

## **DEVELOPMENT REVIEW COMMITTEE**

**Tuesday, March 23, 2021**

### **MEETING MINUTES**

The Monroe County Development Review Committee conducted a virtual meeting on **Tuesday, March 23, 2021**, beginning at 1:00 p.m. via Communication Media Technology (“CMT”) using a Zoom Webinar platform.

**CALL TO ORDER** by Emily Schemper

**ROLL CALL** by Ilze Aguila

#### **DRC MEMBERS PRESENT**

Emily Schemper, Senior Director of Planning and Environmental Resources  
Mike Roberts, Assistant Director, Environmental Resources  
Mayte Santamaria, Senior Planning Policy Advisor  
Bradley Stein, Development Review Manager  
Liz Lustberg, Senior Planner  
Rey Ortiz, Assistant Building Official  
R.L. Colina, Fire Marshall  
Shereen Yee Fong, FDOT Representative  
Justin Stiell, Department of Economic Opportunity

#### **STAFF MEMBERS PRESENT**

Peter Morris, Assistant County Attorney  
Ilze Aguila, Senior Planning Commission Coordinator

#### **APPLICANTS & PUBLIC PRESENT**

Jorge Cepero

#### **CHANGES TO THE AGENDA**

There were no changes to the agenda.

#### **MINUTES FOR APPROVAL**

Approval of the meeting minutes for Tuesday, February 23, 2021, by Emily Schemper.

### **MEETING**

1. **AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** ADOPTING AMENDMENTS TO THE MONROE COUNTY LAND DEVELOPMENT CODE TO AMEND: CHAPTER 114, ARTICLE I, SECTION 114-2 “LEVEL OF SERVICE STANDARDS” TO UPDATE STORMWATER QUALITY PERFORMANCE STANDARDS AND TO CORRECT A SCRIVENER’S ERROR; SECTION 114-3 “SURFACE WATER MANAGEMENT CRITERIA” TO REQUIRE NET

IMPROVEMENT IN STORMWATER QUALITY WHILE PROVIDING FLEXIBILITY IN ACHIEVING STORMWATER QUALITY STANDARDS AND PROVIDE UPDATES TO THE STORMWATER MANUAL AND LAYMAN'S BROCHURE TO INCORPORATE NEW APPROACHES FOR MANAGING STORMWATER; SECTION 114-13 "FENCES" TO REFINE CODE LANGUAGE TO BETTER CLARIFY REQUIREMENTS; CHAPTER 114, ARTICLE IV "LANDSCAPING" TO REFINE CODE LANGUAGE TO BETTER CLARIFY REQUIREMENTS AND UPDATE LISTS OF SPECIES; SECTION 114-163 "WATERFRONT LIGHTING" TO REFINE CODE LANGUAGE TO BETTER CLARIFY REQUIREMENTS; AND, SECTION 114-164 "NONCONFORMING LIGHTING" TO REFINE CODE LANGUAGE TO BETTER CLARIFY REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO AND INCORPORATION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2019-183)

Mr. Mike Roberts, Assistant Director, Environmental Resources, gave a summary outlining the significant changes to the stormwater treatment criteria. There is a new draft, layman's brochure and stormwater manual incorporating recommendations and new practices in stormwater management. The changes in level of service are reflected in the new current edition of the manual. One significant change is the demonstration that the post-development total nitrogen and total phosphorus loads are less to than the pre-development loads to the receiving water. That changes the focus to a specific reduction in the effective nutrients. The first section in 114-3 is primarily editorial referring to the current edition of the County's manual on stormwater management practices. Another significant change being looked at is with single-family residential duplex. Right now, the code only requires that water quantity criteria is met which has led to situations with site-specific flooding of the right-of way coming down driveways and other elevated properties. Extending the water quantity management criteria of 114-3 to single-family residents is being looked at. That means the post-development discharge for any developed site cannot exceed the pre-development discharge of that site.

