



MEMORANDUM
MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

To: Monroe County Development Review Committee and
Emily Schemper, AICP, CFM, Acting Senior Director of Planning and Environmental
Resources

From: Cheryl Cioffari, AICP, Comprehensive Planning Manager

Date: November 28, 2018

Subject: An ordinance by the Monroe County Board of County Commissioners amending Policy 101.5.25 of the 2030 Monroe County Comprehensive Plan to address density issues on parcels of land within the residential medium (RM) Future Land Use Map category and the Improved Subdivision (IS) zoning district that are not platted lots. (File #2018-196)

Meeting: January 15, 2019

I. REQUEST

The Monroe County Planning & Environmental Resources Department is proposing amendments to the 2030 Comprehensive Plan, as directed by the BOCC on August 15, 2018, to amend Policy 101.5.25 to address density issues on parcels of land, that are not platted lots, within the Residential Medium (RM) Future Land Use Map category and the Improved Subdivision (IS) zoning district.

II. BACKGROUND INFORMATION

On July 26, 2016, the Monroe County Planning Commission (PC) considered an appeal by a property owner who had been denied a building permit for a single family residence on an unplatted parcel of land with a Residential Medium (RM) Future Land Use Map (FLUM) designation and within an Improved Subdivision (IS) zoning district based on the density standard of one dwelling unit per platted lot for the RM and IS districts in the Comprehensive Plan and LDC. The PC denied the applicant's appeal.

On July 18, 2018, at their regularly scheduled meeting, the BOCC held a public hearing to consider a request for a Beneficial Use Determination (BUD) and the recommendations of the special magistrate for a parcel within an IS zoning district and with an RM FLUM, for which a building permit was denied because the property does not constitute a "lot" for purposes of density.

The special magistrate had issued a recommendation that the BOCC deny the owner's request for relief under the BUD ordinance. The BOCC denied the applicant's request for relief. The BOCC also directed staff to propose options for amendments to the Comprehensive Plan and/or LDC that would allow owners of parcels that do not constitute a "lot" within the IS zoning district to apply for a single family residence.

Monroe County's current adopted Comprehensive Plan and Land Development Code (LDC) have allocated density requirements that require a parcel to be a duly recorded lot on a plat approved by the County in order to develop a single family residential dwelling unit within the RM FLUM and IS zoning district.

The majority of parcels within IS zoning districts and with RM FLUM designations are platted lots within subdivisions identified on plats approved by the County. However, there are a number of parcels with RM FLUM and IS zoning designations that were created without plat approval or that contain land included on a plat but only identified as a "tract" or for some other purpose; such parcels do not meet the definition of "lot." The legal descriptions for a number of these parcels show that the property is located within a Tract of land included in a duly recorded plat, but these were not divided into "lots" at the time of the plat. In some cases, these tracts of land were subsequently divided into multiple parcels that were never shown as lots or parcels on a plat, re-plat, or amended plat approved by the County and recorded by the Clerk of Court's office. Such parcels do not meet the definition of "lot" and therefore have no density assigned to them.

The majority of these parcels were designated IS with the adoption of the land use district map in 1986 and RM with the adoption of the FLUM in 1993 (effective 1997).

On July 18, 2018, at their regularly scheduled meeting, the BOCC directed staff to propose options for amendments to the Comprehensive Plan and/or LDC that would allow owners of parcels that do not constitute a "lot" within the IS zoning district to apply for a single family residence.

On August 15, 2018, at the regularly scheduled meeting BOCC meeting Staff presented options for BOCC consideration. The BOCC directed staff to process text amendments to the Comprehensive Plan and LDC that would allow unplatted parcels within the RM FLUM designation and IS zoning district to apply for a ROGO allocation in order to build a single family residence on such a parcel without the use of Transferable Development Rights (TDRs).

