

MINUTES

PLANNING COMMISSION

February 24, 2010

MARATHON GOV'T CENTER
2798 OVERSEAS HIGHWAY
MARATHON, FL
MONROE COUNTY, FL

PUBLIC MEETING: 9:00A.M.

CALL TO ORDER

9:07 am

PLEDGE OF ALLEGIANCE

ROLL CALL by Debby Tedesco

COMMISSION:

Randy Wall, Chairman

Jim Cameron, Vice Chairman

Denise Werling

Jeb Hale

Elizabeth Lustberg

present
present
present
present
present

STAFF:

Townsley Schwab, Senior Director of Planning and Environmental Resources

Susan Grimsley, Ass't County Attorney

John Wolfe, Planning Commission Counsel

Mitch Harvey, Comprehensive Plan Manager

Joe Haberman, Principal Planner

Steven Biel, Sr. Planner

Thomas Lloyd, Planner

Michael Roberts, Administrator of Environmental Resources

Debby Tedesco, Planning Commission Coordinator

present
present
present
present
present
present
present
present for Public Hearing
present

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

9:09am

Read into record by John Wolfe

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

SWEARING OF COUNTY STAFF

9:10am

Planning Commission Meeting Minutes January 27, 2010

Motion to approve made by Commissioner Jim Cameron

Motion seconded by Denise Werling

CHANGES TO THE AGENDA

From 9:00am. to 10:30am (Approximated)

Keith & Schnars, planning consultants assisting in the preparation of the 2030 Comprehensive Plan update and Evaluation Appraisal Report, will be giving a presentation to the Planning Commissioners and staff.

9:15am

Michael Davis began presentation in Power Point

Credentials of personnel presented for Michael Davis (Vice President and Principal in charge), Debbie Love (Project Manager), and Kim Giles (Public Outreach and Public Involvement).

Michael Davis noted that the Land Development Regulations will be updated over three and one half (3 ½) years.

9:18am

Michael Davis noted that there will be three (3) public meetings held for public input on the Comprehensive Plan for 2030 on April 6th, 7th, and 8th from 6:00-7:00pm followed by discussion from 7:00-8:30pm regarding the Evaluation Appraisal Report (EAR). The three (3) public meetings will be held in three (3) locations in Key West, Marathon, and Key Largo which will be advertised.

He noted there will be 4 phases:

1. Technical Document Update
2. Evaluation Appraisal Report (EAR)
3. Comprehensive Plan Update
4. Land Development Regulations (LDR) Update

He spoke highly of the Monroe County planning staff and noted there are many moving parts to this process.

9:20-9:38am

Debbie Love, Project Manager noted it was her job to keep the moving parts organized.

She explained the 4 phases listed above in more detail:

1. The Technical Document was last updated in 1990. She noted many legal changes have occurred and must be brought in. She noted Capital improvements must be updated and calculated by present housing needs, traffic needs etc.
2. Phase 2, (EAR) is our "report card" of the Comprehensive Plan. She stated that this drives the entire project every 7 years; the EAR is statutorily driven.

Major Issues: Meeting with County Staff (which has been completed), meeting with Planning Commissioners (which is what was done today), and meeting with Board of County Commissioners (which will be done in the future). She noted that meetings with Florida Keys Aqueduct Authority (FKAA), Department of Community Affairs (DCA) and the Navy will all be forthcoming.

She noted that DCA will receive a courtesy review prior to the Final Compilation Report.

Then, Final Compilation Report will be completed and sent to DCA.

3. After the EAR is done, then amendments to the Comprehensive Plan will be prepared.
4. She noted during the update that the LDR Code would become more user friendly, per request from county staff.

CURRENT STATUS:

She noted that Keith & Schnars are compiling a library of CD's from various data.

She stated her office is working on a deliverable schedule preparation such as:

Upcoming Meetings:

- a. Today: February 24, 2010 briefing, Planning Commissioners
- b. February 28, 2010, Board of County Commissioners briefings
- c. March 10, 2010 Meeting of Directors in Key West
- d. April 6th, 7th and 8th Public Meetings throughout the Keys

Ms. Love asked the Commissioners to think about some specific changes they may have, and communicate those ideas to Mitch Harvey.

Chair Randy Wall asked at what point Public Review occurs.

