

PLANNING COMMISSION

May 25, 2011

Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, May 25, 2011**, beginning at 10:03 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	Absent
Randy Wall, Vice Chairman	Present
Jeb Hale	Present
Elizabeth Lustberg	Present
William Wiatt	Present
Ron Demes, Navy Liaison	Present

**STAFF**

Townsley Schwab, Sr. Director-Planning and Environmental Resources	Present
Susan Grimsley, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Joe Haberman, Planning and Development Review Manager	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present
Mitch Harvey, Comprehensive Planning Manager	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**

John Wolfe stated there was no need to swear anybody in due to the fact there is only one matter on the agenda and it is legislative, not quasi-judicial, and the afternoon will consist of a presentation only.

**CHANGES TO THE AGENDA**

There were no changes to the agenda.

## **APPROVAL OF MINUTES**

**Motion: Commissioner Lustberg made a motion to approve the minutes from the April 13, 2011 meeting. Commissioner Hale seconded the motion. There was no opposition. The motion passed unanimously.**

## **MEETING**

**1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS TO AMEND THE FUTURE LAND USE MAP (FLUM) DESIGNATION FROM UNDESIGNATED TO RESIDENTIAL CONSERVATION (RC) FOR PROPERTY KNOWN AS WISTERIA ISLAND, HAVING REAL ESTATE PARCEL NUMBER 00123950-000000; PROVIDING FOR SEVERABILITY AND REPEAL OF INCONSISTENT PROVISION; PROVIDING FOR THE TRANSMITTAL TO THE SECRETARY OF STATE AND THE DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE.**

(10:07 a.m.) Mitch Harvey explained the reason the Planning Commission was reviewing Wisteria Island again is because it was found that the County failed to submit an adjacent property owner notice. This is a request by the County to change the future land use designation for Wisteria Island, which is presently undesignated, to residential conservation. Mr. Harvey described Wisteria Island as a 21-acre upland island located next to Sunset Key and Key West Harbor that is presently untiered and is vacant. The property primarily is undeveloped with exotics and contains a small area of disturbed wetland and 1.3 acres of disturbed mangrove. Wisteria Island is a spoil island with no legal access to the island by any kind of roadway and is an offshore island. The surrounding land masses were described.

Mr. Harvey detailed the history of the owners of Wisteria Island requesting a change to mixed use commercial with a sub-area policy. The Board of County Commissioners passed a resolution requesting input from the City of Key West, who passed a resolution requesting that the County deny any project that would have an impact to the City of Key West. The applicant withdrew the application prior to this coming before the County Commission on July 21<sup>st</sup>, 2010. The County Commission directed staff to try to develop an appropriate future land use map category.

Photographs of the present condition of the island were shown. Based on the definition in the land development code, Wisteria Island is an offshore island and has a future land use district category of offshore island. The equivalent future land use map category in the comprehensive plan to offshore island is residential conservation. The maximum allocated density allowed under this future land use category is .25 units per acre, or five units.

Residential conservation is the most restrictive category in the comprehensive plan for privately-owned land. The availability of necessary facilities and services must be secured by the property owner for consideration of any increases in density/intensity. There are currently no public services on this island. The proposed amendment is internally consistent with the Monroe County comprehensive plan and is consistent with principles for guiding development in the Florida Keys Area of Critical State Concern. Staff recommended approval.

Mr. Wolfe announced that three letters and one e-mail were forwarded to either Commissioners and/or the Clerk, which have been distributed.

(10:16 a.m.) Ed Scales, Esq. was present on behalf of FEB Corporation, the owner of Wisteria Island. Mr. Scales clarified that the only issue before the Planning Commission is whether the residential conservation FLUM designation is appropriate for Wisteria Island. Mr. Scales explained that the owner opposes the RC designation for one primary reason, and that is that by the County's own code and the County's own report this island simply does not fit the definitional requirements for RC. The policy behind the RC designation included in the staff report was read into the record as: "The principal purpose of the residential conservation land use category is to encourage preservation of open space and natural resources while providing for very low density residential development in areas characterized by a predominance of undisturbed native vegetation." Mr. Scales then read from the same report at Line 34 that, "The existing habitat on Wisteria Island is dominated by disturbed upland communities," and stated that, therefore, by definition this particular land area does not meet the requirements for RC.

Mr. Scales requested that the Commission deny the approval of this FLUM designation. The three speakers present on behalf of the owner were listed as Dr. Phil Frank, an environmental consultant, Dr. Tom Lodge, who authored a book on the Everglades, and Owen Trepanier, a planner in private practice who has been working with the owners of Wisteria Island for quite some time. Mr. Scales distributed Dr. Frank's written report to the Commissioners.

