out of order when the applicant arrives.

APPROVAL OF MINUTES

Motion: Commissioner Lustberg made a motion to approve the minutes of the January 30, 2013 meeting. Commissioner Hale seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

Continued Items:

1-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)

(10:04 a.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that there were minor changes since the last meeting on this item in the wording of this ordinance suggested by the Planning Commission and the Board of County Commissioners (BOCC) regarding who would be able to build bigger than 10,000 square feet. One big change is that the di minimus expansion was changed to a cumulative 1,000 square feet per site across the board as recommended by the BOCC. The second big change is that a certain amount of allotments will be given to the Upper Keys and a certain number to the Lower Keys. That was calculated by multiplying 239 times the number of market rate that the Upper Keys and Lower Keys are supposed to get in total, then dividing the affordable in half, which is an odd number, and giving the extra one to the Upper Keys because they get more market rate development, and then multiplying that by 239. This would begin in NROGO Year 23, which is early next year. The ordinance could be crafted so that the other changes would be effective immediately and Mr. Haberman asked the Commissioners for their comments on this.

Commissioner Lustberg suggested the Planning Commission wait until the next meeting to vote on this, since the staff report was received so recently, in order to give people time to comment on this. Commissioner Miller would like to see the di minimus portion move forward at this time. Chair Werling recommended making those decisions at the end of the presentation. Ms. Stankiewicz confirmed that Duck Key, Long Key and Conch Key are included in the Lower

Keys NROGO allotment. Mr. Haberman explained for Commissioner Lustberg that a new structure on a vacant lot could get a building permit without going through NROGO by applying for a building permit and the planner would review the records and see if di minimus has been used before on that property. The permit would then be approved with a condition that the applicant is utilizing so much or all of their di minimus expansion, which would be deducted from the bank, if it is called that, or a reserve. Mr. Haberman further explained, due to the square footage allowed, most of these permits would be for sheds or storage containers.

Joyce Newman, Big Pine Key resident, asked for the percentages of allotment for the Upper Keys and for the Lower Keys. Mr. Haberman replied that market rate allocations per year is close to a 50/50 split and the Upper Keys would receive approximately a thousand square feet more in affordable allocations.

Chair Werling asked for public comment.

Alicia Putney suggested setback or buffering requirements for storage containers.

Bart Smith, Esq., stated that he is opposed to the restrictions and complications in this proposed ordinance and would like more time to thoroughly analyze it. Mr. Smith reminded the Commission that back in 2001 NROGO stemmed from trying to control overpopulation through limitations on commercial development. Mr. Smith believes tying one to the other restricts the potential for projects that are good for the Florida Keys and that development is not directly proportional to population. Mr. Smith suggested looking at NROGO in its entirety and fixing what is broken instead of changing what is already there with more restrictions. Mr. Wolfe pointed out that it is only the background information that was made available only recently, but this ordinance was put on the agenda timely.

Alicia Putney disagreed that this ordinance is more restrictive, but feels it is less restrictive and allows more large development than has occurred historically.

Joyce Newman took exception with the statement that NROGO has not worked. Ms. Newman asked the Commissioners to consider the people who live here and the retiree population and their quality of life.

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

Commissioner Miller does not see much controversy with di minimus and would like that to move forward, but would like time to consider the rest of the changes to NROGO. Commissioner Wiatt believes the proposed changes outlined in the staff report look good. Commissioner Lustberg asked for clarification on the language on Page 12 of the staff report that lists what “may supersede, modify or supplement the standards established for NROGO in this article.” Mr. Haberman explained that other sections of code may provide different standards for how to review an NROGO allocation and he would have no issue with removing this subsection because he has never cited it, nor used it. Commissioner Lustberg then questioned the language on Page 17 of the staff report regarding sites located within an overlay district. Mr. Haberman

responded that he knows of no such superseding regulation and would agree to delete the language altogether.

