

PLANNING COMMISSION
January 29, 2020

Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, January 29, 2020**, beginning at 10:00 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER by Chair Wiatt

PLEDGE OF ALLEGIANCE

ANNOUNCEMENT

Chair Wiatt recognized Ms. Denise Werling's twenty years of service on the Planning Commission, stating that she will be greatly missed and wishing her the best in all future endeavors.

ROLL CALL by Debra Roberts

PLANNING COMMISSION MEMBERS

William Wiatt, Vice Chair	Present
Ron Demes	Absent
Tom Coward	Present
Ron Miller	Present
Joe Scarpelli	Present

STAFF

Emily Schemper, Senior Director of Planning and Environmental Resources
Cheryl Cioffari, Assistant Director of Planning
Steve Williams, Assistant County Attorney
John Wolfe, Planning Commission Counsel
Mike Roberts, Senior Administrator, Environmental Resources
Devin Tolpin, Senior Planner
Debra Roberts, Senior Coordinator Planning Commission

COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

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

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Ms. Debra Roberts confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

County staff was sworn in by Mr. Wolfe.

CHANGES TO THE AGENDA

Ms. Emily Schemper stated that there were requests for Items 1, 6, 7 and 8 to be continued to the February meeting.

ANNOUNCEMENT

Mr. John Wolfe noted that an applicant is allowed one continuance and additionally, due to the absence of one Commissioner, a continuance is automatically granted to any applicant requesting one.

Motion: Commissioner Scarpelli made a motion to continue the four items to the February meeting. Commissioner Coward seconded the motion. There was no opposition. The motion passed unanimously.

APPROVAL OF MINUTES

Motion: Commissioner Coward made a motion to approve the December 18, 2019 meeting minutes. Commissioner Scarpelli seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

NEW ITEMS:

2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AMENDMENTS TO THE MONROE COUNTY LAND DEVELOPMENT CODE TO AMEND SECTION 101-1 TO ADD DEFINITIONS FOR HAZARDOUS VEGETATION AND MAJOR PRUNING; AND TO AMEND SECTION 114-103 TO PROVIDE FOR A PRUNING AND TREE REMOVAL PERMIT, FEE AND MITIGATION EXEMPTION AS PROVIDED BY STATE STATUTE, AND TO INCORPORATE A TEMPORARY PERMITTING SUSPENSION BY THE BOCC FOR THE MAJOR PRUNING OR REMOVAL OF NATIVE HAZARDOUS VEGETATION AFTER A NATURAL DISASTER; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO AND INCORPORATION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2019-130)

(10:05 a.m.) Mr. Michael Roberts, Assistant Director of Environmental Resources, presented the staff report. This is a result of 2019 legislative action where a Property Owner's Bill of Rights was passed which included a revision to Chapter 2019-155 the laws of Florida, specifically Section 163 of the Florida Statutes, which prohibits local governments from requiring notices, applications, approvals, permit fees, etc., for removal of native vegetation on a property owner's lot, affecting the County's tree ordinances and tree protection codes. This proposed ordinance is designed to meet the legislative requirements of House Bill 1159. Definitions are added within Section 101 of the Code, providing a definition for hazardous vegetation, major pruning and tree abuse. Staff's proposed language changes to Chapter 114-103 dealing with tree removal and major pruning read as follows: "Pursuant to Section 163-045 of Florida Statutes, if a property owner obtains documentation from an arborist certified by the ISA or a Florida licensed

landscape architect that a tree presents a danger to persons or property, the pruning, trimming or removal of trees on residential property will not require a notice, application approval, permit fee or mitigation. The property owner shall not be required to replant the tree that was pruned, trimmed or removed in accordance with the referenced Florida Statute Section. This Section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to Sections 403, 9321 and 9333 Florida Statutes. Should Florida Statute 163-045 be repealed or otherwise withdrawn, the exemptions of this Section 114-103(b) shall no longer apply.” That language was inserted because Staff is not confident that that particular legislation will persist. “Notwithstanding the requirements of Section 114-103 and 118.8, in the event of a declared state of local emergency after a natural disaster, the BOCC may enact a temporary suspension of the requirement for a development permit for the major pruning or removal of native vegetation where imminent danger to life or safety exists or to prevent further property damage caused by the natural disaster. Pursuant to the approved temporary suspension, a property owner may prune or remove native hazardous vegetation to the minimum extent necessary without a development permit. The property owner shall document the pruning or removal with photographs taken before and after the necessary action.”

