

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

****ADD -ON****

Meeting Date: Wed., December 20, 2006

Division: BOCC

Bulk Item: Yes No

Department: Comm. Mario Di Gennaro, District 4

Staff Contact Person: Tamara Lundstrom
(305 289-6000)

AGENDA ITEM WORDING: Discussion and direction to staff to consider non-resident commercial fishing use of property in the Big Pine Commercial Fishing Special District #12 as a legal "non-conforming use" until such time as proper revisions to the Land Use Development Regulations can be made to remove the residential provision for this zoning district.

ITEM BACKGROUND: CFSD#12 is the only commercial fishing district in unincorporated Monroe County with a residential requirement provision. The Marine Port and Advisory Committee is looking at this specific issue as a part of their recommendations to the BOCC for Working Waterfront and Public Access preservation.

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:

TOTAL COST: _____

BUDGETED: Yes No

COST TO COUNTY: _____

SOURCE OF FUNDS: _____

REVENUE PRODUCING: Yes No **AMOUNT PER MONTH** _____ **Year** _____

APPROVED BY: County Atty OMB/Purchasing Risk Management

DOCUMENTATION: Included Not Required

DISPOSITION: _____

AGENDA ITEM # _____

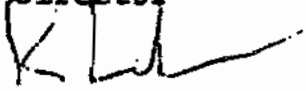
Y. Leon
discuss

Jose Oliveros
305-481-8212

29535 6 Canal DING
and CANALIST LOT # 4
Geraldine

DEC 12 2006

MEMORANDUM

DATE: November 8, 1988
TO: Ron Stack
Code Enforcement Director
FROM: Randy Ludacer 
County Attorney
RE: Monroe County Code Sec. 9.5-247(L) CPFD 12(1)a

I have reexamined the above-cited provision which reads as follows:

"Commercial fishing, excluding processing and packaging as well as trap storage and construction by persons other than residents of the district;"

Despite the tortured construction of the sentence I believe the intent of the drafter is as follows:

1. To permit commercial fishing.
2. To prohibit processing and packaging.
3. To prohibit trap storage and construction by persons not residents in the district.
4. To permit trap storage and construction by persons resident in the district.

The legality of these provisions I think is subject to further

examination since the restrictions do not apply to residents of the property, but residents within the district. I believe this is not a lawful classification for these purposes and I do not ascertain any particular public purpose being served by this provision. If the exclusions of trap storage and construction apply to all persons other than the residents of a particular property I could understand that this was meant to keep it a minor use; however, where traps can be constructed by persons who are residents of the district and merely residents of the subject property I think this objective is no longer served and the restriction has questionable legality.

RW/jeh

cc: Don Craig

- a. Commercial fishing;
 - b. Detached dwellings;
 - c. Accessory uses;
- (2) Subject to the provision of a class C bufferyard along the boundary of the district with a residential district, as a minor conditional use:
- a. Attached dwellings, provided that the total floor area of residential uses in a commercial fishing area district does not exceed twenty-five (25) percent of the land area in the commercial fishing area district;
 - b. Commercial retail, low- and medium-intensity uses, provided that the goods and services are related to or supportive of the commercial fishing industry;
 - c. Light industrial uses, including marine repair services, provided that such uses are intended to serve the needs of the commercial fishing industry.
- (i) *CFSD 9 (Located near Lower Matcumbe):*
- (1) ~~As of right:~~
- a. Repair, maintenance and storage of traps.
- (j) *CFSD 10 (Located on Lower Matcumbe):*
- (1) As of right:
- a. Manufacture, assembly, repair, maintenance and storage of traps;
 - b. Single-family detached dwellings.
- (k) *CFSD 11 (Located on Upper Matcumbe):*
- (1) As of right:
- a. Commercial vessel docking;
 - b. Manufacture, assembly, repair, maintenance and storage of traps and other fishing equipment.
- (l) *CFSD 13 (Located on Big Pine):*
- (1) Subject to the limitation that no use shall involve a vessel that draws more than six (6) feet, as of right:
- a. Commercial fishing, excluding processing and packaging as well as trap storage and construction by persons other than residents of the district;