Commissioner Lustberg is happy to see the increases to four times a year and the increase of allocations per each period and the changes in di minimus. Commissioner Miller again noted he is comfortable with moving the di minimus portion forward. Mr. Wolfe voiced concern with moving only part of an ordinance forward. Mr. Haberman explained that when writing the ordinance certain things can be stated to be effective upon adoption of the ordinance and other things in the ordinance effective upon NROGO Year 23.

Commissioner Lustberg is comfortable with Item 1-a as written with the two sections she questioned being taken out, but would still be more comfortable putting it on hold and bringing it back to the next meeting to see if there is more public input. Commissioner Hale agrees to continue it to the next meeting to have time to digest it a little more. Commissioner Wiatt agrees with removing the “superseding” language from the ordinance. Chair Werling agreed also. Mr. Wolfe explained that Item 1-a could be continued until after hearing Item 1-b and then voting on them separately. The Commissioners agreed to table Item 1-a until after hearing Item 1-b.

New Item:

2.GROBAREK RESIDENCE, 2 CYPRESS TERRACE, KEY HAVEN, MILE MARKER

5: A REQUEST FOR APPROVAL OF A VARIANCE OF TWENTY (20) FEET FROM THE REQUIRED TWENTY-FIVE (25) FOOT FRONT-YARD SETBACK ALONG THE NORTHERN PROPERTY LINE IN ORDER TO CONSTRUCT A POOL. THE SUBJECT PARCEL IS LEGALLY DESCRIBED AS LOT 221, BLOCK 3, KEY HAVEN – 8TH ADDITION, A SUBDIVISION OF PART OF LOT 1, SECTION 26, TOWNSHIP 67 SOUTH, RANGE 25 EAST, AND ADJACENT SUBMERGED LANDS, RACCOON KEY, MONROE COUNTY, FLORIDA (PB5-61), HAVING REAL ESTATE NUMBER 00138970.000000.

(File 2012-152)

(10:47 a.m.) Ms. Schemper presented the staff report. Ms. Schemper reported that this is a setback variance request for a swimming pool for a single-family residence. Ms. Schemper described the property and recited the permit history for this property. According to the code this property has two 25-yard front-yard setbacks because it is on a corner. It also has two shoreline setbacks. There are areas on the site considered not in compliance with the current setback regulations. However, they have all been approved through permits and everything has been developed in accordance with building permits on file. They are considered lawfully nonconforming. The site plan was shown. The swimming pool and pool deck pavers would be placed five feet from the property line. The calculation of the required open space within a shoreline setback showed this property is a bit over the maximum of 60 percent coverage, which does not technically affect the variance. A diagram of how the site plan would be revised at the time of building permit to be in compliance with the shoreline open space requirement was shown. Ms. Schemper stated that staff has determined that the application demonstrates all of the required standards for a variance. Those standards were then listed.

Commissioner Miller asked for examples of variances of a 20-foot exception in a 25-foot setback. Mr. Haberman responded that examples could be found and pointed out that an important distinction to make is development that cannot be seen from the road and that would be screened by a fence. There is no visual impact from the public road. Mr. Haberman explained the solid fencing is not required by code, but the Director of Planning has been consistently requiring the fencing with other in-ground pool permits related to variances that have been given out. Commissioner Lustberg added that the Commission has approved a variance on Rockland Key almost up to the property line. Commissioner Wiatt noted that nothing would prohibit a fence being put up notwithstanding a pool. Commissioner Miller discussed possible changes in the dimensions and placement of the pool to make the requested variance less.

Ms. Schemper continued to cite the requirements for a variance. Staff feels the variance is the minimum necessary, as it would be difficult to place a similar size pool in the as-of-right buildable area of the site based on what is already there. Staff recommended approval with conditions. Those conditions were then outlined.

Heather Sunderman of Southwind Pools was present on behalf of the applicant and was sworn in by Mr. Wolfe. Ms. Sunderman explained the shape of the pool is what the applicant is looking for and in order to maintain that shape the pool must be located in the area shown on the diagram.