(10:25 a.m.) Dr. Phil Frank presented his educational and professional background. Dr. Frank explained the purpose of his appearance was to discuss the type of habitats on Wisteria Island, as well as the type of wildlife that uses it within the context of the land development regulations. Dr. Frank described the process that led to his creation of the habitat map of Wisteria Island. Dr. Frank then read aloud the definitions of disturbed land, natural biological systems and hardwood hammock from Section 101 of the comp plan.

Dr. Frank described Wisteria Island as a manmade spoil island that was created from dredge spoil from Key West Harbor in the late 1800s to early 1900s, with habitat types including disturbed upland and disturbed salt marsh wetlands. The flora and fauna present on the island were reviewed. Dr. Frank does not dispute the findings in Roger Hammer's report, which was prepared on behalf of Last Stand. After this review Dr. Frank concluded that Wisteria Island is a manmade spoil island that does not support intact native plant communities, does not have a predominance of undisturbed native vegetation, but only has patches of vegetation. Wisteria Island does support plant and animal life, but the presence of that plant and animal life does not define it as a habitat in the code.

Dr. Frank spoke of the uniqueness of Wisteria Island. It was stated that the overwhelming majority of offshore islands in the Keys do support intact native plant communities and are natural. The habitat found on natural islands was described, which makes it important for conservation. Dr. Frank explained what makes Wisteria Island different and unique is because it is completely manmade and does not support the intact native plant communities used to define these islands. The commercial uses adjacent to Wisteria Island were described. The amount of campsites and people on the island were also described, which makes for a somewhat degraded

environment. Dr. Frank pointed out that Wisteria Island is not targeted for acquisition on the state or Federal level. All of these reasons give Dr. Frank a clear justification for treating Wisteria Island different in the regulatory context.

Commissioner Wiatt asked Dr. Frank what percentage of the existing vegetation on the island would be considered undisturbed native. Dr. Frank answered none. There is native vegetation there, but it is disturbed vegetation.

(10:45 a.m.) Dr. Tom Lodge, ecologist, gave a summary of his educational and professional background, as well as described the handbook that he authored on the Everglades. Dr. Lodge listed the number of documents about Wisteria Island studied by him. Despite the fact that Phil Frank was a guide for Dr. Lodge on the island, they did not correspond at all while Dr. Lodge worked on his report. Dr. Lodge looked at the regulations, looked at the island, reviewed photographs and arrived at his own conclusions.

Dr. Lodge agreed with County staff in that the island is dominated by disturbed vegetation with only patches of native vegetation. In all instances Dr. Lodge saw the patches of native vegetation as having disturbance indicators. Dr. Lodge agrees with the findings of Roger Hammer, who found only stated-listed species. Dr. Lodge explained that the major intent of the state listing is to prevent commercial exploitation. The avian use of the island was described as minimal. There was no evidence of a rookery on the island.

The patches of native vegetation were described as unusual in that most of them were youthful. That will ultimately go away, as there is evidence that Australian pine will recur. Dr. Lodge also spoke of the human disturbance on the island. Dr. Lodge invited the Commissioners to read the explanatory captions that go along with the photographs he submitted. Dr. Lodge stated that his overall conclusion is that Wisteria Island is a highly disturbed site without native plant communities as defined in the code, only disturbed types.

Owen Trepanier gave a brief summary of his education and professional background. The history of the application for a FLUM designation for Wisteria Island was given. Mr. Trepanier explained the process to determine an appropriate FLUM designation by looking at the characteristics of the property, as well as the characteristics of the surrounding area. Mr. Trepanier described Wisteria Island as being adjacent to the only state-recognized urban area in the Florida Keys, Key West, within the only state designated deep water commercial harbor, and not located in the Federal protections of the Coastal Barrier Resource Area and not in a national wildlife refuge. The surrounding land uses are high intensity. The average for all of the surrounding land uses to Wisteria Island is 70 percent. Mr. Trepanier made the point that Wisteria is located within a very intense area of the Keys.

The purpose of residential conservation was again discussed. Mr. Trepanier stated that there are 36 other islands in the County that have an OS zoning and have some other FLUM designation other than RC, and then added that there is no code and no comp plan policy that required islands to be zoned an offshore island. Mr. Trepanier concluded by stating that based on the characteristics of the land, as well as the surrounding land, and based on the surrounding land uses and the surrounding land use designations, the appropriate FLUM designation is mixed use

commercial. Mr. Trepanier clarified for Commissioner Lustberg that there are 36 other islands that are designated OS, or have a default OS zoning, that have a FLUM designation different than RC, which include conservation, residential medium and residential low.