Debbie Love stated there will be a great deal of public review with opportunities through the website and meetings throughout the Keys. She noted that the EAR- requires only 1 public workshop.

Mike Davis noted that Keith and Schnars will begin the process immediately.

9:39 Debbie Love stated that DCA asked Keith & Schnars to present the following questions to the Commissioners:

1. What do you like best about this county?
Answers included weather, water, laid back life style, wildlife, sense of community, generosity and compassion of the community, accessibility of County Government, small towns yet many cultural amenities available, diversity, grass roots politics (a few can effect change), safety, uniqueness of each community.
2. What do you want to change about your community? (All areas in parentheses were paraphrased by Debbie Love)
Answers included keeping neighborhoods' character instead of trying to change it, increased intensity as it affects property ownership (stops economic growth), Area of Critical Concern should be eliminated so DCA is not always looking over our shoulders (external controls may not fit in with local needs), need for control and in control of our own destiny, you never know where you stand as a property owner (things are done based on looming legislation – moratoriums of one sort or another such as ROGO implementation, DOH Moratorium etc.), find ways to get regular people in our community involved in decisions only a small per cent of citizens show up at meetings, never the people in the middle (Kim Giles will get many people involved), get more young people involved, make things affordable so young people can stay here, encourage more recycling.

9:56am

Ron Demes ex officio member of the Planning Commission, speaking for the US Navy, suggested the County needs to be greener and that mass transportation is needed.

3. What do you like about the Comprehensive Plan?

Answers included not much, the online index makes it easy to find an answer online although you may not agree with the answer, its good there is a mechanism in the Plan to recognize things that don't fit in exactly however, its used too much,

10:04am

4. What parts of the plan do not work well?

Answers included that it takes too much time to make changes

10:05am

Ron Demes mentioned that Military Compatibility criteria (as required by Florida Statute 163) statutorily requires the County to coordinate with the military facility which does not happen often enough

Other answers included that the Master plan has too much detail which hampers things in the future, that people do not perceive the big picture of the Comprehensive Plan, that it is daunting and intimidating to the lay person, and that often the Comprehensive Plan leaves too much room for interpretation, that it is supposed to be a broad plan (framework) and the LDRs are the specifics

10:15am

5. What are the important issues that are not addressed at all in the Plan? (Items in parentheses were spoken by Debbie Love)

10:16am

Ron Demes answered that encroachment of development around the military base has not been addressed.

Debbie Love suggested he give his added comments to Mitch Harvey, Comprehensive Plan Manager.

Additional comments included schools in the Comp Plan (the County is not required to have a separate school element; however, activities must be coordinated with the schools), the economic aspect of the Comp Plan was not well constructed in the Master Plan (Fishkin & Associates work with Keith & Schnars, and are world known for economic analyses and will take a broad look at economic feasibility), noted that every County Staff Report references the Communikeys plan, discussion regarding which Keys have been adopted as part of the Comprehensive Plan.

Debbie Love noted how the questions generated conversation.

10:29am

6. How can we make changes that you want to see?

Answers included making it more user friendly, make the public aware that planning and building staff are available to help them,

Debbie Love suggested if there are more comments get them and future questions to Mitch Harvey.

Exhibit 1 – Copy of power point presentation from Kim Giles, Keith & Schnars

10:43am

Chair Randy Wall called for a recess of the Planning Commission Meeting to reconvene at 10:55am

PUBLIC HEARING: 10:30are (or as soon thereafter as may be heard)

New Items:

1.Little Conch Key Development Corporation property, US-1, Walkers Island Unit 8, Little Conch Key, Mile Marker 62, Oceanside: A request for approval of a variance of two (2) feet from the required ten (10) foot side yard, non-shoreline setback. The granting of this variance will allow the applicant to receive a building permit for an after-the-fact elevated concrete slab, air conditioning unit, and footings for a partially completed single-family residence. The subject parcel is legally described as Unit 8 on the Southeast ½ of Little Conch Key, Section 15, Township 65, Range 34, Little Conch Key, Monroe County, Florida, having real estate numbers 00099090.000000 & 00099090.000100.

