

PLANNING COMMISSION  
November 28, 2012  
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, November 28, 2012**, beginning at 10:06 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
Ron Demes, Ex-Officio Member	Present

**STAFF**

Townsley Schwab, Senior Director of Planning and Environmental Resources	Present
Susan Grimsley, Assistant County Attorney	Present
Steve Williams, 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
Emily Schemper, 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**

Ms. Creech reported that she was waiting for an affidavit and pictures to be e-mailed to her on Item 6.

**SWEARING OF COUNTY STAFF**

Mr. Wolfe swore in County staff.

**CHANGES TO THE AGENDA**

Mr. Harvey stated that Items 1 and 2 are related and will be read into the record together, as well as Items 3 and 4. Separate votes will be taken on each agenda item separately.

**APPROVAL OF MINUTES**

There were no minutes for approval.

**MEETING**

**Continued Item:**

**AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** APPROVING AMENDMENTS TO THE TIER OVERLAY DISTRICT MAPS BY ASSIGNING TIER DESIGNATIONS TO APPROXIMATELY EIGHTY (80) PARCELS THROUGHOUT MONROE COUNTY WHICH HAVE NO PREVIOUS DESIGNATED TIER; PROVIDING FOR SEVERABILITY AND REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE SECRETARY OF STATE AND THE STATE LAND PLANNING AGENCY; AND PROVIDING FOR AN EFFECTIVE DATE.

(File 2012-118) Item 5-b continued from 11.14.12

(10:10 a.m.) Mr. Williams informed the Commissioners that staff had considerable discussion with Ocean Reef regarding Pumpkin Key. Map Z of Item 5-b is going to be removed from the packet and removed from the ordinance. The owners of Pumpkin Key have assured staff that the necessary paperwork both from Tallahassee and Ocean Reef will be produced to the County by March. If that does not happen, the County is going to reinstate Pumpkin Key to March solely on its own. Mr. Wolfe reminded the Commissioners that the public comment on all of the other items was completed at the last meeting. Mr. Wolfe then suggested language for a motion.

**Motion: Vice Chair Wall made a motion to approve the ordinance as amended by staff to remove Map Z and with the tier map designations as recommended and approved at the November 14, 2012 meeting. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.**

**New Items:**

**1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING THE FUTURE LAND USE MAP OF THE MONROE COUNTY YEAR 2010 COMPREHENSIVE PLAN FROM RESIDENTIAL MEDIUM (RM) TO MIXED USE/COMMERCIAL (MC) FOR PROPERTY LOCATED AT 104980 OVERSEAS HIGHWAY, KEY LARGO, LOTS 1-5, BLOCK 4, REVISED AMENDED PLAT OF RIVIERA VILLAGE, PB2/P80 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00511220-000000, 00511220-000100, AND 00511220-000101.

(File 2012-097)

**2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING THE LAND USE DISTRICT (ZONING) MAP OF THE MONROE COUNTY LAND DEVELOPMENT CODE FROM IMPROVED SUBDIVISION (IS) TO MIXED USE (MU) FOR PROPERTY LOCATED AT 104980 OVERSEAS HIGHWAY, KEY LARGO, LOTS 1-5, BLOCK 4, REVISED AMENDED PLAT OF RIVIERA VILLAGE, PB2/P80 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00511220-000000, 00511220-000100, AND 00511220-000101.

(File 2012-098)

(10:12 a.m.) Mr. Harvey presented the staff report. Mr. Harvey reported that this is a request from the property owners to amend the FLUM from residential medium to mixed use/commercial and to amend the LUD map from improved subdivision to mixed use. Mr. Harvey then described the property. This property was within a BU2 zoning district prior to 1986 and the property was redesignated to improved subdivision. After 1986 all subsequent permits indicate that the building was being utilized for a commercial use. Staff has concluded that approval of these amendments will remove the existing nonconformity. Staff has conducted a comprehensive density and intensity analysis and concluded that the proposed FLUM and LUD amendments are not anticipated to adversely impact the community character of the surrounding area, nor the adopted level of service standards. The proposed FLUM and LUD amendments are generally consistent with the goals, objectives and policies of the 2010 comprehensive plan, the Key Largo Livable CommuniKeys Plan, the principles for guiding development and Chapter 163 of the Florida Statutes.