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

Mr. Haberman explained to Commissioner Miller that this house was built before the County required a corner lot to have two front-yard setbacks. Ms. Schemper pointed out that a balcony is approximately 12 ½ feet from the property line along one street of the corner and interprets that to mean when the permit was approved the decision on setbacks was that the front yard was along Cypress Avenue and the Cypress Terrace side was considered the ten-foot side-yard setback. Ms. Schemper noted that the property next door to the applicant along Cypress Terrace has both pavers and a tiki hut right up to the property line and a solid stucco wall along their property line, so this variance would not be inconsistent with what is next door. No comments have been submitted by neighbors.

Commissioner Miller stated he feels the variance is excessive. Commissioner Wiatt requested the height of the fence be required to be consistent with the fence on the neighboring property. Ms. Schemper pointed out that the applicant's fence permit was issued for the construction of a five or six-foot high masonry or wood fence along the front of the parcel. The existing fence on the property appears to be four feet plus the top of the posts. Chair Werling asked for the location of the fence. Ms. Sunderman replied that the fence would be along the property line consistent with the neighbor and consistent with what the applicant has already started, and that they do plan to put in quite a bit of landscaping. Commissioner Lustberg stated she is okay with the variance and the conditions in the staff report. Commissioner Wiatt agreed.

Motion: Commissioner Hale made a motion to approve. Commissioner Wiatt seconded the motion. Commissioner Lustberg then commented that variances that are granted so

routinely such as putting pavers next to the side of a house should possibly not require a variance. Mr. Haberman informed Commissioner Lustberg that a text amendment has been drafted that would allow certain things that are not a visual impact. Chair Werling noted that although this variance is not impacting a neighbor, she is not comfortable with eliminating the necessity of requesting variances. Commissioner Miller added that he understands that the pool does not have a visual impact, but the proximity of the pool to the property line still has an impact. **The roll was called with the following results: Commissioner Hale, Yes; Commissioner Wiatt, Yes; Commissioner Lustberg, Yes; Commissioner Miller, No; and Chair Werling, Yes.**

A recess was held from 11:27 a.m. to 11:38 a.m.

Continued Item:

1-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)

(11:38 a.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that this is a continuation from the January meeting and there have been changes to this ordinance since then, some requested by the Planning Commission and some requested by the BOCC. A reserve of 50 percent towards existing businesses was included. Mr. Haberman asked the Commissioners to review how “existing businesses” was defined. Mr. Haberman further reported that the BOCC recommended creating three accounts within the bank: One for Big Pine, one for the Upper Keys, and one for the Lower Keys. The opening balance of the Upper and Lower banks will be 50/50 and it will be tracked more proportionally moving forward. The fact that this should only be available to Tier III properties was included. A small reserve has been established for di minimus projects.

Commissioner Lustberg asked for clarification of the language on Page 8 under B, “nonresidential floor area not made available for the annual allocation by the BOCC.” Mr. Haberman explained that the BOCC every year had to approve the amount of NROGO available without knowing what the demand was, at their prerogative, and B is recapturing the balance that was not approved, nor demanded. This will not be an issue moving forward because what does not get used goes into this bank, but what has been done in the past has to be accounted for. Mr.

Haberman then clarified what a noncompetitive applicant is. Commissioner Lustberg then asked if it is legal for the Commission to give existing businesses an advantage. Mr. Wolfe responded he does not think there are any discriminatory issues here and this is a perfectly valid policy. Commissioner Wiatt pointed out it is also consistent with the comprehensive plan. The definition used for “existing business” was discussed.

Chair Werling asked for public comment.

Joyce Newman, Big Pine Key resident, pointed out that during the EAR meetings the consultants characterized aging motels and aging office space as a problem and then asked if because of that there ought to be some incentive for these older properties to redevelop with this amount of square footage that has accumulated.

Alicia Putney stated that this ordinance is taking the byproduct of good planning and making this accumulated square footage available. Ms. Putney reminded the Commissioners that this is a compromise. Ms. Putney then referred to Item 1-a and stated the confusing “superseding” language should be removed. Ms. Putney’s recollection of the EAR meetings is there was definitely a preference for supporting the existing businesses, as well as supporting the boating community, the water space and the open space. Ms. Putney is surprised at the attachment showing the maps of the Lower Keys’ community activity centers. Ms. Putney suggested making a set-aside for the di minimus.