In conjunction with level of service, the goal of the water treatment criteria is to reduce the post-development annual average stormwater concentration of both nitrogen and phosphorus. Projects will be required to either meet the net improvement criteria or reduce the post-development annual discharge concentration by 95 percent. Similar to current code, there is a presumption of compliance, meaning that if you design the stormwater management facilities in conjunction with the layman's brochure and the stormwater manual, then it will be presumed the nutrient reduction criteria will be met. Some of the management practices from the manual include making sure the runoff from the site actually goes to the swale, that the swale is longer than it is wide, the site slopes of four-to-one are shallower so there is not a vertical ditch, and then the swale has to be at least six inches deep as anything shallower fills in over time. One other option is that the swales can be treated with an acceptable media. The new swale sizing criteria is based on the effective impervious area to disturbed area ratio. In appendix six of the stormwater manual there are example calculations for that sizing and criteria. Mr. Roberts presented a table showing common lot sizes and depicting the new swale criteria compared to the existing code, giving examples. A requirement is being added for a dewatering inspection. There has been a significant uptick in complaints related to construction site and pool

construction dewatering and there was no way to address that in the code, so this was added to address dewatering operations.

Under 114-13, retaining walls have been regulated under this fencing section using the existing fence language. It became obvious that walls needed to be addressed specifically as opposed to treating them like a fence. Under the current code, fence height was looked at in relation to the highest finished elevation, and that is being amended to the lowest existing grade. People were coming in and filling a lot three feet high and then putting their five-foot fence on top of three feet of fill, essentially ending up with an eight-foot fence. The new language will result in a five-foot visible barrier and no more than that. A section was added for retaining walls limiting them to four feet of height. If more than four feet of fill is added, the new code would require those walls to be tiered in sections. Under 114-104, gumbo limo and palms are not acceptable street trees, and language clarifying size of trees required is included. Other updates include trees, shrubs and ground covers that can be used in stormwater areas. The non-conforming landscaping criteria has changed to specify that any change of use, redevelopment or expansion of a multi-family or non-residential use would require coming into compliance to the greatest extent practical. The maximum buffer that can be established should be required as a condition prior to the issuance of any permit.

Two public meetings were held for these proposed amendments in September and November. The comments received were limited to a question about the minimum threshold for exemptions from stormwater, i.e., a shed. In the new code, a shed would be considered a separate structure and is not exempt, but the calculation for a separate structure is significantly less. A swimming pool cannot be counted as a swale. There was a comment as to the additional cost of compliance with non-conforming buffers, and a comment regarding FDOT access if they change a use and the difficulty in being able to bring that into compliance. There was some concern about non-native trees that are iconic in the Keys such as sapodilla south of the Seven-Mile Bridge and coconut palms. Staff has not recommended any changes solely based on the comments, but they will definitely be taken under consideration.

Ms. Emily Schemper asked for staff comments or questions. There were none. Ms. Schemper noted that some of the very minimal changes were not put into the presentation. There were no DRC member comments or questions. Ms. Schemper also mentioned that during a recent Planning Commission meeting, there had been a question regarding non-conforming buffers, under Section 114-129 and responsibility for district boundary buffer yards. This is a source of confusion when trying to figure out which side of the property line is responsible for which portion of a district boundary buffer yard. It contemplates if one side is vacant and the other side is developed, but it doesn't contemplate situations where both sides were vacant, one property was developed and provided a portion of the buffer, and it would seem to follow that the other side of the property should provide the other portion of the buffer, but it's not clearly spelled out. Ms. Schemper would like to tweak the language to make it more clear what those responsibilities are before the next Planning Commission meeting as it seems to be within the scope of this amendment. Mr. Roberts confirmed that this concerned new development adjacent to conforming development. Ms. Schemper believes it would need to be drafted out to cover all of the scenarios that come up because it has been an issue in multiple cases; not so much changing the policy as making sure it fits all scenarios. Ms. Schemper also confirmed that all of the stormwater detail was included in the new stormwater brochure and layman's guide.

Ms. Schemper then asked for public comment. There was none. Public comment was closed.

**2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** ADOPTING AMENDMENTS TO THE MONROE COUNTY LAND DEVELOPMENT CODE TO AMEND CHAPTER 118 TO ELIMINATE REDUNDANT OR OBSOLETE TEXT, REFINE CODE LANGUAGE TO BETTER CLARIFY REGULATORY INTENT FOR THE BENEFIT OF THE REGULATED COMMUNITY AND COUNTY STAFF, UPDATE LISTS OF SPECIES AND CORRECT SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO AND INCORPORATION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2019-184)