Mr. Harvey then cited the six factors used to review and approve LUD amendments. Mr. Harvey explained to Vice Chair Wall that the data error factor includes errors in mapping. When the comp plan was adopted this property was given an IS designation because the lot sizes are IS size lots in that area, but the problem is that this lot fronts on US-1. Residential uses should not be encouraged along that corridor. Ms. Santamaria clarified that this does not apply to all commercial properties along US-1, but just the ones that are believed to be in error. Mr. Harvey noted that one of the major criteria for recommending approval is the impact it would have on community character. Staff has received no comments or calls from any neighbors.

The property owners declined to speak.

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

**Motion: Vice Chair Wall made a motion to approve the FLUM change for these properties. Commissioner Wiatt seconded the motion. There was no opposition. The motion passed unanimously.**

**Motion: Vice Chair Wall made a motion to approve the new zoning designation for these properties. 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 FUTURE LAND USE MAP OF THE MONROE COUNTY YEAR 2010 COMPREHENSIVE PLAN FROM RESIDENTIAL MEDIUM (RM) TO MIXED USE/COMMERCIAL (MC) FOR PROPERTY LOCATED AT 98175 OVERSEAS HIGHWAY, KEY LARGO, LOTS 1 & 2, BLOCK 4, ROCK HARBOR ESTATES, PB3/P187 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00519750-000000.  
(File 2012-111)

**4. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING THE LAND USE DISTRICT (ZONING) MAP OF THE MONROE COUNTY LAND DEVELOPMENT CODE FROM IMPROVED SUBDIVISION (IS) TO SUBURBAN COMMERCIAL (SC) FOR PROPERTY LOCATED AT 98175 OVERSEAS HIGHWAY, KEY LARGO, LOTS 1 & 2, BLOCK 4, ROCK HARBOR ESTATES, PB3/0187 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00519750-000000.  
(File 2012-110)

(10:27 a.m.) Mr. Harvey presented the staff report. Mr. Harvey reported that this is a request by the property owner to amend the FLUM from residential medium to mixed use/commercial and to amend the LUD from improved subdivision to suburban commercial. The suburban commercial zoning for this proposal is consistent with the adjacent suburban commercial on US-1 in this area. Mr. Harvey described the property. The property was within an RU1 district and a BU2 district prior to 1986. After 1986 all subsequent permits indicate that the building was being utilized for commercial retail use. The proposed FLUM amendment and LUD amendment will eliminate the nonconforming use. Staff conducted a density and intensity analysis. The proposed amendments are not anticipated to adversely impact the community character of the surrounding area, nor the adopted levels of service standards. The proposed amendment is generally consistent with the goals, objectives and policies of the 2010 comprehensive plan, the Key Largo Livable CommuniKeys Plan, the principles for guiding development and with Chapter 163 of the Florida Statutes. Mr. Harvey explained that this property falls under the data errors factor because the subject property was constructed as a commercial use with a BU commercial zoning district and the nonconforming use was created with the adoption of the FLUM and the amendment of the LUD map designation to IS.

The applicant, John Kocol, was present to answer any questions or address any concerns. Mr. Kocol was sworn in by Mr. Wolfe.

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

Vice Chair Wall stated that he owns the property next door to the subject property and is strongly in favor of approving this. Vice Chair Wall asked if his recusal was necessary. Mr. Wolfe advised that a recusal would only be necessary if Vice Chair Wall had a financial interest in the outcome, to which Vice Chair Wall responded he did not.

**Motion: Commissioner Wiatt made a motion to approve staff's recommendation to amend the FLUM for the subject property. Commissioner Hale seconded the motion. There was no opposition. The motion passed unanimously.**

**Motion: Commissioner Wiatt made a motion to approve staff's recommendation to amend the LUD designation for the subject property. Commissioner Hale seconded the motion. There was no opposition. The motion passed unanimously.**

**5. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ESTABLISHING MONROE COUNTY CODE SECTION 130-131, ROCKLAND KEY COMMERCIAL RETAIL CENTER OVERLAY DISTRICT; TO CREATE AN OVERLAY DISTRICT ON ROCKLAND KEY THAT ALLOWS COMMERCIAL RETAIL DEVELOPMENT; TO ESTABLISH MAXIMUM FLOOR AREA RATIOS FOR SUCH COMMERCIAL RETAIL DEVELOPMENT; 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)**

