PLANNING COMMISSION
July 26, 2016
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Tuesday, July 26, 2016,** beginning at 10:08 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	Absent
Ron Miller	Absent
Beth Ramsay-Vickrey	Present

STAFF

Mayte Santamaria, Sr. Director of Planning and Environmental Resources	Present
Steve Williams, Assistant County Attorney	Present
Peter Morris, Assistant County Attorney	Present
Tom Wright, Planning Commission Counsel	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present
Kevin Bond, Planning & Development Review Manager	Present
Devin Rains, Sr. 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. Wright.

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Ms. Creech confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

County staff members and all members of the public intending on speaking today were sworn in by Mr. Wright.

CHANGES TO THE AGENDA

Mr. Williams stated that the applicants of Item 1 have been extended the opportunity to continue the matter one month in order to have all members of the Planning Commission present. Mr. Mulick announced that the applicants are prepared to proceed today.

APPROVAL OF MINUTES

Motion: Commissioner Wiatt made a motion to approve the May 25, 2016, meeting minutes. Commissioner Ramsay-Vickrey seconded the motion. There was no opposition. The motion passed sly.

MEETING

New Items:

1.John T. and Susan M. Slattery, 1516 Shaw Drive, Key Largo, Mile Marker 103: An appeal, pursuant to Section 102-185 of the Monroe County Land Development Code, by the property owner to the Planning Commission concerning an administrative decision of the Planning and Development Review Manager dated December 4, 2015, in which the Planning & Environmental Resources Department failed the owner's building permit application for a new single-family detached residential dwelling on property located within the Improved Subdivision (IS) Land Use District. The subject property is legally described as Parcel 18, a portion of Tract A, Twin Lakes First Addition, according to the Plat thereof, recorded in Plat Book 5, Page 68, of the Public Records of Monroe County, Florida, having real estate number 00551000-001800. (File 2015-234)

(10:11 a.m.) Ms. Santamaria presented the staff report. Ms. Santamaria reported that the applicant applied for a single-family new residential structure and the Planning Department denied that application because it did not meet the density standards for the zoning district in which it is located. The plats of the neighborhood were shown on the screen. Ms. Santamaria stated the subject parcel is within the residential medium future land use category as well as the improved subdivision zoning category. It is Tier III and it is vacant. GIS data describes it as disturbed with some hammock, surrounded by single-family homes, as well as environmentally sensitive lands. This application was failed at the building permit stage based on the County Code definitions of buildable lot, lot, parcel of land and platted lot. These definitions were adopted by the Board of County Commissioners (BOCC) and are included in the Land Development Code. "Lot" is defined as a duly recorded lot as shown on a plat approved by the County. The description of the subject property is Parcel 18, a portion of Tract A. This particular land area was part of a plat back in 1962 that just established the large tract, it did not identify any blocks of lots within it, and has been subsequently divided by previous developers or property owners and sold off to various parties.

Ms. Santamaria further reported in both the 2030 comp plan, as well as the 2010 comp plan, the density that is established for the residential medium category is based on lots: One dwelling unit per lot. Included in the comp plan is a disclosure that the purchase of a platted lot does not confer the ability to build, all the other criteria of the comp plan and code must be met. The platting standards in the County since 1963 require platting for the division of land into three or more parcels, which is the situation in this particular tract. It also includes a disclosure that if property is parceled out without a plat, that there is no expectation of being able to build on this property. A chapter was adopted in 1986 by the BOCC specifically to accommodate legally

vested residential development rights of the owners of lots in subdivisions that were lawfully established and approved prior to the adoption of this chapter. That chapter specifically states improved lots are those lots that are served by a dedicated and accepted existing road, which is not the case for this particular parcel, and has FKAA service and sufficient uplands to accommodate a single-family home.

