

PLANNING COMMISSION

February 9, 2011

Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, February 9, 2011**, beginning at 10:10 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

Randy Wall, Chairman	Present
Denise Werling	Present
Jeb Hale	Present
Elizabeth Lustberg	Present
William Wiatt	Present

STAFF

Townsley Schwab, Sr. Director-Planning and Environmental Resources	Present
Susan Grimsley, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mitch Harvey, Comprehensive Plan Manager	Present
Joe Haberman, Planning and Development Review Manager	Present
Steven Biel, Senior Planner	Present
Richard Jones, Marine Resources Administrator	Present
Mike Roberts, Environmental Resources Senior Administrator	Present
Gail Creech, Planning Commission Coordinator	Present
Kim Kiraly, Staff Assistant	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

Gail Creech confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

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

APPROVAL OF MINUTES

Motion: Commissioner Lustberg made a motion to approve the December 1, 2010 minutes. Commissioner Werling seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

Continued Item:

1. Surprise Island LLC, 107900 Overseas Highway (US 1), Key Largo, Mile Marker 107.9:

A request for approval of a major conditional use permit in order to develop the property with a marina for the purpose of boat storage and boat ramp, the construction of a bathhouse and dockmaster's office, parking, and associated site improvements. The subject property is legally described as Section 36, Township 60S, Range 39E, Part Fractional, Key Largo, Monroe County, Florida, having real estate number 00083760.000000.

(10:14 a.m.) Steven Biel explained that this item was continued from the January 12, 2011 meeting in order for the applicant to address several issues discussed at the last meeting. The two major issues were described as relocation of the dinghy dock from the east side of the property over to the west side of the property, and also a clear delineation of the boat storage parking area. Mr. Biel directed the Commissioners to the most recent site plan showing these changes.

Staff recommended approval of the marina uses as permitted, or restricted, in the NA district: Boat ramp, the boat and boat trailer storage areas, vehicle parking spaces, vehicle parking spaces with additional length to accommodate trailers and oversized vehicles, loading and unloading space, observation platforms and landscaping with conditions. Those conditions were then outlined. Conditions A and B have been complied with and can now be stricken. Following the completion and adoption of the marina siting plan and finding that this site is appropriate for a marina with three or more slips, staff recommends approval of the dinghy dockage and the elevated boardwalk that is going to provide access from the dinghy dockage to the upland facilities with conditions. Those conditions were then outlined. Mr. Wolfe added the condition that prior to the issuance of an initial building permit, the applicant shall submit a boundary survey showing setbacks in accordance with applicable state statutes.

Chairman Wall questioned how Condition M fits in the Commission's responsibility to maintain and promote public access to the waterways. Mr. Wolfe stated that it is part of the comprehensive plan policy and, therefore, must be addressed. Rich Jones explained that the comprehensive plan says that marina siting criteria must be developed and there must be full utilization of marinas within five miles. A marina siting plan was developed, but it did not get adopted by the state or the county. In the revision of that plan identification of what "full utilization" really means is being addressed. Mr. Jones stated that the burden is on the applicant to determine if there is full utilization, looking at not just slips for bigger boats are full within five miles, but if there is suitable dinghy dockage. Mr. Jones further stated that there should be promotion of marinas and dockage in the Keys, but it has to meet the criteria and the concerns of

the comprehensive plan. Mr. Haberman added that the only way this proposal can be approved is as a marina with the elements that are required in the NA district.

(10:30 a.m.) David de Haas was present on behalf of the applicant and was sworn in by John Wolfe. Reinhard Schaupp, owner of the property, was introduced. Mr. de Haas made a brief presentation of the project and presented aerial pictures of the area. The revisions of the location of the dinghy dock and delineation of the storage area for boats and trailers was pointed out. Mr. de Haas reminded the Commissioners that the applicant is required by DEP to meet certain criteria, which will be complied with before applying for a building permit. The location proposed for the boat ramp is in an area having the least amount of impact to the wetlands and the mangroves, and anything removed will be replaced with four or five times as much vegetation. Mr. de Haas explained that the mitigation that must be done on several levels will increase the quality of the property. It was reiterated that the applicant is amenable to limitations on the number of boats, as well as the size of the boats, allowed at the dinghy dock. Mr. de Haas added that there are no dinghy docks and very little capacity for boats on trailers in this area, and this proposed development will be fulfilling a need and is very appropriate.

