

PLANNING COMMISSION
September 8, 2010
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting **Wednesday, September 8, 2010**, beginning at 10:05 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL by Debby Tedesco

PLANNING COMMISSION MEMBERS

Randy Wall, Chairman	Present
Denise Werling	Present
Jeb Hale	Present
James Cameron	Present
Elizabeth Lustberg	Present

STAFF

Townsley Schwab, Sr. Director-Planning and Environmental Resources	Present
Susan Grimsley, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present
Tiffany Stankiewicz, Dev. Administrator.-Planning and Environmental Resources	Present
Mitch Harvey, Comprehensive Plan Manager	Present
Steven Biel, Senior Planner	Present
Joe Haberman, Planning and Development Review Manager	Present
Debby Tedesco, Planning Commission Coordinator	Present

COUNTY RESOLUTION 131-92 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

Debby Tedesco confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

All staff intending to speak were sworn in by John Wolfe.

MINUTES FOR APPROVAL

Motion: Commissioner Cameron made a motion to approve the minutes of the previous meeting. Commissioner Werling seconded the motion. There was no opposition. The motion passed unanimously.

Chairman Wall asked to have the minutes of May 26, June 10 and July 28, 2010 resubmitted to the Commissioners for review.

CHANGES TO THE AGENDA

Susan Grimsley asked that the Commission hear Item Number 2 first, tabling the portion of the report concerning ROGO allocations on Big Pine until the next Planning Commission meeting at 10 o'clock and that Ms. Stankiewicz give the ROGO report for the Upper Keys and Lower Keys only.

(10:10 a.m.) Banks Prevatt, after being sworn in by Mr. Wolfe, spoke on behalf of the Aikens family and agreed to postpone this matter until the next Planning Commission meeting. **Motion: Commissioner Cameron made a motion to delay the hearing of the Big Pine Key portion until the next meeting addressing ROGO. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.**

Mr. Wolfe stated that Item Number 2 was changed to Number 1 and Item Number 3 was changed to Number 2.

MEETING

New Items:

2.A public hearing to consider and finalize the ranking of applications in the Dwelling Unit Allocation System for the April 13, 2010, through July 12, 2010, ROGO quarter (4th Quarter Year 18). Building permits will be allocated for all unincorporated Monroe County.

(10:12 a.m.) Tiffany Stankiewicz presented the staff report and recommended approval for allocations in the Upper Keys and Lower Keys listed in the staff report. Chairman Wall asked for public comment. There was none. Ms. Stankiewicz explained for Commissioner Cameron that affordable allocations that are rolled over from the prior year strictly roll over to affordable, not market rate units.

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

3.A public hearing to consider and finalize the ranking of applications for Non-Residential Floor Area for all unincorporated Monroe County for the NROGO allocation Period 2 or Year 18 ending July 12, 2010. Building permits will be allocated for all unincorporated Monroe County.

(10:17 a.m.) Tiffany Stankiewicz recommended approval for the one application for NROGO. Chairman Wall asked for public comment. There was none. Townsley Schwab stated to Commissioner Cameron that the 2500-square-foot limit issue will be addressed in the future. Ms. Stankiewicz assured Commissioner Cameron that there are sufficient mitigation credits.

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

Continued Item:

1.Kula Property, 150 Ellis Drive, Tavernier, Mile Marker 92.5: A request for an administrative appeal to the Planning Commission based on a Letter of Understanding by the Senior Director of Planning & Environmental Resources dated December 22, 2009.

The subject property is legally described as Part of Tract 1, Plat of Survey of Ellis Property (PB2-99), Key Largo, Monroe County, Florida, having real estate number 00490130.000100.

(10:20 a.m.) Steven Biel noted that this is an administrative appeal for a letter of understanding and then presented the staff report. Mr. Biel read into the record the conditions that were placed on the LOU when it was written. Susan Grimsley drew the Commission's attention to a letter from the appellant's attorney, Andrew Tobin, Esq., dated April 22, 2010 and confirmed with Mr. Tobin that the request made in the letter for removal of the residential structure was no longer an issue. Mr. Biel presented photographs of the property. Staff recommended that the LOU was correct and recognized that the workshop is lawfully established.

Upon questioning by Ms. Grimsley, Mr. Biel stated that Mrs. Kula's position with the County had no bearing on his evaluation, that the major benefit that Mr. Kula obtained from this LOU is being exempt from the NROGO allocation process, and that this is a permitted use in this zoning district of suburban commercial.

