

PLANNING COMMISSION  
**November 16, 2016**  
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, November 16, 2016**, beginning at 10:00 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL** by Ilze Aguila

**PLANNING COMMISSION MEMBERS**

Denise Werling, Chair	Present
William Wiatt, Vice Chair	Present
Elizabeth Lustberg	Present
Ron Miller	Present
Beth Ramsay-Vickrey	Present

**STAFF**

Mayte Santamaria, Sr. Director of Planning and Environmental Resources	Present
Steve Williams, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present
Tiffany Stankiewicz, Development Administrator	Present
Kevin Bond, Planning & Development Review Manager	Present
Janene Sclafani, Planner	Present
Ilze Aguila, Sr. Planning Commission Coordinator	Present

**COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL**

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

**SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS**

Ms. Aguila confirmed receipt of all necessary paperwork.

**SWEARING OF COUNTY STAFF**

County staff members were sworn in by Mr. Wolfe.

**CHANGES TO THE AGENDA**

Ms. Aguila stated that Item 3 had requested to be continued to the December 15, 2016, Planning Commission Meeting.

**Motion: Commissioner Ramsay-Vickrey made a motion to allow for the continuance of Item 3 to December 15, 2016. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.**

**APPROVAL OF MINUTES**

**Motion: Commissioner Ramsay-Vickrey made a motion to approve the October 26,, 2016, meeting minutes. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.**

**MEETING**

**Continued Items:**

Ms. Santamaria requested that Items 1 and 2 be read and heard together.

**1. Gulf Drive, Lot 12, Block 28, Key Largo Park PB3-62, Key Largo, Mile Marker 100.5:** A public hearing concerning a request for a Variance of 10 feet from the required 25-foot primary front yard setback along the Gulf Drive right-of-way, which is adjacent to the southeastern property line, and a variance of 10 feet from the required 20-foot rear yard setback along the northwestern property line. Approval would result in a primary front yard setback of 15 feet along the Gulf Drive right-of-way and a rear yard setback of 10 feet along the southeastern property line. The variance is requested for the development of a proposed single-family detached dwelling. The subject property is legally described as Lot 12, Block 28, Amended Plat of Key Largo Park, Plat Book 3, Page 62, Key Largo, Monroe County, Florida, having real estate number 00529300-000000.  
(File 2016-060)

**2. Gulf Drive, Lot 13, Block 28, Key Largo Park PB3-62, Key Largo, Mile Marker 100.5:** A public hearing concerning a request for a Variance of 10 feet from the required 25-foot primary front yard setback along the Gulf Drive right-of-way, which is adjacent to the southeastern property line, and a variance of 10 feet from the required 20-foot rear yard setback along the northwestern property line. Approval would result in a primary front yard setback of 15 feet along the Gulf Drive right-of-way and a rear yard setback of 10 feet along the southeastern property line. The variance is requested for the development of a proposed single-family detached dwelling. The subject property is legally described as Lot 13, Block 28, Amended Plat of Key Largo Park, Plat Book 3, Page 62, Key Largo, Monroe County, Florida, having real estate number 00529310-000000.  
(File 2016-061)

(10:03 a.m.) Ms. Santamaria stated that both of these items were presented back in August. Last month the applicant submitted a revised application answering all questions regarding the criteria for the variance, held a community meeting, and submitted a letter from their architect. A letter was also submitted by one neighbor. Staff has no further information to present. The applicant is present to speak.

Guillermo Alvarez, Esquire, of 130 LaPaloma Road in Key Largo, spoke on behalf of the applicant, stating that all criteria had previously been presented and gave a brief summary. The Commission had asked for the applicant to have an architect look at the project to see if the setback could be minimized, which was unable to be accomplished. The applicant also held a meeting for the neighbors at an identical unit previously built. Two neighbors, June Vanderwiden and Rolando Casada, came to the property and loved the property. Mr. Casada had questions regarding vacation rentals and was told that should not be a problem. Both were pleased with parking and space for accessory vehicles. Ms. Vanderwiden is a rear neighbor and requested Bahama shutters be put on the rear windows of the property for her privacy, and the applicant is agreeing, is willing to make that a condition of approval, and presented pictures for the Commission. Having met the additional items requested by the Commission, they are requesting approval of the variances.

