

PLANNING COMMISSION
September 25, 2013
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, September 25, 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	Absent
Susan Grimsley, Assistant County Attorney	Present
Steve Williams, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mayte Santamaria, Assistant Director of Planning and Environmental Resources	Present
Joe Haberman, Planning & Development Review Manager	Present
Mitch Harvey, Comp Plan Manager	Present
Mike Roberts, Sr. Administrator, Environmental Resources	Present
Tiffany Stankiewicz, Development Administrator	Present
Tim Finn, Planner	Present
Matt Coyle, 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

County staff members were sworn in by Mr. Wolfe.

CHANGES TO THE AGENDA

Item 4 was tabled and will not be heard today. Items 5 and 6 will be heard together, but will require separate motions.

APPROVAL OF MINUTES

Motion: Commissioner Lustberg made a motion to approve the minutes of the August 28, 2013 meeting. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

New Items:

1.A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM FOR THE APRIL 13, 2013 THROUGH JULY 12, 2013, ROGO (4th QUARTER YEAR 21). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY.
(File 2012-137)

(10:06 a.m.) Ms. Stankiewicz presented the staff report. Ms. Stankiewicz reported that the Planning Department is recommending approval of market rate ROGO allocations and deferring one application in the Big Pine subarea. There were no affordable housing applications.

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

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

2.A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS FOR NON-RESIDENTIAL FLOOR AREA FOR ALL UNINCORPORATED MONROE COUNTY FOR THE NROGO PERIOD 2 OF YEAR 21 JANUARY 15, 2013 – JULY 12, 2013. ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY.
(File 2012-108)

(10:07 a.m.) Ms. Stankiewicz presented the staff report. Ms. Stankiewicz reported that staff is recommending approval of one NROGO allocation award outside of the Big Pine/No Name subarea. In the Big Pine subarea staff is recommending for the reservation of 1,489 square feet and that the applicant roll over to the following quarter to compete for the remainder of an allocation award.

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

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

3.PBP Marina Inc., doing business as Geiger Key Marina and Fish Camp, 5 Geiger Road, Geiger Key, Mile Marker 11: A request for approval of a 5COP SRX (Restaurant – Beer, Wine and Liquor, no package sales) Alcoholic Beverage Special Use Permit. The subject property is described as part Government Lot 6, Geiger Key, Section 26, Township 67, Range 26, Monroe County, Florida, having real estate number 00122160.000000.
(File 2013-098)

(10:09 a.m.) Mr. Finn presented the staff report. Mr. Finn reported that this is a request for a 5COP SRX alcoholic beverage special use permit at Geiger Key Marina located on Geiger Key. The new permit would serve as an upgrade because the property already has a valid 2COP alcoholic beverage special use permit. Mr. Finn gave a brief history of County actions on the property. Staff recommended approval with the following conditions: The alcoholic beverage special use permit shall be deemed to be a privilege running with the land; in the event that the holder's license expires and lapses, this alcoholic beverage special use permit approval shall be null and void as of the date of that expiration; alcohol service, sales and consumption shall occur only within areas allowed for and approved; and the applicant shall maintain at least three off-street parking spaces and designated parking area signs on the property for the restaurant use.

Robert Mongelli, the applicant, stated he does not believe parking will be a problem because adding alcohol to an existing 2COP license does not create more of an influx of customers. The applicant is trying to purchase a vacant piece of property across from the marina in order to address any parking problems.

Chair Wiatt asked for public comment.

Douglas Meeker, who lives directly across from Geiger Key Marina and owns Bobalu's Restaurant at Mile Marker 10, assured the Commissioners that his intent has nothing to do with any competition between restaurants. Mr. Meeker stated his biggest objection to granting this license is the lack of parking at this marina. Mr. Meeker added that two years ago the applicant's license was increased to a wine license without increasing the parking and without signage directing customers to specific restaurant spaces. Mr. Meeker feels the neighborhood has been turned into a parking lot and storage yard for this marina. Mr. Meeker asked the Commissioners to postpone the decision on this matter until they look at the parking situation and the effect that granting this license will have on the neighborhood.

Mr. Mongelli responded that Mr. Meeker has never approached the manager of the marina with any of these complaints. Mr. Mongelli stated a lot of the trailers do not belong to patrons of the marina, but that the whole neighborhood uses that street for parking. Mr. Mongelli stated that several other residents that are not present are fine with this request.