Owen Trepanier, planner with Trepanier & Associates, commented that proportional development ought to be based on permanent population. Mr. Trepanier believes the location of existing commercial development should be looked at when considering where the proportional future needs should be. The gap in community activity centers on Rockland Key, Geiger Key and Big Coppitt was pointed out. Mr. Trepanier then pointed out the term “bank” is not a good term to use because NROGO is a self-imposed limitation and was designed in the comp plan to be bankrupt. Mr. Trepanier described how NROGO has been very effective in preventing commercial development since its inception. Mr. Trepanier urged the Commissioners to direct proportional development into the commercial centers and activity centers. Mr. Trepanier then asked the commissioners to rescind NROGO in total and regulate development through smart growth policies.

Bart Smith, Esq., was present on behalf of Charlie Topino & Sons, Rockland Operations and the Rockland Commercial Center. Mr. Smith recognizes staff’s hard work on this issue, but noted how arbitrary and capricious NROGO is. Mr. Smith voiced concern about basing commercial development on ROGO, which is to protect against the loss of life. Mr. Smith pointed out that the Keys were established as being “Keys-y” before NROGO and NROGO restricts development to the point that it is a prohibition. Mr. Smith agrees with Mr. Trepanier that development should be allowed based on smart growth and what is good for a certain area as opposed to having broad limitations that stops intelligent growth and creative “Keys-y” projects.

Joyce Newman commented that NROGO provides a level playing field and furthers public wishes for protection of local community character.

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

Commissioner Lustberg asked how the 50 percent ratio on the di minimus set-aside will be figured going forward. Mr. Haberman explained that if somebody came in wanting an allocation by way of the bank they could ask for 80 percent of the bank if they are an existing business, and if they are not an existing business they can ask for half of that 80 percent in that quarter. Then they can wait until the next quarter and, if nobody wants it, they can ask for half of what is currently in the bank, minus the di minimus, again. Mr. Haberman reminded the Commissioners that NROGO grows and contracts all the time. Mr. Haberman clarified that the 20,000 square feet of the bank set-aside for di minimus is always off limits when somebody comes in asking for something from the bank, that it is a reserve. If the bank fell below 20,000, then nobody can use the bank until that 20,000 is replenished.

Mr. Haberman discussed when people would follow the regular NROGO option and when they would go through an NROGO bank application, and that a very large project would probably go through the bank. Mr. Haberman explained that the way the ordinance is drafted right now NROGO would become based on quarters and the bank decisions and regular allocation decisions would be made at the same four quarterly hearings. Applicants will need to make a choice which method to choose at the beginning of development rather than changing midstream to avoid administrative complications. Mr. Haberman further explained in the draft policy of the comp plan there will be NROGO with the annual allocation of 47,000. The policy will be revised to eliminate the 239, which confuses some people. The scoring is still the same. Mr. Haberman believes this ordinance is completely consistent with both the existing comp plan and the comp plan as it is being drafted by Keith & Schnars.

Commissioner Miller reiterated that he would like to see di minimus move forward. Ms. Grimsley explained it would be nearly impossible to separate di minimus out of the ordinance and it has been advertised and set forth as one entire ordinance. Mr. Wolfe agreed the whole ordinance should be continued or approved or denied as a whole. Mr. Haberman noted that 1-a and 1-b can be separated out without there being any major issues. Commissioner Lustberg would feel most comfortable continuing Item 1-a and 1-b to the next meeting just so everybody has a chance to make sure they did not miss anything and it would only put di minimus off by a month. Chair Werling is comfortable moving 1-a ahead with the deductions of B on Page 17 and D on Page 12 as discussed and continuing Item 1-b to the next meeting. Commissioner Lustberg agreed. Commissioner Miller asked for a clean copy of the ordinance to review without the strike-throughs and underlines and with the two sections deleted as discussed.