Commissioner Ramsay-Vickrey asked if there was another meeting, other than the one held Monday, November 14, 2016, that the applicant had not shown up for. Mr. Guillermo stated there was a community association meeting held which the applicant had been invited to, but was unable to attend.

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

Commissioner Miller stated he was going to vote for approval. He found it interesting that even if the lots were aggregated, a variance would still be necessary. He made a motion for approval of Items 1 and 2 with the shutters. Commissioner Wiatt seconded the motion.

Mr. Wolfe momentarily interrupted and asked Commissioner Ramsay-Vickrey about any ex parte discussion she may have had regarding the second meeting that was not attended by the applicant. Commissioner Ramsay-Vickrey indicated she had heard about it last month from staff. She explained she is still against this variance and was not convinced Ms. Vanderwiden was overly happy with the project, particularly concerning the height of the building. The community meeting was held only two days ago on Monday at 10:00 a.m. when most people work and the meeting should have been held in the evening or on the weekend. It also would have been nice to have the applicant attend the association meeting. This morning, she checked on Zillow to get an idea of unit sizes on 3,000 square foot lots, found 14 homes for sale, and not one was 1,600 square feet. She does not believe 1,600 square feet is the minimum required. Last month the applicant stated they had gotten variances for large homes on 2,500 square foot lots dozens of times. It feels as though the applicant is trying to work around the County rules instead of adhering to them. Last month, Ms. Moses stated this community was mostly little conch cottages, and now people are attempting to build 3-story 1,600 square foot homes, which is not the minimum size necessary. For all of these reasons, she will vote against approval.

Mr. Guillermo believes focus is lost when discussing size of the house. Square footage is volume and he is speaking of the minimum necessary for a variance to allow a residential unit to be built. A 50-by-50 lot needs a variance to build a home. The FEMA guidelines require the home to be built on stilts. Once the variance is granted, the size of the house is not dependent on other factors. They are only asking for a variance on the front and rear setbacks.

Mr. Williams asked Ms. Santamaria to address those issues to clarify the record. Ms. Santamaria stated anyone applying for a variance must meet all criteria, not a subset of them. This neighborhood is in an AE10 Zone, so homes need to be elevated. The IS setbacks are large for the front and back. This property is unique in terms of the flood zone and addressing parking, along with everything else. Mr. Guillermo interjected you cannot build a house five feet deep and meet safety and fire criteria.

Commissioner Wiatt stated he had wanted more input from the neighborhood as to preference of a smaller home that comes closer to meeting setback requirements or a larger home requiring more of a setback variance. He feels that from a property value standpoint and parking, it would be better to allow the variance, and it would be difficult to prohibit it entirely. Chair Werling added her hope was that with the variance, the parking is addressed. Commissioner Wiatt agreed, noting a smaller house would have less parking.

Chair Werling asked if the Commission was ready for a vote on each item separately.

**Motion: Commissioner Miller made a motion to approve the variance for Item 1 based on staff report recommendations and additional requirement for Bahama shutters. Commissioner Wiatt seconded the motion. The roll was called with the following results: Commissioner Ramsay-Vickery, No; Commissioner Wiatt, Yes; Commissioner Lustberg, No; Commissioner Miller, Yes; and Chair Werling, Yes. The motion passed.**

**Motion: Commissioner Miller made a motion to approve the variance for Item 2 based on staff report recommendations and additional requirement for Bahama shutters. Commissioner Wiatt seconded the motion. The roll was called with the following results: Commissioner Ramsay-Vickery, No; Commissioner Wiatt, Yes; Commissioner Lustberg, No; Commissioner Miller, Yes; and Chair Werling, Yes. The motion passed.**

**3. A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM FOR JULY 13, 2016, THROUGH OCTOBER 12, 2016, ROGO (1ST QUARTER YEAR 25). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY.**  
(File #2016-164)

(10:25 a.m.) Ms. Stankiewicz presented the staff report on the residential dwelling unit allocations for the Lower and Upper Keys subareas, and the Big Pine/No Name subareas, noting one correction to the Lower Keys ranking on applicant ranked number 12, a typo, which should have been 15104656. The recommendations for market rate rankings are as follows: Lower Keys applicants ranked 1 through 14. Big Pine/No Name Keys applicants ranked 1 through 2, subject to mitigation availability at time of permitting. Upper Keys applicants ranked 1 through 15. And there are no affordable housing applicants.