Community Meeting and Public Participation

In accordance with LDC Section 102-159(b)(3), a Community Meeting for the Comprehensive Plan and Land Development Code text amendments was held on November 27, 2018 in Marathon and provided for public input. Issues identified by the public at the meeting included:

- "current configuration" of parcels and how strict the date/location of parcel lines would be
- Paved roads – what constitutes a paved road
- ROGO process for owners who previously submitted applications under the current code

The subject of this staff report is the amendment to the Comprehensive Plan.

III. PROPOSED COMPREHENSIVE PLAN TEXT AMENDMENTS

Proposed Amendment (deletions are ~~stricken-through~~; additions are shown in underlined):

Policy 101.5.3

The principal purpose of the Residential Medium (RM) future land use category is to recognize those portions of subdivisions that were lawfully established and improved prior to the adoption of this plan and to define improved subdivisions as those lots served by a dedicated and accepted existing roadway, have an approved potable water supply, and have sufficient uplands to accommodate the residential uses. Development on vacant land within this land use category shall be limited to one residential dwelling unit for each such platted lot or parcel which existed on or before January 4, 1996.

Policy 101.5.25

Monroe County hereby adopts the following density and intensity standards for the future land use categories, which are shown on the FLUM and described in Policies 101.5.1—101.5.20. [F.S. § 163.3177(6)(a)1.]

Future Land Use Densities and Intensities				Minimum Open Space Ratio ^(c)
Future Land Use Category and Corresponding Zoning	Residential ^(d)		Nonresidential	
	Allocated Density ^(a) (per upland acre)	Maximum Net Density ^{(a)(b)} (per buildable acre)	Maximum Intensity (floor area ratio)	
Agriculture/Aquaculture (A) ^(d) (no directly corresponding zoning)	0 du 0 rooms/spaces	N/A N/A	0.25	Per underlying zoning
Airport (AD) (AD zoning)	0 du 0 rooms/spaces	N/A N/A	0.10	0.20
Commercial (COMM) (C1 and C2 zoning)	0 du 0 rooms/spaces	N/A N/A	0.15—0.50	0.20
Conservation (C) (CD zoning)	0 du 0 rooms/spaces	N/A N/A	0.05	0.90
Education (E) ^(d) (no directly corresponding zoning)	0 du 0 rooms/spaces	N/A N/A	0.30	Per underlying zoning
Industrial (I) (I and MI zoning)	1 du 0 rooms/spaces	2 du N/A	0.25—0.60	0.20

