

PLANNING COMMISSION
June 22, 2011
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, June 22, 2011**, beginning at 10:06 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

STAFF

Townsley Schwab, Sr. Director-Planning and Environmental Resources	Present
Susan Grimsley, Assistant County Attorney	Present
Thomas Wright, Planning Commission Counsel	Present
Joe Haberman, Planning and Development Review Manager	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present
Steven Biel, Senior Planner	Present
Barbara Mitchell, Senior Planner	Present
Rey Ortiz, Planner	Present
Barbara Bauman, 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 Thomas Wright.

CHANGES TO THE AGENDA

Mr. Wright requested that each item for continuance be announced at the time the item is read.

MEETING

Continued Item:

1.Roy's Trialer Park, 6500 Maloney Avenue, Stock Island, Mile Marker 5: A request for approval of a development agreement between Roy's Trailer Park, Inc. and Monroe County. The development agreement would allow the property owner to transfer market-rate Rate of Growth Ordinance (ROGO) exemptions associated with 108 existing, lawfully established dwelling units to another receiver site or sites in exchange for maintaining an equal or greater number of deed-restricted affordable dwelling units on the subject property or sender site. The development agreement is required as part of an affordable housing incentive program as set forth in Section 130-161.1 of the Monroe County Code. The subject property is legally described as Lots 4-11 and 40-47, Square 46, Maloney Sub (PB1-55), Stock Island, Monroe County, Florida, having real estate number 00126090.000000

Ms. Grimsley stated that staff is requesting a motion to table the item and there will be further advertising when it is ready to be heard. **Motion: Commissioner Lustberg made a motion to table this item. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.**

New Items:

2.Florida Keys Quality Foods, Inc. dba Mandalay Oceanfront Grill & Tiki, 80 East Second Street, Key Largo, Mile Marker 97.7: A request for approval of a 5SRX (Restaurant, no package sales) alcoholic beverage special use permit. The subject property is legally described as Block 4, Lots 1 and 2, Mandalay (PB1-194), Key Largo, Monroe County, Florida, having real estate number 00554740.000000.

Vice Chair Wall informed the public that there are requests to Continue Items 6, 8, 11 and 13.

(10:12 a.m.) Barbara Bauman presented the staff report. Ms. Bauman gave a brief history of prior County actions on this site. Staff recommended approval of the 5SRX alcoholic beverage special use permit with conditions. Those conditions were then listed.

Ms. Grimsley asked the Commissioners to accept the e-mail report from the County's traffic consultant, even though it was submitted within the five days before the meeting. That e-mail states it is the consultant's belief that there will be no difference in trip generation based on the serving of a different type of alcoholic beverage. **Motion: Commissioner Wiatt made a motion to accept the e-mail within the five-day period. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.**

John Jabro, Esq. was present on behalf of Florida Keys Quality Foods dba Mandalay Oceanfront Grill and Tiki. Mr. Jabro thanked the members of staff for their work on this matter. The applicant seeks to change the menu by adding alcoholic beverages that are beyond beer and wine, and at the same time is giving up their liquor license that allows for package sales. The applicant believes the impact to the community is going to remain relatively the same. The

applicant has no plans to go outside the scope of the development agreement and is not going to limit the on-street parking in any way and not limit anybody's access to the water. Mr. Jabro clarified for Vice Chair Wall that the applicant's lease encompasses the restaurant on the property.

Vice Chair Wall asked for public comment. Mr. Wright then swore in all members of the public intending to address this issue.

Joseph Miller, business owner and resident in the neighborhood, stated that he feels that the liquor license will not increase the traffic into the facility. Mr. Miller stated that he is in favor of the project and does not believe it will have a negative impact on traffic or anything else.

Malcolm Tratt, neighbor, believes it is great for the neighborhood that the applicant's restaurant is moving in. Prior to that it appeared to Mr. Tratt that some shady people were starting to move into the neighborhood and take over that area. Since the applicant has moved in they have cleaned it up and invested a lot of money and time into the project.

Robin Berray, with Morgan Management, owners of the property, stated that Morgan Management is looking forward to a great association and thanked staff for their hard work.

Jay LeBlanc, neighbor, was present. Mr. LeBlanc read a letter that his fiancée, Nicole Lane, wrote. The letter spoke of Ms. Lane's faith in the new project. Ms. Lane feels that this establishment will bring much needed revenue to an area that is experiencing significant effects from the difficult economy and looks forward to having this restaurant open.

Daniel Lennon requested to reserve his comments until he has heard some of the issues against the project so he can offer a fair and balanced comment at that time. Vice Chair Wall granted that request.

