

PLANNING COMMISSION  
October 28, 2020

Meeting Minutes

The Planning Commission of Monroe County conducted a virtual meeting on **Wednesday, October 28, 2020**, beginning at 10:00 a.m.

**CALL TO ORDER** by Chair Coward

**PLEDGE OF ALLEGIANCE**

**ROLL CALL** by Ilze Aguila

**PLANNING COMMISSION MEMBERS**

Tom Coward, Chair	Present
Bill Wiatt, Vice Chair	Present
Ron Miller	Present
Joe Scarpelli	Present
Ron Demes	Present

**STAFF**

Emily Schemper, Senior Director of Planning and Environmental Resources  
Peter Morris, Assistant County Attorney  
John Wolfe, Planning Commission Counsel  
Mayte Santamaria, Senior Planning Policy Advisor  
Ilze Aguila, Senior Coordinator Planning Commission

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

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

**SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS**

Ms. Ilze Aguila confirmed receipt of all necessary paperwork.

**SWEARING OF COUNTY STAFF**

County staff was not sworn in by Mr. Wolfe as all agenda items were legislative.

**CHANGES TO THE AGENDA**

Ms. Ilze Aguila stated that staff was requesting Items 1 and 2 be read together.

**DISCLOSURE OF EX PARTE COMMUNICATIONS**

There were no disclosures of ex parte communications.

**APPROVAL OF MINUTES**

Ms. Ilze Aguila noted two minor edits made to the September 23, 2020 minutes.

**Motion: Commissioner Wiatt made a motion to approve the September 23, 2020, meeting minutes with noted edits. Commissioner Scarpelli seconded the motion. There was no opposition. The motion passed unanimously.**

## **MEETING**

### **NEW ITEM:**

**1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** ADOPTING AMENDMENTS TO THE MONROE COUNTY 2030 COMPREHENSIVE PLAN AMENDING THE FUTURE LAND USE ELEMENT AND THE HOUSING ELEMENT TO ESTABLISH A NEW BUILDING PERMIT ALLOCATION CATEGORY TO ACCEPT AND AWARD 300 WORKFORCE HOUSING EARLY EVACUATION UNIT BUILDING PERMIT ALLOCATIONS PURSUANT TO THE WORKFORCE-AFFORDABLE HOUSING INITIATIVE (WORKFORCE INITIATIVE) AUTHORIZED BY THE FLORIDA ADMINISTRATION COMMISSION AND THE FLORIDA DEPARTMENT ECONOMIC OPPORTUNITY BY AMENDING AS WELL AS CLARIFYING POLICIES 101.2.2, 101.2.4, 101.3.1, 101.3.2, 101.3.3, 101.3.4, 101.3.10, 101.3.11, 601.1, 601.1.1, 601.1.2, 601.1.8, 601.1.11, 601.5.1 AND CREATING NEW POLICY 101.3.12 TO ESTABLISH THE SPECIFIC WORKFORCE INITIATIVE REQUIREMENTS; 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 INCLUSION IN THE MONROE COUNTY COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2020-067)

**2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** ADOPTING AMENDMENTS TO THE MONROE COUNTY LAND DEVELOPMENT CODE AMENDING THE SECTION 138-24, RESIDENTIAL ROGO ALLOCATIONS, TO ESTABLISH A NEW BUILDING PERMIT ALLOCATION CATEGORY TO AWARD 300 WORKFORCE HOUSING EARLY EVACUATION UNIT BUILDING PERMIT ALLOCATIONS PURSUANT TO THE WORKFORCE-AFFORDABLE HOUSING INITIATIVE (WORKFORCE INITIATIVE) AUTHORIZED BY THE FLORIDA ADMINISTRATION COMMISSION AND THE FLORIDA DEPARTMENT ECONOMIC OPPORTUNITY AND TO ESTABLISH THE SPECIFIC WORKFORCE INITIATIVE REQUIREMENTS; 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 AMENDMENT TO AND INCORPORATION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2020-068)

(10:04 a.m.) Ms. Mayte Santamaria, Senior Planning Policy Advisor, presented the staff report. The amendments to the Comprehensive Plan and Land Development Code were presented jointly because the amendments are similar between both documents. Based on direction by the BOCC on February 19, 2020 and July 15, 2020, staff was directed to accept the 300 workforce early-evacuation units, specifically in exchange for existing affordable allocations at multi-family developments for developments that agreed to make an early-evacuation restriction, and

the affordable housing allocations recouped in the change will be returned to the County and banked for future takings cases. The history of how this came about, the Governor in 2018 issued an initiative for the Keys workforce housing to provide additional units after Hurricane Irma, with a specific requirement to be rental housing for the workforce and occupants would need to evacuate in the early phase one of the two-phase evacuation. The Florida Administration Commission approved this in June of 2018. During that hearing when DEO was presenting this to the Cabinet, they explained that the way they were authorizing these units was in the hurricane modeling, they had found that the phase one evacuation, which starts at the 48-hour mark, could be accomplished in 17.5 hours, leaving a capacity of 6.5 hours in that phase one. From that, they extrapolated the 1,300 units, up to 300 per community, within that initial phase. The Cities of Islamorada, Marathon and Key West have also attempted to accept these units. All three have amended their Comp Plans to accept them and all three had their amendments challenged. This went through a DOAH challenge process and a DOAH judge, in April of 2020, recommended approval of those amendments which are similar to the County's. The recommended order was forwarded to the DEO for issuance of a final order. DEO did not issue a final order but remanded the case back to DOAH to review the amendments for meaningful and predictable standards. The DOAH judge again reviewed the files in the case and in September 2020, again recommended approval for all three city amendments. That is not the final outcome as DEO still needs to issue a final order and it is unknown whether that order will be challenged in the future; but DOAH has recommended approval twice based on the same workforce initiative that the County is basing these amendments on.

