

**DEVELOPMENT REVIEW COMMITTEE**

**Tuesday, May 25, 2021**

**MEETING MINUTES**

The Monroe County Development Review Committee conducted a virtual meeting via Zoom Webinar, on **Tuesday, May 25, 2021**, beginning at 2:30 p.m.

**CALL TO ORDER** by Emily Schemper at 2:32 p.m.

Ms. Emily Schemper apologized for the time change of the meeting and explained that it was due to the Special BOCC meeting also scheduled for today because two Zoom webinars could not be held at the same time. Due to the time change, some public emails may be read into the record.

**ROLL CALL** by Emily Schemper

**DRC MEMBERS PRESENT**

- Emily Schemper, Senior Director of Planning and Environmental Resources
- Mike Roberts, Assistant Director, Environmental Resources
- Bradley Stein, Development Review Manager
- Rey Ortiz, Assistant Building Official
- Justin Stiell, Department of Economic Opportunity
- Karen Taporco, Naval Air Station Key West
- Shereen Yee Fong, FDOT Representative

**STAFF MEMBERS PRESENT**

- Peter Morris, Assistant County Attorney, Arrived During Meeting
- Ilze Aguila, Senior Planning Commission Coordinator

**APPLICANTS & PUBLIC PRESENT**

- |                            |                           |                                 |
|----------------------------|---------------------------|---------------------------------|
| Diane Beraldson (phonetic) | Burke Cannon (via email)  | Captain Ed (via email)          |
| Dr. Bernie Ginsberg        | Jess Goodall, Esquire     | Steven Hartz                    |
| Ron Miller                 | Wilma Montague            | Dottie Moses (via email)        |
| Joyce Newman               | Joyce Peckman (phonetic)  | Judy Starr (via email)          |
| Russell A. Yagel, Esquire  | Brian Waters              | Susan White                     |
| Chelsea Vanadia, Esquire   | Gail (no last name given) | Jenny (indiscernible last name) |

**CHANGES TO THE AGENDA**

There were no changes to the agenda.

**MINUTES FOR APPROVAL**

Approval of the meeting minutes for Tuesday, April 27, 2021, by Emily Schemper.

**MEETING**

**1. 6125 SECOND STREET, 5700 LAUREL AVENUE AND 6325 FIRST STREET, STOCK ISLAND, MILE MARKER 5 (SENDER SITE) AND NO SITE DESIGNATED (RECEIVER SITE):** A PUBLIC MEETING CONCERNING A REQUEST FOR A MINOR CONDITIONAL USE PERMIT. THE REQUESTED APPROVAL IS FOR THE TRANSFER OF EIGHTY (80) PERMANENT MARKET RATE AND EIGHTEEN (18) TRANSIENT TRANSFERRABLE ROGO EXEMPTIONS (TRES) FROM THE SENDER SITE PROPERTY DESCRIBED AS A PARCEL OF LAND IN SECTION 35, TOWNSHIP 67 SOUTH, RANGE 25 EAST, STOCK ISLAND, MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBERS 00124540-000000, 00124550-000000 AND 00124560-000000. THIS REQUEST IS FOR THE TRANSFER OF THE TRE'S FROM THE SENDER SITE, TO BE HELD IN PAPER CERTIFICATE FORM; IT DOES NOT TRANSFER THE TRE'S TO A DESIGNATED RECEIVER SITE. AN ADDITIONAL MINOR CONDITIONAL USE PERMIT WILL BE REQUIRED TO COMPLETE THE TRANSFER OF THE TRE'S TO A DESIGNATED RECEIVED SITE. (FILE 2019-149)

(2:36 p.m.) Mr. Bradley Stein, Development Review Manager, presented the staff report. This is a request for a minor conditional use permit to transfer off only 80 permanent market rate and 18 transient transferrable ROGO exemptions known as TREs. The applicants are Wrecker's Cay Apartments Stock Island, LLC, for the sender site, and Wrecker's ROGO Co, LLC, to hold on paper or certificate the TREs. There is no proposed receiver site associated with this request at this time. An additional minor conditional use permit will be required to transfer the TREs to a specific receiver site. If there is more than one receiver site proposed for TREs then additional minor conditional use permit approvals are required for each site. The agent for the applicant is Jess Goodall of Smith Hawks.