David Shine, general manager of the Mandalay and resident of Key Largo, stated that the only change being made is to the menu, as was said before.

Dorothy Harden, Esq. was present on behalf of Rock Harbor Marina. Ms. Harden stated that her client has no problems with progress and with revenue generation and with trying to have proper economic development within the Keys, but it must be in conformity with the Monroe County code and this Commission's responsibility and purpose. As a preliminary matter, this SRX application does not comply with the requirements for an SRX application. It is required that the owner actually file the application along with the tenant, and the letter within the SRX application packet is not notarized, contrary to the requirements of an SRX application.

Ms. Harden feels there has been a misrepresentation in connection with the actual revenues that have been generated by the restaurant in the past, as there has been an indication of income from the restaurant in the year 2010, a time when the restaurant was closed. Other problems that remain with the project is that the project was supposed to have been part of a development, it was supposed to be a small restaurant with shared parking under condos. There has not been a final site plan and the requirements of the major conditional use permit were not complied with

prior to the building permits being issued. There has not been a proper review process for a stand-alone restaurant, contrary to the requirements of the Monroe County Code. There has been no phase plan submitted. Ms. Harden's client is concerned that if the Commission approves the SRX application, a stamp of approval will be put on something that does not comply with the code and is contrary to the criteria that the Commission is supposed to be adhering to. In addition, there has been no finding that the project is going to be able to have the 150 parking spaces that they are looking for, nor does it appear that the stand-alone restaurant is going to have the 2,500 square feet of serving area that is required. The other businesses on the property need to be considered when determining whether or not this project is going to actually increase the traffic.

Ms. Harden added that another issue of concern is the fact that no less than seven after-the-fact permits have been issued on this property. There is currently an open code enforcement case pertaining to building and construction renovation without a permit. The traffic study cited in the staff report occurred in October of 2007 and did not take into account an SRX application with liquor. The similar applications referred to in the staff report indicating staff does not anticipate any significant increase in traffic are only mentioned in the staff report and were not submitted. Ms. Harden cited a Florida case, JPM Investment Group versus Brevard County Board of County Commissioners, which states that just by the mere fact of changing from a beer and wine to a liquor license automatically is an expansion of use. This is one of the criteria that the Commission has to determine, whether or not this is going to have more of an impact upon the community.

Ms. Harden noted that some individuals who spoke to the Commission today did not even say where they actually were from, and the Commission can only consider for purposes of this application the effect of such use upon the surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises. Ms. Harden feels that the suitability of the premises in regard to its location criteria was glossed over in the staff report. The owner has not complied with the criteria that in the event music and entertainment is permitted the premises shall be air-conditioned. The tenant is trying to use as its commercial space a long detached awning area. The property owner has violated Paragraph 6 of the actual lease with the County by increasing the footprint of the property.

Ms. Harden urged the Commission to deny the application. Ms. Harden commented that the submission of an e-mail by the County's traffic consultant to the Commission should be submitted with the actual packet and the actual report to determine what this person looked at and the actual conditions. Ms. Harden again asked that this Commission deny the application.

Ms. Harden then recited the dates of the after-the-fact permits for Commissioner Lustberg. Commissioner Lustberg asked what Ms. Harden's clients would ideally like to see, at which time Ms. Harden deferred to David de Haas.

David de Haas, owner of de Haas Consulting and Design, was present representing Sam Stoya, owner of the adjacent properties and other property in the immediate area. Mr. de Haas asked the Commission to consider two options: Option 1, not to allow the liquor license to be issued; and Option 2, to allow it under certain conditions. Mr. de Haas added that Mr. Stoya truly

believes this is going to be an improvement to this neighborhood, but that the primary concerns are the possible noise and traffic impacts.

Mr. de Haas made the general statement that what probably should occur is that this application needs to be tabled, or the applicant should ask for a continuance to allow some of these issues to be resolved. Mr. de Haas stated that he has drawings and plans for the property as an illustration of some ideas and suggestions to put forth for consideration so the Commission understands what it is Mr. Stoya is asking for, but is withholding them at this time and will continue to verbally explain what it is Mr. Stoya wants.

