

PLANNING COMMISSION

April 13, 2011

Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, April 13, 2011**, beginning at 10:07 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**

|                           |         |
|---------------------------|---------|
| Denise Werling, Chairman  | Present |
| Randy Wall, Vice Chairman | Present |
| Jeb Hale                  | Present |
| Elizabeth Lustberg        | Present |
| William Wiatt             | Absent  |

**STAFF**

|  |         |
|--|---------|
| Townsley Schwab, Sr. Director-Planning and Environmental Resources | Present |
| Bob Shillinger, Assistant County Attorney                          | Present |
| John Wolfe, Planning Commission Counsel                            | Present |
| Joe Haberman, Planning and Development Review Manager              | Present |
| Rey Ortiz, Planner   | 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.

**CHANGES TO THE AGENDA**

Item Number 1 was moved to Number 4. Item Number 2 requested a continuance to April 27, 2011. **Motion: Commissioner Hale made a motion to continue Item 2 to April 27, 2011. Vice Chair Wall seconded the motion. There was no opposition. The motion passed unanimously.**

## APPROVAL OF MINUTES

**Motion:** Vice Chair Wall made a motion to approve the February 9, 2011 minutes. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

**Motion:** Vice Chair Wall made a motion to approve the January 12, 2011 minutes. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

**Motion:** Vice Chair Wall made a motion to approve the March 9, 2011 minutes. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

## MEETING

### New Items:

**1.Jones Residence, 11 Cypress Avenue, Raccoon Key, Mile Marker 5:** A request for approval of a variance of twenty-five (25) feet to the twenty-five (25) foot required front yard setback along the southeastern property line in order to construct a gate house. The subject property is legally described as part of Block 3, Lot 1, Key Haven Eighth Addition (PB5-61), Raccoon Key, Monroe County, Florida, having real estate number 00138770.000000.

(10:11 a.m.) Chair Werling recused herself because of a personal business involvement with this agenda item and passed the gavel to Vice Chair Wall. Rey Ortiz presented the staff report. Photographs of the structure were projected on the screen. The eight standards of approval for a variance were reviewed. Staff recommended denial for a variance of 25 feet from the required 25-foot front yard setback along the eastern property line as the applicant has not demonstrated that all eight required variance standards shall be met. Mr. Ortiz recommended conditions in the event the Planning Commission approves this variance.

(10:16 a.m.) Tom Kelly was present on behalf of the applicants and was sworn in by Mr. Wolfe. Mr. Kelly submitted photographs of six-foot walls allowed in this neighborhood. Mr. Kelly explained that the roof over the gatehouse brings the structure over the six-foot height and that this roof would impact the site about one-half of 1 percent total area.

Vice Chair Wall asked for public comment. There was none.

It was clarified by Mr. Ortiz that the roof overhang is what is causing this gatehouse to be considered a structure. **Motion: Commissioner Hale made a motion to approve staff's recommendation to deny. Commissioner Lustberg seconded the motion.** Vice Chair Wall stated the he felt that a structure like this should be done with a code change and not as a variance. **There was no opposition. The motion passed unanimously.**

Chair Werling joined the proceedings.

**2.Sellers Residence, 10 Calle Dos Drive, Rockland Key, Mile Marker 9:** A request for approval of a variance of eighteen (18) feet to the twenty-five (25) foot required front yard setback along the western property line in order to construct a swimming pool. The subject property is legally described as Lot 10, Rockland Village No. 2 (PB7-17), Rockland Key, Monroe County, Florida, having real estate number 00149011.001000.

(10:26 a.m.) Rey Ortiz presented the staff report. Mr. Ortiz reviewed the standards of approval. Staff recommended approval with conditions, which were then outlined. Vice Chair Wall requested that Line 2 include “pool equipment.” Chair Werling requested that the permit for the fence go along with the permit for the pool. Mr. Wolfe pointed out that Condition 3 already covers that.

(10:35 a.m.) Peter Pike, architect, was present on behalf of the applicant and was sworn in. Mr. Pike explained that the traditional method of placing a pool behind the house was not an option because the canal has been fractured due to a blasting method when creating the canal. And secondly, there is no objection from the neighbors on either side of the applicants, and across the street there is a quarry pit with industrial zoning. Mr. Pike confirmed for Vice Chair Wall that the intentions are to put the pool equipment in the front yard.

Chair Werling asked for public comment. There was none.

**Motion: Vice Chair Wall made a motion to approve with the change to Item Number 2 to read: “This variance is for in-ground pool, pool equipment and in-ground decking.” Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.**

**3.Key Largo Ocean Resort (KLOR), 94825 Overseas Highway (US 1), Key Largo, Mile Marker 94.8:** A request for approval of a major deviation to the site plan and major conditional use permit approved by Planning Commission Resolution #P35-07. The subject parcel is legally described as portions of Sections 13 and 14, Township 62 South, Range 38 East on Key Largo, being part Tract 10 and part Tract 11 of Southcliff Estates (PB2-45), Monroe County, Florida, having real estate numbers 00483390.000000, 00483400.000000, 00088680.000100 and 00088670.000100.