Ms. Santamaria reiterated the density standard of IS zoning is one dwelling unit per lot. The requirements for the plat approval, the description of the IS zoning district and the density standard have all existed since 1986. Section 9-303 of the 1986 LDC specific to the IS zoning district stated to be able to build on a parcel, it had to be a lot and it had to be a lawfully buildable lot. "Buildable lot" means a duly recorded lot that complies with each and every component of the County zoning and subdivision codes immediately prior to the effective date of this code. This lot does not meet the zoning standards, nor the subdivision standards. The applicant has stated that this property was subdivided in early 1970, but staff has searched all of the records of the County Clerk and have not identified a plat, a replat, amended plat or anything else to show that this property has been legally divided and approved by the County or recorded in the Clerk of Court records.

Ms. Santamaria recommended that the Commissioners uphold the decision to deny this particular permit for a single-family home for the following reasons: This subject property was part of a plat in 1962 established as Tract A, but it has been divided without County approval since that time; it has been conveyed without the disclosure requirements; there has been no plat, replat or amended plat to create the 41 parcels; it does not include an existing road that is either maintained or created by the County; it does not meet the definition or the purpose of the IS zoning district; it did not go through the proper subdivision rules or platting requirements; it does not meet the definition of "buildable lot" or "lot"; it does not meet the density standards for residential medium or IS zoning. This recommendation would affect the eight vacant parcels in this tract, but would not affect the other parcels that have received permits in the past. The subject parcel could be utilized for other items, such as community parks, schools, beekeeping, or it could be donated for points in the ROGO system. Ms. Santamaria emphasized this does not affect the other parcels that have homes on them. The BOCC adopted both a comprehensive plan and code regulations that an existing lawfully established residential dwelling unit not considered nonconforming to density will be able to be replaced or rebuilt.

Nicholas Mulick, Esquire, present on behalf of the Petitioners, stated that this lot is in a subdivision of 41 other lots as shown by a zoning map promulgated by Monroe County, broken down into 41 lots by lot number and zoned IS. In addition to that, over the last 40 years 27 permits have been issued for single-family residences in that subdivision. Mr. Mulick added that the ordinance referred to regarding existing property owners is only effective for the properties that were built prior to 1996. Mr. Mulick believes the existing situation is a result of intentional acts, a reasonable interpretation of the ordinance that took into effect facts that are irrefutable, not a series of mistakes.

Mr. Mulick asked to question Ms. Santamaria to understand certain facts since this is a fact-based case. Mr. Mulick would ask Ms. Santamaria if the County acknowledges that permits have been issued here without exception up to the time the Slatterys applied for a building permit

and whether the records promulgated by the County actually acknowledge this property has been zoned IS consistently since 1986. Commissioner Ramsay-Vickrey interjected that in reviewing the paperwork she noticed three significant dates: The Monroe County Building Department issued a building permit on April 1, 2015, for the construction of a single-family resident; The Department of Economic Opportunity's final order adopting the County's LDC is dated April 2, 2015; and the Slatterys' warranty deed is dated April 10, 2015. The definition of "lot" has changed with the DEO final order. Commissioner Ramsay-Vickrey believes this is an unfortunate timing event for the appellants. Mr. Mulick responded that the amendatory ordinance that changed or modified the text of the definition of a "lot" is one line in a ten-page document. There is nothing in that document that leads one to believe that the intention of that change was to essentially start a process where it was "too bad" for those that had not gotten a permit previously. Commissioner Ramsay-Vickrey took exception to Mr. Mulick's characterization of her comments.

Mr. Mulick clarified the ordinance that staff is traveling under is the same ordinance that was being applied in 1973 and consistently thereafter and would like to question Ms. Santamaria on that also. Mr. Williams replied that this is an appeal, not a quasi-judicial proceeding. The burden is on Mr. Mulick to rebut with adverse competent substantial evidence previously utilized by staff. Cross examination is not appropriate in appeals. Mr. Wright agreed with Mr. Williams. Mr. Mulick believes the appellants have a fundamental right to inquire of Ms. Santamaria, but understands Mr. Willliams' position and will proceed.