Institutional (INS) ^(d) (no directly corresponding zoning)	0 du 15 rooms/spaces	N/A 24 rooms/spaces	0.30	Per underlying zoning
Mainland Native (MN) (MN zoning)	0.01 du 2 spaces ^(e)	N/A N/A	0.03	0.95—0.99
Military (M) (MF zoning)	6 du 10 rooms/spaces	12 du 20 rooms/spaces	0.30—0.50	0.20
Mixed Use/Commercial (MC) ^{(f)(g)} (SC, UC, DR, RV, MU and MI zoning)	1 du (DR, MU, MI) 3 du (SC) 6 du (UC) Commercial Apartments (RV) ^(h) 5—15 rooms/spaces	2 du (MI) 6-18 du (SC) ^(k) 12 du (UC) 12—18 du (MU) ^(k) 18 du (DR) 10—25 rooms/spaces	0.10—0.45 (SC, UC, DR, MU) <2,500 SF (RV) 0.30—0.60 (MI)	0.20
Mixed Use/Commercial Fishing (MCF) ⁽ⁱ⁾ (CFA, CFV, CFSD zoning)	1 du (CFSD-20) ⁽ⁱ⁾ 3 du (CFA, all other CFSD) 1 du/lot (CFV) 0 rooms/spaces	12 du (CFA, CFSD) N/A (CFV) N/A	0.25—0.40	0.20
Preservation (P) ^(d) (P zoning)	0 du 0 rooms/spaces	N/A N/A	0	1.00
Public Buildings/Lands (PB) ^(d) (no directly corresponding zoning)	0 du 0 rooms/spaces	N/A N/A	0.30	Per underlying zoning
Public Facilities (PF) ^(d) (no directly corresponding zoning)	0 du 0 rooms/spaces	N/A N/A	0.30	Per underlying zoning
Recreation (R) (PR zoning)	0 du 2 rooms/spaces	N/A N/A	0.20	0.90
Residential Conservation (RC) (OS and NA zoning)	0—0.10 du (OS) 0.25 du (NA) 0 rooms/spaces	N/A N/A	0—0.20	0.95
Residential Low (RL) (SS, SR, and SR-L zoning)	0.50 du 0 rooms/spaces	3 du (SR-L) 5 du (SR) or 1 du/lot (SR) ^(m) N/A (SS) N/A	0.25	0.50 (SR, SR-L) 0.80 (SS)
Residential Medium (RM) (IS ⁽ⁿ⁾ , IS-V, IS-M ⁽ⁿ⁾ and IS-D ^(j) zoning)	1 du/lot (IS, IS-V, IS-M) <u>or</u> <u>1/pre-1986 parcel</u> ⁽ⁿ⁾ 2 du/lot (IS-D) ^(j) 0 rooms/spaces	N/A N/A	0	0.20
Residential High (RH) (IS-D ^(j) , URM, URM-L and UR zoning)	6 du (UR) 1du/lot (URM, URM-L) 2 du/lot (IS-D) 0—10 rooms/spaces	12—25 du (UR) ^(k) N/A (IS-D, URM, URM-L) 0—20	0	0.20

		rooms/spaces		
Notes:				
(a) The allocated densities for submerged lands, salt ponds, freshwater ponds, and mangroves shall be 0 and the maximum net density bonuses shall not be available.				
(b) The Maximum Net Density is the maximum density allowable with the use of TDRs, or for qualifying affordable housing development. TDRs can be utilized to attain the density between the allocated density standard up to the maximum net density standard. Deed restricted affordable dwelling units may be built up to the maximum net density without the use of TDRs. "N/A" means that maximum net density bonuses shall not be available. Buildable acres means the portion of a parcel of land that is developable and is not required open space.				
(c) Additional open space requirements may apply based on environmental protection criteria; in these cases, the most restrictive requirement shall apply.				
(d) Future land use categories of Agriculture/Aquaculture, Education, Institutional, Preservation, Public Buildings/Lands, and Public Facilities, which have no directly corresponding zoning, may be used with new or existing zoning districts as appropriate.				
(e) Within the Mainland Native future land use district, campground spaces and nonresidential buildings shall only be permitted for educational, research or sanitary purposes.				
(f) For properties consisting of hammocks, pinelands or disturbed wetlands within the Mixed Use/ Commercial and Mixed Use/ Commercial Fishing future land use categories, the maximum floor area ratio shall be 0.10 and the maximum net density bonuses shall not be available.				
(g) A mixture of uses shall be maintained for parcels designated as MI zoning district that are within the MC future land use category. Working waterfront and water dependent uses, such as marina, fish house/market, boat repair, boat building, boat storage, or other similar uses, shall comprise a minimum of 35% of the upland area of the property, adjacent to the shoreline, pursuant to Policy 101.5.6.				
(h) In the RV zoning district, commercial apartments shall be allowed, not to exceed 10% of total spaces allowed or in existence on the site, whichever is less.				
(i) The allocated density for the CFSD-20 zoning district (Little Torch Key) shall be 1 dwelling unit per acre, or 1 dwelling unit per parcel for those parcels existing as of September 15, 1986, whichever is less, and the maximum net density bonuses shall not be available. Residential density shall be allowed in addition to the permitted nonresidential uses and intensity (i.e., density and intensity shall not be counted cumulatively).				
(j) Within IS subdivisions with primarily single family residential units, IS-D zoning may be used with a RM future land use designation for platted lots which have a duplex that was lawfully established prior to September 15, 1986.				
(k) The maximum net density shall be 25 du/buildable acre for the UR zoning district and shall be 18 du/buildable acre for the MU and SC zoning district for development where all units are deed restricted affordable dwelling units. For the UR zoning district market rate housing may be developed as part of an affordable or employee housing project with a maximum net density not exceeding 18 du/buildable acre.				
(l) Vessels, including live-aboard vessels, or associated wet slips are not considered dwelling units and do not count when calculating density.				
(m) Within the Residential Low future land use category, the maximum net density for platted lots of less than 0.40 gross acres within the SR zoning district shall be 1 dwelling unit per platted lot, provided all of the following conditions are met: <ol style="list-style-type: none"> 1) The parcel must be one full platted lot shown on a plat approved by the County and duly recorded prior to January 2, 1996; 2) The platted lot may not be identified for any other use or purpose on the plat (e.g., "park," "common area," etc.); 3) The platted lot must have a Tier designation of Tier III; 4) Notwithstanding Policy 101.13.2, the maximum net density may only be reached with the transfer of one (1) full TDR to the SR lot, regardless of the size of the lot and the allocated density assigned to it; 5) Notwithstanding Policy 101.13.2, the maximum net density may only be reached with the transfer of one (1) full TDR to the SR lot, regardless of the size of the lot and the allocated density assigned to it; 6) The TDR must meet all requirements and procedures specified in Policy 101.13.3 and Section 130- 				