Ms. Santamaria then went over the main policy and code amendment that established the criteria for the workforce initiative, presenting the items side-by-side to show that they were essentially identical. This is for 300 units which will be awarded through the BOCC in terms of a reservation for those units. Those units will be a one-for-one exchange; i.e., if someone is requesting a workforce unit, they would need to return an affordable allocation order exemption. This will be an exchange with existing reserved affordable allocations or existing deed-restricted affordable housing units. Any affordable allocations recouped by the County through this process will be banked and used for future administrative relief, beneficial use, takings cases and Bert Harris cases. The allocations will return back to their original affordable housing categories, and the property owner receiving the workforce housing allocations must use them within the same affordable housing category and will require a deed restriction for 99 years, be limited to rental occupancy to members of the workforce within Monroe County, will be required to evacuate 48 hours in advance of tropical storm winds with an exemption for first responders such as law enforcement, correctional, fire, healthcare and public employees with emergency management responsibilities. Rental agreements are required to be signed by occupants understanding noncompliance will cause penalties including eviction. The properties require on-site property managers to enforce and encourage occupants to evacuate at 48 hours, and need to be available on site during working hours and available to respond outside of working hours. Property managers must annually verify employment and income eligibility of the occupants, report total units on site, occupancy and compliance and report that to the Planning Department, which reports to the DEO, which reports to the Governor and Cabinet. These units are limited to Tier III locations, cannot be within a V-Zone or CBRS, must have

available infrastructure, meet ADA compliance, and to the greatest extent practical need to include sustainable and resilient design principles and be accessible to employment centers. The addition of “to the greatest extent practical” was a staff addition because the County’s process for these units is an exchange program, these are existing units through existing approvals that may or may not have the ability to add additional facilities on site. In theory, this exchanges an allocation type adding an additional restriction to the existing occupants to evacuate early, and won’t necessarily change the dynamics of the development. Staff recommends approval based on the criteria and details outlined in the policy and code amendment because this is a program to create an exchange program for allocations and maintains the County’s focus on redevelopment infill without incentivizing brand new development, and shouldn’t encroach into new habitat in those instances. By banking recouped allocations, this could also help with potential liability in the future. Staff does not recommend simply accepting them with criteria. These have been looked at carefully and the amendments provide details sufficient to implement and monitor the program.

Ms. Santamaria indicated that she was aware of the Board receiving comments from the public regarding Policy 101.3.10 within the amendment. This is an existing policy within the Comp Plan that allows the transfer of affordable allocations to be exchanged between ROGO subareas and jurisdictions. During the DRC version, staff had included the ability for the workforce housing units to transfer between ROGO subareas and jurisdictions, but there was a lot of negative feedback and the public was not supportive of this concept, so the references to workforce housing have been removed in the Planning Commission version with the intent of not necessarily allowing that transfer to occur. The intention was to remove that ability because of the negative comments, but staff has not received direction from the BOCC specific to this topic. Also, it is not within the DEO’s template language, but rather is just a mechanism for the County to potentially recoup more allocations for takings cases in the future.

Commissioner Miller asked what the limit on the number of exemptions would be with the 300 allocations. Ms. Santamaria responded that there is no limit or cap proposed within the amendment. It would be anyone who qualifies within those specific first responder positions. Commissioner Miller stated that it is conceivable that all of these could be occupied by exempted people. Ms. Santamaria agreed that was one of many scenarios but did not believe it was necessarily the likely outcome. Ms. Emily Schemper added that these workers are already exempted from mandatory evacuation directives from emergency management. Commissioner Miller added that the homes of those exempted are actually counted in the hurricane evacuation counts because of the homes they live in, not because of their occupation. Ms. Schemper confirmed his meaning to be that those occupants’ homes are already assumed to need to evacuate and are counted in the hurricane evacuation model, and added that in this case, the same would be true, assuming they leave within 48 hours, even though they wouldn’t be leaving. Commissioner Miller believed there was a difference but didn’t desire to belabor the point.