(10:40 a.m.) Joe Haberman, in presenting the staff report, explained that the applicant is requesting a major deviation to the approved site plan by requesting a modification of the layout of the internal non-platted lots within the site and by proposing design guidelines as opposed to choosing between 12 different model types of housing. There is still going to be detached single-family housing on each of the lots and the density will not change. Mr. Haberman confirmed that the applicant still must honor the original setbacks, with the exception of non-enclosed stairways along the sides of the structures.

There was discussion regarding the parking requirements. Mr. Haberman stated that the applicant will explain how the parking will be sited and how any unresolved issues will be remedied. Staff recommended approval of the major deviation application with conditions, which were then outlined. There was discussion regarding from where to measure for the height

requirement. Mr. Wolfe suggested revising the height requirement issue after hearing from the applicant. Mr. Haberman continued outlining the conditions. Mr. Wolfe suggested adding back in the word “tankless” in Condition G on Line 28. Mr. Shillinger read from the development agreement that the building height is, in fact, limited to 35 feet, and encouraged the Commission to put the conditions in regarding how to go about measuring the 35 feet.

(11:02 a.m.) Mr. Wolfe swore in the members of the public intending to speak on this item.

Kent Harrison, Esq. was present on behalf of Key Largo Ocean Resort Co-op. Mr. Robbins thanked and complimented the Planning staff on their work regarding this item. Mr. Robbins informed the Commission that the architect submitted the requested changes of the fire marshal on March 30<sup>th</sup> and a letter of coordination was issued by the fire marshal. By increasing the efficiency of the overall site plan the open space was increased from 106,000 square feet to 141,000 square feet, and all encroachments on the preservation area on the north side were removed. The architectural design guidelines show that the parking spaces are contained within the areas underneath the houses, and 68 additional parking spaces are included on the plans, as well as an increase in the width of the roads.

Mr. Robbins further added that each of the single-family homes and perimeters sets back 20 feet from the shoreline to assure that there is no shoreline encroachment, and that there are a number of existing facilities that are going to be maintained. The intent of the applicant is to have no houses over 35 feet, as that would not be permitted under the design guidelines.

(11:16 a.m.) Orestes Lopez-Recio, the current architect for the project, reiterated the fact that this proposal is only an internal change in this plan, and that the intent is to have as much open area within the park as possible. Mr. Lopez-Recio pointed out that the applicant has complied with the recommendation of a 20-foot wide entrance and an emergency exit/entrance, which wasn't shown in the original plan. Mr. Robbins added that it was important to also have architectural design guidelines approved so the shareholders have the freedom to design homes by their own architects and not be compelled to use the designs of the prior architect, who has made claims of copyright infringement in the last month.

Vice Chair Wall asked if the architectural guidelines addressed rooftops. Mr. Lopez-Recio responded that rooftops are not contemplated in the design guidelines, but there is nothing that prohibits them. The shareholder will have to present their plan to the Architectural Review Board for approval. Vice Chair Wall voiced his concern of rooftops being permitted given the closeness of the buildings to each other.

Chair Werling asked for public comment in favor of the proposal. Mr. Robbins stated that the residents who were present are in favor of this proposal, but there is no need for them to create any further record.

(11:27 a.m.) Frank Herrera, Esquire was present on behalf of homeowners Ray and Renee Gonzalez. Mr. Herrera stated that his clients in general are in favor of this, but if there is anything in the plans that might in the future allow for some sort of boardwalk or something that

might obstruct their view and, in turn, make this some type of public access, they would be strongly opposed to that and would view that as some type of taking without just compensation.

(11:33 a.m.) Homeowner Mari Orondo desires for the Commission to approve the site plan. Ms. Orondo feels that the proposed plan gives all the residents an even share of the land, and then reminded the audience that the residents bought a stock, not a piece of property.

Eddie Barandiaran said that he feels that the new site plan would take everybody back to square one. Mr. Barandiaran then recited the history of KLOR's interactions with the County. Mr. Barandiaran asked the Commission to respect and protect his property rights and deny the proposed major deviation.

Eddie Calil, the original architect of the project, informed the Commission that his site plan was copyrighted with the Federal Copyright Office in Washington, D.C. If approved, Mr. Calil's attorneys will sue both the County and the copying architect for infringing the copyrighted site plan, as well as for creating a common area within his waterfront property. Mr. Calil clarified for Mr. Shillinger that what is copyrighted is the site plan, the overall layout plan.

Mr. Robbins cross-examined Mr. Calil. Mr. Calil testified that he was hired by KLOR to do the site plan, which he performed pro bono, and that there was never a written agreement to do the work, only a verbal understanding with the previous board. Mr. Calil did not have with him a copy of his copyright registration for the Commission to review. The architectural designs of the 12 model homes that are in the original site plan were copyrighted by another company, Oceanview Seven, of which Eddie Barandiaran is a principal. Mr. Calil never advised KLOR of his intent to copyright the plans until February of this year. Mr. Shillinger received confirmation from Mr. Calil that the copyright is for the proposed site plan for KLOR that has the overall view.