The first request is for the Commission to impose one-way traffic going south to the property and not allow two-way traffic going into the rest of the neighborhood from the restaurant area. The second request is that there be a revision to the parking, moving access from East 2nd Avenue around the corner and away from the other residential areas and confine the parking. The third request is the requirement of buffers between the parking and the adjacent neighbors. Mr. Wright cautioned the Commission to keep this hearing relevant to the matter at issue, which is the liquor license. Mr. de Haas noted that under the alcoholic beverage permit application the Commission is empowered to add those conditions which they feel are appropriate for the issuance of the alcoholic beverage permit, and that as part of the alcoholic beverage permit Mr. Stoya is asking that the Commission put those conditions in with this application. Mr. Wright stated that it seems as if the entire issue of a development agreement that has already been arrived at is being asked to be reopened. Ms. Grimsley added that the development agreement has already been approved and any parking revisions that were approved at the conditional use level would have to be addressed prior to the opening of the restaurant. Townsley Schwab clarified that what is being addressed now is the approval or lack thereof of the alcoholic beverage license, and the other issues will be addressed as this process moves forward and the reopening of the restaurant is appropriate without the entire major conditional use being executed.

Mr. de Haas responded that these are suggestions of what might be appropriate conditions that have been placed on alcoholic beverages in the past. Mr. de Haas again stated that there are unanswered questions and this item should be tabled to try to resolve these issues. The applicant has assured Mr. de Haas that he will voluntarily limit the music and the noise and is willing to stop the music at 10 o'clock. Mr. de Haas added that there is a discrepancy still if the applicant is going to exceed the allowable commercial square footage for use on that property and believes that needs to be resolved.

Sam Stoya, adjacent property owner, stated that in general he supports this restaurant, but he supports the restaurant with conditions, and that the problem really is just basic neighborhood cooperation. This is a building that has grown immensely without permits. Mr. Stoya believes the square footage for floor area ratio cited in the staff report is including the bay bottom. Mr. Stoya thinks this item ought to be tabled until this can be resolved. The difficulty is that the landlord will not come to the table to discuss this with the adjacent property owners. Mr. Stoya spoke about the restriction of traffic and the completion of the turnabout as proposed in the major conditional use permit, which now none of that is on the table. Mr. Stoya would like to see restrictions placed on the alcoholic license to help with noise, traffic flow and parking.

Mr. Stoya questioned the owner's timing in applying for a liquor license before having their code enforcement cases continued, their building properly worked out or their square footage worked out. Mr. Stoya again requested that this item be continued for at least 60 days so all these issues can be resolved. There was agreement to accept photographs submitted by Mr. Stoya. Mr. Wright again reminded the Commission that the issue before them is whether it is a restaurant with beer and wine or a restaurant with full liquor. Mr. Stoya responded that these photographs will help the Commission determine whether there is sufficient square footage to approve the application. Mr. Stoya then went through the photographs and pointed out revisions already performed on the restaurant. Mr. Stoya would like this application postponed for the County, owner and tenant to meet and resolve all of the code cases, as well as the noise, traffic and parking issues.

Don Horton was present on behalf of the tenant, Sam Nekhaila and the Mandalay. Mr. Horton clarified for the Commission that there is one after-the-fact permit that has been issued, and it was for a bathroom renovation that was started without a permit. All of the other after-the-fact permits were issued or applied for long before Mr. Nekhaila came onto this property. Mr. Horton also mentioned the fact that the County's own traffic engineer says there is not going to be an increase in traffic due to this license. What was approved in the development agreement was a certain number of square footage of open dining area and the applicant is not expanding the square footage. All they are saying is they are going to have 150 tables. Adequate parking is provided for through the development agreement, and the applicant must stay within that agreement that the Planning Commission and the County Commission have approved.

Robert Guyon, neighbor, stated that his first concern is losing access to the boat ramp. Ms. Grimsley informed Mr. Guyon that there is a 60-foot right-of-way there, ten feet of which is leased to the owner of the property for the use of the restaurant, but the remaining right-of-way is still open. Mr. Guyon then stated that his second concern is the fact that hard alcohol being served will definitely bring in a different crowd and a different atmosphere and is concerned about patrons driving through his neighborhood under the influence.

Carlos Manuel Rodriguez, liveaboard in the area, stated his main concern is that every new tenant adds on to the restaurant, which is encroaching onto the public right-of-way. Mr. Rodriguez also stated that concrete is being poured at nighttime without a permit. Mr. Rodriguez doesn't agree with rewarding an applicant for breaking the law with a liquor license. There was a tenant named Marty Webb who obtained a lease from 12/1/97 to 11/30/17, which has now been passed on to subsequent tenants, which was not in the agreement.

