

**DEVELOPMENT REVIEW COMMITTEE**

**Tuesday, May 26, 2015**

**MEETING MINUTES**

The Monroe County Development Review Committee conducted a meeting on **Tuesday, May 26, 2015**, beginning at 1:00 p.m. at the Marathon Government Center, Media & Conference Room (1<sup>st</sup> floor, rear hallway), 2798 Overseas Highway, Marathon, Florida.

**CALL TO ORDER**

**ROLL CALL** by Gail Creech

**DRC MEMBERS**

Mayte Santamaria, Senior Director of Planning and Environmental Resources	Present
Mike Roberts, Sr. Administrator, Environmental Resources	Present

**STAFF**

Steve Williams, Assistant County Attorney	Present
Rey Ortiz, Planning & Biological Plans Examiner Supervisor	Present
Lori Lehr, Floodplain Administrator	Present
Tiffany Stankiewicz, Development Administrator	Present
Matt Coyle, Senior Planner	Present
Gail Creech, Planning Commission Coordinator	Present

**CHANGES TO THE AGENDA**

There were no changes to the agenda.

**MINUTES FOR APPROVAL**

Ms. Santamaria approved the minutes of the April 28, 2015, DRC meeting with one correction of a section number that will be submitted to Ms. Creech.

**MEETING**

**New Items:**

**1.99700 Overseas Highway, Key Largo, mile marker 99:** A public meeting concerning a request for a major deviation to a major conditional use permit. The requested approval is required for the proposed development to increase the existing walk-in cooler and to increase the size of the existing bathrooms which would increase the amount of non-residential floor area on the property. The subject property is legally described as Lazy Lagoon – A revision of Amended Plat of Curry’s Corner, Plat Book 2, Page 120 of public records, Monroe County, Section 33, Township 63 South, Range 39 East, Key Largo, Monroe County, Florida (legal description in metes and bounds is provided in the application/file), having real estate number 00497540.000000.

(File 2015-093)

(1:01 p.m.) Mr. Ortiz presented the staff report. Mr. Ortiz reported that the applicant is requesting a major deviation to a major conditional use application. The applicant wants to expand the bathroom by approximately six square feet, add a modular component to the rear of the building for a walk-in cooler and expand an existing cooler that is currently within the setbacks on the rear property line. The only criteria not met is regarding the variance requirement that the site is going to need. Mr. Ortiz recommends approval to the Planning Commission with conditions. Those conditions were outlined. Ms. Santamaria confirmed that the applicant has submitted a variance application.

Hany Haroun, the applicant, emphasized that this renovation is necessary. Many hours have been spent with Wendy's International and the County to make this work. The new kitchen configuration in the center of the restaurant is a requirement from Wendy's International, which takes away from the cooler/freezer space and the current storage area. The extension for the sides is due to making the bathrooms ADA compliant. None of this will be visible from the front. The only setback issue is for the cooler/freezer.

Ms. Santamaria asked for public comment.

Dottie Moses, Key Largo resident, does not object to what is being asked for. Ms. Moses likes the proposed landscaping along the highway. Ms. Moses commented on the poor drainage that exists on the property. Mr. Haroun explained that the main road was built to drain out towards Buttonwood Drive and consequently it floods there all the time. That is on the County right-of-way. The County and State agreed to dig out the French drain and fill it with gravel to address the flooding problems. The tides also affect the drainage in this area. Ms. Santamaria noted when building permits are applied for the applicant will have to comply with the stormwater requirements. Mr. Williams suggested that the applicant provide some documentation from Wendy's International to show the hardship imposed on the applicant for purposes of the variance. Mr. Ortiz asked the applicant to provide an updated site plan.

**2.AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING MONROE COUNTY COMPREHENSIVE PLAN POLICY 101.4.26 TO PROVIDE AN EXCEPTION TO THE HEIGHT LIMIT FOR WIND TURBINES OWNED AND OPERATED BY A PUBLIC UTILITY; CREATING POLICY 101.5.31 TO ADDRESS NON-HABITABLE ARCHITECTURAL DECORATIVE FEATURES WITHIN THE OCEAN REEF COMMUNITY; AND CREATING POLICIES 101.5.32 AND 101.5.33 TO PROVIDE CERTAIN EXCEPTIONS TO THE HEIGHT LIMIT IN ORDER TO PROTECT PROPERTY FROM FLOODING AND REDUCE FLOOD INSURANCE COSTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE.  
(File 2015-006)

