

DEVELOPMENT REVIEW COMMITTEE

Tuesday, November 8, 2011

Meeting Minutes

The Development Review Committee of Monroe County conducted a meeting on **Tuesday, November 8, 2011**, beginning at 10:09 a.m. at the Marathon Government Center, Media & Conference Room (1st floor, rear hallway), 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER

ROLL CALL by Gail Creech

DRC MEMBERS:

Townsley Schwab, Senior Director of Planning and Environmental Resources	Present
Mike Roberts, Administrator, Environmental Resources	Present
Joe Haberman, Planning & Development Review Manager	Present

STAFF MEMBERS:

Mitch Harvey, Comprehensive Plan Manager	Present
Mayte Santamaria, Assistant Planning Director	Present
Steven Biel, Senior Planner	Present
Tim Finn, Planner	Present
Gail Creech, Planning Commission Coordinator	Present

CHANGES TO THE AGENDA

There were no changes to the agenda.

MEETING

NEW ITEMS:

1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AN AMENDMENT TO THE MONROE COUNTY YEAR 2010 COMPREHENSIVE PLAN, CREATING POLICY 101.4.26, AMENDING POLICY 101.4.21, AND AMENDING POLICY 101.5.8 TO ESTABLISH A NEW FUTURE LAND USE MAP DESIGNATION OF MARITIME HARBOR ISLAND; PROVIDING FOR SEVERABILITY; DIRECTING THE DIRECTOR OF PLANNING TO FORWARD A COPY TO THE FLORIDA STATE LAND PLANNING AGENCY; PROVIDING FOR FILING WITH THE SECRETARY OF STATE; PROVIDING FOR THE INCORPORATION INTO THE COMPREHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE.

(10:10 a.m.) Mitch Harvey presented the staff report. Mr. Harvey reported that this is an application submitted by FEB Corporation to create a new future land use map category called

Maritime Harbor Island, which has a lot of very specific development criteria. Some unique features of the Maritime Harbor Island category, as proposed by the applicant, would state this category would only be located outside of any coastal barrier resource area, located outside any national wildlife refuge, and on predominantly disturbed lands with access to water at least four feet deep at low mean tide. The applicant submitted some data and analysis which demonstrates that the only upland area that exists right now where that would be applicable would be for Wisteria Island. Development criteria associated with that is a minimum of 45 percent open space, 10 percent available for public access. The proposal also includes density caps, with no more than 40 residential dwellings allowed, 35 transient residential dwellings allowed, and no more than 55,000 square feet of nonresidential floor area. One of the aspects of the proposal is to designate Maritime Harbor land as a receiver site for Rate of Growth units. The position of the applicant is that by doing that there would be no increase in the overall growth of Monroe County. The applicant is requiring that an analysis of the availability of facilities and services be performed based on survey studies and data prior to the issuance of any development order, and that facilities and services must be accommodated on site or available concurrent with the impacts of development.

Mr. Harvey emphasized that this is not a proposal to create a Wisteria Island land use category, but just a proposal to establish a land use category first. Once that category is established, the applicant has the ability to apply that category to a particular land mass. Staff voiced some concerns regarding the proposal. The comprehensive plan does not have a definition for disturbed islands. Staff would like to see this only applied to offshore spoil islands with no documented bird rookeries. Wisteria presently has no facilities and services and is not connected to any other land mass. The applicant incorporated into its proposal to except Maritime Harbor Island from the offshore island policies that restrict densities, intensities, and extension of facilities and services to offshore islands. Although the overall hurricane evacuation system may not be affected, the evacuation trips would be redistributed, which could have an impact on evacuation in the Key West area. Staff requested some data and analysis to confirm or deny that effect.

Staff is recommending denial of the proposal until some additional data and analysis occurs that address the concerns that are identified in the staff report. Some major changes to the proposal that Growth Management is recommending were highlighted. Placing density and intensity impacts on an undeveloped island should be mitigated in the form of two acres of allocated density to be purchased and set aside as mitigation for every acre developed. Data analysis with some identification of sources for facilities and services to support the impact of development needs to be provided up front prior to review and approval.

In conclusion, staff believes it may be premature to approve this without more data and analysis and more cooperation with the affected residents and, therefore, recommended denial, but was open to recommendations and suggestions from the applicant and the public.