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

Commissioner Lustberg asked about violations currently on the property. Mr. Haberman does not know of any open code cases on this property that are in the process of being resolved. Mr. Haberman informed Commissioner Miller that this restaurant does not have the number of parking that it would be required to have if building a restaurant there today, but it is lawfully

non-conforming like many other restaurants in the Lower Keys. Mr. Haberman further stated if the Commissioners felt that the alcoholic beverage upgrade was going to create an issue with parking, conditions could be imposed on the approval. There is currently nowhere else on this property to add parking. Parking is usually based on seats, not directly linked to what is sold or not sold at the property. Commissioner Werling feels an increase in the license does not significantly change the amount of people that frequent the establishment. Mr. Haberman clarified for Chair Wiatt that there is no direct requirement that X number of parking spaces be added for any individual type of permit. Historically if a property owner is nonconforming to the parking and there is area available to get into conformity, that is done, but in this case there is not enough room on site that that can be required. The potential purchase of a neighboring property would qualify for off-site parking. This area is predominantly owned by the Federal Government, but without a No Parking sign parking operable vehicles on a public right-of-way is permitted. Parking on other people's private land is a code enforcement issue.

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

5. CONSIDERATION OF AN ORDINANCE OF THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING POLICY 101.2.6 OF THE MONROE COUNTY YEAR 2010 COMPREHENSIVE PLAN EXTENDING THE MORATORIUM ON TRANSIENT UNIT ALLOCATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR THE TRANSMITTAL TO THE FLORIDA STATE LAND PLANNING AGENCY; PROVIDING FOR THE FILING WITH THE SECRETARY OF STATE AND FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE INCLUSION IN THE MONROE COUNTY 2010 COMPREHENSIVE PLAN.

(File 2013-086)

6. CONSIDERATION OF AN ORDINANCE OF THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING SECTION 138-23 OF THE MONROE COUNTY CODE, EXTENDING THE MORATORIUM ON TRANSIENT UNIT ALLOCATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR THE TRANSMITTAL TO THE FLORIDA STATE LAND PLANNING AGENCY; PROVIDING FOR THE FILING WITH THE SECRETARY OF STATE AND FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE INCLUSION IN THE MONROE COUNTY CODE.

(File 2013-090)

(10:32 a.m.) Mr. Harvey presented the staff report. Mr. Harvey reported that a prohibition on new transient uses has been affecting Unincorporated Monroe County since the comp plan became effective in 1997. During the review of the 2010 transient use amendment the Florida DEO recommended that the transient moratorium be continued until the adoption of the Evaluation and Appraisal Report (EAR). The new EAR schedule amended the EAR due date to May 2, 2014. EAR-related amendments are required to be adopted within one year of the EAR. The BOCC on December 14, 2011 adopted an ordinance that extended the existing transient use

moratorium until May 1, 2014 to coincide with the State schedule for the EAR. The BOCC at that same time adopted an ordinance which amended Section 139-23 of the Monroe County Code to extend the existing transient moratorium until May 1, 2014 to be consistent with the amended Policy 101.2.6. Monroe County recently adopted an EAR on May 22, 2012 based upon the updated technical document which serves as the data analysis for EAR-based amendments. An economic study was performed which determined that in an unrestricted market an annual occupancy consistently above 65 percent the market typically responds by adding new hotel rooms until an annual occupancy falls back to approximately 65 percent. Occupancy data provided to the Tourist Development council indicates that the average annual occupancy rate for 2012 was about 75.9 percent. This indicates there may be a need to expand the available amount of transient units in Monroe County. Monroe County is mandated to maintain a 24-hour evacuation level of service standard. The occupants of transient uses evacuate ahead of permanent residents. The proposed amendment would, therefore, not impact the County's adopted hurricane evacuations time standard. DEO completed hurricane evacuation modeling tasks and, based on their results, recommended 197 allocations for the next ten years. In March 2013 the State Administrative Commission approved a recommendation to allocate these, but the issue is that there are presently 8,168 privately-owned vacant parcels within Unincorporated Monroe County. It would take over 41 years' worth of annual allocations at the current rate of 197 to absorb these parcels. This may result in a balance of 6,198 privately held parcels at risk of not obtaining permits in the future, which would trigger takings claims against both the State and Monroe County if no additional permits are allowed beyond the year 2023. Staff is consequently recommending that Policy 101.2.6 be amended to prohibit the allocations of new ROGO allocations for transient uses until the next round of EAR amendments, which will be due on May 1, 2022. The proposed extension of the transient unit moratorium would provide an opportunity to use 2020 Census data to update and run the Florida Keys hurricane evacuation model. Staff is proposing that Policy 101.2.6 read as follows: Monroe County shall prohibit new transient residential allocations for hotel or motel rooms, campground spaces or spaces for parking recreational vehicle or travel trailers until May 1, 2022. Staff is also recommending Section 138-23 of the Monroe County Code read as follows: New transient residential units such as hotel and motel rooms or campground, recreational vehicle or travel trailer spaces shall not be eligible for residential ROGO allocations until May 1, 2022.

