

PLANNING COMMISSION
March 27, 2013
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, March 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

William Wiatt, Chair	Present
Jeb Hale	Present
Elizabeth Lustberg	Present
Ron Miller	Present
Denise Werling	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
Mike Roberts, Sr. Administrator, Environmental Resources	Present
Joe Haberman, Planning & Development Review Manager	Present
Emily Schemper, Senior 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.

CHANGES TO THE AGENDA

There were no changes to the agenda, but election of a new Chair will take place first.

Motion: Commissioner Lustberg made a motion to nominate Commissioner Wiatt to be the new Chair. Commissioner Werling seconded the motion. There was no opposition. The motion passed unanimously.

Motion: Commissioner Miller made a motion to nominate Jeb Hale as the new Vice Chair. Commissioner Lustberg 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 MORNOE 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)

(10:06 a.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that there are only minor changes to go over since the last two hearings on this agenda item. The first change made, recommended by some of the Commissioners at the past hearing, was the deletion of the superseding language. Mr. Haberman stated that staff has conferred to determine a reasonable effective date of this ordinance. Even though the Commission wanted the di minimus portion of this ordinance to be effective as soon as possible, it is very difficult to make parts effective immediately and other parts effective later. Mr. Haberman believes this ordinance should start on an NROGO year or Part 2 of an NROGO year. If a decision is made on this today it will tentatively go before the BOCC in April and this can make the next NROGO year, which would be this July for an effective date if DEO does not take their 45 days, and staff is working with them on this. If for some reason it does not make the July date, it will go to Part 2, which would be January 15th of next year.

Commission Miller questioned the increase of square footage that could be transferred from 4,000 up to 50,000 square feet and asked if the transfers could go to different commercial districts in the Keys. Mr. Haberman explained the 50,000 number was as a result of wanting to encourage redevelopment, and the way redevelopment would be encouraged is through removing existing development and moving it as opposed to taking it out of the normal system. The way the ordinance was written before made it so that new development was encouraged before redevelopment and this change to add a higher figure for transfers would balance it out a little bit

more. Mr. Haberman further explained that criteria could be added that it has to go to an overlay community center, but cautioned that may prevent small scale transfers from happening. Commissioner Lustberg pointed out that the limitations on the amount of nonresidential floor area which may be transferred to any one site on Page 16 may take care of Commissioner Miller's concern. Mr. Haberman clarified the caps outlined on Page 16 are per structure, not per site, but that there are not many people with 100,000 square feet on their site that are ready to remove it. As the ordinance is written right now the building size is capped and the floor area ratio would cap that individual property size and the zoning category would cap the floor area allowed. Mr. Haberman then explained to Commissioner Miller that the way the ordinance is drafted right now di minimus can be requested any time, and as staff reviews the building permit they will determine if the property owner is eligible for di minimus. If they are, then administratively staff will deduct the amount needed from the reserve, or the bank, and it will be noted on the building permit it was used so they do not go beyond the 1,000. If di minimus runs out in the individual accounts for the Upper, Lower and Big Pine ROGO subareas, then a property owner would need to submit an NROGO application and compete for it or wait until the bank is replenished.

Chair Wiatt asked for public comment.

Alicia Putney stated that in July of 1992 ROGO was adopted as an emergency measure to reduce the rate of residential development and to direct it to the least sensitive habitat areas. By the time the 2010 plan was adopted in 1996 there were hundreds of thousands of commercial square feet in the development pipeline, which is why a moratorium was enacted. The NROGO ordinance was adopted in 2001 and has been successful in getting control over development. Ms. Putney believes the proposed changes to NROGO will increase the intensity and density of commercial development because it makes it easier to build bigger projects. Ms. Putney also feels these changes are being proposed without a lot of data and analysis and are being proposed without the economic baseline analysis that was called for in the comp plan. Ms. Putney agrees that the larger developments should be directed into the community centers. Ms. Putney would like to see a cap of a maximum total number of square feet per site be 250,000 to maintain the community character of the Keys.