(1:12 p.m.) Ms. Santamaria presented the staff report. Ms. Santamaria reported that this item started with the comp plan update. There were policies to amend the height policies, address the wind turbines, affordable housing and the flood protection. The BOCC asked staff to process this as a separate stand-alone amendment. This was before the DRC in March where a lot of comments were received. The flood protection policy generated concerns about the overall height exception. Staff has proposed a policy that includes the reasons why there would be an exception with a max height limit of 40 feet and it would be to elevate property three feet above base flood elevation (BFE). The exception for new buildings is to exceed BFE, not just to meet it, up to three feet above BFE. The exception for lawfully existing buildings is to either meet or exceed BFE because there are circumstances, depending on the flood zone, where this exception will not allow you to exceed BFE. If it is exceeded, it is only that amount it is exceeded that one gets to go above BFE. Again, it is capped at 40 feet. The exception would not be allowed in high-risk areas.

Ms. Santamaria introduced Ms. Lehr and asked for an update and information on flood zones.

Ms. Lehr explained that one of her roles is to help the County get into the Community Rating System (CRS) program, which would result in some discount in flood insurance. When property owners voluntarily elevate their properties they get a reduced premium on their flood insurance. For every foot of elevation, the savings is about a quarter of the premium. After the cap of three feet, the discounts fall off. The cost to elevate a property is recouped quickly in flood insurance savings. Ms. Lehr believes the future of the Florida Building Code and other legislation is going to be moving towards the implementation of some sort of freeboard, some sort of elevation requirement above BFE. Ms. Lehr further explained the County is going through a mapping process currently. It will be 2018 before those new maps come out, but the general feeling of those maps is that the elevations in some areas will increase, so the required elevations will increase.

Ms. Lehr clarified for Ms. Moses a community has to require a higher regulatory standard above what is required on the flood insurance rate amounts to get CRS credit. Florida in general has some of the highest scoring communities in the nation. Ms. Lehr believes Monroe County is doing a lot of things to address the flooding that will be worth CRS credit. There will be changes in the Florida Building Code coming up in the next couple of years to address BFE. Ms. Santamaria explained the CRS does not address the top height, so the BOCC gave staff direction to look into elevating the height limit so home owners are not squeezed in from the top, causing homes to become smaller and smaller. Ms. Lehr noted that credits are being given for existing buildings being elevated as opposed to rebuilt. The CRS program is very adamant that communities do what is good for their floodplain management and protection of their citizens' investments.

Ron Miller, Planning Commissioner and Key Largo resident, questioned why the County has become concerned about someone losing habitable space in their structure, because in URM parking spaces were required to be under homes, which takes away from habitable space. Ms. Santamaria clarified this proposal is not zoning-specific. Mr. Miller feels homeowners should be amenable to some give-and-take in the loss of some habitable space. Mr. Miller believes the people interested in more living space and more stories are those who are renting illegally. Ms.

Santamaria clarified that the BOCC has become aware of the new FEMA maps coming out and want Monroe County to get into the CRS and help the community better protect their property and investments. So they have directed staff to address this issue by allowing people to make that financial choice themselves. The whole intent was to better protect our community.

Bill Hunter, Sugarloaf resident, suggested that a definition of “elevate” be proposed. Mr. Hunter mentioned different scenarios of what could fall under the definition of “elevate.” Ms. Santamaria said that staff will consider and look into those different scenarios. Ms. Lehr clarified if a bottom floor was knocked out and used for parking with penthouses built on top of the structure, those structures would still be limited by the height restriction from BFE. Ms. Santamaria noted that Policy 101.5.33 is for lawfully established existing buildings which already exceed the 35-foot height limit and a top cap of 40 feet is in place unless the owners go to a public hearing before the BOCC. Mr. Hunter then asked for an explanation of why the different numbers of 38 and 40 feet are used. Ms. Santamaria explained that discounts are given for one, two and three feet above BFE. Since discounts are not given above that, the new buildings were capped at 38 feet. The 40-foot limit was added for existing buildings in case they needed to raise their property a little bit higher because they do not meet base flood today. Ms. Lehr clarified that the flood insurance policy associated with a structure would receive a different rating because of the elevation of that property. The discount for CRS is completely different. The discount for CRS could be in addition to the different rating on the insurance policy for an elevation. Ms. Santamaria noted that no exception will be given to either new or existing structures in AE10 through VE10. That came from the comments made at prior DRC meetings about not facilitating redevelopment or new development in higher-risk areas.

Mr. Hunter stated he agrees with Mr. Miller about the ability of Monroe County citizens to live under the 35-foot height limit, but is more sympathetic to the owners of existing homes than to new construction. Mr. Miller is concerned for the properties in such a high AE or VE that they would not be able to develop a home that was attractive. Mr. Miller proposed keeping the 35-foot height limit in the comp plan and allowing for a variance for those so limited that they would not be able to develop something architecturally acceptable to the community. Ms. Santamaria stated it would be difficult to create a variance for architectural or visual issues. There is no real hardship in that instance.