Commissioner Demes asked about the public comment attachments containing the July 7, 2020 letter to the BOCC, and wanted Ms. Santamaria to address the third paragraph concerning a flaw in the model where 24-hour evacuation times are already exceeded, which seems counter to what

this is based on, which is the 6.5 hour evacuation space. Ms. Santamaria believed the author of that letter was discussing two different items. This is workforce housing units which would evacuate at phase one, 48 hours, which is prior to the 24-hour mark that other residents would be leaving. The information on the 24-hours being exceeded by 2.5 hours is included in Exhibit 4 of the staff report for both items, and is part of the transcript and recommended orders by DOAH in the challenges to the three City amendments. There is testimony within those documents from Mr. Richard Ogburn who is a former South Florida Regional Planning Council staff member involved in the 2012 hurricane evacuation modeling. Mr. Ogburn has stated there are some census tracts where vehicle information was missed within the entering of the model and that when he re-ran it himself it appeared that the 24-hour order of phase two was exceeded. This was not further peer reviewed or presented to the jurisdictions, and was simply testimony within the challenge cases. The judge heard and evaluated that, and still recommended approval of the three City amendments because the workforce housing units were not within the 24-hour or second phase of evacuation, and are assumed to go at the 48-hour mark.

There were no further questions or comments from the Commissioners. Chair Coward asked for public comment.

Stuart Schaffer representing SSPOA stated they were the ones who sent the two communications in the file comments and summarized their requests. Commissioner Demes' question referenced a letter sent by multiple organizations and he couldn't add a lot of specifics to what Ms. Santamaria had stated, but his understanding is it was fairly well acknowledged after the last evacuation model process was done in 2012 that there was information that got missed and some hundreds of ROGOs were in excess of what should have been allowed in the 24-hour period. Mr. Schaffer had no further knowledge of that, but thought it had been acknowledged. Mr. Schaffer stated that SSPOA, along with other organizations, oppose the County accepting these 300 ROGOs. There is concern about the precedent of the State simply creating 1,300 ROGOs in an early evacuation window out of whole cloth. This could open the door to thousands more ROGOs being issued and is very troubling. It is hoped that the Planning Commission would recommend to the BOCC that the County simply reject these ROGOs. He believes it is within the Commission's ability. Comments on the amendments as currently drafted cause concern that the amendments would allow the County to transfer all or some of these 300 ROGOs or affordable housing ROGOs received in exchange to other Keys municipalities. In that event, they would not be used for settling takings cases. Similarly, these amendments would also allow the County to receive some of the 300 ROGOs issued to Key West, Islamorada and Marathon without requiring they be used to settle takings case, which does not reflect the direction of the BOCC. Though he believes this had not been staff's intent to allow these types of exchanges, there is concern that the language doesn't make that clear. Mr. Schaffer offered a sentence to resolve this and stated that Ms. Santamaria had indicated staff has no objection to his language. If the Commission does move forward with these amendments, he requests the Commission accept his proposed language. Mr. Schaffer also objects to the language in the amendments that purport to restrict the housing associated with the 300 ROGOs to certain locations; specifically, "to the greatest extent practicable, the housing must be accessible to Key West, Stock Island or Marathon," and these words are meaningless as every location in the County would meet that

requirement. This housing will not be located in small-scale developments because small rental housing projects can't financially support the on-site management which is required. So these will be large housing developments which should be located close to the main employment centers to minimize traffic on U.S. 1. Mr. Schaffer requests the language be revised to require the housing be within a fixed number of miles, specifically 10 miles, of Key West, Stock Island or Marathon.

Ms. Dottie Moses, President of the Island of Key Largo Federation of Homeowners Association, representing over 2,500 property owners in Key Largo, spoke opposing these ROGOs, agreeing with Mr. Schaffer's comments and adding that this is not the plan everyone has been operating under. This is randomly pulling additional ROGOs out of nowhere to ultimately be built somewhere. The evacuation issues are concerning. Presently there is a hurricane causing flooding roads that would not be able to be evacuated through easily. The State Statute says there is to be another study done to determine available development in the Keys, and this is not what has happened in this scenario. The County already has a very complicated ROGO system in place and this makes it more convoluted and complicated. The early evacuation issue is likely something that will never easily be imposed. People in these existing apartment units today that are being traded already have signed leases and will now be forced, overnight, to sign a new lease and if they don't want to, will be asked to leave. There are a couple of affordable housing apartment buildings in the Upper Keys right now that have not been able to meet the income requirements to rent the units and they are vacant and offering two months free rent right now because they can't fill them. So a property manager having trouble filling units won't likely throw existing tenants out because they won't sign the new lease. Ms. Moses is hoping the Commission votes no on this.

Ms. D.A. Aldridge of Tavernier stressed what Mr. Schaffer said about the swapping of ROGOs between communities and pointed out the fact that this discussion actually concerns 1,200 ROGOs. There were 1,300 ROGOs given to the County and municipalities, with 100 given to Layton who does have any interest in them, and Ms. Aldridge does not want the County to have the ability to accept those 100. Ms. Aldridge asked Ms. Santamaria how many developers or individuals had expressed interest in this new swap, and what would be the advantage to a developer or individual to do a swap like this. Mr. Peter Morris advised that there was no requirement for staff to respond, but they were free to. Ms. Santamaria responded that she had not been in communication with any developers in terms of their interest in this item. Commissioner Coldiron mentioned that Quarry III and Wrecker's had spoken to her back in July of 2020, as being potentially interested, but that was the extent of her knowledge. A developer or property owner would have to make their own decision on whether this is a worthwhile transaction in terms of taking on the additional restrictions of early evacuation.

