

PLANNING COMMISSION
May 30, 2012
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, May 30, 2012**, beginning at 10:03 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
Randy Wall, Vice Chair	Present
Jeb Hale	Present
Elizabeth Lustberg	Present
William Wiatt	Present
Ashley Monnier, Installation Community Planning Liaison Officer	Present

STAFF

Townsley Schwab, Senior Director of Planning and Environmental Resources	Present
Susan Grimsley, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mayte Santamaria, Assistant Director of Planning and Environmental Resources	Present
Joe Haberman, Planning & Development Review Manager	Present
Mitch Harvey, Comp Plan Manager	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present
Steven Biel, Senior Planner	Present
Rey Ortiz, Planner	Present
Timothy Finn, Planner	Present
Gail Creech, Planning Commission Coordinator	Present

COUNTY RESOLUTION 131-91 APPELLANT TO PROVIDE RECORD FOR APPEAL

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

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Gail Creech confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

Mr. Wolfe stated that all agenda items today are legislative and, therefore, it is not necessary to swear anybody in.

CHANGES TO THE AGENDA

There were no changes to the agenda.

APPROVAL OF MINUTES

Motion: Commissioner Lustberg made a motion to approve the minutes of the April 25, 2012 meeting. Vice Chair Wall seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

New Items:

1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 130-82, INDUSTRIAL DISTRICT, 130-164, MAXIMUM NONRESIDENTIAL LAND USE INTENSITIES AND DISTRICT OPEN SPACE, AND 138-50, TYPE OF DEVELOPMENT NOT AFFECTED, TO ALLOW COMMERCIAL RETAIL/SERVICE FACILITY AND INSTITUTIONAL USES IN THE INDUSTRIAL LAND USE (ZONING) DISTRICT; TO ESTABLISH MAXIMUM FLOOR AREA RATIOS FOR COMMERCIAL RETAIL/SERVICE FACILITY AND INSTITUTIONAL USES IN THE INDUSTRIAL LAND USE (ZONING) DISTRICT; TO EXEMPT COMMERCIAL RETAIL/SERVICE FACILITY AND INSTITUTIONAL USES IN THE INDUSTRIAL LAND USE (ZONING) DISTRICT FROM THE NONRESIDENTIAL RATE OF GROWTH ORDINANCE (NROGO) PERMIT ALLOCATION SYSTEM; 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 CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2011-094)

(10:05 a.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that this is an applicant petition to change the regulations pertaining to the industrial land use district and the NROGO section of the code. The applicant is trying to add an additional use of commercial retail to the industrial district with some parameters: Tier III, Lower Keys ROGO subarea, and industrial FLUM. Staff found some issues that should be addressed. A lot of them relate to service facilities, which the applicant agreed at the DRC meeting they were no longer necessary.

Mr. Haberman explained that the first issue staff has with the amendment is adding a commercial use to the industrial district, as it is not consistent with the purpose of the industrial district as defined in the land development code. The second issue staff has is use of the terminology "as designated and zoned industrial." If the applicant's intent is to mean zoned and a future land use category of industrial, then that language needs to be revised to clearly state that. The applicant has already changed "Lower Keys planning area" to "Lower Keys ROGO subarea," which is a defined term. Some general issues that are still up in the air include the request of a maximum floor area ration of .4 for this new commercial use. Although that is compatible with the comp plan for the industrial district, it is on the high end of what is allowed. The applicant also applied a floor area ratio of .4 for institutional uses, which again would be one of the higher FARs for

institutional. Mr. Haberman clarified that rooms, such as a hospital room, is actually treated through the residential density section of the code, not through floor area. Another issue staff has with the amendment is the request for NROGO exemption, which staff believes is inconsistent with the comprehensive plan Policy 101.3.4, because commercial uses in the industrial district are not included. Concerning Policy 101.3.1, staff believes allowing a large exemption could affect the 1 to 239 floor area ration, which could be construed as inconsistent with the policy and comp plan.