10:55am Reconvene

10:56am

Read into record by John Wolfe

Staff report presented in Power point by Joe Haberman

2' variance is requested

Joe Haberman stated this was initially an Administrative Variance; however, an adversely affected property owner can and did request a public hearing. He stated it is a unique property.

Staff recommended DENIAL as the request did not meet all criteria, however, Joe Haberman stated that if the Commissioners approve it piece by piece, staff noted the recommendations in the staff report.

11:00am-11:23am

Discussion:

Patricia Silver for the applicant stated they are withdrawing their request for a variance for a slab with nothing on it, and the trash receptacle. Not the only issue in the request for a Variance is the air-conditioning slab. She stated the air-conditioning slab is not a nuisance, and there is no viable place to relocate it.

EXHIBIT 2 -Specs on Lennox XC-21 air conditioner given to Commissioners and Coordinator by Patricia Silver. She noted the unit has the lowest decibels of available on the market.

Ms. Silver noted the neighboring property had a very old and noisy air conditioner which was probably the noise being referred to. She stated the air-conditioner to be installed on the slab is NOT a public nuisance, and she said that it is not justified to deny a variance.

11:23am-11:39am

Discussion including but not limited to, stated conversations with planners, Cornerstone Construction is the contractor, Mr. McCarthy and Mr. Tom Cerrito are partners/owners, definition of red-line on plans.

11:39 – 11:55am

PUBLIC COMMENT:

Nicholas Mulick, attorney for Rebecca Nauchlas stated it was inconsistent to build with plans and then come in for a hardship as this is against the Florida Supreme Courts direction. He quoted that "the property owner cannot benefit from a hardship created by himself".

Discussion followed to include the survey provided by the applicant versus another supplied by the agent, Mr. Don Craig, for the affected property owner.

Exhibit 3 submitted by Mr. Mulick showing DEP (Department of Environmental Protection) requirements for shoreline setbacks

Susan Grimsley stated that Mr. Mulick had nothing from DEP stating that it is an invalid survey.

12 Noon

Don Craig was sworn in by John Wolfe

Discussion followed including but not limited to Mr. Craig's statement that he stated he commissioned the second survey with Mr. Grimes without going on the property, Chair Wall noted that a Variance is being heard by the Planning Commission not a shoreline setback, Mr. Craig presented the criteria that was not being met and why the Planning Commission should deny a two-foot variance request.

12:22am

PUBLIC COMMENT

Ms. Rebecca Nachlaus sworn in by John Wolfe

Her statement followed to include, the house is right on top of her property lowering the amount of rent she could have received as property previously surrounded by mangroves, and she had never spoken to Mr. McCarthy or Mr. Cerrito although she had tried.

When asked what her wishes were by Commissioner Cameron, she stated she would like to have the house go away or her house relocated. Chair Wall noted once again, that the Commission was hearing a setback variance.

Susan Grimsley asked for Joe Haberman to return to the podium for discussion of the survey again. Joe Haberman stated he was at the property, saw boulders at the shoreline that created a poof seawall, which was not on the survey commissioned by Don Craig. Chair Wall again reminded the parties that the Commission was hearing a setback variance, not shoreline variance. Joe Haberman agreed.

12:32-12:49pm

Ms. Silver stated that in spite of smoke screens and other issues being discussed, a side yard setback variance is the request before the Commission. She stated her client would be happy to buffer the yard, but stated it is not feasible for her client to put the air-conditioning unit on the second floor balcony, not did she agree that Don Craig had proved it was creating a public nuisance or all air-conditioning units in the Keys would have to be located 20' away from the adjoining properties which is not feasible. The problem came up through Code Enforcement who was called by Ms. Nachlaus.

Mr. McCarthy came to the podium once again, stating that the County Biologist, Janis Vaseris came to the property and told him that Ms. Nachlaus had made a complaint to Code Enforcement who in turn asked Mr. Vaseris to check the property. He re-stated that it would create a hardship to relocate the air-conditioner to the second floor balcony.

Ms. Silver stated that Mr. Mulich is not licensed as a surveyor or a mapper and that neither is relevant for the purposes today.

12:49-1:25pm

BOARD DISCUSSION:

Commissioner Cameron stated it was an unfortunate error that the slab was missed during inspections and that the applicant has done what he could to make the air-conditioning unit quiet. Commissioner Werling noted that she was against any variance granted for error and that rules should be followed. Commission Hale agreed with Commissioner Cameron and added a landscape buffer.