<p>160 of the Land Development Code;</p> <p>7) TDRs under this provision may not be transferred into noise zones of 65 DNL or greater; and</p> <p>8) 7) The subject parcel must comply with Policy 301.2.5 regarding legal access.</p>
<p><u>(n) Within the IS zoning district, the allocated density shall be one (1) dwelling unit per parcel for parcels that meet all of the following conditions:</u></p> <p>1) <u>The parcel boundaries must have been established in their current configuration prior to September 15, 1986;</u></p> <p>2) <u>The applicant must provide sufficient evidence that the parcel boundaries were established before September 15, 1986 (such as one or more of the following: boundary survey, deed, etc.);</u></p> <p>3) <u>The parcel may not be identified for any other use or purpose on a plat (e.g., “park,” “common area,” etc.);</u></p> <p>4) <u>The subject parcel may not be a fractional portion of a platted lot;</u></p> <p>5) <u>The parcel must have a Tier designation of Tier III;</u></p> <p>6) <u>The subject parcel must include all infrastructure (potable water, adequate wastewater treatment and disposal wastewater meeting adopted LOS, paved roads, etc.); and</u></p> <p>7) <u>The subject parcel must comply with Policy 301.2.5 of the Comprehensive Plan regarding legal access.</u></p>

IV. ANALYSIS OF PROPOSED AMENDMENT

Monroe County’s current adopted Comprehensive Plan and Land Development Code (LDC) have allocated density requirements that require a parcel to be a duly recorded lot on a plat approved by the County in order to develop a single family residential dwelling unit within an RM FLUM and IS zoning district.

Per Policy 101.5.3 of the Comprehensive Plan, “the principal purpose of the Residential Medium (RM) future land use category is to recognize those portions of subdivisions that were lawfully established and improved prior to the adoption of this plan and to define improved subdivisions as those lots served by a dedicated and accepted existing roadway, have an approved potable water supply, and have sufficient uplands to accommodate the residential uses. Development on vacant land within this land use category shall be limited to one residential dwelling unit for each such platted lot or parcel which existed on or before January 4, 1996.”

The following definitions are provided in the Glossary of the Comprehensive Plan:

- *Buildable Acre* means the upland portion of a parcel that is not required open space. Also referred to as *Buildable Area*.
- *Plat* means an official subdivision approved by the Board of County Commissioners.