Mr. Stein presented an aerial showing the sender site's location on Stock Island at approximately mile marker five, made up of three parcels with portions of Laurel Avenue, McDonald Avenue and First Street that were abandoned. The property is currently known as Wrecker's Cay and has been approved for 280 deed-restricted affordable dwelling units through a development agreement and major conditional use permit. The Land Use designation is Urban Residential, with a FLUM designation of Residential High and is Tier III. To transfer permanent and transient ROGO exemptions, Land Development Code Section 138-22(b) must be followed. Staff recommends approval

Ms. Schemper then asked for staff and DRC member comments or questions. There were none. Ms. Schemper asked if the applicant wished to speak. Mr. Jess Goodall thanked staff. Ms. Schemper then asked for public comment. There was none.

**2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** AMENDING THE MONROE COUNTY TIER OVERLAY DISTRICT MAP FROM TIER I TO TIER III AS REQUESTED BY RUSSELL A. YAGEL, ESQ. FOR A PARCEL OF LAND LEGALLY DESCRIBED AS LOTS 1 THROUGH 14, SQUARE I, ELDORADO HEIGHTS, PLAT BOOK I PAGE 203 AND A PARCEL OF LAND IN SECTION 32, TOWNSHIP 61 SOUTH, RANGE 39 EAST AND A PARCEL OF SUBMERGED LAND IN THE BAY OF FLORIDA IN SECTION 32, TOWNSHIP 61 SOUTH, RANGE 39 EAST; HAVING REAL ESTATE NO. 00088170-000000. (FILE 2021-038)

(2:48 p.m.) Mr. Mike Roberts, Assistant Director, Environmental Resources, presented the staff report. This is an application for a Tier Map Amendment from Tier 1 to Tier III for property located on U.S. 1, just south of the existing Thurman Street. Mr. Roberts presented a GIS of the property, with the subject property being outlined in blue. The parcel to the west is an existing 10-acre hammock, and to the east is developed land. Staff has evaluated this proposal in conjunction with the Land Development Code, Chapter 130-130, which states, “The Tier boundary criteria, excluding Big Pine Tier boundaries, are designated using aerial photography, data from the Florida Keys Carrying Capacity Study, Endangered Species Maps, property and permitting information and field evaluation. Tier I boundaries shall be delineated to include one or more of the following criteria and shall be designated Tier I: Vacant lands which can be restored to connect upland native habitat batches and reduce further fragmentation of native upland habitat; lands required to provide an undeveloped buffer up to 500 feet in depth if indicated as appropriate by special species studies between natural areas and development to reduce secondary impacts; canals or roadways, depending on width, may provide a boundary that removes the need for the buffer or reduces it; (c) Lands designated for acquisition by public agencies; (d) Known locations of threatened and endangered species as defined in Section 101 of the Land Development Code, identified on the Threatened and Endangered Plant and Animal Maps or in the Florida Keys Carrying Capacity Study Maps, or identified in on-site surveys; (e) Conservation Native Area, Sparsely Settled and Offshore Island Land Use Districts; and, (f) Areas with minimal existing development and infrastructure.”

As outlined in the staff report with regard to (1)(d) above, the known locations of endangered species, the parcel is designated as potentially suitable habitat for the Key Largo Wood Rat, Key Largo Cotton Mouse, the Eastern Indigo Snake, Shell Swallowtail Butterfly and the Stock Island Tree Snail, all of which are federally listed endangered species. The site also supports suitable habitat for a number of state-listed waterfowl and migratory birds such as the White Crown Pigeon. As noted previously, the area to the west of the subject site is an existing tropical hardwood hammock. The canopy on site consists of what should be 1.6 acres of also tropical hardwood hammock as described in the application documents and as supported by previous site visits by staff. Based on staff’s review of the Land Development Code criteria and corresponding Comp Plan policies, staff recommends denial of this application.

Ms. Schemper asked for any comments or questions from staff or DRC members. There were none. Ms. Schemper then asked if the applicant’s representative wished to speak. Mr. Russell A. Yagel commented on the provision stated regarding “known locations.” This parcel is on the Special Focus Area Maps and is identified as “potentially suitable” which is different than a “known location.” Additionally, in the past, the County has assessed this property twice for a pool building permit which was applied for and received, as well as with the residence that was placed on the property. The application indicates a conservation easement would be given for the hammock on the property which would give it greater protection than it has now. Mr. Yagel stated that it is important to discuss the area consisting of hammock as one large number and say it is 1.02 or 1.6, but the reality is the hammock is fragmented. Mr. Yagel referenced Policy 105.21, and stated that the aerials of this property show that not all of this property has been characterized as environmentally sensitive and he does not think it actually meets the criteria. Policy 205.11 referencing natural areas, no one has said that any of these threatened and

endangered species are present, and his biologist has stated there is very little evidence that any federal species would actually be on this property. In arriving at the four-acre threshold, it's been added to another parcel, and yet the code states it should be done by individual parcel whenever possible. Mr. Yagel's position is that this would not allow additional clearing as the applicant has voluntarily conditioned the Tier change on granting of a conservation easement to protect the existing hammock. Mr. Yagel thinks the Tier change should be granted, that it doesn't meet the criteria, and there is no functional difference in terms of protection of the hammock or any species located on this property.