A Motion was submitted by Commissioner Cameron to approve the air-conditioner slab footings, with condition of landscape buffer added and applicable conditions in the staff report.

Commissioner Hale seconded.

Commissioner Lustberg noted that although the air-conditioner should not have been placed there, but since the setback is very small I would leave the slab there although it is not an ideal situation.

Chair Wall noted that he is sympathetic to the property owners and that clearly mistakes were made in the permitting process.

John Wolfe suggested rewording the Motion to approve a variance for an elevated concrete slab for an air-conditioner with footings, and two feet of the driveway.

Commissioner Cameron stated this was his new motion and Chair Wall asked if another motion can be made if this one fails. Mr. Wolfe answered affirmatively.

ROLL CALL:

Commissioner Hale - Yes
Commissioner Cameron - Yes
Commissioner Lustberg - No
Commissioner Werling - No
Chair Wall - No

Chair Wall modified the previous motion to include the footing and pool equipment only, not for the air-conditioning pad, to allow what exists to remain. He called for lattice around the pool equipment slab. He did not believe that there was any hardship demonstrated for the driveway setback and therefore, excluded it from the motion.

Seconded by Commissioner Hale.

Discussion followed regarding the driveway setback however, Susan Grimsley advised that if a variance is needed for the driveway the applicants can submit a new application

ROLL CALL:

Commissioner Hale - Yes
Commissioner Cameron - Yes
Commissioner Lustberg - Yes
Commissioner Werling - No
Chair Wall - Yes

2. Siever's Marina, Inc., 21 Garden Cove Drive, Key Largo, Mile Marker 106: A request for approval of a Sign Variance to allow construction of a 22-foot high by 10-foot wide (including mounting structures), ground-mounted, off-premise sign on a vacant parcel. The subject parcel is legally described as Block 1, Lot 11, Ocean Isle Estates, (PB5-14), Key Largo, Monroe County, Florida, having Real Estate Number 00538170.000000.

1:25pm

Read into record by John Wolfe

1:26pm

Regarding Item #1 and for the record, Mr. Mulich said that Mr. Grimes, the surveyor commissioned by Don Craig, had been watching the proceeding on Monroe County TV, and has returned here to the Planning Commission meeting in case there was any reason to doubt that he had been here prior.

Staff report for Item #2 was presented by Thomas Lloyd who noted to the Commissioners that this had been heard previously on November 27, 2010 and at the time Condition B asked that unlawful signage be removed prior to the issuance of a resolution, followed by a 30 day appeal period, then approval of building permits would create a hardship to the applicant to be without signage during that time.

The applicant asked that this be changed to removal of the signs prior to the issuance of a building permit which could be resolved within five to seven days.

Thomas Lloyd noted that staff is agreeable to B1 for the change; however, he noted staff had to bring it back before the Planning Commission because a resolution had not yet been signed. He also noted that this was a Code Enforcement case that could not be resolved without the sign variance approval. He noted the sign variance approval replaces illegal signage.

1:35-1:45pm
BOARD DISCUSSION

John Wolfe noted there should be an outward date with which the applicant is comfortable.
Thomas Lloyd noted the applicant's building permit is on his desk awaiting the 30 day appeal after the Resolution is signed.
Chair Wall suggested the permit should be picked up within 30 or 90 after the appeal period.

PUBLIC COMMENT
Ron Sievers gave his oath that under condition B2 (Code Enforcement issue) he could keep the present signs and would remove them as soon as the new sign is built.

BOARD DISCUSSION
Commissioner Cameron voiced his support for Mr. Sievers' suggestion and noted the Board could condition that the building department permit gets picked up within 30 days of the end of the appeal period, then within 10 business days of picking up the permit, everything else would be complete.
Ron Sievers noted he has to install lighting, but agreed to 7 days, weather permitting.

Motion was mad to that effect by Commissioner Cameron
Seconded by Commissioner Werling.
Unanimously approved with conditions

BOARD DISCUSSION

1:46pm
None

GROWTH MANAGEMENT COMMENTS

None

RESOLUTIONS FOR SIGNATURE

None

ADJOURNMENT

1:46pm