(10:33 a.m.) Andrew Tobin, Esq. was present representing the applicant, Patricia Mull. Copies of all the permits were given to the Commissioners. Ms. Grimsley recognized that the application for the LOU, the appeal application, staff report and all of the other correspondence from Mr. Tobin was also part of the record. Mr. Tobin made a brief opening statement.

(10:40 a.m.) Paul Turek, co-owner of Paul's Permit Services, LLC, was called as a witness by the appellant and was sworn in by John Wolfe. Mr. Turek listed the licenses he holds and then told the Planning Commission the circumstances surrounding his inspection. Mr. Turek testified that he didn't recall any conversation and didn't recall seeing anything that would lead him to believe there was a commercial venture at this property during his inspection in 1997. After review of the building permits Mr. Turek opined that a lawfully established commercial use was never permitted by the County. Setbacks for a suburban commercial use were discussed. Ms. Grimsley objected to any discussion of the pending permit application and discussing that the building does not meet the front setback requirements.

(11:03 a.m.) Mr. Biel stated to Mr. Tobin that the setbacks could have been a factor to consider in a determination as to whether or not a lawfully established commercial use had been established. There was agreement among the Commissioners that the setback issue was not before them today. Ms. Grimsley questioned Mr. Turek and Mr. Turek testified that he didn't have any knowledge of what was going on between the years of 1981 to 1986 on that property. Upon questioning by John Jabro, Esq., attorney for Leon Kula, Mr. Turek testified that on the site plan it says "proposed garage and workshop."

(11:16 a.m.) Mr. Tobin called Patricia Mull as a witness and Ms. Mull was sworn in by John Wolfe. Ms. Mull gave a brief description of her background in the Keys and described how the workshop sits in relation to Ellis Drive. Ms. Mull further testified about her earliest recollection of the garage/workshop and the construction activities that started in 2007 and how it changed direction to go to a commercial use. Ms. Mull stated there was never any indicia that this garage/workshop was a lawfully established commercial area.

(11:24 a.m.) Ms. Mull admitted to Ms. Grimsley that it was conceivable that someone from an art show might have come back to Mr. Kula's house to look at something in the workshop, but that he had a shop at the Rain Barrel. Mr. Jabro asked Ms. Mull about the \$5,000 she paid to Mr. Kula to make a large bronze sculpture and Ms. Mull insisted that Mr. Kula's bronze work equipment was not inside of the workshop. Upon questioning by Mr. Tobin, Ms. Mull described the outdoor oven on Mr. Kula's property that was under an awning used to create his bronze sculptures.

(11:31 a.m.) Mr. Jabro submitted historical newspaper articles going back to the early '80s through the '90s showing Mr. Kula's bronze work happening in the workshop/studio that he used on Ellis Drive. Mr. Jabro called Don Horton to testify on behalf of Mr. Kula. Mr. Horton was sworn in by John Wolfe. Mr. Horton told the Commission of his experience in Monroe County in building and planning. Mr. Jabro proffered Mr. Horton as an expert witness in the area of planning and permitting. There was no objection by Ms. Grimsley.

Mr. Horton described what he observed when he went out to Mr. Kula's studio/workshop for the first time and then described what information was assembled for the County to make it clear that the use was pre-1986. Mr. Horton then discussed his site visits with Mr. Biel and Barbara Bauman. The requirements for Mr. Kula to obtain a permit were listed, as well as what Mr. Kula has already done to obtain this permit. Mr. Horton again stated that he felt he had gathered enough documentation to show that the use was pre-1986, and then explained the significance of the use being pre-1986 is that Mr. Kula does not have to comply with the requirements of NROGO.

Upon questioning by Mr. Tobin, Mr. Horton testified that the specific use that was established before 1986 was as an art studio, although he didn't see any permits for that, that it was actually permitted as a garage/workshop. Mr. Tobin clarified that it only stated on the actual permit it was permitted as a garage for a single-family home. Mr. Horton could not answer Ms. Grimsley's question regarding whether a change of use permit was required prior to 1986. Mr. Tobin read into the record Section 19-216 Subsection D that industrial and manufacturing uses were prohibited.

(12:01 p.m.) Leon Kula was called to testify and was sworn in by John Wolfe. Mr. Kula explained how he makes his living as an artist and gave a brief history of how the art studio was created. Mr. Kula testified that the main studio that he has always used since 1982, when the garage was built, was the Ellis Drive studio. Mr. Tobin questioned Mr. Kula. Mr. Kula described the improvements made to the inside of the garage without benefit of a permit. Mr.