Joyce Newman, Big Pine Key resident, asked the Commissioners to honor the history of public participation in the community planning process to maintain community character. Ms. Newman asked for assurance that nothing in this revised ordinance can be misused to subvert the public's intent to limit commercial development in the Keys.

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

Mr. Haberman clarified for Commissioner Lustberg that a large amount of square footage being transferred has to be Tier III and within the same ROGO subarea as where the floor area came from. However, 50,000 square feet can be moved to any one site. The problem is a larger property can be made to be two stand-alone sites, but that is something that can happen no matter what. In addressing the concern of overlay Mr. Haberman asked that transfers to small developments still be allowed in case the bank concept does not get approved or the bank is ever depleted. Mr. Haberman stated the community character concern would be addressed by the

requirement of a conditional use permit to approve the use for anything over 10,000 square feet. Currently there is no definition within the code for “community character,” but as part of the comprehensive planning process staff has asked the consultant to craft that definition. Currently staff uses the CommuniKeys plans to decide what the community character is. Mr. Haberman then reiterated for Commissioner Miller that there are not a lot of large transfers because not many people have floor area that it is viable to tear it down and move it somewhere else. There are less than 20 shopping centers of greater than 50,000 square feet in Unincorporated Monroe County. There is also the restriction that a transfer has to come from the same subarea, which makes the number of eligible sender sites even smaller.

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

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)

(10:32 a.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that the big change made since the last meeting was the effective date from NROGO Year 23 to the NROGO year that will start this July. The effective date would be consistent with the effective date of the prior ordinance, if they are both approved. Some language about the size classifications was deleted.

Commissioner Miller stated he does not agree that boat barns should be exempted. Mr. Haberman explained boat barns were excluded from the definition of nonresidential by the BOCC five or six years ago. Commissioner Miller commented if NROGO is to be given out at an accelerated rate, boat barns need to be brought under the commercial square footage. Mr. Haberman pointed out that historically NROGO has never been applied to outdoor storage that is not covered or enclosed. Chair Wiatt feels that is an important distinction. CommuniKeys plans that prohibit outdoor storage in certain areas as a principal use have been used to control the proliferation of outdoor retail sales without a building and outdoor storage.

Commissioner Lustberg noted that the Commission should be cautious about putting boat barns back into NROGO because boats and access to the water is a critical part of the Florida Keys and changing the regulations may encourage somebody to put in a hotel where they have a boat barn

currently. Commissioner Werling remembers the reason boat barns were excluded was because there was very little NROGO available and it was very hard to acquire that amount of square footage to facilitate a sizeable boat barn. Mr. Haberman clarified for Chair Wiatt that using rack space for retail sales is not very popular.

Chair Wiatt suggested removing the second sentence of the first paragraph on Page 20 so the boat barn exception would no longer apply. Commissioner Werling and Commissioner Miller agreed. Commissioner Lustberg prefers to continue the exemption for boat barns. Mr. Haberman noted the prior ordinance would need to be changed for consistency. Commissioner Lustberg then stated that in general she believes the details on how to use the NROGO bank are very good, but thinks before voting on this the Commissioners need to clarify they definitely want an NROGO bank and they do not want the allocations to just disappear.

Chair Wiatt asked for public comment.

Joyce Newman asked for clarification whether transferable rights attach to a boat barn that is demolished. Mr. Haberman replied that it depends on when the boat barn was constructed. The ones that were specifically built exempt from NROGO would not be able to reuse the rights.

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

Motion: Commissioner Hale made a motion to approve with the removal of boat barns being exempt from NROGO and making it consistent with the previous ordinance in Item 1-a. Commissioner Miller seconded the motion. The roll was called with the following results: Commissioner Werling, Yes; Commissioner Hale, Yes; Commissioner Lustberg, No; Commissioner Miller, Yes; and Chair Wiatt, Yes. The motion passed four to one.

