

**DEVELOPMENT REVIEW COMMITTEE**

**Tuesday, October 27, 2015**

**MEETING MINUTES**

The Monroe County Development Review Committee conducted a meeting on **Tuesday, October 27, 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, Senior Administrator, Environmental Resources	Present
Emily Schemper, Comprehensive Planning Manager	Present
Kevin Bond, Planning & Development Review Manager	Present

**STAFF**

Devin Rains, Senior Planner	Present
Gail Creech, Planning Commission Coordinator	Present

**CHANGES TO THE AGENDA**

Ms. Santamaria asked that Items 2 and 3 be read together.

**MINUTES FOR APPROVAL**

Ms. Santamaria approved the meeting minutes of July 28, 2015, August 25, 2015, and September 29, 2015.

**MEETING**

**New Items:**

**1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM SUBURBAN COMMERCIAL (SC) TO MIXED USE (MU), FOR PROPERTY LOCATED AT 28500 AND 28540 OVERSEAS HIGHWAY, LITTLE TORCH KEY, MILE MARKER 28.5 OCEANSIDE, LEGALLY DESCRIBED AS PARCELS OF LAND IN A PART OF U.S. GOVERNMENT LOT 6, SECTION 28, TOWNSHIP 66 SOUTH, RANGE 29 EAST, LITTLE TORCH KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00113570-000000, 00113570-000100, 00113570-000200, 00113590-000000 AND 00113620-000000, AS PROPOSED BY PATRICK R AND DIANE COLEE, DOLPHIN MARINA ASSOCIATES LTD AND TORCH KEY PROPERTIES LTD; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING

PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE LAND USE DISTRICT (ZONING) MAP; PROVIDING FOR AN EFFECTIVE DATE.  
(2015-152)

Mr. Bond presented the staff report. Mr. Bond reported that this is a land use district map amendment from Suburban Commercial to Mixed Use. The property is located oceanside on Little Torch Key and serves as a land base for the Little Palm Island. There is no FLUM change required for this proposed amendment. The property was described. Mr. Bond stated the change in development potential between the two districts would result in a reduction of eight permanent residential units, a slight increase in max net density, a net zero change in transient development potential and no change in commercial development potential. The change would open up the possibility of some uses that are currently prohibited within the SC district. Staff has evaluated the proposed amendment and found it is consistent with the comprehensive plan and that the request does fall under two provisions of the code: Number 4, new issues; and 6, data updates, primarily due to the Lower Keys Livable CommuniKeys Plan (LCP). It is consistent with the Lower Keys LCP. Staff recommended approval of the proposed amendment.

James Hendrick was present on behalf of the applicant and commended staff on their memorandum.

Ms. Santamaria asked for public comment.

Dottie Moses, Key Largo resident, asked why the applicant is changing the zoning Ms. Santamaria replied that the applicant wants to have a use their current zoning does not allow, which will reduce the overall allocated density, but they can transfer in up to 11 more units through TDRs. Mr. Hendrick assured Ms. Moses that the applicant is definitely not interested in having a light industrial use on the property.

Bill Hunter, Sugarloaf Key resident, asked for clarification on the justification for the request. Mr. Bond explained that there are seven different factors by which map amendments are to be evaluated. Any one of those factors can be a justification for map amendment approval. Number 4 is new issues, the new Lower Keys LCP, which was not in effect prior, and Number 6, data updates, which is the LCP that was not in effect at the time of their original zoning. The Lower Keys LCP is not inconsistent and is new data in the County's files. Mr. Hendrick noted that the applicant has other rationale for the proposed change.

Deb Curlee, Cudjoe Key resident, asked for clarification on what is being proposed to be on the property. Ms. Santamaria responded that this is a map amendment only and the specific development is not the subject of the amendment. Mr. Hendrick offered to e-mail Ms. Curlee an outline of the proposed development. Mr. Bond explained for Ms. Curlee that with the map amendment staff evaluates what the potential is, not what they specifically may or may not be planning to do. Anything listed as a major or minor conditional use would go through the review process and, if the applicant meets all of those conditions staff would have no basis for saying no and would approve it. Ms. Creech and Mr. Bond confirmed that no negative feedback was received from any neighbors.

