

PLANNING COMMISSION
April 15, 2014
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Tuesday, April 15, 2014**, beginning at 10:01 a.m. at the Murray Nelson Government and Cultural Center, 102050 Overseas Highway, Key Largo, Florida.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL by Gail Creech

PLANNING COMMISSION MEMBERS

William Wiatt, Chair	Present
Jeb Hale, Vice Chair	Present
Elizabeth Lustberg	Present
Ron Miller	Present
Denise Werling	Present

STAFF

Townsley Schwab, Senior Director of Planning and Environmental Resources	Present
Susan Grimsley, Assistant County Attorney	Present
Steve Williams, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Joe Haberman, Planning & Development Review Manager	Present
Mike Roberts, Sr. Administrator, Environmental Resources	Present
Trish Smith, Transportation Planner	Present
Matt Coyle, Planner	Present
Gail Creech, Planning Commission Coordinator	Present

COUNTY RESOLUTION 131-91 APPELLANT TO PROVIDE RECORD FOR APPEAL

Mr. Wolfe stated this is a continuation of a prior hearing on this matter and County Resolution 131-91 does not need to be read into the record again.

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Gail Creech confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

Mr. Wolfe stated this is a continuation of a prior hearing on this matter where County staff were sworn.

MEETING

Continued Item:

1.Paradise Point Senior Housing (Proposed), 2 North Blackwater Lane, Key Largo, Mile Marker 105.5: A request for a minor conditional use permit allowing the development of an institutional residential use, involving 46 deed-restricted affordable housing units (in the form of rooms), 1 commercial apartment and accessory uses/structures. The subject property is described as a parcel of land in Section 1, Township 61, Range 39, Monroe County, Florida, having real estate public number 00084260.000100 (part).
(File 2013-118)

Mr. Wolfe inquired of and received assurance from Chair Wiatt that Chair Wiatt had reviewed the entire video transcript of the prior hearing, as well as read all of the written materials submitted with respect to the prior hearing.

Mr. Wolfe stated there were no additional materials submitted since public comment was closed prior to the conclusion of the last hearing on this matter. Mr. Wolfe informed the Commissioners that Lee Rohe, Esquire, on behalf of Stillwright Property Owners Association, sent an e-mail to Planning staff yesterday afternoon asking to submit a memorandum to the Planning Commission. This is after the five-day period. Since public comment is closed, accepting that would require that public input be opened a second time. Kaye Thacker, Key Largo resident, requested on behalf of some of the public members unable to attend the prior hearing to reopen public input. Chair Wiatt noted that four hours of public comment was taken at the prior meeting.

Mr. Rohe apologized for the lateness of the requested submission. Mr. Rohe stated there was confusion among staff as to what would be taking place at this meeting. Mr. Rohe wants to introduce today merely a summation of what occurred in January with no new arguments. Mr. Rohe stated he was told he could ask Mr. Roberts questions at this meeting. Mr. Williams disagreed with Mr. Rohe's description of the memorandum. Nicholas Mulick, Esquire, present on behalf of the applicant, vigorously opposed an effort to reopen the meeting for introduction of new evidence and comments. Mr. Mulick stated that would be a violation of his client's due process rights and there was no misunderstanding at the end of the last hearing that all the Commissioners wanted to know is the status of the code enforcement matter and nothing more. Mr. Rohe stated he would have no objection to Mr. Mulick having time to respond to the memo if it is accepted. Mr. Wolfe pointed out that public input was closed by the Chair.

Chair Wiatt commented that although the Commissioners sometimes receive additional information within the five-day window, it does not provide enough time for the Commissioners to review the submission. Ms. Grimsley pointed out that the Planning Commission has allowed late submissions during the evidentiary portion of a hearing, but never after deliberations were started on a matter. Vice Chair Hale added that the only reason for today's meeting was to hear the outcome of the code violation and he is not comfortable receiving a memo at this point in time. Chair Wiatt agreed. Commissioner Lustberg stated she would be very hesitant to reopen general public comment to rehash what was heard before. If public comment were reopened

over strenuous objection from legal staff, it should only be to accept public comment on anything applicable to the code resolution, but not whether the outcome on the code enforcement case is correct.

Commissioner Miller asked Mr. Rohe about being told he could question Mr. Roberts. Mr. Rohe responded that Mr. Williams, in response to questions about the methodology Mr. Roberts used in determining the filled site was in compliance, wrote, "Your questions concerning Mike's methodologies are best directed to him at the meeting." Vice Chair Hale reiterated it was clear at the meeting in January the only reason why this was continued to today was to hear the outcome of the code violation. Mr. Rohe stated that a transcript of the last 15 pages of what occurred at that meeting has been provided to the Commissioners. Mr. Wolfe commented that Mike Roberts did testify at the last meeting that the property was in compliance with the fill issue and that could have been addressed at that time. Mr. Wolfe informed the Commissioners that there was the impression that there was going to be another code enforcement hearing, but in fact the matter had already been resolved. They were brought into compliance on January 21, 2014, so that matter is closed. Mr. Mulick clarified that once a code violation has been cited, the special magistrate gives the property owner time to correct it and either it is corrected and the case is closed or a fine runs until the case is corrected and closed. There is no further hearing on the matter.