Ian Cortina spoke regarding the nine parking spots on the side of the restaurant. Mr. Cortina noted that the landscaping that has been installed in this area is taking up space in the parking area. Mr. Cortina is ambivalent about the liquor license. Mr. Cortina's ideal vision for this area would be for the applicant to not utilize much of the right-of-way at all, but that they lease or obtain the large vacant lot directly behind the establishment and use that for parking. Mr. Cortina agreed that there is a history of encroachment here. Mr. Cortina feels it will be great to have a restaurant located here.

Jenny Alterman, neighbor, said that she is very much in favor of the liquor license and thinks it is a great addition to the neighborhood.

Dan Lennon, neighbor and local dive instructor, stated that he is in favor of the applicant receiving the liquor license as long as all the laws are met.

Charles Kirkpatrick asked if there would be signs put up to stop people from parking in the area. Mr. Schwab then clarified again that ten feet of the 60-foot right-of-way is leased by the Mandalay, and that the public right-of-way is not designated parking for the restaurant. Ms. Grimsley added that the development agreement says that nine spaces can be used by the restaurant adjacent to the building, which is in addition to the ten feet. Mr. Kirkpatrick noted that the cleared trailer park in the area would make a good parking lot, and further stated that the public right-of-way should remain public with no restaurant parking allowed. Vice Chair Wall informed Mr. Kirkpatrick that the Commission is not hearing that today, they are hearing a liquor license application. Mr. Schwab added that there are 12 spaces up towards U.S.1 that are not dedicated to the restaurant and are there for the public to use.

Denise Monroy was sworn in. Ms. Monroy stated that she is a liveaboard in the area, and stated that since the applicant has come onto the property it has improved 100 percent. Ms. Monroy commented that there has always been a restaurant there, there has always been drinking there, and this liquor license is not going to hurt anything.

Timothy Thomes, Esq., was present because he represented the prior owner of the property and was able to work with the County and negotiate the development agreement. Mr. Thomes feels that the public is not concerned with the liquor license, but that they are asking that the development agreement conditions that call for certain conditions as to East 2nd Street, the parking conditions, the square footage that is going to be allowed to be enclosed and other conditions work together. Mr. Thomes believes he was asked to appear before the Commission to make sure that there is not an approval that is out of sync with the development agreement insofar as it pertains to the restaurant. The issues regarding the access to the water and the parking were addressed at some length when the development agreement was considered and that was not appealed. Mr. Thomes asked the Commission to make sure that there is compliance with conditions under the development agreement when granting this request for an expansion of use.

Mr. Rodriguez again addressed the Commission and stated he was concerned about signs going up prohibiting his use of the boat ramp.

Mr. Cortina again approached and again pointed out that the nine spots along the side of the building have been diminished by the four feet of landscaping that was installed. Ms. Grimsley stated that the lease, itself, prohibits any landscaping or rocks or any additional material being placed in the right-of-way. Because of the property being transferred because of a foreclosure, Ms. Grimsley believes that the current owner may be unaware of that. Mr. Schwab added that the dimensions and location of the parking spaces are defined in the lease and the intent here is for those parking spaces not to exceed that defined area, and this is the criteria that will be used to ensure compliance with this condition.

Public comment was closed.

Mr. Jabro commented that what was heard today is mostly dealing with the development agreement and issues related to the development agreement. None of these issues were raised then or appealed. The development agreement has a time plan, and the development agreement now provides for a ten-year time period when the rest of the criteria has to be met. There is no linkage with regard to the development of the restaurant with regard to the liquor license. The applicant would prefer to move forward as staff has recommended. Mr. Jabro agreed that the reason everybody has appeared before the Commission is because the property owner will not come to the table to do something more than the development agreement requires in a timetable that the development agreement requires, and reminded the members of the Planning Commission that all of this is really outside the scope of the liquor license issue.

Commissioner Lustberg asked staff if, after listening to all of the public comment, their recommendation and the conditions they would recommend would be the same or would anything change? Mr. Schwab answered they would remain the same. Commissioner Lustberg then asked if Condition E would influence anything having to do with any one-way roads or is it purely parking related, to which Mr. Schwab answered it was parking only. Mr. Schwab added that the parking spaces will meet the requirements for the square footage that they are asking for.

Ms. Grimsley then asked Don Horton to explain to the Commissioners the general plan for the parking for this property. Mr. Horton explained that there is an area directly across the street in a fenced-in piece of property that is currently empty where the applicant can put down a base and put in 35 parking spaces. One would come down from the highway, turn onto 2nd Street, go into that empty lot, and from there you go back out and head straight out of U.S.1 without going into the area where Mr. Stoya's development is. The applicant will now ask for a minor deviation to the development order for this parking. Ms. Grimsley added that this will have to be done in order to open the restaurant.