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

**2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING MONROE COUNTY COMPREHENSIVE PLAN CREATING POLICY 101.5.31 TO ADDRESS HEIGHT EXCEPTIONS FOR NON-HABITABLE ARCHITECTURAL DECORATIVE FEATURES WITHIN THE OCEAN REEF MASTER PLANNED 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)

**3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING MONROE COUNTY LAND DEVELOPMENT CODE AMENDING SECTION 101-1 TO CREATE DEFINITIONS RELATED TO FLOOD PROTECTION HEIGHT EXCEPTIONS; AND AMENDING SECTION 130-187 TO PROVIDE CERTAIN EXCEPTIONS TO THE HEIGHT LIMIT IN ORDER TO PROTECT PROPERTY FROM FLOODING AND REDUCE FLOOD INSURANCE COSTS AND TO ADDRESS HEIGHT EXCEPTIONS FOR NON-HABITABLE ARCHITECTURAL DECORATIVE FEATURES WITHIN THE OCEAN REEF MASTER PLANNED COMMUNITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE. (File #2015-171)

Ms. Santamaria presented the staff report. Ms. Santamaria reported that this is the fourth DRC meeting on the proposed comp plan amendments for the height provisions. The BOCC asked staff to work on the height policies that were in the comp plan update and process them separately so that they could be fully vetted and worked through as one topic versus within the entire comp plan update. The previous various staff reports are attached to show how these amendments have been revised. Ms. Santamaria stated there is a proposed policy change to Policy 101.5.3 to incorporate the height definition that is in the code today into the comp plan as well. That height is defined as “The vertical distance between grade and the highest part of the structure.”

Ms. Santamaria reported that the next amendment is to Policy 101.5.31, Ocean Reef-specific, related to non-habitable architectural decorative features. This would allow these features to be above the roof line of those homes up to five feet. The overall height of those structures still cannot exceed a 40-foot height limit. There are no differences between this version and what was presented at the last DRC meeting regarding this policy.

Mr. Hendrick, present on behalf of Ocean Reef, stated Policy 101.5.31 does not address Ocean Reef's needs. Ocean Reef had asked for three things. Mr. Hendrick acknowledged that staff has not received the additional information it had requested. Mr. Hendrick stated Ocean Reef contains several buildings which now greatly exceed the 35-foot height limitation, do not comply with flood, and Ocean Reef would like for them to be elevated. Mr. Hendrick submitted a document detailing what Ocean Reef is asking for with regard to the corresponding Land Development Code. Mr. Hendrick continued to explain that Ocean Reef is most concerned about the lawfully established existing buildings which exceed 35 feet and do not meet flood. There is no mechanism in the proposed policies which allows for those buildings to be made flood-compliant as-of-right. Mr. Hendrick pointed out that Ocean Reef is a master-planned community, completely isolated from the rest of Monroe County, and they have established their own community character, which is not 35 feet in height. Ocean Reef would ask for a policy which enables them to replace their existing buildings, floor for floor, to allow for flood compliance. Ocean Reef would also like to increase their slab-to-slab height in building to be consistent with what people expect when they go to a luxury resort. Mr. Hendrick then stated Ocean Reef is concerned about their cultural center because that building cannot accommodate the fly space that is needed. Ms. Santamaria confirmed that staff has not received information from Ocean Reef that they have requested. Staff needs more information so they can evaluate and understand what is being requested. Staff has not received information on the Ocean Reef Cultural Center.

Dottie Moses, speaking on behalf of Island of Key Largo Federation of Homeowners, voiced concern these policies could spill over into Unincorporated Monroe County. Ms. Curlee agreed. Ms. Santamaria explained that staff would like to start to move this item toward the Planning Commission unless members of the public would like to have another DRC meeting to get more input. Alicia Putney, speaking on behalf of Last Stand, reiterated what Ms. Moses stated regarding spillover into Monroe County.

Ms. Santamaria then reported that the next proposed amendment is to Policy 101.5.32, and this is to create a flood protection height exception up to five feet above the 35-foot height limits to allow buildings to go three feet above their base flood elevation. In no event under this policy will a building be over 40 feet. The policy is specific to new buildings and for existing buildings. If the building is not being elevated to meet at least the required base flood elevation this exception cannot be used at all. This exception would not be provided for buildings located in the very hazardous flood zones.

Ms. Santamaria asked for public comment.

Ms. Moses commented that adding an extra three feet to meet base flood elevation should be allowed with the 35-foot height limit remaining. Ms. Moses does not see the need for this amendment for new construction. Ms. Santamaria explained that staff does not know how many homes there are in the County below base flood right now. Staff is working on getting information from the Property Appraiser to see if somehow that information can be extrapolated, but it is not available at this time. Ms. Santamaria confirmed for Ms. Moses that this policy refers to elevating existing structures. If a house is torn down it must be rebuilt to a 35-foot height limit. Ms. Santamaria then explained between the last DRC meeting and today the

language has been reorganized a bit, but it is the same information. Language has been added that if a building is not being elevated to at least meet base flood it is not eligible for this exception. This exception shall also apply to the substantial improvement of buildings, whether voluntary or not.