(10:39 a.m.) Mr. Haberman presented the staff report. Mr. Harberman reported that this initially came before the Planning Commission as a text amendment to change the permitted uses of the industrial district, with staff recommending denial. The applicant decided not to pursue taking it to the BOCC and repackaged it considering staff's and the Commissioners' comments. It is now being presented as an overlay district which will only go over this industrial district and not pertain to other industrial districts throughout the Keys. This ordinance would allow commercial retail uses at all intensities, but would prohibit commercial apartments and heavy industrial. It would remove all the residential density in the overlay district, but would add a higher FAR than typical for the commercial uses in play. Since the applicant's last appearance before the Planning Commission there was a workshop in the Lower Keys. The community was generally supportive of commercial retail on Rockland Key.

Mr. Haberman stated that there is a sliver of what is being proposed to be in the boundaries that is native area. Mr. Haberman wants to add language in this ordinance that will prohibit any development in a native area designated portion of the district. The applicant has left in a type of use only found in the industrial district of manufacturing, assembly and storage of goods and materials. Since heavy industrial will be prohibited in this district, that creates a conflict. Staff is recommending that there be a cap on building size of 125,000 square feet. Mr. Haberman then gave examples of sizes of buildings to give the Commissioners an idea how big this building would look.

Mr. Haberman explained that the applicant is asking to get the unallocated NROGO in this district to help them build this project. Staff has analyzed this county-wide, not just this one property. Staff is not generally opposed to the idea, but is opposed to the fact that it would be only available immediately for this one given property and does not believe this issue should be addressed in a text amendment, but in the NROGO chapter. Another issue staff is working on is the applicant's proposal to give a certain percentage of floor area or land to public uses. Staff

would like the applicant to fund the building of those public uses. What those public uses would be would be worked out through the conditional use process, but if the determination of who is responsible for the funding of the construction of these types of development is not in the text amendment it is much harder to ask for that as part of the conditional use process. At this time staff does not support the text amendment as drafted by the applicant, but if the recommended changes are made staff would support it.

Mr. Haberman explained to Commissioner Wiatt that commercial retail on any scale would require at a minimum a minor conditional use amendment. If it is over the 10,000 square feet for a parcel, then a major conditional use is required. There is a cap suggested by staff of 125,000 per building, as well as 300,000 in total for the site.

Owen Trepanier, present on behalf of the applicant, was sworn in by Mr. Wolfe. Mr. Trepanier stated that the applicant supports the changes in NROGO being considered by staff, but those changes are not in place today. This concept cannot be achieved the way NROGO is written today. Mr. Trepanier asked to leave the NROGO language in this ordinance and, if the changes occur to the NROGO code, then the NROGO language can be stricken out of this ordinance. Mr. Trepanier explained that the maximum square footage that can be built under the current regulations is a little more than 600,000 square feet. The applicant has proposed a maximum cumulative cap of 500,000 square feet based on the trip generation analysis for this project. Staff has suggested 300,000 as an appropriate square footage. The applicant will accept a 400,000 square foot cap today. This overlay proposes to deal with the mass of the project by allowing no building greater than 50,000 square feet to be located within 600 feet of US-1. The large mass of a building will be in the back of the property, beyond the 600 feet. The applicant would like the larger building that will encompass the principal anchor to be capped at 140,000 with subanchors on each side of 50,000 or less. Because of construction costs and the economy, the applicant would prefer to build one building broken up into three spaces as opposed to three buildings. The applicant has been informed that a potential Target would require 140,000 square feet.

Mr. Trepanier believes the requirement to prove US-1 meets capacity prior to any development approval is unreasonable. Mr. Haberman agreed to revise that language to state the applicant could not apply unless they showed the level of service would be brought up through the development application. Also, Mr. Trepanier feels that the requirement of the developer to set aside an area and then build out a building for the County for which a use is not determined is excessive. Mr. Trepanier then thanked the Commissioners for their input at the previous meeting and asked for the Commissioners' support.