Vice Chair Wall asked if the restaurant could be a stand-alone business whether or not the rest of the development agreement is ever executed. Ms. Grimsley explained that the restaurant already existed at the time of the development agreement. There was never anything in the development agreement prohibiting the operation of the restaurant during the rest of the construction. Mr. Wright added that the restaurant is not a nonconforming use and it complies with zoning for that parcel. Mr. Schwab clarified that the parking will be addressed prior to opening.

Motion: Commissioner Wiatt made a motion to approve the request of the applicant with amended conditions A through G. Commissioner Hale seconded the motion. There was no opposition. The motion passed unanimously.

A luncheon recess was held from 12:15 p.m. to 1:36 p.m.

3. Douglas & Laurie Schroeder Residence, 983 Indies Drive, Ramrod Key, Mile Marker 27:

A request for approval of a variance of 0.3 feet from the required 15-foot front yard setback along the Indies Drive right-of-way (reduced from 25 feet by a variance approval in 2004), 1.5

feet from the required 25-foot front yard setback along the southern extension of the Indies Drive right-of-way, and 0.3 feet from the required 5-foot side yard setback along the eastern property line. The subject parcel is legally described as Block 2, Lot 82 (less the North 25 feet), Breezeswept Beach Estates (PB4-143), Ramrod Key, Monroe County, Florida, having Real Estate Number 00201740.000000.

Mr. Biel presented the staff report, reminding the Commission that at the April 27, 2011 meeting they did give approval for the three requested variances and the applicant was asked to submit a new survey showing the high water mark line and verify that the 20-foot setback for that portion of the building in the rear had been met. The May 9, 2011 revised survey found that the shoreline setback came in at 20-plus feet, but it did reveal a new issue on the front yard setback along the southern extension of Indies Road. No resolution has been signed or recorded, so all three variances will be contained in one resolution this time. In conducting the new survey the surveyor correctly identified the pins and measured from there, which threw everything off a foot, resulting now in a need for a foot-and-a-half variance. Staff recommended approval of these three variance requests with conditions, which were then listed.

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

Motion: Commissioner Wiatt made a motion to approve the applicant's requests for variance with the conditions recommended by staff. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

4.AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 2-428, PLANNING COMMISSION MEMBERS; COMPENSATION; CONCERNING PLANNING COMMISSION COMPENSATION AND THE NUMBER OF MEETINGS FOR SUCH COMPENSATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMUNITY AFFAIRS AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Ms. Grimsley noted that this is not a land development regulation, but is being presented to make the Planning Commission aware of it. No motion is needed.

Rey Ortiz explained that there was an inconsistency found in this section of the code. The compensation is going to remain \$9,600 annually, but the language will be tweaked to include that it is going to be in coordination with the payroll schedule instead of one lump sum at the beginning. The month of August will also be removed as part of the text. This is being done so that this section of the code will mirror and run parallel with the section of the code addressed in Item 5.

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

5.AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 102-20(I),

PLANNING COMMISSION, MEETINGS, HEARINGS AND PROCEDURE, TO MODIFY THE REQUIREMENT OF BI-MONTHLY PLANNING COMMISSION REGULAR MEETINGS TO MONTHLY PLANNING COMMISSION REGULAR MEETINGS AND TO MODIFY THE TYPES OF APPLICATIONS THAT MAY BE HEARD AT A SPECIAL MEETING; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMUNITY AFFAIRS AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Ortiz informed the Commission that staff, in an effort to streamline and consolidate resources, is looking at having the Planning Commission meet once a month versus a mandatory twice a month. That means if August was still unavailable, some applicants might have to wait almost three months to be heard. So the month of August will now be included. Mr. Ortiz noted that the Commission will always have the option of having an extra meeting if needed. Decreasing the number of meetings adds efficiency by not having to advertise as often, and it will bring down the costs for everyone involved. Mr. Schwab confirmed for Vice Chair Wall that although there will only be monthly meetings, there are safeguards in place to allow meetings to be held more frequently when the need arises.

6. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 114-67(C), REQUIRED OFF-STREET PARKING, REQUIRED NUMBER OF OFF-STREET PARKING SPACES, TO REVISE THE MINIMUM PARKING STANDARD FOR MULTIFAMILY DWELLING UNITS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMUNITY AFFAIRS AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Staff asked that this item be continued to July 27, 2011. **Motion: Commissioner Lustberg made a motion to continue this item to July 27, 2011. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.**

7. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 138-23, MORATORIUM ON NEW TRANSIENT UNITS, TO REVISE THE DATE ON WHICH THE MORATORIUM SHALL EXPIRE TO BE CONSISTENT WITH THE POLICY 101.2.6 OF THE MONROE COUNTY COMPREHENSIVE PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMUNITY AFFAIRS AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Haberman explained that this is being requested so that the moratorium on new transient units will expire on the same date as the transient moratorium in the LDRs. The prior EAR date was what is in the staff report of August 1, 2012. Since then the State has changed that date to May 1, 2014. Mr. Haberman verbally amended the date listed in the staff report to reflect the

date of May 1, 2014. What staff is supposed to do in the meantime is figure out whether this should be a permanent prohibition, whether the County wants to allocate some of the ROGO allocations towards transient, which staff is hoping whether there is a need for them and, if so, how to proceed with that amendment will be discovered during the comprehensive plan process that is currently underway. Mr. Haberman then clarified for Vice Chair Wall that this means no new transient ROGO allocations shall be allocated through the system, but transient units may be able to be transferred with limitations. The County's position is that once the County determines a property is lawfully established as a transient unit, that determination remains, whether they have been demolished for some time or not. The public is made aware that even though there is a moratorium on new transient units, there still is a vehicle one can pursue to achieve this.

Vice Chair Wall asked for public comment.

Ron Miller stated that he is concerned about the takings issue in this county and every time a transient unit is carved out of the allocations it costs the County a lot more for someone who cannot build a home on a piece of property. Mr. Miller is against any more transient units in this county. Mr. Miller questioned whether it is really a moratorium if there are conditions that will allow one in the future to have more transient units.

Motion: Commissioner Wiatt made a motion to approve the recommendations of the Board of County Commissioners in amending the Monroe County code as stated in the text of the staff report, substituting the date to be May 1, 2014. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

8. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTIONS 138-19, RATE OF GROWTH ORDINANCE (ROGO), 138-25, APPLICATION PROCEDURES FOR RESIDENTIAL ROGO, 138-26 EVALUATION PROCEDURES FOR RESIDENTIAL DWELLING UNIT ALLOCATION, 138-28, EVALUATION CRITERIA, 138-47, NONRESIDENTIAL RATE OF GROWTH ORDINANCE, 138-52, APPLICATION PROCEDURES FOR NROGO, AND 138-55, EVALUATION CRITERIA (NROGO); ESTABLISHING NEW MONROE COUNTY CODE SECTIONS 138-29, ROGO SITE PLAN APPROVAL PROCESS AND 138-56, NROGO SITE PLAN APPROVAL PROCESS; RENUMBERING EXISTING MONROE COUNTY CODE SECTION 138-56, EMPLOYEE HOUSING FAIR SHARE IMPACT FEE TO SECTION 138-57, ELIMINATING SECTIONS 110-142, COMPLIANCE REQUIREMENTS FOR BUILDING PERMIT APPLICATIONS REQUIRING A ROGO OR NROGO ALLOCATION AWARD OR SUBMITTED UNDER PRIVATIZED PLAN REVIEW, AND 110-143, DEADLINES FOR SUBMISSION OF BUILDING PERMIT APPLICATIONS TO BE ENTERED INTO THE RESIDENTIAL AND NONRESIDENTIAL PERMIT ALLOCATION SYSTEMS, TO ELIMINATE THE REQUIREMENT THAT BUILDING PERMIT BE "APPROVED" PRIOR TO ENTERING ROGO OR NROGO AND REPLACE THAT REQUIREMENT WITH A REQUIREMENT THAT APPLICANTS SEEKING ROGO OR NROGO ALLOCATIONS OBTAIN A SITE PLAN APPROVAL PRIOR TO ENTERING ROGO OR NROGO; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMUNITY AFFAIRS

AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Staff requested a continuance of this matter to September 14, 2011. **Motion: Commissioner Lustberg made a motion to continue this matter to September 14, 2011. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.**

9.AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 138-22, TYPE OF DEVELOPMENT NOT AFFECTED, TO INCORPORATE CRITERIA FOR RESIDENTIAL ROGO EXEMPTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMUNITY AFFAIRS AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Barbara Mitchell explained that this is simply providing the codification of an existing practice within the county for ROGO exemptions. This ordinance enacts and codifies those requirements. A minimum of two requirements are needed to prove or to substantiate ROGO exemptions.