Mr. Haberman explained to Vice Chair Wall that unallocated NROGO floor area has been monitored, but the code does not have a mechanism to reclaim that because the code contemplated that it would all be used. There might be changes to NROGO in the future in this regard. Mr. Haberman stated that staff tried carefully to look at the amendment as an amendment, not as the development. Staff did not propose any other alternatives to the applicant's request because this is the applicant's proposal and staff believes there are fundamental issues as it is written, namely inconsistencies with the comp plan over the NROGO exemptions.

Mr. Haberman stated that the data and analysis provided regarding the commercial retail use is not complete enough to allow staff to feel comfortable recommending approval. Staff feels that the comp plan should be adjusted first before asking for an exemption like the applicant is asking for. If the applicant were to get rid of all the industrial and not do anything but commercial, that number is higher than any banked amount of NROGO available right now. Mr. Wolfe then explained that ROGO came about around 1992, the comp plan was approved in '96 or '97, but the County had overbuilt for commercial ROGO. So there was a deficit for approximately eight years. Finally enough houses were built and the ratio caught up.

Mr. Haberman further reported that staff found the exemption request inconsistent with the purpose of the NROGO section as outlined in Monroe County Code Section 138.47. The applicant wants to exempt things of greater than 10,000 square feet and allow things at greater than 10,000 square feet, but they do not propose allowing any commercial retail of less than 10,000 square feet. Staff believes that goes against other plans that suggest that small developments should also be encouraged. Mr. Haberman again stated that the data and analysis of what the effects of the text amendment would be was inadequate for staff to feel comfortable recommending approval. In conclusion, staff did not find that the applicant demonstrated that they would clearly meet the standards for a text amendment. Staff recommended denial of the application as it is currently presented.

Upon questioning by Ms. Grimsley, Mr. Haberman recited the requirements of a text amendment from the staff report. Mr. Haberman then stated that staff did not find conclusively that the applicant met any of these standards to recommend approval.

Owen Trepanier, planner, was present on behalf of the applicant. Mr. Trepanier spoke of his personal experience of being unable to purchase a crib in the Keys and then spoke of the positive response he has received from Keys citizens regarding the proposed shopping center. The applicant hired Market Share Corporation to do a survey, and 80 percent of the people surveyed wanted a larger scale shopping opportunity within a half-hour of where they live. Mr. Trepanier

stressed that the applicant is trying to building something that is for the residents of the Lower Keys. Mr. Trepanier then addressed the issues raised by staff and stated that the applicant has no problem changing the language of a heading from “uses” to “districts,” or adding “commercial” to the LDRs. The applicant also would not object to receiving a permit for the potential development of smaller scale commercial retail.

Mr. Trepanier then spoke of the significant issue of NROGO. Mr. Trepanier explained that an exception to a rule is an inconsistency by its very nature and the code and the comp plan already include exceptions to NROGO. All of the exceptions have been thoroughly vetted and these have been found to be in compliance with and consistent with the comprehensive plan. Mr. Trepanier further explained that the applicant is asking for this exception because they cannot proceed with the development otherwise. NROGO specifically prohibits a potential development of a larger scale commercial retail. Mr. Trepanier pointed out that since the LDRs were written there has been an incremental change to the LDRs, specifically in the case of NROGO: There has been essentially an outright ban to larger scale retail commercial development. Mr. Trepanier stated that the problem with the existing NROGO is that it explicitly prohibits structures greater than 10,000 square feet and it is allocated in 2500 square foot increments biannually. Mr. Trepanier then spoke of the changed projections. Mr. Trepanier then asked Jim Hendrick, the County Attorney when NROGO went into effect, to explain the history of NROGO.