Mr. Wolfe informed the Commissioners that during the deliberation phase the Commissioners are allowed to ask questions relevant to their determination of anybody, which is not deemed to be reopening public comment. Chair Wiatt agreed with Vice Chair Hale as to the purpose of this meeting. Ms. Thacker stated she was contacted by the press inquiring if there would be public comment at this meeting and stated there has been some confusion regarding the special magistrate code compliance hearing. Chair Wiatt stressed that the purpose of this meeting is to clarify the situation surrounding the compliance issue. Commissioner Werling commented that the Commissioners would have moved forward at the last meeting had they all been comfortable with what the code outcome was and there were opportunities for the public to put in any comments at any time to anyone.

Motion: Vice Chair Hale made a motion to disallow the memorandum and move forward with the meeting. Commissioner Werling seconded the motion. The roll was called with the following results: Commissioner Lustberg, Yes; Vice Chair Hale, Yes; Commissioner Miller, Yes; Commissioner Werling, Yes; and Chair Wiatt, Yes. The motion passed unanimously.

Mr. Williams provided an update on the code enforcement matter. Mr. Williams stated the finding of violation in this matter was made March 31, 2011. The imposition of fines was reserved by the special magistrate at that time. However, the fines were imposed by the special magistrate on April 28, 2011, and again on November 17, 2011. A lien was filed in this case on October 28, 2013. There is one outstanding violation in this case and a daily fine of \$100 per day is accruing every day the violation remains. Daily fines have accrued for 776 days. The total accrued fines as of March 27, 2014, was \$92,900. The costs being sought as of March 27, 2014, were \$1,141.32. The costs continue to accrue until it is closed. As of April 11, 2014, the applicant did receive a permit and at this point in time there is nothing further for Code

Enforcement to do on this matter. Code Enforcement is finished with this matter until such time as the fines are paid. The permit is for a change in use, but the fill and shipping containers were addressed. Mr. Wolfe clarified that the fill issue was brought into compliance in January of this year. The storage containers on the property required a change in use permit.

Commissioner Miller asked if any of the fines pertain to clearing the property, to which Mr. Williams responded he did not know. Mr. Wolfe stated the fines are running for the fill and change of use. Commissioner Miller commented he has difficulty believing the grade on this property has been restored. Mr. Williams noted that is not necessary to consider for a conditional use. Mr. Williams explained whatever the Planning Commission does at this meeting will not affect the code enforcement matter. Mr. Wolfe added that a code enforcement lien is like other liens on the property and will have to be dealt with between the applicant and whoever the applicant is purchasing from because it would affect their ability to get loans and marketable title if the liens are not paid. Commissioner Miller asked if this property was ever a Tier I property? Mr. Roberts responded the parcel is currently a Tier III and was never a Tier I, to his knowledge. The only wetlands that have ever been identified on this lot are in the northwestern corner. Mr. Roberts pointed out that the fill issue was related to unpermitted fill on the site, not a wetland fill violation. There have never been any code cases associated with wetland impacts on this parcel. Commissioner Miller reiterated that he does not believe that the grade has been restored on this property. Both Mr. Roberts and Mr. Mulick are satisfied that this code issue is closed aside from the payment of the fine.

Commissioner Lustberg pointed out that back in 2013 a permit was applied for for the restoration of this site and temporary structure storage. This was for removal of fill to the elevation of nine feet. This was never issued. Later another permit was never issued for the excavation of fill. Commissioner Lustberg commented that if Code Enforcement has determined that this is acceptable and that the property is as it should be, then that is not the Planning Commission's job. This property went to Code Enforcement for illegal fill in 2008, which went on for years. Ms. Grimsley noted that there are many properties in the County that have liens on them, that this is not an unusual situation. Commissioner Miller would like this application to be conditioned that the property be restored to the original grade level. Ms. Grimsley replied that level would be whatever the FEMA and stormwater runoff requirements are to be flood plain compliant. Commissioner Lustberg noted that Code Enforcement never determined that there was an improper elevation. Mr. Roberts emphasized that the fill that was placed on the property was never placed in wetlands. The permit application was originally for placement of fill on uplands. The staff biologist that reviewed the site stated that he was unable to determine whether or not the site had been restored to grade. The County then requested survey data be submitted by the applicant. The applicant's engineer stated that the site did meet the grade that was established in the existing grade documents that were prepared prior to the approval of the fill. The County accepted that as compliance with the permit requirement from the prior permit and, thus, deemed that compliant with the code. The proposed site plan for the conditional use continues to preserve the wetlands on the property.