Mr. Mike Roberts continued his presentation regarding Chapter 118, which has some fairly significant recommended changes. The first is clarification as to adding the reproductively mature vegetation species that reach reproductive maturity at less than four inches in diameter. There are clarifications on how the existing conditions report needs to include the numbers of the vegetation that is less than four inches. 118-3 relates to requirements for conservation easements. There had been a staff recommendation for the conservation easement to be required at time of or prior to permit issuance, and staff has elected not to pursue that recommendation and maintain the conservation easement being required prior to the CO. Clarification of the open space referred to in Chapter 118 refers to protected natural areas and not necessarily lawn as it's used in a purely planning perspective. There may be some further tweaking of other codes or sections of the Land Development Code that may be necessary if continuing with this clarification. Another requirement is the need to restrict fence construction to hand construction using hand tools, to make it clear that someone can't go in with a Bobcat and clear a three-foot wide swath to put the fence down the middle in the middle of a conservation easement. There are editorial changes to the mitigation standards. In 118-10, the design criteria for specific habitats, the strict reading of the code now would prohibit a property owner who has adequate upland to build on from being able to access their lot in the event there is a wetland between it and the road. A recommendation has been included that automobile or pedestrian access to a lawfully-established dwelling unit will be provided, even if it is a wetland other than a disturbed buttonwood or salt marsh. The filling of a manmade basin, canal, boat ramp or even a pool does require DEP and Army Corps permits. Staff is recommending the deletion of salt marsh or buttonwood association specification for bridges over wetlands that are required to provide automobile or pedestrian access.

A significant, in-depth change is to Section 118-11, the environmental restoration standard. Post Hurricane Irma, one of the problems that staff encountered with tremendous frequency is the situation where a property owner completely cleared their lot and by the time staff was able to evaluate the site, there was no way to determine what the vegetation may have been outside of it being native hammock. So the requirement of replanting exactly what was removed became a stumbling block because there was no way to prove what was there. In those events where it's not possible to determine what the previous vegetation is, staff has come up with standards including the required density of two canopy and four understory trees being required for every

100 square feet of impact. Those numbers are based on research papers that have been written relative to the average density and species variability within tropical hardwood hammocks. There had been a staff recommendation for 40 percent of that planting to be trees that were reproductively mature at less than four inches, but Mr. Roberts could not find any scientific rationale behind that so that recommendation was eliminated. However, 20 percent of those trees will be listed as threatened, endangered or regionally important. That is consistent with the species makeup and diversity found in the hammocks, particularly of the Upper Keys. The next section provides clarification on when the restoration was complete in terms of being able to lift a stop work order, versus when it's listed as complete in terms of being a successful restoration.

Shoreline setback, 118-12, is a section that may or may not stand after communication with the DEO, relative to accessory structures within the shoreline setback. Staff's focus was to be able to provide access to a dock from a back door but the language right now may or may not be consistent with the Comp Plan language so this may not stand. Another addition is language specific to that, at grade decks not exceeding six inches. This is consistent with the language in 131 relative to side yard setbacks. In deleting the need for native vegetation on open water shorelines that have been filled, 118-12(b) with regard to accessory structures, the language is including but not limited to pools, spas or any screen enclosures over pools or spas. This caused some confusion amongst the regulated public and staff as to why exactly, if everything is an accessory structure, why were pools included, et cetera, so for clarification purposes that language was deleted, and an exception added for a maximum four-foot-wide walkway to the shoreline or docking facility, one walkway permitted per 100 linear feet of shoreline to allow for pedestrian access from a lawful upland structure to a lawfully-permitted deck, dock, boat ramp or boat slip. There had been recommendation for four-post hoists to tighten that language up a little bit and make that type of lift only available on open water, but after discussion staff decided not to include that recommendation but added where installed perpendicular to the shoreline they had to be set back a minimum of five feet from the side property line, which is consistent with other setback criteria in the code.

One thing there was a lot of push-back on was all pilings associated with construction of any dock shall be non CCA, which is copper, chromium and arsenic pressure-treated lumber, is to be wrapped with impermeable plastic or PVC sleeves with a minimum of 30 millimeter thickness and extending at least six inches below the level of the substrate to at least two feet above the mean high water line. There is quite a bit of research regarding the leeching of copper, chromium and arsenic associated with this lumber and there are recommendations from Reef Relief and FWC's research people that the CCA is, in fact, an endocrine destructor, which is a biological term for impacting reproductive ability of benthic organisms. In conjunction with the Comp Plan policies and in support of Reef Relief and their agendas, this has been included. The recommended height of pier-type docks has been raised to five feet above the water. Additional bathometric and benthic surveys have also been recommended. For marginal docks an eight width allowance was added.