Mr. Hendrick corrected the chronology by stating that he was the land use counsel to the County at the time NROGO went into effect. Mr. Hendrick explained that when drafting NROGO there was concern that if residential development was prohibited commercial development would explode. Mr. Hendrick believed that NROGO would be a temporary expedient, that all of the vacant lots that were the driving force behind this would be gone, which of course they are not, and NROGO remains. Mr. Hendrick further explained that the 1 to 239 ratio was a historical number of the relationship between how many square feet had been permitted and how many units had been permitted. At that time it was determined that that ratio could be adjusted through the LDRs as situations changed. Mr. Hendrick referred to the market analysis done by Trepanier & Associates, which shows that clearly there is a demand for these types of facilities. Mr. Hendrick believes that the 10,000 square feet really is the impediment being dealt with presently. Mr. Hendrick stated that NROGO has outlived its usefulness. Mr. Hendrick then encouraged the Commissioners to use the mechanism in the existing comp plan that allows for these adjustments by changing the LDRs.

Mr. Trepanier then pointed out that the state statute, the comprehensive plan and the LDRs are very specific about when concurrency analysis is required. The one time where it is specifically omitted is for text amendments to the LDRs. Mr. Trepanier stated that a traffic analysis is not relevant at this point because they are not before the Commission with a development plan. Mr. Trepanier asked the Commissioners for a recommendation to the BOCC to allow this potential opportunity to be developed.

Vice Chair Wall asked if the negotiations between staff and the applicant could be broader. Mr. Trepanier believes that they can. The applicant hopes to come away today with a recommendation of approval as long as certain critical criteria are met, which the applicant has

no problem with. Vice Chair Wall raised the five points of inconsistency cited to by Mr. Haberman. Mr. Trepanier responded that the comp plan specifically contemplates amendments to the ratio from time to time, which are done by amending the LDRs, which is what the applicant is proposing to do.

Commissioner Lustberg responded that although there are disagreements between the applicant and staff that are minor things that could be tweaked, there are also fundamental issues that cannot be overcome. Vice Chair Wall noted that the primary fundamental issue is a commercial project of over 10,000 square feet. Mr. Haberman reiterated that the issues are, as it relates to the permitted use, staff were not given the data necessary to feel good that the impact of this would be consistent with that zoning district. Mr. Haberman does not disagree that the ratio can be amended, but it must be based on a market study. Further, the applicant is not proposing to directly amend the ratio, but they are asking to be let out of it. Also, this would be an exemption to a commercial use, which NROGO was meant to control commercial growth more than any of the other nonresidential uses, so staff did not feel they received the analysis necessary to do that and does not believe this is the proper process for that.

Vice Chair Wall asked Mr. Haberman to speak to whether the Commission can approve commercial retail on a parcel zoned industrial. Mr. Trepanier answered that is contemplated in the comprehensive plan, that the purpose of the industrial FLUM category includes and contemplates commercial retail uses, commercial uses. Mr. Haberman responded that the industrial future land use category is an umbrella category. The applicant is asking for a change to one of those categories. Mr. Haberman repeated that it comes back to the data and analysis issue of why that should be done without knowing all the impacts of doing that. Mr. Trepanier said that is the crux of the disagreement: When are the impacts evaluated. Mr. Trepanier believes that should be evaluated when the applicant has a development plan. Mr. Trepanier spoke of the reasons why this site is so well-suited for a larger scale commercial development.

Vice Chair Wall noted that without there being a project, planning staff always has to imagine the most intense case scenario. Mr. Trepanier added that right now the most intense case scenario can already be developed: A couple million square feet of restaurant spaces. Mr. Trepanier repeated that commercial is already permitted under the comprehensive plan and exemptions to NROGO are already permitted under the comprehensive plan, only the LDRs need to be tweaked.

Vice Chair Wall asked if the obstacle would be overcome if the zoning were commercial rather than industrial, to which Mr. Haberman responded that the same issues would exist on the map amendment application. Some of the concerns staff has is the level of service of that section of US-1 is not ideal and approving anything that could lead to more traffic could be an issue. Ms. Santamaria added that there is not a commercial zoning district under industrial. If a commercial FLUM was created in the future, that would be an option for the applicant, but staff would still have to look at the maximum potential development. If there are inconsistencies with the plan, staff has to ensure that what they are approving in the code is consistent with the plan. Mr. Trepanier believes that the issue is determining whether a concurrency analysis is required for a text amendment. Vice Chair Wall commented that concurrency has to be met at the major conditional use point, and if at that time the applicant would not meet those requirements, they

would not be able to proceed. Mr. Trepanier agreed and stated that the property owner's ultimate goal is not to amend the text, but to build a shopping center.

