

**DEVELOPMENT REVIEW COMMITTEE**

**Tuesday, June 28, 2016**

**MEETING MINUTES**

The Monroe County Development Review Committee conducted a meeting on **Tuesday, June 28, 2016**, 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**

Peter Morris, Assistant County Attorney	Present
Gail Creech, Sr. Planning Commission Coordinator	Present

**CHANGES TO THE AGENDA**

There were no changes to the agenda. Ms. Santamaria asked that Items 3 and 4 be read together.

**MINUTES FOR APPROVAL**

Ms. Santamaria approved the meeting minutes of March 29, 2016, and April 26, 2016, with no changes.

**MEETING**

**New Items:**

**1.Eager Family Limited Partnership, LP (Sender) and 97450 Overseas Highway, Key Largo, Playa Largo Resort, mile marker 97.5 (Receiver Site):**A public meeting concerning a request for a Minor Conditional Use Permit. The requested approval is required for the transfer of five (5) Transferrable ROGO Exemptions (TRES) from the sender to the receiver site. The sender units are recognized through a settlement agreement between the Eager Family Limited Partnership and Monroe County, dated March 21, 2007, recorded as document #1636107 in book #2284, pages #1469-1475 of the records of the Monroe County, Florida, Clerk. The receiver site is described as Tracts 4B and 5B, Amended Plat of Mandalay (PB2-25), and also a tract of submerged land in the Bay of Florida fronting said Tract 5B, (TIIF Deed No. 22416), Key Largo, Monroe County, Florida, having real estate number 00555010.000000.  
(File 2016-066)

Ms. Schemper presented the staff report. Ms. Schemper reported that this is an application from Playa Largo Resort to transfer five transient ROGO exemptions (TREs) from the Eager Family Limited Partnership to the property where Playa Largo Hotel is being built. This is a unique situation in that the sender units are not attached to a physical property location, but are held by certificate based on a settlement agreement from 2007. Based on the settlement agreement the County recognized 28 TREs belonging to the Eager Family for transient units which can be used in accordance with the regulations of the current Land Development Code at the time of transfer. It is specified that the TREs may be transferred to any planning subarea, although this is a transfer to the Upper Keys, from where they originated. As of the date of this report zero of those 28 TREs have been transferred. The applicant is requesting five of them be transferred to Playa Largo. Ms. Schemper described the receiver site. Almost everything is built at this point, and the final building will be the structure that houses the hotel rooms that need these TREs. The total number of TREs required to complete their 177-room project is 23.

Ms. Schemper further reported that staff has found, after reviewing the application against Monroe County Code Section 138-22, everything is in compliance either with how the code reads or, in the case of the eligibility of the sender units, because of the settlement agreement they are recognized by the certificate. All required criteria is in order. The conditions for issuance of a permit have been adjusted slightly because these TREs are held by certificate and not on a physical property. Staff recommends approval for the transfer of five TREs with three conditions. Ms. Schemper read those conditions aloud.

There were no comments on this item from staff nor the applicant's representative, Jorge Cepero.

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

**2.Eager Family Limited Partnership, LP (Sender) and 97801 Overseas Highway, Key Largo, PL Ocean Residence Holdings, LLC, mile marker 98 (Receiver Site):** A public meeting concerning a request for a Minor Conditional Use Permit. The requested approval is required for the transfer of 4.66 Transferrable Development Rights (TDRs) from the sender to the receiver site. The sender units are recognized through a settlement agreement between the Eager Family Limited Partnership and Monroe County, dated March 21, 2007, recorded as document #1636107 in book #2284, pages #1469-1475 of the records of the Monroe County, Florida, Clerk. The receiver site is described as five (5) parcels of land located in Sections 5 and 6, Township 62 South, Range 39 East, Key Largo, Monroe County, Florida, having real estate numbers 00090810.000000, 00090820.000000, 00090840.000000, 00090840.000100, and 00090860.000000.  
(File 2016-066)

Ms. Schemper presented the staff report. Ms. Schemper reported that this item is related to the same settlement agreement referenced in Agenda Item 1. In that settlement agreement the County recognized 4.66 transfer development rights (TDRs) belonging to the Eager Family. The applicant is requesting approval of the minor conditional use permit to transfer those 4.66 TDRs to a receiver site, the PL Ocean Residence site, which is related to the Playa Largo site, but is on the oceanside at Mile Marker 98. Ms. Schemper noted at the top of Page 2 of the staff report the

receiver site should be listed as PL Ocean Residence Holdings with the address of 97801 Overseas Highway. Ms. Schemper described the receiver site. Ms. Schemper stated that in March of 2016 a development order was issued for a minor conditional use permit for this site for the development of 24 attached dwelling units as affordable housing and 28 detached units as market rate housing, as well as the associated amenities. That conditional use permit states that 7.6 TDRs must be transferred to the site in order to build the 21<sup>st</sup> through 28<sup>th</sup> detached market rate dwelling units. These 4.66 TDRs count towards that required 7.66.