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

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

10.AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 110-5, NOTICE, SECTION 110-69, MINOR CONDITIONAL USES, AND SECTION 110-70, MAJOR CONDITIONAL USES; TO MODIFY THE PROCEDURE FOR PUBLIC NOTICE OF MINOR AND MAJOR CONDITIONAL USE PERMIT APPLICATIONS AND TO REVISE PROCESS OF REVIEWING MINOR AND MAJOR CONDITIONAL USE PERMIT APPLICATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMUNITY AFFAIRS AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Ms. Mitchell stated that in this particular item three different issues are being addressed. The first issue concerns the public notice process for minor conditional uses. Staff believes that notice should be given to surrounding property owners prior to the DRC meetings so that they can come in and comment if they choose or provide written comment. The second item concerns cleaning up a conflict that occurred between 2008 and 2010 when the BOCC approved changes to the major and minor conditional use sections concerning the Planning Director and removing the Development Review Administrator, etc. The final issue with this particular text amendment is to modify some time frames that allow staff more flexibility in bringing projects to the Development Review Committee and to the Planning Commission. Staff is proposing to eliminate the 30-day requirement for a DRC meeting under minor conditional uses and is

proposing to provide the Planning Director with 60 days to issue a development order from the DRC meeting. Staff is proposing to modify a major conditional use from 45 days to 60 days for advertising Planning Commission meetings after the DRC has heard a project, and modifying again the issuance of a development order from 30 to 60 working days. Ms. Grimsley pointed out that on Page 4 of the staff report, in Section 110-69(C), that “60 days” should be underlined and “10 days” should be stricken. Ms. Mitchell agreed.

Vice Chair asked for public comment. There was none.

Mr. Haberman explained to Commissioner Lustberg that an application for a minor conditional use permit will still be heard if that matter is appealed, but that is not dictated through the conditional use section, it is only heard as an appeal. **Motion: Commissioner Wiatt made a motion to approve staff’s recommendations to amend the Monroe County Code as stated in the text of Item 10. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.**

11. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 110-73, DEVELOPMENT UNDER AND APPROVED CONDITIONAL USE PERMIT, TO FURTHER EXPLAIN WHEN A MINOR DEVIATION APPLICATION, A MAJOR DEVIATION APPLICATION OR AN AMENDMENT APPLICATION IS REQUIRED TO MODIFY THE DEVELOPMENT APPROVED BY A CONDITIONAL USE PERMIT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMUNITY AFFAIRS AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Staff requested a continuance to July 27, 2011. **Motion: Commissioner Lustberg made a motion to continue this item to July 27, 2011. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.**

12. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ESTABLISHING MONROE COUNTY CODE SECTION 114-21, RECYLING, TO IMPLEMENT A RECYCLABLE MATERIALS RECYCLING PROGRAM FOR MULTIFAMILY AND NONRESIDENTIAL DEVELOPMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMUNITY AFFAIRS AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Ms. Mitchell explained that a new section of code is being added to implement a requirement as a result of an amendment of Florida Statutes to address recycling issues for multifamily and nonresidential or commercial establishments. Staff is addressing minimum standards for recycling areas, which were then described. Ms. Mitchell clarified for Commissioner Wiatt that this is not retroactive. However, if a development came in for a conditional use or an amendment to a conditional use, this code would apply. Ms. Lustberg suggested adding the

words “and redevelopment” at the end of Section 114-21. Ms. Mitchell stated that Solid Waste Management is in the process of redoing the County recycling program. This amendment was found to be consistent with the law by the Senior Administrator of Solid Waste. Ms. Grimsley said that the presentation to the BOCC recently did address the recycling component. It is a part of the technical document and will be addressed. Commissioner Wiatt suggested deleting the interior dimension requirements for multifamily and only using total square footage requirements to provide for more flexibility. Mr. Schwab voiced his concern about adding the words “and redevelopment” in Section 114-21 because of a lack of an exact definition of redevelopment. Mr. Haberman noted that redevelopment is not defined, but the definition of “development” includes terminology that implies redevelopment could be considered development, and added that he feels just putting “development” in would cover anything defined as development, including redevelopment. Mr. Haberman suggested using the threshold term “substantial improvement,” which is defined as 50 percent or more of the value of the property or building in question. Commissioner Lustberg agreed. Mr. Wright feels that the definition of “development” would encompass things that would be less than 50 percent, and that language should be left alone.

Motion: Commissioner Wiatt made a motion to approve staff’s recommendation to the amendment of Monroe County code with the table in the second column in Line 46 entitled “Interior Dimensions” being removed. Ms. Grimsley asked if anybody had any inclination to make these criteria subject to variances. Mr. Haberman asked if it would be an administrative variance or a Planning Commission variance? Vice Chair Wall recommended continuing this item with some direction to think about these concerns. Commissioner Wiatt withdrew his motion, stating this would allow for an opportunity to review and understand the state requirements.