Mr. Scales then pointed out that there is not an automatic requirement that RC go with the offshore island zoning designation. Mr. Scales stated that Dr. Lodge, Dr. Frank and Mr. Trepanier had the benefit of the Last Stand brief, and, finally, that there is not a concern about precedent of what other offshore islands were designated because of the unique characteristics of Wisteria Island.

(11:13 a.m.) Vice Chair Wall asked for public comment.

Naja Girard spoke on behalf of Last Stand. Last Stand fully supports staff's recommendation of the RC designation, as the laws governing offshore islands are based on good science, common sense and good planning. Ms. Girard spoke about the possible precedent if the Commission begins to give different designations to spoil islands. Ms. Girard stated that the possible negative impacts to adjacent jurisdictions are a concern. Ms. Girard feels that offshore islands should be looked at in a different perspective from other properties in Monroe County because it is an ecosystem that differs. Photographs in the report by Roger Hammer were pointed out to show the seven endangered plant species and three threatened plant species located on the island. Ms. Girard stated that Tom Wilmers wrote a report that just came out in January indicating the white crown pigeon is using the island most extensively, and that the foraging habitat for these birds is very much in jeopardy. Ms. Girard pointed out that Wisteria Island is not a Tier 3 property because it is remote from infrastructure and is completely undeveloped. Wisteria Island is very difficult to evacuate in the case of a hurricane and Ms. Girard wants the Commission to consider the dangers to human life as well when thinking about how much residential density should be allowed on the island.

Mr. Wolfe brought to the attention of the Commission that the Last Stand report and every letter and e-mail referenced earlier were submitted after the five-day deadline. **Motion: Commissioner Wiatt made a motion to allow in those documents, as well as anything submitted at this meeting. Commissioner Hale seconded the motion. There was no opposition. The motion passed unanimously.**

Arnaud Girard spoke in favor of staff's recommendation because, from his reading of the code, if Wisteria Island is not connected to U.S.1, then it is part of the offshore island district and, therefore, should be designated RC. Mr. Girard thinks the developer's presentation is misleading. Mr. Girard presented photographs taken years earlier to demonstrate the amount of erosion which has occurred in this area, and stated that Wisteria Island is a barrier island, which islands are used for protection.

Mike Mongo agreed that the argument being made by the potential developers is misleading. Mr. Mongo encouraged the Commission to look at the spirit of the comprehensive plan, as well as the letter of the law, which indicates the development of Wisteria is to be limited and go with staff's approval.

Deb Curlee spoke on behalf of Last Stand and read into the record the mission statement of Last Stand. Ms. Curlee referred to Roger Hammer's report, which stated that Wisteria Island could become a showcase project for the protection of native plants and migrating birds. Ms. Curlee encouraged the Commission to demonstrate the Commission's value for the welfare and safety and the quality of life of the residents, as well as the welfare and safety of many species of native plants by supporting staff's recommendation.

Alicia Putney, resident of No Name Key, reminded the Commission that during the planning process between 1992 through 1996 the FLUM designations were not based on one or two very specific issues, but on the overall importance of the island and the amount of intensity and density of development that Monroe County wanted or needed to limit on an offshore island. Ms. Putney supports staff's recommendation.

Cliff Hartman presented photographs of the Key West area to highlight the green spaces that are used by the birds. Mr. Hartman stated that there are three times as many species of native vegetation as there are exotics, and added the vegetation is disturbed only by definition and hopes the Commission will follow staff's recommendation.

Patrick Stuckey, resident of Key West, stated that he is in favor of the staff recommendation for the RC designation and that the development of Wisteria Island is very unpopular in Key West.

Andrea Quigley, resident of Key West, brought up that Roger Hammer stated if something was done about the exotics, all of the native vegetation would thrive. Ms. Quigley disagreed that the white crown pigeons thrive in Key West because of the amount of people in Key West. Ms. Quigley has not seen any white crown pigeons in the White Crown Pigeon Preserve in the last year when she visited.

Sloan Bashinsky clarified that this FLUM designation has never been before the Key West City Commission, but only the developer's FLUM designation request. Mr. Bashinsky spoke of the Key West Commission's and residents' unhappiness about the proposed development on Wisteria Island. Mr. Bashinsky further clarified the issue before the Commission today is only to recommend for or against the proposed FLUM.