Chair Werling asked for public comment. There was none. Public comment closed. The Commissioners had no questions or comments. Chair Werling asked for a motion.

**Motion: Commissioner Ramsay-Vickrey made a motion to approve. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.**

Chair Werling noted there was some discussion desired.

Commissioner Miller asked as to the ranking of affordable housing allocations, referring to the previous matter with Mr. Trepanier and the discussion of allowing affordable housing in a Velocity Zone, if they had fewer negative points compared to other projects, how would that work out when allocating affordable housing.

Ms. Santamaria responded that there are two different pieces. The scoring criteria is for market rate applications. Affordable housing under Section 138-24(C)(4) states that no affordable housing allocation shall be awarded within a V-Zone. So today it is prohibited. Commissioner Miller commented that there would be no negative points then, it's just simply not allowed, and Ms. Santamaria confirmed that to be correct. Commissioner Miller asked if affordable housing got any points. Ms. Santamaria explained that affordable housing was a separate process and wasn't competitive with market rate.

Commissioner Lustberg discussed when increasing density on a piece of property, it's not increasing density in the Keys overall because we are under ROGO, and if more gets built here, less gets built over there. ROGO has to do with hurricane evacuation and US-1. Commissioner Miller has raised concerns that were ROGO to disappear or change, will allowing density in one place allow for an increased overall density in the Keys. Her question is, is this logical thinking and is there a real possibility of ROGO no longer acting as the limit to growth.

Ms. Santamaria indicated she would try to answer that. Commissioner Lustberg noted it didn't have to be answered today, but wants to understand going forward when making decisions, what should be the mental process. Commissioner Miller interjected that he would like to answer that after Ms. Santamaria, who stated he could go first. Commissioner Miller stated under the comp plan right now, the density is laid out. If density is increased over what is allowed, the overall density in the Keys is increased. No matter what is done, there is one road. Ms. Santamaria added there are multiple pieces and multiple limits. ROGO is the units. Density is associated with the land use districts and future land use. Today, every property has a designation to establish its density. If market rate density is increased on one site, TDRs must be transferred, offsetting it by taking density from one site, eliminating it, and moving it to the other location. For affordable housing, TDRs are not required. With a map amendment to increase density, overall density is increased, but ROGO caps the total number of units. Build-out should be reached by 2023 and with the last projected hurricane model, 24 hours will be reached at that time. There have been no roadway changes that would increase capacity. Even if occupancy rates change for permanent housing and more people are living here full time, the net result in the hurricane model will be over 24 hours. The County has to decide if they want to eliminate ROGO, which would be a recommendation by the Planning Commission and the decision of BOCC. It would need to be based on extensive roadway improvements or hurricane forecasting abilities but, right now, ROGO is the total cap and it can't be exceeded, regardless of density.

Commissioner Lustberg asked if then even with roadway changes where they could theoretically get rid of ROGO, could they also decide not to. Ms. Santamaria indicated that to be correct, adding it would also be State reviewed. Any time a code or comp plan amendment is done it must also be approved by the State. Mr. Williams added that the permits themselves come from the State, so if ROGO were eliminated, we really don't know what the State would do with our permits. Commissioner Lustberg noted it seems more likely if there were changes in modeling forecasts or the roadway, rather than eliminating ROGO entirely, the State would allow more ROGO. Ms. Santamaria replied that the State would likely extend the annual allocation to a longer time frame until 24 hours was reached.

