

PLANNING COMMISSION
February 24, 2016
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, February 24, 2016**, beginning at 10:01 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, Chair	Present
William Wiatt, Vice Chair	Present
Elizabeth Lustberg	Present
Ron Miller	Present
Beth Ramsay-Vickrey	Present

STAFF

Mayte Santamaria, Sr. Director of Planning and Environmental Resources	Present
Steve Williams, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present
Tiffany Stankiewicz, Development Administrator	Present
Emily Schemper, Comprehensive Planning Manager	Present
Kevin Bond, Planning & Development Review Manager	Present
Matt Coyle, Principal Planner	Present
Devin Rains, Senior Planner	Present
Janene Sclafani, Planner	Present
Gail Creech, Sr. Planning Commission Coordinator	Present

COUNTY RESOLUTION 131-91 APPELLANT TO PROVIDE RECORD FOR APPEAL

County Resolution 131-92 was read into the record by Mr. Wolfe.

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Ms. Creech confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

County staff members were sworn in by Mr. Wolfe.

CHANGES TO THE AGENDA

Ms. Creech asked to have Items 4 and 5 read together with separate votes taken on each. The applicant of Item 3 is delayed and that item will be heard out of order when they arrive.

APPROVAL OF MINUTES

Motion: Commissioner Wiatt made a motion to approve the January 27, 2016, meeting minutes. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

New Items:

1.A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM FOR OCTOBER 14, 2015, THROUGH JANUARY 12, 2016, ROGO (2nd QUARTER YEAR 24). ALLOCATION AWARDS WILL BE ALLOCATED FOR ALL UNINCORPORATED MONROE COUNTY.

(File 2015-192)

(10:04 a.m.) Ms. Stankiewicz presented the staff report. Ms. Stankiewicz stated that this report is for the quarterly ROGO. Ms. Stankiewicz recommended approval of the market rate allocations as specified in the report and there were no affordable housing applications.

Chair Werling asked for public comment. There was none. Public comment was closed.

Commissioner Miller asked for a ballpark figure of Tier I properties that have been developed in the last ten years. Ms. Santamaria will collect that information and provide it to Commissioner Miller.

Motion: Commissioner Ramsay-Vickrey made a motion for approval as recommended by staff. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

2.A PUBLIC HEARING TO CONSIDER AND FINALIZE THE RANKING OF APPLICATIONS IN THE DWELLING UNIT ALLOCATION SYSTEM FOR THE BIG PINE KEY/NO NAME KEY SUBAREA. ALLOCATION AWARDS TO BE ALLOCATED, IF AVAILABLE, TO APPLICANTS PREVIOUSLY DEFERRED WITHIN THE BIG PINE KEY/NO NAME KEY SUBAREA.

(File 2015-192)

(10:05 a.m.) Ms. Stankiewicz presented the staff report. Ms. Stankiewicz reported that the Planning Department recommends approval of the release of the remaining three deferred allocations at this time.

Chair Werling asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Lustberg made a motion for approval. Commissioner Ramsay-Vickrey 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 COMPREHESIVE PLAN CREATING POLICY 101.5.31 TO ADDRESS HEIGHT EXCEPTIONS FOR NON-HABITABLE ARCHITECTURAL DECORATIVE FEATURES WITHIN THE OCEAN REEF MASTER PLANNED COMMUNITY; AND CREATING POLICIES 101.5.32 AND 101.5.33 TO PROVIDE CERTAIN EXCEPTIONS TO THE HEIGHT LIMIT IN ORDER TO PROTECT PROPERTY FROM FLOODING AND REDUCE FLOOD INSURANCE COSTS; 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 INCLUSION IN THE MONROE COUNTY COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE.
(File 2015-006)

5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY LAND DEVELOPMENT CODE AMENDING SECTION 101-1 TO CREATE DEFINITIONS RELATED TO FLOOD PROTECTION HEIGHT EXCEPTIONS; AND AMENDING SECTION 130-187 TO PROVIDE CERTAIN EXCEPTIONS TO THE HEIGHT LIMIT IN ORDER TO PROTECT PROPERTY FROM FLOODING AND REDUCE FLOOD INSURANCE COSTS AND TO ADDRESS HEIGHT EXCEPTIONS FOR NON-HABITABLE ARCHITECTURAL DECORATIVE FEATURES WITHIN THE OCEAN REEF MASTER PLANNED COMMUNITY; PROVIDING FOR SEVERABILITY; 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 INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE.
(File 2015-171)

(10:07 a.m.) Ms. Santamaria presented the staff report. Ms. Santamaria reported that both the comp plan and the Land Development Code will be addressed together today. Ms. Santamaria explained that during the October 7, 2014, BOCC meeting the Commissioners asked staff to set aside the height and offshore policies and sections and provide additional information on those topics. Then in December of 2014 the BOCC decided to separate these topics totally from the 2030 comp plan and process them separately. Five DRC meetings have been held since March of 2015 on these issues.

Ms. Santamaria provided the definitions for “height” and “grade.” Those terms are critical to understand because each property may be different depending on what their natural elevation, their grade is or their crown of the road. A depiction was shown of how this generally works. Ms. Santamaria continued to report that there are going to be upcoming changes with the FEMA maps. Staff anticipates that flood zones will likely go up because sea level rise projections will be included in the new maps. FEMA is trying to make the rates consistent with a property’s actual risk. With this legislation if a structure is elevated up to three feet above base flood discounts can be received on flood insurance.