Naja Girard, Key West resident, commented that people are more concerned over encouraging new development in AE and VE areas as opposed to elevating existing homes in those areas. Mr. Miller agrees with limiting infrastructure in flood-prone areas, but feels a minimal-size house could be able to punch through the height barrier if the owners could show a hardship when asking for a variance. Ms. Lehr explained that the CRS does not take away points. The CRS program credits activity. Prohibiting development in high-risk areas is credited under the CRS. The emphasis of the program has always been to build safer, more resilient communities.

Jim Hendrick was present on behalf of Ocean Reef Community Association (ORCA) regarding Policy 101.5.31. Mr. Hendrick stated Ocean Reef is an isolated and gated community with a distinct community character. The planning process in Ocean Reef is very tough. Mr. Hendrick said Ocean Reef would like the extra five feet for architectural features. The largest concern with this policy for Ocean Reef is its cultural center. The cultural center does not have the head

room needed to be able to house events that could potentially be put on at this facility. Mr. Hendrick asked for a height limit unique to the Ocean Reef Cultural Center, which was built and paid for by the people of Ocean Reef. Another concern that ORCA has is that any multi-story building in existence on the effective date of this policy be able to replace their existing number of stories up to 11 feet slab to slab per story. The Ocean Reef hotels are currently dated with a ceiling height of only eight feet. Ms. Santamaria noted that at the last meeting Joel Reed presented this information on behalf of Ocean Reef Club. Staff had asked for an inventory of existing heights of the various structures throughout Ocean Reef. Nothing has been received to date. Mr. Hendrick will send the complete list to Ms. Santamaria. Mr. Hendrick emphasized this is being asked to apply to Ocean Reef only, which is isolated and does have a distinct community character.

Deb Curlee, resident of the Lower Keys, noted that Ocean Reef is still part of Monroe County. Mr. Hendrick replied there is an abundant body of policy already recognizing the unique circumstances of Ocean Reef. Ms. Santamaria asked that Ocean Reef consider proposing an Ocean Reef specific overlay to address height issues in Ocean Reef. Mr. Hendrick replied Ocean Reef has a very effective self-governance program within the community. Ms. Santamaria asked that the information regarding the various heights as well as the total heights at Ocean Reef be sent in to help staff understand what the request is from Ocean Reef. Mr. Hendrick then explained for Ms. Girard how Ocean Reef is self-governed.

Ms. Moses stated the Federation is opposed to punching through the height limit and they feel that the 35-foot height limit has been accommodating and there is still room for elevating the floodplain. Ms. Girard on behalf of Last Stand stated that a majority of the properties should be able to elevate the buildings as much as needed and still have adequate living space. Last Stand would like to see this turned into a hardship situation that would have to be triggered to go through the height barrier.

Mr. Miller asked what would happen to those properties whose flood zone was changed due to the FEMA flood maps. Ms. Santamaria reminded Mr. Miller that no exceptions being given to properties in AE10 or VE10 or higher was a result of members of the community not wanting to facilitate development of homes within those flood zones. The owners of those properties would have to work within the rules or not build at all. Ms. Santamaria then confirmed for Mr. Hunter that reconstructed structures in Policy 101.5.33 includes those that are demolished and rebuilt. Ms. Santamaria explained that the BOCC resolution that specifies the maximum approved height is done on a building-by-building basis. There is currently no limit to that height because it is not known what would be needed to meet base flood. Ms. Santamaria explained that buildings over 35 feet currently could only rebuild to 35 feet if they were wiped out by a hurricane.

Ms. Curlee asked why no caps are placed in Policy 101.5.33. Ms. Santamaria replied that building heights would be different depending on how it was measured. Ideas were proposed for the BOCC to consider when making the decision on how high they can go. Mr. Hunter suggested considering the community's desire to limit the height. Ms. Santamaria noted a public hearing would require surrounding property owner notices being sent out.

Mr. Haroun stated he finds it unreasonable to not allow a condo to be built back up so that no owners would lose their living space. Ms. Santamaria pointed out that is why a flood exception is being proposed for those property owners. Mr. Miller noted that his concern is not whether they can build back what they had or not, but his concern is that the potential for more habitable space in this county is being increased as a result of seeking relief from sea level rise.