Ms. Schemper continued to report that staff found, after review of the application against Monroe County Code Section 130-160, compliance with all of the requirements for TDRs. Ms. Schemper clarified that normally TDRs are rounded to the nearest tenth, but because the settlement agreement specifically recognized 4.66 they will be transferred that way. Like with the TREs, these TDRs are not connected to a physical property location, but are held on a certificate, which affects the conditions of how this will be approved in terms of retiring them. Ms. Schemper then pointed out one of the requirements for TDRs for density purposes is that the maximum net density cannot be exceeded on the receiver site. The combination of market rate units and affordable units on the minor conditional use permit approval comes out to a cumulative total of 89.4 percent of their maximum net density allowance. If for some reason the site is not developed under that minor conditional use permit, but the transfer had already happened, the max net density for market rate would still not be exceeded, which allows them 44.2 dwelling units. Staff recommends approval of the transfer of 4.66 TDRs to the receiver site with three conditions. Ms. Schemper read aloud those conditions as contained in the staff report.

There were no comments from staff, nor the applicant's representative, Jorge Cepero.

Ms. Santamaria asked for public comment.

Deb Curlee, resident of Cudjoe Key, asked about the number and range of affordable units proposed. Ms. Schemper replied that 24 out of 52 will be affordable, which are voluntary affordables, not required. Mr. Cepero added that the range has not yet been determined.

Jill Patterson, a neighboring property owner, thanked the applicant for recently putting down pea rock on the property that helped control the dust. Ms. Patterson asked about the inclusion of an acceleration and deceleration lane. Ms. Schemper explained that the applicant is required to coordinate with DOT and staff has received a notice of intent that shows that DOT has reviewed the project. The requirement from DOT is unknown at this point. A DOT permit is required before the County will CO any of the units. Ms. Santamaria clarified for Ms. Patterson that even though a DOT representative is noticed of the DRC meetings, they do not always attend. Ms. Santamaria further clarified that the deceleration lane would not be part of this approval, but would be part of the minor conditional use that was approved in March of 2016. Ms. Patterson believes the traffic entering the property and possibly backing up onto US-1 is a safety concern. Ms. Santamaria assured Ms. Patterson that the County has coordinated with DOT on that particular issue, but DOT will ultimately make the decision on what is required. Ms. Patterson then asked about required parking on the property. Ms. Schemper confirmed the parking requirement, which is two spaces per unit, has been met.

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

**3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING MONROE COUNTY YEAR 2030 COMPREHENSIVE PLAN POLICIES 101.5.29 AND 101.3.10, TO ALLOW LAWFULLY ESTABLISHED TRANSIENT UNITS TO BE ENTITLED TO A DENSITY OF ONE TRANSIENT UNIT PER LAWFULLY ESTABLISHED TRANSIENT UNIT AND NOT BE CONSIDERED NONCONFORMING AS TO DENSITY, TO ALLOW THE DENSITY OF LAWFULLY ESTABLISHED TRANSIENT UNITS TO BE REPLACED WITH THE SAME DENSITY OF PERMANENT AFFORDABLE HOUSING DWELLING UNITS NOTWITHSTANDING DENSITY LIMITATIONS OF THE FUTURE LAND USE MAP CATEGORIES AND SUBJECT TO THE AWARD OF AFFORDABLE ROGO ALLOCATIONS, AND TO ALLOW CERTAIN TRANSIENT ROGO EXEMPTIONS REPLACED BY AFFORDABLE HOUSING ROGO ALLOCATIONS TO BE TRANSFERRED BETWEEN SUBAREAS AND BETWEEN LOCAL GOVERNMENT JURISDICTIONS; 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 2016-046)

**4. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING MONROE COUNTY CODE SECTION 130-163, EXISTING RESIDENTIAL DWELLINGS, TO ALLOW LAWFULLY ESTABLISHED TRANSIENT UNITS TO BE ENTITLED TO A DENSITY OF ONE TRANSIENT UNIT PER LAWFULLY ESTABLISHED TRANSIENT UNIT AND NOT BE CONSIDERED NONCONFORMING AS TO DENSITY, TO ALLOW THE DENSITY OF LAWFULLY ESTABLISHED TRANSIENT UNITS TO BE REPLACED WITH THE SAME DENSITY OF PERMANENT AFFORDABLE HOUSING DWELING UNITS NOTWITHSTANDING DENSITY LIMITATIONS OF THE LAND USE (ZONING) DISTRICTS AND SUBJECT TO THE AWARD OF AFFORDABLE ROGO ALLOCATIONS; 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 2016-047)