This is due to the specific result of property damage and loss of vegetation associated with Hurricane Irma. There was extensive loss of vegetation and a lot of resultant clearing. Part of the unintended consequences of that were many Code cases associated with clearing of what was essentially storm debris cleanup. This is intended to try to limit that while not necessarily approving the removal of native vegetation.

Commissioner Miller asked what the consequences would be of going against this statute by pruning without the approval of an arborist. Mr. Roberts stated that it would be the same as in the current Code and Code Enforcement, which is typically requirement of an after-the-fact permit and mitigation, if appropriate, in a case of a new removal. Commissioner Miller wanted confirmation that mitigation was a part of this. Mr. Roberts explained that there are two different scenarios. If the clearing is otherwise consistent with the Code and would be allowed clearing where the property owner overlooked obtaining a permit, then mitigation would be required. If the clearing is over and above what could be permitted, then restoration would be required.

Vice Chair Wiatt asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Scarpelli made a motion to approve. Commissioner Coward seconded the motion. There was no opposition. The motion passed unanimously.

Vice Chair Wiatt stated they would now skip to Item 9.

9. KEYS' MEADS, LLC, 99411 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 99.4, OCEAN SIDE: A PUBLIC HEARING CONCERNING THE REQUEST FOR A 2COP ALCOHOLIC BEVERAGE USE PERMIT, WHICH WOULD ALLOW FOR BEER AND WINE SALES FOR ON PREMISES CONSUMPTION AND IN SEALED CONTAINERS FOR PACKAGE SALES. THE SUBJECT PROPERTY IS LEGALLY DESCRIBED AS LOTS 39, 40, 41, 42, 43, 44, 45, 46, 47, AND 48, BLOCK 11, SUNSET COVE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, AT

(10:14 a.m.) Ms. Devin Tolpin, Senior Planner presented the staff report. This item is a request for a 2COP Alcoholic Beverage Use Permit which would allow for the sale of beer and wine for on-premises consumption and package container sales. This property is located in the SC Zoning District and Mixed Use Commercial FLUM. This request would cover two of the existing commercial retail units. On October 30, 2018, the Planning Commission approved the same permit for the existing restaurant located on the subject property. Ms. Tolpin presented a graphic. This request covers the sale of alcohol but approval will allow the possibility of alcoholic beverage sales only if the proper land use permits are obtained. This does not constitute any approval of land use or any proposed future special events. There are five factors to consider. Staff has found all five to be in compliance and recommends approval of the subject 2COP Alcoholic Beverage Special Use Permit with general conditions and two additional conditions that explain that this is not approval of land use or additional special events.

Commissioner Miller asked why this was for the whole area instead of the one site. Ms. Emily Schemper responded that many times a special use permit for alcoholic beverages is very clear cut with one parcel and one building. This site has multiple units and tenants in the same area. This applicant is requesting to serve alcoholic beverages in a different portion of the building where the current mattress store is, so approval was required specifically for that portion of the building. The applicant also mentioned possible outdoor events. In order for that to be allowable, the site plan includes the areas on the property the request was for. The conditions do not give land use approval for these items and the applicant would still need to go through the permitting process for that. This permit would cover that whole area for anything approved through the land use rules.

Commissioner Miller asked if the café didn't already have a beer license, by including all of these lots would they have had a license within this application since it appears the whole area is included. Ms. Schemper stated that was incorrect in this case, but if the owner of the building decided to request a permit for the entire property, they could do that. These applications came in with very specific requests. Commissioner Scarpelli asked if the permit was attached to Keys' Meads or the property itself. Ms. Schemper responded that it's attached to the property, but has been specifically requested for a portion of the property because of the multiple units, and the applicant has a building permit application submitted to approve the operation moving into a portion of that area. Commissioner Scarpelli asked if that would include any outdoor areas for consumption. Ms. Schemper responded that that would still need to be worked out.

Vice Chair Wiatt asked if the applicant wanted to speak. The applicant stated he was available for questions. Vice Chair Wiatt asked if there was any public comment. There was none. Public comment was closed.

Motion: Commissioner Miller made a motion to approve. Commissioner Scarpelli seconded the motion. There was no opposition. The motion passed unanimously.

Mr. Wolfe stated that Items 3 and 4 would be read together.