Ms. Putney stated that it would be helpful to know what the FEMA maps will show. Ms. Putney then noted that with new construction, although there may be a hardship involved, it can be made to work within the 35-foot height limit. Ms. Moses stated the Federation opposes raising the 35-foot height limit on new construction. Ms. Moses shared a newsletter written by Dennis Henize, a retired meteorologist, stating that communities should be thinking in terms of decelerating growth, especially in the eyes of sea level rise. Ms. Putney pointed out that pre-FIRM, January 1, 1975, people built on the ground mostly and built a small enough house that they could afford to lose. With insurance, houses got bigger, higher and fancier. Citizens need to open up their minds to reverting back to smaller homes given sea level rise and FEMA.

Ms. Santamaria then reported that Policy 101.5.33 is another flood protection height exception, but this is for lawfully established existing buildings which already exceed the 35-foot height limit. If a lawfully established existing building which already exceeds the 35-foot height limit wants to rebuild over 40 feet, they would have to go before the BOCC and meet specific criteria. The BOCC would then decide and specify the height that they could build to. Ms. Santamaria reviewed the criteria used by the BOCC to evaluate the request. The BOCC would have to pass a resolution stating which height a homeowner could build to. Ms. Santamaria explained there are condo structures where clearly units would be lost if redeveloped at the 35-foot height limit.

Ms. Moses pointed out the amendment, as written, does not apply to only multi-tenant buildings, but would apply to any building. Ms. Santamaria added that the public can suggest a provision that this is for multi-family structures only. Ms. Curlee agreed with that suggestion. Ms. Moses noted that previously Legal staff had referred to a Bert Harris implication when discussing this. Ms. Santamaria stated at the next meeting there will be an attorney present who will be able to address that. Mr. Hunter asked if there are any commercial buildings that fall into this category. Ms. Santamaria is unaware of any, but stated that does not mean there is not one in existence. Ms. Moses asked what effect raising some of the low roads would have on this. Ms. Santamaria explained that grade is either natural elevation or crown of the road, whichever is higher. Ms. Moses believes that could exacerbate things.

Mr. Hendrick commented that there are many commercial buildings throughout the County over 35 feet. Mr. Hendrick stated Ocean Reef has a boat barn well over 35 feet. They have real concerns because they would like to elevate, but if they do they are going to lose rack space when they already cannot supply the need that they have. Mr. Hendrick then asked that the words "building envelope" be substituted with "building footprint" to be able to modernize these spaces. Ms. Santamaria confirmed for Mr. Hunter that boat barns would fall within the definition of "building."

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

**4. 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)

Ms. Santamaria presented the staff report. Ms. Santamaria reported that this item started with the comp plan update in dealing with amendments that prohibited transferable ROGO exemptions and transferable density from going to an offshore island. After numerous public comments the BOCC asked staff to extract those amendments from the overall comp plan update and process them separately. This amendment reflects the comp plan update. This proposed amendment is to Policy 101.6.8, which is the transfer of ROGO exemptions. The existing text in the staff report for this policy is already included in the comp plan update and has been transmitted to the State with the exception of Receiver Site Criteria Number 6, which says it is not an offshore island. This is a separate stand-alone amendment so focus can be placed on this one topic. Policy 101.13.3, which is the transfer of development rights, has been transmitted to the State with the EAR-based amendments except for Receiver Site Criteria Number 7, which states it is not an offshore island. That also reflects the initial amendment in the comp plan update the BOCC asked staff to extract and process separately. Policy 206.1.2 had an added statement not transmitted with the comp plan update regarding discouraging the development of offshore islands. This added statement has been struck for consideration and still includes existing policies in the comp plan that offshore islands should be designated as Tier I and it has the existing policy that development shall be prohibited on offshore islands, including spoil islands which have been documented as an established bird rookery based on resource agency best available data or survey. Staff is proposing a definition for the entity “offshore island” as “Offshore Island means an area of land surrounded by water which is not directly or indirectly connected to US-1 by a bridge, road or causeway.”

Ms. Santamaria asked for public comment.

Lance Kyle, owner of an offshore island in Monroe County, asked for an explanation of “severability” as used in the agenda. Ms. Santamaria explained that the one provision of offshore island could be appealed and extracted out without overturning the rest of the ordinance and keeping it from becoming effective. Ms. Santamaria further explained for Mr. Kyle that she believes the ten-acre size determination came from the ’86 code. Mr. Roberts clarified for Mr. Kyle that the fact that his island is only 800 feet from US-1 does not give it any kind of special consideration.

Gidget Jackson asked whether there is any flexibility in the restricted use for the islands for camping. Ms. Santamaria responded that the zoning category allows for camping of the owner

only. Law enforcement would have to be called for trespassers on an offshore island. Mr. Hendrick confirmed that the ten-acre determination did come from the '86 code, if not before.