There was no further public comment. Public comment was closed. Commissioner Coward asked Ms. Santamaria about Mr. Schaffer's suggestion of the location being within 10 miles of employment centers, and asked how relevant that is when doing an exchange. Using Quarry and Wrecker's as an example, which are already within 10 miles, and in doing an exchange with them, would the concern be that the affordable housing ROGO taken back for the takings cases

will go somewhere that's not within 10 miles, or is the concern that the exchanged destination is not within 10 miles. Ms. Santamaria responded that she believed Mr. Schaffer's concern was where the exchanged workforce housing units would ultimately end up in a receiver site, but in her mind these are essentially approved projects built in a developed site. So because this is only an exchange program, further restrictions relative to employment centers is not necessary because they are already occupied by affordable housing occupants and will be traveling to wherever they're going to be traveling to anyway.

Commissioner Scarpelli asked what the current restrictions on affordable housing are and whether they included mileage. Ms. Santamaria responded that there are no mileage restrictions. The whole purpose was to incentivize creation of affordable housing and not create obstacles to building it, and she confirmed that the language in these amendments regarding location is similar to the existing affordable allocation language, encouraging them to be close to employment centers to the greatest extent but not requiring it.

Commissioner Wiatt asked about the concern regarding existing leases and how that would be managed. Ms. Santamaria responded that this would not be managed by the County, but rather the property owner and developer. Each developer or property owner would look at who their occupants are and when lease terms are up to see if this is a viable alternative for them. If they elect this option, they must have the lease that includes these details as well as the restrictive covenant on the properties recorded with that piece of land and follow the unit for 99 years in terms of having to meet these requirements.

Mr. Peter Morris, Assistant County Attorney, added that the party would assume that obligation and through arms-length transaction have to make good on complying. The spectrum of contract law is that you can engage in any kind of transaction short of a straight-up illegal act such as selling an illegal drug. Mr. Morris believes the concern is overstated from a legal perspective as the County would have no standing in those transactions. Mr. John Wolfe, Planning Commission Counsel, agreed, emphasizing this would be a matter between the property owner and the tenants and not something the County would be involved in. Ms. Santamaria added that the property owner would be required to report compliance with these terms annually to the County, who would report back to the State.

Commissioner Miller, going back to the exemption question, asked whether the property manager would have a list of who is and is not exempt and how that would work. Ms. Santamaria responded that the property manager would have the list and report it to the County, and in their annual report to Monroe County they would specify all units that complied and the ones that did not because of an existing exemption. Commissioner Miller believed there were many things that could go wrong with this.

Chair Coward asked about a statement made by one of the speakers regarding opening the door for future ROGOs and future development, and he'd heard maybe as many as 10,000 additional development ROGOs, and relating that to a statement by a County Attorney in a prior BOCC meeting that stated this will reduce the takings liability and would not set a precedent for opening the door to future development. Chair Coward asked if that was an accurate or defensible

statement. Mr. Morris stated he believed that had been said by Mr. Robert Shillinger, County Attorney. What Mr. Shillinger opines does not require Mr. Morris's co-signature but he would certainly concur with the opinion. With respect to precedent, the word precedent is thrown around a lot. In legal practice, precedent really applies to judicial proceedings in which parties are actually litigating. In sort of a loose sense a member of the public or private party might be concerned about political precedent but that's not binding. Just because a legislative body makes one policy choice of many along a continuum does not bind that policy-making body to continue making that same decision over and over again ad infinitum. There is always an opportunity to pivot in the political process of public hearings. There is no binding precedent in the sense of a legal decision from the Florida Supreme Court which would bind all the courts within the state. Mr. Wolfe indicated he agreed with both Mr. Shillinger's and Mr. Morris's comments.

Commissioner Scarpelli thought this exchange of one for one was actually helpful to the evacuation model. This takes regular affordable units that would be required to evacuate within phase two and pushes them to phase one, which reduces the evacuation model by 300 units for the phase two 24-hour period. Chair Coward added that some of the concern is whether people really have 48 hours to evacuate. Some recent storms have intensified quickly allowing only 18 to 24 hours for evacuation, which is a bigger concern for him. Commissioner Scarpelli had looked at the graphic in the staff report which showed a total of 1,179 homes completely destroyed from Hurricane Irma, and 2,977 homes that were majorly destructed. Most were likely trailers in the Big Pine area and that would be the affordable housing bracket there. Anything to help with the affordable housing makes sense when also not affecting the evacuation models, understanding rapid intensification. Additionally, these newer structures would be less likely to be destroyed in the event of a storm so when people do evacuate they actually have a home to come back to. The more sustainable development helps the Keys overall, including reducing the bill for trash pickup, by building homes that can sustain storms.