Ms. Santamaria explained the first policy change is to Policy 101.5.30, which is the policy that includes the 35-foot height limit. The definition of “height” has been included directly into the policy as well as the proposed exceptions to the height limits. There is a policy for the Ocean Reef master planned community for non-habitable architectural decorative features on the roof line up to five feet. Section 130-187A of the code contains the matching language. The structure itself with the decorative features cannot exceed 40 feet. The first flood protection height exception is proposed Policy 101.5.32, which allows up to a maximum of five feet above the 35-foot height limit to a total maximum of up to 40 feet for flood protection. This is specifically to allow property owners to better protect their property and potentially receive discounts on their flood insurance. Section 130-187B of the code has two provisions: Number 1 is for new buildings that would have the opportunity of a maximum of up to three feet above the 35-foot height limit to a maximum height of 38 feet; Number 2 is for lawfully existing buildings, not multi-family, up to five feet above the 35-foot height limit. The reasons five feet was provided here instead of three feet is these structures may be below base flood and may need an opportunity to get to base flood and hopefully will have a foot or two more to go above and better protect themselves and receive discounts. It is proposed that no structure will ever be more than 40 feet. FEMA base flood would have to be met for this opportunity to be afforded to a property owner. Also, those properties located in AE10 or VE 10 or greater are not afforded this opportunity because those are riskier areas for development. A table of FEMA flood zones with the number of private vacant parcels in the county was shown. Most of both the existing parcels and the private vacant parcels exist in AE5 through AE9. These ordinances, therefore, would cover the majority of the parcels in the County.

Ms. Santamaria then explained that another flood protection height exception is for those lawfully established buildings that exist today and already exceed the 35-foot height limit. A lawfully established existing building may be repaired, improved, redeveloped and/or elevated to meet the required FEMA base flood elevation provided the building does not exceed a total maximum building height of 40 feet. If a building already exceeds the 40-foot height limit and cannot rebuild within that provision of the 40-foot max, a hearing before the Planning Commission and the BOCC would be required to set what would be their maximum height. There is criteria created in the code to address that situation. Lawfully existing multi-family buildings that exceed the 35-foot height limit that would need to go beyond 40 feet would again require a hearing before the Planning Commission and a hearing before the BOCC to set a maximum height. The criteria to address this situation were illustrated. Ms. Santamaria recommended approval to both the comp plan amendments as well as the Land Development Code amendments.

Commissioner Lustberg asked for clarification between an existing house and a new house. Ms. Santamaria clarified that existing homes can be elevated to 40 feet, a new home can be built to 38 feet, and replacement of a demolished home can go to 40 feet because of a ROGO exception. Commissioner Ramsay-Vickrey suggested exploring the difference between a damaged rebuild and a voluntary tear-down and rebuild.

Chair Werling asked for public comment.

Burke Cannon, resident of Tavernier, cited examples of discrepancies that would exist in his neighborhood. The neighborhood would change dramatically. Mr. Cannon asked that more consideration be given to these ordinances.

Mel Montagne, president of Fair Insurance Rates of Monroe County (FIRM), asked to show a four-minute video put together by Scott Fraser, who is the FEMA coordinator and flood plain manager for the City of Key West, which highlights the potential savings in a video format. That video was presented. Mr. Montagne then commented that FIRM supports Monroe County's referendum that will allow homeowners to protect their property by elevating structures up to five feet above base flood level, but in no case exceeding a maximum building height of 40 feet. FEMA is expected to redraw flood insurance rate maps in Monroe County over the next several years and the National Flood Insurance Program will be reauthorized in 2017, which may result in rates less than favorable to Monroe County. A referendum with similar changes passed easily in the City of Key West. Mr. Montagne asked the Commissioners to adopt proposed amendments that allow elevation to mitigate flood risk. Commissioner Miller pointed out that the cost of building a home higher has not been deducted in the figures shown by Mr. Montagne, which could actually negate 20 years of savings to a home. Mr. Montagne replied that the figures on the video were Key West-specific and based on a 30-year payout. Also, catastrophic events should be considered in those figures. Commissioner Miller does not believe this ordinance should be passed before knowing what the flood maps will be.

Dottie Moses, representing the Island of Key Largo Federation of Homeowners Associations, stated that although the Federation has been a supporter of the FIRM organization, they object to raising the 35-foot height limit on new construction. The Federation is not against raising the base flood elevation, but believes that can be done under the 35-foot height. The flood insurance premiums should in themselves be a motive for people to want to build higher without being given another higher elevation, but this is voluntary. Ms. Moses then commented that although recent sea level rise workshop data is being used as support for elevating, the executive summary from that project says their results do not mean that the County should begin implementing a program to elevate flood plain residential. Ms. Moses pointed out that Key West is an older community and has more homes that are in lower elevations than Unincorporated Monroe County. Voluntarily tearing down a house and then being allowed to rebuild it to 40 feet should be looked at very closely and should be treated as new construction. Ms. Moses clarified for Commissioner Lustberg that she personally supports the ability to elevate an existing house to 40 feet, but not for any new construction, including a teardown. Commissioner Miller asked where in the LDRs it states you can build to 40 feet if you tear your house down. Ms. Santamaria pointed out Section 130-187B. Ms. Santamaria then explained that she misspoke earlier and clarified that this exception shall apply to the substantial improvements of buildings, whether voluntary or not, who would be able to rebuild to 38 feet, not 40 feet.

Bill Hunter of Sugarloaf Key asked what the maximum height would be if he bulldozed his home to build a new one. Ms. Santamaria replied the maximum would be 38 feet.

Alicia Putney, resident of No Name Key, explained that the height of 35 feet was determined by the height of the existing tree line so that trees would be higher than the buildings. Throughout the Keys members of homeowners associations and environmental groups fought for that height

limit to keep the Florida Keys a unique and special place. Ms. Putney pointed out that there are only three land use determinants for the 2010 comp plan and LDRs: The carrying capacity limitations; natural resource protection; and the enhancement of community character. Policy 101.2.24 limits the height of structures to 35 feet. To be able to change the comp plan new issues or a change in circumstance need to be shown using data and analysis. The only new data being presented today is the need to allow existing buildings to be elevated for flood protection. Ms. Putney suggested the following ways to address this agenda item on height issues: Allow an exception to the 35-foot height limit when the reasons to elevate the existing structure is for FEMA reasons to a maximum of 38 feet; allow an exception to the 38-foot height limit to allow grandfathered structures to elevate the structure for FEMA reasons; and allow an exception to the 35-foot height limit limited to Ocean Reef where the community character is distinct from the rest of the Florida Keys provided there is legal protection from this allowance setting a precedent for the rest of the Keys and provided the exceptions are based in a Livable CommuniKeys planning initiative which would result in an overlay district. Allowing new construction to those owners who desire a third story that would exceed 35 feet is encouraging development in the lowest areas of the Florida Keys where development should be discouraged. There is no need to change the rules for new construction. Ms. Putney asked the Commissioners to consider these recommendations prior to voting on this important issue.