(10:41 a.m.) Ron Miller was sworn in by Mr. Wolfe. Mr. Miller asked, because these neighboring properties are under the same ownership, at what point would this become a destination resort? Mr. Haberman answered that each parcel is treated as separate developments because they are not related by any planning codes or aggregation.

Commissioner Lustberg quoted four different sections of County regulations that would be violated in allowing this development as it is proposed with the mangrove clearings. Mr. Roberts pointed out that the preamble paragraph of 118.10 specifically states that boat ramps are permitted in mangrove wetlands, as are the elevated boardwalks. This boat ramp was permitted and positioned in such a way that it met the water depth requirements while minimizing the mangrove impacts to the greatest degree possible. Mr. Roberts then explained the County's required mitigation policies. Commissioner Wiatt asked for a determination on the exact number of vessels to be serviced at the dinghy dock in order to determine whether or not a pump-out station is required.

(10:50 a.m.) Mr. Schaupp explained the reason that he desires to build this new marina on Surprise Island is to help control the liveaboards in the waters surrounding his properties. Mr. de Haas stated that if part of the requirements in order to meet code is to put in a pump-out facility, the applicant would comply, but then stressed that the pump-out facilities would not be promoted. Mr. Schaupp pointed out that there is nothing to pump out on these dinghies, but they are used only to bring people in to the dock, and also added that Monroe County is currently pumping out in his marina on another property.

Commissioner Wiatt then asked if putting in this dinghy dock will promote additional liveboard vessels in the area. Mr. Schaupp stated that it may, but that this development would help to control their behavior in a way that is good for the environment. Commissioner Werling asked how Mr. Schupp could assure the Commission that the control will be improved on a brand new site that is smaller than Gilbert's, where Mr. Schaupp admits he lacks control over the liveaboards' behavior. Mr. de Haas answered that the applicant is instituting controls by this

development that should almost eliminate what has been happening historically and continues today.

Mr. Jones clarified that staff does need to know what the number of dinghy slips is going to be. Since it is dockage for dinghies instead of larger vessels, a porta-potty dump station would probably be required. Limitations on the size and number of vessels allowed were discussed. Mr. Jones mentioned that the number of dinghies is what needs to be decided for the sake of pump-out requirements and for parking requirements.

Susan Grimsley asked for the definition of a slip. Mr. Jones stated that each boat is counted as a slip. It was agreed that nine slips would not require a pump-out facility. Chairman Wall pointed out that the other option was limiting these vessels in length to 12 feet, thereby rendering a dump station for a porta-potty to be in compliance. Mr. de Haas requested a limitation of 12 vessels limited to 12 feet in length, which would require the inclusion of a porta-potty dump station.

(11:09 a.m.) Commissioner Lustberg requested to be provided the entire code dealing with the mangroves. Mr. de Haas stated that the square footage of what would be necessary to clear is much less than originally thought because the canal is much wider than originally drawn. Commissioner Lustberg requested and received confirmation of the width of the canal and the elevation of the mean low water level. Commissioner Werling asked if there is a time limit on fees for dry storage. Mr. Schaupp stated that on average people usually stay only a week, but that there will be a daily price, weekly price and monthly price. Mr. Schaupp informed Commissioner Wiatt that 95 percent of the boats in the area are anchored out there, and that during high use periods at least 20 to 25 boats are out there.

Chairman Wall stated that the overall question becomes: Is what is being proposed going to help solve a problem or help to create a problem? Chairman Wall feels that this is going to help solve a problem. Commissioner Hale agreed that the development will be an improvement.

Motion: Commissioner Hale made a motion to approve with the conditions set forth by staff and the additional condition of submitting a boundary survey discussed today. Commissioner Lustberg emphasized that she still had questions.

(11:18 a.m.) Mr. Roberts confirmed that the conditions that were placed on the after-the-fact clearing permit from 2009 were met. Mr. Jones also explained that the marina siting criteria would be completed in the next year. There was discussion again regarding what was needed on the property to be defined as a marina. It was confirmed for Commissioner Lustberg that the open space requirements are in compliance and that the new site plan corrected the boat trailer storage issue. Commission Lustberg asked for a way to condition that there will not be further development of the property once the infrastructure for further development is in place. Mr. Wolfe answered that by approving only what the applicant is proposing today, if they wanted to make changes and have additional development in the future they would have to come back for an amendment to the major conditional use.