Bart Smith, Esquire, was present on behalf of FEB Corp. Mr. Smith asked staff to look closely at whether it is necessary to prohibit transferring TREs onto offshore islands because TREs take pressure off of the allocation system and offshore islands are already limited in density to .1 per acre. There are restrictions in place that require all of the development potential be in place with the correct development requirements. Mr. Smith agreed with the prior comments made by Ms. Dick on behalf of Last Stand regarding the redundancy of the language in 206.1.2 because that is already provided for in the policy as written. Mr. Smith believes the citation to the ALJ order from 2006 regarding the four-acre threshold was incorrect. Mr. Smith stated now that the language that defines "significant upland habitat" has been eliminated and the term "offshore island" is being added to the defined terms of the glossary the policies identify when development on offshore islands should be prohibited is based on the documentation of an established bird rookery or nesting area. Those terms are not defined in the comprehensive plan and the land development regulations and should be. Without having a quantifiable or objectionable criteria for what an established bird rookery or nesting area is it could be left to interpretation. FEB Corp. has retained Phil Frank, a well-respected biologist in the community, to put together a proposed definition for "established bird rookery or nesting area." Copies of the definition were submitted to staff. Mr. Frank then explained how he worked through the definition and what he reviewed in order to come up with that definition. Mr. Frank stated the common theme in the definitions as cited by different authorities is the words "communal nesting, gregarious birds, prominent colonies, colony forming, gregarious colony." Mr. Smith read aloud the proposed definition. Mr. Smith believes if this term that is utilized for the absolute prohibition of development is not defined it will be left open to interpretation that will be fought over for years to come.

Ms. Santamaria stated that part of the reasons a definition for "bird rookery" is not proposed in this amendment is that in the comp plan update the definition as "A communal nesting ground for gregarious birds" was included, as well as a definition for "nesting area." This has been transmitted to the State. Ms. Santamaria read aloud the definition for "nesting area." Mr. Frank pointed out that passerine birds are not listed in the definition and should be. Mr. Smith stated he is concerned that the definition for "nesting area" is too broad and could prohibit development on any offshore island.

Ms. Curlee noted that solitary birds, which are not included in the definition, are equally as important. Ms. Curlee does not agree with Mr. Frank's definition, but does agree with staff's. Mr. Smith believes the definition needs to be clarified so that arguments are not made that all offshore islands are nesting islands.

Julie Dick of the Everglades Law Center, present on behalf of Last Stand and Florida Keys Environmental Fund, re-emphasized that offshore islands are the last place to be encouraging development because they are not connected to public facilities and are some of the most environmentally sensitive areas in the entire Keys. Development rights should not be moved to offshore islands because they are the hardest areas to evacuate. Ms. Dick disagreed with Mr. Smith that TREs should not have the restriction on transferring receiver sites to offshore islands.

Ms. Dick appreciates staff removing the confusing and redundant new language in Policy 206.1.2, but continues to believe the entire policy should be removed. Ms. Dick stated Last Stand and Florida Keys Environmental Fund will likely support staff's existing definition over what has been proposed today, but will need time to confer on that.

Mr. Hendrick, speaking on behalf of himself, stated he fully supports the idea of protecting bird rookeries, but feels that it seems illogical to focus and protect nesting areas on offshore islands because nesting areas are located everywhere. Ms. Santamaria clarified Policy 206.1.2 does not actually refer to nesting areas. Mr. Frank commented when the comp plan was written back in 1986 the bird rookeries were teased out as special resources. Mr. Smith noted that is why using one definition is preferable. Ms. Dick clarified Last Stand and Florida Keys Environmental Fund fully supports the language protecting nesting areas. Ms. Dick then noted that Mr. Smith is here on behalf of FEB, who does not own Wisteria Island, and questions their interest in the matter. Ms. Santamaria emphasized the ordinance does not speak to a particular island, but would apply to anything that falls within the definition of offshore island.

Mr. Kyle asked whether the term "nest" implies that the island has to have some sort of tree canopy of bush canopy. Mr. Roberts replied not necessarily, because there are a number of shore birds and wading birds that are ground-nesters. Mr. Kyle then commented that 90 percent of the speck islands in the County are transient, so the evacuation time issue seems to be somewhat discounted. Ms. Santamaria then explained to Mr. Kyle in detail how the phased evacuation process occurs. Ms. Dick re-emphasized that evacuation is a real concern for Monroe County citizens and it is a safety threat for everyone in the county if the evacuation predictions are not correct. That situation adds further weight to the need to reduce added risk to the evacuation formula by allowing further development on offshore islands.

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

Ms. Santamaria asked the public if they prefer to bring this back to DRC one more time or move this forward to the Planning Commission. Mr. Smith, on behalf of FEB Corp., stated they would like to see how concerns over nesting areas are going to be resolved prior to bringing it to the Planning Commission because it affects all offshore islands. Ms. Santamaria agreed to bring this matter back to the DRC one more time for safe measure.

### **ADJOURNMENT**

The Development Review Committee meeting was adjourned at 2:45 p.m.