Joyce Newman of Big Pine Key spoke on behalf of Last Stand. Ms. Newman stated that Last Stand has participated in all of the meetings related to change of height in the county and wholeheartedly supports a mechanism that would allow an existing home to be raised five feet above base flood elevation as protection against sea level rise and increased flood insurance premiums. However, Last Stand is opposed to a blanket exemption to the 35-foot height that would change the community character of the Florida Keys. A variance procedure should be attached to any changes proposed above the 35-foot level, which would allow the Planning Commission to look carefully at these requests on a case-by-case basis. Last Stand does not support new construction being afforded the ability to go beyond the 35-foot level because there is no burden on new construction to achieve the BFE elevations. Last Stand continues to object to special considerations for Ocean Reef because of the precedent this might set. However, the suggestion of going through the Livable CommuniKeys process might provide legal protections to avoid the precedence being set. Ms. Newman believes this is not ready to go before the BOCC because of the recent changes and the contention and lack of consensus that still exists.

Joel Reed was present on behalf of Ocean Reef Club to speak on Agenda Item 4 as it pertains to Ocean Reef Club. Mr. Reed stated Ocean Reef has been represented at all of the meetings regarding this issue over the last two years. This is a key and critical issue for Ocean Reef and the language does not go far enough to protect existing structures that are already exceeding the height limit. Mr. Reed displayed proposed language to be included under Policy 101.5.31. Mr. Reed attempted to assuage the concerns that language applicable to Ocean Reef would spread to the rest of the community by explaining the policy, as written, is a policy unique only to Ocean Reef and is not applicable to other parts of the County. Ocean Reef is the only community that meets the gated master planned community in the definitions of the code today. Additional items that Ocean Reef is asking to be put in is that the existing structures that already exceed the 35-foot height restriction could be built back. Ocean Reef is asking that two community buildings that are key and essential to the community, the cultural center and the boat barn, would have a

65-foot height restriction. Mr. Reed described Ocean Reef as distinct in that it is isolated, inaccessible and does have a distinct community character. There is no visual impact due to the buildings in Ocean Reef. Commissioner Miller pointed out that Ocean Reef can be seen clearly from the water. Mr. Reed continued to explain that Ocean Reef has design guidelines and an architectural committee that reviews for all architecture that happens in all buildings in Ocean Reef. Photographs of Ocean Reef were shown from different times and different vantage points. Mr. Reed stated that Ocean Reef is more restrictive than Monroe County as far as setbacks, building envelope requirements and architectural restrictions. Mr. Reed stated the County has no regulations to date to protect buildings that are lawfully established buildings that exceed the height limits that are part of the Ocean Reef community. Pictures were displayed of some of these buildings. Ms. Santamaria clarified that a table of the proposed changes for the buildings at Ocean Reef is contained in the backup for some policy language in Exhibit 11, although the table is mostly blank. Mr. Reed stated that he will fill in the updated information and provide it to staff and to the Commissioners afterwards.

Mr. Reed then continued to show the different buildings as examples in the community. Mr. Reed stated some of the buildings have aged and have passed their useful life because of the restrictions and not allowing these building to be rebuilt with an increase in height is not a benefit to the community or to the overall value of that community. Some buildings have outdated ceiling heights and Ocean Reef is asking those buildings be allowed to be built back with 11 or 12 feet slab-to-slab height. Some buildings would lose units if built back to current height restrictions. To build the boat barn back within codes to maintain the same number of boats stored there it would need to go up to 65 feet. The boat barn currently is at 37 feet. The cultural center has asked to go to 65 feet because of the space needed for the type of productions that are put on for the community. Mr. Reed reiterated that Ocean Reef Club is a distinct community and isolated. Ocean Reef Club is managed by its board of directors and the homeowner piece of it, Ocean Reef Community Association (ORCA), has not only a board, but an architectural committee as well. Both the club and the community association are in support of this request and believe it is a necessity for Ocean Reef.

Commissioner Ramsay-Vickrey discussed the difference in height of the cultural center and the boat barn currently and what is proposed by Mr. Reed. Commissioner Wiatt asked Mr. Reed about ownership of the different structures in the table provided. Mr. Reed replied that the commercial buildings are all owned by Ocean Reef Club and the condominium buildings are all owned within the community association. Commissioner Wiatt expressed sympathy for the owners that may have obtained these properties prior to the 35-foot limit, but believes owners that obtained them after the 35-foot limit came into place should have known they could only be built back to 35 feet. Ms. Santamaria noted that the 35-foot height restriction came into being in 1986. Commissioner Lustberg disagreed in that many things in the County are grandfathered in and when purchasing something that violates the rules owners believe continuing that use is generally allowed. Mr. Reed commented again concerning neighbor impact due to a change that Ocean Reef Club is isolated and has their own rules and regulations that guide development and their community members are part of that entire process. Mr. Reed went over Number 2 and 3 to Policy 101.5.31 that Ocean Reef is requesting be added to the policy language. Mr. Reed confirmed for Commissioner Ramsay-Vickrey that Number 2 would allow replacement of a building at an additional height. Commissioner Miller asked what the flood zone is for Ocean

Reef. Mr. Reed replied that the Amberjack Hotel is in a V11-13 zone and the others are AE 9 and AE 10.