Mr. Roberts has not found any literature relative to the effectiveness of wrapping the pilings, but did find literature about the leaching effects of copper, chromium and arsenic. Public comment included what happens if one piling is replaced, does the whole dock become non-conforming. No specific language has been provided on that, but Mr. Roberts believes it would be required for the pilings being replaced and not for the entire dock. The question was asked, are other

materials allowed besides wood, and the answer is yes. This restriction is specific to copper, chromium, and arsenic pressure-treated lumber. Other construction materials are allowed. As to when the changes would take effect would be upon adoption. There were some comments relative to the four-foot depth requirements throughout the docking criteria and that three feet might be just as adequate. The issue there is that both DEP and the Army Corps have that four-foot depth requirement where there is seagrass or other benthic organisms. Outside of that, they are pretty silent on depth requirements. But given the extent of benthic resources throughout the Keys, with coral, macro-algae as well as seagrass, four feet seems reasonable and staff has not seen any reason to recommend any change. There was a comment regarding maintenance dredging, particularly in existing basins where seagrass has been able to reestablish and then subsequent to that reestablishment, creating shallower water than the design depth of the basin impacting navigability of the basin. There was some recommendation that language be looked at to re-dredge those basins whether there was seagrass there or not. Other recommended language included T-shaped and L-shaped docks extending to 40 feet along the shoreline, though that is viewed as a restrictive length in some comments. In 118-12(o) there was a question as to whether that applied to the dock section or the whole chapter. This language needs to be re-looked at to respond to that. There were questions on whether the addition of a deck or accessory structure would trigger the need for a conservation easement, and that needs to be gone back and looked at, but right now the recommended language doesn't address that specifically. There were questions on whether contractors could submit NOAs for the revised wood piling requirements, providing documentation that the alternative piling material doesn't leach CCAs into the water. The code language could be looked at and perhaps insert something such as it's either wrapped as recommended or with adequate documentation that it doesn't leach, but Mr. Roberts doesn't see that as being an alternative. Another frequent comment was the increase costs and time associated with the new survey recommendations.

Ms. Schemper asked for questions or comments from staff or DRC members. There were none. Ms. Schemper then asked for public comment. There was none. Public comment was closed. Ms. Schemper noted that as Mr. Roberts had pointed out, there would probably be more tweaking of the language on this to address public comments.

Mr. Rey Ortiz, Assistant Building Official, asked if the diameter of four inches was at breast height, and Mr. Roberts confirmed that was correct, specifically DBH. Mr. Ortiz added that as to the hand tools, there would be push-back on that because of the cap rock, though it can be done. And lastly, the NOAs are for hurricane velocity and things like that and he does not think they would address what Mr. Roberts needs them to address.

**3. FMH2, LLC, 313 OVERSEAS HIGHWAY, BIG COPPITT KEY, MILE MARKER 10:**  
A PUBLIC MEETING CONCERNING A REQUEST FOR A MINOR CONDITIONAL USE PERMIT. THE REQUESTED APPROVAL IS REQUIRED FOR THE DEVELOPMENT OF A PROPOSED 3,083 SQUARE FOOT OFFICE BUILDING. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOTS 12 AND 13, BLOCK 1, AMENDED PLAT OF COPPITT

SUBDIVISION (PLAT BOOK 4 PAGE 50) MONROE COUNTY, FLORIDA, HAVING PARCEL ID NUMBER 00149500-000000. (FILE 2021-001)

Ms. Liz Lustberg, Senior Planner, presented the staff report. This application is for a minor conditional use permit in order to have a 3,083 square foot office building. The Future Land Use Designation is Mixed Use Commercial, the Zoning is Suburban Commercial, and both allow for office buildings of this size, but the Land Development Code requires minor conditional use approval. Ms. Lustberg presented the site plan showing the office building, parking, and what is proposed. Everything reviewed for is in compliance with requirements, so staff is recommending approval with a couple of conditions. One is NROGO will be required. Also, even though at the time of conditional use review the concurrency for traffic is all okay, that will need to be re-reviewed at the permit stage prior to permit issuance. Conditions four and five are regular conditional use conditions.