Ms. Schemper stated that she had taken notes and would look at his comments as this item moved forward to the Planning Commission, but noted that a map amendment cannot be conditioned on an agreement to do a conservation easement so there would need to be further discussion on how to implement something like that. Mr. Yagel responded that his recollection is that the code prefers the tiering occur by parcel or lot, and does not prohibit a parcel from having multiple tiers on it, which he believes is a viable solution with the voluntary conservation easement. Ms. Schemper responded that that could be discussed more after this meeting.

Ms. Schemper then again asked for any questions or comments from staff or DRC members based on the applicant's statements. There were none. Ms. Schemper then asked for public comment, after which she would read emails if there was more input reflected in them.

Ms. Joyce Newman, though she lives on Big Pine, is concerned about the fragmentation and loss of habitat that is suitable for the listed endangered species and about the property owner's willingness in the past to push the envelope, so she has no confidence that the integrity of the hammock areas would be respected through the proposed possibility of partitioning separate parcels.

Mr. Brian Waters, who lives at the property just south of the described property, thanked the committee for considering the wildlife and ecosystem which is very important to him, but wanted it noted that even with the hardwood hammock in between himself and that property, it is already a public nuisance as it is very loud late nights and weekends, and he would like that to be known and considered.

Ms. Jenny (last name indiscernible) representing the Tavernier Community Association stated that they are in support of the tropical hardwood hammocks and agree with the staff's recommendations that this application be denied. They do not agree with the tier change request.

Mr. Steven Hartz, a retired lawyer, had a home in Pirates Cove about 500 yards from the subject parcel for 35 years. Dr. Jan Lindsey-Hartz, his wife, among her many academic achievements, received a Bachelor of Science degree summa cum laude from Brown University in Biology. She has kayaked this cove for the 35 years they lived there. They have submitted written comments to staff, and support staff's recommendation in opposing this application. They also are relying on Professor Grosso's letter which was also submitted. Mr. Hartz stated the burden of proof is on the applicant to show one of the enumerated reasons for a tier change, and here no competent proof has been offered. At the community meeting, Mr. Yagel admitted, quote, "It is impossible for me to sit here today and say that I have personal knowledge of what has occurred

on that property.” That is important because half an acre of the hammock seems to have disappeared when you look at the maps. Mr. Yagel also said that all of the development on the land has been lawful because there was no case brought against his client for illegal clearing. That is like saying it is legal to go a hundred miles-an-hour down U.S. 1 if you don’t get a ticket. Mr. Yagel stated the hammock is fragmented, and that is not a term of art in the code, and has been disproved by photos and surveys submitted by he and the County, as they indeed show unlawful cutting. Even after the owner’s self-help cutting, the hammock is still more than an acre and is contiguous with 11 acres owned by the United States. Dr. Jill Lindsey-Hartz, has witnessed the presence of three threatened species of waterfowl on the property; the White Crowned Pigeon, the Little Blue Heron and the Tri-Colored Heron, contrary to the argument made by Mr. Yagel at the community meeting. The presence of threatened species is a specific predicate to Tier I designation. The applicant bought the property with full knowledge that this was Tier I residential land for low-intensity use, and presumably the price of the land reflected the limited future use of the property. Neither TSP nor its predecessors ever contested the Tier I designation, and there is no basis for giving the applicant a windfall and permitting high-intensity use based on no law or facts in contravention of the policies of the Comp Plan. As to the idea of a divided Tier System, the noise and high intensity proposed for the future development of the property will have a direct impact on those species that are actually found and known to be on the property as well as human beings. The notion of a conservation easement has been correctly identified as an impossible mechanism to use or enforce. Where there has been cutting that has not been permitted, which regrettably involved dredging and filling of federal land, which he takes personally due to his history as a federal prosecutor, rather than coming here and demanding a Tier III designation, Mr. Yagel should be coming here pleading for his client to get forgiveness and presenting a conservation restoration plan for the half-acre of precious hammock that has been destroyed. Mr. Hartz stated he is appreciative of all staff does, especially during this time of Covid.

Mr. Peter Morris, Assistant County Attorney, joined the meeting.