Preliminary analysis of the platted subdivisions within RM FLUM category and IS zoning district indicates that **there may be approximately 215 parcels (not qualifying as “lots”) identified on plats prior to September 15, 1986. Additional parcels that are not shown on approved plats have not been analyzed as of the date of this report.** The number of parcels within this scenario may vary as property owners have (and continue to) split and combine properties without County Planning & Environmental Resources Department knowledge (nor plat approval). If this amendment is adopted, each parcel shall be individually evaluated at the

time of an application for development with the criteria established. Property owners must provide sufficient evidence that the parcel was created prior to September 15, 1986.

V. CONSISTENCY WITH THE MONROE COUNTY COMPREHENSIVE PLAN, THE PRINCIPLES FOR GUIDING DEVELOPMENT, AND FLORIDA STATUTES.

A. The proposed amendment is consistent with the Goals, Objectives and Policies of the Monroe County 2030 Comprehensive Plan. Specifically, it furthers:

GOAL 101

Monroe County shall manage future growth to enhance the quality of life, ensure the safety of County residents and visitors, and protect valuable natural resources. [§163.3177(1), F.S.]

Objective 101.1

Monroe County shall ensure that all development and redevelopment taking place within its boundaries does not result in a reduction of the level-of-service requirements established and adopted by this comprehensive plan. Further, Monroe County shall ensure that comprehensive plan amendments include an analysis of the availability of facilities and services or demonstrate that the adopted levels of service can be reasonably met. [§163.3177 & 163.3180, F. S.]

Objective 101.3

Monroe County shall regulate new residential development based upon the finite carrying capacity of the natural and man-made systems and the growth capacity while maintaining a maximum hurricane evacuation clearance time of 24 hours.

Policy 101.3.1

Monroe County shall maintain a Permit Allocation System for new residential development known as the Residential Rate of Growth Ordinance (ROGO) System. The Permit Allocation System shall limit the number of permits issued for new residential dwelling units. The ROGO allocation system shall apply within the unincorporated area of the county, excluding areas within the county mainland and within the Ocean Reef planned development (Future development in the Ocean Reef planned development is based upon the December 2010 Ocean Reef Club Vested Development Rights Letter recognized and issued by the Department of Community Affairs). New residential dwelling units included in the ROGO allocation system include the following: affordable housing units; market rate dwelling units; mobile homes; and institutional residential units (except hospital rooms).

Vessels are expressly excluded from the allocation system, as the vessels do not occupy a distinct location, and therefore cannot be accounted for in the County's hurricane evacuation model. Under no circumstances shall a vessel, including live-aboard vessels, or associated wet slips be transferred upland or converted to a dwelling unit of any other type. Vessels or associated wet slips are not considered ROGO allocation awards, and may not be used as the basis for any type of ROGO exemption or TRE (Transfer of ROGO Exemption).

ROGO Allocations for rooms, hotel or motel; campground spaces; transient residential units; and seasonal residential units are subject to Policy 101.3.5.

Policy 101.5.3

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Policy 101.18.3

Within the IS, IS-D, URM, URM-L and CFV land use districts (zoning), parcels platted as of September 15, 1986 shall not be further subdivided in a way that creates more net lots than the original plat.

Policy 301.2.5

In order to proceed with development, a parcel shall have legal access to public or private roads, rights of way or easements or such access shall be established.

B. The amendment is consistent with the Principles for Guiding Development for the Florida Keys Area, Section 380.0552(7), Florida Statutes.

For the purposes of reviewing consistency of the adopted plan or any amendments to that plan with the principles for guiding development and any amendments to the principles, the principles shall be construed as a whole and no specific provision shall be construed or applied in isolation from the other provisions.