Commissioner Miller could not follow Commissioner Scarpelli's reasoning when it comes to furthering hurricane evacuation. The market rate that basically would be swapped for takings and everything else eventually would be used so they're still in the works as far as contributing to hurricane evacuation. This assumes that somewhere down the line these market rate allocations can be issued to someone, so this is a lot of pie in the sky. Commissioner Scarpelli thought that anything exchanged could only be used for takings cases, and not reissued for building. Ms. Santamaria confirmed that, but mentioned if there is ultimately a takings case that the County was not successful on, it could result in issuing an allocation and someone building, but it is not an immediate outcome. The attorney's office would fully litigate any takings cases that they have. But even assuming all 300 are exchanged from the 300 bank, 300 is ultimately a small number compared to the number of privately owned vacant parcels out there. It is not in the County's best interest to simply give them out to build.

Chair Coward asked whether it would be fair to say that the units exchanged that are put into the bucket would never be seen as development unless a judge rules and a property owner is negotiated with and the unit must be given to them as a settlement, and then at that point they

could potentially build, but this would be a last negotiation chip. Ms. Santamaria responded that that was an accurate summary.

Commissioner Demes stated that he understands the swap would not be entered into for any unit currently in a V-Zone, but a swap in a takings case that is lost, could that lot trying to get a building permit be in a V-Zone. Ms. Santamaria thought it would depend on a case-by-case scenario. There is an existing administrative relief pool of unused market rate allocations. Annually, year by year, if there are any excess units not awarded to somebody or expired, they come back to the County and they are pooled for administrative relief as well. If these 300 are also utilized and held in the affordable housing bank, Ms. Santamaria would assume if there is a case, and depending on the nuances of that case, it may be a market rate allocation or an affordable allocation. If it is an affordable one, the rest of the rules and regulations would apply, though the judge may make a specific order where the V-Zone may not apply in a specific instance. This is simply the award of an allocation, not an exemption from everything else. Mr. Morris agreed with the assessment. Commissioner Demes also asked about the mileage question and what mile marker would equate to five miles from Key West. Ms. Santamaria believed it would start at the jurisdictional end of Key West, so wherever the city limit is would start the five miles. Commissioner Demes pointed out that the Principles for Guiding Development subparagraph “(h)”, speaks to protecting major public investments, one of which would be NAS, and any time limiting things to the distance from Key West is discussed, that puts these things very much in the MIAI area and also the associated high noise zone. Limiting this to five to ten miles would put an aspect of pressure on an area that’s already supposed to be protected against encroachment. Commissioner Demes stated he was not in favor of that limitation. Additionally, Commissioner Demes does not see people running out to do this nor does he see an incentive. Maybe in a case that he does not envision right now, it might be advantageous to enter into this agreement, but he does not see these all going away tomorrow anywhere in the near future.

Commissioner Wiatt asked about the safety aspect of the evacuation as opposed to ROGO. At the top of page 16 of the staff report there is language, “required to evacuate 48 hours in advance,” but the current language that talks about the 48-hour evacuation uses the words, “shall be initiated,” and these are two different things. The proposed language talks about evacuation 48 hours in advance, “is required,” whereas the existing language further down in Policy 101.2.4 says, “it shall be initiated.” Commissioner Wiatt does not like the word “initiated” because you could say you were initiating evacuation but not leave until 24 hours, and prefers the amendment language that talks about evacuating in 48 hours. Another concern relates to the lease language on page 23, item four, “The covenants shall require rental agreements which contain a separate disclosure requiring rental occupants to acknowledge that failure to adhere to the phase one evacuation requirement could result in severe penalties including eviction to the occupant.” The word “could” has no real bite at all. A landlord who has a good tenant could give a break to the good tenant because it only says it could result in penalties. Believing that everyone in one of these units is leaving within 48 hours is pie in the sky, just like the trailers down at the trailer park, those people didn’t remove all those trailers when there was a tropical storm warning a month or so ago and nothing has happened to those folks. Enough teeth should be put into the language to get these folks to leave within 48 hours because that’s what is being used in the

model. Mr. Morris interjected that his reading of the language is that it only speaks to the text that goes into a disclosure statement. The fact that the disclosure statement language would be voiced in a non-mandatory tone doesn't obviate the obligation of the private party to comply with a requirement that the leaseholders would have to evacuate in the time required by the County Code and Comp Plan. Speaking only as a matter of law, not as to policy efficacy, the non-mandatory tone of the disclosure statement language would not in any way obviate the legal requirement that the private parties would nonetheless assume, but he understands the concern. Commissioner Wiatt explained that this has three parties involved, not two; you've got the County, the tenant and the property manager involved. If the property manager says, don't worry about your lease language, which they can do because it says "could," then now, as a tenant, the only thing I have to worry about is the fact that I'm in violation with the County requirement to initiate 48 hours worth of evacuation. I'm seeing holes and opportunity for a tenant to not meet those obligations and he would like to see it tightened up. Especially, the "initiate" versus "require." If you put "shall" in there, that's pretty tough and may be too far, but he would like to see something in between. Mr. Morris understood the concern. Ms. Santamaria pointed out two pieces within the Comp Plan and the Code. There's the lease language and the disclosure, but also a restrictive covenant on the units. Number three says, "The covenant shall require occupants to evacuate 48 hours in advance of a tropical storm," et cetera. Those restrictive covenants can be enforced by the County, and there has been at least one instance with another affordable housing site, it was actually an employee housing site where the person had to earn seventy percent of their income within the County, that the County tried to take enforcement on that and ultimately, the judge did tell that occupant they needed to sell and get out of the unit because they were not meeting the requirement. So beyond the property manager and the lease, the property manager is going to be reporting to the County so we will know who may or may not be following the requirements of the lease, but there is also the additional restrictive covenant that the County could take enforcement upon the property manager and tenant and have somebody evicted. While that is not ideal, there is an enforcement mechanism for code compliance to do that, and this information will be reported to DEO and the Governor and Cabinet. So they may receive pressure from other state representatives as well that you need to be complying with this to participate to make sure this is providing for public safety for your own tenant.

