

PLANNING COMMISSION
June 23, 2010
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, June 23, 2010**, beginning at 10:05 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL by Debby Tedesco

PLANNING COMMISSION MEMBERS

Randy Wall, Chairman	Present
Denise Werling	Present
Jeb Hale	Present
James Cameron	Present
Elizabeth Lustberg	Present

STAFF

Townsley Schwab, Sr. Director-Planning and Environmental Resources	Present
Susan Grimsley, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mike Roberts, Senior Administrator, Environmental Resources	Present
Mitch Harvey, Comprehensive Plan Manager	Present
Tiffany Stankiewicz, Dev. Administrator.-Planning and Environmental Resources	Present
Rich Jones, Senior Administrator, Marine Resources	Present
Ron Demes, U.S. Navy Liaison	Present
Debby Tedesco, Planning Commission Coordinator	Present

COUNTY RESOLUTION 131-92 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

Debby Tedesco confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

All staff intending to speak were sworn in by John Wolfe.

MINUTES FOR APPROVAL

Motion: Commissioner Cameron made a motion to approve the April 28, 2010 minutes. Commissioner Werling seconded the motion. There was no opposition. The motion passed unanimously.

CHANGES TO THE AGENDA

Debby Tedesco informed the Commissioners that both parties' attorneys agreed to continue Item 2 to the September 8, 2010 meeting due to health issues of Mr. Kula.

Motion: Commissioner Cameron made a motion to continue Item 2 to the September 8, 2010 meeting. Commissioner Werling seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

Item 1. A public hearing to consider and finalize the ranking of applications in the Dwelling Unit Allocation System for the January 13, 2010 through April 12, 2010 ROGO quarter (3rd Quarter Year 18). Building permits will be allocated for all unincorporated Monroe County.

(10:09 a.m.) Tiffany Stankiewicz recommended approval of the residential dwelling units allocation for the Upper Keys sub-area to the following market rate applicants ranked 2 through 12 and 15. Allocations for applicants ranked 1, 13 and 14 are being held in abeyance due to their lack of a tier designation.

Motion: Commissioner Cameron made a motion to approve staff's recommendation. Commissioner Werling seconded the motion. There was no opposition. The motion passed unanimously.

John Wolfe noted that Items 3 and 4 will be heard together, but voted on separately. These items are continued from the Monroe County Planning Commission meetings of June 9 and 10, 2010.

Item 3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS CREATING GOAL 107, OBJECTIVE 107.1, AND POLICY 107.1.1 OF THE MONROE COUNTY 2010 COMPREHENSIVE PLAN TO ESTABLISH A SUB AREA POLICY FOR PROPERTY LEGALLY DESCRIBED AS WISTERIA ISLAND & ADJACENT BAY BOTTOM (OR385-897-898), HAVING REAL ESTATE NUMBER 00123950-000000; PROVIDING FOR SEVERABILITY AND REPEAL OF INCONSISTENT PROVISION; PROVIDING FOR THE TRANSMITTAL TO THE SECRETARY OF STATE AND THE DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE.

4. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS TO AMEND THE FUTURE LAND USE MAP (FLUM) DESIGNATION FROM UNDESIGNATED TO MIXED USE COMMERCIAL (MC) FOR PROPERTY LEGALLY DESCRIBED AS WISTERIA ISLAND & ADJACENT BAY BOTTOM (OR385-897-898), HAVING REAL ESTATE NUMBER 00123950-000000; PROVIDING FOR SEVERABILITY AND REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR THE TRANSMITTAL TO THE SECRETARY OF STATE AND THE

DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE.

John Wolfe reminded the public that since this matter has been continued from the previous meeting, all those previously sworn in for this matter are still under oath. Susan Grimsley stated that public comment would be limited to the two areas not concluded, the inclusionary mooring balls and the open space issues.

(10:15 a.m.) Townsley Schwab informed the Commissioners that staff has received verbal communication from DCA that explained that the intent of the June 16, 2010 letter from Charles Gauthier was an expression of their concerns of the project. Mr. Schwab felt it important to express that DCA directed staff and the applicant previously to pursue this development through a sub-area policy, and the two issues still in limbo since the end of the last Planning Commission meeting are the mooring ball percentage and the two-acre upland.

Mr. Schwab confirmed it was staff's opinion that it is appropriate for the Commissioners to make a decision on the issues at this point. Commissioner Cameron questioned whether the Planning Commission should proceed forward on the issue without hearing from Christine Hurley, who had contact with DCA. Mr. Schwab assured the Commissioners that Ms. Hurley conveyed this statement from the DCA and that the letter was not in response to an inquiry from the County.