Ms. Schemper provided the staff report. Ms. Schemper reported that the applicant is requesting to amend Policies 101.5.29 and 101.3.10 of the comprehensive plan, which are the new policy numbers under the recently adopted and effective comprehensive plan, as well as a similar amendment to Section 130-163 of the Land Development Code (LDC). The LDC update is not yet effective, so the staff report shows the proposed changes by staff that have been adopted, but not effective, and the changes by the applicant. The section number did not change.

Ms. Schemper explained that the applicant is requesting to amend the policies so that lawfully established transient units are entitled to replace those units at the same density with affordable housing even if it is over the maximum net density of the future land use category or zoning

category. The result would be that then the transient unit development goes away on that property, is replaced by affordable, and it could potentially then transfer the ROGOs for the transients elsewhere. However, the affordables would require affordable ROGOs to replace them on that site. Ms. Schemper emphasized that no ROGOs are being added to the pool and no additional exemptions are being created that did not previously exist. The applicant has told staff that the primary purpose of this amendment is to incentivize a provision of affordable housing, and a secondary effect will be to incentivize the redevelopment of aging hotel and motel infrastructure. Those two issues were identified during the Monroe County Evaluation and Appraisal Report (EAR) and comprehensive plan update process. The applicant has provided over 400 pages of documents that were used as supporting data for the EAR and the data and analysis and technical document for the comp plan update.

Ms. Schemper continued to report that staff has reviewed the applicant's position and supporting documentation and agrees that inadequate availability of affordable housing is currently a primary issue facing the residents of Unincorporated Monroe County. Staff also acknowledges that the EAR's major issues analysis from 2012 identified aging hotel/motel infrastructure as an economic sustainability issue for Unincorporated Monroe County. The EAR pointed out that only 25 percent of the hotel rooms in all of the Keys are located in unincorporated portions of the county. Of those hotel rooms in the unincorporated county, over half were within structures over 40 years, which is considered the useful life of a building, and by 2030 85 percent of those hotel/motel structures will have surpassed their useful life. The EAR recommended providing incentives for redevelopment of existing outdated hotel and tourist facilities.

Ms. Schemper explained the proposed amendment to Policy 101.5.29 includes changing the term "dwelling unit" with "permanent dwelling unit." The following paragraph is proposed to be added: "Lawfully established transient units recognized by the County shall be entitled to a density of one transient dwelling unit per each recognized lawfully established transient unit and shall not be considered as nonconforming to the density provisions of Policy 101.5.25 in the Monroe County Code. To further the purposes and goals of the housing element in the comprehensive plan, transient units and associated transient density recognized pursuant to this policy and the code may be replaced on a unit-per-unit basis with affordable housing units pursuant to a development agreement."

Ms. Schemper then discussed the proposed change to the code, which is very similar. The adopted LDC update wording for Section 130-163 did not change significantly from what is currently effective, which states: "Notwithstanding the provisions of Sections 130-157 and 130-162, the owners of land upon which a lawfully established dwelling unit, mobile home or transient unit exists shall be entitled to one dwelling unit for each type of dwelling unit in existence before January 4, 1996. Such lawfully established dwelling unit shall not be considered nonconforming as to density." The applicant is proposing to not change that paragraph at all, but just add to the end of it: "Lawfully established transient units recognized by the County shall be entitled to a density of one transient dwelling unit per each recognized lawfully established transient unit and shall not be considered as nonconforming to the density provisions of the code. Transient units and associated transient density may be replaced on a unit-per-unit basis with affordable housing units pursuant to a development agreement."