Vice Chair Wall asked Mr. Haberman what potential risk is there for the County in agreeing to this and then facing these challenges at the development stage? Mr. Haberman responded that this text amendment is not property-specific. Mr. Haberman also stated that situations change in time, so staff believes they can require it at both stages. Ms. Santamaria added that since this is not property-specific, this could affect the entire Lower Keys area, except for Big Pine and No Name. Staff has to ensure that level of service is maintained, and so it is a concern for the County to ensure that what they are approving or recommending can meet those standards that have been adopted in the comp plan.

Chair Werling noted that there are always unintended consequences and wonders what other properties can ride in on this process. Chair Werling then questioned this property's proximity to NAS Key West. Ms. Monnier stated that one of the concerns is any type of FLUM amendment or text amendment that could potentially increase the density in high noise areas. Mr. Trepanier clarified that the proposed amendment would not allow additional mixed use and would not allow residential. This amendment only allows commercial retail, which is a use that can be recommended with sound attenuation in the AICUZ. On this property there is a little bit of the crash zone, which would have to be cleared. Mr. Trepanier stated that this amendment does not affect the industrial district as a whole, nor does it affect the Lower Keys as a whole, but affects only one collection of properties on Rockland Key and a strip of properties on Big Coppitt. In order for it to affect any other property, someone would have to come before the Commission and request a change to their zoning or their FLUM. The applicant has to plan for trip traffic and anticipate it and then go through the complex process of getting the permits.

Commissioner Lustberg voiced concern that if the County changes the LDRs as proposed and then when the actual development comes before the Planning Commission and the concurrency analysis is done, if data comes out in that concurrency analysis that makes the proposal objectionable to the County, the County might be on the losing end of a takings lawsuit. Commissioner Lustberg also believes that these issues in general are much more applicable to the comprehensive plan and should not be dealt with through text amendments. Commissioner Lustberg thinks more analysis is needed if this is to be moved forward.

Chair Werling then asked for public comment.

Don Riggs, president of the Tamarac Park Property Owners' Association (TPPOA), was present on behalf of the association's board of directors and park property owners. Tamarac Park is two-and-a-half miles from the subject property. Mr. Riggs stated that the TPPOA board is not in a position to offer an opinion as to whether this particular property and the proposal submitted meet all of the conditions that would allow commercial use on this property, but they respect the process. The TPPOA board wanted Mr. Riggs to express in general terms the concept of turning underutilized property zoned as industrial into property that allows commercial use that makes use of the land for those purposes such as retail shopping, which is something they support. The TPPOA board believes that rezoning this property from industrial or unused residential is an

opportunity for community betterment. Mr. Riggs then made suggestions of what this property could be used for, including a big box store with groceries.

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

Mr. Trepanier stated in closing that the applicant has inventoried all of the industrial land in the Keys and drafted the application so that it would apply to only one area. In order for this to affect another area, the Planning Commission would have to approve a change to someone else's zoning district and probably their future land use designation. An unintended consequence of this proposal is that there will be an environmental cleanup of a documented brown field, which has to do with in-ground contaminants from previous industrial uses.

Mr. Haberman assured Commissioner Lustberg that an animal shelter would be allowed on this property under the current rules. Mr. Haberman then explained that an applicant has to meet three criteria to be found exempt from NROGO: They are not for profit, they service the community, and that they are Tier III. Mr. Haberman does not know of any form of NROGO exemption available to commercial retail with the exception of redevelopment of existing development.