Mr. Trepanier clarified for Commissioner Hale that the applicant believes individual structures need to be limited to 250,000, but individual tenant size could be limited to 140,000. Mr. Haberman pointed out that Target's website states their stores are 126,000 square feet. Staff is willing to work with the applicant on the site cap because that is going to be determined by things such as traffic, but the 125,000 limitation staff is basing on community character.

Mr. Demes commented that because this application proposes an increase in intensity in a moderately high noise area the Navy has concerns. Mr. Demes asked the applicant to consider additional attenuation other than the 30 DB noise level reduction proposed because the majority

of this site is in a 75 DNL noise zone. Although this area is no longer designated within an accident potential zone, weather conditions still dictate that particular runways be used often. Mr. Demes asked the applicant to be sensitive to keep any type of development out of the clear zone. Departures from certain runways could cause certain uses on this project to be unrealistic. The Navy's major concern is any type of residential use, which this particular ordinance would alleviate that concern. The Navy will track how traffic will be dealt with. The Navy will be involved at the front end of the planning of any activities that would obstruct aircraft or interfere with their frequencies.

Chair Werling asked for public comment.

Judy Martinez, Key West resident, was sworn in by Mr. Wolfe. Ms. Martinez stated that people from Key West would drive up to Rockland Key if there was a big Wal-Mart or a Target, as well as people would drive down from north of Rockland Key to shop. Ms. Martinez suggested building up one or two stories if the developer is not allowed to build out. Ms. Martinez does not believe this proposed project would negatively affect the businesses on Duval Street.

Michael Halpern was sworn in by Mr. Wolfe. Mr. Halpern owns six acres on Rockland Key and is strongly in favor of bringing commercial properties to Rockland Key and is strongly against the zoning of Rockland Key parcel by parcel. Mr. Halpern suggested that the proper and fair way to zone Rockland Key is with a master plan that provides for how much square footage the community feels is needed in commercial property, since it is clear that the Navy does not want residential usage on Rockland Key. Mr. Halpern asked that this item be continued so the other property owners in this area can join in the efforts to have Rockland Key master-planned.

Don Riggs, president of Tamarac Park Homeowners Association and chairman of M-10, a coalition of neighborhood and property owner associations in the Lower Keys, was sworn in by Mr. Wolfe. Mr. Riggs stated he is generally supportive of this type of development on Rockland Key. Mr. Riggs also does not believe residential uses would be appropriate in this area. Mr. Riggs stated that a community center is needed in the Lower Keys, which should be paid for by builder impact fees, not County money. Mr. Riggs asked that such a community center should include a warming kitchen, a satellite library or medical office space, as examples.

Bart Smith, Esq. was present on behalf of a property owner in this area, the Toppino family. Mr. Smith stated that his clients support this project moving forward.

Bill Hunter, Sugarloaf Key resident, was sworn in by Mr. Wolfe. Mr. Hunter asked the applicant to explain what his plans might be for funding these community facilities.

Mr. Trepanier then introduced David Garfunkel, who will be the builder and operator of the shopping center, to the Commissioners. Mr. Trepanier clarified that the applicant will be paying for any improvement required on US-1. This overlay will do away with housing within the overlay district. The applicant completely supports Mr. Riggs' position on the community center 100 percent. The way this ordinance is drafted now specifically calls for bike paths and a transit facility to be put in and 5 percent of the buildable floor area to be set aside.

Mr. Garfunkel was then sworn in by Mr. Wolfe. Mr. Garfunkel reiterated that 5 percent of the developable space will be set aside for a public area and the development of that public area would be paid for by impact fees. The applicant likes the idea of bus service with bus stops along with bike paths. This project has been worked on for over three years. No residential is being asked for and nothing is going to be built in a crash zone and all setbacks will be complied with. Mr. Garfunkel's company is a 104-year-old family business. Mr. Garfunkel added that this is a linear development that will not be fronting US-1, it is set in the very back of the property. There is development on the property now in the back of the property that has to be cleaned up. Mr. Garfunkel stated again that he has worked on this project for three years and does not have the luxury of time in terms of pursuing a master plan for this area. This is 32 acres of land. Mr. Garfunkel is very proud of his company's reputation and believes this development will be something that everybody in the Lower Keys is going to be very proud to have. Nothing will be done to overload US-1 at the demise of the other property owners in the area.