Motion: Commissioner Wiatt made a motion to continue Item 1-a to the March 27, 2013 meeting with the caveat that Paragraph D on Page 12 and Paragraph B on Page 17 is deleted. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

Motion: Commissioner Wiatt made a motion to continue Item 1-b until the March 27, 2013 meeting. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

New Items:

3.A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM FOR THE OCTOBER 13, 2012, THROUGH JANUARY 14, 2013, ROGO (2ND QUARTER YEAR 21). ALOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY.

(File 2012-137)

(12:38 p.m.) Ms. Stankiewicz presented the staff report. Ms. Stankiewicz reported that there is one correction to the legal description and real estate number for Applicant Number 2 of the Upper Keys market rate rankings. Staff recommended that the allocation awards for market rate applicants ranked 1 through 22 of the Lower Keys be approved, Big Pine/No Name Key applicants ranked 1 through 2 be approved because there is enough mitigation, and Upper Keys market rate applicants ranked 1 through 15 be approved. There were no affordable housing applicants.

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

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

4.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 21 JULY 13, 2012 – JANUARY 14, 2013. ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY.

(File 2012-108)

(12:41 p.m.) Ms. Stankiewicz presented the staff report. Ms. Stankiewicz reported that there was one applicant for NROGO in the Lower Keys for 2500 square feet. Staff recommended approval. There were three applicants in the Big Pine/No Name Key subarea for a total of 5,240 square feet and staff recommended approval.

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

Motion: Commissioner Hale made a motion to approve. 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 THE MONROE COUNTY CODE BY ESTABLISHING TWO COMMERCIAL DISTRICTS; AMENDING SECTION 130-2, LAND USE DISTRICTS ESTABLISHED; CREATING SECTION 130-51, PURPOSE OF THE COMMERCIAL 1 DISTRICT (C1); CREATING SECTION 130-52, PURPOSE OF THE COMMERCIAL 2 DISTRICT (C2); CREATING SECTION 130-102, COMMERCIAL 1 DISTRICT (C1) PROVIDING FOR PERMITTED AND CONDITIONAL USES; CREATING SECTION 130-

103 COMMERCIAL 2 DISTRICT (C2) PROVIDING FOR PERMITTED AND CONDITIONAL USES; AMENDING SECTION 130-164, MAXIMUM NONRESIDENTIAL LAND USE INTENSITIES AND DISTRICT OPEN SPACE; 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 2012-160)

(12:42 p.m.) Ms. Schemper presented the staff report. Ms. Schemper reported that this is a request from the Planning Department to create these sections in order to establish two commercial zoning categories. These are needed to implement the commercial future land use category that was passed on February 20, 2013 and adopted by the BOCC. This particular amendment establishes the districts, the purpose of the districts, and also the densities and intensities, including open space, and the permitted and conditional uses. Two commercial zoning districts were created. Commercial 1 was created to primarily serve the needs of the immediate vicinity in which they are located. This is the smaller scale commercial. Commercial 2's purpose is to designate appropriate areas for higher intensity commercial uses intended to serve retail, sales and service and professional service needs of an entire subarea. The main feature of these zoning categories is that they do not contain any residential, which was needed to address nonconforming commercial uses. The permitted and conditional uses for Commercial 1 are similar to suburban commercial and Commercial 2 is similar to urban commercial, but again without any residential component. The land use intensities for Commercial 1 is similar to suburban commercial, but the FAR is .15 as opposed to .1. For Commercial 2 an FAR of .5 for low intensity commercial retail was given. The commercial recreational was given a slightly higher FAR in Commercial 2, as well as public building and uses were given a slightly higher FAR. A provision for light industrial was included within the Commercial 2 district.