Commissioner Wiatt asked if the covenant could be included in the lease, so the tenant would recognize it's not only between the tenant and landlord, it's also between the tenant and the County Code. Ms. Santamaria proposed that the language could include, the covenant shall require a rental agreement which contains a separate disclosure requiring rental occupants to acknowledge the existing restrictive covenant on the unit to evacuate 48 hours in advance, and that failure to adhere to the phase one evacuation requirement could result in severe penalties including eviction to the occupant. Commissioner Wiatt thought that was much stronger. Commissioner Miller asked how that would bring back the people who potentially could die in a catastrophic hurricane. Commissioner Wiatt responded that hopefully they wouldn't die if they got out of here in 48 hours. Commissioner Miller stated that they have seen over and over that the County has no teeth to enforce this and it is not reasonable to assume that this is going to happen. Commissioner Wiatt agreed, adding that he was trying to make it a little more

reasonable. And getting back to page 16 once again, the words should be changed from “initiate” to “required.” Ms. Santamaria added that the hurricane model for growth management purposes does not automatically start an evacuation at exactly the 48-hour mark. There is actually a lot of detail and human behavioral science that goes into that model, and there is a response curve that’s based on actions from actual events and surveys from individuals. From the 2012 model the response curve was created by professors at FSU. So if an evacuation is called at a given moment, people need to prepare themselves and consider the time of day the evacuation order is called. So, it starts a little slower, but then peaks up as people start actually evacuating. That is how the model is run and how the results of that model eventually extrapolate to units. It’s not that the model says 48 hours, 12,000 people gone. It actually shows vehicles and their different entry points throughout the Keys, their cuing and where the roads merge and open up to four lanes and then merge back. That is all planned out with the response curve to have a more accurate representation of what occurs during an evacuation event. That’s why the language on page 16 has that wording. It initiates the process at 48 hours. Commissioner Wiatt asked if she would suggest changing the proposed amended language to “initiate.” Ms. Santamaria did not agree, suggesting that people should be encouraged to leave at 48 hours in the event of any safety concerns or rapid intensification. Commissioner Wiatt noted that 101.2.4, number one, is right in the middle because it says the deed-restricted workforce housing has to start or be initiated. Ms. Santamaria responded that it could be altered to say, “Shall be required to evacuate in phase one of the 48-hour evacuation.” Commissioner Wiatt thought that would be more apples to apples.

Commissioner Miller asked if there was an evacuation for a Category 1 storm. Ms. Santamaria responded that emergency management directors may or may not call evacuations for different level storms, but for growth management purposes and modeling for ROGO allocations, it is triggered with a major storm, Category 3 or higher. Commissioner Miller cited information from the Jet Propulsion Laboratory, October 2015. “Hurricane Patricia in the northeast Pacific Ocean went from a Category 1 to a Category 5 in 24 hours.” This was not the first storm to do this. Not having a handle on how the intensification of a hurricane works, the County will be caught flatfooted someday and more and more people in the Keys will be in these scenarios, and it’s irresponsible.

Commissioner Scarpelli stated that he understands Commissioner Miller’s concerns and everyone has responsibilities to themselves and their families, and the County has the responsibility to allow the citizens to have their best foot forward in terms of handling their own individual safety, but he does not see how this exchange program affects that. There is always going to be the danger of a storm changing suddenly. This does not increase the number of people living here so the model is not being changed.

Commissioner Miller stated that it’s wishful thinking to believe everyone can get out in a phased evacuation considering mother nature doesn’t always cooperate. Using this wishful thinking, more people are being added in the Keys. Banking these, they will eventually get used one way or the other.

Commissioner Demes commented on Commissioner Wiatt's point, with the Commission having just finished with the RV and mobile home issue and acknowledging there are no evacuation police in this county because, for all intents and purposes, there shouldn't be anyone here in that window trying to get somebody out of a house which isn't going to get out anyway. Regarding the psychology of how people behave, a lot of it has to do with speaking to people and what their plans are. When there is a storm supposed to hit and it doesn't and people have evacuated, the next storm or two or three times after, what really happens? That will never be able to be controlled or enforced. The teeth can be put into the language to make it understood that if you do this, you are violating an agreement, the law, et cetera, and to whatever degree the people pay the consequences, if they're still alive when it's over. The County can do only what they can do, and it can only be enforced to the point practical, and from year to year that's going to differ depending on the psychology of what happened the year or two before and how long a disaster stays in peoples' minds.