Mr. Garfunkel confirmed for Vice Chair Wall that the applicant is amenable to a 140,000 square foot cap for the largest individual building, a 400,000 square foot cap on total square footage, prohibiting anything that has to do with animals being outdoors, and the 5 percent set aside for community area.

Mr. Haberman explained to Mr. Demes that parking is really what limits the amount of outdoor retail allowed in this particular overlay district. Mr. Demes asked that the staff be sensitive to the cultural/entertainment/recreational portions of this development because the Navy considers them to be an incompatible use. Mr. Garfunkel is willing to work with Mr. Demes and staff between now and the BOCC meeting to come up with language that would be suitable and acceptable to the Navy. Mr. Garfunkel then pointed out that one of the shopping centers he developed in Georgia backs up to an airstrip at the largest military base east of the Mississippi and that shopping center is very successful. Mr. Demes responded that the State of Florida continues to protect its public investments, of which NAS-Key West is one of those investments.

Don Riggs asked Mr. Demes if the Navy would oppose this development if it included a community center, to which Mr. Demes responded that each specific use would have to be considered individually, but things that would deal with the quality of life based upon a quiet environment would obviously be discouraged and not recommended. Mr. Haberman clarified that impact fees are very specific in how they can be used in County code and there is not an impact fee for public improvements as has been discussed today. Impact fees are for transportation, community parks, libraries, solid waste, police facilities and employee housing, and those impact fees are not site-specific. Mr. Haberman further clarified that the square footage he cited for specific buildings were averages and staff considers a cap based upon what fits into the community.

Commissioner Wiatt agreed with staff that applying all the previously unused NROGO allocations to one location in the Keys is inherently unfair and that a specific overlay amendment is not the right place to talk about amendments to NROGO. Ms. Santamaria stated the unused NROGO allocations are approximately 400,000. Commissioner Lustberg feels it is unfair to make available years of accumulated NROGO limited to this one piece of property and nobody else has an opportunity to apply for it. Commissioner Lustberg is concerned this could open the

County up to potential lawsuits. Ms. Santamaria noted that 400,000 is the cumulative total of the Upper and Lower Keys banked together. Mr. Haberman explained that currently 2500 is allotted per allocation period and there are two allocation periods per year. Staff in the near future will be taking an amendment to NROGO to the Planning Commission suggesting changes to make it a quicker process for people in the system. Commissioner Hale agreed it is unfair to make banked NROGO available for one specific applicant.

Ms. Santamaria explained to Vice Chair wall that another property owner in the area has filed an application for a FLUM amendment. Staff has not been informed that the property owners would like to join together, so staff is processing the various applications separately at this point. Ms. Santamaria explained to Commissioner Lustberg that staff's proposed commercial future land use category allows for higher intensities, but would be limited by NROGO to 10,000 square feet, or 50,000 if in a community center. Staff has not proposed within the NROGO changes to change the maximum building cap size. Any proposed change to intensity would affect the other properties that are within that same designation.

Vice Chair Wall feels this property is unique because of the large amount of buildable land in an area with so little residential development. Vice Chair Wall also thinks that the limitation of residential development in this area is a significant argument for relaxing the artificial constraints on square footages of commercial development. Ms. Santamaria clarified that staff is not opposed to the use of the banked NROGO, but does not agree with the process of putting it within the overlay district and within the land use chapter. Staff is also concerned about the equity of it going to one site versus being open to the general public. Mr. Trepanier stated that the applicant is happy to agree with staff that the appropriate place to deal with NROGO is in the NROGO section and agreed to have the NROGO language stricken as written in the report. Mr. Haberman then clarified that the NROGO text amendment will be brought before the Planning Commission in January. Chair Werling and Commissioner Lustberg requested that staff bring the changes of how NROGO is allocated under the existing system and the allocation of banked NROGO together. Mr. Haberman explained that creating a zoning category that would have different NROGO requirements or exemption from NROGO would require a comp plan amendment. Exemptions are specifically addressed in the comp plan and do not include any type of commercial redevelopment.

Vice Chair Wall suggested discussing the five issues staff had mentioned in the staff report. The first issue was removing the native area from the process. Mr. Haberman stated that the applicant can choose to revise his next application to show the development away from the native area boundaries or staff can add language along the lines of "Areas designated native area shall not be developed." If the applicant chose to change the boundaries and not include the native area, that would be discussed during the next application. Mr. Trepanier stated the applicant has no preference. Hr. Haberman stated staff prefers to have the change in the text.