Mr. Mulick asked to elicit testimony from his client. Mr. Slattery, having been previously sworn, upon questioning by Mr. Mulick stated he and his wife purchased the subject parcel in April 2015 for $75,000. He applied for a building permit the last week of November of 2015. They bought the property to build their dream second home. The lots immediately surrounding his lot all have houses on them. Before purchasing the property he was not informed by anyone on behalf of the County that this lot was unbuildable. No neighbor has requested to acquire the lot for the purpose of expanding their own lot. Commissioner Ramsay-Vickrey asked Mr. Slattery if when he purchased his property he received the following disclosure statement: "You are hereby notified that under the Monroe County Land Development Regulations the division of land into parcels of land which are not approved or platted lots under the regulations confer no rights to develop a parcel of land for any purpose," to which Mr. Slattery replied no. Commissioner Ramsay-Vickrey suggested that Mr. Slattery discuss that with his attorney in regards to his real estate agent.

Mr. Mulick emphasized the County's records establish that 27 permits have been issued in this area and approximately eight of them were issued post 1996. The ordinance that the Planning Department is relying on specifically says that prior to 1996 all single-family residences in existence as of January 4, 1996, are deemed to be lawfully existing, not nonconforming lawfully existing. That '96 date has some significance because it was intended to create a baseline when an inventory was done of every single developed and undeveloped lot in the Keys in connection with the hurricane evacuation model. '96 was when the inventory was made fixed. The County assumed under the hurricane evacuation plan that every one of these lots would be permitted. Mr. Mulick pointed out if the County's current interpretation of the ordinance is correct, then every lot there that has been developed since 1996 is not legally existing, cannot be repaired,

cannot be improved and no accessory uses can be granted. According to this interpretation, the balance of the undeveloped lots will not be authorized to build a house.

Mr. Mulick stated there are drops at every one of the lots in this neighborhood for connection to the sewer system and they are being taxed as buildable lots. Mr. Mulick disagrees with Commissioner Ramsay-Vickrey that there was a trigger date in April of 2015, but only that it was intended to clarify existing law. Even though the property owners had a disclosure on their warranty deed, the County still gave building permits. Mr. Mulick asked how a permit can be grandfathered in that was issued in April of 2015 when that is after the ordinance adopting the 1996 rule. It would be impossible. Mr. Mulick believes the interpretation of the ordinance creates a taking of these properties.

Mr. Mulick addressed the other suggested uses for this property, such as a park or beekeeping. Mr. Mulick believes they are incompatible with the land uses in the area. The option to use the property as a ROGO point is impossible because the property cannot be developed. Mr. Mulick commented that denial of the appeal would render every one of the remaining lots on the property useless and every building permit issued after 1996 would be made illegally issued. The law has not changed; only the ordinance is being interpreted differently. Mr. Mulick urged the Commissioners to interpret the ordinance to say the County has by its actions indicated that it interprets this ordinance so as to allow the development of a single-family home in an IS zoned property that has been zoned in that fashion since 1986 based upon a document that shows these lots as being numbered lots in the County's public records. The County would not suffer any harm because this is already anticipated in its hurricane evacuation plan. The down side is zero for the County, but astronomical for the property owners. The Planning Commission has been involved in approving building permits in this subdivision for over 40 years.

Mr. Mulick then pointed out that some of the post-'96 lots are illegally permitted lots that are homesteaded. Mr. Mulick does not believe the County can now reinterpret its ordinance to say other than what it has said consistently for 40 years. Mr. Mulick submitted to the Commissioners a copy of the subdivision with notations as to when permits were issued, from as early as 1973 to as late as 2015, a number of those permits being issued after 1996. There are fewer vacant lots than there are developed lots in this subdivision. Current interpretation of this ordinance will result in multiple unbuildable lots. Mr. Mulick asked that he be allowed to comment at the end of the hearing.