Tobin proffered for the record that Mr. Kula sold off the front part of the property and that Ellis Drive is now the sole entrance to the property

Commissioner Werling questioned whether there was anything leading to this becoming a habitable structure. Mr. Schwab clarified that this would strictly be limited to being a gallery/workshop/garage/studio. Mr. Biel told Commissioner Werling that the status was that the Kulas have applied for a building permit to address the conditions that are in the LOU because turning it into a dwelling unit is not pertinent to SC zoning.

(12:18 p.m.) Mr. Tobin made his closing argument and stated that this application sets a bad precedent and is contrary to the old code and existing code. Mr. Tobin further stated that there is no competent substantial evidence in the record to support the finding by the Planning Director that there was a lawfully established use pre '86 and asked the Planning Commission to overturn the decision to allow this nonconforming structure to be converted into a business.

(12:28 p.m.) Mr. Jabro presented his closing arguments. Mr. Jabro suggested that they have established by competent evidence, that they've provided documentary evidence that goes back to the early '80s that shows that Mr. Kula was using this structure as an art studio and requested that the letter of understanding and staff's conclusions be affirmed. Ms. Grimsley stated that there is substantial competent evidence to uphold Mr. Schwab's letter of understanding and that the sale of art goods and presumably even the making of them is allowed in 19-216 BU1 Paragraph A. Mr. Tobin rebutted that occupational licenses have no bearing because the County does not use occupational licensing in zoning. Mr. Tobin argued that under 19-216 the words "no manufacturing" directly following "pottery sales" are intended to prohibit artistic work.

(12:39 p.m.) Commissioner Cameron took issue with the idea of calling any production of any artwork as manufacturing and said that Mr. Tobin's argument is not valid. **Motion: Commissioner Cameron made a motion to reaffirm the letter of understanding as issued. Commissioner Hale seconded the motion. There was no opposition. A vote was taken with the following results: Commissioner Hale, Yes; Commissioner Cameron, Yes; Commissioner Lustberg, Yes; Commissioner Werling, Yes; and Chairman Wall, Yes.**

Mr. Tobin identified the records that the Commission based their decision on as all the documents in the packet, plus the site plan, all of the permits, the definition of the 1980 BU1, the application, the staff report, the information that Mr. Tobin submitted, as well as several letters written by Mr. Tobin

A brief recess was held.

New Items (Cont.):

4. Newman Trust Property, aka Tropic Palms Trailer Park, 6125 Second Street, Stock Island, Mile Marker 5: A request for approval to amend the land use district designation from Urban Residential Mobile Home – Limited (URM-L) to Urban Residential Mobile Home (URM). The subject property is legally described as Block 34, Lots 1-10 and 16-20,

MacDonald's Plat, PB1-55, Stock Island, Monroe County, Florida, having Real Estate No. 00124560.000000.

(12:51 p.m.) Joe Haberman presented the staff report. Mr. Haberman explained that after the DRC meeting the applicant decided to modify their request to urban residential mobile home and asked the Commission to disregard any reference to urban residential in the application. Mr. Haberman continued to present the staff report. Staff recommended approval of the application.

(12:57 p.m.) Jenny Stone, Esq. appeared on behalf of the applicant and gave a brief history of the property. Ms. Stone stated that this request and re-designation will return the property to the designation that it had prior to 1996 and it will allow for the placement of detached modular or conventional single-family homes while maintaining consistency with the use currently there of mobile homes. Commissioner Cameron confirmed that the applicant was aware that they will be subject to the 30 percent affordable if this is going to be redeveloped. Chairman Wall asked for public comment. There was none.

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

BOARD DISCUSSION

(1:01 p.m.) Mr. Harvey gave an update on the comprehensive plan and informed the Commission that a compilation report document that was prepared by Keith & Schnars is going to appear in front of the Board of County Commissioners Wednesday, September 15, 2010 at approximately 11 a.m. Mr. Schwab discussed the general signage review issue. Mr. Schwab verified that all Planning Commission members would be present for a Tier Designation Review process meeting scheduled for the regular meeting date of November 16, 2010. Mr. Schwab informed the Commission that Debby Tedesco would be retiring.

Commissioner Cameron described how some small towns in the state of Maine handled their signage issues. The signage issues were further discussed. The procedures for the Planning Commission meetings regarding tier designations were described by Ms. Grimsley.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 1:20 p.m.