Jim Hendrick of Key West was present on behalf of ORCA. Mr. Hendrick explained that Ocean Reef Club is the actual ownership entity and ORCA is the local governance for Ocean Reef that has its own architectural standards, its own boards and committees. Mr. Hendrick noted Kay Thacker's passing. Mr. Hendrick stated that Ms. Thacker fought for preserving a measure of limitation on buildings within the island communities along the US-1 chain, but recognized that the community character of Ocean Reef is very distinct from the rest of the Keys. Ocean Reef is the only community that is exempted from ROGO because it is isolated. Mr. Hendrick pointed out that under the regulations that are currently being proposed all owners of a condominium could not be accommodated. A special policy is needed for Ocean Reef because there are no standards given to guide the exercise of granting an exemption. A special rule can be accomplished for Ocean Reef without setting an adverse precedent because the policy contains the reasons why Ocean Reef is unique: Because it is a gated master-planned community; it is isolated and inaccessible to the surrounding community; and has a distinct community character. Mr. Hendrick believes the suggestion that this be worked through a Livable CommuniKeys program has merit, but pointed out that Ocean Reef's proposed policy gives very clear and specific guidelines as to what will and will not be allowed in Ocean Reef. The Ocean Reef community is speaking with one voice on this and no one speaks against it.

Naja Girard of Key West asked since when is a property owner allowed to make their own rules. Ms. Girard asked if the County wants to encourage walled-up, exclusive, gated communities throughout the Keys. Ms. Girard asked that this issue be considered very carefully.

Deb Curlee of Cudjoe Key stated that she attended all of the DRC meetings on this issue and this is the first time the proposed changes or additional language from Ocean Reef has been seen. Ms. Curlee asked Ms. Santamaria to confirm that Ocean Reef is part of Monroe County. Ms. Santamaria answered in the affirmative.

Chair Werling asked for further public comment. There was none. Public comment was closed.

Commissioner Ramsay-Vickrey asked to discuss Ocean Reef first. Commissioner Ramsay-Vickrey agrees that Ocean Reef is a distinct community and agrees with the five-foot exemption for the decorative features. Commissioner Ramsay-Vickrey commented that the proposed language by Ocean Reef contained in Number 2 and Number 3 has not gone through staff review or a public process. Therefore, she is opposed to voting on that today. Commissioners Wiatt and Miller agreed with that. Commissioner Lustberg believes there has been substantial public discussion on many things before coming in front of the Planning Commission and this is what is before the Commission today. Commissioner Lustberg feels that Ocean Reef is largely protected by the language allowing for the variance process in order to build beyond the 40 feet because it would be considered a hardship for somebody to lose a unit. That would be considered differently in Ocean Reef with a condo than it might for an individual homeowner. Commissioner Miller asked if the 15,000 excluded properties in AE-10 and VE-10 throughout the County would also apply to Ocean Reef. Ms. Santamaria responded that there are properties in Ocean Reef that are AE-10, VE-10 or greater. So the proposed policy that allows for existing

multifamily structures to exceed the 35-foot height limit and go beyond 40 feet would not be available for those that exceed the 10-foot level. Ms. Santamaria then noted that the previous submission from Ocean Reef, Exhibit 11 of the staff report, contains 90 percent of the same language, but the table related to the request was never submitted previously. Commissioner Ramsay-Vickrey repeated that should go through staff and a public process before coming before the Planning Commission on those issues.

Commissioner Wiatt noted that even though the height restrictions were originally put in place to address aesthetics and the height of the trees, they have morphed into something more than that. There are really only two things right now that have any control over residential floor area: setbacks and height restrictions. Therefore, the only way Commissioner Wiatt will be comfortable with increasing height restrictions is to make sure language is in place that does not allow for an increase in floor area in the guise of raising properties for flood. Ms. Santamaria confirmed that there is no limit in the text currently relating to floor area. Commissioner Ramsay-Vickrey suggested limiting this height rise to only single- and two-story homes. Commissioner Miller voiced concern that the height increase in new construction will result in a density increase. Commissioner Miller distributed graphs showing the potential changes that will result from the height increases. Commissioner Miller explained how to read the graphs. Commissioner Miller pointed out that these increases will incentivize those people who want to maximize their number of floors and believes protecting our homes and getting reduced FEMA premiums can already be accomplished without the proposed increases. Taking the residential units out of the equation may make for a better product. Commissioner Wiatt commented that Policy 101.5.33 limits existing lawfully established floor area to the building envelope. Ms. Santamaria pointed out that B2 does not include that language. C contains that language for multi-family. Ms. Schemper explained that new construction is sandwiched in between base flood and the 35-foot height limit, so an additional story is not able to be added. Commissioner Miller disagreed with that. Commissioner Ramsay-Vickrey again suggested limiting the increases to new buildings to single- or two-story homes. Commissioner Lustberg stated new construction gets the increase only if the house is elevated that three feet above base flood. Ms. Santamaria agreed that the increment is only what is gone above base flood. Mr. Williams explained the house stays the same size, but just gets moved up or down. Commissioner Miller insisted that his graph of showing the changes is correct and suggested having a workshop on this matter. Commissioner Wiatt would like to include multi-family in the limitation to single- or two-story structures. Commissioner Ramsay-Vickrey voiced concern because of the effects that may have on affordable housing. Commissioner Miller agreed with limiting the new construction to single- or two-story homes, but wants the community concern addressed. Ms. Santamaria explained if three stories could be built under the 35-foot limit, then those three stories could be built under the 38-foot limit because it is just being shifted up.