Chair Wiatt asked if the language of Condition E could be changed to reflect that there can be no issuance of a building permit until the fine is paid? Ms. Grimsley responded that a condition cannot be placed on a conditional use that affects what the Code Compliance Department or the

Board of County Commissioners may or may not do, because the lien amount may be negotiated. Chair Wiatt suggested not including a dollar figure. Mr. Mulick pointed out that the applicant does not own the property yet and the applicant will not purchase this property with a lien on it. The applicant agrees with the general statement that the issue of fines will be resolved prior to a permit. How that is done is a matter between Code Enforcement and the current property owner. Commissioner Miller commented that the owner of the property has added enough value to pass on the cost of the liens. Mr. Mulick replied that the purchase price was negotiated before any issue arose about the liens. Chair Wiatt asked for the meaning of “properly addressed” in Condition E. Mr. Williams explained that because this is before the Planning Commission a condition has been added that the code compliance issues have to be addressed to the satisfaction of the Planning Director also.

Mr. Mulick clarified for Commissioner Lustberg that when this property is sold the Code Enforcement Department can keep the lien on the property and, under those circumstances, the applicant would demand that it be paid. Nothing that happens in this meeting is going to affect that. This is a new project, a new use, and has nothing to do with what happened before. The liens will not be affected by this project. The current property owner has to take care of the liens or the applicant will not buy the property. Mr. Wolfe further clarified that it is possible to transfer land with a lien. The owner cannot then get marketable title because it is an exception in the title policy. The lien could be passed on and on, but eventually the County can foreclose and take the property back, which happens infrequently.

Mr. Wolfe explained that language can be included in the conditions that the liens shall have been released from the site prior to receiving a building permit because that is directly in control of the applicant and the current property owner. Mr. Mulick agreed that the applicant has no choice but to accept that condition because the applicant cannot get a mortgage if there is a lien on the property. Mr. Wolfe suggested adding language to the effect the code enforcement lien shall have been released from the site prior to the issuance of a building permit. Mr. Mulick agreed with that. Commissioner Miller is concerned with use of the word “resolved.” Mr. Wolfe clarified the word to be used is “released.” Mr. Williams cautioned the Commissioners to be very careful and parcel-specific when conditioning this conditional use, otherwise it may impact all of the parcels the current owner owns within Monroe County. Mr. Wolfe explained the site subject to this conditional use has not yet been divided and assigned two different RE numbers. Theoretically, upon the purchase the Property Appraiser will assign two different RE numbers.

Commissioner Lustberg believes it would be appropriate to include a condition for a Level 2 environmental study on the property before it is used for residential purposes. Mr. Wolfe explained the County has nothing to do with Phase 1 or Phase 2 environmental assessments. In a commercial transaction the buyer and lender will always get a Phase 1 environmental assessment. A Phase 2 is needed only if the Phase 1 suggests there is some concern. Ms. Grimsley noted that there is no substantial competent evidence in the record concerning the environmental status of this property in regard to pollution and does not think there is any basis for that condition. Mr. Mulick added that a Phase 1 assessment was done to appropriate industry standards and it did not recommend a Phase 2.

Commissioner Lustberg commented that, although the neighborhood hates the thought of this project, the neighborhood might be better off if anybody else bought this property besides the current owner. Commissioner Miller asked to have Section 110-68 be made available for the Commissioners to review with regard to limiting the volume, bulk and size of the development. Mr. Schwab explained that the Planning Department has reviewed this application and finds that the size, location, bulk, et cetera, are appropriate.

Commissioner Lustberg stated this conditional use meets the requirements for a conditional use and fits in the land regulations for the area. Conditions can be placed on this conditional use so that it is a better project and it better fits with the neighborhood. Vice Chair Hale agreed and reiterated that this proposed development would seem to be an improvement compared to what is currently there. Commissioner Werling also agreed and added that this project is going to have a lesser impact than some of the other alternatives that could arise later down the road. Chair Wiatt commented that both the County and the applicant are satisfied with the conclusion of the compliance issue and that this property has development rights. There are multiple conditions that staff has already placed on this property in order for it to be developed and it seems to meet all the requirements.

Motion: Commissioner Lustberg made a motion to approve this minor conditional use with staff's recommended conditions, changing Condition E as discussed earlier by requiring the code enforcement lien shall have been released from the site subject to this conditional use, and based upon the recommendations by staff, the staff report, and all testimony and evidence in the record as has been presented. Vice Chair Hale seconded the motion. The roll was called with the following results: Commissioner Lustberg, Yes; Vice Chair Hale, Yes; Commissioner Miller, No; Commissioner Werling, Yes; and Chair Wiatt, Yes.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 11:33 a.m.