Motion: Commission Wiatt made a motion to continue this item to July 27, 2011. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

13.AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTIONS 101-1, DEFINITIONS, AND 118-12(M)(4), SHORELINE SETBACK, DOCKING FACILITIES, ADJACENT PARCEL, TO CLARIFY WHAT ELEMENTS OF DOCKING FACILITIES MAY BE PERMITTED ON ADJACENT PARCELS OF LAND, PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMUNITY AFFAIRS AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Staff requested a continuance of this item to July 27, 2011. **Motion: Commissioner Lustberg made a motion to continue this item to July 27, 2011. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.**

14.AN ORDINANCE OF THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 102-19, BOARD

OF COUNTY COMMISSIONERS, CONCERNING DUTIES OF THE BOARD OF COUNTY COMMISSIONERS CONCERNING LAND USE MATTERS; SECTION 102-20, PLANNING COMMISSION, CONCERNING DUTIES OF THE PLANNING COMMISSION; SECTION 102-158, AMENDMENTS TO THIS CHAPTER, CONCERNING AMENDMENTS TO THE COMPREHENSIVE PLAN, LAND DEVELOPMENT CODE, FUTURE LAND USE MAP AND LAND USE DISTRICT MAP; PRESCRIBING NOTICE AND PROCESS FOR PUBLIC HEARINGS; REQUIRING A VOTE OF FOUR MEMBERS OF THE BOARD OF COUNTY COMMISSIONERS TO TRANSMIT OR ADOPT A COMPREHENSIVE PLAN AMENDMENT, A COMPREHENSIVE PLAN TEXT SUB AREA POLICY OR OVERLAY DISTRICT, FUTURE LAND USE MAP AMENDMENT OR SUB AREA OR OVERLAY DISTRICT, CHANGES IN THE LAND DEVELOPMENT CODE THAT AFFECT A PERMITTED USE OR HEIGHT REQUIREMENT WITHIN A PARTICULAR LAND USE DISTRICT, CREATION OR AMENDMENT OF AN OVERLAY DISTRICT OR SUBAREA, OR ANY LAND USE DISTRICT MAP AMENDMENT; ELIMINATING A PROTEST PROCEDURE FOR ZONING MAP CHANGES AND TRANSMITTAL OF COMPREHENSIVE PLAN AMENDMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMUNITY AFFAIRS AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Haberman explained that this amendment removes the protest procedure because a new procedure is inserted to establish a four-fifths requirement on certain types of applications. This does not include EAR-based amendments.

Vice Chair Wall asked for public comment.

Ron Miller stated that he is supporting the super majority for everything in Item 14. Mr. Miller thinks the super majority is a gift to the citizens.

Commissioner Lustberg stated that she supports the super majority, but thinks it is misleading that whereas clauses have ties into Amendment 4, and suggested removing the first four whereas clauses. Ms. Grimsley informed the Commission that the BOCC directed staff to do this upon the failure of Amendment 4 statewide, where Monroe County was the only county that was over 50 percent for the amendment. Ms. Lustberg stated she would feel more comfortable with language stating that more than 50 percent of the voters in Monroe County voted for Amendment 4, which shows the voters' desire to have more control over the land regulation process, and as such the County is going to move to a super majority because it reduces the ability of special interests to influence these regulations. Ms. Grimsley suggested striking the first three whereas clauses and adding some language to the fourth whereas clause evidencing that the voters in Monroe County desire more control over their land use decisions, and then adding down in the second to last whereas clause that the oversight by the Florida state land planning agencies may not be sufficient to prevent unwanted or undesirable development or environmental impacts. Mr. Wright added that the BOCC would have the authority to add the first three whereas clauses back in if they wished.

Motion: Commissioner Lustberg made a motion to approve this item with the change that the first three whereas clauses be removed and the fourth whereas clause is written in that this passage in Monroe County shows desire for more oversight of land use issues. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

BOARD DISCUSSION

The Commission was informed that the KLOR issue was continued to September. Staff hopes to have the text amendments ready by July 27, 2011. The NROGO site plan approval matter is being continued to September because the Director of Growth Management wants to be present when that is considered. Mr. Schwab assured Commissioner Lustberg that the minutes of the public comment heard at the FWC Pilot Program stakeholder meetings will be available to the Commission.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 3:00 p.m.