Mayte Santamaria noted other changes that were recommended by the department. Staff would like transfer of TDRs from the Lower Keys, Big Pine and No Name to implement the applicant's statement that they would not increase density in the county. Staff does not recommend excluding this category from the tier system. Staff suggested changing the public facilities

section to read that public facilities need to be determined prior to the designation of any land as Maritime Harbor, not prior to the development order, as well as data submitted that either facilities can be accommodated on site or provided by the local government. Staff is also recommending the mitigation of transferring density down to the lowest part of the Keys by requiring the donation of two acres of land for every acre that is designated Maritime Harbor, and also suggesting that any land designated Maritime Harbor be developed under a major conditional use permit. Mr. Harvey added that the staff report is a draft at this point and staff will take all the comments from this meeting to prepare and finalize a staff report that then goes to the Planning Commission scheduled for December 13, 2011.

Owen Trepanier, Planner, was present on behalf of the applicant. Mr. Trepanier had clarified by staff that it needs to be shown that utilities and services can be accommodated on site before designating the land MHI, but is not looking to see property that has developed infrastructure on it. Mr. Trepanier pointed out that the comp plan recognizes two distinct classes of island: Offshore islands and spoil islands. Spoil islands have no level of service requirements. Spoil island are not associated with any of the environmental protections that offshore islands are, except spoil islands that contain bird rookeries. It was suggested that "offshore island" be defined in the comp plan. Mr. Trepanier reported that the Department of Community Affairs and the County's hurricane evacuation expert said moving units around in the Lower Keys had zero impact on hurricane evacuation, but the applicant will try to provide staff with some clear data. The applicant proposes to include MHI in the exempt properties outlined in Policy 105.2.1. Mr. Trepanier questioned staff's recommendation that all development is required to obtain a major conditional use. Mr. Haberman clarified that once defined as a conditional use, things are allowed as of right.

Tim Koenig, Esq. spoke on behalf of the applicant. Mr. Koenig wished to make two points for the record relating to the process and the procedural aspects of some of the recommendations that have been made. The first point is to require mitigation in the form of the purchase of and donation of lands of an applicant, who is attempting to create a category, is a requirement that is contrary to the law and prejudices the applicant in terms of processing its application. Every parcel of land is entitled to a FLUM designation appropriate to its characteristics and entitlement to that designation cannot be conditioned upon the purchase of or donations of land. Mr. Koenig cited two cases, *Nollan vs. California Coastal Communities*, 483 U.S. 825, and *Dolan versus the City of Tigard*, 512 U.S. 374, which address that specific issue. Mr. Koenig explained that while the applicant is not opposed to mitigation in concept, they are certainly opposed to conditioning their application for the creation of a FLUM category on such an onerous requirement.

The second point Mr. Koenig addressed is the requirement that at this time the availability of facilities and services be established, since Monroe County Code contemplates that would be done at the time of application for development. To require that when applying for and asking for the creation of a FLUM category acts to prejudice the application, because the applicant would be delayed to develop information and develop data to bring back to the County so that the County can further consider this application. It creates a prejudicial delay in the application and could create a delay in the transmittal of this, all occurring at the time the County is proposing its own designation for the island, which they hope to transmit. Policies 1401.4.5, 1401.4.6, 1401.4.7, 1401.4.8, 101.1.2, 101.12.1, 215.1.2, 701.1.3, 801.1.2, 901.1.2, 1001.1.2,

1201.1.4, 1301.3.1 and Capital Improvement Plan 4.2.3 and Plant 5.1.1 were listed as indication that the timing for requiring the establishment of availability of facilities and services is at the time of application or at the time that the impacts are to be assessed.

Mr. Koenig stated that the code is there so that everyone is treated the same and treated fairly, thereby garnering public support and confidence in the process. Mr. Koenig requested that the Committee consider the prejudicial impact those two points would have and not allow it to happen. Mr. Koenig added that, regardless of what the City of Key West does, the applicant has the ability to provide facilities and services on site.