Ms. Schemper stated that the applicant argues that the comp plan amendments will offer opportunities to develop affordable housing at higher densities than the max net density currently allowed on sites that are already developed and it will thereby incentivize additional development of affordable dwelling units. Staff recognizes that this does conflict with the County's current regulations that require a site that is proposing a change of use to develop the site in conformance with all adopted standards and regulations. Ms. Schemper listed the conflicting policies. Ms. Schemper noted that even though staff is concerned about internal consistency with the comp plan for this proposal, staff is supportive of the requirement for a development agreement and has recommendations for additional detail to be added to the proposed policy. Staff is proposing that the same eligibility criteria be required that the TREs and the TDRs require. Staff would also recommend that the sites with existing transient units that are proposed to be redeveloped with affordable housing under this proposed policy be limited to a development plan that is exclusively affordable housing, not a combined development plan. Ms. Santamaria noted this is because staff recognizes potential nonconforming density and is trying to cap it and not exceed it even more by adding conditional uses. Ms. Schemper continued to state that staff would also recommend that any proposed affordable housing units under this policy be subject to the same minimum size requirements as inclusionary housing is subject to in Section 130-161, a minimum of 400 square feet. Staff is recommending that if the intention is to reuse the existing hotel structure for the proposed affordable housing, it must be subject to the same life safety inspection requirements already in place in Section 130-161. Similarly, these buildings that would be reused would be subject to compliance with the hurricane standards established by the Building Code and habitable standards established under the Florida Landlord and Tenant Act. The next staff recommendation is that the amendment clearly states that the affordable units replacing the transient unit density on the site are subject to ROGO and must obtain an affordable ROGO allocation before a building permit is issued. Also, that the amendment explicitly state that any transfer of the transient ROGO exemptions are subject to the TRE requirements of Policy 101.6.8.

Ms. Schemper then explained that the proposed changes to the LDC are almost identical except for applicable section numbers. Ms. Schemper read aloud staff's recommended amendment of Policy 101.5.29 as shown on Pages 8 and 9 of the staff report.

Ms. Schemper reported that the second policy in the comprehensive plan that the applicant is proposing to change is Policy 101.3.10 by adding the following phrase: "Notwithstanding any other provision of the plan, ROGO allocations utilized for affordable housing projects, and transient ROGO exemptions replaced by affordable housing pursuant to Policy 101.5.29, may be pooled and transferred between ROGO subareas, excluding Big Pine Key/No Name Key subareas, and between local government jurisdictions within the Florida Keys Area of Critical State Concern. Any such transfer between local government jurisdictions must be accomplished through an interlocal agreement between the sending and receiving local governments." Pursuant to the current Policy 101.3.10 in the newly adopted 2030 comprehensive plan, ROGO allocations for affordable housing projects can be transferred between ROGO subareas and may be transferred between jurisdictions within the Florida Keys through an interlocal agreement. All other ROGO transfers are subject to the requirement for TREs outlined in Policy 101.6.8. The applicant is proposing that transient ROGOs that have been replaced by affordable housing

units under the previous requested amendment to Policy 101.5.29 may also be transferred to subareas between local government and jurisdictions. They argue that this will incentivize affordable housing development and also the redevelopment of housing and hotel/motel sites.

Ms. Schemper further reported that staff's analysis showed that there are over 8,000 vacant undeveloped parcels in the County that are under private ownership. The number of permits to be issued under ROGO between 2013 and 2023 is limited to 1,970. Consequently, over 6,000 privately held vacant parcels will still be at risk of not obtaining permits in the future. The applicant's proposal allowing the transfer of some of these transients to the incorporated parts of the county would in theory create an even greater number of parcels at risk within the Unincorporated County. The incorporated jurisdictions within the county do not have the same imbalance of permit allocations versus vacant private land, so staff believes the ability to receive transferred transient ROGO allocations would not serve the same purpose in eliminating parcels at risk for the incorporated jurisdictions as it does in the Unincorporated County. The applicant has argued that this would encourage the redevelopment of aging hotel and motel sites and further economic development within the county. Ms. Schemper again pointed out, as identified in the EAR, only 25 percent of the hotel rooms within the entire county are within the unincorporated parts and transferring the already limited supply of hotel transient units out of the Unincorporated County jurisdiction actually takes away from the economic sustainability of the Unincorporated County, reduces tourism revenue and does not further the Unincorporated County's economy. Staff recommends that this proposed change to Policy 101.3.10 be removed entirely from the applicant's proposal and the policy be left as it is.

Ms. Santamaria asked for staff comments. Mr. Roberts asked that stormwater management facilities be added to the list of infrastructure that should be in place within Policy 101.5.29(b). Mr. Roberts wonders whether "no removal of native vegetation" should be added to that policy, although since the policy is limited to Tier III properties that is probably not a critical issue.