Commissioner Lustberg then commented that the Livable CommuniKeys plans have been created and have taken a long time to achieve. The most recent one before the Commission was in the Lower Keys and the residents through that process and before the Commissioners at a public hearing repeatedly emphasized that they wanted small development, and that they wanted small commercial retail and other development to be intensely focused in what are called the community development centers. Mr. Haberman clarified that Rockland Key was not within the recent Lower Keys CommuniKeys plan and that the Rockland area is still in need of a CommuniKeys plan. Mr. Haberman agreed that in general the other plans supported small businesses and encouraged smaller developments.

Chair Werling stated that she agrees with the Livable CommuniKeys plan and then noted the loss of retail stores which serve the residents who live in the Keys. Chair Werling believes that this is an extremely appropriate area for this project to be considered in, but also believes work needs to be done on how that can be properly, legally and appropriately done without having other areas follow suit where it would not be appropriate. Chair Werling then asked staff for suggestions as to how this can get to a more amenable situation. Ms. Santamaria responded that staff does not disagree in terms of encouraging commercial development in the future, and staff is currently in the process of developing a commercial FLUM category as well as zoning categories which will address commercial retail for future uses not only in this location, but throughout unincorporated Monroe County. One of the concerns is everybody is talking in site-specific parameters and this is not a site-specific amendment.

Commissioner Wiatt agreed with staff that as a general rule making text amendments to Monroe County code based on individual projects should be avoided. Commissioner Wiatt feels this is more of a zoning issue. Commissioner Wiatt added that while the County has slowed growth through ROGO, it only makes sense that you need to slow commercial growth as well, which NROGO does. Commissioner Wiatt concluded by stating that he does not like the idea of an

NROGO exemption in this text amendment, nor the idea of making text amendments for individual projects, and will not be voting in favor of a text amendment for those reasons.

Commissioners Lustberg believes that this amendment goes against the comprehensive plan because of the Livable CommuniKeys plans, which were done with incredible amounts of public input. Designated community development centers were created through the Livable CommuniKeys plans where communities have decided to encourage increased density and intensity, including commercial retail. Allowing a large scale commercial retail in this industrial area would hurt these other hubs and the community character that goes along with them because it would be much easier for a commercial retail to locate at this location than in the community development centers. Also, in creating the Livable CommuniKeys plans, residents decided to promote small-scale “Keys-y” businesses and to promote redevelopment of existing businesses rather than promoting new businesses. If people change their minds and if people want development that is different from what they created in the Livable CommuniKeys plan, it should go through that same kind of public involvement process. Commissioner Lustberg also believes if NROGO is going to be altered it needs to be done through a public forum, not through exempting that which the community previously decided they did not want to have. Another potential problem is potential takings because what the impacts of this will be are unknown. Commissioner Lustberg disagrees with the projection change assumptions and new issues stated by the applicant as reasons why the LDRs can be changed and does not think that any of the reasons that are needed to do a LDR change have been met.

Commissioner Hale agreed with Commissioners Lustberg and Wiatt and Chair Werling. Although he believes this is a good spot for something like this, he does not believe this is the venue to make a text amendment site-specific, as there could possibly be some unforeseen consequences.

Mr. Haberman explained to Vice Chair Wall that the applicant could approach this by changing the comprehensive plan, which would mean changing the FLUM for this property and then changing the zoning to be allowed to do what they intend to do, but NROGO would still pose a problem for them by having hard caps in urban commercial. Ms. Santamaria added that even though that is a mechanism that could be used, one of the things that must be considered if the applicant went that route is mixed use commercial also allows additional residential uses, which may be an issue with the military amendment just adopted and sent to DEO. Ms. Santamaria stated that there are options, but all of those other issues must be considered that may come into play. Ms. Monnier echoed Ms. Santamaria’s comments from the perspective of the installation that the existing regulations that are in place today have been considered and coordination and different strategies were approached in making sure that continued compatibility is ensured.

Chair Werling agreed that the application does not meet the criteria necessary to consider an approval with the information received thus far and definitely does not want to set a precedent for others to follow and believes there is more work that needs to be done at this juncture.