Ms. Santamaria then stated the affordable housing has been struck from this proposal at this point in time. Staff will work with the BOCC and the Affordable Housing Committee further in that regard. The other item in this stand-alone amendment is the wind turbines owned and operated by a public utility. At the last meeting members of the public asked what the results were from the Keys Energy demonstration project. It was concluded that the wind towers have been proven to be ineffective. Ms. Moses proposed striking this item altogether. Ms. Girard stated on behalf of Last Stand they would like to see the whole exception to the wind turbines stricken. If someone comes forward and proposes a great plan in the future, then it can be looked at with specific considerations in mind.

Ms. Santamaria stated the plan is to bring this amendment back to the DRC and get more data for community-specific amendments. It will be brought back as two items: One as a comp plan and an LDR for more discussion and more input.

**3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING MONROE COUNTY COMPREHENSIVE PLAN CREATING A DEFINITION OF OFFSHORE ISLAND; AMENDING POLICIES 101.5.8 AND 101.13.5 WITHIN THE FUTURE LAND USE ELEMENT AND POLICY 207.1.2 WITHIN THE CONSERVATION AND COASTAL MANAGEMENT ELEMENT TO FURTHER CLARIFY THE DEVELOPMENT OF OFFSHORE ISLANDS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE.

(File 2015-007)

(2:38 p.m.) Ms. Santamaria presented the staff report. Ms. Santamaria reported that this amendment has stemmed from the comprehensive plan update process. There was a lot of discussion on where to direct and how to direct development in the future and if it is appropriate to go to offshore islands. The BOCC asked staff to remove this from the general comp plan update and process it as a stand-alone amendment. The definition of “offshore island” has been included. The new provision is that TDRs and TREs would not be allowed to transfer to an offshore island.

Ms. Santamaria asked for public comment.

Attorney Nick Batty was present on behalf of FEB Corporation with respect to Wisteria Island. Mr. Batty stated the issues that FEB has with this proposed amendment pertain to the receiver sites for TREs have to be within a Tier III designated area and must not be an offshore island. Policy 206.1.2 provides that Monroe County shall discourage the development

of offshore islands which have no prior development and have significant upland habitat by discouraging the extension of public facilities and designating the offshore islands as Tier I. That makes a scenario where ROGO exemptions cannot be transferred to those islands and at the same time bumps them down to a Tier I level for the ROGO allocation program. Mr. Batty pointed out there is no definition proposed for “significant upland habitat.” Significant upland habitat does not necessarily coincide with environmentally sensitive areas. As a result, areas like Wisteria Island, which does not have significant areas of environmentally sensitive habitat, would by default be lumped in with a Tier I designation, which is contrary to the intent of the code. Bumping them down to a Tier I in terms of the ROGO allocation system and not allowing any transfers of TREs to the area would result in a situation where there would be no beneficial uses for the properties. Mr. Roberts replied that using the blanket and undefined term “significant upland habitat” does not account for the differences in the natural features of those properties and effectuate the intent of the Tier I and Tier III definitions. Ms. Santamaria added that no changes are being proposed to the Tier III criteria for designating any land. Mr. Batty replied that islands which currently do not have a tier designation and would fit whatever the definition is determined to be of “significant upland habitat” and have no prior development would be pushed into that Tier I category without any other consideration. Ms. Santamaria stated no particular tier designation is being proposed for any offshore island. This is simply policy, not property specific. Ms. Santamaria will review this further and consider proposing a definition for “significant upland habitat.”

Ms. Girard, on behalf of Last Stand, stated it makes very little difference what is on the upland, whether or not there even is upland, because offshore islands are surrounded by shallow waters and environmentally sensitive benthic resources and are important for avian species. Ms. Girard emphasized a survey containing 76 different species of native plants and a report regarding the importance of Wisteria Island for the white crown pigeons a couple of hundred feet away from Wisteria Island are on file with the County. Last Stand thinks it is extremely appropriate that offshore islands be given Tier I designations and that they not be considered as receiver sites because they are inappropriate for development in a county that has a limited number of ROGOs and is basically facing build-out. Ms. Santamaria clarified that this is not a property-specific amendment. Ms. Santamaria further clarified that the tier designations are based on upland habitat. Mr. Roberts clarified for Ms. Girard that native areas that provide corridors or wildlife access between other larger native areas are part of the Tier I designation. Mr. Batty pointed out it is important to make sure the intent of the code is being effectuated.

Ms. Santamaria asked for further public comment. There was none. Public comment was closed.

Ms. Santamaria stated staff will review all the comments made and will look at defining “significant upland habitat” and bring this back to the DRC for one more round of public input before taking it to the Planning Commission.

### **ADJOURNMENT**

The Development Review Committee meeting was adjourned at 2:55 p.m.