The second item, no manufacturing, assembly and storage of materials to do with manufacturing, the applicant agreed to.

The third issue, the cap on the individual building size, the applicant will provide staff with the data and analysis to change the cap from 125,000 to 140,000. Commissioner Lustberg

recommended that the applicant and staff get together to work on this, with the understanding that the Commissioners would prefer to not see over 400,000 as a total cap and the individual cap at not more than 140,000. Mr. Garfunkel agreed. Commissioner Hale stated he has no problem with a 140,000 cap.

Item 4, the unallocated NROGO language, the applicant agreed to remove.

Item 5, public uses, Vice Chair Wall reiterated that the Navy believes this property is a bad location for that. Vice Chair Wall suggested having language written where the project helped to fund something that was defined off-site. Mr. Trepanier responded that the overlay is not defining a use. The overlay calls for the builder to set aside a certain amount of space for a community facility and that use can be defined in the conditional use. Commissioner Lustberg pointed out the discrepancy that the applicant agrees to set aside the 5 percent of the property and staff is requiring them to set aside the land and build the improvements. Mr. Garfunkel agrees to giving 5 percent of the land and whatever impact fees there are will go to whatever it is that the Commissioners would want to do, which does not have to be decided today.

Mr. Demes clarified that even though the majority of the site was at a 75 and above DNL, the portion that is in the 70 DNL should encompass those public-type activities. Mr. Trepanier agreed that the public facility would be located with the 70 DNL zone. Ms. Santamaria mentioned that the reason the public facility was included was in response to community comments. There can be triggers or placements added in the language so the developer does not have to pay the cost of everything up front. Mr. Garfunkel responded that asking him to build something that would allow an area for community use without having knowledge of what that community use will be, how expensive it is going to be to build it and being charged an impact fee on top of that is unfair. Mr. Garfunkel strongly disagrees that it is unfair that one development gets the banked NROGO allocations because anybody could have come and gotten those credits at any time. Mr. Garfunkel stated that industrial Rockland Key should be excluded from NROGO entirely and then the other 400,000 square feet of credits could be utilized by the rest of the Keys. Mr. Garfunkel asked the Commissioners to not delay and let him work with staff and the Navy to get this development completed for the people of the Keys.

Mr. Haberman clarified that it would take a text amendment for anybody to claim unallocated NROGO. The applicant is proposing to do it within this ordinance and staff thinks that request is misplaced. Commissioner Lustberg stated the Planning Commission needs to decide whether this development is appropriate or not appropriate for this property without talking about the intricacies of the community development center, which is not the purpose of the development on this property. Vice Chair Wall agrees with the applicant's argument that not knowing what he is agreeing to in order to move this forward is unreasonable. Commissioner Lustberg suggested recommending to the BOCC the 5 percent set-aside without deciding on the money issue. Vice Chair Wall pointed out that enormous taxes will be generated from this property that could be used to fund public buildings. Commissioner Wiatt stated again that if it is the consensus of the County to make banked NROGO allocations available, everyone should have an equal opportunity to get those. Commissioner Wiatt has no problem with the 5 percent in a 70 DNL area or with staff's recommendations as far as building size and total size, and would not have a problem with increasing those caps.

Commissioner Lustberg asked for clarification under Required Public Improvements in Item 5. Mr. Wolfe suggested that if a motion to approve is crafted, it be a motion to approve as recommended by staff with enumerated changes. Mr. Haberman stated that the applicant and staff will get the language for the Traffic Impact section worked out. Commissioner Lustberg then asked for clarification on the language in Required US-1 Improvements. Mr. Haberman explained that the language can be made clear by stating that required US-1 improvements will only be required for development that require a major conditional use, which is something over 10,000 square feet of retail, or they have to do it for anything, which might be a bit extreme. Mr. Haberman then suggested removing “major” in front of “conditional use.” Mr. Trepanier agreed with that refinement. Mr. Trepanier clarified for Commissioner Lustberg that a habitable structure under Sound Attenuation does not imply building of any residential units, but was just used to differentiate what will be soundproofed. Mr. Haberman assured Commissioner Lustberg that all recommendations that the Planning Commission makes today will be included in what is presented to the BOCC.