Chair Werling asked for public comment.

Michael Hosford, property owner in the subdivision, was sworn in by Mr. Wright. Mr. Hosford stated he has an interest in an existing homesteaded structure in the subdivision and is concerned with the potential ruling in case of a need for hurricane repair or rebuild. Mr. Hosford pointed out that this appeal affects more than just this particular lot, but is an issue that affects many property owners in the subdivision. Mr. Hosford does not want the great achievement of owning property taken by the County. Commissioner Ramsay-Vickrey assured Mr. Hosford that the County comp plan and County code grandfather in lawfully established dwelling units. Ms. Hosford is concerned post-'96 properties might be interpreted differently. Chair Werling noted that this appeal is regarding the Slattery case and other concerns need to be brought separately.

Mr. Wright then swore in any members of the public that plan to testify and have not taken the oath yet today.

Van Fischer, Esquire, representing a property owner on Ramrod Key, stated the change to the definition of "lot" affects other properties in Monroe County. Mr. Fischer's client waited until after the sewer hookup became available before applying for a building permit and was denied solely upon the change in the definition of "lot." This change was just to amend a small matter, but has resulted in a much larger situation. Mr. Fischer does not believe constructive notice is on every single deed in the County. These are properties that were zoned improved subdivision twice, which is where the County has determined development should occur. Mr. Fischer pointed out the controversy in determining which lots are lawfully established and which are not. This change in the definition of "lot" has resulted in a regulatory takings. Rezoning or using the property for ROGO points is not an option because it is an unbuildable lot. Mr. Fischer suggested the improved subdivision portion of the code be amended to change the word "lot" to "parcel." These lots were already considered on numerous occasions by the Planning Department, DCA and DEO as buildable lots and today they are unbuildable. It defies common sense and logic to change a definition to extinguish the ability to build a house in the areas that the County has determined over the past 40 years it is appropriate for houses to be built.

D.J. Miller, owner of 1511 Shaw Drive, an empty lot, was previously sworn and stated he has received a permit to clear all invasive foliage and trim his mangroves. Mr. Miller has owned six restaurants in Key Largo. Mr. Miller bought the property in 2012-2013 from a family member in distress and Mr. Miller and his wife bought the property to build their dream home. Mr. Miller was previously told by the Building Department he could build a home on this property. The lot is surrounded by homes. There is sewer hookup and Mr. Miller pays almost $900 a year in property taxes. The lot has been surveyed. $127,000 has been invested in this property. After getting plans and permits done on the property he was told by the Building Department in Key Largo the lot is not buildable because of a technicality. Mr. Miller then went to the Building Department in Marathon and was told his lot was buildable. Mr. Miller is concerned how insurance companies will react to learning these lots are not considered legally established. Mr. Miller stated he stands to lose his dream home and part of his retirement.

Richard Mahshie, 1513 Shaw Drive, owns both a home and a vacant lot in this subdivision. Mr. Mahshie stated his house is homesteaded and both of his properties have sewer connection. Mr. Mahshie had to wait until retirement to do anything with his vacant lot, but kept paying taxes on it. Mr. Mahshie believes this is a payback because of the neighbors north of Shaw Drive that complained to the County about flooding.

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

The appellant, John Slattery, provided the Commissioners with his educational and occupational background in business and real estate. Mr. Slattery stated he is experienced in buying real estate and did extensive due diligence on this property. That due diligence led him to believe that this property was completely buildable. Houses are being constructed around his property. The property is being assessed as a buildable value with sewer connection. The realtor

advertised the lot as a buildable lot. There is no environmental impact on this lot. Mr. Slattery has $110,000 tied up in this lot. Mr. Slattery stressed the human element involved here. Mr. Slattery asked if anybody considered how many deeded parcels were affected by this. Mr. Slattery pointed out there was one little line in the middle of the ordinance changed that is making these lots not buildable anymore. That one change is affecting people's retirements and savings. Mr. Slattery estimates his community alone has suffered a $35 million decrease in real estate values.