Chair Werling stated there are already buildings in the very hazardous flood areas and they are getting no advantage to rectify their situation with these proposed changes. Ms. Santamaria explained that they can still build back within the 35 feet and take advantage of actually adding a couple feet above base flood, but the County does not want to incentivize construction in those riskier areas. They would be rebuilding smaller homes in those areas. Staff tried to capture in the language where the majority of the existing parcels and the majority of the existing development occurs, which is AE-6 through 10. Chair Werling asked if homes in those lower

areas could be considered on a case-by-case situation because it is not known what FEMA's numbers on their maps are going to be. Mr. Williams explained how the LiDAR works when creating these new maps and stated some counties who have had the LiDAR used to create their maps have seen as much as a foot change in their elevation. Chair Werling is bothered that no exception is given to those homes in the low-lying areas. Commissioner Miller questioned why the County would not wait for the map changes before voting on this ordinance. Ms. Santamaria replied to give people the opportunity to be better prepared and better protect their homes with potential changes coming out. Commissioner Ramsay-Vickrey asked to add language this is to be reviewed every time there is an issuance of new maps. Chair Werling agreed. Commissioner Lustberg does not believe that the height should be tied in to where base flood goes because that could go on forever. At this point a concession is being made to people who have an existing property to allow them to use it the same way, but to make it safer for flooding and to reduce their premiums. Commissioner Lustberg feels that this ordinance tries to take into effect where it is appropriate to build back and how much is appropriate to grant people in order to be able to have insured houses without allowing for inappropriate development that slips in. Otherwise, only people who do not need a mortgage can afford to live here.

Commissioner Miller made three points: It is more equitable if the 35-foot rule applied to all of the properties in the Keys; under no circumstances should there be increased capacity in the number of floors that could be built under this exemption; and consideration should be given to the fact that our communities have been built under the 35-foot height limitation successfully for years. Ms. Santamaria proposed the following language to limit the 38-foot height exemption to one- or two-story homes: "For new single-family or multi-family buildings, which are voluntarily elevated to exceed the building's minimum required base flood elevation, an exception of a maximum of three feet above the 35-foot height limit may be permitted. The amount of the height exception shall be no greater than the amount of voluntary elevation above base flood elevation. In no event shall a new building exceed 38 feet in height or two floors of habitable space." Ms. Santamaria explained the proposed language for new development will not adversely affect those property owners who can build three floors currently at 35 feet.

The Commissioners agreed to keep the language in B2 as is. Commissioner Ramsay-Vickrey asked that these same changes to new and existing development decided on for Item 5 be made to Item 4. Ms. Santamaria clarified that language will be added to specify in Policy 101.5.32 that limits new single-family and multi-family to 38 feet and two stories and existing to 40 feet to match the code. Commissioner Ramsay-Vickrey suggested in Policy 101.5.33 changing "The Planning Commission" to "The Planning Director shall provide a recommendation to the BOCC." Commissioner Lustberg and Chair Werling believe that language shall remain "The Planning Commission" to allow for public input. Chair Werling stated that nobody should be exempt in Number 5 of the LDC, especially if the maps are going to change. Ms. Santamaria explained the rationale for that language was public comment received during the DRC that redevelopment should not be facilitated or encouraged in the riskier areas. They could still build under the 35-foot height limit, but would not have the ability to go the extra height. Commissioner Miller believes that would allow for the creation of more habitable space in those homes. Commissioner Wiatt noted that the language is covered under existing development and the limitation of two floors covers it under new development. The people that have structures in low-lying areas can continue to have those structures, but they are not getting any more floor

area. Commissioner Miller pointed out that in the lower elevations this will create more habitable space. Commissioner Ramsay-Vickrey proposed the language “No exception shall be provided to new buildings located in” AE 10 and greater or VE 10 and greater. That would discourage development in the most sensitive and flood prone areas for new development. Chair Werling added that there are a lot of restrictions in obtaining a permit in those areas already.

Commissioner Lustberg asked to hear the proposed language again. Ms. Santamaria read aloud the changes in Item 4, Policy 101.5.32: “Within one year of the effective date of this policy, Monroe County shall adopt Land Development Regulations which provide a Flood Protection Height Exception to Policy 101.5.30 to promote public health, safety and general welfare; allow adaptation to coastal flooding, storm surge and other hazards; protect property from flooding and minimize damages; minimize public and private losses due to flooding; minimize future expenditures of public funds for flood control projects and for recovery from flood events; and mitigate rising flood insurance premiums. A Flood Protection Height Exception of up to a maximum of five feet above the 35-foot height limit shall be provided to allow lawfully existing buildings to be voluntarily elevated up to three feet above FEMA base flood elevation and a Flood Protection Height Exception of a maximum of three feet above the 35-foot height limit shall be provided to allow new buildings to voluntarily elevate up to three feet above FEMA base flood elevation. These exceptions are in order to promote flood protection, minimize flood damage, reduce flood insurance premiums and minimize future expenditures of public funds for recovery from flood events. In no case shall a Flood Protection Height Exception result in a new building exceeding a maximum height of 38 feet and a lawfully existing building exceeding a maximum height of 40 feet.”

Ms. Santamaria then read aloud the proposed changes to Item 5, B1: “For new single-family and multi-family buildings which are voluntarily elevated to exceed the building’s minimum required base flood elevation, an exception of a maximum of three feet above the 35-foot height limit may be permitted. The amount of the height exception shall be no greater than the amount of voluntary elevation above base flood elevation. In no event shall a new building exceed 38 feet in height or two habitable floors. This exception shall apply to the substantial improvement of buildings, whether voluntary or not.” Ms. Santamaria explained that “multi-family” will be stricken from B2 and B5 will read: “No exception shall be provided to new buildings located in an AE 10 or VE 10 or greater FEMA flood zone.”

Motion: Commissioner Ramsay-Vickrey made a motion on Agenda Item Number 4 to approve with the language adjustments as read by staff as directed by the Planning Commission. Commissioner Wiatt seconded the motion. Commissioner Lustberg asked Legal staff about unintended consequences these changes will bring about. Mr. Williams stated that there are always consequences, but as long as the County does not infringe on property owners’ rights as they currently exist everything should be fine. Chair Werling clarified that the information submitted today by Ocean Reef is not included in this motion. Commissioner Ramsay-Vickrey added that the Planning Commission is willing to address those requests when they come before the Commission through the existing process. **There was no opposition. The motion passed unanimously.**

Motion: Commissioner Ramsay-Vickrey made a motion on Agenda Item Number 5 to approve with the changes as read by the Planning Director as directed by the Planning Commission. Ms. Santamaria repeated the changes for Commissioner Miller. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

A brief recess was held from 12:36 p.m. to 12:48 p.m.