Mr. Rey Ortiz confirmed that this was a one-story building, and added that based on what he's seeing, there may be a problem with ADA compliance, suggesting the caveat in the conditions that they must meet egress and ADA compliance. Ms. Lustberg asked if condition number four requiring compliance with Florida Building Code would be sufficient, but Mr. Ortiz thought there should be a specific call-out for it. Ms. Schemper asked for clarification on the roof overhang and whether that was sidewalk beneath it leading to the front door. Ms. Lustberg believed that to be correct but stated she would need to double check. Ms. Schemper thought that may help with the ADA question. Ms. Shereen Ye Fong, FDOT Representative, asked if this site had a new access onto U.S. 1, and Ms. Lustberg responded that they were not proposing a new access. There is a side road in the FDOT right-of-way that parallels U.S. 1 that they would enter onto. Ms. Schemper clarified with Ms. Lustberg that a letter of coordination had been received from Perovial (phonetic) that works with FDOT. Though the letter was a little odd because they said this was not FDOT property and no more coordination with FDOT was required. Ms. Ye Fong agreed that was odd and confirmed that it was from the Marathon FDOT office. Ms. Lustberg presented the aerial so Ms. Ye Fong could see the frontage road.

Ms. Schemper then asked for public comment. There was none. Public comment was closed.

**4. PLAYA LARGO OCEAN RESIDENCES, 97801 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 97.8:** A PUBLIC MEETING CONCERNING A REQUEST FOR A MINOR CONDITIONAL USE PERMIT. THE REQUESTED APPROVAL IS REQUIRED TO CONTINUE DEVELOPMENT OF 24 ATTACHED DWELLING UNITS (ALREADY COMPLETE) AS AFFORDABLE HOUSING AND 28 DETACHED DWELLING UNITS AS MARKET RATE HOUSING, AS PREVIOUSLY APPROVED BY D.O. 01-16, ON PROPERTY DESCRIBED AS TWO (2) PARCELS OF LAND LOCATED IN SECTION 6, TOWNSHIP 62 SOUTH, RANGE 39 EAST, KEY LARGO, MONROE COUNTY, FLORIDA AND HAVING PARCEL IDENTIFICATION NUMBERS 00090820-000000 AND 00090860-000000. (FILE 2021-022)

Mr. Bradley Stein, Development Review Manager, presented the staff report. This is an application for a minor conditional use. The 24 attached dwelling units that are affordable housing have already been completed and CO'd. Four of the 28 detached dwelling units have already been permitted so this is a continuation for the 24 detached dwelling units. The applicant

and owner is PL Ocean Residence Holdings, LLC, and PLORMF Holding, LLC. The agent is Jorge Cepero. The size of the site is 4.6 acres. The Land Use District is Urban Residential with the FLUM designation of Residential High and a Tier III designation. This minor conditional use permit is required because of the attached dwelling units associated with the aggregated site, pursuant to Section 130-98(b)(1). The property had previously had an approved minor conditional use which has expired. This is not a common occurrence, but it does happen every once in a while. Nothing is changing with the request, it is just a continuation. Some of the issues with regard to the current shoreline setbacks, shoreline open space, size of the conservation easement and recording of the easement have been identified within the staff report. Staff has received an updated plan as of yesterday evening but has not had a chance to review that plan. The conditions currently in the staff report will stand at this point. Staff recommends approval with the conditions, and once those conditions are met the development order will be signed.

Ms. Schemper asked for comments or questions from staff or DRC members. There were none. Ms. Schemper asked if the applicant wished to speak. Mr. Jorge Cepero stated he believed everything had been covered, and thanked the architect for focusing on that. The open space calculations were addressed with a very small change from what was there before but accounted for some of the sidewalk differences. The conservation easement areas were added and the encroachment on the setbacks. Mr. Cepero asked regarding the conservation easement and the two types of setbacks, the mangrove wetland and shoreline setbacks, if that was still only one conservation easement document. Ms. Schemper and Mr. Roberts both confirmed that that was correct. Ms. Schemper presented on the screen what Mr. Cepero had submitted yesterday, and clarified that the conservation easement would be 25 feet, where 20 feet needed to be planted, noting that some adjustments still needed to be made. Mr. Cepero confirmed that for the legal description, it would be one conservation easement for both the shoreline and the wetland and asked Mr. Peter Morris if he could send him the latest conservation easement document. Mr. Morris indicated that he would do that.

Ms. Schemper then asked for public comment. There was none. Public comment was closed. Ms. Schemper thanked everyone for attending.

### **ADJOURNMENT**

The Development Review Committee meeting was adjourned at 2:07 p.m.