Ms. Santamaria clarified that this particular ordinance change was not specific to the Twin Lakes subdivision or any other subdivision. Denying a permit is not a pleasant part of the Planning Department's duties. Ms. Santamaria explained since 1986 the County has had definitions of "lot" and "buildable lot" which specifically impact the improved subdivision zoning district, the urban residential mobile homes zoning district and the commercial fishing area zoning district. Since 1986 every permit that has been issued on a parcel that is not a lot in those zoning districts was not the appropriate action of the County, so those units are lawful because of County action. Those are recognized. Now there is a very clear and specific definition of "lot" in both the new comp plan and in the new code that was adopted April 2016. Based on the words in those documents, adopted by the BOCC, this permit was failed.

Mr. Williams asked about the significance of the 1996 date. Ms. Santamaria stated the comp plan was adopted in 1992, but became effective in 1996 with approval by the DCA at that time. The policy does not have a date. Lawfully existing structures will be recognized and allowed to rebuild. Commissioner Ramsay-Vickrey asked if these properties which are not properly platted as a lot can go through a process to get properly designated as a lot. Ms. Santamaria clarified that since 1986 the LDC has included that lands within the IS, URM and commercial fishing village district shall not be platted, replatted or otherwise reconfigured in any manner that would allow the number of proposed lots to exceed the number of parcels that lawfully existed as of September 15, 1986. They could go through a beneficial use process to see if potentially that could be the result of a beneficial use, but by code they are not supposed to replat to create additional lots. Right now growth is restricted based on ROGO and NROGO, which is based on hurricane evacuation based on units that exist, not parcels or lots that exist. The hurricane evacuation model did not take into account vacant properties. Mr. Morris added, with respect to the question of statutory interpretation of the ordinances in question, the case law is clear that a panel such as the Commission should resort to that kind of interpretation only if the appellant establishes that the ordinance text in question is ambiguous. Otherwise, the plain language of the text governs. Also, with respect to the appellant's recently furnished handout to the staff and much of the testimony of the nonparty participants who have testified as lay witnesses, hearsay alone is insufficient for an appellant to prove up its case in chief.

Mr. Mulick believes the cavalier treatment of the 1996 ordinance as meaning nothing defies common sense. Mr. Mulick believes it is illogical that the Commissioners believe the comp plan adopted years ago is prospective. Commissioner Ramsay-Vickrey asked Mr. Mulick to show more respect to the Commission. Mr. Mulick stated Commissioner Ramsay-Vickery has not been respectful to him. Commissioner Ramsay-Vickrey asked for a short recess.

A brief recess was held from 11:53 a.m. to 11:58 a.m.

Mr. Mulick apologized to Commissioner Ramsay-Vickery if he gave the impression that he did not regard her comments as honest, fair and appropriate. Commissioner Ramsay-Vickrey assured Mr. Mulick that no apology is needed and that the Commissioners are sympathetic to the appellants, but they are only here to implement the County Code, not rewrite it.

Mr. Mulick reiterated that even though the Planning Director says post-'96 units are legal, that is not what the ordinances say. And if that meaning is going to be stretched, why is staff interpreting something that the County has interpreted for years in a certain way so narrowly? Mr. Mulick pointed out the ordinance in question was adopted in January of 2015. Commissioner Ramsay-Vickrey clarified it became final when the DCA adopted it in April. Mr. Mulick then insisted these vacant lots were counted as buildable lots in the hurricane evacuation plan. The law remains the same. What has occurred is a reinterpretation. Mr. Mulick asked the Commissioners to interpret this ordinance the way it has been interpreted for 43 years. Any other interpretation is a denial of due process and equal protection under the law. Mr. Mulick stated if the Commissioners believe the law has changed, that is a taking because the properties have been rendered unbuildable.