6.AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY COMPREHENSIVE PLAN CREATING A DEFINITION OF OFFSHORE ISLAND; AMENDING POLICIES 101.5.8 AND 101.13.5 WITHIN THE FUTURE LAND USE ELEMENT AND POLICY 207.1.2 WITHIN THE CONSERVATION AND COASTAL MANAGEMENT ELEMENT TO FURTHER CLARIFY THE DEVELOPMENT OF OFFSHORE ISLANDS; 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 INCLUSION IN THE MONROE COUNTY COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE.

(File 2015-007)

(12:49 p.m.) Ms. Santamaria presented the staff report. Ms. Santamaria reported that, similar to the height amendment, this item started in the comp plan update and the BOCC in December 2014 asked staff to take it out of the comp plan update and process it separately. This has also gone to the DRC five times since that time period. Three amendments are being proposed to the comp plan. The language in Policy 101.6.8 that allows the transfer of ROGO exemptions from one area to the other has already been transmitted to DEO and voted on and supported by the BOCC. The new addition is that the receiver site of these existing units transferring from one location to the other would not be to an offshore island. The language in Policy 101.13.3 allowing for the transfer of development rights, the transfer of density and not units, has also been transmitted to the State of Florida. The new addition, Number 6, states an offshore island will not be a receiver site for extra density. Policy 206.1.2 has the following new language beyond what has already been transmitted: “As used in this policy, established bird rookery refers to the location where colonial birds nest together (location in which a bird lays and incubates its eggs and raises its young). The nesting area may include nest structures, shallow depression in sand, soil or vegetation, crevices in the rocks, burrows and cavities.” A definition of “offshore island” for the glossary that was previously included in the comp plan update and removed is included here. It is not for offshore island zoning, but for the specific term of the physical island, itself. “Offshore island means an area of land surrounded by water which is not directly or indirectly connected to US-1 by a bridge, road or causeway.” Ms. Santamaria recommended approval of the amendments before the Planning Commission today.

Chair Werling asked for public comment.

Naja Girard, resident of Key West, questioned why the amendments relating to offshore islands are being brought separately from the general comp plan update with no new data that contradicts the original technical document. Ms. Girard stated during the final BOCC hearing on the comp plan update one of FEB Corp’s attorneys claimed to speak on behalf of a client who

owned a spoil island to the west of Key West when, in fact, the gentleman was not really his client and the island is not really a spoil island. That maneuver was used as the pretext that set in motion the sidetracking of the comp plan update as it pertains to offshore islands. Ms. Girard urged the Commissioners to keep in mind that today there are 60 privately-owned offshore islands and what is done here today will affect many islands that have remaining development potential. Ms. Girard asked that the comp plan policies retain the clear language that has been in place for decades that states that all offshore islands are Tier I, that development must be low density and even prohibited if the island is a bird nesting colony site and that no development rights or ROGOs may be transferred to offshore islands. Offshore islands are protected not only for the upland habitat they provide, but also because of the important ecosystem that is found in the waters that surround them. Spoil islands are uniquely inappropriate for residential development because they are highly prone to erosion. Ms. Girard concluded by stating that there is no legitimate reason and no data that supports the weakening of protections for offshore islands.

Nicholas Batty, attorney on behalf of FEB Corp., thanked staff for their hard work in this matter. Mr. Batty stated FEB Corp. supports this proposal except for one facet of the ordinance to which FEB takes exception: The prohibition of offshore islands as receiver sites for TREs. It is completely acceptable to eliminate the transfer of TDRs to offshore islands because there is no maximum net density for islands within the offshore zoning category, but not every offshore island has ROGO attached and the prohibition of offshore islands as receiver sites forces the property owners to look to the ROGO allocation system which is already crowded and takes the possibility of purchasing and transferring ROGO exemptions in the market system off the table. There is no justification for the blanket prohibition against transfers to offshore islands. If a site on offshore islands meets all of the required criteria, why should it not be eligible for a TRE transfer? Mr. Batty respectfully requested the Commission approve the language of the amendment as written with the exception of the TRE receiver prohibition.

Alicia Putney, resident of No Name Key, pointed out to the Commissioners that the final order for the 1995 challenge to the current comp plan adopted by the BOCC in 1993 includes findings of facts that specifically pertain to the goals, objectives and policies of the current year 2010 plan. Maps showing the offshore islands that were considered in the development of the comp plan were attached to that final order. Ms. Putney recited certain language from the technical document about offshore islands and their importance in the ecosystem of the Florida Keys. Ms. Putney stands firmly behind staff in the concept of offshore islands not being eligible to be a receiver site. There has been no data or analysis brought forward to justify changing the restrictions on development of offshore islands. To do so will not only be in violation of the comp plan, but also the principles for guiding development. Offshore islands are environmentally sensitive by definition and the protections should not be lowered.