It was clarified for Vice Chair Wall that for a development such as has been envisioned here to happen at this location, either a zoning category that does not exist now or an existing zoning with restrictions on any residential use is needed, as well as a code change would probably be

necessary. Mr. Haberman stated that it would be hard to say that the Lower Keys Livable CommuniKeys plan contemplated Rockland because Rockland is very different than any of the other Keys. Commissioner Lustberg believes that this development would definitely change community character because it would encourage commercial retail to locate at this location instead of at the hubs as proposed by the Livable CommuniKeys plan.

Motion: Commissioner Lustberg made a motion to recommend to the Board of County Commissioners to reject this application for the reasons discussed today and for the reasons in the written staff report. Commissioner Hale seconded the motion. There was no opposition. The motion passed unanimously.

Commissioner Lustberg then requested staff to inform the Commissioners if this application is substantially different when it goes to the BOCC.

2.AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 130-160, TRANSFERABLE DEVELOPMENT RIGHTS, TO REVISE THE LAND DEVELOPMENT REGULATIONS TO BE CONSISTENT WITH POLICY 101.13.4 OF THE MONROE COUNTY COMPREHENSIVE PLAN; 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 CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2012-035)

(11:58 a.m.) Steven Biel presented the staff report. Mr. Biel reported that this request has been initiated by the Planning and Environmental Resources Department staff to bring consistency between the comp plan and the land use development code. A modification is necessary to address a direct inconsistency with comp plan Policy 101.13.4, which provides criteria for sender sites. The criteria in this policy are not consistent with those set forth in the Monroe County code. Mr. Biel then cited some of the criteria as examples. The land development code is more liberal than the comp plan. Planning staff feels the code should be amended to state the requirements that are included in the comp plan. Staff is also proposing revisions to TDR Section 130-160A to remove references to an improved subdivision lot being a valid receiver site. And finally, staff is proposing revisions to the procedure for obtaining approval. The revisions are necessary in order to clarify the existing process. Staff recommends amending the Monroe County code as stated in the text of the staff report.

Vice Chair Wall questioned if there has ever been a way to use a TDR on an IS lot to circumvent ROGO. Mr. Haberman explained that this has nothing really to do with ROGO, but it has to do with being in compliance before you can get into ROGO. Vice Chair Wall then asked why the language read “Tier I receiver sites shall be discouraged” as opposed to “shall be prohibited.” Mr. Haberman answered that the comp plan does not state “prohibited” yet. Mr. Haberman explained that, as it is worded, it probably would not be anything to deny an application over, but if there was a choice between a Tier III and Tier I lot, the Tier III would be chosen. This could all be changing as part of the comp plan process. Mr. Haberman added that it is language that goes to the spirit of the tier system, which is that Tier I development shall be discouraged in

general. Commissioner Lustberg asked if the Commission could request that the comp plan be amended to have the word “prohibited” included. Mr. Wolfe explained that a motion is not needed, but that historically what has happened is the Commission suggests staff consider that revision in the comp plan. Ms. Santamaria added that is one of the main items being considered.

Motion: Vice Chair Wall made a motion for approval. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY CODE TO ADD SECTION 110-144, UNLAWFUL USES; ESTABLISHING PROCEDURES TO REVIEW AND ACT UPON BUILDING PERMIT APPLICATIONS FOR A SITE WITH A KNOWN UNLAWFUL USE THAT MAY BE PROSECUTED BY CODE COMPLIANCE, 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 CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2012-038)

(12:12 p.m.) Mr. Haberman informed the Commissioners that staff have received some late community comments on this item with some valid concerns about how this might be used. Staff wants to discuss it, but wants to request a continuance to revise the language by the next meeting to have something that addresses these valid concerns. Mr. Haberman explained that Section 6107 in the building code of the County code had language stating that if there was an unlawful use or improvement, building permit approvals could be withheld for anything not related to life safety or public health as a tool to get them to come into compliance. That section was deleted. Staff wants to insert similar language that could be used by Planning staff when there is an unlawful use, but not to the level of unlawful improvements, structures or development. Mr. Haberman asked for comments about whether this is even necessary or what changes the Commissioners would recommend making.