Mr. Williams asked Ms. Santamaria to state her job title on the record. Ms. Santamaria stated she is Senior Director of Planning and Environmental Resources, effectively the Planning Director for Monroe County.

Commissioner Wiatt asked Ms. Santamaria if she still stands by the statement that the subject property does not meet a definition of a "lot" and does not meet the residential density requirements of the IS land use district in order to allow the proposed development of a dwelling unit, to which Ms. Santamaria answered affirmatively. Commissioner Wiatt stated there is no interpretation which allows the Commissioners "wiggle room" to consider the human element to this. Commissioner Wiatt stated he personally did not know how many properties were affected by the change in this ordinance. Commissioner Wiatt would support some future change to the regulations that would take into account some of the issues brought up today. Chair Werling agreed with Commissioner Wiatt's comments.

Ms. Santamaria believes since 1986 when the IS zoning and these density standards were adopted the County has issued permits that were inconsistent with density, not use. It is not an easy part of staff's job to deny anybody a permit, but staff has to read the words, not interpret them. Since 1986 IS zoning has been based on buildable lots and lots, and this particular area has never met that because it has always been Tract A of parcels that have been subdivided without any approval. Ms. Santamaria confirmed for Mr. Williams without the language change in the definition of "lot" in January 2015 her opinion would not change. It goes back to 1986 when the issue was created.

Motion: Commissioner Wiatt made a motion to uphold the Planning Director's decision. Commissioner Ramsay-Vickrey seconded the motion. The roll was called with the following results: Commissioner Ramsay-Vickrey, Yes; Commissioner Wiatt, Yes; and Chair Werling, Yes. The motion passed unanimously.

2.Lazy Lobster, 102770 Overseas Highway, Key Largo, mile marker 102.7: A public hearing concerning a request for a 2COP Alcoholic Beverage Special Use Permit, which would allow beer and wine for sale by the drink (consumption on premises) or in sealed containers for package sales. The subject property is legally described as Lots 4, 5, 6 and 7, Block 12, Twin Lakes Subdivision (Plat Book 3, Page 160), Key Largo, Monroe County, Florida, having real estate number 00549600-000000, 00549610-000000 and 00549640-000000.
(File 2016-083)

(12:22 p.m.) Mr. Bond presented the staff report. Mr. Bond reported that this property is located in the suburban commercial land use district and is currently used for a restaurant. The property did have a 2COP license in the past, but that license was null and void as of March 31, 2015. Staff has reviewed the request for the 2COP license against the criteria in the code for alcoholic beverage use permit and found that it meets the criteria. Mr. Bond stated staff is recommending approval with the three conditions as outlined in the staff report.

The applicant's agent declined to speak.

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

Motion: Commissioner Wiatt made a motion to approve the applicant's request. Commissioner Ramsay-Vickrey seconded the motion. There was no opposition. The motion passed unanimously.

3.Corks & Curds, 99202 Overseas Highway, Key Largo, mile marker 99.2: A public hearing concerning a request for a 2COP Alcoholic Beverage Special Use Permit, which would allow beer and wine for sale by the drink (consumption on premises) or in sealed containers for package sales. The subject property is legally described as Lots 1 to 11, Block 11, Sunset Cove Subdivision (Plat Book 1, Page 165), Key Largo, Monroe County, Florida, having real estate number 00504940-000000.
(File 2016-089)

(12:24 p.m.) Mr. Bond presented the staff report. Mr. Bond reported that this property is located in the suburban commercial zoning district and is currently used as a hotel and commercial retail. Staff could not find a prior 2COP license on file for this location. Staff has reviewed the request for the 2COP license against the criteria in the code and found that it met the criteria. Mr. Bond stated staff is recommending approval with the three conditions as outlined in the staff report.

The applicant declined to speak.

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

Motion: Commissioner Wiatt made a motion to approve the applicant's request. Commissioner Ramsay-Vickrey seconded the motion. There was no opposition. The motion passed unanimously.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 12:27 p.m.