Chair Coward asked the Commissioners if they thought it was necessary to incorporate any of Mr. Schaffer's comments regarding transferring of these early evacuation ROGOs. Personally, he likes it and would like to see it incorporated because if this does go through, it should be pretty ironclad that it can't go out there for future development for anything other than its intended purposes of takings cases, and Mr. Schaffer's verbiage helps to solidify that. Commissioners Wiatt and Scarpelli agreed, adding that it makes it very apparent that this is an exchange and what it's being used for. Commissioner Demes asked Ms. Santamaria if she had already incorporated that language and asked if she could share where she was with that. Ms. Santamaria presented page 21 of the Comp Plan staff report, Policy 101.3.10, and in the DRC version of this amendment she had inserted workforce housing, workforce initiative units throughout so that they couldn't be exchanged between jurisdictions in ROGO subareas. Based on the public comment and negative response, since the Board hadn't directed it and it wasn't a clear-cut desire of the Board, the language was removed with the intent that they would not be able to be transferred between ROGO subareas and other jurisdictions. Ms. Santamaria is not opposing that as that was ultimately the intent with removing the previous text. If the Commission decides to move forward with this, the language presented in blue highlighting could be inserted into the next iteration for the BOCC. Chair Coward stated he would like that. Commissioner Wiatt stated he was in agreement. Commissioner Scarpelli also agreed. Commissioner Demes had no objection. Commissioner Miller stated he wanted nothing to do with this amendment, period.

Chair Coward responded that he believes it is within the Commission's rights to recommend to the BOCC that the amendments not be accepted it all, and it sounds like that is where Commissioner Miller is at, though staff has done a good job of inserting wording in their report to eliminate potential problems with this. Commissioner Miller stated he would not preach anymore about this but the 300 allocations, which could become more and more because a venue is being created to receive more, is a farce perpetuating a farce; in other words, the hurricane evacuation model itself. Ms. Schemper asked if Chair Coward was asking if the Commission could recommend denial, but if the Board chooses to approve to please include certain language. Chair Coward thought that was correct and that there were three options. Recommend denial,

recommend denial with recommended language, or approve with recommended language. Mr. Wolfe added a fourth, approval with the following changes. Ms. Schemper stated that even with a recommendation of denial, it would go before the BOCC, and staff would still add the staff-recommended language if they choose to approve.

Commissioner Wiatt noted that the reason this discussion was taking place was because of the BOCC vote, a four to one vote, wanting to do something like this without having the detail necessary. Staff put the detail together and the Planning Commission is looking at it now to tweak it. Though he understands what Commissioner Miller is saying, this isn't an applicant coming before them requesting these amendments, it's the BOCC with a four to one vote saying they want to do it. So it's a moot point based on what's already happened and that's why his focus is on what the language should look like. Mr. Morris interjected that the scope of the decision is more constrained. The item has arrived at this quasi-legislative body pursuant to the BOCC's vote and explicit direction to accept the 300 ROGOs and for staff to bring forward a package. Mr. Morris stated there is room in the scope of this decision to recommend denial based on disagreement with substantive components of what staff has put together, but there isn't room for the Planning Commission to act like a dissenting judge on a three-judge panel to say they disagree with what the BOCC has said and will recommend this is a bad idea as a matter of policy. Mr. Wolfe concurred with that and thought the most productive option would be to recommend approval with changes discussed, or recommend denial with the caveat that if it is approved, the Planning Commission is suggesting these specific changes.

Commissioner Miller disagreed and does not believe that it's incumbent to approve this in any way, shape or form. Mr. Wolfe reiterated that there were four options, one being denial, but he was addressing the realistic part of it. Noting that he and Mr. Morris are counselors, and that's why they are counseling here.

Commissioner Demes added that the two options overlap, one being pessimistic and one optimistic. The Planning Commission should move forward, and he would like to address Commissioner Wiatt's concerns to give the wording more teeth, and he is set to move forward. Chair Coward agreed that this may be a slippery slope, but having heard from counsel that courts are leaning in favor of these things, and these 300 units, while they may ultimately get to the evacuation criteria, they initially are going to be used for takings cases, but the County fights tooth and nail to make sure those don't come into play. An entire bucket of market rate ROGOs have been put aside that have never been touched. This could be a very good thing for the County. Commissioner Miller asked Chair Coward how many more of these would be coming down the pike and if he thought this would be the end of this. Chair Coward responded that he hoped it was the end of it because the growth strategy for the County is sound and to exceed that without any additional information is not a good idea. Commissioner Miller stated he did not agree with accepting these while hoping this would be the end of it when a venue was being set up to accept them. Commissioner Wiatt commented that it's the BOCC's responsibility to decide whether to take this 300 or any future 300, and that's their primary role. They've made that decision and it's time for the Planning Commission to tweak language as best as possible and make as good a decision as possible, regardless of whether or not the Commission agrees

with it. Mr. Wolfe added that it was consistent with exercising their responsibility to give as constructive input as possible to the ultimate decision making body.