New Items:

2. CONSIDERATION OF A REQUEST BY PARADISE PIT, LLC TO AMEND THE FUTURE LAND USE MAP OF THE MONROE COUNTY YEAR 2010 COMPREHENSIVE PLAN FROM MIXED USE/COMMERCIAL (MC), RESIDENTIAL LOW (RL), AND RESIDENTIAL CONSERVATION (RC), TO INDUSTRIAL (I), RESIDENTIAL CONSERVATION (RC), AND CONSERVATION (C), FOR PROPERTY LOCATED AT 101075 AND 101101 OVERSEAS HIGHWAY, KEY LARGO, LEGALLY DESCRIBED AS PARCELS OF LAND WITHIN SECTION 27, TOWNSHIP 61 SOUTH, RANGE 39 EAST, ON KEY LARGO, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00087100.000500 AND 00087190.000000.

(File 2012-140)

(10:57 a.m.) Ms. Schemper presented the staff report. Ms. Schemper reported that this is a request for an amendment to the comprehensive plan future land use map for two parcels to change from mixed use/commercial, residential low and residential conservation to a mix of industrial, residential conservation and conservation. Currently the property owners operates a light industrial business and regulations pertaining to the permitted uses within the FLUM categories and land use districts do not allow light industrial uses. So this is considered a

nonconforming use and the requested change to the FLUM is a request in order to eliminate the nonconformity. Ms. Schemper then described the property. A recitation was given of the property's zoning history. The existing light industrial use is located entirely within the portion of the site designated residential low. At one time the site was used for resource extraction, but there is no evidence of any mining activity currently taking place. The existing use includes equipment maintenance and storage, as well as material storage and handling for a local excavation and batch concrete company. Ms. Schemper noted that within the Upper Keys there is currently no land with an industrial FLUM designation. The Livable CommuniKeys plan for Key Largo encourages revision of the FLUM and land use district maps to resolve nonconformities in the planning area where appropriate. Ms. Schemper then detailed the FLUM categories on the site. The net change in development potential is that the residential development potential would go up by seven dwelling units, the transient would have no change and the nonresidential would increase by 210,000 square feet. Ms. Schemper then noted that the applicant agreed after discussion with the DRC to reduce the amount of industrial that they were proposing by about six-and-a-half acres, which reduced the potential increase by four dwelling units and by about 140,000 square feet of nonresidential potential. This application was received prior to the effective date of the discouragement policy. Ms. Schemper then described the parcels surrounding the subject property. This property will be subject to clearing limits, and because it is Tier I land it would only be allowed 7500 square feet of clearing. Staff has determined there seems to be capacity through the concurrency analysis. Staff has also determined this is consistent with the comp plan, the Florida Statutes and the principals for guiding development. Staff recommended approval of the proposed FLUM amendment as revised in the diagram submitted.

Commissioner Miller stated that he cannot support a FLUM that increases the density and intensity to this extent and believes this is adverse to the public good. Mr. Haberman pointed out that part of the reason why staff is supporting this is because there is not any industrially-zoned land in Key Largo and the property owner has been doing the industrial use there for a very long time. Mr. Haberman stated that staff and the applicant did a good job of trying to balance the application out. Mr. Miller noted that if the area that does not include the industrial FLUM were changed to conservation, that would cut down on the amount of density and intensity so that the increase would be two developed units instead of seven, and instead of an increase in 210,000 square feet there would be an increase of 184,000.

The applicant, John LaRocco, was sworn in by Mr. Wolfe and stated he has been involved with this property since 1984 or '85 and has about 30 employees working for him, most living in the Upper Keys area. Mr. LaRocco assured the Commissioners he does not want to build houses on the property, but there was no other way to resolve the longstanding nonconforming use. Commissioner Miller proposed that the applicant change the area proposed to be designated residential conservation as just conservation. Mr. Haberman read aloud the purpose of the conservation district to clarify that the principal purpose of the conservation land use category is to provide for publicly-owned lands held primarily for the preservation of natural and historic resources and compatible passive recreational uses and noted that a conflict may be created if after being FLUM'd conservation it is not given to the County or the State. Mr. Haberman pointed out that if there are changes made to the categories, it could require a second public hearing of the Planning Commission. Ms. Santamaria stated if the applicant wanted to

voluntarily make the area conservation, they can make that offer, but they cannot be held to the discouragement policy since it was not even in effect when they applied. Mr. Haberman then pointed out that in the industrial district the only type of housing is deed-restricted commercial apartments, which would indirectly control any potential residential development here in the future.