Commissioner Wiatt asked why additional enforcement provisions are being added. Mr. Haberman explained whether the Board approves this or not, there is still code compliance prosecution. That process takes some time, and this mechanism allows staff to not approve a building permit while that process is unfolding. Mr. Haberman clarified that even if an application for a building permit is for something that is perfectly legal on that piece of property, it will be stopped if there are any existing unlawful uses, but not violations. Staff is still debating whether it should apply to the whole property or just permits that would affect that unlawful use.

Commissioner Lustberg brought up the topic from a prior Commission meeting regarding changes in downstairs enclosure procedures. Mr. Haberman responded that this amendment was not designed to look at lower enclosures. This amendment’s intent is if a single-family house that has a full blown business operating out of it is found, to not approve permits that would facilitate that unlawful business, as an example. Commissioner Wiatt again voiced concern with imposing enforcement provisions when they already exist for these kinds of violations. Vice Chair Wall is concerned that uses and structures are being muddled. Mr. Haberman explained

that in some cases an unlawful structure is primarily to facilitate an unlawful use, but in some cases they are very separate issues, and staff is just trying to have this focus on use and use alone.

Motion: Commissioner Lustberg made a motion to continue this until the next meeting, June 27, 2012. Chair Werling interrupted and asked for public comment. There was none. Mr. Haberman then clarified for Commissioner Lustberg that this amendment does not impact non-conformities, which are already addressed rather clearly in the code. Mr. Haberman then described the difference between a non-conforming use and an illegal use. **Commissioner Wiatt 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 CODE SECTIONS 138-28, EVALUATION CRITERIA, AND 138-55, EVALUATION CRITERIA (NROGO); TO ADJUST THE ROGO AND NROGO POINT VALUES TO BE CONSISTENT WITH THE MONROE COUNTY COMPREHENSIVE PLAN; 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 CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.
(File 2012-033)

(12:24 p.m.) Rey Ortiz presented the staff report. Mr. Ortiz reported that the Planning and Environmental Resources Department is proposing two separate text amendments to line up with some comp plan amendments. At the February 13, 2012 meeting the BOCC passed resolution 22-2012, a resolution transmitting to DEO a proposed text amendment to revise comprehensive plan Policies 101.5.4 and 101.5.5, to revise the existing ROGO and NROGO permit allocation scoring system. The Planning Commission on December 1, 2011 reviewed these proposed comprehensive plan amendments and it was passed with P40-11. On the same date the BOCC passed Resolution 24-2012, a resolution to transmit to DEO a proposed text amendment to revise the comp plan, same sections of code, that would revise the permit allocation scoring system by assigning negative point applications for new development in Tier III parcels which contained wetlands and which would require 100 open space that are adjacent or contiguous to Tier I properties. The Planning Commission reviewed this amendment of December 1, 2011 and unanimously recommended approval as memorialized in Resolution P44-2011. On April 24, 2012 the DRC looked this over and concurred. If the text amendments are approved by the DEO, staff would like the approval today to coincide with the approval of the comprehensive plan so they get approved at the same time by BOCC for a clean transition into both.

Commissioner Lustberg questioned if there was a cutoff to the amount of “50 percent or less” language. Mr. Ortiz responded that the purpose for today’s amendment is only to make them consistent for a clean transition. Ms. Santamaria explained that this is for Tier III lots only as an additional layer to discourage development in wetlands because the tier system does not address wetlands. Vice Chair Wall asked if there was a different definition for adjacency when it involved environmental matters than adjacency in other parts of the code. Mr. Haberman explained that the big difference is this refers to adjacent landowners. Ms. Santamaria added that

this also went to the Tier Designation Review Committee, who determined that US-1 would constitute a break to the habitat.