Commissioner Lustberg asked what the clearing consisted of as a result of the after-the-fact permit. Mr. Schaupp clarified that the clearing was never after-the-fact and that the permit was

to clear exotics and invasives. Mr. Roberts explained that mitigation was required because of the loss of native vegetation that was part of the exotic removal.

(11:33 a.m.) Chairman Wall desired having a philosophical discussion of continuing to champion public access to the water. Mr. Wiatt voiced his concern with the dinghy dockage and the long-term issues associated with promoting liveaboard vessels on anchor in the Keys. Mr. Wiatt then pointed out a regulation that states, “Vessels docked or stored shall not be used for liveaboard purposes,” and since dinghies service liveaboards, at that point in time it would not meet the requirements for the development of native area.

Commissioner Werling stated that she is fine with the boat ramp and parking area for trailers for day use or weekend use, but that the bathrooms and shower facilities encourage more liveaboards in the area. Chairman Wall questioned why the bathrooms on the property should not be approved for the customers launching their boats at the boat ramp. Commissioner Wiatt felt that will still promote the liveaboards coming to shore and using those facilities.

A ten-minute recess was taken.

(12:13 p.m.) Mr. de Haas amended the application to propose a dock of 50 feet in length, with the dock to be only for the docking of two boats, and eliminating anything to do with a dinghy dock for any of those vessels. Mr. de Haas stressed the importance of the bathroom facilities to this development. Mr. Wiatt stated that the regulations he quoted earlier regarding having no liveaboard activities in an NA area is no longer an issue with the new proposal. Ms. Lustberg stated that she views the bathrooms as a fundamental change in the property, and by increasing the infrastructure, opening it up to potentially other uses. Chairman Wall asked if the applicant is asking for something that is not permitted in native area zoning. Mr. Wolfe answered that it appears to be permitted, but the issue is if the Commission is going to approve the major conditional use and, if so, what conditions will be put on it? Chairman Wall stated that the Commission should be requiring the applicant to have a bathroom as part of the conditional use, rather than considering the development without the bathroom. Commissioner Hale agreed. Mr. Wiatt commented that he has no issue with the bathrooms, but is a little concerned about the shower in that they might draw more liveaboards to the property.

Motion: Commissioner Hale withdrew the motion made earlier and made a new motion to approve with a 50-foot boat dock for two boats and all the conditions imposed to be met, including the new condition with respect to the survey. Mr. Jones added that if there are now only two slips being proposed, then the marina siting plan requirements do not apply. Mr. Wolfe recommended deleting Condition M and that Page 16, Line 18, 19 and 20 should read: “Staff recommends approval of the following components of the application.” Mr. Haberman thought that should be stricken and Items 1 and 2 moved to the preceding page with the rest of the items and changing “dinghy dockage” to just “the dockage.” Mr. Haberman requested another condition of a new site plan that shows the location of the new modified 50-foot dock as opposed to the 140-foot dock. **Mr. Wiatt seconded the motion.** Mr. Miller commented that this canal is restricted in width and that the size of the boats allowed went from a dinghy to a 25-foot boat or larger. Mr. Miller stated that he supported the applicant in what he wanted to do originally with the dinghy dock. **A poll was conducted with the following results: Commissioner Hale, Yes;**

Commissioner Wiatt, Yes; Commissioner Lustberg, No; Commissioner Werling, No; and Chairman Wall, Yes.

BOARD DISCUSSION

There was discussion regarding when to elect a new chair. **Motion: Chairman Wall made a motion to nominate Denise Werling as Chairman for the next year. Commissioner Hale seconded the motion. There was no opposition. The motion passed unanimously.** It was agreed that Randy Wall would be Vice-Chair.

GROWTH MANAGEMENT COMMENTS

(12:45 p.m.) Mitch Harvey stated that Keith & Schnars will submit their next update on March 14th, and then on April 13th they will come back in front of the Planning Commission for another presentation.

Mr. Schwab introduced Kim Kiraly as a new assistant in the Planning Department. Commissioner Lustberg required that changes be made to the technical document based on comments submitted from the different departments before proceeding further. Commissioner Lustberg requested a list of the things that are actionable that maybe the Planning Board should be thinking about so that they could be more prepared.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 12:49 p.m.