Ms. Susan White supports the staff’s recommendation to deny this Tier change. It is important to protect environmentally sensitive hardwood hammock. She is also concerned that a change in the Tier designation in violation of the Land Development Code and 2030 Comp Plan Policy solely to appease a business interest would set a disturbing precedent risking the loss of other sensitive Tier I habitat as other businesses could potentially seek similar amendments leading to a whittling away of our fragile environment.

Ms. Diane Beraldson (phonetic) with the Stock Island Association spoke in support for the Key Largo Federation. The applicant should have been fined for abusing the land, annoying the neighbors and threatening the various species. Ms. Beraldson does not understand how the County could even have this hearing because it’s so clear cut, but in the Florida Keys she has seen environmental concerns go down the drain for development, developers and businesses. Obviously, this area was designated in its Tier for a reason. There have been many complaints in the newspapers. Absolutely, this applicant should be denied and she asks they be fined money and perhaps even eviction as they are not taking care of the property in its Tier as they should be.

Mr. Ron Miller hopes staff sticks to their guns in denying this request, and thanked Mr. Hartz for his comments. This reminds him of the National Environmental Policy Act which recognizes if you degrade the protection on one piece of property, you degrade the next property or the defense of that property. This is a very real concern.

Ms. Joyce Peckman, representing (indiscernible) Creek Village and the Key Largo Federation of Homeowners, thanked staff for their decision.

Dr. Bernard Ginsberg, a retired physician but in practice in this community for the last ten years, finds it reprehensible that this applicant wants to get rewarded for having threatened our environment. This is an environmentally sensitive area, and the residents want no more intensive development. There is no reason for the Tier change, but there are plenty of reasons against it.

Ms. Gail (no last name given) stated she supports staff's recommendation.

Captain Ed Davidson, first Vice President of the Islamorada Community Alliance, could not get the audio working on his end, and Ms. Schemper read an excerpt from his emailed comments into the record. "It should be noted for context that the Tier Classification System was part of an outgrowth of both state and federal court proceedings in which environmental interests and organizations prevailed. Official staff report contains estimates of what appears to be significant unpermitted clearing of some hammock trees. It should be further noted that driveways such as existed on the property are generally not scientifically regarded as hammock bifurcation boundaries. In addition, in the staff evaluation of the remaining hammock as potentially suitable habitat for five threatened and endangered species, it is important to recognize that the native hardwood hammock trees listed on the applicant property includes a poisonwood which is specifically regarded as a preferred forage tree for White Crown Pigeon. While this pigeon has been listed as a threatened species by the State of Florida, it has also been identified as a bird of conservation concern under the Migratory Bird Treaty Act administered by the U.S. Fish and Wildlife Service because the bird nests only in South Florida and the Florida Keys and migrates to the Caribbean during the winter months. The U.S. Fish and Wildlife Service stated position is that tropical hardwood hammock foraging grounds are as essential as nesting ground in order to ensure successful breeding of this protected species. The Islamorada Community Alliance adds these above concerns to its support of the staff recommendation for denial of the requested change of the Tier I classification of this property to the more clearable and developable Tier III designation."

Ms. Schemper then summarized some other emails received by public, noting that most of the comments had already been stated by other speakers present. Ms. Dottie Moses, on behalf of the Federation, is in support of staff's recommendation of denial. Professor Richard Grosso sent a letter, also on behalf of the Federation, in support of staff's recommendation. Islamorada Community Alliance sent support of staff's recommendation. Mr. Alexander Erickson supports staff's recommendation to deny. The Keys is an extremely sensitive environmental area and we must retain what little hardwood hammock we have left. Ms. Judy Starr asks that the Tier I designation be preserved. It rests within an eleven-acre hammock and provides habitat for five species listed federally as threatened or endangered. The hammocks themselves are imperiled

worldwide and live only within a limited range. There was no further public comment. Public comment was closed.

Mr. Russell Yagel asked to make another comment, stating he hated to disappoint Mr. Hartz by not begging forgiveness for false allegations made against his client. He commends staff that in their report as they have done an outstanding job of focusing on the issues. He may disagree with the criteria but he believes the correct law is being applied. The attacks against his client as to clearing are false, salacious and libelous, and though he does not have the trained eye of staff, in the report, the aerial that most resembles the property as it exists today is the 1986 existing conditions map. Accusations that his client did something on federal lands are unsupported, but he trusts that staff, with the guidance of Mr. Morris, will apply only the criteria as set forth in the Comp Plan, the code and the policies.

Ms. Schemper noted that Mr. Burke Cameron was not able to connect, but asked him to email his comments. Ms. Schemper stated that this would go to a public hearing before the Planning Commission, who would make a recommendation to the BOCC, and then there would be a public hearing before the BOCC as they would be the body to adopt an ordinance for a Tier Amendment if they chose to approve.