3. AN ORDINANCE BY MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AMENDMENTS TO THE MONROE COUNTY 2030 COMPREHENSIVE PLAN TO AMEND POLICY 101.5.25 TO REDUCE THE OPEN SPACE RATIO FOR THE RECREATION (R) FUTURE LAND USE CATEGORY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO AND INCORPORATION IN THE MONROE COUNTY LAND DEVELOPMENT CODE; PROVIDING FOR AN EFFECTIVE DATE. (FILE 2019-131)

4. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY LAND DEVELOPMENT CODE SECTION 130-164 TO REDUCE THE OPEN SPACE RATIO FOR THE PARK AND REFUGE (PR) LAND USE (ZONING) DISTRICT; 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 2019-132)

(10:24 a.m.) Ms. Cheryl Cioffari, Assistant Director of Planning, presented the staff report. These two items are Text Amendments to both the Comp Plan and Land Development Code. The proposal is to amend the open space ratio within the Park and Refuge Zoning District and the corresponding Recreation FLUM. Following impacts from Hurricane Irma, subsequent rebuilding and bringing parks back online have shown the current open space ratio can limit some improvements such as ADA accessibility improvements once impervious cover is installed. Open space is area unobstructed from ground to sky excluding vegetation, so a wheelchair ramp or handicap accessible space decreases the open space. Staff worked with the Facilities Department to get an inventory of existing parks to determine the existing open space ratios and a recommendation is being made to reduce that ratio to 40 percent. The difference between the Recreation FLUM category and some of the others like Conservation or Preservation FLUM is there is more use within the Recreation FLUM. The other two are for passive recreation, landscape preservation or conservation uses, whereas Recreation allows parks which require improvements to make those facilities accessible. Staff recommends approval.

Commissioner Scarpelli commented that 40 percent seemed significant. Commissioner Coward agreed that going from 90 to 40 percent was a lot and asked where that number came from. Ms. Cioffari explained that on some of the smaller parks, when adding the accessibility pieces, it gets closer and closer to the open space ratio. Under the changes for the LDC on page two of the staff report, when a park is allowed a minor conditional use, the open space ratios actually allow for more impervious coverage in other zoning districts so you could have a park. In Suburban Commercial if a park is approved through the minor conditional use, the open space ratio is only 20 percent. In Parks and Recreation the open space is 90 percent. This is a balance of the existing open space ratios within the Land Development Code to make it more consistent for the specific use of a park.

Commissioner Coward noted that on the chart listing all of the parks in the County, not one was under 60 percent and his concern was unintended consequences of parks with unneeded buildings on it. Commissioner Scarpelli agreed, indicating that it's part of the design challenge to be ADA accessible and still retain green space which is what people go to a park for. He understands the little pop-up parks in Suburban Commercial dropping down to the 20 percent open space, but believes the larger parks throughout the County should not have as much impervious space. His fear is that 40 percent opens the door for lazy design effort. Ms. Cioffari asked if the Planning Commission would have an amended number they would like to recommend.

Commissioner Coward asked if going to 60 percent would provide for what is attempted to be accomplished. Commissioner Miller asked if the parks would be nonconforming after changing the open space ratio because the parks are all above 40. Ms. Cioffari pointed to page three of the staff report under the Land Development Code, indicating that all of those parks would be nonconforming to open space. Commissioner Miller then asked if it could be 68 percent to include the lowest one. Ms. Schemper interjected that some of the existing parks on the chart have been updated recently but some had not been for a long time. One factor contributing to the loss of open space is provision of shade structures such as over playground equipment which has been repeatedly requested, and listed some examples. Commissioner Coward still believed going to 40 percent was a drastic change. Ms. Schemper explained that it is hard to anticipate what improvements will be requested and what will be necessary, and this was based on current estimates. Though the County would not want every park at 40 percent, it allows for flexibility. Commissioner Miller asked if a sand volleyball court would take away from open space, and Ms. Schemper responded that that would be considered open, but a basketball court would not. Commissioner Scarpelli confirmed that fabric shade structures were counted against open space. Commissioner Coward commented that Higgs Beach is a little different from other parks, but asked what that open space requirement is, as it is very dense. Ms. Cioffari responded that in the City of Key West, the park is designated as Public Services and the maximum impervious surface ratio is 60 percent with 40 percent open space, though Ms. Mayta Santamaria was still awaiting additional site plans from the Facilities Department on that.