Commissioner Miller stated this was one pitfall with relying on hurricane evacuation rather than also using the carrying capacity of the Keys. Common sense says that we're actually at build-out. We put a line in the sand and keep moving it. He has no confidence that they will actually say, no more, and then FDOT will step in and build more lanes. Ms. Santamaria stated she understands that position and that the BOCC and this Board has been proactive in recommending strategies to eliminate development, provide other options for commercial categories, and a significant amount of money has been set aside for land acquisition. The Land Authority has been aggressive lately, and DEP is also purchasing land. They are trying to look at it holistically with 2023 being right around the corner, and that may be the end. Commissioner Miller stated he was disappointed with the BOCC stepping back from what they had agreed to do with the 20-year horizon. Staff did the work looking at alternatives and it sounded like this could happen with more time. The second thing is the takings issues and why density increases are given to properties that do not have a takings issue. If they were not given that density, they can't come back and sue. Whereas a person with a residential lot who doesn't get an allocation has a case, providing they're not in Tier 1. Changing density when somebody wants more is to our detriment.

Commissioner Ramsay-Vickrey stated this is a big reason why she was opposed to giving the earlier variances as it gives developers incentives to build on these itty-bitsy lots. If the little \$25,000 lots were bought as ROGO lots, they wouldn't be built. When we let these things happen, we're part of the problem. She asked Ms. Santamaria if they could look to see if there is a number that is reasonable to lock in for these small lots. Mr. Williams asked what is considered reasonable. Ms. Santamaria stated that this particular one, the footprint was 875 square feet, so they would need some direction. Commissioner Wiatt noted that the fact it was three stories jacked up the square footage. Commissioner Lustberg added that when doing a variance, it is different giving a variance for a three-foot wide staircase which intrudes into the setback rather than to make it the whole width of the house, three stories high, and the same setback has a much larger impact.

Mr. Williams stated these are two lots that won't sue for takings in 2023. And they could spend \$25,000 to acquire the lot now in the hopes of, in 2023, they have a 50 to \$75,000 lawsuit. There will always be give and take. They are taken as they come for the next seven to eight years and hopefully the State either changes their position or brings a big check to the table to ease the burden they are imposing on us. Commissioner Miller stated if we want to hold the line on density, go after those putting double density on the land they're buying. Instead of voting yes, vote against it. There was further reiterating as to agenda Items 1 and 2.

Commissioner Lustberg commented further as to the takings. Right now, if ROGO does not get increased, the State should bear some, hopefully all or a greater portion of the takings. She asked, should the State be willing to give more ROGOs and if we decide we shouldn't develop to that capacity, would that transfer extra burden to the County in terms of the takings. Ms. Santamaria indicated she could not answer those questions. The County believes the State is a partner in this as they helped to adopt ROGO and directed the County to do it, but she cannot discuss the liability and distribution of it. Based on the last hurricane model, we reach 24 hours at 2023. Significant change after that is not anticipated, but there is no new data to review. This is a partnership with DEO, Department of Emergency Management, and every municipality, so it is a joint decision, and not one made lightly by the County.

Commissioner Miller asked, similar to with the FLUM and the discouragement policy, if it was within the Planning Commission's venue to do that with zoning. Ms. Santamaria responded that could be proposed for staff to work on, but was a little more difficult. Commissioner Miller requested, if we're talking about stopping density, let's do it for zoning as well as the FLUM. Ms. Santamaria added that the FLUM has the discouragement policy because FLUM is the ultimate cap, setting the main limit. All zoning has to be that number or below so it's more difficult to do with zoning. Commissioner Miller stated he understands it's more difficult, but believes we're at the point where if we're going to stop the development on these 50-by-50 lots, we should stop any zoning changes that increase the density also. Commissioner Ramsay-Vickrey clarified that she did not say stop development on 50-by-50 lots. Commissioner Miller asked if that was her point. Commissioner Ramsay-Vickrey stated her point was to not encourage it. Commissioner Miller continued, then if we're going to not encourage the building on these, let's not encourage any density increases in the zoning.

Mr. Williams responded that there were a couple of thoughts in terms of solving this problem, such as taking the setback alterations down to a 20-by-20 type footprint. With two stories it's 800 square feet, with one story it's 400 square feet. It would be hard for anyone to argue all economic benefit was denied. In terms of the neighbors, there would be a tall skinny building instead of a tall fat building blocking the view, but smaller. Commissioner Miller commented on building the same in a neighborhood and keeping community character the same. Mr. Williams added that this situation was an odd one.

## **ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 10:58 a.m.