**3. 1655 OVERSEAS HIGHWAY, MARATHON, MILE MARKER 48 (SENDER SITE) AND 337 LAGUNA AVENUE, KEY LARGO, MILE MARKER 99 (RECEIVER SITE): A PUBLIC MEETING CONCERNING A REQUEST FOR A MINOR CONDITIONAL USE PERMIT. THE REQUESTED APPROVAL IS FOR THE TRANSFER OF ONE (1) PERMANENT MARKET RATE TRANSFERRABLE ROGO EXEMPTION (TRE) FROM THE SENDER SITE PROPERTY DESCRIBED AS A PARCEL OF LAND IN SECTION 09, TOWNSHIP 66 SOUTH, RANGE 32 EAST, MARATHON, MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00326650-000000 TO THE RECEIVER SITE LEGALLY DESCRIBED AS LOT 410, PORT LARGO FIFTH ADDITION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, AT PAGE 109, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, HAVING PARCEL IDENTIFICATION NUMBER 00453475-002600. TRANSFER OF THE TRE FROM MARATHON TO THE UNINCORPORATED COUNTY IS AUTHORIZED PURSUANT TO THE SECOND CORRECTED INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY AND THE CITY OF MARATHON APPROVED AUGUST 15, 2018. (FILE 2021-062)**

(3:17 p.m.) Mr. Bradley Stein, Planning and Development Review Manager, presented the staff report. This is a request for a minor conditional use permit to transfer one permanent market rate ROGO exemption known as a TRE. The applicants are 1655 OS, LLC, for the sender site, and 336 Laguna, LLC, for the receiver site. The agent is Attorney Chelsea Vanadia with Smith Hawks. Mr. Stein presented an aerial showing the sender site's location, which is in the incorporated limits of the City of Marathon at approximately mile marker 48. The property is permitted to be a sender site through an interlocal agreement between Monroe County and the City of Marathon which was entered into August 15, 2018. The interlocal agreement approved the exchange of 18 County affordable ROGO allocations for 18 market rate ROGO exemptions that must be transferred into unincorporated Monroe County. The receiver site is located in Key

Largo at approximately Mile Marker 99 Ocean Side. The address of the vacant property is 337 Laguna Avenue. The site has a Land Use District designation of Improved Subdivision and a FLUM designation of Residential Medium. The property has a Tier III designation and is not in a Velocity Flood Zone or a CBRS unit.

In order to transfer permanent market rate ROGO exemptions, the requirements of Monroe County Land Development Code Section 138-22(b) must be followed. The interlocal agreement specifically removed any requirement that the transfer go to either the Upper Keys or Lower Keys ROGO Subareas. All requirements are being met with the exception provided under the interlocal agreement. Staff recommends approval.

Ms. Schemper asked about the requirement that the applicant get their approval from Marathon as well, and whether there was a plan or schedule for when that was happening.. Mr. Stein responded that that had already happened. The only remaining requirements are to get the documents recorded, but the County must first sign off on those documents.

Ms. Schemper asked for staff or DRC questions or comments. There were none. Ms. Schemper stated she had a question for Ms. Tiffany Stankiewicz, who was not present, whether there was a tracking system associated with the property in Marathon that was called the Saint Columbo site, because she had received a request for information about whether someone could buy the rest of these up in certificate form before they get transferred. So these need to be numbered and tracked.

Ms. Chelsea Vanadia, agent for the applicant, thanked staff for their assistance on this application, adding that she would send what she had received from Marathon for signature. Mr. Stein noted that those documents were already in the file. An unidentified speaker asked what would remain on the sender site. Ms. Schemper responded that they have already built affordable housing on the sender site, so the County had entered that interlocal with Marathon to transfer County affordable ROGOs to the City of Marathon so they could complete an affordable housing development within the City limits. In this case, there were 18 market rates for permanent housing units on the site, so the County requested agreement from Marathon that if they were given 18 affordables, they would basically give 18 market rates back to the County, but the mechanism for that would be through a transfer amongst the private property owners, not given to the County to put in the pool to allocate. This is the first of those 18 to be transferred via the conditional use permit. They also need to do a parallel process in Marathon to tick all the boxes of how they transfer things off a site. The County transferring it onto a site must make sure it meets the County receiver site criteria as well.

Ms. Schemper then asked for public comment. There was none. Public comment was closed. Ms. Schemper thanked everyone for attending and the meeting was adjourned.

### **ADJOURNMENT**

The Development Review Committee meeting was adjourned at 3:30 p.m.