Commissioner Miller asked how other counties handled their recreational areas and open space, as he was trying to figure out the motivator for the change. Ms. Cioffari did not know about other counties, but stated that the change is due to the realization that these areas were noncompliant with the open space ratio during restoration of these facilities. Some have already been built or the improvements with shade structures would bring them into noncompliance. Vice Chair Wiatt commented that with these items being improvements he really didn't see a problem since it's not being developed commercially or for some other reason where it would be built out to 40 percent just because they can, but it just provides flexibility for improvements needed or desired. Commissioner Coward stated that he understood that, but Bernstein park is finished at 86 percent with a massive community building and with adding a couple of shade structures, if they could build out to a 40-percent ratio, scares him. Commissioner Scarpelli agreed. Commissioner Coward added that 90 may be too high, but in his opinion 40 is too low.

Vice Chair Wiatt asked what type of criteria was placed on improvements and who makes the decisions. Ms. Schemper explained that the Parks and Refuge Zoning category are all in public

ownership. In order for a private park to get that zoning they would need to go through a zoning amendment process. It is the County deciding what is needed in terms of park space. If the BOCC decided a community center was needed and it fit within a Park and Refuge District somewhere, a lower required open space ratio would give the flexibility to do that. Vice Chair Wiatt noted that there were still some checks and balances in place. Ms. Schemper pointed out that the decisions about open space coverage would be made by the BOCC or their staff to provide what is needed within the County. Commissioner Coward asked if 65 could be recommended. Ms. Cioffari stated that could be taken back and put before project management, Mr. Kevin Wilson, and see how that number would work. The original explanation for the open space ratio changes came directly from the Facilities Department. This item could be tabled and staff could bring back more information. Vice Chair Wiatt asked if any projects were being held up right now due to the current Code. Ms. Cioffari did not know of any and bringing it back would only be a 30-day delay.

Commissioner Miller asked about putting a sign-in sheet at the parks so the communities could have a say. Ms. Cioffari responded that the item had been noticed. Vice Chair Wiatt asked how many recreation areas were being discussed. Mr. Steve Williams responded to Commissioner Miller that this would not be a part of the procedure to adopt an ordinance. Commissioner Miller stated that the County does a lot of things that there are no specific provisions for. Mr. Williams explained that the County tries very hard not to do that. Ms. Schemper interjected that this has been noticed Countywide in the newspapers and on the website. A community meeting was required and this has been noticed up and down the County through the normal procedure. Commissioner Miller asked if it was too much of an effort to put something in each recreation area stating this is what is being proposed for your neighborhood park or recreation area. Mr. Wolfe stated that though that may be a laudable suggestion, once you go down that road, then the next person says, there you noticed everybody in the world but you didn't do it for us and you should have posted it everywhere. Commissioner Miller thought if that was the worst case scenario then it's not a bad idea. Mr. Wolfe added that it could backfire. Vice Chair Wiatt stated that it would take some really nice wordsmithing to explain this to the public to get their input. His concern is a delay of worthwhile improvements to parks due to the current code being too restrictive. Further public notice would take time and effort that may cause more harm than good to current projects. Vice Chair Wiatt suggested modifying the numbers and moving on. Commissioner Coward asked if parks and recreation had weighed in on this and Mr. Williams responded that this was their proposal. Ms. Schemper clarified that Public Works was the applicant for this text amendment, and provided information that the Big Coppitt Volunteer Fire Department is at 47 percent now, so anything they would need to do there would be inhibited if it's over 50 percent.

Commissioner Miller again asked whether there had been any public input to this at all. Ms. Schemper responded that there had not been, as no one had shown up at the meetings. Public Works has been working on the plans for park improvements, many of which are ADA requirements or ADA associated and they need a little more flexibility. Though 90 percent is way too high, if the Commission would like to make a different recommendation or postpone this for a month, that would be fine, and it would then go to the BOCC. Commissioner Miller asked if this had been discussed in public by the BOCC. Ms. Schemper stated it had not gotten to that level of the process yet. Ms. Cioffari interjected that a community meeting had been held

in Marathon, along with the DRC meeting, both in October 2018, and no public had attended. Commissioner Miller reiterated that a notice should be put up at the parks of the DRC meeting.

There was further discussion on the shade structures where Vice Chair Wiatt thought they would actually provide more open space than un-shaded areas in the summer as they would actually be utilized. Commissioner Scarpelli understood that. Commissioner Coward reiterated that 40 is too low. Ms. Schemper stated she was getting a message from Public Works that a safe number would be 50 percent.