Mr. Wolfe commented that this letter is not an official response from DCA and reminded the Commissioners that it is their job to interpret the provisions of the comprehensive plan and land development regulations and determine whether the project should be approved or denied.

(10:24 a.m.) Mitch Harvey presented the staff report and informed the Commissioners that the applicant is now in agreement with staff regarding the affordable housing set aside on the mooring balls and the two-acre open space. A map depicting the different jurisdictional areas was distributed.

Ron Demes brought to the attention of Mr. Harvey the updated CFR 334610, showing the exclusion zone on the west side of Fleming Key not shown on the map Mr. Harvey distributed, as well as the need to address construction impacts on shoreside facilities.

Mr. Harvey reminded the Commissioners that the offshore island provisions of the comprehensive plan do not apply to Wisteria Island because Wisteria Island is a spoil island that does not contain pristine natural habitat that warrants preservation as an offshore island, and there are no bird rookeries on the island.

Mr. Harvey explained that the comment in the DCA letter regarding the appropriateness of utilities running from an island connected by a bridge to an island not connected by a bridge stemmed from a policy within the comprehensive plan that discourages development on offshore islands, although Wisteria Island is not predominated by natural habitat. Mr. Harvey further clarified that the transfer of market rates to Wisteria Island would not result in a net increase in dwelling units in Monroe County.

Chairman Wall asked for comment regarding the issue of takings that was the subject of a letter received by the Commissioners. Susan Grimsley responded that it is all subject to permitting and other requirements set forth in the sub-area policy, and that the County attorneys specifically involved with those issues have been consulted on this.

(10:39 a.m.) Nicholas Mulick, Esq. was present on behalf of the applicant. Mr. Mulick confirmed the applicant's agreement with staff's proposals. Mr. Mulick encouraged the Commissioners to follow the decision-making process by considering the analysis performed and recommendations made by staff.

(10:52 a.m.) Owen Trepanier, Planner, spoke on behalf of the applicant. Mr. Trepanier stated that he felt DCA's letter at this point interfered in the statutory process more than it is helpful. Mr. Trepanier pointed out the following inconsistencies in DCA's letter: Policy 102.7.3 refers to discouraging development proposed on offshore islands by "designated" offshore islands as Tier I lands, as opposed to "designating" offshore islands as Tier I lands; Wisteria Island does not constitute the definition of an offshore island; the applicant is not asking to spend public money to extend facilities or services to Wisteria Island; all privately-owned offshore islands are not zoned offshore island with a future land use designation of residential conservation, which Wisteria Island does not meet that definition either.

Mr. Trepanier commented that the letter states ROGO units should not be transferred to Wisteria Island, and then clarified that the reason that was included in the sub-area policy is because DCA requested that to cut down on potential takings cases on the main islands in Monroe County. That land would then be dedicated to conservation, which staff requested be no less than 40 acres. Mr. Trepanier noted that the Key West sewer plant has the capacity to service Wisteria Island, and feels that the smart growth initiatives referred to in the DCA letter are included in the sub-area policy for Wisteria Island. In closing, Mr. Trepanier questioned the DCA's role of advocate in this process.

Mr. Schwab pointed out that staff does contend that Wisteria Island is zoned offshore island.

Chairman Wall asked for public comment.

(11:11 a.m.) Sloan Bashinsky wondered why staff is having a problem with DCA's letter if staff is contending Wisteria Island is an offshore island. Mr. Bashinsky stated he felt certain there will be 75 additional residences in Monroe County after this development occurs since he feels the ROGO units being allocated are simply paper rights, not actual structures being demolished. Mr. Bashinsky suggested the Commissioners table this issue until Christine Hurley can inform them regarding her conversation with DCA.

(11:15 a.m.) Christine Russell was sworn in by John Wolfe. Ms. Russell encouraged the Commissioners to be guided by DCA's letter and stated that she is concerned with the precedent that could be set in approving this application.

(11:18 a.m.) Deb Curlee stated her concern is that the environmentally valuable plants and wildlife is being passed over too lightly.

(11:20) Ron Miller stated that any public benefit referred to by staff will be negated by development rights being transferred to environmentally sensitive land when those rights could have been used for scarified land in Monroe County. Mr. Miller also commented on the fact that Wisteria Island owners are swapping bay bottom that cannot be used for a mooring field for state-owned bay bottom which belongs to the public to accomplish the mooring field. Mr. Miller feels development on Wisteria Island should be limited, in keeping with the comprehensive plan policies, and asked the County to address hurricane evacuation impacts.

Chairman Wall asked Mr. Miller to explain why the County receiving 40 acres of environmentally sensitive land with all rights for development removed from them for 20 acres of less environmentally sensitive land is not a benefit. Mr. Miller responded that the 20 acres is an offshore island, not in a scarified area with existing infrastructure, which is the overall intent of the comprehensive plan.