Commissioner Miller commented that not allowing any custodial residential in these commercial areas does not make sense in the Keys. Commissioner Lustberg feels it is a bad idea to have these categories. Commissioner Lustberg questioned the language of Number 4 on Page 9 relating to land use overlays. Ms. Schemper explained that the overlay districts we have are agriculture, education and public facilities, which correspond with FLUM categories in the comp plan and is patterned after suburban commercial. Commissioner Lustberg then questioned the language under B on that same page. Ms. Schemper believes the intent of that is if a light industrial use needs more than two acres it would be better to have it zoned industrial. Mr. Haberman explained that a lot of this came from the previous CommuniKeys plans and comp plans where people did not want U.S. 1 to become a storage yard because it is our scenic highway. Commissioner Lustberg then questioned why on Page 10 under A the heliport must be associated with a governmental services facility, law enforcement element or medical services facility. Ms. Schemper stated the County does not want a large scale helicopter site in a downtown type of area. Mr. Haberman added that staff is currently working on determining whether a helipad is an accessory use or not. Ms. Schemper clarified for Chair Werling that this ordinance does not allow any residential, but then reminded the Commissioners that the commercial future land use category which has been adopted does not allow any residential and staff is required to create these zoning categories that fit within that FLUM.

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

Ms. Schemper added that staff recommends approval of amending the code as stated in the staff report. Ms. Schemper explained to Commissioner Miller that floor area is capped based on the floor area ratio in the intensities table. Mr. Haberman further explained caps are not put on ultimate floor area in any zoning category right now. Mr. Haberman added that there are general caps that are not zoning specific of 10,000 square feet per building. Commissioner Miller is concerned that the caps increase as the site gets larger. Mr. Haberman further added that the larger sites require special approval and anybody that wants to come to this zoning category will have to come before the Planning Commission for a recommendation whether commercial use is appropriate on that property. Mr. Haberman stated that this is an option for people to take care of their nonconformities without adding residential density to the table. Commissioner Wiatt feels this is a win/win scenario for the County aside from the fact that this allows properties to get in conformance with the comp plan.

Motion: Commissioner Wiatt made a motion for approval. Commissioner Hale seconded the motion. The roll was called with the following results: Commissioner Hale, Yes; Commissioner Wiatt, Yes; Commissioner Lustberg, No; Commissioner Miller, Yes; and Chair Werling, Yes. The motion passed four to one.

6. AN ORDINANCE BY THE MORNOE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY CODE TO INCLUDE THE COMMERCIAL 1 (C1) AND COMMERCIAL 2 (C2) LAND USE DISTRICTS WITHIN THE FOLLOWING SECTIONS; SECTION 114-20 FENCES; SECTION 114-99 REQUIRED LANDSCAPING; SECTION 114-126 DISTRICT BOUNDARY BUFFERS; SECTION 114-127 REQUIRED SCENIC CORRIDOR AND MAJOR STREET BUFFERS; SECTION 130-186 MINIMUM YARDS; SECTION 142-4 SIGNS REQUIRING A PERMIT AND SPECIFIC STANDARDS; CHAPTER 146, ENTITLED "WIRELESS COMMUNICATIONS FACILITIES," SECTION 146-3 APPLICABILITY, SECTION 146-4 USES BY LAND USE DISTRICT, AND SECTION 146-5 DEVELOPMENT STANDARDS; REFERENCING COMMERCIAL 1 (C1) AND COMMERCIAL 2 (C2) LAND USE DISTRICTS WHERE APPROPRIATE; 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 2012-161)

(1:06 p.m.) Ms. Schemper presented the staff report. Ms. Schemper reported that this relates directly to the previous amendment. This ordinance adds C1 and C2 in other sections of the code that call out specific land use districts for things such as fences, buffer yards and landscaping, et cetera. The C1 and C2 districts have been patterned after suburban commercial and urban commercial because they are similar in intensity. Contingent upon adoption of the text amendment establishing the C1 and C2 land use districts, staff recommended that the Monroe County Code be amended as stated in the text of the staff report.

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

Ms. Schemper clarified for Commissioner Miller that once this commercial FLUM is created it would require an amendment to go back and add a residential component to it. Mr. Haberman added that would defeat the point of these districts because the whole reason they were created is to specifically give people an option of commercial without a residential component.