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

Commissioner Lustberg suggested extending the moratorium until 2016 and then re-evaluating the situation. This would provide for more flexibility in the future. Commissioner Lustberg also believes using ROGO on hotels would help with evacuation times and feels it might be worthwhile to put a few more hotel rooms in Tier III than to be building new houses on certain Tier I properties. Mr. Harvey noted that the County is obligated to use data analysis to re-run the hurricane model every time Census data comes out, which will not come out until 2020. If there is data analysis that comes out that would justify adjusting the date down, the comp plan can be amended. Commissioner Werling agreed with Commissioner Lustberg's comments and believes the moratorium creates other ways of getting around the legal motel unit system. Mr. Harvey mentioned that the emphasis in this ordinance is on new units.

Commissioner Miller is opposed to adding any more transient space due to the increase of traffic on the one highway in the County and agrees it should be looked at further in the future. Chair Wiatt agreed with Commissioner Miller and pointed out the impacts transient residents have on the environment. Commissioner Lustberg believes it will be harder to undo a moratorium than to extend a moratorium and if transient uses are not permitted to legally expand, it encourages people to illegally provide transient units. Commissioner Miller feels illegal transient units are a completely different scenario that needs to be addressed. Commissioner Hale agreed with Commissioner Miller and Chair Wiatt.

Motion: Commissioner Hale made a motion to amend Policy 101.2.6 of the Monroe County Comprehensive Plan to extend the transient allocations moratorium to May 1, 2022. Commissioner Miller seconded the motion. The roll was called with the following results: Commissioner Lustberg, No; Commissioner Hale, Yes; Commissioner Miller, Yes; Commissioner Werling, Yes; and Chair Wiatt, Yes. The motion passed four to one.

Motion: Commissioner Hale made a motion to amend Section 138-23 of the Monroe County Code to extend the transient moratorium to May 1, 2022. Commissioner Werling seconded the motion. The roll was called with the following results: Commissioner Lustberg, No; Commissioner Hale, Yes; Commissioner Miller, Yes; Commissioner Werling, Yes; and Chair Wiatt, Yes. The motion passed four to one.

7.AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 101-1, DEFINITIONS, AMENDING MONROE COUNTY CODE SECTION 130-4, TEMPORARY EMERGENCY HOUSING, ESTABLISHING MONROE COUNTY CODE SECTION 130-5, TEMPORARY USES INCLUDING PUBLIC ASSEMBLIES, ESTABLISHING REGULATIONS CONCERNING TEMPORARY HOUSING ASSOCIATED WITH CAPITAL IMPROVEMENT PROJECTS, ESTABLISHING REGULATIONS CONCERNING TEMPORARY USES IN THE LAND DEVELOPMENT CODE, 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 2013-087)

(10:55 a.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that it became apparent through the Key Largo wastewater experience that there were issues with how temporary sites for storage of equipment and fill were approved and this ordinance will resolve some inconsistencies within the code. Temporary uses are defined in the Land Development Code, but it never states how to approve them or not approve them. There are no requirements, no criteria. The first thing this ordinance does is tell you how to approve temporary uses. The ordinance includes not just construction-related projects, but anything that is less than one year in duration. This ordinance is also to deal with requests from public entities for a temporary house on site with equipment for security purposes. Staff has added language to state for a capital improvement project a temporary RV, not a house, would be allowed for up to a year. Another issue clarified in this ordinance is defining a public assembly, which is a type of

temporary use, as having over 250 people a day and which requires coordination with the sheriff, the fire marshal and Health Department.