Commissioner Lustberg asked if there is a way to include a bonding requirement so the County has the money to deal with a vacant structure if this building becomes vacant in the future or construction is not completed. Mr. Haberman explained that as part of a conditional use the Planning Commission can require the applicant to show that they have the money to complete the project, but requiring something be done if the property becomes vacant in the future oversteps the Planning Commission’s purview. Mr. Garfunkel responded that a lender puts serious reserves in the loan amount so monies are there to take care of future tenants’ needs, but the only assurance Mr. Garfunkel can give is that the project will be delivered like it is supposed to be delivered. Mr. Haberman explained that a performance bond could be requested by the Planning Commission. Mr. Wolfe suggested that construction bonds should be handled in the conditional use approval process rather than putting it into the overlay district text amendment.

**Motion: Commissioner Wiatt made a motion for approval with staff’s recommendations, including: A 140,000 square foot building cap if the data and analysis supports it; a 400,000 square foot total site cap; removal of the requirement that relates to the applicant funding the construction of the public improvements related to the community center; removal of the term “major” under Required US-1 Improvements; areas designated native area cannot be built upon; no enclosed spaces are to fall within the areas of the property designated as 75 or above DNL; as well as those recommendations as modified in Item 5, numbered 1 through 8. Vice Chair Wall seconded the motion. The roll was called with the following results: Commissioner Hale, Yes; Vice Chair Wall, Yes; Commissioner Lustberg, No; Commissioner Wiatt, Yes; and Chair Werling, Yes. The motion passed four to one.**

**6.AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE LAND USE DISTRICT (ZONING) MAP TO ESTABLISH THE BOUNDARIES OF THE ROCKLAND KEY COMMERCIAL RETAIL CENTER OVERLAY DISTRICT, AS SET FORTH IN SECTION 130-131 OF THE MONROE COUNTY CODE, FOR PROPERTY LEGALLY DESCRIBED AS PARCELS OF LAND IN PART OF GOVERNMENT LOT 7, SECTION 21, TOWNSHIP 67 SOUTH, RANGE 26 EAST,**

ROCKLAND KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00122070.000200, 00122070.000201, 00122070.000400, 00122070.000500, 00122070.000600, 00122080.000200, 00122080.000300, 00122080.000303 AND 00122080.000304.

(File 2012-142)

(1:15 p.m.) Mr. Haberman presented the staff report. Mr. Haberman reported that a map amendment application and a text amendment have to be separate processes, because the text amendment is going to change the land development code and the map amendment is going to change the land use district map. This amendment would establish the boundaries for what can happen in the previous discussion, Agenda Item 5, regarding 33 acres on the northwestern half of Rockland Key. The native area concern was removed in the last recommendation. Staff recommended approval if the previous application is approved.

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

**Motion: Vice Chair Wall made a motion to approve. Commissioner Wiatt seconded the motion. The roll was called with the following results: Commissioner Hale, Yes; Vice Chair Wall, Yes; Commissioner Lustberg, No; Commissioner Wiatt, Yes; and Chair Werling, Yes. The motion passed four to one.**

### **BOARD DISCUSSION**

Mr. Haberman clarified for Commission Lustberg that the Planning Commission will be looking at two different concepts to address the NROGO issue: Give it all out on a first come/first served basis at the beginning of the year with scoring still being accomplished; or distribute it up to 10,000 four times a year so people do not have to wait as long for what is made available. There are smaller revisions that will be proposed. These changes will not require a change to the comp plan.

Ms. Grimsley asked the Commissioners for direction in dealing with evidence received at the last minute. Commissioner Lustberg believes a short submission indicating favor for an item or not would be acceptable, but not pages of facts that may or may not be relevant that nobody else has access to. Chair Werling believes the Commission absolutely has to adhere to the time rule. Mr. Wolfe explained that late submissions included in the Commissioners' packets are not posted on the website, so the public is not seeing it. Chair Werling suggested the Commissioners think about this and bring back their comments to the next meeting.

Chair Werling expressed sincere thanks and appreciation to Vice Chair Wall for his years of hard work and dedication to the Planning Commission.

### **ADJOURNMENT**

The Monroe County Planning Commission meeting was adjourned at 1:30 p.m.