Motion: Commissioner Lustberg made a motion for approval. Vice Chair seconded the motion. There was no opposition. The motion passed unanimously.

5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTIONS 138-19, RATE OF GROWTH ORDINANCE (ROGO), 138-25, APPLICATION PROCEDURES FOR RESIDENTIAL ROGO, 138-47, NONRESIDENTIAL RATE OF GROWTH ORDINANCE, 138-52, APPLICATION PROCEDURES FOR NROGO; TO ESTABLISH A REQUIREMENT THAT A BUILDING PERMIT APPLICATION THAT IS SUBMITTED TO THE BUILDING DEPARTMENT BE REVISED FOLLOWING RECEIPT OF ITS REQUIRED ROGO/NROGO ALLOCATION(S) AND PRIOR TO BUILDING PERMIT ISSUANCE TO MEET ALL BUILDING CODES IN EFFECT AT THE TIME OF BUILDING PERMIT ISSUANCE; 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 CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.
(File 2012-037)

(12:32 p.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that a few months ago the Planning Commission approved a text amendment that recalled the ROGO/NROGO site plan approval process, but it never made it to the BOCC because a series of meetings with the construction industry were held and some of the different issues between staff and the industry were unresolved. Staff feels one facet of that amendment is something that needs to be corrected now, and that is because of the length of time one could sit in ROGO or NROGO, changes in the building code may occur. A new building code was just adopted, so this could be happening a lot over the next coming months. The purpose of this amendment is to say that prior to picking up that building permit, you have to now submit new plans if your plans were affected by the changes in the building code. Changes related to the building code only will have to be made. Another thing that staff is trying to change is requiring that a checklist of items to ensure by code that a proper site plan is submitted as part of a building permit application.

Mr. Haberman clarified for Chair Werling that a minor code change would only require the applicant to show the information necessary to show that the building will be in compliance with the building code, unless the changes in the building code require you to adjust the footprint of the building. Vice Chair Wall questioned the redundancy of the work of the surveyor and the private biologist with regard to calculating areas of different habitats. Mr. Haberman stated that staff will look into that, but Mike Roberts would need to be consulted since that is more for Environmental Resources staff. Vice Chair Wall then asked if a person can be proactive if they are anticipating correcting changes to codes. Mr. Haberman explained that most people wait until after they get the allocation to not affect their scoring.

Motion: Vice Chair Wall made a motion to approve the ordinance. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.

GROWTH MANAGEMENT COMMENTS

Ms. Santamaria gave an update on the comp plan update project. On May 22, 2012 the BOCC adopted the final EAR. The BOCC added a few more strategies at the very end to revise the County's land acquisition strategies as a result of the potential maximum build-out of the Florida Keys based on the hurricane evacuation issues. They also asked that staff look into changing their funding strategy. They also want staff to prioritize the strategies that are included in the EAR. Ms. Santamaria informed the Commissioners that there is another hurricane evacuation work group meeting on June 8, 2012 at 9 or 10 a.m. at the Marathon Government Center. This will be the last meeting of the hurricane board group, and scenario results as well as a draft MOU will be reviewed at this meeting.

Ms. Santamaria further informed the Board that on May 22, 2012 a proposal was taken to the BOCC and they did give staff direction to request scenarios where our ROGO allocations would be redistributed based on vacant lands. The County would receive slightly more allocations than some of the other local governments. Another issue discussed at that meeting was the Board asked for scenarios where the rate of allocations were cut by 10 percent, 25 percent and 50 percent to potentially allow more time to have allocations to spread them out and purchase land in the meantime to try to address any potential takings liability in the future. The last issue that the Board directed was to consider notifying permanent residents to evacuate 36 hours in advance of tropical storm winds. All of these requests have been submitted to the DEO. It will be discussed on June 8, 2012.

Mr. Schwab stated that there is an appeal on the proposed Border Patrol facility up in the Key Largo area. Mr. Schwab asked the Commissioners to consider having a special meeting held in that area.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 12:52 p.m.