Commissioner Lustberg asked what is the purpose of going through this process to change the land use map when, as an existing nonconformity, the property owner can continue to do what they are doing without any issues. Mr. Haberman explained they would like to construct a small office, which they currently cannot do because that would be an expansion of the nonconformity.

Chair Wiatt asked for public comment.

Randy Wall, Key Largo resident, was sworn in by Mr. Wolfe and then assured staff that he is not employed by or representing John LaRocco in any capacity. Mr. Wall explained his business history with this property since the mid '70s and stressed that this site is the only place in Key Largo that can legally process fill. Mr. Wall feels strongly that it is in the community's best interest to have at least one piece of industrially-zoned property in Key Largo.

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

Commissioner Lustberg asked Mr. Roberts about the possible benefit of changing the boundaries of the map between the residential conservation and the industrial sections. Mr. Roberts replied it is really a nonfactor, that it is the tier that drives the determination in terms of both the ROGO and the clearing. Mr. Haberman added that there is a Tier I cap on how many allocations can be awarded in that subarea. Commissioner Miller then asked whether the density on the property being 20 units as opposed to ten units makes the property more valuable. Ms. Santamaria responded that is a legal question, but pointed out with the change they have other viable uses on their property. Ms. Santamaria added that restrictions cannot be put on the granting of a map change. Ms. Grimsley commented that this is going to move forward to the BOCC for a transmittal hearing and will be transmitted to the DEO and then come back for approval or not.

Commissioner Lustberg stated that the process and the amount of change recommended for something that should just be a minor change seems out of alignment. Commissioner Hale agreed. Mr. Haberman explained that if the owner were to go to industrial use it is under a minor conditional use permit, and if they ever wanted to do anything on the property it would require that approval and that could be conditioned, but a condition cannot be put on a FLUM amendment. Commissioner Miller feels this process makes stumbling blocks for people who want to do the right thing. Mr. Haberman further explained there is the option of a property owner putting a conservation easement on their property. The conservation FLUM category refers to lands publicly-owned, which is part of the reason more options are being created for people through the update, one of which is a preservation category that would be open to private and public property. Mr. Haberman stated to Commissioner Lustberg the increase in dwelling units and square footage is theoretical with the clearing limits, shoreline setback and open space requirements. Chair Wiatt commented that this property owner and business owner is being penalized because Monroe County does not have the right type of code to address his situation

property. Chair Wiatt suggested consideration of taking steps for industrial zoning like was done for commercial zoning where commercial zoning is allowed without density and intensity increases.

Motion: Commissioner Werling made a motion to recommend this move on to the BOCC based on the staff report. Commissioner Hale seconded the motion. There was no opposition. The motion passed unanimously.

BOARD DISCUSSION

Commissioner Miller asked about the progress on the storage ordinance. Mr. Haberman explained it was indefinitely tabled because it was decided that the off-site parking section of the code does allow for off-site parking in controlled conditional use circumstances already. Ms. Grimsley added there is an ordinance being proposed concerning tractors, trailers, boats and car storage on property that will be coming forward this month or next month.

Commissioner Miller then asked about regulations regarding garage sales. Mr. Haberman replied the code, other than saying yard sales are allowed, is silent on how long it can last. It has historically been interpreted that if it is going on every week, that is consistent, it is a commercial retail use and they are subject to code. Commissioner Lustberg suggested letting code compliance handle it as opposed to creating another regulatory structure to deal with this.

Mr. Haberman informed the Commission that the Rockland Key ordinance is scheduled to go before the BOCC in Key West in April and that the applicant has tried to accommodate some of staff's concerns as well as some of the concerns raised by the BOCC in January. The NROGO ordinance is scheduled for that same meeting.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 12:09 p.m.