Brian Schmidt, lifelong resident of the Florida Keys, stated he is a real estate broker who has handled at least four offshore island sales himself. Mr. Schmidt suggested the Commission request staff to come up with an appropriate designation other than RC, which is not appropriate for this completely unique island.

Sheila Mullins asked the Commission to rely on staff's recommendation and designate Wisteria Island as residential conservation. Ms. Mullins feels the developer's basis for appeal is pathetic. Ms. Mullins feels that a lot of misrepresentations have occurred at the beginning of the meeting and that the confusion that was spread is totally against residents' interests. The decision should be based on good information and good science and on the needs of the people in the Keys. Ms. Mullins encouraged the Commission to do what is in the interest of all the people in Monroe County and protect them and protect the comp plan and make this residential conservation zoning.

Ms. Grimsley clarified that the owner of the affected property did not request this hearing, but that the County decided to have this hearing because of a technical notice problem.

Nils Muench, resident of Key West, asked the Commission to listen to the citizens of Key West, the Key West City Commission, Last Stand's environmental assessment of Wisteria, the DCA and staff when recommending a FLUM designation.

Bob Cardenas, a local real estate broker, spoke about the economic health of the community. Mr. Cardenas stated that Sunset Key has in 2010 generated almost \$3 million in taxes. Mr. Cardenas wishes for responsible development on Wisteria Island that would bring in money to the community and provide public access that the citizens have wanted.

Bill Barry, resident of Key West, disclosed he has worked for FEB as a communications consultant in the past, but today is speaking on his own accord. Mr. Barry spoke of the negative human impacts that have occurred on Wisteria Island. Mr. Barry feels a designation to allow it to be developed which would add \$3 million of tax revenues and add hundreds of jobs would be a prudent decision.

Donna Windle spoke of the difference between offshore islands and spoil islands, that one size does not fit all. Ms. Windle asked the Commission to keep in mind the illegal dumping that is occurring on Wisteria Island that is hurting the quality of the nearshore waters and hurting the environment when making a decision today.

Barry Barrosa, prior member of the City of Key West Planning Board, stated that staff should bring forward more than one recommendation for Wisteria Island. Mr. Barrosa believes the Commission has an obligation to take their time and weigh all of the parameters for this designation and make a better decision than the proposed FLUM.

Michael Halpern, resident of Shark Key, asked the Commission to send this to Key West for a public hearing to achieve cooperative zoning as opposed to confrontational zoning. Mr. Halpern stated the citizens deserved access to shoreline which they have been denied for a long period of time.

Ms. Mullins asked to refute one thing. Mr. Wolfe advised the Commission that they may allow a quick rebuttal of a specific statement if they wish. Ms. Mullins asked the Commission to not be swayed by any smokescreen about public access, citing Sunset Key as an example, which now costs \$40 to access it.

Steve Condella, resident of Key Haven and business owner in Stock Island, believes development of Wisteria Island would help the County and help all of the local workers. Mr. Condella further stated that Key Haven also has white crown pigeons.

Public comment was closed.

Mr. Scales re-emphasized the fact that the issue in front of the Commission is whether the RC FLUM designation is appropriate for this island. The County's land use policies state that the principal purpose of the RC land category is to encourage preservation in areas characterized by a predominance of undisturbed native vegetation, and Mr. Scales stated that not one single person has said Wisteria Island is such an area and, therefore, the fact remains that this island does not meet the definitional requirements of RC.

Mr. Harvey gave a breakdown of FLUM designations of the offshore island within the County. Mr. Harvey explained that there are level of service standards that need to be met in order to support the density and intensity of development. At this point in time there are no facilities and services that the island has.

Mr. Wolfe interrupted and stated that questions by the Commission for Mr. Harvey are more appropriate at this point in the proceedings.

Mr. Harvey outlined for Commissioner Lustberg what goes into determining a FLUM designation. Commissioner Wiatt asked if there are any points where an RC designation would be inconsistent with the comp plan. Mr. Harvey responded not that he is aware of, and that he feels that the RC designation is consistent with the OS zoning district. The level of difficulty of having a FLUM designation changed from one designation to another as opposed to creating a FLUM designation where there was none before was discussed.