(11:27 a.m.) Naja Girard asked for a study to be performed on Wisteria Island by an independent biologist/botanist. Ms. Girard stated that the County biologist's survey did not include all of the native vegetation and threatened and endangered species on the island. Mike Roberts responded that staff has been on the island multiple times, and while there is native vegetation and listed species on Wisteria Island, it does not constitute viable habitat for wildlife that the County is tasked with protecting.

(11:30 a.m.) Mr. Mulick pointed out that no expert has contradicted the information submitted regarding the environmental value on Wisteria Island, nor has anyone with credentials stated the island should be designated Tier I. The utilities to be run to the island will be overseen by authorities who will not allow any negative environmental impacts to occur, and no public funds will be expended in extending utilities. Mr. Mulick again reminded the Commissioners that the decision to approve this application is the Planning Commission's to make, not DCA's.

(11:37 a.m.) Roger Bernstein of FEB Corporation, owner of Wisteria Island, described the meeting with DCA, DEP and FWC in the beginning stages of this project, as well as the applicant's meetings with staff. Mr. Bernstein discussed the problem of sewage being discharged into the Key West Harbor, and then stated that the applicants are following the rules established for processing an application and asked for the Planning Commission's consideration at this time.

Susan Grimsley informed the Commissioners that Mr. Hurley was under the impression that DCA was willing to participate in arriving at an acceptable sub-area policy throughout this process. Mr. Schwab interjected that the letter is an expression of DCA's concerns at this stage of the process.

A five-minute recess was held.

Public comment was closed.

Commissioner Hale stated that he feels Wisteria Island is a spoil island and the proposed use is compatible with the surrounding areas, a mooring field would help control the anchorage in this area, and the tax revenue generated from property taxes would be a benefit to all. Commissioner Cameron agreed with Commissioner Hale's points made and stated that he feels this is a good project.

(11:58 a.m.) Mr. Bernstein clarified for Commissioner Lustberg the areas that would be involved in the land swap to create the mooring field and described the benefits that would result from this exchange. Mr. Roberts stated to Commissioner Lustberg that he has seen enough of the island to make a fair assessment of the overall condition of the island, and that prior to permitting additional extensive surveys of both wildlife and vegetation on the island would have to be conducted.

(12:03 p.m.) Commissioner Lustberg pointed out that the land swap would provide Wisteria Island with privacy on three sides and asked if the boaters' abilities to moor where they are currently allowed to moor would be lost. Mr. Jones responded that anchoring in this area is permitted as long as one is not in a restricted area or precluded by the owner from doing so, but abandoned and derelict vessels are illegal.

Commissioner Werling prefers the creation of the mooring field and the construction on the island to be stand-alone entities, not connected to each other. Commissioner Werling feels there are too many unanswered questions associated with such a large development, understanding that this point in the process is not where those details are presented, but does not think the designation is appropriate for this island.

Motion: Commissioner Cameron made a motion for approval of Item 3 based on the staff report and testimony heard, with recommended conditions. Commissioner Hale seconded the motion. Commissioner Lustberg commented that there may be unintended consequences of the sub-area policy on dealings with other spoil islands since it specifically addresses them differently than the comprehensive plan does, and that the mooring field is not the only option to address the problems in this area. Mr. Schwab confirmed that this sub-area policy is specific for Wisteria Island and no other area. Chairman Wall stated that the benefits from this development are significant and this is an appropriate use of the island. **A poll was conducted with the following results: Commissioner Hale, Yes; Commissioner Cameron, Yes; Commissioner Lustberg, No; Commissioner Werling, No; and Chairman Wall, Yes.**

Motion: Commissioner Cameron made a motion for approval of Item 4 based on the staff report and testimony heard, with recommended conditions. Commissioner Hale seconded the motion. Commissioner Lustberg stated that she feels the proposed FLUM designation will have an adverse community impact to Key West. The progression of approvals through the different jurisdictions was discussed. **A poll was conducted with the following results: Commissioner Hale, Yes; Commissioner Cameron, Yes; Commissioner Lustberg, No; Commissioner Werling, No; and Chairman Wall, Yes.**

BOARD DISCUSSION

Commissioner Cameron questioned the necessity of the July 14, 2010 meeting when only one item has been put on the agenda. It was agreed that the advertisement for that agenda item will be rescinded and the matter will be rescheduled to the July 28, 2010 meeting.

GROWTH MANAGEMENT COMMENTS

Mr. Schwab informed the Commissioners that a compilation report relative to the comprehensive plan will be presented July 14, 2010 at 6:00 p.m. at the Marathon Government Center.

ADJOURNMENT

The Monroe County Planning Commission meeting was adjourned at 12:27 p.m.