Commissioner Miller pointed out that there is a new section proposed for the comp plan which would allow temporary emergency housing. Ms. Santamaria confirmed that is in fact being proposed. Commissioner Miller pointed out that this is being put in the LDC before approving the changes to the comp plan. Mr. Haberman clarified this ordinance is not inconsistent with the comp plan as it is written right now and that this ordinance includes some parameters and criteria that cannot be enforced until the code is changed. Commissioner Miller disagrees with use of the word “emergency.” Mr. Haberman shares that concern and stated staff is working on that internally. Mr. Haberman explained that the placement of RVs can only be done by a local, state or federal agency, not a private contractor. The request would be made to the BOCC and on a case by case basis the Board would decide the number of RVs allowed, but the Planning Commission can recommend a cap. Ms. Santamaria clarified this would be exempt from ROGO and is not anticipated to increase hurricane evacuation. The Board has to approve the temporary use by a resolution. Mr. Haberman added that language was included in the temporary use section that a temporary use shall be compatible with the existing uses on surrounding properties, which gives staff the ability to deny it if the property is not appropriate for this use. The Board is capped at allowing this use for one year.

Commissioner Miller recommended allowing for one watchman’s trailer unless it is a declared emergency or a public health threat. Mr. Haberman assured Commissioner Miller that language is already contained in the other sections, but some language could be crafted to limit the one RV for security purposes. Commissioner Lustberg agrees with creating proper storage of equipment and materials for capital improvement projects and a security trailer, but wants the ability for emergency temporary housing. Commissioner Lustberg does not want the agencies to have the ability to bring their employee housing down here with them. Commissioner Lustberg suggested tightening language on Page 4 to read “long-term capital improvement projects by federal, state or local agency, government employees only, and not contractors,” as well as adding the security purpose on Page 9.

Chair Wiatt voiced concern of the potential for a trailer being in a location for a year with a possible extension of another half-year, and then remaining on that same property because of it being used on a different project next. Mr. Haberman suggested adding language “Under no circumstance shall an RV be on a property for more than two years,” which would allow for one conceivable extension. Chair Wiatt suggested “No structure shall remain on any property for a period greater than a year-and-a-half.” Commissioner Werling agreed. Chair Wiatt further suggested limiting any one property used for temporary housing for only a year-and-a-half. Commissioner Miller would like the temporary housing be limited to one security trailer. Commissioner Lustberg reiterated the tightening language is that it has to be a government employee, it cannot be a contractor, and that there is a limited time that any one trailer could be on one site. It was clarified that the security trailer does not need to be occupied by a security guard or law enforcement officer, but just an employee of the project so there is a presence on the site 24 hours a day. Chair Wiatt would like to retain the language that states all these projects have to come before the Board before they are approved. Mr. Haberman mentioned the way it is worded right now a building permit would be needed.

Motion: Commissioner Lustberg made a motion to approve staff’s recommendations to the BOCC with the removal of the ability to have employee trailer housing. However, should the BOCC wish to have that employee trailer housing, the tightening language discussed today should be included. Commissioner Werling seconded the motion. Commissioner Miler suggested staff work on this ordinance further and bring it back with the suggested changes. Mr. Haberman stated that would be fine, but the only reason why the Commissioners would want to move this forward today is the wastewater projects are getting underway in the Lower Keys and as the code is written today, there would be more sites open for them to store their equipment. After discussion the Commissioners agreed there is no need to continue this item.

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

Mr. Haberman clarified with Commissioner Lustberg that any kind of housing other than for a single RV for security purposes would be removed from the ordinance. **There was no opposition. The motion passed unanimously.**

BOARD DISCUSSION

Paradise Point Senior Housing (Proposed), 2 North Blackwater Lane, Key Largo, Mile Marker 105.5: A request for approval of a resolution by the Planning Commission approving an affordable housing project of greater than 20 units, as required by Monroe County Code Section 130-161(a)(6)h. This request is being concurrently processed with a separate request for a minor conditional use permit allowing the development of an institutional residential use, involving 50 deed-restricted affordable housing units (in the form of rooms) and accessory uses/structures. The subject property is described as a parcel of land in Section 1, Township 61, Range 39, Monroe County, Florida, having real estate number 00084260.000100.