Julie Dick from Everglades Law Center, present on behalf of Last Stand and the Florida Keys Environmental Fund, thanked staff for all of their work that has gone into developing this language and these policies. Ms. Dick stated her clients are fully supportive of keeping offshore islands from being receiver sites. Being able to transfer ROGOs to offshore islands would exacerbate very serious problems in terms of evacuation. Ms. Dick addressed some definitions in the policies. Ms. Dick proposed the language "Development shall be prohibited on offshore

islands (including spoil islands) which have a nesting area or an established bird colony site, based on best available data or survey and on-site verification by the County biologist.” Ms. Dick explained the words “been documented as” should be removed because whether or not an offshore island has previously been documented as a nesting area or a bird rookery or colony site is irrelevant. The important thing is whether the bird rookery or colony site is on that offshore island and it may be documented in the future. The addition of “nesting area” is suggested because Policy 102.7.2 has almost mirror-image language except it lists rookery and nesting area. Nesting areas are critical to protect. In the definitions and the glossary “Nesting Areas” cover endangered and threatened species and species of special concern at the State and Federal level. Ms. Dick explained that “resource agency” should be removed so that the County does not have to wait for information that is needed when there may be other available data. Also, it should be verified by the County biologist to provide for on-the-ground verification of what is really on these islands in terms of colony sites or nesting areas. Ms. Dick stated Dr. Jerry Lorenz, the Florida Research Director for Audubon Florida, will address the fact that “bird rookeries” is an ambiguous term and refers to crows. A colony site is a more scientifically accurate reference. The definition for colony site should mirror what staff proposed in Policy 206.1.2 so there will be consistency throughout the comp plan. Policy 207.9.1 references anticipation of an updated list of offshore islands with bird rookeries where development shall be prohibited. That update has not been done, so Ms. Dick asked that the policy be taken out altogether.

Dr. Jerry Lorenz, marine biologist representing National Audubon Society and Audubon Florida, stated that in order to make some of the language more consistent scientifically “rookery” should be changed to “colony site” because a rookery is much broader as it is defined whereas a colony site is a nesting habitat. Dr. Lorenz stated these islands are environmentally sensitive and are critical to bird life in the Keys and to the rest of the country because of the migration flyways through this area. A number of birds nest on these islands that are classified as colonial or semi-colonial, which are distinctly different. White-crowned pigeons are classified as a semi-colonial species, which simply means they can nest in colonies or they can nest individually. The white-crowned pigeon is critical to the upland habitat in the Keys because the hardwood hammocks are dependent upon them for moving around seeds. They are classified as threatened by the State of Florida and are a critical component of the ecosystem. Commissioner Ramsay-Vickrey noted that changing “rookery” to “nesting site” narrows the language. Dr. Lorenz reiterated that “rookery” is incorrectly defined in the language. All colonies are rookeries, but not all rookeries are colonies. Mr. Roberts agreed that Dr. Lorenz’ proposed language would afford less protection to the area. Ms. Santamaria read aloud the Merriam-Webster definition of “rookery.” Dr. Lorenz noted that that definition is not scientifically correct. Dr. Lorenz stated these lands are environmentally sensitive and he would like the comp plan to be as specific as possible to protect these nesting habitats. Dr. Lorenz pointed out again when using the term “colony site” that both colonial birds and semi-colonial birds need to be included. When birds form in groups to sit on a nest it is a bird colony no matter what the bird is classified as. Dr. Lorenz then explained that bird colonies are ephemeral. The islands will be used by birds when appropriate and not used when not appropriate. A colony site is a place where birds would go to nest, not necessarily that birds are nesting there at a certain time. Commissioner Miller suggested adding the word “suitable” habitats. Dr. Lorenz agreed that would be much more restrictive and much more protective if it said “suitable habitats for semi-colonial or colonial nesting birds.”

Commissioner Lustberg asked if every offshore island would be suitable. Dr. Lorenz replied that all offshore islands he is familiar with are environmentally important to all avian species even though they may not necessarily be a nesting location. Offshore islands are critical to all species of bird that migrate through the Florida Keys going to Cuba or the Yucatan Peninsula.

Chair Werling asked for further public comment. There was none. Public comment was closed.

Commissioner Ramsay-Vickrey asked Mr. Roberts for his opinion regarding the broad definition of rookery, which could include turtles. Mr. Roberts explained that protections are in place for turtles. This policy protects offshore islands relative to the transfer of development rights and the transfer of ROGO exemptions. Mr. Roberts agreed that “resource agency” can be deleted and agreed the term “or semi-colonial” could be added. That would close a narrowly open door. Commissioner Ramsay-Vickrey does not want “resource agency” taken out because then it is unknown who will make the determination that it is suitable habitat. Commissioner Ramsay-Vickrey does like the receiver site criteria adding that it is not an offshore island and does like the definition of “offshore island” mirroring what has been discussed at the comp plan level. Chair Werling suggested adding “best available data verified by the County biologist.” Mr. Roberts explained that the resource agencies that have a presence in the Keys are U.S. Fish & Wildlife, Florida DEP, Florida Game and Freshwater Fish Commission and the County. Commissioner Lustberg pointed out that there is not one entity the County should be dependent upon to get the data, but also does not want to rely on the applicants for that data. Mr. Roberts proposed the language “based on resource agency best available data or survey as verified by the County biologist.” Commissioner Ramsay-Vickrey agreed with that proposal. Chair Werling asked to change “established” to “suitable” in that same paragraph. Commissioner Lustberg pointed out that would mean there would be no development allowed on any offshore island and right now this language allows development on offshore islands so long as it can get the appropriate ROGO units, that it complies with all the land use maps, but no development or ROGO units can be transferred to the properties.

Commissioner Miller asked to open this up to the idea of designating all offshore islands as Tier I. Ms. Santamaria explained Policy 102.7.3 directs the County to discourage development proposed on offshore islands by methods, including but not limited to, designating offshore islands as Tier I lands. Each property is evaluated based on the tier criteria that has been adopted into the comp plan and code to see if they meet the criteria for the designation. Ms. Santamaria read aloud the proposed amended language for confirmation: “Development shall be prohibited on offshore islands (including spoil islands) which have been documented as an established bird rookery, based on resource agency best available data or survey as verified by the County biologist. As used in this policy, established bird rookery refers to the location where colonial or semi-colonial birds nest together (referring to a location where a bird lays and incubates its eggs and raises its young). The nesting area may include nest structures, shallow depression in sand, soil or vegetation, crevices in the rocks, burrows, and cavities.”