The applicant's agent, Kevin Sullivan of Trepanier & Associates, commented that these amendments are a tool to try to address the affordable housing crisis. Mr. Sullivan disagrees with the removal of the second proposed amendment and asked that the County consider some transfer between subareas. Ms. Santamaria asked that the applicant review that and provide some analysis on why moving units further down the county would be a good thing considering the impact that would have on hurricane evacuation and the number of wetland habitats located in the Lower Keys. Mr. Sullivan then referred to the second paragraph of the staff-recommended language and proposed the language "with affordable housing units subject to the award or transfer of" be included. Ms. Santamaria agreed that an affordable unit can be transferred in. Mr. Sullivan also requested "as a permitted use or conditional use" be added. Ms. Schemper noted that is what the language means. Mr. Sullivan further requested "et cetera" be removed from the end of Sub B.

Mr. Sullivan stated the applicant does not object to stormwater facilities being added, but wants to make sure the applicant could upgrade under whatever the LOS umbrella is. Ms. Santamaria confirmed they can upgrade and will have to come into compliance. Mr. Sullivan mentioned the double-dip policy for affordable housing commercial and asked that some sort of minimal FAR be considered. Ms. Santamaria replied that analysis on why that would be appropriate would

have to be provided considering the nonconforming extra density being added. Mr. Sullivan asked if Sub H should happen later rather than prior to approval of the development agreement. Ms. Santamaria explained that since the data shows that so many hotel structures are past their useful life, staff wants to know in advance that they can be redeveloped and repaired so that affordable housing is not being put into substandard structures. Mr. Sullivan will also look to provide some analysis for Sub K. Ms. Schemper asked if Mr. Sullivan is agreeable to allowing staff to rewrite the second proposed paragraph regarding the award of transfer of affordable ROGOs. Mr. Sullivan asked that similar language to that of Sub J be used.

Ms. Santamaria asked for public comment.

Bill Hunter, resident of Sugarloaf Key, pointed out that moving transient units off of a property and acquiring affordable ROGOs and building affordable units can be done currently. Ms. Santamaria explained to Mr. Hunter that this application is not site-specific, but would apply to any site where TREs would potentially be recognized and they would be recognized in terms of their density for redevelopment of affordable and with the conditions added if that zoning and future land use designation allows permanent residential units. Discussion followed regarding the number of hotel rooms that currently exist in the county. Mr. Hunter asked if the requirements to meet life safety standards include elevation for flood. Ms. Santamaria replied it does not, but currently nonresidential uses can flood-proof, where residential structures cannot. So if a building is going to be reused, the bottom floor would have to be made into parking or storage or be removed so the actual units are elevated above flood. Mr. Sullivan noted that the text amendments are not site-specific, but the development agreement that is required via the text amendments will be site-specific. Ms. Santamaria explained that is one of the reasons a life safety inspection will be conducted prior to the development agreement.

Ms. Santamaria confirmed that what these amendments anticipates being done can be done today, but this would memorialize nonconforming density. This is a county-wide change, but staff does not have a complete data set of the location and the number of transient units that are lawfully recognized within Unincorporated Monroe County. Mr. Hunter is concerned with how severe and how large the nonconformities might be. Mr. Hunter asked if there is anticipation of no variances for things like open space, parking and setback, to which Ms. Santamaria replied it has not been anticipated, but may be considered. Mr. Hunter believes anyone who is going to build under these amendments is going to build to the maximum extent possible. Mr. Hunter feels that adding a condition that no variances will be given for parking, setback, open space, etc., would be more acceptable to the public. Mr. Sullivan thinks prohibiting the possibility for variances from the get-go takes away from the incentive behind this. Ms. Santamaria summarized the public discussion that an applicant should try to come into compliance to the maximum extent practicable without getting additional variances considering the nonconformities that already exist. Mr. Sullivan is agreeable with the “to the maximum extent practicable” language.

Ms. Curlee wonders what the purpose of the amendments would be since converting transient to affordable is allowed currently. Ms. Schemper explained that this is about density, not the ROGOs. Ms. Curlee believes the change from transient to permanent will result in a negative impact with even more people not having to evacuate 48 hours out. Ms. Santamaria explained

that is why the provision was added to require a ROGO allocation. Ms. Curlee is alarmed at the change in the character of the Keys replacing hotel rooms with affordable housing would cause.

Mr. Hunter stated he would be more comfortable if this were an overlay and not a development agreement to allow the community more input. Mr. Hunter asked why the word “permanent” has been inserted into staff’s proposed language on Page 8. Ms. Santamaria explained it was to distinguish between the permanent units already recognized versus a transient unit whose nonconforming densities are not recognized today.

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

Mr. Sullivan will let Ms. Santamaria know in the near future if the applicant will be submitting revisions and data support for staff to review. Ms. Santamaria informed those present that staff will be considering comments made today both by the applicant and the members of the public.

### **ADJOURNMENT**

The Development Review Committee meeting was adjourned at 2:25 p.m.