Commissioner Lustberg cited the rules for changing a future land use map designation. Commissioner Lustberg stated that she feels there are not appropriate levels of service to have a future land use map designation beyond residential conservation. However, if the City of Key West agreed to provide that level of service, that would give the owner the ability to come back to the County and get the future land use map designation that would be required for that to happen. Mr. Scales added that it is significantly more difficult to change a FLUM once there has been a designation of a FLUM. Ms. Grimsley agreed that once there is a FLUM designation in place, one does have to go through all of the requirements in the code and the principles for guiding development and show that there are good reasons to change the FLUM. Ms. Grimsley added that DCA has asked the County to implement a discouragement policy.

Commissioner Wiatt questioned how staff came up with the RC designation. Commissioner Wiatt voiced his concern that the RC designation was assumed to be the right designation and it was evaluated alone. Mr. Harvey responded that the direction to move forward was to evaluate whether or not residential conservation would be supportable on this site, and the analysis was conducted with that direction. Mr. Schwab stated that other designations were analyzed.

Mr. Demes stated that the Navy's focus is to safeguard and promote the military operational capability. The general rule of thumb for the Navy is that less is better, but the Navy understands development is a reality. The Navy concurs with the staff recommendation.

Mr. Roberts concurred with the overall description of the island as being disturbed, and that RC is the most appropriate designation available at this time.

**Motion: Commissioner Lustberg made a motion to accept staff's recommendation of residential conservation based on staff's report and the testimony given today. Commissioner Wiatt requested further discussion.**

Commissioner Wiatt again voiced his concern that there has been a review of one designation and, given the importance of this decision, requested documentation that reviews other possible designations that includes both consistencies and inconsistencies. Ms. Grimsley added that the transmittal hearing is scheduled for June 20, 2011, but that the BOCC would want the matter addressed thoroughly.

**Motion: Commissioner Hale made a motion to deny staff's request based on the fact that this is disturbed land, there are no endangered species on this island, and that RC does not fit this particular island, and also based on the testimony put in the record today.**

**Motion: Commissioner Wiatt made a motion to continue this item to the July 27, 2011 Planning Commission meeting so staff can provide a detailed consistency versus inconsistency discussion of any designation that is reasonably appropriate to Wisteria Island. Commissioner Hale seconded the motion. Commissioner Lustberg suggested narrowing the analysis to mixed use commercial, recreation, residential conservation, residential low, medium and high. There was no opposition to the motion. The motion passed unanimously.**

A luncheon recess was held from 1:03 p.m. to 2:05 p.m.

## **2.Keith & Schnars Presentation.**

Dawn Sonneborn of Keith & Schnars explained the purpose of today's presentation was to present the highlights of the remaining elements of the technical document, which is Phase 1 of the four-phase project. Also presented will be a portion of the evaluation and appraisal report, which is Phase 2 of the contract services. Feedback will be taken today. What was contained within the notebooks given to the Commission was described. An outline of the presentation was given.

Debbie Love, Senior Planner with Keith & Schnars, pointed out a couple of updates to the document. Then Ms. Love gave a 30-minute presentation of the future needs and opportunities portion of the technical document.

Erin Deady, attorney with Lewis, Longman & Walker, gave a 25-minute presentation on the energy conservation and climate change element of the technical document.

A 20-minute recess was held.

Ms. Love gave an hour-long presentation on the element assessment portion of the document. During this presentation Mike Roberts explained the County's wetland regulations, Rich Jones described the County's Marina Siting Plan, Mitch Harvey discussed the shoreline setback, as well as the water supply plan.

An hour-long question-and-answer session followed between the Commission, staff and the Keith & Schnars representatives. Mr. Demes again voiced his concern regarding the use of the 1977 AICUZ study since it is not the most up-to-date study available.

Captain Ed Davison urged Keith & Schnars to include major safeguards for the County to be incorporated into the legal structure of the document.

Sandy Walters spoke and asked that the on-line comment forms be put as a separate item on the website so the public can easily find it. Ms. Walters also urged Keith & Schnars to contact the Marine Sanctuary to obtain more current data on threats to corals in the Florida Keys, and also asked Keith & Schnars to correct any mapping errors that may be contained in the document.

Alicia Putney spoke of her ability to supply herself with water by natural means. Ms. Putney questioned the necessity of opinions within the technical document. Ms. Putney distributed and discussed a proposed revised version of the Habitat Conservation Plan.

Public comment was concluded.

Ms. Love spoke of the opportunity for public comment in the future. Mr. Demes read into the record Florida Statute 163.3175(4) and requested that he receive a copy of any future packages submitted. Vice Chair Wall suggested the Commission only accept into the record what was specifically referred to by the presenter and not the entire document.

#### **ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 6:04 p.m.