Chair Coward asked for a motion. Commissioner Demes made the first motion to go with the staff report, tweaked to incorporate Mr. Schaffer's recommendation as captured by Ms. Santamaria, as well as the wording requested by Commissioner Wiatt's concern to make the responsibility to evacuate more clear. Ms. Santamaria confirmed she had the recommended edit to Policy 101.2.2 to state, "Shall be required to evacuate in phase one of the 48-hour evacuation of a pending major hurricane," as well as an amendment to Policy 101.3.12 (4) about the lease containing a separate disclosure requiring rental occupants to acknowledge the existing restrictive covenant on the unit requiring evacuation in phase one of the 48-hour evacuation, and that failure to adhere to the phase one evacuation requirement could result in severe penalties, including eviction, to the occupant. Commissioner Demes stated that that would be included in his motion.

Chair Coward asked Commissioner Demes if he was including the conditions staff had written on page 32 and 33 in the Comp Plan report that says, "Staff does not recommend approval of the general acceptance of," et cetera. Commissioner Demes asked to see the language. Ms. Santamaria pointed out the referenced language. While staff recommends approval based upon the conditions and criteria established in the policies and recommendations, both documents include a statement that says staff does not recommend approval of just the general acceptance. Commissioner Demes stated that his answer for Mr. Wolfe was yes. Mr. Wolfe then confirmed that this was a motion for the Comp Plan Amendment.

Commissioner Miller asked Commissioner Demes if he would be willing to put in the caveat that any allocations exempt from early evacuation would be counted in the hurricane evacuation model along with the second phase. Chair Coward and Commissioner Demes both were not sure what that meant. Commissioner Demes stated that he understands the hurricane model, and when the County staff looked at this and before going forward, there was a delta that could safely be included in the model of 6.5 hours and asked that this be explained. Ms. Santamaria re-explained that these amendments were based on the phase one of a two-phase evacuation. These units would be included in the phase one that starts at the 48-hour mark. The other site-built homes identified as occupied in the Census is what is included in the 24-hour evacuation which is phase two of the evacuation. The model is actually based on Census data as to whether the unit is occupied or vacant. Any occupied unit is included in the modeling for the allocations and growth management purposes. With the 2020 Census, there will be another hurricane modeling event likely in late 2022 to early 2023, so after getting the small-area data and updates to the modeling, there will be another hurricane modeling that occurs at that time to stipulate whether there are any future allocations in that phase two. Any jurisdiction that accepts these 300 workforce early-evacuation units will be modeled in that phase one so they are captured and those potential impacts, if any, are included in the model result.

Commissioner Miller wanted to rephrase this. Right now there is an open ledger as to who will occupy these units. If they are first responders, they could not evacuate in the first phase, and would need to evacuate finally or not at all. They need to be counted in the hurricane evacuation

model in the last phase and not the first phase. This makes more potential for development by ignoring this fact and not knowing how many people will be exempt with these 300 allocations. Ms. Schemper responded that the concept is they won't evacuate at all. They will not evacuate in phase two as they are workers who stay, so they don't need to be counted in any evacuation phase if they're not evacuating and staying through the storm. Commissioner Miller asked if none of these people would be put into the evacuation model. Ms. Santamaria responded that the 300, assuming the County adopts the amendments, will be modeled in phase one. They will be captured because they are occupying units in phase one. If there are some in the future because of the particular occupants of the units that don't evacuate, the units themselves will still be modeled in phase one. Commissioner Miller asked about the families of these people and whether they would be in the hurricane evacuation. Ms. Santamaria stated they should be evacuating at the 48-hour phase one mark. Commissioner Scarpelli added, from personal experience and knowing first responders, most of them would get their families out as soon as possible because they know what it's going to be like down here and it's not fun for anyone.

Commissioner Demes stated, as someone who could never leave the Keys for the 30-plus years he was working for the Navy doing that type of work, his wife has always evacuated when he stayed. Those that don't evacuate at all won't add to the traffic problem. Commissioner Demes added that he was done making amendments to his motion. Commissioner Scarpelli seconded the motion.

**Motion: Commissioner Demes made a motion to approve Item 1 with inclusion of the additional language recited by Ms. Santamaria. Commissioner Scarpelli seconded the motion.**

**Roll Call: Commissioner Scarpelli, Yes; Commissioner Wiatt, Yes; Commissioner Demes, Yes; Commissioner Miller, No; Chair Coward, Yes. The motion passed 4 to 1.**

**Motion: Commissioner Scarpelli made a motion to approve Item 2 with inclusion of the additional language recited by Ms. Santamaria. Commissioner Demes seconded the motion.**

**Roll Call: Commissioner Scarpelli, Yes; Commissioner Wiatt, Yes; Commissioner Demes, Yes; Commissioner Miller, No; Chair Coward, Yes. The motion passed 4 to 1.**

## **BOARD DISCUSSION**

Commissioner Demes requested that staff consider listing the ex officio members as part of the Planning Commission. When he had been an ex officio member he had been listed and called on the roll. Ms. Schemper responded that that could be done. Mr. Wolfe stated that he had no issue with it.

## **ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 11:50 a.m.