(11:33 a.m.) Mr. Wolfe clarified while this item is listed under Board Discussion, the Commissioners will need to consider approving a resolution that the site is okay for more than 20 units. This is a precursor to the actual conditional use.

Mr. Haberman presented the staff report. Mr. Haberman reported that the reason why this is under Board Discussion is because there is a unique provision in the code that any time there is going to be more than 20 affordable housing units on a single site it requires Planning Commission approval. Some of these approvals would be as of right and some of them would be minor conditional uses, which are not decided upon by the Planning Commission. Mr. Haberman stated the applicant might have to scale back the project to 47 or 48 units because of some wetlands that affect density, but in general the zoning allows affordable housing at that site in the form of institutional housing. This development includes housing for elderly residents, which is addressed in comp plan policies encouraging that. Mr. Haberman clarified that this project is not a nursing home and not a hospital, but just affordable housing for people that have an age requirement. All residents will meet the requirements of affordable housing and they will have age requirements. Mr. Wolfe read Section 130-161 to explain why the Planning Commission is making this decision today. Mr. Haberman clarified that because the applicant is

using incentives for affordable housing the Planning Commission has to decide if this is an appropriate project for that site. Staff has already ensured there were enough reservations and the applicant has already received a reservation of up to 50 units from the BOCC, so there is enough affordable allocations for them to have this project. The Commissioners just have to decide if this is an appropriate place for 20-plus units.

Mr. Haberman explained to Commissioner Lustberg the difference between max net density and allocated density. Mr. Haberman further explained back in 2005, in order to encourage affordable housing, developers were allowed to build up to max net density for deed restricted affordable housing projects if they met all other criteria.

Joel Reed, Planner, was present on behalf of the applicant. Mr. Reed gave a brief history of the applicant's history of development in Monroe County. Mr. Reed explained that through this development the applicant is providing housing for people through the aging process. The funding for this development is for senior housing, but it is for active adults age 62 and up. This is not an assisted living facility. The units are deed-restricted affordable. 60 percent of the units are one-bedroom. \$36,000 would be the income limit for a resident and the average rents are around \$850 a month. There are common shared facilities in the building. Other services to be provided were described. Mr. Reed believes this is a well-situated site and appropriate development. There will be 46 affordable institutional units and one employee unit for the on-site manager. 80 percent of the allocations are for low income.

Commissioner Miller wants to ensure this affordable housing is for Monroe County residents. Mr. Williams explained that is a form of discrimination that is prohibited. Mr. Reed assured Commissioner Miller that there is targeted marketing that can be done and the applicant has promised the County they will not do marketing outside of Monroe County to try to fill those units. Mr. Haberman clarified that employee housing has requirements that a certain amount of income needs to be derived from the County, but that is not a requirement for affordable housing.

Commissioner Lustberg questioned whether there were neighborhood compatibility issues or environmental issues for having this density on this site. Mr. Haberman explained this is located in an urban commercial district which would allow for an intense commercial use there. Staff does not anticipate any community character issues with this project. Environmentally this project may improve the situation because the wetland area will be preserved. The applicant is going to bring their portion of the site into stormwater compliance, add landscaping and add green areas to a site that is pretty much all gravel. Mr. Roberts concurred with Mr. Haberman's assessment of the environmental conditions on the site.

Chair Wiatt asked about a limitation on occupancy per unit. Hana Eskra, representing Gorman and Company, stated that under the Fair Housing laws the applicant can and will restrict folks under 62 from living in those units. In some instances one caretaker would be allowed, but that usually happens in two-bedroom units and there are no two-bedroom units in this development. Chair Wiatt asked if a limitation of two people per unit could be a condition. Mr. Wolfe recommended that limitation occur at the minor conditional use approval. Mr. Haberman stated staff will put that condition onto the minor conditional use permit.

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

GROWTH MANAGEMENT COMMENTS

Ms. Santamaria agreed that there is no need for an update on the comp plan because the schedule of meetings with Keith and Schnars is being followed currently.

Commissioner Lustberg asked if conditions such as AC and live music can be put on venues such as the one this morning from Geiger Key. Mr. Haberman stated it is redundant to require code as conditions because code may change. Staff is trying to limit conditions to actual conditions that go beyond code to preserve community character.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 12:08 p.m.