Ms. Santamaria clarified that staff is not recommending any delays and is processing the application in a timely manner. State law requires the County to look at public facilities and services, and staff is trying to follow State law and get the best information possible. Mr. Harvey pointed out that the idea of mitigation is not new, but was an idea that was developed with the applicant during the prior submission for Wisteria Island. Mr. Koenig repeated that the requirement of the applicant to purchase land and give it to the County as a condition to approval of a FLUM designation is contrary to Federal law which has been set for that particular issue. Ms. Santamaria informed Mr. Koenig that the State is requiring the County by rule to discourage future land use map amendments and the County is proposing comp plan amendments will also be submitted at the same time that all the other packages are submitted and it is going to require mitigation for applications for future land use map designations that increase density or intensity. Mr. Koenig believes Monroe County could not survive a challenge to that requirement. Mr. Schwab assured Mr. Koenig that staff will look at the cases cited and evaluate the applicant's input.

Mr. Harvey mentioned that correspondence was received from Last Stand, which has been included as part of the record. Mr. Schwab asked for public comment.

Naja Girard spoke on behalf of Last Stand. Ms. Girard believes it is important to see that there is a need for a new category and is hopeful that the County would be the entity conducting any type of data and analysis when deciding whether or not this County needs a new category. Ms. Girard disagreed that this type of property was omitted from the comprehensive plan process that created the current comprehensive plan. Spoil islands were taken into account and are found in the language. Ms. Girard agreed with what was taken into account to create the offshore island district and the RC designation that limited density. Ms. Girard feels this property should remain in the tier system, and believes on-site mitigation might simplify the mitigation issue. Ms. Girard then spoke about the environmental value of Wisteria Island.

Arnaud Girard, Key West resident, spoke. Mr. Girard is interested to see data as to whether building on spoil islands is actually a good idea due to the soil, as well as determining whether developments on an island is the way of the future considering the rising sea levels. Mr. Girard questioned the rationale for the necessity for the deep water port category and believes a common sense approach of this issue would be to determine that on-site mitigation is needed to reduce the impact to Key West.

Ron Miller, Key Largo resident, stated that an interlocal agreement with Key West is needed before proceeding with this designation because it does increase the density over what is in the comp plan that is available now. Mr. Miller pointed out that this is the applicant's second attempt at getting a new FLUM on this property, so they should not complain about the delay in the application.

Christine Russell, Key West resident, sees the County as protecting itself and protecting the taxpayers when making sure they do not create a category with a greater density than can actually be supported. Ms. Russell cautioned the County of becoming involved in a takings lawsuit. Ms. Russell questioned whether a developer has ever created a major category before. Ms. Russell then spoke about the risk more density would cause to Key West residents during hurricane evacuations. Ms. Russell added that Key West does not feel they can support this development so close to Key West.

Roger Bernstein, president of FEB Corporation, brought out the fact that there is not another offshore island that qualifies within the deep water port category. Mr. Trepanier explained the applicant determined it was appropriate to have island development adjacent to a federally designated deep water port where facilities exist already to service an island. Mr. Bernstein emphasized the limiting criteria is not to bestow a special benefit on a particular piece of property, but to give the property an appropriate use. Mr. Bernstein stated this is a spoil island, is manmade, and is not characterized by a predominance of undisturbed native vegetation.

Mr. Schwab thanked everybody for their input. Staff will continue to process this application, taking the various comments and specific information provided under advisement. It is scheduled for the December 13 Planning Commission meeting and the transmittal is tentatively scheduled for February.

A recess was held from 11:08 a.m. to 11:20 a.m.

2.Key Largo Ocean Resort (KLOR), 94825 Overseas Highway (US 1), Key Largo, Mile Marker 94.8: A request for approval of a major deviation to the site plan and major conditional use permit approved by Planning Commission Resolution #P35-07. The subject parcel is legally described as portions of Sections 13 and 14, Township 62 South, Range 38 East on Key Largo, being part Tract 10 and part Tract 11 of Southcliff Estates (PB2-45), Monroe County, Florida, having real estate numbers 00483390.000000, 00088680.000100 and 00088670.0000100.

(11:21 a.m.) Mr. Haberman did not present a formal staff report since this issue has already been to the DRC under a previous application. Mr. Haberman explained that a similar application for the same type of approval was submitted last year and went through the process of DRC and went to the Planning Commission. Prior to a decision by the Planning Commission the applicant withdrew the application due to resolving some legal issues in terms of ownership and trying to rally more support from the co-op members. A new vote has been submitted that was near unanimous in support of this current site plan and the legal issues are resolving regarding the waterfront parcels. Orestes Lopez, architect and KLOR resident, confirmed that all the actual votes have been submitted, as well as proof of clear ownership of all the land in question.