- (a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.
- (b) Protecting shoreline and benthic resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
- (c) Protecting upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.
- (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.
- (e) Limiting the adverse impacts of development on the quality of water throughout the Florida Keys.
- (f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys.
- (g) Protecting the historical heritage of the Florida Keys.
- (h) Protecting the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:
 - 1. The Florida Keys Aqueduct and water supply facilities;
 - 2. Sewage collection, treatment, and disposal facilities;
 - 3. Solid waste treatment, collection, and disposal facilities;
 - 4. Key West Naval Air Station and other military facilities;
 - 5. Transportation facilities;
 - 6. Federal parks, wildlife refuges, and marine sanctuaries;

7. State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
 8. City electric service and the Florida Keys Electric Co-op; and
 9. Other utilities, as appropriate.
- (i) Protecting and improving water quality by providing for the construction, operation, maintenance, and replacement of stormwater management facilities; central sewage collection; treatment and disposal facilities; and the installation and proper operation and maintenance of onsite sewage treatment and disposal systems.
 - (j) Ensuring the improvement of nearshore water quality by requiring the construction and operation of wastewater management facilities that meet the requirements of ss. 381.0065(4)(l) and 403.086(10), as applicable, and by directing growth to areas served by central wastewater treatment facilities through permit allocation systems.
 - (k) Limiting the adverse impacts of public investments on the environmental resources of the Florida Keys.
 - (l) Making available adequate affordable housing for all sectors of the population of the Florida Keys.
 - (m) Providing adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a postdisaster reconstruction plan.
 - (n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

Pursuant to Section 380.0552(7) Florida Statutes, the proposed amendment is not inconsistent with the Principles for Guiding Development as a whole and is not inconsistent with any Principle.

C. The proposed amendment is consistent with the Part II of Chapter 163, Florida Statute (F.S.). Specifically, the amendment furthers:

163.3161(4), F.S. – It is the intent of this act that local governments have the ability to preserve and enhance present advantages; encourage the most appropriate use of land, water, and resources, consistent with the public interest; overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within their jurisdictions. Through the process of comprehensive planning, it is intended that units of local government can preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve, develop, utilize, and protect natural resources within their jurisdictions.

163.3161(6), F.S. – It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act.

163.3177(1), F.S. – The comprehensive plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented. The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall

describe how the local government's programs, activities, and land development regulations will be initiated, modified, or continued to implement the comprehensive plan in a consistent manner. It is not the intent of this part to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities, and land development regulations will be carried out. The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.

163.3201, F.S. – Relationship of comprehensive plan to exercise of land development regulatory authority.—It is the intent of this act that adopted comprehensive plans or elements thereof shall be implemented, in part, by the adoption and enforcement of appropriate local regulations on the development of lands and waters within an area. It is the intent of this act that the adoption and enforcement by a governing body of regulations for the development of land or the adoption and enforcement by a governing body of a land development code for an area shall be based on, be related to, and be a means of implementation for an adopted comprehensive plan as required by this act.

VI. PROCESS

Comprehensive Plan Amendments may be proposed by the Board of County Commissioners, the Planning Commission, the Director of Planning, or the owner or other person having a contractual interest in property to be affected by a proposed amendment. The Director of Planning shall review and process applications as they are received and pass them onto the Development Review Committee and the Planning Commission.

The Planning Commission shall hold at least one public hearing. The Planning Commission shall review the application, the reports and recommendations of the Department of Planning & Environmental Resources and the Development Review Committee and the testimony given at the public hearing. The Planning Commission shall submit its recommendations and findings to the Board of County Commissioners (BOCC). The BOCC holds a public hearing to consider the transmittal of the proposed comprehensive plan amendment, and considers the staff report, staff recommendation, and the testimony given at the public hearing. The BOCC may or may not recommend transmittal to the State Land Planning Agency. The amendment is transmitted to State Land Planning Agency, which then reviews the proposal and issues an Objections, Recommendations and Comments (ORC) Report. Upon receipt of the ORC report, the County has 180 days to adopt the amendments, adopt the amendments with changes or not adopt the amendment.

VII. STAFF RECOMMENDATION

Staff recommends approval of the proposed amendment.