Mr. Robbins then cross-examined Eddie Barandiaran. Mr. Barandiaran listed the members of Oceanview Seven as Mr. Collazo, Richard Wasserstein, and Marilyn Barandiaran. Mr. Collazo was a member of the KLOR Board of Directors while the original site plan was being approved. Mr. Barandiaran owns one of 284 shares of KLOR and his property was on the water

(11:59 a.m.) Architect Felix Pardo gave his employment background. Mr. Pardo stated that without a doubt, as a professional architect and after reviewing plans for so many years and after designing so many hundreds of projects over the years, that there is a copyright infringement on Mr. Calil's work. Mr. Pardo presented a very short overview of the similarities between both site plans. Mr. Pardo then asked the Commission to consider that the proposed site plan takes away property rights from people that paid premiums for these proprietary leased areas. The difference between purchasing a stock and purchasing a share from a co-op was then described.

Mr. Robbins cross-examined Mr. Pardo. Mr. Pardo testified that he entered into a verbal agreement with Mr. Calil to testify and he is not being paid. Mr. Pardo outlined the documents he reviewed before appearing on behalf of Mr. Calil. Mr. Pardo has not physically walked the site. The difference between a survey and a site plan were described by Mr. Pardo. Mr. Pardo further testified that he is not an attorney and has not read the lease involved in this particular

case. Mr. Pardo was not aware of a rock retention wall along the entire eastern perimeter of the property or a 30-foot beach on the property.

A luncheon recess was held from 12:29 p.m. to 1:33 p.m.

(1:36 p.m.) Neighbor Stanley Nits voiced his concern over damage that could be caused when the pilings would be put in the ground. Mr. Robbins represented that they will be auger pilings. Mr. Nits also suggested “No Wake” buoys be placed in KLOR’s channel and the security guards be required to speak English.

Neighbor Sylvia Zolot submitted pictures of the piles of debris on the property and voiced her concern regarding parking.

Chair Werling asked for further public comment. There was none.

Mr. Robbins responded that the applicant will have everything cleared off the site by June 1. Mr. Robbins stated that he didn’t believe the copyright infringement claims have any merit at all. Mr. Shillinger interjected his concerns about the County’s potential exposure regarding the two legal issues: The takings issue and the intellectual property issue. Mr. Wolfe added for consideration the cost of defending any litigation. Mr. Robbins stated that the actual source of the design is derived from the CAD of the original survey, and encouraged the Commission to approve the application for a major deviation.

Vice Chair Wall asked how would it harm the majority of the co-op members to allow those members whose site is what one would call oceanfront to maintain control over the first 20 feet shoreward of the high water mark just to keep the peace? Mr. Robbins added that when most of these units were purchased, they were not purchased with a representation that they owned or had control of or the lease included those areas, and that every single member waived and consented to the demolition of their units and were put on notice to make any claims they may have promptly.

Mr. Shillinger informed the Commission that they could defer action until the extraneous issues are settled in some sort of declaratory action. Commissioner Hale said that the potential takings issue of the oceanfront property was an issue for him. Mr. Shillinger followed up by stating that Judge Garcia is retaining jurisdiction over this matter. Mr. Shillinger then gave a brief history of the prior KLOR litigation before Judge Garcia.

Mr. Robbins asked if procedurally this site plan could be approved and bifurcate the very issue of the rights and interest as to the seaward land to the east side of the most eastern properties so as not to delay the project any longer. Mr. Shillinger answered that would not take care of the potential intellectual property issue and would, therefore, he would be reluctant to do that. There was discussion of what the 20-foot shoreline setback could be used for. Chair Werling stated that she would want some of the major issues completely vetted and decided upon before the Planning Commission made a decision on the application.

A recess was held from 2:19 p.m. to 3:12 p.m.

Mr. Wolfe stated that staff is recommending this matter be deferred to the June 8<sup>th</sup> meeting. Mr. Robbins reiterated the issue of concern they will be looking into is the issue as to extending a theoretical lot line to the rock area on the eastward side of the 11 or 12 properties on the most southeastern corner of the site, and stated that the applicant would propose limitations of use of the open area in front of Mr. Calil's lot so that it would not interfere with his enjoyment of his area.

Vice Chair Wall added that he would like to see something in the architectural guidelines that prohibits rooftop balconies. Mr. Haberman stated that staff would like to see the following adjustments made: A written narrative for the design guidelines as opposed to just having the big plans; clearly putting that each residence will contain two parking spaces within the non-setback area; also possibly renaming them from guidelines to requirements; to show mean high water as it really is, not assumed; and putting within the design code that 35 feet would be measured from the adjacent drive.

**Motion: Vice Chair Wall made a motion to continue this matter to the June 8<sup>th</sup>, 2011 meeting. Comissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.**

#### **GROWTH MANAGEMENT COMMENTS**

Mr. Schwab announced that at the May 25, 2011 Planning Commission meeting Keith & Schnars will make a presentation on the technical document. Mayte Santamaria was introduced to the Commission as the new Assistant Planning Director.

#### **ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 3:32 p.m.