Mr. Roberts stated he will review the survey to confirm the mean high water mark was provided as requested. Mr. Lopez informed Mr. Roberts that a surveyor who was an expert at mean high water line issues was hired to prepare a new survey that should have been submitted. Mr. Haberman questioned whether the fire marshal approved the emergency access. Mr. Lopez stated he verbally approved it, but never sent a letter of coordination. Mr. Haberman urged the applicants to get that before the Planning Commission meeting. Mr. Roberts will review the plans and let the applicant know if the survey containing the mean high water mark was located.

Mr. Haberman reviewed issues from the last application. Mr. Lopez stated there are 285 shareholders as opposed to 284. Staff will disregard the previous condition on the last staff report stating that the County would take the extra ROGO exemption if the applicant was not going to use it. Mr. Haberman received confirmation that the applicant is changing from the model houses that were approved to the architectural design guidelines, which are still single-family residences, either modular or site-built. Density is nonconforming under current code, but the applicant is grandfathered in with the one provision of the code that states that lawfully established density is okay. The language regarding the baseline for the height measurement should be changed from "road," which denotes a public road, to "road/driveway" to be consistent with the code.

Mr. Haberman encouraged the applicant to keep working with Kevin Wilson, County Engineer, to get him everything needed to do a full storm water review, which should be done when the applicant is ready to apply for a building permit. Mr. Lopez stated that South Florida Water Management has already approved the drainage system and he will submit a calculation and copy of the permit to Mr. Wilson. Mr. Haberman told the applicant they can expect a condition one way or the other regarding the mean high water line be correctly reflected before getting approval for any building permits or any new structures along the shoreline.

The development agreement was next discussed. Mr. Haberman suggested that the applicant change the benchmark dates in the development agreement that have not and will not be met. Mr. Haberman received confirmation that the previous 12 home models that were approved would meet the current architectural design guidelines. Mr. Lopez explained that, with the way the economy is currently, it is difficult to come up with a phasing plan. Site work for the property will be done all at the same time and completed before residents can move in. Mr. Lopez assured Mr. Haberman that the applicant will come up with a plan that will group the construction as much as possible. Mr. Schwab stated that will take an awareness and a strategy that is different than other circumstances and staff and the applicant will need to work together on it so it does not become an issue.

Mr. Haberman asked about the financing of the construction. Mr. Lopez responded that experts have been hired for that, and initially the co-op will finance the infrastructure work through a bank loan. The co-op is going to become land condominium in order for this to happen. Every unit will be responsible for their own payback and then the infrastructure financing will turn into a permanent loan for each home. Mr. Haberman encouraged Mr. Lopez to put in the development agreement that the individual units do not have to be constructed within the life of the development agreement. The condition previously accepted of requiring tankless water

heaters needs to be changed to state that they should use super efficient water heaters due to FKEC's concern of the peak time demands of 285 homes.

Conditions were listed as: Clear sight triangles need to be put on the proposed site plan and the emergency access be labeled; the Building Department, the Flood Plain Administrator, the fire marshal and the County engineer through Public Works are only giving their conceptual approval at this point; the Board can review this project at any time; the architectural design guidelines must be recorded with the text attached, as well as a phasing plan, if available; modify the original approval regarding the water tanks and heaters; any building permit for construction along the shoreline shall be required to show the actual mean high water line as required by Florida Statutes and Monroe County Code; the landscape plans must include labeling of species; and the applicant shall use the highest elevation of the ground surface prior to construction of the roadway/driveway directly adjacent to the structure.

Staff is recommending approval. Mr. Herrera, the applicant's engineer, asked Mr. Haberman to describe the actual process when applying for a permit, which Mr. Haberman explained. Mr. Haberman recommended that the applicant have one site work permit for all the site work on the property, and then each unit should have its own permit. There was discussion whether the storm water management facilities should be completed prior to issuance of a building permit or prior to the issuance of a CO. Mr. Roberts will review the code to see if there is a specific restriction in that regard. Mr. Roberts believes the cleanest thing to do is make sure the infrastructure, storm water management facilities, are complete prior to starting the structures. Mr. Lopez agreed. Mr. Haberman again encouraged the applicant to work with the fire marshal to get the letter of coordination.

ADJOURNMENT

The Monroe County Development Review Committee was adjourned at 12:11 p.m.