Motion: Commissioner Wiatt made a motion for approval. Commissioner Hale 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 SECTIONS 102-185 AND 102-215 CONCERNING APPELLATE PROCEDURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES INCONSISTENT HEREWITH; PROVIDING FOR FILING WITH THE SECRETARY OF STATE AND THE STATE LAND PLANNING AGENCY; AND PROVIDING AN EFFECTIVE DATE.

(File 2012-162)

(1:10 p.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that this ordinance consists of small changes to make current practice entirely consistent with the code. The Attorney's Office requested this amendment.

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

Mr. Haberman clarified for Commissioner Miller that this would be applicable if a building permit is given and a neighbor filed an appeal, that work may not proceed on the project until the Planning Commission makes their decision.

Motion: Commissioner Lustberg made a motion for approval. Commissioner Wiatt 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 SECTION 138-22(2); CLARIFYING THAT LAWFUL TRANSIENT RESIDENTIAL RATE OF GROWTH ORDINANCE (ROGO) EXEMPTIONS MAY BE TRANSFERRED TO RECREATIONAL VEHICLE (RV) PARKS, AS WELL AS TO HOTELS; 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 2012-165)

(1:13 p.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that staff found no reason in the comp plan that a lawfully established transient RV space cannot be transferred to another RV park. RV parks are held to a standard of 48 hours evacuation, so there is no evacuation reason to say that hotels are better than RV parks. Staff wants to allow transferring a lawfully established transient residential unit to an RV park as well as a hotel. Mr. Haberman

pointed out that a residential unit cannot be transferred onto Big Pine Key, but one can be transferred off Big Pine to other sites in the Lower Keys subarea because that is consistent with a variety of regulations related to Big Pine and trying to limit development there. The application process was clarified in the ordinance to make it more clear of what needs to be done and what an application would need to consist of.

Chair Werling asked for public comment.

Alicia Putney asked whether a lawfully established RV space, one being used, not abandoned, can be transferred and become a single-family residence. Mr. Haberman replied this only pertains to transient residential dwelling units, which are defined clearly as being a hotel or motel room, an RV space or campground space. Ms. Putney likes the new language that requires the old site be returned to its natural state.

Chair Werling questioned how park models are addressed. Mr. Haberman replied that is something being worked on. There is some language that suggests that a park model can also be used permanently, but it is irrelevant because the County always makes a decision on ROGO exemptions as to whether that ROGO exemption is a transient ROGO allocation or deemed to be a permanent one.

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

Mr. Haberman clarified for Commissioner Wiatt that a hotel room is a bedroom/bath combination and turning an RV space into a hotel room is already allowed. This ordinance allows turning an RV space into an RV space somewhere else. Mr. Haberman pointed out that RVs are not allowed in a lot of places, so the impact of this is minimal. Mr. Haberman explained to Commissioner Lustberg that in theory a tent campsite could be transferred to an RV or a hotel/motel, but it is very hard to establish a campground space as a lawfully established transient unit.

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

BOARD DISCUSSION

Commissioner Lustberg again stated there should possibly be a change in how routine variances are dealt with to simplify things. Mr. Haberman agreed and stated that nobody meets the standards of a variance and a paver patio should not have the same standards as an addition to a house. Commissioner Wiatt noted that the Commission previously spoke about having a definition for “hardship.” Mr. Haberman replied that there is a definition of “exceptional hardship” that is very interpretive. Mr. Haberman will provide the Commissioners with the drafts of prior amendments to deal with routine variances.

Commissioner Lustberg then noted that the new bike path between Mile Marker 25 and Key West has places between the shoulder of U.S.1 and some bridges where there is no link between the two. Mr. Schwab will look into this and then stated FDOT is very restrictive on those connections because of liabilities.

Mr. Wolfe noted as a procedural matter that it has been discovered the Chair Werling has served two consecutive years and is, therefore, term-limited. Mr. Williams stated that election of a new chair will be the first order of business at the next meeting.

Commissioner Miller stated that the bay-side pedestrian and bicycle path in Key Largo has wooden poles that belong to AT&T that are an obstruction to this project. Mr. Schwab will check with engineering and Trish Smith, but believes those utilities are within the FDOT right-of-way.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 1:39 p.m.