Vice Chair Wiatt asked for public comment. There was none. Public comment was closed. Commissioner Scarpelli thought 50 percent was a better recommendation than 40. Commissioner Coward asked what other protections or processes there would be for excessive expansion. Ms. Schemper gave examples of buffer yards, maximum floor area ratio if there were buildings, and setbacks, and it would also depend on their zoning category. The Park and Refuge District would be allowed as of right and would only need a building permit. Vice Chair Wiatt added that one inherent check and balance is that the Public Works Department is very familiar with the parks and needs. If they are requesting 40 percent, they must believe it is necessary, and it's different than a commercial for-profit development. He would be willing to go along with it as well as 50 percent if that seems better. Commissioner Miller asked why someone from Public Works was not here today if they were the experts, and Ms. Schemper responded that Planning had indicated that they could handle this for them. Ms. Cioffari added that there are other constraints when designing such as setbacks, buffers, sensitive habitat and then providing parking, etc. Those factors wouldn't affect the open space ratio necessarily. Ms. Schemper added that the maximum floor area ratio for Park and Refuge is 20 percent. Commissioner Coward stated that that was the type of protection he was looking for. Ms. Schemper then pointed out where these zoning categories currently occur in the County.

Motion: Commissioner Scarpelli made a motion to approve Item 3 with a recommended change to 50 percent. Commissioner Coward seconded the motion.

Commissioner Miller asked if Public Works could come before them to explain why they're doing this, and then people may then come to the meeting. Mr. Williams responded that there has been no interest from the public based on the two public meetings which occurred before today. Commissioner Miller stated his theory is that most people have no clue what is being done here today.

Roll Call: Commissioner Scarpelli, Yes; Commissioner Coward, Yes; Commissioner Miller, No; Chair Wiatt, Yes. The motion passed 3 to 1.

Motion: Commissioner Scarpelli made a motion to approve Item 4 with a recommended change to 50 percent open space. Commissioner Coward seconded the motion.

Roll Call: Commissioner Scarpelli, Yes; Commissioner Coward, Yes; Commissioner Miller, No; Chair Wiatt, Yes. The motion passed 3 to 1.

5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY TIER OVERLAY DISTRICT MAP FROM TIER III-A TO TIER III AS REQUESTED BY THE SCHOOL BOARD OF MONROE COUNTY FLORIDA FOR A PARCEL OF LAND LEGALLY DESCRIBED AS PART OF LOT 1 AND PART OF LOT 2 SECTION 36, TOWNSHIP 66S, RANGE 27E SUGARLOAF KEY; HAVING REAL ESTATE NO: 00118050-000000, MORE COMMONLY KNOWN AS THE SUGARLOAF SCHOOL, LOCATED AT 255 CRANE BOULEVARD, SUGARLOAF KEY. (FILE 2019-167)

(10:58 a.m.) Mr. Roberts, Assistant Director of Environmental Resources, presented the staff report. This is for a Tier Map Amendment from Tier IIIA which is Special Protection Area to Tier III for a small portion of Sugarloaf Schools in the northwest corner of the parcel. It currently is ball field. The entire school site is designated as Tier IIIA and is an inappropriate Tier designation, and has been since the beginning. Staff is recommending approval of the requested amendment to Tier III for that small portion.

Commissioner Scarpelli asked why the whole thing wasn't being changed. Mr. Roberts responded that this is an applicant-driven request and the applicant had only asked for that one section to be amended, so that's what was processed. The school board representative was present and Vice Chair Wiatt asked if the applicant wanted to address the Commission.

Mr. Galen Jones, on behalf of the School Board of Monroe County, stated that the reason that specific site was selected for the Tier Overlay Designation was due to the affordable housing project to ensure they would be eligible for affordable ROGOs when the time came. The RFP is currently out for the development and the bid selection is scheduled for February 19.

Vice Chair Wiatt asked for public comment. There was none. Public comment was closed.

Motion: Commissioner Coward made a motion to approve. Commissioner Scarpelli seconded the motion. The motion passed unanimously.

BOARD DISCUSSION

Vice Chair Wiatt asked if the Commission would like to address the topic of a new Chair. Mr. Williams asked if they wanted to wait for five Commissioners to be present. Vice Chair Wiatt stated that he did not.

Motion: Vice Chair Wiatt nominated Commissioner Coward as the new Chair of the Planning Commission. Commissioner Scarpelli seconded the motion. There was no opposition. The motion passed unanimously. Vice Chair Wiatt will remain as Vice Chair.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 11:04 a.m.