Motion: Commissioner Ramsay-Vickrey made a motion to approve with the amendments as read by the Planning Director as directed by the Planning Commission. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

3.PLAYA LARGO RESORT, 97450 OVERSEAS HWY, KEY LARGO, MILE MARKER

97.4: A PUBLIC HEARING CONCERNING A REQUEST FOR A 6COP-S ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW BEER, WINE, AND LIQUOR IN CONNECTION WITH OPERATION OF HOTEL, MOTEL, MOTOR COURT OR CONDOMINIUM; SALE BY THE DRINK FOR CONSUMPTION ON PREMISES AND PACKAGE SALES IN SEALED CONTAINERS. THE SUBJECT PARCEL IS LEGALLY DESCRIBED AS TRACTS 4B AND 5B OR AMENDED PLAT OF MANDALAY ON KEY LARGO, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 25, PUBLIC RECORDS OF MONROE COUNTY, FLORIDA AND ALSO A TRACT OF SUBMERGED LAND IN THE BAY OF FLORIDA FRONTING SAID TRACT 5B, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00555010-0000000.

(File 2016-014)

(1:43 p.m.) Mr. Rains presented the staff report. Mr. Rains described the location and zoning of the property. Mr. Rains reported that the property is under substantial development at this time and is in for an application for special use permit to allow alcoholic beverage sales in connection with a hotel resort application. Mr. Rains described prior County actions on this property. Mr. Rains explained that within an application for variance from the parking it became evident that this was a closed resort to guests of the facility. Photographs of the property were shown. Surrounding properties that include alcoholic beverage use permits were listed. Mr. Rains recommended approval with conditions. Those conditions were then outlined.

Nicholas Mulick, Esquire, was present on behalf of the applicant. Mr. Mulick requested that Condition Number 2 refer to “guests of the hotel” as opposed to “registered guests of the hotel.” Mr. Williams explained this is normally not an issue, but some of the variances received on this property expressly related to the parking issues on site. Mr. Williams suggested all people attending a special event could register as guests.

Jorge Cepero of Playa Largo was sworn in by Mr. Wolfe and stated every weekend there will be some kind of event, so to have every guest register for every single event is not realistic. Mr. Cepero suggested using the language “hotel related uses.” Commissioner Wiatt emphasized the fact that parking is the concern if the bar is open to non-registered guests. Mr. Cepero responded that the applicant is only restricted in not advertising for people to come into the bar and be served at the bar. Mr. Wolfe explained parking for a hotel contemplates functions like weddings. What is not covered and is specifically excluded is traffic from people coming into the bar. Ms. Santamaria clarified that the parking variance approved by Planning Commission Resolution Number P39-07 states “Alcoholic beverage sales shall be limited to registered guests of the hotel and registered guests at events at the hotel facility.” Mr. Mulick asked to broaden the language slightly to include special events or catered events. Commissioner Lustberg noted that guests of a conference would be registered guests even if staying elsewhere. Mr. Cepero noted that is often controlled by people putting on the wedding or the event, not by the hotel.

Commissioner Ramsay-Vickrey supports the Commission’s attorney and County staff on this item. Commissioner Ramsay-Vickrey asked if the applicant would like to take a continuance for a month to go back and meet with staff and try to work out the language so it would be acceptable to all. Mr. Mulick stated the applicant is fine with Ms. Santamaria’s language as read

from the resolution. Mr. Williams pointed out that the concern is not with the present applicant, but with what may happen two or three owners down the road who are not aware of everything that is agreed to here. Ms. Santamaria re-read Planning Commission Resolution P39-07 aloud.

Chair Werling asked for public comment.

Dottie Moses, resident of Key Largo, was sworn in by Mr. Wolfe and then asked Mr. Cepero if the restaurant at the waterfront was no longer going to be open to the public as was previously believed. Mr. Williams pointed out that public comment is not an opportunity for the public to question the applicant. Ms. Moses stated that she had been told that the waterfront apartment was for employee housing only, which is not being called a commercial unit. The two residential areas on either side of this resort are members of the Federation of Homeowners Associations and are very concerned about any kind of impact the parking, traffic and noise will cause in those neighborhoods. Ms. Schemper added that some of these issues were dealt with during the conditional use approval. The approval on that site is for a hotel with restaurant and bar areas that are accessory uses to the hotel. The commercial apartment was approved as a commercial apartment, which means it can be for either employees or the owner to use on the site. One of the conditions in the conditional use permit is that there will be no outdoor entertainment past 10 p.m. Ms. Moses stated the noise ordinance in place now is not working.

Joyce Newman, resident of Big Pine Key, was sworn in by Mr. Wolfe and then repeated the story from a prior meeting about a piece of property on Big Pine Key that was proposed as a family restaurant and in short time became Coconut's Lounge. Ms. Newman cautioned the Commissioners to keep the big picture in mind. The neighbors of this resort are not only dealing with a drastic change in community character, but the whole community is dealing with a loss of affordable housing, so the developer ought to be able to give up something.

Chair Werling asked for further public comment. There was none. Public comment was closed.

Commissioner Wiatt pointed out in fairness to the applicant that they have supplied affordable housing for their workers, but stated he is not willing to compromise on the parking. Chair Werling and Commissioner Miller agreed.

Motion: Commissioner Wiatt made a motion to approve staff's recommendation with the language read by the Planning Director at the request of the Planning Commission. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.

GROWTH MANAGEMENT COMMENTS

Ms. Santamaria reminded the Commissioners that on March 1 and April 13 the adoption hearings for the Land Development Code and the comprehensive plan will be held. Staff is trying to organize a training session for the Planning Commission on March 17 from 1:00 to 2:30 p.m. on fair and effective zoning hearings. Commissioner Lustberg stated she will be out of the country, but would be happy to read any written minutes of the meeting. Ms. Santamaria will check to see if the video can be purchased for those who cannot attend.

ADJOURNMENT

The Planning Commission meeting was adjourned at 2:12 p.m.